

Hiring a Contractor

What You Need To Know

By Mel Metts
www.melmetts.com

Disclaimer

This publication is distributed with the understanding that it does not constitute legal, accounting or other advice. The author assumes no liability for loss or damage as a result of reliance on the material provided. Appropriate legal, accounting or other expert assistance should be sought from competent professionals.

About the Author

Mel Metts is also author and publisher of the book, *Do it Yourself Evictions; A layman's guide to Forcible Entry and Detainer procedures in Illinois*. He is a licensed real estate agent with Graff Realty, Inc., specializing in investment real estate services. He can be reached at 847-949-6045 or melmetts@gmail.com.

This document assembled from public sources.

Last updated October 10, 2009

Introduction

The apartment owner had a collapsed sewer line. He hired a reputable local plumber to do the work. The plumber provided a quote which included the required building permit.

Building permit issued, the work was performed, inspected and approved by the building department.

Weeks later, the apartment owner received a violation notice from the city. The sewer repairs were done without the proper permit. The owner was fined hundreds of dollars.

As the saying goes, half the problem of hiring a contractor is just finding one that will show up.

This publication deals with the other half. You want a contractor who performs quality work on time and at a reasonable cost. But you also need someone who won't get you in trouble with your village, city, or the federal regulators; and won't get you sued by the contractor's employees or creditors.

As the property owner, you are the responsible party. You must ensure that the contractor is properly licensed, insured (liability and workers compensation), will comply with local ordinances, and will perform the job on time and in a workmanlike manner.

Beginning April 22, 2010, if your residential rental was constructed prior to 1978 you have additional requirements. Unless the building has been tested and cleared for the presence of lead-based paint, the law requires you to presume that lead is present. When replacing a window or disturbing more than six square feet of painted surfaces per room for interior activities or more than twenty square feet of painted surface for exterior activities, work must be performed by a certified renovator who is required to follow "lead-safe" procedures. Read about this rule in our publication entitled ***EPA's Lead-Based Paint Renovation, Repair and Painting Program; What You Need To Know***.

When hiring a contractor you also put yourself at risk of being sued by the contractor, as well as his suppliers and subcontractors! Why? Mechanic's liens, that's why. Make sure this never happens to you by studying the two following chapters which de-mystify Illinois state laws involving contractors and mechanic's liens.

Chapter 1. Hiring a Contractor

From the Illinois Attorney General

If you are like most Illinoisans, your home is your most valuable financial asset. Performing upgrades on your home in the form of a new roof, new kitchen, or addition can increase its value, but home improvements can also be needlessly expensive and frustrating if you pay for work that is not performed, work that does not meet the building codes in your town, or work that is of poor quality. For these reasons, it's important to take extra care when you hire someone to work on your home. Of the more than 20 thousand complaints received each year by the Office of the Illinois Attorney General, approximately 20 percent involve disputes between home owners and home repair contractors. Home owners can protect themselves by following some important rules and asking the right questions.

Common Home Repair Scams

Complaints received by the Office of the Illinois Attorney General demonstrate that unscrupulous home repair contractors use some common techniques to gain the confidence of home owners. Unscrupulous contractors might tell you they have "leftovers" from a larger job and can do the repair work for you at a discount. They might attempt to frighten you by claiming that your house contains health hazards or code violations that must be fixed right away. They might claim to be a representative of your insurance company in an attempt to get you to agree to work they say your insurance policy will pay for. You might be offered a "free furnace cleaning" by a heating and cooling company as an excuse to sell you a new furnace you do not need. In general, consumers should beware when a home repair contractor:

- contacts you or comes to your home uninvited;
- tells you that you need to make repairs immediately or your safety may be in danger;
- pressures you to sign papers today or talks too quickly, attempting to confuse you;
- tells you that he or she is doing work in your neighborhood and claims to
- have "extra materials" left over from another job;
- quotes a price that's out of line with other estimates;
- offers to drive you to your bank to withdraw funds to pay for his or her work;
- can be reached only by leaving messages with an answering service;
- drives an unmarked vehicle or has out-of-state license plates; or
- asks you to pay for the entire job up front.

