

## Basic Mechanic's Lien Law for the Real Estate Practitioner

Presented by

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### FAQs

- **Where is the Mechanic's Lien Act?**
  - 770 ILCS, 60/0.1 *et seq.*
  - Public Construction Bond Act
  - Commercial Real Estate Broker Lien Act

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### FAQs

- **What is a mechanic's lien?**
  - A claim by a contractor or subcontractor who furnishes labor, materials, or services provided for by the Act.
    - Section 1 of the Act describes the labor, materials, or services that are lienable.

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**FAQs**

▪ **Is a property manager entitled to a mechanic's lien?**

- A property manager is entitled to a mechanic's lien for services performed or expenses incurred as a property manager.

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**FAQs**

▪ **Is a developer entitled to a mechanic's lien?**

- A developer is not entitled to a mechanic's lien.

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**FAQs**

▪ **Is a real estate broker entitled to a mechanic's lien?**

- A real estate broker is not entitled to a mechanic's lien.
- However, a real estate broker may be entitled to a lien under the Commercial Real Estate Broker Lien Act in certain situations involving the sale or leasing of commercial real estate.

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**FAQs**

- **Who else may be entitled to a mechanic's lien?**
  - Architects
  - Land Surveyors
  - Structural Engineers
  - Professional Engineers

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**FAQs**

- **What are the classifications of contractors?**
  - Original Contractor
  - Subcontractor
  - Sub-subcontractor

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**FAQs**

- **How does an original contractor perfect a claim for lien as to third parties?**
  - Record claim for lien within four months.
  - File suit within two years of completion of the contract.

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**FAQs**

- **How does a subcontractor perfect a claim for lien?**
  - 90-day notice.
  - File claim for lien within four months.
  - File suit within two years after the last date of work.

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**FAQs**

- **What is the last date of work for purposes of perfecting a claim for mechanic's lien?**
  - The date of completion of work under the contract.

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**FAQs**

- **What happens if a subcontractor cannot find the owner, its agent, architect, or superintendent?**
  - Section 25 of the Act provides for recording of a claim for lien where the owner, its agent, architect, or superintendent cannot, upon reasonable diligence, be found in the county in which the improvement is made.
    - The claim for lien in this situation needs to be recorded within 90 days of the last date of work.

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**FAQs**

- **Can I lien a municipal center?**
  - You cannot force a sale of City Hall. You cannot lien it either.

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**FAQs**

- **I represent the owner of an office building. How can I protect my client from potential liens of contractors of tenants?**
  - If a tenant enters into a contract for an improvement, the issue is whether the owner has knowingly permitted the tenant's contractor to contract on behalf of the owner.

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**FAQs**

- **I Represent a lender. How do I protect my client?**
  - A property perfected mechanic's lien claim relates back to the date of the contract.
  - A subsequent recorded claim for mechanic's lien may prime an earlier recorded mortgage.
  - Enhancement?

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**FAQs**

- **I am closing next week. There is a mechanic's lien against the property. How do I extinguish it in time for the closing?**
  - It cannot be done in one week's time.
  - Sections 34 and 35 of the Act provide a procedure for extinguishing claims for lien.

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**FAQs**

- **If I represent an owner, how do I protect my property from mechanic's liens?**
  - Never pay a contractor without receiving a sworn contractor's statement in accordance with Section 5 of the Act.

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**FAQs**

- **May an owner enter into a no-lien contract?**
  - No. It is considered to be against public policy and unenforceable.
  - The lien can be subordinated.

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**FAQs**

▪ **What if the owner or another necessary party files a bankruptcy?**

- A lien claimant may continue to perfect his or her claim for mechanic’s lien despite the automatic stay.

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**FAQs**

▪ **What is the Construction Trust Fund Statute?**

- Any owner, contractor, subcontractor, or supplier of any tier who requests or requires the execution and delivery of a waiver of mechanic’s lien by an person who furnishes labor, services, or materials for the improvement in exchange for payment or the promise of payment, shall hold in trust the unpaid sums subject to the waiver of mechanic’s liens as trustee for the person who furnished the labor, services, or materials.

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**FAQs**

▪ **Does the Act provide for attorney’s fees?**

- The Act provides for recovery of attorney’s fees by a subcontractor in some situations.

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**FAQs**

- **The Act was amended in 2005. What changes were made to the Act?**
  - Easier to read and understand;
  - Increased penalty for failure to release a lien when requested in conformity with the Act;
  - Provides that statements in notice or claims for lien are not an admission that a claimant is a subcontractor;
  - Notice changes;
  - Who must be a party.

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**FAQs**

- **I hear that there were recent changes to the Act, effective August 2007. What are the recent changes?**
  - 770 ILCS 60/1.2
  - 770 ILCS 60/23

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**FAQs**

- **What other statutory changes affect construction projects?**
  - The Contractor Prompt Payment Act
    - A contractor for improvements of an owner-occupied single-family residence must give the owner written notice within 10 days after recording a lien against any property or owner.

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**FAQs**

- I heard about something called the Home Repair and Remodeling Act. What is it?

– Requires:

- A written contract;
- Furnishing of *Home Repair: Know Your Consumer Rights* pamphlet;
- Insurance.

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**Recent Cases**

- *Artisan Design Build v. Bilstrom*
- *Cordeck Sales Inc. v. Construction Systems, Inc. (Cordeck I)*
- *Cordeck Sales, Inc. v. Construction Systems, Inc. (Cordeck II)*
- *Crawford Supply Company v. Marc Schwartz*
- *K. Miller Construction Company, Inc. v. Joseph J. McGinnis*
- *Weather-Tite, Inc. v. University of St. Francis*

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**Title Company Requirements for Disbursement of a Construction Escrow**

- Owner's and General Contractor's Sworn Statements
- Lien Waivers
- Certificate of Completion
- Owner and Lender Payment Authorization
- Title Examination

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**When Problems Arise**

- Out-of-Balance Loan
- Mechanic's Lien Claims
- Workouts

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**Prohibited Practice**

- Waiver in Arrears
  - This is where a contractor would be paid based on the sworn statement and without lien waivers from the subcontractors.

