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## Real Estate

### The Right of Redemption in a Mechanics Lien Foreclosure

By Adam Whiteman

When a property subject to only a mechanics lien is sold at a sheriff's sale, the law grants an owner six months after the sale to redeem. Be aware of this when drafting final orders in a foreclosure case, and advise your lien-claimant clients they may have to wait six months before getting paid.

Your client hires you to file and sue on a mechanics lien claim. You diligently investigate the facts, draft and serve proper lien notices, draft and properly record the lien on a timely basis, survive motions to dismiss and motions for summary judgment, prove up your lien claim at trial, and win!

But still the owner (and/or general contractor) refuses to pay. You are now in relatively unfamiliar territory because the vast majority of lien claims are settled once the lien is proven to be valid and properly perfected.

You have literally spent years litigating this matter. Your client is eager to know when he will finally be paid for the work he performed. The injustice of this delay astounds him, and he is now getting impatient with you. You assume that mechanics lien foreclosure sale procedures will mirror mortgage foreclosure sales, and thus that the client will be paid as soon as the court approves the sheriff's sale.

However, this would be a mistake because the redemption period (allowing the owner to buy back their property) for mortgage foreclosures differs markedly from the redemption period for mechanics lien foreclosures. As it happens, your client may have to wait another six months after the sale to get paid.

This article examines the difference in redemption periods between mortgage foreclosures and mechanics lien



#### TAKEAWAYS

- An owner of property subject to a mechanics lien foreclosure has a right of redemption, which allows the owner to re-capture his/her property after a foreclosure sale by paying off all amounts due to the lien claimant(s).
- When a mechanics lien is being foreclosed, the Illinois statute relating to judgment liens for money dictates the rights of redemption. A judgment debtor/property owner whose property has been sold due to a mechanics lien has six months *after* the judicial sale to redeem.
- To redeem a property, the original owner must pay interest of 10 percent that accrues *after* the sale up to the date of redemption. For the period from judgment to the judicial sale, an interest rate of 9 percent likely applies.

foreclosures and provides the practitioner with a warning to keep this issue in mind when handling lien foreclosures.

### **What law governs the redemption period (hint - not the Mortgage Foreclosure Act)?**

The Mechanics Lien Act makes several references to the Illinois Mortgage Foreclosure Act. It provides that the court in a mechanics lien case "[s]hall have the power to appoint receivers for property...in the same manner...as in cases of foreclosure of mortgages...." <sup>1</sup> It also provides that deficiency judgments are addressed, "as upon a deficiency judgment in the foreclosure of a mortgage...." <sup>2</sup>

Based upon these references to mortgage foreclosures, one might assume that the property owner's right of redemption in a mechanics lien case would also be dictated by Illinois mortgage foreclosure law. This is not correct.

### **Judgment liens for money**

The Mechanics Lien Act provides as follows:

Upon all sales under this Act the right of redemption shall exist in favor of the same persons, and may be in the same manner as is or may be provided for redemption of real estate from sales under judgments for the payment of money.<sup>3</sup>

From the above language, we see that the right of redemption under the Mechanics Lien Act is the same as for "sales under judgment for the payment of money." Thus, the Mortgage Foreclosure Act does not dictate the rights of redemption when the underlying judgment relates to a mechanics lien. Rather, it is the statute relating to judgment liens that dictates the rights of redemption when a mechanics lien is being foreclosed.

### **Historical backdrop**

The language regarding redemption in the current iteration of the Illinois Mechanics Lien Act has a statutory predicate dating back to the mid-1800s and an even earlier common law source based on principles of equity and fairness.

