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Mechanics Liens

Path to Perfection: Crafting Error-Free Illinois Mechanics Lien Claims

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Crafting a valid, error-free claim for lien for your contractor clients requires more than just reading the Mechanics Lien Act. Here are tips based on the statute and the cases interpreting it.

The Mechanics Lien Act[1] ("the Act") is an invaluable weapon for contractors and subcontractors, enabling them to place a lien on property they have improved to help ensure payment for their work. But perfecting mechanics lien claims takes more than familiarity with the statute, though strict conformity with the Act is essential. It also requires an understanding of the Act's history and the cases interpreting it. (For pointers about the important steps leading up to filing the claim for lien - gathering information from clients and the public record, preparing required notices, and more - see the authors' IBJ article from a year ago.[2])

Section 7 requirements - more than meets the eye. Claimants must record their claim for lien for it to be valid against any "creditor, incumbrancer or purchaser,"[3] a list that includes mortgagees, judgment creditors, other mechanics lien claimants, and purchasers of the property. Section 7 of the Act specifies what claimants must include in a recordable mechanics lien claim and what happens when they do or do not comply with the statutory requirements.

The section itself only states three such requirements: (1) a brief statement of the claimant's contract; (2) the balance due after allowing all credits; and (3) a sufficiently correct description of the

lot, lots, or tracts of land to make it identiable.[4] But the courts have interpreted these requirements in ways that are not always obvious. And, as in all drafting, your work on behalf of mechanics lien claimants should reflect informed speculation about how the law might be interpreted in the future.

This article takes a close look at what a claim for mechanics lien must include if it is to be valid and enforceable, reviewing not only the statutory language but the cases interpreting it.

When and where to file a claim for lien

The claimant must file a claim within four months of the last day of work with the county recorder where the real estate is located. If the claimant did extra work, the last day of work is the last day on which the extra work was done.

Filing a claim for lien is unnecessary, however, if the lienholder files suit to enforce the lien within the four-month period. But the suit must be for foreclosure of the lien. A suit by a subcontractor solely for a joint judgment against the owner and the contractor under 770 ILCS 60/28 is not a suit to foreclose a lien and therefore does not satisfy the requirements of 770 ILCS 60/7.

Note also that recording a claim before the work is completed or stating a "last day of work" that is earlier than the actual finish date will exclude any amount claimed for work done after the stated date.[5]

The 'brief statement' of the contract

Few cases address what the "brief statement" of the claimant's contract must include, but clearly an error in the party's name can be fatal[6] while an error in the contract date is probably not.[7] If the contract is oral but described as being written, the lien may be invalid, especially if another agreement between the parties is oral.[8]

It is also good practice to describe the kind of work being done and the labor or material being furnished. When more than one contract applies to the same premises and parties, one court has held that subsequent contracts can be treated as extra work of the original contract even if the work on each is substantially different.[9] However, the better practice is to treat each contract as a separate lien claim if you are within the filing time limits for both, although you can list both claims in one notice of and claim for lien.

A well drafted claim for lien will include in the "brief statement" of the lien claimant's contract: (1) the correct names of the parties; (2) whether the agreement is in writing or oral; (3) the date of the contract; and (4) a description of the work. If there is extra work, the claim should so state. If the extra work was for a different trade, state that trade even though doing so is not expressly required. Mechanics lien law is always evolving, and you should include any information that helps explain the basis of the claim.

The balance due after allowing all credits

Section 7 requires that the lien claim state the balance due after credits. It does not require an itemized statement of account.

But be sure the amount is accurate, because it cannot be increased by amendment against mortgagees, judgment creditors, subsequent purchasers, and other lien creditors. It can, however, be increased against the owner's interest within two years of the last day of work.[10]

An adequate description of the real estate

The real estate description must be sufficient to identify the property, a stricter standard than that applicable to a notice under Section 24 of the Act. The reason, according to *Steinberg v. Chicago Title & Trust Co.,*[11] is that the purpose of recording a lien is to give notice to third parties.