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**Everything You Want To Know**  
**About The Mechanics Lien Act**  
**While Standing On One Foot**

**Attorneys' Title Guaranty Fund, Inc.**  
**June 9, 2010**

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## **25 QUESTIONS YOU ALWAYS WANTED TO ASK ABOUT MECHANICS LIENS AND CONSTRUCTION LAW BUT WERE AFRAID TO DO SO**

The Mechanics Lien Act (the "Act") is a trap for the unwary. In order to simplify the Act, I have identified questions you may have always wanted to ask about the Act, but were afraid to do so.

### **1. Where is the Act Found?**

The Mechanics Lien Act is found at 770 ILCS, 60/0.1 et seq. You should also be aware of the Public Construction Bond Act. 30 ILCS 550/0.01 and The Commercial Brokers Lien Act. 770 ILCS 15/1 et seq.

### **2. What is a Mechanics Lien?**

A claim by a contractor or subcontractor who furnishes labor, materials or services provided for by the Act. Section 1 of the Act describes the labor, materials or services which are lienable.

### **3. Is a Property Manager Entitled to a Mechanics Lien?**

A property manager is entitled to a mechanics lien for services performed or expenses incurred as a property manager. The Act provides for a mechanics lien for any person who shall by any contract manage a structure, perform any services or incur any expenses as a property manager.

### **4. Is a Developer Entitled to a Mechanics Lien?**

A developer is not entitled to a mechanics lien. A developer cannot be equated with a property manager or with a person who manages a structure.

### **5. Is a Real Estate Broker Entitled to a Mechanics Lien?**

A real estate broker is not entitled to a mechanics lien. However, a real estate broker may be entitled to a lien under the Commercial Real Estate Brokers Lien Act in certain situations involving the sale or leasing of commercial real estate.

### **6. Who Else May be Entitled to a Mechanics Lien?**

The classifications of trades entitled to a mechanics lien are too many to identify. However, some to keep in mind are architects, land surveyors, structural engineers and professional engineers. As our society becomes more complex, the trades entitled to lien claims are growing. The Act was recently amended to permit a lien for persons who lease construction equipment to another for use in constructing a specific improvement to real estate other than a single family or multi-family residence of fewer than 12 units

in a single building. However, unless services are specifically identified in the Act as lienable where the services rendered did not increase the value of the land or benefit the landowners in any way. Mastardi-Platt Associates, Inc. v. Leonard Czerniewski, No 5-09-0339

**7. What are the Classification of Contractors?**

An original contractor is one who has a contract with one whom the owner has authorized or knowingly permitted to contract to improve the real estate. A subcontractor is one who enters into a contract with the original contractor. A sub-subcontractor is one who enters into a contract with a subcontractor. A sub-subcontractor or secondary subcontractor is considered a subcontractor for purposes of the Act.

**8. How Does a Contractor Perfect its Claim for Lien as to the Original Owner?**

An original contractor must file suit within two years after completion of the contract, or the completion of any extra work or the furnishing of any extra material thereunder. Sections 7 and 11 of the Act.

**9. How Does an Original Contractor Perfect a Claim for Lien as to Third Parties?**

An original contractor must record a claim for lien within four months of completion of the contract or within four months of furnishing any extra or additional material and file suit within two years after completion of the contract or the completion of any extra work or furnishing or any extra material thereunder. Alternatively, an original contractor may file suit within four months of completion of the contract or any extra or additional work or materials. A lien claimant should also record a lis pendens.

**10. How Does a Subcontractor Perfect a Claim for Lien.**

A subcontractor must serve a ninety day's notice on the owner, its agent, architect or superintendent and any mortgagees of record, or rely on the existence of an original contractor's statement from the contractor to the owner under Section V of the Act. The subcontractor must also file a claim for lien within four months of the last date of work and file suit within two years of the last date of work. Sections 7, 11, 21, 24, and 28 of the Act.

**11. What is the Last Date of Work for Purposes of Perfecting a Claim for Mechanics Lien?**

The last date of work is the date of completion of work under the contract. Subsequent repair work cannot extend the Act's requirement for perfection of a claim for lien.

**12. What Happens if a Subcontractor Cannot Find the Owner, its Agent, Architect or Superintendent?**

Section 25 of the Act provides for recording of a claim for lien where the owner, its agent, architect or superintendent cannot, upon reasonable diligence, be found in the county in which the improvement is made. The claim for lien in this situation needs to be recorded within 90 days of the last date of work.

**13. I Did Work as a Subcontractor for the Municipality in Constructing the Municipal Center. I Did Not Receive Payment From my Contractor. Can I Lien the Municipal Center?**

You cannot force a sale of City Hall. You cannot lien it either. However, a subcontractor has two remedies. Section 23 of the Act provides for a lien on funds due from a public body, municipal or state, to the contractor. The Public Construction Bond Act provides for a claim against the bond of the contractor 30 ILCS 550/0.01. The Miller Act provides for a vehicle for recovery on Federal projects.

**14. I Represent the Owner of an Office Building. How Can I Protect my Client From Potential Liens of Contractors of Tenants?**

Tenant improvements are a difficult area for building owners. If a tenant enters into a contract for an improvement, the issue is whether the owner has knowingly permitted the tenant's contractor to contract on behalf of the owner. Did the owner have knowledge of the improvement? What did the lease state about tenant improvements? A provision in a lease by which a landlord seeks to prohibit tenants from entering into contracts for improvements without express written approval may be helpful to the landlord. However such a provision is not determinative. If the matter is litigated, it is usually a factual issue based on the circumstances of the individual situation.

