

One Minute Memo®



New Illinois Laws Affect Construction Industry

Within the span of about two weeks, Governor Blagojevich signed into law bills that provide three significant changes to the construction industry in Illinois. Two changes, effective August 17, 2007, involve the Illinois Mechanics Lien Act and the third change, effective August 31, 2007, involves the payment process on private construction projects.

The Provision of Rental Equipment is Now Lienable.

New Section 1.2 to the Illinois Mechanics Lien Act provides that an entity that leases equipment to another entity for use in the process of constructing an improvement to real estate shall have a lien for the rental value of that equipment. The only exception is for construction projects involving a single family residence or a multi-family residence with less than twelve units in a single building.

Rules Regarding Public Liens Have Been Changed.

The majority of the changes to Section 23 of the Illinois Mechanics Lien Act are for the purpose of consistency in the language used and to conform the language to judicial interpretations. There are substantive changes, too, however, including: a requirement that the claim for lien contain a sworn statement identifying the claimant's contract, describing the work performed and stating the amount due and unpaid; a specific time frame of ten days in which a copy of any foreclosure complaint must be furnished to the relevant public entity providing notice that a lawsuit has been commenced; a clarification that the forfeiture of a claimant's lien does not prohibit a lien for subsequently performed work; and the termination of

the lien in the event a lawsuit to enforce the lien had been commenced and subsequently dismissed.

A New Statute Entitled "Contractor Prompt Payment Act" Has Been Enacted.

This new law again exempts single family residences or a multi-family residence with less than twelve units in a single building. It provides that a payment application is deemed approved unless within twenty-five days of receipt the Owner identifies, in writing, those items that are not approved and the reason for the rejection. In the event that some items are rejected, the Owner is still required to pay for the approved work. If the Owner fails to make a payment within 15 days of the approval (or partial approval as the case may be), interest shall accrue at a rate of 10% per annum. If a contractor receives payment from the Owner, or a subcontractor receives payment from the contractor, each must pay its respective subcontractors within 15 days of receipt of its payment. If the contractor or subcontractor fails to make the payment, interest likewise shall accrue at a rate of 10% per annum. Significantly, if any entity (contractor or subcontractor) is not paid within the time frame provided, after seven (calendar) days written notice, that contractor or subcontractor can suspend performance of the contract without penalty for breach of contract, until payment is received.

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