In 1860, the Illinois Supreme Court recognized that there was no statutory right of redemption for the foreclosure of a mechanics lien, and so it set one. The court adopted an equitable approach to the issue and stated as follows:

This court has held, that when premises are sold under a decree, to enforce a mechanics' lien, it is without redemption. This being the case, the decree should fix a reasonable time within which the money is required to be paid, and in default of payment within the time, decree the sale of the premises, or a sufficient portion to pay the money for which the decree is rendered. When the amount is large, the time should be longer than when it is small. In no case should the sale be ordered at a shorter period than the lifetime of an execution at law. The law gives the sheriff ninety days within which to make the money, or the sale, and this, when the defendant has a year to redeem his land, when sold. It would, therefore, seem no more than equitable and just, that the



defendant, in a proceeding of this nature, should at least have the time an execution runs, to pay the money, and save his lands from an irredeemable sale.<sup>4</sup>

Similarly, in *Mills v. Heeney*, the court addressed the issue of redemption on a mechanics lien case and explained as follows:

An established rule of practice in this state requires decrees in chancery, directing the sale of real estate for the nonpayment of money, to give at least ninety days for its payment where there is no right of redemption from the sale.<sup>5</sup>

Sometime thereafter, a statutory right of redemption was crafted by the legislature, and it is remarkably similar to the current wording:

Sec. 24. Redemption, Approved March 25, 1874: Upon all sales under this act, the right of redemption shall exist in favor of the same persons, and may be made in the same manner as is or may be provided for redemption of real estate from sales under judgments and executions at common law.<sup>6</sup>

This language reveals that from the very earliest dates of our state law (Illinois became a state in 1818), the rules of redemption for foreclosures of mechanics liens derived from the same rules of redemption for "sales under judgments at law."

Note that the law book of 1877 helpfully refers the reader to another provision providing that "[a] judgment of a court of record shall be a lien on the real estate of the person against whom it is obtained situated within the county for which the court is held...." <sup>7</sup> Section 18 of this chapter allows for a redemption period of "twelve months from said sale." <sup>8</sup> Thus, the policy was to provide a period of redemption that began to accrue only *after* the sale was concluded by the sheriff.

Interestingly, the right of redemption for debtors subject to mortgage foreclosures seems to have grown from the same source as the right of redemption for debtors subject to mechanics lien foreclosures, e.g., the redemption granted for "sales under judgments at law."

A review of the law regarding mortgage foreclosures from the statutes in place in 1883 reveals no express language specifically granting mortgagors a right of redemption. However, if you refer to the index of the statute book (rather than the mortgage foreclosure act itself), under the term "Mortgages" you will find a reference to "redemption from sale under decree." This reference directs you to chapter 77 section 18 which is the very same redemption period for general judgment liens affecting real property (and mechanics liens).

During the course of the 20th Century, the saplings of the Illinois Mortgage Foreclosure Act and the Mechanics Lien Act grew into complex trees of provisions with many thick branches. Eventually, the shared root regarding redemptions snapped free as political and economic forces affecting the residential lending industry and the secondary mortgage market gave rise to the need for more certainty and faster turnaround on mortgage foreclosure redemption periods.

Thus, while the redemption period for mechanics liens is still tied to "sales under judgment for the payment of money," the redemption period for mortgage loans is now specifically addressed in the Illinois Mortgage Foreclosure Act.

### **In a mechanics lien foreclosure an owner may redeem up to six months after the sale**

As it happens, "sales under judgments for the payment of money" are not treated the same as mortgage foreclosures. The operative law for such money judgment redemptions is 735 ILCS 5/12-122. This section provides that a judgment debtor may, "within 6 months from the sale, redeem the real estate so sold...." <sup>9</sup> Thus, a judgment debtor/property owner whose property has been sold due to a mechanics lien, has 6 months after the judicial sale in which to redeem.

This is actually a longer period than that provided by those subject to sales arising out of the foreclosure of a run-of-the-mill mortgage, which for residential properties is "the later of (i) the date 7 months from the date the mortgagor...(A) have been served with summons...or (B) have otherwise submitted to the jurisdiction of the court, or (ii) the date 3 months from the date of entry of a judgment of foreclosure." [10](#)

Notice how under section 1603(b)(2)(ii), the redemption date for mortgage foreclosures is measured by the "judgment of foreclosure." [11](#) This is a departure from the foreclosure of mechanics liens where the redemption date for mechanics lien foreclosures is measured by "the sale."