**15. I Represent a Lender. How do I Protect my Client?**

Many mechanics lien cases revolve around the priority of the mechanics lien claim and the mortgage. A properly perfected mechanics lien claim relates back to the date of the contract. Accordingly, a subsequent recorded claim for mechanics lien may prime an earlier recorded mortgage. If the mortgage is recorded before the date of the contract, the lien claimant must prove enhancement. This is often a difficult and expensive task for a lien claimant. However, based on a recent case, the task may now be easier. On significant projects, I would recommend a construction escrow.

**16. I am Closing Next Week. There is a Mechanics Lien Against the**

## **Property. How do I Extinguish it in Time for the Closing?**

It cannot be done in one week's time. Sections 34 and 35 of the Act provide a procedure for extinguishing claims for lien. The procedure requires service of a Notice to Commence Suit requiring suit to be commenced within thirty days. If suit is not commenced within the thirty day period, and the lien is not released upon subsequent demand, suit can be filed to extinguish the lien. The suit prays for a judgment in the amount of \$2,500.00 plus attorneys' fees. If you cannot release the lien, you will likely have to bond it over. Please note that the Act was recently amended to change the judgment amount from \$25.00 to \$2,500.00.

### **17. If I Represent an Owner, How do I Protect my Property From Mechanics Liens?**

Never pay a contractor without receiving a sworn contractor's statement in accordance with Section 5 of the Act. Section 5 of the Act requires that a contractor provide an owner with a written statement "under oath verified by affidavit, of the names and addresses of all parties furnishing materials and labor and the amount due or to become due each" before the owner is required to pay. An owner must withhold the amount of monies claimed by subcontractors who serve a ninety's day notice prior to payment.

### **18. May an Owner Enter Into a No Lien Contract?**

Section 1.1 of the Act provides that "(a)n Agreement to waive any right to enforce or claim any lien under the Act where the agreement is in anticipation of and in consideration for the awarding of a contract or subcontract, either express or implied, to perform work or supply materials for an improvement upon real property is against public policy and unenforceable" However, an Owner may require the subordination of a lien.

### **19. What if the Owner or Another Necessary Party Files a Bankruptcy?**

A lien claimant may continue to perfect his or her claim for mechanics lien despite the automatic stay. However, he or she must modify the automatic stay to enforce it. The ability to perfect rights in light of the automatic stay, appears to extend to Section 23 of the Act.

### **20. What is the Construction Trust Fund Statute?**

In 1999, the Act was amended to provide that any owner, contractor, subcontractor, or supplier of any tier who requests or requires the execution and delivery of a waiver of mechanics lien by any person who furnishes labor, services, or materials for the improvement in exchange for payment or the promise of payment, shall hold in trust the unpaid sums subject to the waiver of mechanics liens as trustee for the

person who furnished the labor, services, or materials. Most practitioners are not aware of this provision of the Act which is a real trap for the unwary.

**21. Does the Act Provide for Attorneys Fees?**

The Act, at Section 17, provides for recovery of attorneys fees by a subcontractor in some situations. However, it is very difficult for a subcontractor to recover attorneys fees. It is almost like recovering under Supreme Court Rule 137.

**22. The Act Was Amended in 2005. What Changes Were Made to the Act?**

Amendments to the Act became effective January 1, 2006. The Act has been amended to make it easier to read and understand, to make its language more consistent and to bring it into the 21<sup>st</sup> century. For example, Section 1 of the Act consisted of four sentences containing 522 words. The Section is broken up into four sections

Section 35 increases the penalty from \$25.00 to \$2,500.00 plus attorney's fees for failure to release a lien when requested in conformity with the Act. Sections 7, 24 and 25 were amended to provide that statements in notices or claims for lien are not an admission that a claimant is a subcontractor. Section 25 of the Act has been amended to provide that where a lending agency cannot be located for service of a Section 24 notice, notice may be served by recording a Section 25 notice. The recorded Section 25 notice may serve as a recorded claim for lien if it meets the requirements of Section 7.

Section 11 clarifies who must be a party. Necessary parties are the owner of the premises, the contractor, all persons in the chain of contracts between the claimant, and all persons who have asserted or may assert liens against the premises the claimant asserts a claim.

**23. I Hear That There Were Recent Changes to the Act Effective August 2007. What Are the Recent Changes?**

- A. 770 ILCS 60/1.2 (Section 1.2 of the Act)  
Effective Date: August 17, 2007

The Mechanics Lien Act has been amended to specifically provide a lien for any person who leases construction equipment to another for use in constructing a specific improvement to real estate for the rental value of the equipment. The rental equipment lien is a new section, 1.2, of the Act. The lien applies only to the extent that the equipment is used on or about the site of the improvement. The lien applies to real estate other than a single family residence or a multi-family residence of fewer than 12 units in a single building.

B. 770 ILCS 60/23  
Effective Date: August 17, 2007

Section 23 of the Act has been amended to affect notices and other provisions affecting public improvements.

Section 23 is amended to add a definition of "unit of local government." The definition includes any unit of local government defined in the 1980 Illinois Constitution, and any entity, other than the State, organized under the Intergovernmental Cooperation Act (5 ILCS 220/1, *et seq.*) or the General Not-for-Profit Corporation Act (805 ILCS 105/101.01, *et seq.*) to conduct public business. The remainder of Section 23 is then amended to add "or any other unit of local government" to the phrase "county, township, school district, municipality, municipal corporation."

