



BUILDING KNOWLEDGE

The newsletter of the ISBA's Section on Construction Law

August 2017, vol. 8, no. 1

Keeping homeowners apprised of their rights under The Illinois Mechanics Lien Act

By Adam B. Whiteman

Introduction

Homeowners rarely feel they have any leverage or equality when dealing with a contractor doing work on their residence. Homeowners are often intimidated by a contractor who will threaten to “file a lien” against the homeowner’s property if they are not paid. To make matters worse, sometimes the homeowner will make payments to a general contractor only to find that money is still owed to a subcontractor with whom the homeowner did not even contract.

What is a homeowner to do? One answer can be found in the Illinois Mechanics Lien Act (770 ILCS 60/1 et. seq.)

The Contractors Sworn Statement required by 770 ILCS 60/5 is supposed to be one of the key documents used to balance the interests of the contractor’s right to payment with the property owner’s right to know (1) who is working on their property and (2) what they are owed. If a homeowner complies with the requirements of Section 5 (by demanding a Contractor’s Sworn Statement and then making payments to the general contractor based on the contents of that Sworn Statement), they can avoid double payment to a subcontractor.

Despite the protections provided by the statute, the Section 5 Sworn Statement is rarely used in a residential construction setting. The reason for this is that people (and attorneys) simply do not even know about it.

The Home Repair and Remodeling Act

The Illinois legislature has taken steps to help keep homeowners advised of their rights through the Home Repair and Remodeling Act (815 ILCS 513/1 et. seq.) The Home Repair and Remodeling Act requires that a contractor provide a homeowner with a “Consumer Rights Brochure”.

The problem with this brochure is that it does not accurately or sufficiently advise homeowners of their rights and obligations under Section 5 of the Mechanics Lien Act.

Specifically, Section 20 of the Home Repair and Remodeling Act provides, in relevant part,

(815 ILCS 513/20)

Sec. 20. Consumer rights brochure.

(a) For any contract over \$1,000, any person engaging in the business of home repair and remodeling shall provide to its customers a copy of the “Home Repair: Know Your Consumer Rights” pamphlet prior to the execution of any

home repair and remodeling contract...

(c) The pamphlet must be a separate document, in at least 12 point type, and in legible ink. The pamphlet shall read as follows:

“HOME REPAIR: KNOW YOUR CONSUMER RIGHTS

As you plan for your home repair/improvement project, it is important to ask the right questions in order to protect your investment. The tips in this fact sheet should allow you to protect yourself and minimize the possibility that a misunderstanding may occur.

CONTRACTS

(1)- (9)***

(10) Remember, homeowners should know who provides supplies and labor for any work performed on your home. Suppliers and subcontractors have a right to file a lien against your property if the general contractor fails to pay them. To protect your property, request lien waivers from the general contractor.

***”

Thus, 815 ILCS 513/20(10) appears to be a general suggestion about lien waivers, but it fails to adequately inform homeowners of their rights and obligations under Section 5 of the Mechanic’s Lien Act.

The Illinois Mechanics Lien Act

In relevant part, Section 5 of the Mechanic’s Lien Act provides as follows:

(770 ILCS 60/5) (from Ch. 82, par. 5)

Sec. 5. Statement of persons furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work notice to owner of waiver; size of type.

(a) It shall be the duty of the contractor to give the owner, and the duty of the owner to require of the contractor, before the owner or his agent, architect, or superintendent shall pay or cause to be paid to the contractor or to his order any moneys or other consideration due or to become due to the contractor, or make or cause to be made to the contractor any advancement of any moneys or any other consideration, a statement in writing, under oath or verified by affidavit, of the names and addresses of all parties furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work and of the amounts due or to become due to each. Merchants and dealers in materials only shall not be required to make statements required in this Section.

(b) The following shall apply to an owner-occupied single-family residence: (i) Each contractor shall provide the owner or his or her agent, either as part of the contract or as a separate printed statement given before the owner or his agent makes the first payment for labor, materials, fixtures, apparatus or machinery, the following:

THE LAW REQUIRES THAT THE CONTRACTOR SHALL SUBMIT A SWORN STATEMENT OF PERSONS FURNISHING LABOR, SERVICES, MATERIAL, FIXTURES, APPARATUS OR MACHINERY, FORMS OR FORM WORK BEFORE ANY PAYMENTS ARE REQUIRED TO BE MADE TO THE CONTRACTOR.”

A comparison of the language in the above two statutes reveals that Section 20(10) of the Home Repair and Remodeling Act does not fully and accurately apprise the homeowner's of their actual rights and obligations under Section 60/5(b) the Mechanic's Lien Act. This discrepancy should be remedied.

Suggested Solution

Currently, as quoted above, Section 20(10) of the Home Repair and Remodeling Act simply alerts the home owner about the need to know the identity of subcontractors, the possibility of a lien and the value of a lien waiver, but it does not actually provide the homeowner with guidance as to what they need to do to avoid a lien and what statute will help them in this regard.

Section 20(10) of the Home Repair and Remodeling Act should be amended so as to better alert homeowners of their rights and obligations under Illinois law. Such an amendment would be in line with the consumer protection goals of the Home Repair & Remodeling Act.

It is thus suggested that the state legislature amend Section 20(10) of the Home Repair and Remodeling Act so that it reads as follows:

(10) Remember, those who supply materials, work or other improvements to your property may have a right to file a lien against your property even though you did not contract directly with them. To help you identify these potential lienholders, the Illinois Mechanics Lien Act requires that the contractor shall provide you with a sworn statement of persons furnishing labor, services, material, fixtures, apparatus or machinery, forms or form work before any payments are required to be made to the contractor. You should request a sworn statement and lien waivers from the general contractor before making payments.

This suggested amendment has the effect of (1) clarifying for the homeowner who can file a lien against their property, and (2) summarizing how such liens can be prevented by obtaining a sworn statement and lien waivers prior to making payments. Because the suggested amended tracks the existing statutory warning language already found in Section 5(b) of the Illinois Mechanic's Lien Act, it is not substantively changing the law, but rather, is simply informing the consumer about the law. □

Adam Whiteman Serves on the ISBA Construction Law Section Council and also serves as Chair of the Real Property Section Council. His real estate and litigation practice is located in Chicago Illinois as Whiteman Borden LLC.

Adam@WhitemanBorden.com

« [Back to the August 2017 Newsletter](#)

Member Comments

© Illinois State Bar Association