

AN ACT concerning civil law.

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

Section 5. The Mechanics Lien Act is amended by changing Sections 1 and 21 as follows:

(770 ILCS 60/1) (from Ch. 82, par. 1)

Sec. 1. Contractor defined; amount of lien; waiver of lien; attachment of lien; agreement to waive; when not enforceable.

(a) Any person who shall by any contract or contracts, express or implied, or partly expressed or implied, with the owner of a lot or tract of land, or with one whom the owner has authorized or knowingly permitted to contract, to improve the lot or tract of land or for the purpose of improving the tract of land, or to manage a structure under construction thereon, is known under this Act as a contractor and has a lien upon the whole of such lot or tract of land and upon adjoining or adjacent lots or tracts of land of such owner constituting the same premises and occupied or used in connection with such lot or tract of land as a place of residence or business; and in case the contract relates to 2 or more buildings, on 2 or more lots or tracts of land, upon all such lots and tracts of land and improvements thereon for the amount due to him or her for the material, fixtures, apparatus, machinery, services or

labor, and interest at the rate of 10% per annum from the date the same is due. This lien extends to an estate in fee, for life, for years, or any other estate or any right of redemption or other interest that the owner may have in the lot or tract of land at the time of making such contract or may subsequently acquire and this lien attaches as of the date of the contract.

(b) As used in subsection (a) of this Section, "improve" means to furnish labor, services, material, fixtures, apparatus or machinery, forms or form work in the process of construction where cement, concrete or like material is used for the purpose of or in the building, altering, repairing or ornamenting any house or other building, walk or sidewalk, whether the walk or sidewalk is on the land or bordering thereon, driveway, fence or improvement or appurtenances to the lot or tract of land or connected therewith, and upon, over or under a sidewalk, street or alley adjoining; or fill, sod or excavate such lot or tract of land, or do landscape work thereon or therefor; or raise or lower any house thereon or remove any house thereto, or remove any house or other structure therefrom, or perform any services or incur any expense as an architect, structural engineer, professional engineer, land surveyor or property manager in, for or on a lot or tract of land for any such purpose; or drill any water well thereon; or furnish or perform labor or services as superintendent, time keeper, mechanic, laborer or otherwise, in the building, altering, repairing or ornamenting of the

same; or furnish material, fixtures, apparatus, machinery, labor or services, forms or form work used in the process of construction where concrete, cement or like material is used, or drill any water well on the order of his agent, architect, structural engineer or superintendent having charge of the improvements, building, altering, repairing or ornamenting the same.

(c) The taking of additional security by the contractor or sub-contractor is not a waiver of any right of lien which he may have by virtue of this Act, unless made a waiver by express agreement of the parties and the waiver is not prohibited by this Act.

(d) An agreement to waive any right to enforce or claim any lien under this Act, or an agreement to subordinate the lien, where the agreement is in anticipation of and in consideration for the awarding of a contract or subcontract, either express or implied, to perform work or supply materials for an improvement upon real property is against public policy and unenforceable. This Section does not prohibit release of lien under subsection (b) of Section 35 of this Act, nor does it prohibit an agreement to subordinate a mechanics lien to a mortgage lien that secures a construction loan if that agreement is made after more than 50% of the loan has been disbursed to fund improvements to the property ~~or prohibit subordination of the lien, except as provided in Section 21.~~

(Source: P.A. 94-627, eff. 1-1-06.)

(770 ILCS 60/21) (from Ch. 82, par. 21)

Sec. 21. Sub-contractor defined; lien of sub-contractor; notice; size of type; service of notice; amount of lien; default by contractor.

(a) Subject to the provisions of Section 5, every mechanic, worker or other person who shall furnish any labor, services, material, fixtures, apparatus or machinery, forms or form work for the contractor, or shall furnish any material to be employed in the process of construction as a means for assisting in the erection of the building or improvement in what is commonly termed form or form work where concrete, cement or like material is used in whole or in part, shall be known under this Act as a sub-contractor, and shall have a lien for the value thereof, with interest on such amount from the date the same is due, from the same time, on the same property as provided for the contractor, and, also, as against the creditors and assignees, and personal and legal representatives of the contractor, on the material, fixtures, apparatus or machinery furnished, and on the moneys or other considerations due or to become due from the owner under the original contract.