Section 23 is also amended to require the lien claimant to serve a notice of claim on the municipal clerk or secretary, or the director or other State official in the case of improvement contracts with the State, which notice must contain a sworn statement identifying the claimant's contract, the work done by the claimant, and the unpaid balance due as of the date of the notice. The notice becomes effective when it is received or refused by the clerk or secretary, or the director or other State official.

The Section is also amended to provide that if the claimant fails to file a complaint for accounting within 90 days of serving the notice, such failure will not preclude a subsequent claim for amounts that become due after the prior notice.

If the suit to enforce the lien is dismissed, the lien expires 30 days after dismissal unless the lien claimant files a motion to reinstate the suit, a motion to reconsider the dismissal, or an appeal within the 30-day period. Nevertheless, the public body may pay the lien claim within the 30-day period after dismissal.

## **24. What Other Statutory Changes Affect Construction Projects?**

A. The Contractor Prompt Payment Act (815 ILCS 603) creates a statutory time frame and remedy for payment. (Effective Date: August 31, 2007)

The Contractor Prompt Payment Act provides that all construction contracts shall be deemed to provide that if a contractor has performed in accordance with the provisions of a construction contract and the payment application has been approved by the owner or the owner's agent, the owner shall pay the amount due to the contractor not more than 15 days after the approval.

If a subcontractor has performed in accordance with the provisions of its contract with the contractor/subcontractor and the work has been accepted by the owner, the

owner's agent or the contractor, the contractor/subcontractor shall pay to its subcontractor within 15 days of receipt by the contractor/subcontractor of each periodic payment, final payment or receipt of retainage monies, the full amount received for the work completed or the services rendered under the contract. However, it permits an owner who finds that a portion of the work is not in accordance with the contract to withhold payment for the reasonable value of that portion only.

Provides that, if payment is not made in a timely manner under this Act, the delinquent party is liable for the payment plus interest at 10 percent. It also permits a contractor/subcontractor who is not paid as required by this Act, after providing seven calendar day's written notice, to suspend performance without penalty for breach of contract until the payment is made.

Excludes contractors for the design, construction, alteration, improvement or repair of single family residences with 12 or fewer units in a single building or contracts that require the expenditure of public funds.

B. A contractor for improvements of an owner-occupied single-family residence must give the owner written notice within 10 days after recording a lien against any property of the owner. The notice is served when it is sent or personally delivered. If timely notice is not given and, as a result, the owner has suffered damages before notice is given, the lien is extinguished to the extent of the damages. The mere recording of the lien claim is not considered damages. This subsection does not apply to subcontractors, and it applies only to contracts entered into after the effective date of this amendatory Act of the 96th General Assembly.

## **25. I Heard About Something Called the Home Repair and Remodeling Act. What the Heck is it?**

Effective January 1, 2000, the Home Repair and Remodeling Act requires that a person engaged in the business of home repair or remodeling furnish to the customer a written contract or work order before initiating home repair or remodeling work for more than \$1,000.00. It also requires the furnishing to the customer with the contract a copy of a pamphlet titled "Home Repair: Know Your Consumer Rights" before initiating the home repair or remodeling work. It requires contractors to obtain insurance in specified amounts. It also amends the Consumer Fraud and Deceptive Business Practices Act to include a violation of the Act as a cause of action. An amendment to the Act requires notification of submission of disputes to binding arbitration and waiver of a right to trial by jury. Courts have gone as far as denying recovery based on quantum meruit for violation of this act. However, courts are beginning to mellow.

## RECENT CASES

1. **Artisan Design Build v. Bilstrom**  
**2009 Ill. App. LEXIS 920**

Plaintiff filed an amended verified complaint for foreclosure of its mechanics lien and other relief. The other relief included causes of action for breach of contract and unjust enrichment. The parties agreed to eight change orders which significantly increased the contract price. Plaintiff claimed in excess of \$200,000.00. Defendant filed a motion to dismiss which alleged Plaintiff's failure to provide Defendants with the consumer rights brochure.

The court held that a contractor's failure to provide the consumer with the consumer's right brochure does not vitiate the contractor's right to recover either in equity or law. But if certain requirements are met, the failure to furnish the brochure may give the consumer a cause of action under the Consumer Fraud and Deceptive Business Practices Act. A violation of the Consumer Fraud and Deceptive Business Practices Act must be knowingly committed and plaintiff has to prove that his damages were proximately caused by the failure to provide the brochure.

2. **Cordeck Sales Inc. v. Construction Systems, Inc.**  
**382 Ill. App. 3d 334**  
**(Cordeck I)**

The case addressed many issues. AMEC Construction Management was hired to provide construction supervision for a condominium project. AMEC filed a claim for mechanics lien in the amount of \$749,640. Then continuing to work on the project, AMEC submitted amended lien claims totaling \$1,318,965.

First, the court held that one who provides construction management services meets the definition of a contractor.

Second, inclusion of overhead and profit does not render a claim constructively fraudulent. It was not established that inclusion of the fee in the lien claim does not make the lien inherently erroneous.

Third, the lender argued that the amended claim for lien is not enforceable against it due to its undisputed status as a third-party encumbrancer. The court found that the Act provides that a claim for lien may be amended at any time before the final judgment. As to third parties such as lenders, it may be amended within four months after the completion of work. The court found that by explicitly providing for amendment to lien claims against owners, under the traditional rule of statutory construction, the statute precluded amendments against third parties after four months of completion of work.

**3. Cordeck Sales, Inc. v. Construction Systems, Inc.  
2009 WL 2914204, 2009  
Ill. App. LEXIS 886 (1<sup>st</sup> Dist., September 9, 2009)  
(Cordeck II)**

The case discusses the description of the real estate and Section 6 of the Act. Subcontractors on a stalled construction project filed claims to enforce mechanics liens. Section 7 of the Act requires that a claim for lien include a sufficiently correct description of the lot, lots or tract of land to identify same. The description included individual condominium unit numbers and ownership percentages but not unit specific descriptions even though the claim for lien was recorded subsequent to the recording of the declaration that contains owner numbers and percentages. The description was proper under Section 7 of the Act. The 3-year period is measured by the subcontractor's work for which the lien is sought.