Now, what if your mechanics lien case is being litigated in the context of a mortgage foreclosure case? The answer is that the mortgage foreclosure provision applies. We know this because section 735 ILCS 5/12-122 expressly excludes its application in connection with a sale "by virtue of a judgment of foreclosure in accordance with Article XV..." (i.e., the Illinois Mortgage Foreclosure Act). [12](#)

## Post-judgment issues

The fact that the period of redemption on a mechanics lien case lasts for six months *after* the sale creates some interesting collection issues for the practitioner. The first deals with timing of payment from the sale proceeds and the second deals with the post judgment interest rate.

**Timing of payment.** In practice, lenders on mortgage foreclosure cases wait until after the redemption period has run before scheduling their sale. This way, they can get paid from the sale proceeds right after the court approves the sale.

However, the six-month redemption period on a mechanics lien case (with no accompanying mortgage foreclosure) does not even start until the sale has been completed. Once the redemption period has run, and the court has entered an order confirming the sale with proper notice, the sheriff can then issue a deed. [13](#)

Therefore, when drafting your final foreclosure order, remember to include language that directs the sheriff or the judicial sale company to immediately pay your mechanics lien claimant their judgment plus interest from the sale proceeds. However, as seen below, the six-month delay on payment might not be the end of the world - those funds will be earning interest at 10 percent per year.

**Postjudgment interest.** As for how much postjudgment interest may be charged on a mechanics lien, two relevant time periods come into play. The first is the period from the entry of the judgment of foreclosure order, and the second is the period from the sale itself to the confirmation of the sale. Let us look to the second period first, because it is simpler.

For the post-sale redemption period, 735 ILCS 5/12-122 directs that redemption requires the payment of interest at the rate of 10 percent "from the time of such sale." [14](#) Thus, to redeem, the owner must pay interest of 10 percent that accrued after the sale up to the date of redemption.

That's how it works *after* the sale has taken place. But what interest rate should apply between the date judgment is entered up to the sale date?

The judgment itself accrues postjudgment interest at the rate of 9 percent under section 735 ILCS 5/2-1303. This interest simply continues up to the date of sale.



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### ISBA RESOURCES >>

Mathew Hector, *Real Estate Bills Raise Concerns Among ISBA Section Councils*, 103 Ill. B.J. 10 (May 2015), <http://www.isba.org/ibj/2015/05/lawpulse/realestatebillsraiseconcernsamongco>.

ISBA FreeCLE, *Construction Contracts: The Boiler Plate that Gives You Fits* (Oct. 24, 2014), <http://onlinecle.isba.org/store/seminar/seminar.php?seminar=32735>.

Howard M. Turner & Michael T. Nigro, *Path to Perfection: Crafting Error-Free Illinois Mechanics Lien Claims*, 102 Ill. B.J. 192 (Apr. 2014), <http://www.isba.org/ibj/2014/04/pathtoperfectioncraftingerrorfreeil>.

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1. 770 ILCS 60/12.
2. *Id.* § 60/19.
3. *Id.* § 60/20.
4. *Link v. Archetectural Iron Works*, 24 Ill. 551 (1860).
5. *Mills v. Heeney*, 35 Ill. 173 (1864).
6. Ill. Rev. Stat. 1877, ch. 82, § 24.
7. Ill. Rev. Stat. 1877, ch. 77, §§ 18-27.
8. *Id.* § 18.
9. 735 ILCS 5/12-122.
10. 735 ILCS 5/15-1603(b).
11. *Id.* § 5/15-1603(b)(2)(ii).
12. 735 ILCS 5/12-122.
13. See *id.*; *id.* § 5/12-144.5; *id.* § 5/12-145.
14. See *id.* § 5/12-122.

## Member Comments

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