

SB3038



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB3038

Introduced 2/18/2016, by Sen. Emil Jones, III

SYNOPSIS AS INTRODUCED:

65 ILCS 5/11-20-15
65 ILCS 5/11-20-15.1

Amends the Illinois Municipal Code. Provides that a municipality may file a notice of lien for removal of costs relating to dilapidated properties on any other parcel or parcels of private property in owned by the owner of the dilapidated property located within the same municipality as the dilapidated property. Further provides that after obtaining a judgment on a lien for removal costs of dilapidated properties a municipality may file a lien against any property owned by the owner of the dilapidated property.

LRB099 18834 AWJ 43219 b

A BILL FOR

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Municipal Code is amended by
5 changing Sections 11-20-15 and 11-20-15.1 as follows:

6 (65 ILCS 5/11-20-15)

7 Sec. 11-20-15. Lien for removal costs.

8 (a) If the municipality incurs a removal cost under Section
9 11-20-7, 11-20-8, 11-20-12, or 11-20-13 with respect to any
10 underlying parcel, then that cost is a lien upon that
11 underlying parcel and other parcels. This lien is superior to
12 all other liens and encumbrances, except tax liens and as
13 otherwise provided in subsection (c) of this Section.

14 (b) To perfect a lien under this Section, the municipality
15 must, within one year after the removal cost is incurred, file
16 notice of lien in the office of the recorder in the county in
17 which the underlying parcel is located or, if the underlying
18 parcel is registered under the Torrens system, in the office of
19 the Registrar of Titles of that county. The notice must consist
20 of a sworn statement setting out:

21 (1) a description of the underlying parcel that
22 sufficiently identifies the parcel;

23 (2) the amount of the removal cost; and

1 (3) the date or dates when the removal cost was
2 incurred by the municipality.

3 If, for any one parcel, the municipality engaged in any
4 removal activity on more than one occasion during the course of
5 one year, then the municipality may combine any or all of the
6 costs of each of those activities into a single notice of lien.

7 (b-5) Using the same requirements as set forth in
8 subsection (b), a municipality may also file a notice of lien
9 on any other parcels for the removal cost under Section
10 11-20-7, 11-20-8, 11-20-12, or 11-20-13 on the underlying
11 parcel.

12 (c) A lien under this Section is not valid as to: (i) any
13 purchaser whose rights in and to the underlying parcel or other
14 parcel arose after the removal activity but before the filing
15 of the notice of lien; or (ii) any mortgagee, judgment
16 creditor, or other lienor whose rights in and to the underlying
17 parcel or other parcel arose before the filing of the notice of
18 lien.

19 (d) The removal cost is not a lien on the underlying parcel
20 or other parcel unless a notice is personally served on, or
21 sent by certified mail to, the person to whom was sent the tax
22 bill for the general taxes on the property for the taxable year
23 immediately preceding the removal activities. The notice must
24 be delivered or sent after the removal activities have been
25 performed, and it must: (i) state the substance of this Section
26 and the substance of any ordinance of the municipality

1 implementing this Section; (ii) identify the underlying parcel
2 and other parcels, by common description; and (iii) describe
3 the removal activity.

4 (e) A lien under this Section may be enforced by
5 proceedings to foreclose as in case of mortgages or mechanics'
6 liens. An action to foreclose a lien under this Section must be
7 commenced within 2 years after the date of filing notice of
8 lien.

9 (f) Any person who performs a removal activity by the
10 authority of the municipality may, in his or her own name, file
11 a lien and foreclose on that lien in the same manner as a
12 municipality under this Section.

13 (g) A failure to file a foreclosure action does not, in any
14 way, affect the validity of the lien against the underlying
15 parcel or other parcel.

16 (h) Upon payment of the lien cost by the owner of the
17 underlying parcel after notice of lien has been filed, the
18 municipality (or its agent under subsection (f)) shall release
19 all related liens on the underlying parcel and other parcels
20 ~~the lien~~, and the releases ~~release~~ may be filed of record by
21 the owner at his or her sole expense as in the case of filing
22 notice of lien.