**4. Crawford Supply Company v. Marc Schwartz  
2009 WL 3079905**

A subcontractor failed to serve the 60-day notice applicable to owner occupied single-family residences required by Section 5(b) of the Mechanics Lien Act. The failure to serve the 60-day notice did not invalidate the claim for lien as a matter of law. There was no evidence of prejudice such as the owner paying the general contractor for the subcontractor's work prior to receipt of the notice requiring the owner pay twice. The court addresses the following question:

“Whether Plaintiff’s failure to serve a 60-day notice as provided in Section 5 of the Act renders Plaintiff’s claim for lien invalid as a matter of law.”

5. **K. Miller Construction Company, Inc. v. Joseph J. McGinnis**  
**2009 WI 2448568 (Ill. App. Dist.)**

In 2000, the Illinois legislature passed the Home Repair and Remodeling Act (815 ILCS 513/1 et seq. (West 2006)), declaring it “unlawful” for a contractor to “charge for remodeling or repair work before obtaining a signed contract or work order over \$1,000” 815 ILCS 513/30 (West 2006). Section 15 of the Act requires persons “engaged in the business of home repair or remodeling” to provide customers with “a written contract or work order” prior to beginning work on a project with cost over \$1,000. 815 ILCS 513/15.

The court dismissed the mechanics lien foreclosure claim and breach of contract claim in the face of the plain language of the Act that bars recovery for work that exceeds \$1,000 on a residence without a written contract order as these counts are based on proof of the parties’ oral contract. The only open question is whether the legislature’s declaration that oral contracts falling under the Act are “unlawful” means that the equitable remedy of quantum meruit is foreclosed in an action between a well-established contractor and a sophisticated consumer where no allegation is made that the contractor engaged in anything other than a fair and honest practice, and where based on the allegations of the complaint, the contractor took out a construction loan to complete the project, which, after a “walk through” was approved by the consumer.

6. **Weather-Tite, Inc. v. University of St. Francis**  
**233 Ill. 2d 385-388 (2009)**

In *Weather-Tite*, the University of St. Francis hired a general contractor for renovation of a residence hall. The general contractor then entered into a written contract with the plaintiff subcontractor to provide electrical labor, materials, and services for the renovation. On five occasions, the general contractor submitted sworn statements requesting payment from the University. After receipt of each of the first four sworn statements, the University paid the general contractor the total amount listed on each statement, including the amount due the plaintiff subcontractor and the general contractor then paid the plaintiff subcontractor the amounts due as listed on the statements. The University wire transferred the fifth and final payment to the general contractor's bank account. At that time, the recipient bank exercised its right of setoff and applied the funds to an outstanding debt of the general contractor. Thus, the plaintiff subcontractor was not paid the final balance due for electrical work, totaling \$130,948.48.

The Appellate Court ruled in favor of the subcontractor. The Supreme Court affirmed. The Supreme Court noted that Section V of the Act explicitly states that the Owner has a duty to require a contractor's sworn statement "before" paying the general contractor any moneys. The purpose served by the requirement is to place the owner on notice of any subcontractor claims and to secure waivers of lien claims from the subcontractor when making payment to the general contractor. The Supreme Court found that an owner is required to retain funds sufficient to pay all claims of subcontractors when an owner is notified of amounts due or to become due a

subcontractor, as is included in a contractor's sworn statement under Section 5 of the Act.

7. **Weydert Homes, Inc. v. Ricky A. Kammes**  
**In the Appellate Court of Illinois Second District No. 2-08-0768**

This is a good case discussing the Section V sworn statement. On February 28, 2008, Plaintiff recorded an original contractor's claim for lien. Prior thereto on December 18, 2007, Plaintiff furnished a purported sworn statement signed by the president of plaintiff which was not notarized. Defendant owner requested a sworn statement in April, 2008. Plaintiff did not furnish the sworn statement. It filed suit in May, 2009.

Plaintiff sought to foreclose a claim for mechanics lien and recover damages based on breach of contract and quantum meruit. The court found that the December 5, 2007 sworn statement did not comply with the Mechanics Lien Act. The court found that the Plaintiff was also required to furnish a sworn statement in response to the April 2008 request. Plaintiff was able to assert its breach of contract and quantum meruit claims.

ATTORNEYS' TITLE GUARANTY FUND, INC.

OWNER'S/GENERAL CONTRACTOR'S SWORN STATEMENT

SECTION I
INSTRUCTIONS

- 1. The owner must execute the Sworn Statement – Owner in Section II. Prior to execution, the owner shall list on Schedule C-1 of this Sworn Statement the names of all persons, firms, or corporations furnishing services, equipment, labor, and/or materials in connection with the work performed on the Premises (as hereinafter described) other than those listed on the Schedule C-2 Sworn Statement – General Contractor.
2. The general contractor must execute the Sworn Statement – General Contractor in Section III. Prior to execution, the general contractor shall list on Schedule C-2 of this Sworn Statement the names of all persons, firms, or corporations engaged by the General Contractor to furnish services, equipment, labor, and/or materials in connection with the work performed on the Premises including the contract price (including extras), amount previously paid, amount due, and the balance due to each of them, and a description of the type of work or materials furnished by each.
3. The examining attorney shall verify that every person or firm listed in Schedule C-1 and Schedule C-2 has properly executed appropriate waivers of lien.

