

legal lines

from
MOORE, SUSLER, McNUTT & WRIGLEY
Lawyers

Building or Remodeling? Protect Your Property

by Bill McNutt

If you build a new home or make additions to an existing one, you should be aware of the legal traps found in the Illinois mechanics' lien law. If you employ someone to do work on your real estate, and they do not pay the people they employ, or from whom they buy materials, you may end up having to pay twice. The Illinois mechanics' lien statute gives subcontractors (people who supply goods or services to improvements on your real estate at the request of a contractor) the right to a lien against that real estate. That lien is similar to a mortgage against your real estate. The amount owed to the subcontractor is like a mortgage loan. No one will want to buy your home (or make you a mortgage loan) until the lien has been removed. And the way you get the lien removed is by paying that subcontractor what is owed, possibly plus interest. Even if you do not plan to sell or mortgage your real property with a mechanics' lien against it, you may still have a problem. The subcontractor can foreclose the lien in court just like a mortgage can be foreclosed. Your home could end up on the auction block!

Let's look at a typical fact situation where a mechanics' lien can be a surprise:

Mary and John Doe employ the Meridian Building Company to add a family room with a fireplace onto their existing ranchstyle home that had a value of \$100,000. The new addition will add \$25,000. John and Mary give



the builder \$10,000 to get started. Shortly after the work started, they received a notice from Macon Cinderblock and Brick Company that it had supplied all the materials to Meridian to be used in their fireplace. The notice did not say what was owed to Macon, but it gave the Does the statutory notice that they should be aware of the potential for a lien by this subcontractor, Macon Cinderblock.

John called Macon Cinderblock and the bookkeeper said not to worry; they always send those notices. John and Mary even went out to Macon Cinderblock to look at a gas log for the new fireplace. While they were there, they asked the salesman whether Meridian had paid its bill to Macon. The salesman said they probably had and not to worry.

John and Mary had no trouble with Meridian Builders. Each time they made a payment to Meridian they required the builder to give them a waiver of lien. When Meridian completed the construction, they made their final payment to Meridian.

A few days later they got a notice from Macon Cinderblock that it was owed \$5,000 for brick, mortar and vents that it supplied to the new construction. Macon Cinderblock said in the notice that they were claiming a mechanics (or subcontractors) lien against John and Mary's real estate. The next notice they got was from the Bankruptcy Court, telling them that Meridian Builders could not pay their creditors and had gone out of business.

Even though John and Mary had gotten waivers of lien from Meridian, they had not take the necessary steps to protect themselves from Macon Cin-

derblock's secret lien. Lengthy litigation followed. When it was all over, John and Mary were required to spend almost another \$5,000 out of their pocket, plus their attorneys fees.

John and Mary could have protected themselves from these liens by requiring the contractor to supply an affidavit showing whom it owed, how much for labor and materials for this job, in conformity with the mechanics' lien law before each payment was made to Meridian, the builder. Responsible builders are prepared to meet this requirement upon request. If the builder does not know of the requirements of the law, or in any way suggests it is unimportant, that should be a signal to look for someone else to do the job.

Once the affidavit is received (make sure it is signed and notarized), you should read it very carefully. For each mechanic not paid, you should require that the builder supply a partial waiver of lien signed by that subcontractor. If the builder says that he is unable to get

Thanks for Your Replies!

We heard from many of you after our initial issue last October. Based on your replies, we plan to publish quarterly.

Future topics we are considering are:

- Tenancies by the Entirety as a way for couples to own their homes.
- Property Powers of Attorney and Living Trusts.
- Liability risks of serving on not-for-profit boards.

If you have other ideas, let us hear from you. We want this to be **your** newsletter.

Mechanics Liens *(Continued)*

a partial waiver of lien, then you should call the subcontractor. You should require that the subcontractor send you a statement in writing of the amount due. You should then issue a check in the amount due, payable to both the contractor and the subcontractor. When delivering the check to the contractor, you should also insist that the contractor bring you the partial waiver of lien from the subcontractor. In addition, insist on a partial waiver of lien signed by the contractor itself, because it, too, is entitled to a lien under the mechanics' lien law.

If homeowners comply with the law, then they should be protected from the lien. For example, if Meridian Builders

had given the Does a false affidavit showing that no one was owed any money, John and Mary could have relied upon that affidavit unless they had other facts that suggested the affidavit was false. Still, as a final protection, at the end of the job, the homeowner should have all the waivers of lien from the contractor and all the subcontractors, and thereby know that there are no further amounts due to be paid.

The Illinois mechanics' lien law was enacted long ago on the fair premise that people who improve real estate should be paid. It gave the contractor a lien against the owner's real estate as improved to assure payment to the con-

tractor. It gave a similar lien to subcontractors, if the contractor failed to pay them. The requirements were set up to give sufficient notice to the owner of the requirements of the act. Unfortunately, in the course of human events, all the proper notices are not always given or understood. Therefore, it is important for homeowners who are building a new home or just making an improvement to an existing one, to keep in mind the Illinois mechanics' lien statute, and to call their attorney when they have questions as to this short but powerful little statute. One's home may not be a castle, but it's too precious not to protect it from mechanics' liens.

Mr. Moore Goes to Washington

Thanks to the appointment by Representative Glenn Poshard, Partner Dan Moore will be a delegate to the 1995 White House Conference on Aging to be held in the Nation's Capitol May 2-5. Moore will join some 2,000 additional delegates appointed from across the country.

The background which Dan will bring to his service in the conference include his membership in the National Academy of Elder Law Attorneys, service on Decatur's Aging Advisory Commission, former board membership and past presidency of a residential care facility in Sullivan, and current presidency of the Visiting Nurse Associ-

ation. In preparation for the 1995 White House Conference on Aging, Moore served as an elected delegate to the 1990 Illinois White House Conference. He is also current president of the Decatur Bar Association.

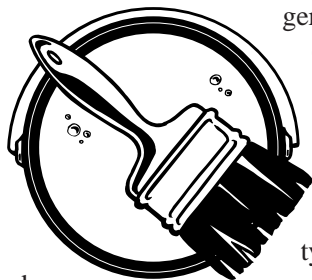
In announcing Dan's appointment, Congressman Poshard said "I am extremely pleased to have someone the caliber of Dan Moore to represent the 19th Congressional District at this important conference. His personal commitment and professional experience will be a valuable asset, both at this conference and in future efforts to meet the needs of our seniors."

Get the Lead Out!

Do you fall into one of these categories?

1. Owner of a building built before 1978, portions of which you rent out to others as dwelling units?
2. Occupant of a residential building built before 1978?

If so, an amendment to the Lead Poisoning Prevention Act effective last year should be of interest to you. That Act requires owners to give present and prospective tenants information on the potential health hazard posed by lead in residential dwellings.



The required information is contained in a brochure entitled "Lead Poisoning, A Renter's Guide" published by the Illinois Department of Public Health and available by calling 1-800-545-2200.

The brochure explains the dangers of lead poisoning, especially for small children and the possible sources of lead in homes built before 1978. Primarily the lead occurs in old lead-based paint or in water lines because of the type of piping used. From a parent's standpoint, there are some good ideas about ways to

protect your small children from lead poisoning.

As the brochure acknowledges, this new law is some of the work of Illinois First Lady Brenda Edgar's Campaign for Children.

Moore, Susler, McNutt & Wrigley
3071 North Water Street
Decatur, IL 62526

(217) 872-1600

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