23 (h-5) In any case where a municipality has obtained a lien
24 under subsection (a), the municipality may also bring an action
25 for a money judgment against the owner or owners of the
26 underlying parcel in the amount of the lien in the same manner

1 as provided for bringing causes of action in Article II of the
2 Code of Civil Procedure and, upon obtaining a judgment, file a
3 judgment lien against all of the real estate of the owner or
4 owners and enforce that lien as provided for in Article XII of
5 the Code of Civil Procedure.

6 (i) For the purposes of this Section:

7 "Lien cost" means the removal cost and the filing costs for
8 any notice of lien under subsection (b).

9 "Other parcel" means a parcel or parcels of private
10 property other than the underlying parcel that is within the
11 same municipality and has the same ownership as the underlying
12 parcel.

13 "Removal activity" means any activity for which a removal
14 cost was incurred.

15 "Removal cost" means a removal cost as defined under
16 Section 11-20-7, 11-20-8, 11-20-12, or 11-20-13.

17 "Underlying parcel" means a parcel of private property upon
18 which a removal activity was performed.

19 "Year" means a 365-day period.

20 (j) This Section applies only to liens filed after August
21 14, 2009 (the effective date of Public Act 96-462).

22 (k) This Section shall not apply to a lien filed pursuant
23 to Section 11-20-15.1.

24 (Source: P.A. 96-462, eff. 8-14-09; 96-856, eff. 3-1-10;
25 96-1000, eff. 7-2-10.)

1 (65 ILCS 5/11-20-15.1)

2 Sec. 11-20-15.1. Lien for costs of removal, securing, and
3 enclosing on abandoned residential property.

4 (a) If the municipality elects to incur a removal cost
5 pursuant to subsection (d) of Section 11-20-7, subsection (d)
6 of Section 11-20-8, subsection (d) of Section 11-20-12, or
7 subsection (e) of Section 11-20-13, or a securing or enclosing
8 cost pursuant to Section 11-31-1.01 with respect to an
9 abandoned residential property, then that cost is a lien upon
10 the underlying parcel of that abandoned residential property.
11 This lien is superior to all other liens and encumbrances,
12 except tax liens and as otherwise provided in this Section.

13 (b) To perfect a lien under this Section, the municipality
14 must, within one year after the cost is incurred for the
15 activity, file notice of the lien in the office of the recorder
16 in the county in which the abandoned residential property is
17 located or, if the abandoned residential property is registered
18 under the Torrens system, in the office of the Registrar of
19 Titles of that county, a sworn statement setting out:

20 (1) a description of the abandoned residential
21 property that sufficiently identifies the parcel;

22 (2) the amount of the cost of the activity;

23 (3) the date or dates when the cost for the activity
24 was incurred by the municipality; and

25 (4) a statement that the lien has been filed pursuant
26 to subsection (d) of Section 11-20-7, subsection (d) of

1 Section 11-20-8, subsection (d) of Section 11-20-12,
2 subsection (e) of Section 11-20-13, or Section 11-31-1.01,
3 as applicable.

4 If, for any abandoned residential property, the
5 municipality engaged in any activity on more than one occasion
6 during the course of one year, then the municipality may
7 combine any or all of the costs of each of those activities
8 into a single notice of lien.

9 (c) To enforce a lien pursuant to this Section, the
10 municipality must maintain contemporaneous records that
11 include, at a minimum: (i) a dated statement of finding by the
12 municipality that the property for which the work is to be
13 performed has become abandoned residential property, which
14 shall include (1) the date when the property was first known or
15 observed to be unoccupied by any lawful occupant or occupants,
16 (2) a description of the actions taken by the municipality to
17 contact the legal owner or owners of the property identified on
18 the recorded mortgage, or, if known, any agent of the owner or
19 owners, including the dates such actions were taken, and (3) a
20 statement that no contacts were made with the legal owner or
21 owners or their agents as a result of such actions, (ii) a
22 dated certification by an authorized official of the
23 municipality of the necessity and specific nature of the work
24 to be performed, (iii) a copy of the agreement with the person
25 or entity performing the work that includes the legal name of
26 the person or entity, the rate or rates to be charged for

1 performing the work, and an estimate of the total cost of the
2 work to be performed, (iv) detailed invoices and payment
3 vouchers for all payments made by the municipality for such
4 work, and (v) a statement as to whether the work was engaged
5 through a competitive bidding process, and if so, a copy of all
6 proposals submitted by the bidders for such work.