SECTION II
SWORN STATEMENT – OWNER

STATE OF \_\_\_\_\_ )
COUNTY OF \_\_\_\_\_ ) SS

I (We), \_\_\_\_\_, being duly sworn, depose and say that I (we) am (are) the owner(s) of the premises commonly known as:

\_\_\_\_\_
and legally described as: \_\_\_\_\_

(the "Premises"); that the persons, firms, and corporations whose names have been set out in the Schedule C-1 of this Sworn Statement include all of the persons, firms, and corporations who have furnished services, equipment, labor, and/or materials in the construction or repair of improvements on the Premises other than those listed on the Schedule C-2 Sworn Statement – General Contractor; that, as of this date, all such work has been fully completed and accepted by me (us); that the general contractor and all other parties with whom I (we) have contracted for improvements on said property have been paid in full; that, as of this date I (we) have no knowledge or notice of any claim of any subcontractor, laborer, or materialman with respect to said Premises.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_
(Day) (Month) (Year)

Name (individual/corporation/partnership): \_\_\_\_\_

By: \_\_\_\_\_ (Title) Attest \_\_\_\_\_ (Title)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_
(Day) (Month) (Year)

\_\_\_\_\_
(Notary Public)

ATTORNEYS' TITLE GUARANTY FUND, INC.

OWNER'S/GENERAL CONTRACTOR'S SWORN STATEMENT

SECTION III
SWORN STATEMENT - GENERAL CONTRACTOR

STATE OF \_\_\_\_\_ )
COUNTY OF \_\_\_\_\_ ) SS

The undersigned, being duly sworn, on oath deposes and says that he/she is the \_\_\_\_\_ (Title)

of the \_\_\_\_\_ (Firm Name), the contractor employed by \_\_\_\_\_

to furnish labor and materials for the \_\_\_\_\_ (Description of Improvement)

work on the building(s) located at \_\_\_\_\_

and legally described in section II above (the "Premises") of which \_\_\_\_\_

is owner; that the total amount of the contract is \$ \_\_\_\_\_, of which I have received payment of

\$ \_\_\_\_\_ prior to this payment; that the persons, firms, and corporations whose names have been

set out on Schedule C-2 of this Sworn Statement are all of the persons, firms, and corporations engaged by the undersigned to furnish services, equipment, labor, and/or materials in the construction or repair of the improvements on the Premises; that the dollar amount set opposite each person, firm, or corporation in this Sworn Statement is the exact and total amount due or to become due to each such person, firm, or corporation on account of labor, services, equipment, and/or materials furnished with respect to said subcontractors of the undersigned or any of the persons, firms, or corporations named in Schedule C-2 of this Sworn Statement, has been fully accepted by the owner and completed according to the plans and specifications.

The undersigned further states that all material (except as disclosed on said Schedule C-2) has been or will be furnished from his/her own stock and has been paid for in full; that there are no other contracts or subcontracts for said work outstanding, and that there is nothing due or to become due to any person for services, equipment, material, labor, or any other work done or to be done in connection with said work other than that stated on said Schedule C-2. There are no chattel mortgages, personal property leases, conditional sale contracts, or any other agreements given or are now outstanding as to any fixtures, equipment, appliances, or materials placed upon or installed in or upon the aforementioned premises or improvements thereon. All waivers are true, correct, and genuine, and are delivered unconditionally. Furthermore, there is no claim, either legal or equitable, to defeat the validity of said waivers.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (Day) (Month) (Year)

Name (individual/corporation/partnership): \_\_\_\_\_

By: \_\_\_\_\_ (Title) Attest \_\_\_\_\_ (Title)

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (Day) (Month) (Year)

\_\_\_\_\_  
(Notary Public)

ATTORNEYS' TITLE GUARANTY FUND, INC.

**OWNER'S/GENERAL CONTRACTOR'S SWORN STATEMENT**

**SCHEDULE C-1  
SWORN STATEMENT – OWNER**

Name, Address, & Telephone Number	Type of Labor & Materials to be Furnished	Amount of Contract (including extras & credits)	Amount Previously Paid to Date	Amount of Current Request	Accumulative Retainage to Date	Balance Due
<b>TOTAL LABOR &amp; MATERIALS TO COMPLETE</b>						

**RECAPITULATION**

Amount of Original Contract	\$ _____	Work Completed to Date	\$ _____
Plus: extras to contract	\$ _____	Less: total retainage	\$ _____
Total: contract plus extras	\$ _____	Less: amount previously paid	\$ _____
Less: credits to contract	\$ _____	Less: amount of this request	\$ _____
<b>Total: Adjusted Total Contract</b>	<b>\$ _____</b>	<b>Total: Balance Due</b>	<b>\$ _____</b>





# ATTORNEYS' TITLE GUARANTY FUND, INC.

## WAIVER OF LIEN TO DATE

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_ Escrow No.: \_\_\_\_\_

TO WHOM IT MAY CONCERN:

WHEREAS, the undersigned \_\_\_\_\_ has been employed by \_\_\_\_\_  
 \_\_\_\_\_ to furnish \_\_\_\_\_ for the  
 \_\_\_\_\_ at the premises known as \_\_\_\_\_  
 in the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, and legally described as  
 \_\_\_\_\_, of which \_\_\_\_\_ is owner.

NOW, THEREFORE, the undersigned, for and in consideration of the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_),  
 and other good and valuable considerations, the receipt whereof is hereby acknowledged, does hereby waive and release any and all lien or claim or right of lien under  
 state statutes relating to mechanics' liens on the above described premises and improvements thereon, and on the monies or other considerations due or that may  
 become due from the owner on account of labor or services, material, fixtures, apparatus, or machinery heretofore furnished to this date by the undersigned, to or on  
 account of said owner, for the above described premises without prejudice to assert any right of lien as to any labor, services, material, fixtures, apparatus, or machinery  
 hereafter furnished by the undersigned.