(b) If the legal effect of a provision in any contract between the owner and contractor or contractor and subcontractor is that no lien or claim may be filed or ~~maintained by any one and the waiver is not prohibited by this~~

~~Act, or that such contractor's lien shall be subordinated to the interests of any other party, and the provision is not prohibited by this Act, such provision shall be binding if made as part of an agreement not prohibited by this Act. such provision shall be binding; but the only admissible evidence thereof as against a subcontractor or material supplier, shall be proof of actual notice thereof to him or her before his or her contract is entered into. Such subordination provision shall not be binding on the subcontractor unless set forth in its entirety in writing in the contract between the contractor and subcontractor or material supplier.~~

(c) It shall be the duty of each subcontractor who has furnished, or is furnishing, labor, services, material, fixtures, apparatus or machinery, forms or form work for an existing owner-occupied single family residence, in order to preserve his lien, to notify the occupant either personally or by certified mail, return receipt requested, addressed to the occupant or his agent of the residence within 60 days from his first furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work, that he is supplying labor, services, material, fixtures, apparatus or machinery, forms or form work provided, however, that any notice given after 60 days by the subcontractor shall preserve his lien, but only to the extent that the owner has not been prejudiced by payments made prior to receipt of the notice. The notification shall include a warning to the owner that before

any payment is made to the contractor, the owner should receive a waiver of lien executed by each subcontractor who has furnished labor, services, material, fixtures, apparatus or machinery, forms or form work.

The notice shall contain the name and address of the subcontractor or material man, the date he started to work or to deliver materials, the type of work done and to be done or the type of materials delivered and to be delivered, and the name of the contractor requesting the work. The notice shall also contain the following warning:

"NOTICE TO OWNER

The subcontractor providing this notice has performed work for or delivered material to your home improvement contractor. These services or materials are being used in the improvements to your residence and entitle the subcontractor to file a lien against your residence if the services or materials are not paid for by your home improvement contractor. A lien waiver will be provided to your contractor when the subcontractor is paid, and you are urged to request this waiver from your contractor when paying for your home improvements."

Such warning shall be in at least 10 point bold face type. For purposes of this Section, notice by certified mail is considered served at the time of its mailing.

(d) In no case, except as hereinafter provided, shall the owner be compelled to pay a greater sum for or on account of the completion of such house, building or other improvement

than the price or sum stipulated in said original contract or agreement, unless payment be made to the contractor or to his order, in violation of the rights and interests of the persons intended to be benefited by this Act: Provided, if it shall appear to the court that the owner and contractor fraudulently, and for the purpose of defrauding sub-contractors fixed an unreasonably low price in their original contract for the erection or repairing of such house, building or other improvement, then the court shall ascertain how much of a difference exists between a fair price for labor, services, material, fixtures, apparatus or machinery, forms or form work used in said house, building or other improvement, and the sum named in said original contract, and said difference shall be considered a part of the contract and be subject to a lien. But where the contractor's statement, made as provided in Section 5, shows the amount to be paid to the sub-contractor, or party furnishing material, or the sub-contractor's statement, made pursuant to Section 22, shows the amount to become due for material; or notice is given to the owner, as provided in Sections 24 and 25, and thereafter such sub-contract shall be performed, or material to the value of the amount named in such statements or notice, shall be prepared for use and delivery, or delivered without written protest on the part of the owner previous to such performance or delivery, or preparation for delivery, then, and in any of such cases, such sub-contractor or party furnishing or preparing material, regardless of the

price named in the original contract, shall have a lien therefor to the extent of the amount named in such statements or notice. In case of default or abandonment by the contractor, the sub-contractor or party furnishing material, shall have and may enforce his lien to the same extent and in the same manner that the contractor may under conditions that arise as provided for in Section 4 of this Act, and shall have and may exercise the same rights as are therein provided for the contractor.

(e) Any provision in a contract, agreement, or understanding, when payment from a contractor to a subcontractor or supplier is conditioned upon receipt of the payment from any other party including a private or public owner, shall not be a defense by the party responsible for payment to a claim brought under Section 21, 22, 23, or 28 of this Act against the party. For the purpose of this Section, "contractor" also includes subcontractor or supplier. The provisions of Public Act 87-1180 shall be construed as declarative of existing law and not as a new enactment.

(Source: P.A. 94-615, eff. 1-1-06; 94-627, eff. 1-1-06.)

Section 99. Effective date. This Act takes effect upon becoming law.