7 (d) A lien under this Section shall be enforceable
8 exclusively at the hearing for confirmation of sale of the
9 abandoned residential property that is held pursuant to
10 subsection (b) of Section 15-1508 of the Code of Civil
11 Procedure and shall be limited to a claim of interest in the
12 proceeds of the sale and subject to the requirements of this
13 Section. Any mortgagee who holds a mortgage on the property, or
14 any beneficiary or trustee who holds a deed of trust on the
15 property, may contest the lien or the amount of the lien at any
16 time during the foreclosure proceeding upon motion and notice
17 in accordance with court rules applicable to motions generally.
18 Grounds for forfeiture of the lien or the superior status of
19 the lien granted by subsection (a) of this Section shall
20 include, but not be limited to, a finding by the court that:
21 (i) the municipality has not complied with subsection (b) or
22 (c) of this Section, (ii) the scope of the work was not
23 reasonable under the circumstances, (iii) the work exceeded the
24 authorization for the work to be performed under subsection (a)
25 of Section 11-20-7, subsection (a) of Section 11-20-8,
26 subsection (a) of Section 11-20-12, subsection (a) of Section

1 11-20-13, or subsection (a) of Section 11-31-1.01, as
2 applicable, or (iv) the cost of the services rendered or
3 materials provided was not commercially reasonable. Forfeiture
4 of the superior status of the lien otherwise granted by this
5 Section shall not constitute a forfeiture of the lien as a
6 subordinate lien.

7 (e) Upon payment of the amount of a lien filed under this
8 Section by the mortgagee, servicer, owner, or any other person,
9 the municipality shall release the lien, and the release may be
10 filed of record by the person making such payment at the
11 person's sole expense as in the case of filing notice of lien.

12 (f) Notwithstanding any other provision of this Section, a
13 municipality may not file a lien pursuant to this Section for
14 activities performed pursuant to Section 11-20-7, Section
15 11-20-8, Section 11-20-12, Section 11-20-13, or Section
16 11-31-1.01, if: (i) the mortgagee or servicer of the abandoned
17 residential property has provided notice to the municipality
18 that the mortgagee or servicer has performed or will perform
19 the remedial actions specified in the notice that the
20 municipality otherwise might perform pursuant to subsection
21 (d) of Section 11-20-7, subsection (d) of Section 11-20-8,
22 subsection (d) of Section 11-20-12, subsection (e) of Section
23 11-20-13, or Section 11-31-1.01, provided that the remedial
24 actions specified in the notice have been performed or are
25 performed or initiated in good faith within 30 days of such
26 notice; or (ii) the municipality has provided notice to the

1 mortgagee or servicer of a problem with the property requiring
2 the remedial actions specified in the notice that the
3 municipality otherwise would perform pursuant to subsection
4 (d) of Section 11-20-7, subsection (d) of Section 11-20-8,
5 subsection (d) of Section 11-20-12, subsection (e) of Section
6 11-20-13, or Section 11-31-1.01, and the mortgagee or servicer
7 has performed or performs or initiates in good faith the
8 remedial actions specified in the notice within 30 days of such
9 notice.

10 (g) This Section and subsection (d) of Section 11-20-7,
11 subsection (d) of Section 11-20-8, subsection (d) of Section
12 11-20-12, subsection (e) of Section 11-20-13, or Section
13 11-31-1.01 shall apply only to activities performed, costs
14 incurred, and liens filed after the effective date of this
15 amendatory Act of the 96th General Assembly.