Given under \_\_\_\_\_ hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ Year.

Signature and seal: \_\_\_\_\_  
Contractor Name

By: \_\_\_\_\_  
Title

NOTE: All waivers must be for the total amount paid. If the waiver is for a partnership, the partnership name should be used. Also, the partner should sign and  
 designate himself as a partner. If the waiver is for a corporation, the corporate seal must be affixed, the corporate name should be used, and the title of the officer  
 signing the waiver should be specified.

## AFFIDAVIT

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The undersigned, first being duly sworn, on oath deposes and says that he is the \_\_\_\_\_ of the  
Title

\_\_\_\_\_ who is the contractor for the  
Contractor Name  
 \_\_\_\_\_ work on the building(s) owned by  
 \_\_\_\_\_ and located at \_\_\_\_\_; that the

total amount of the contract, including extras, is \$ \_\_\_\_\_, of which he has received payment of \$ \_\_\_\_\_  
 prior to this payment. The undersigned further states that the following are the names of all parties who have furnished material and/or labor for said work and all  
 parties having contracts or subcontracts for specific portions of said work or for materials entering into the construction thereof and the amount due or to become due to  
 each, and that the items listed include all labor and material required to complete said work according to plans and specifications.

Moreover, there are no other contracts or subcontracts for said work outstanding, and there is nothing due or to become due to any person for material, labor, or other  
 work of any kind done or to be done in connection with said work other than above stated. Furthermore, all waivers are true, correct, and genuine, and delivered  
 unconditionally and there is no claim, either legal or equitable, to defeat the validity of said waivers.

Name, Address & Telephone No.	Labor & Materials Supplied	Contract Price	Amount Previously Paid	Amount of Current Draw	Balance Due
<b>Total Labor &amp; Materials to Complete</b>					

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ Year  
Day Month Year

\_\_\_\_\_  
Signature

Subscribed and sworn to before me  
 this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ Year  
Day Month Year

\_\_\_\_\_  
Notary Public

You are required by law to provide Attorneys' Title Guaranty Fund, Inc., with  
 your current taxpayer identification number. If you do not provide Attorneys'  
 Title Guaranty Fund, Inc., with your current taxpayer identification number,  
 you may be subject to civil or criminal penalties imposed by law.

Taxpayer Identification/Social Security Number: \_\_\_\_\_

Certification: Under penalties of perjury, I certify that the number shown on  
 this statement is my correct taxpayer identification number.

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Date

ATTORNEYS' TITLE GUARANTY FUND, INC.

**FINAL WAIVER OF LIEN**

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_ Escrow No.: \_\_\_\_\_

TO WHOM IT MAY CONCERN:

WHEREAS, the undersigned \_\_\_\_\_ has been employed by \_\_\_\_\_  
 \_\_\_\_\_ to furnish \_\_\_\_\_ for the  
 \_\_\_\_\_ at the premises known as \_\_\_\_\_  
 in the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, and legally described as  
 \_\_\_\_\_, of which \_\_\_\_\_ is owner.

NOW, THEREFORE, the undersigned, for and in consideration of the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_),  
 and other good and valuable considerations, the receipt whereof is hereby acknowledged, does hereby waive and release any and all lien or claim or right of lien under  
 state statute relating to mechanics' liens on the above described premises and improvements thereon, and on the monies or other considerations due or that may become  
 due from the owner on account of labor or services, material, fixtures, apparatus, or machinery heretofore furnished or that may be furnished at any time hereafter by  
 the undersigned, to or on account of said owner, for the above described premises.

Given under \_\_\_\_\_ hand and seal this \_\_\_\_\_ Day \_\_\_\_\_ Month \_\_\_\_\_ Year \_\_\_\_\_.

Signature and seal: \_\_\_\_\_  
 Contractor Name

By: \_\_\_\_\_  
 Title

NOTE: All waivers must be for the total amount paid. If the waiver is for a partnership, the partnership name should be used. Also, the partner should sign and  
 designate himself as a partner. If the waiver is for a corporation, the corporate seal must be affixed, the corporate name should be used, and the title of the officer  
 signing the waiver should be specified.

**AFFIDAVIT**

STATE OF \_\_\_\_\_ COUNTY OF \_\_\_\_\_

The undersigned, first being duly sworn, on oath deposes and says that he is the \_\_\_\_\_ of the \_\_\_\_\_  
 Title

\_\_\_\_\_ who is the contractor for the  
 Contractor Name  
 \_\_\_\_\_ work on the building(s) owned by  
 \_\_\_\_\_ and located at \_\_\_\_\_; that the

total amount of the contract, including extras, is \$ \_\_\_\_\_, of which he has received payment of \$ \_\_\_\_\_  
 prior to this payment. The undersigned further states that the following are the names of all parties who have furnished material and/or labor for said work and all  
 parties having contracts or subcontracts for specific portions of said work or for materials entering into the construction thereof and the amount due or to become due to  
 each, and that the items listed include all labor and material required to complete said work according to plans and specifications.

Moreover, there are no other contracts or subcontracts for said work outstanding, and there is nothing due or to become due to any person for material, labor, or other  
 work of any kind done or to be done in connection with said work other than above stated. Furthermore, all waivers are true, correct, and genuine, and delivered  
 unconditionally and there is no claim, either legal or equitable, to defeat the validity of said waivers.