As a general rule, a lien claimant cannot use a metes and bounds description if the property has been subdivided. He or she must use the description contained in the plat of subdivision. But *Cordeck Sales, Inc. v.Construction Systems, Inc.* has reinterpreted and limited *Steinberg*, at least as far as condominiums are concerned.[12] The court wrote as follows:

We are unpersuaded by FMB's assertion that *Steinberg* establishes a blanket requirement that a lien use the most recent legal description of the property. *Steinberg's* clear holding is that if a subsequent plat of survey is available, a metes and bounds description that fails to specify individual parcels affected by the lien may be found inadequate under section 7 of the Act. Neither *Steinberg* nor the language of the Act required the trial court in the instant case to invalidate CSI's lien upon the mere showing that a more recent legal description of the property had been available.[13]

The key consideration in *Cordeck* was that the description be detailed enough to appear in a search of the chain of title of each condominium unit. Since most counties now use permanent index numbers for searching a chain of title, an erroneous PIN number may in some future case be enough to invalidate a claim for lien.

In preparing a description of the real estate for a lien claim, you must be inclusive and accurate. If you erroneously include real estate in good faith that is not subject to the lien, your claim will not be held invalid. But if you omit something, your lien claim will be invalid as to the real estate missing. You can add it in an amendment if filed within two years, but that will only be valid against the owner, not against mortgagees, incumbrancers, or subsequent purchasers.[14]

Include as much information as you can in your lien, including the street addresses and other commonly known descriptions and, most importantly, an accurate PIN. In Cook and many other counties, a document cannot be recorded without a PIN. The safest way is to take a description or a group of descriptions that you reasonably believe cover the property and attach them as an exhibit to your lien claim. This reduces the risk of typographical errors, which can be fatal.

Stating the last day of work

Section 7 does not expressly provide that the last day of work must be stated in a claim for lien. In *First Federal Savings & Loan Ass'n of Chicago v. Connelly*, the Illinois Supreme Court wrote, "We see no reason to establish filing requirements other than those provided in that act….When the lien claimant has strictly complied with each of the statutory requirements, he has a right to expect that his lien will be completely enforceable."[15]

An earlier Illinois Supreme Court decision, *Schmidt v. Anderson*, held that when a single lien is asserted against multiple parcels of land owned by different people, the claimant must apportion the amount of a lien among the different parcels of land and state the last day work was done on each separate parcel.[16] *Connelly*narrowed *Schmidt's* application, with the court stating as follows:

We hold that the dating and apportionment requirements discussed in *Schmidt* are necessary only to enforce the four-month limitations period under circumstances analogous to the facts of that case. In*Schmidt* there was evidence that work on some of the houses had been completed more than four months before the filing of the lien claim. Here, there is no such evidence.[17]

Nonetheless in *Merchants Environmental Industries, Inc. v. SLT Realty Ltd. Partnership*, the first district held that a lien claim must state the last day of work.[18] The court wrote that "[w]hile section 7 itself does not expressly require inclusion of the completion date in the lien claim, nevertheless that requirement must be inferred."[19] *Merchants* did not discuss or cite *Connelly*, but *Connelly* was not called to the court's attention by counsel for the parties or the court's law clerks.[20] After *Merchants* was decided, the judges of the Mechanics Lien Section of the Circuit Court of Cook County felt they had to follow it even though it seemed to conflict with*Connelly.*

Recently, the second district has weighed in on this issue. *National City Mortgage v. Bergman* specifically rejected *Merchants* and adopted *Connelly's* view holding that a claim for lien does not have to state the last day of work, except when it is necessary to apportion the amount of the claim for lien among different lots.[21]

So what should a prudent lawyer do? In Cook County, you definitely should state the last day of work in the lien. But even in the other appellate districts, until the Illinois Supreme Court addresses this issue, you should state the last day of work. If multiple parcels of land are covered by a lien claim and work on them was completed at different times, definitely state the last day of work for each parcel and apportion the amount of the claim among the different parcels.