16 (h) For the purposes of this Section and subsection (d) of
17 Section 11-20-7, subsection (d) of Section 11-20-8, subsection
18 (d) of Section 11-20-12, subsection (e) of Section 11-20-13, or
19 Section 11-31-1.01:

20 "Abandoned residential property" means any type of
21 permanent residential dwelling unit, including detached single
22 family structures, and townhouses, condominium units and
23 multifamily rental apartments covering the entire property,
24 and manufactured homes treated under Illinois law as real
25 estate and not as personal property, that has been unoccupied
26 by any lawful occupant or occupants for at least 90 days, and

1 for which after such 90 day period, the municipality has made
2 good faith efforts to contact the legal owner or owners of the
3 property identified on the recorded mortgage, or, if known, any
4 agent of the owner or owners, and no contact has been made. A
5 property for which the municipality has been given notice of
6 the order of confirmation of sale pursuant to subsection (b-10)
7 of Section 15-1508 of the Code of Civil Procedure shall not be
8 deemed to be an abandoned residential property for the purposes
9 of subsection (d) of Section 11-20-7, subsection (d) of Section
10 11-20-8, subsection (d) of Section 11-20-12, subsection (e) of
11 Section 11-20-13, and Section 11-31-1.01 of this Code.

12 "MERS program" means the nationwide Mortgage Electronic
13 Registration System approved by Fannie Mae, Freddie Mac, and
14 Ginnie Mae that has been created by the mortgage banking
15 industry with the mission of registering every mortgage loan in
16 the United States to lawfully make information concerning each
17 residential mortgage loan and the property securing it
18 available by Internet access to mortgage originators,
19 servicers, warehouse lenders, wholesale lenders, retail
20 lenders, document custodians, settlement agents, title
21 companies, insurers, investors, county recorders, units of
22 local government, and consumers.

23 (i) Any entity or person who performs a removal, securing,
24 or enclosing activity pursuant to the authority of a
25 municipality under subsection (d) of Section 11-20-7,
26 subsection (d) of Section 11-20-8, subsection (d) of Section

1 11-20-12, subsection (e) of Section 11-20-13, or Section
2 11-31-1.01, may, in its, his, or her own name, file a lien
3 pursuant to subsection (b) of this Section and appear in a
4 foreclosure action on that lien pursuant to subsection (d) of
5 this Section in the place of the municipality, provided that
6 the municipality shall remain subject to subsection (c) of this
7 Section, and such party shall be subject to all of the
8 provisions in this Section as if such party were the
9 municipality.

10 (i-5) All amounts received by the municipality for costs
11 incurred pursuant to this Section for which the municipality
12 has been reimbursed under Section 7.31 of the Illinois Housing
13 Development Act shall be remitted to the State Treasurer for
14 deposit into the Abandoned Residential Property Municipality
15 Relief Fund.

16 (j) If prior to subsection (d) of Section 11-20-7,
17 subsection (d) of Section 11-20-8, subsection (d) of Section
18 11-20-12, and subsection (e) of Section 11-20-13 becoming
19 inoperative a lien is filed pursuant to any of those
20 subsections, then the lien shall remain in full force and
21 effect after the subsections have become inoperative, subject
22 to all of the provisions of this Section. If prior to the
23 repeal of Section 11-31-1.01 a lien is filed pursuant to
24 Section 11-31-1.01, then the lien shall remain in full force
25 and effect after the repeal of Section 11-31-1.01, subject to
26 all of the provisions of this Section.

1 (k) In any case where a municipality has obtained a lien
2 under subsection (a) the municipality may also bring an action
3 for a money judgment against the owner or owners of the real
4 estate in the amount of the lien in the same manner as provided
5 for bringing causes of action in Article II of the Code of
6 Civil Procedure and, upon obtaining a judgment, file a judgment
7 lien against all of the real estate of the owner or owners and
8 enforce that lien as provided for in Article XII of the Code of
9 Civil Procedure.

10 (Source: P.A. 96-856, eff. 3-1-10; 96-1419, eff. 10-1-10.)