Name, Address & Telephone No.	Labor & Materials Supplied	Contract Price	Amount Previously Paid	Amount of Current Draw	Balance Due
<b>Total Labor &amp; Materials to Complete</b>					

Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
 Day Month Year

You are required by law to provide Attorneys' Title Guaranty Fund, Inc.,  
 with your current taxpayer identification number. If you do not provide  
 Attorneys' Title Guaranty Fund, Inc., with your current taxpayer  
 identification number, you may be subject to civil or criminal penalties

\_\_\_\_\_  
 Signature

Taxpayer Identification/Social Security Number: \_\_\_\_\_

Subscribed and sworn to before me  
 this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
 Day Month Year

\_\_\_\_\_  
 Signature of Contractor

\_\_\_\_\_  
 Notary Public

\_\_\_\_\_  
 Date

ATTORNEYS' TITLE GUARANTY FUND, INC.

**CERTIFICATE OF COMPLETION**

**CHAMPAIGN**  
P.O. Box 9136  
Champaign, IL 61826-9136  
217.359.2000

**CHICAGO**  
One South Wacker Drive  
24<sup>th</sup> Floor  
Chicago, IL 60606-4654  
312.372.8361

**MADISON**  
2418 Crossroads Drive  
Suite 1600  
Madison, WI 53718-2420  
608.442.8130

To: Attorneys' Title Guaranty Fund, Inc.

\_\_\_\_\_  
\_\_\_\_\_

From: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

RE: Escrow Number: \_\_\_\_\_

\_\_\_\_\_

(Project Name or Address)

Pursuant to the above captioned escrow, the undersigned hereby certifies that Attorneys' Title Guaranty Fund, Inc., is authorized and directed to disburse the sum of \$ \_\_\_\_\_, in accordance with the Owner's and General Contractor's Sworn Statements (ATG Form 3018 or Forms 3018-A and 3018-B), dated \_\_\_\_\_.

The undersigned further certifies to Attorneys' Title Guaranty Fund, Inc., that all work for which the above payment is requested, and all prior work for which payment has been made, has been satisfactorily completed and all materials are in place.

Signed: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_

ATTORNEYS' TITLE GUARANTY FUND, INC.

**CONSTRUCTION DISBURSEMENT AUTHORIZATION**

Escrow No.:

To: Attorneys' Title Guaranty Fund, Inc.                      Attorneys' Title Guaranty Fund, Inc.  
 One South Wacker Drive    or    P.O. Box 9136  
 24<sup>th</sup> Floor    Champaign, IL 61826-9136  
 Chicago, IL 60606-4654    217.359.2000  
 312.372.8361

Project name and/or address: \_\_\_\_\_

The undersigned hereby certify that the following sworn statement(s) are true, to wit:

- a. Owner's and General Contractor's Sworn Statement dated \_\_\_\_\_, as amended to and including the date hereof.
- b. Owner's Sworn Statement dated \_\_\_\_\_, as amended to and including the date hereof.
- c. General Contractor's Sworn Statement dated \_\_\_\_\_, as amended to and including the date hereof.

The undersigned hereby authorize and direct Attorneys' Title Guaranty Fund, Inc., to disburse the sum of \$ \_\_\_\_\_, pursuant to the sworn statements identified above, as part of the above-captioned escrow.

The undersigned accepts the condition of title as evidenced by the commitment, policy, and all endorsements issued to date.

Furthermore, the undersigned authorize and direct Attorneys' Title Guaranty Fund, Inc., to disburse the following amounts, if any, from the aforementioned escrow to the following entities for non-construction items not set forth in the sworn statement(s).

Name, Address, and Telephone	Labor and Materials to be Furnished	Amount of Contract (including extras and credits)	Amount Paid to Date	Amount of Current Request	Balance Due

If checked, this escrow is out of balance. The undersigned, and specifically the lender, authorize Attorneys' Title Guaranty Fund, Inc., to disburse the sum of \$ \_\_\_\_\_, despite the fact that the total of the unpaid disclosed cost of construction of the improvement exceeds the amount of the undisbursed mortgage proceeds available to the escrowee from the lender.



**2. CORPORATION**

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the above County and State, DO HEREBY CERTIFY that \_\_\_\_\_ is personally known to me to be the \_\_\_\_\_ president of the corporation, and \_\_\_\_\_ is personally known to me to be the \_\_\_\_\_ secretary of the corporation and personally known to me to be the same person(s) who(se) name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they had signed and delivered the instrument as their free and voluntary act, and as the free and voluntary act of the corporation, for the uses and purposes set forth therein.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Day Month Year

\_\_\_\_\_  
Notary Public

(Seal)

**3. TRUSTEE**

EXCULPATORY CLAUSE: It is expressly understood and agreed by and between the parties, anything here to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings, and agreements made here on the part of the trustee while in form purporting to be the trustee's warranties, indemnities, representations, covenants, undertakings, and agreements are nevertheless each and every one of them made and intended not as personal warranties, indemnities, representations, covenants, undertakings, and agreements by the trustee or for the purpose or with the intention of binding the trustee personally, but are made and intended for the purpose of binding only that portion of the trust property specifically described here, and this instrument is executed and delivered by the trustee not in its own right but solely in the exercise of the powers conferred on it as trustee. No personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforceable against,

\_\_\_\_\_ on account of this instrument or on account of any warranty, indemnity, representation,  
Name of Trustee

covenant, undertaking, or agreement of the trustee in this instrument, either express or implied. All such personal liability, if any, is expressly waived and released.

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for the above County and State, DO HEREBY CERTIFY that \_\_\_\_\_ is personally known to me to be the \_\_\_\_\_ president of the corporation as Trustee, and \_\_\_\_\_ is personally known to me to be the \_\_\_\_\_ secretary of the corporation and personally known to me to be the same person(s) who(se) name(s) is/are subscribed to the foregoing instrument appeared before me this day in person and acknowledged that they had signed and delivered the instrument as their free and voluntary act, and as the free and voluntary act of the corporation as Trustee, for the uses and purposes set forth therein.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
Day Month Year

\_\_\_\_\_  
Notary Public

(Seal)