Allocating the lien among separate properties

Two statutes and two cases are relevant to determining whether it is necessary to allocate the lien among separate properties (the special case of condominium units is treated in the next section). In *Schmidt vs. Anderson*, there was a single contract between the original owner of four lots and the contractor to improve the properties.[22] The contractor finished work on three of the lots more than four months before the lien was recorded. Those lots were also conveyed to purchasers before the claim for lien was recorded. The lien claim did not allocate the amount among the four lots. The court said that to enforce the lien

would practically nullify that part of section 7 which provides that no lien shall be enforced to the prejudice of any other creditor, incumbrancer, or purchaser, unless within four months the claim for lien is filed or suit begun…. In our judgment, the Legislature did not intend to permit two or more buildings on two or more tracts of land to be included in one claim for lien, unless the claim was filed within four months after the last labor was performed or the material furnished on each of the buildings.[23]

The court held that the lien could not be enforced against the fourth lot, because nothing in the lien claim could serve as the basis for apportioning the proper amount to that property. But as previously discussed,*Connelly* limited *Schmidt* to the facts of that case.[24]

Connelly is distinguishable from *Schmidt* for several reasons. First, in *Schmidt,* third party purchasers of the three lots took title before the claim for lien was recorded. Second, the claim for lien was not recorded until more than four months after the work on their lots was completed. Unlike *Schmidt,* in *Connelly* no subsequent purchasers of the lots would be prejudiced if the lien was enforced against them. The *Schmidt* court based its decision largely on the fact that the subsequent purchasers would have been prejudiced because the lien was recorded more than four months after the work on three of the four properties was completed.

What should the prudent lawyer do when there are multiple lots subject to a lien based upon one contract? Prepare an allocation of the amount due among the various lots and state in the lien claim that no allocation is required, but if there is allocation it shall be as stated in the lien claim. Typically, it is best to present the allocation as an exhibit attached to the lien claim. It is especially important to

allocate the amount among different parcels if one or more has been conveyed by the original owner.

Allocation and condominium units

Mechanics liens asserted against condominium units require special consideration. The Condominium Property Act provides in part:

Subsequent to the recording of the declaration, no liens of any nature shall be created or arise against any portion of the property except against an individual unit or units. No labor performed or materials furnished with the consent or at the request of a particular unit owner shall be the basis for the filing of a mechanics' lien claim against any other unit. If the performance of the labor or furnishing of the materials is expressly authorized by the board of managers, each unit owner shall be deemed to have expressly authorized it and consented thereto, and shall be liable for the payment of his unit's proportionate share of any due and payable indebtedness as set forth in this Section.[25]

Allocate the amount claimed among the different units in two instances: (1) if the declaration of condominium is recorded before the original contractor's contract is made; or (2) if there are third party purchasers of units before the claim for lien is recorded.[26] Unless you are certain that these two conditions do not exist, you should at the very least include a statement that allocation, if required, will be as stated on an exhibit attached to the lien claim.

The landowner's name

Section 7 does not require you to state the property owner's name in the lien, but as a practical matter, you should. That is the only way to get the lien claim into a grantor-grantee index, which is the official record of recorded documents. Nothing in Section 7 requires you to state the name of the owner of record, but if you do not, the claim for lien will not be connected to the property in the recorder of deeds' grantor-grantee index.

If the lien claim does not list the title holder as a person against whom the lien is filed, it will not be within the chain of title as shown by the grantor-grantee indexes.[27] As the second district has noted, "[t]he grantor-grantee index is the legal record required to be maintained by the recorder. Thus, recording outside of the grantor-grantee index in other indices is recording merely for convenience and does not operate to give constructive notice to subsequent purchasers."[28] Therefore, your lien may not be effective notice to third parties if it does not include the name of the owner of record.

If the property has been conveyed, whose name do you use? It is best to tell the full story of who owned the property when the contract was made and who acquired it afterward. Accuracy is essential, because even though you need not include the name of the owner, you can expect a mortgagee or purchaser to challenge the lien claim if there is an error in it.

Does it matter whether the lien claimant is a contractor or subcontractor?

Nothing in Section 7 requires a claimant to identify itself as a contractor or subcontractor. The section only requires a "brief statement of the contract" that identifies any parties with whom the lien claimant has its contract.

It is probably best not to categorize the lien claimant as either a contractor or subcontractor. In any event, if the lien claimant discovers that he or she was not contracting with a contractor but with an

agent for the owner, two recent amendments to the Mechanics Lien Act protect the claimant against that error.

Section 7(c) provides that "[a] statement that a party is a subcontractor shall not constitute an admission by the lien claimant that its status is that of subcontractor if it is later determined that the party with whom the lien claimant contracted was the owner or an agent of the owner."[29] Section 24(b) includes a similar provision for subcontractor's notices of claim for lien.[30]

Accuracy is essential, because even though you do not need to include the name of the owner, you can expect a mortgagee or purchaser to challenge the lien claim if there is an error in it.

Conclusion

Our principal goal in this article is to prevent malpractice. At least 25 percent of the lien claims prepared by other lawyers that we have reviewed have defects that could lead to malpractice claims. We hope these tips will help you avoid that fate.

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1. See 770 ILCS 60 *et seq.*
2. Howard M. Turner & Michael T. Nigro, *Perfecting a Mechanics Lien: What You Need to Do it Right*, 101 Ill. B.J. 217 (May 2013), available athttp://www.isba.org/ibj/2013/05/perfectingamechanicslienwhatyouneed.
3. *Mutual Services, Inc. v. Ballantrae Development Co.*, 159 Ill. App. 3d 549, 553-54 (1st Dist. 1987).
4. 770 ILCS 60/7.
5. *Cordeck Sales, Inc. v. Construction Systems, Inc.*, 382 Ill. App. 3d 334, 359-60 (1st Dist. 2008).
6. *Bale v. Barnhart*, 343 Ill. App. 3d 708, 713-14 (4th Dist. 2003); *Candice Co. v. Ricketts,* 281 Ill. App. 3d 359, 363-64 (4th Dist. 1996); *Ronning Engineering Co. v. Adams Pride Alfalfa Corp.,* 181 Ill. App. 3d 753, 759 (4th Dist. 1989).
7. *Lyons Federal Trust & Savings Bank v. Moline National Bank*, 193 Ill. App. 3d 108, 112 (3d Dist. 1990).
8. *Ronning Engineering Co. v. Adams Pride Alfalfa Corp.,* 181 Ill. App. 3d 753, 759 (4th Dist. 1989).
9. *Illinois Malleable Iron Co. v. D. G. Brennan*, 174 Ill. App. 38, 40-41 (1st Dist. 1912).
10. *Cordeck Sales, Inc. v. Construction Systems, Inc.*, 382 Ill. App. 3d 334 (1st Dist. 2008).
11. *Steinberg v. Chicago Title & Trust Co.*, 142 Ill. App. 3d 601, 605 (1st Dist. 1986).
12. *Cordeck Sales, Inc. v. Construction Systems, Inc.*, 394 Ill. App. 3d 870, 873-74 (1st Dist. 2009).

13. *Id.* at 874.
14. *Cordeck Sales, Inc. v. Construction Systems, Inc.*, 382 Ill. App. 3d 334, 359-60 (1st Dist. 2008).
15. *First Federal Savings & Loan Ass'n of Chicago v. Connelly*, 97 Ill. 2d 242, 251 (1983).
16. *Schmidt v. Anderson*, 253 Ill. 29, 32 (1911).
17. *Connelly*, 97 Ill. 2d at 249.
18. *Merchants Environmental Industries, Inc. v. SLT Realty Ltd. Partnership*, 314 Ill. App. 3d 848, 869 (1st Dist. 2000).
19. *Id.*
20. Judge Gordon, the author of the *Merchants* opinion, told Mr. Turner that he did not know whether*Connelly* would have changed his mind, but if it had been called to his attention he certainly would have discussed it in his opinion.
21. *National City Mortgage v. Bergman*, 405 Ill. App. 3d 102, 107-08 (2d Dist. 2010).
22. *Schmidt vs. Anderson*, 253 Ill. 29 (1911).
23. *Id.* at 32.
24. *First Federal Savings & Loan Ass'n of Chicago v. Connelly*, 97 Ill. 2d 242, 249 (1983).
25. 765 ILCS 605/9.1.
26. See *Edgecrete, Inc. v. Cole Taylor Bank Skokie,* No. 92 CH 10813 (Cook Cty. Cir. Sept. 17, 1993);*Argonne Construction Co. v. Norton,* 29 B.R. 731, 737 (N.D. Ill. 1983).
27. See *Hillblom v. Ivancsits*, 76 Ill. App. 3d 306, 311-12 (1st Dist. 1979).
28. *Krueger v. Oberto*, 309 Ill. App. 3d 358, 368 (2d Dist. 1999).
29. 770 ILCS 60/7(c).
30. *Id.* § 60/24(b).