Before You Start Your Project

You should always complete two basic steps before contracting for any home repair or home improvement project: 1) determine the scope of work to be done and 2) set specifications for the job. Before you start your project, make sure to define the scope of the work that you are going to undertake. To define the scope of work, write down exactly what you want done in your home, so that when you talk to a contractor, you will be able to focus on what you actually need—not be sold additional or unnecessary work. You should also write down the specifications for the job. The specifications should include such factors as the time frame in which you want the work done, the type of materials you want the contractor to use, how you intend to pay for the job, and the payment schedule for the contractor, subcontractors, and suppliers. Your list of specifications can include anything about the project that is important to you and can serve as a reference for you when you interview contractors. If you think through the scope and specifications of the project ahead of time and put your expectations in writing, you can show a contractor what you need clearly and quickly.

Finding a Contractor

You should find out as much as you can about a contractor before hiring him or her. You can do this by calling the Illinois Attorney General and the Better Business Bureau. Contact your local village hall or township to find out if there is a license requirement and if there have been any complaints made about the companies you might use. Ask for recommendations from friends, neighbors, or coworkers who have had home improvement work done. Don't assume that all contractors who advertise in the "home improvement" section of the Yellow Pages have a valid license or that they're reputable. Get written estimates from several firms—don't automatically choose the lowest bidder. There are other factors besides cost to consider. The following is a list of the basic steps for choosing a contractor or home repair company:

- Check contractor complaint records with the Illinois Attorney General and the Better Business Bureau.
- Get recommendations and references. Talk to friends, family, and other people or whom the contractor has done similar work.
- Get at least three written estimates from contractors who have come to your home to evaluate what needs to be done. Be sure the estimates are based on the same work so that you can make meaningful comparisons.
- Make sure the contractor meets licensing and registration requirements by contacting the appropriate governmental authority.
- Get the names of suppliers and ask if the contractor makes timely payments.
- Contact your local building inspection department to check for permit and inspection requirements.
- Be sure your contractor has the required personal liability, property damage, and worker's compensation insurance for his or her workers and subcontractors. Get copies of the contractor's proof of insurance. Also check with your insurance company to find out if you are covered for any injury or damage that may occur.
- Be wary of businesses that operate out of post office boxes, private mailboxes, and suites instead of local business addresses.
- Insist on a complete written contract. Know exactly what work will be done, the quality of the materials that will be used, warranties, timetables, the total price of the job, and the schedule of payments.

Ask the contractor if subcontractors will be used on the project. If yes, ask to meet them, and make sure they have current insurance coverage and licenses. Also ask them if this contractor has paid them on time in the past. A "mechanic's lien" could be placed on your home if your contractor fails to pay the subcontractors and suppliers who worked on or provided materials for your project, even if you have fully paid the contractor. This means the subcontractors and suppliers could go to court to force you to sell your home to satisfy their unpaid bills from your project. (See the section below on Mechanic's Liens and Lien Waivers.)

Checking References

By talking with some of a prospective contractor's former customers, you can find out important information about the business you are considering hiring. When speaking with these references, you want to ask:

- May I visit your home to see the completed job?
- Were you satisfied with the project? Was it completed on time?
- Did the contractor keep you informed about the status of the project and any problems along the way?
- Were there unexpected costs?
- Did workers show up on time?
- Did they clean up after finishing the job?
- Would you use the contractor again?

Contracts for Home Repair in Illinois

Before signing any home repair or remodeling contract over \$1,000, a person engaging in the business of home repair and remodeling is required in Illinois to provide the customer with a copy of the "Home Repair: Know Your Consumer Rights" pamphlet [Appendix A].

A contract spells out the who, what, where, when, and cost of your project. The agreement should be clear, concise, and complete.

In Illinois, a written contract with all costs enumerated is required for home repair or remodeling work over \$1,000.

This written contract or work order is required by law to state total cost, including parts and materials and any charge for the estimate. In addition, the contract is required to give the name and address of the person engaged in the business of home repair or remodeling.

If the contractor uses a post office box, mail service, or agent to receive business correspondence, the agreement must state the contractor's home address.

Before you sign a contract, make sure it contains:

- the contractor's full name, address, and telephone number;
- a description of the work to be performed;

- a detailed list of all materials, including product, color, model, size, and brand name;
- the total cost for work performed, including charges for estimates and additional labor;
- all oral promises made by the contractor in writing;
- a description of how change orders will be handled;
- starting and estimated completion dates;
- a schedule and method of payment, including down payment, subsequent payments, and final payment;
- written guarantees if the contractor warrants his or her work and product.

If the company won't put its promises in writing, look for a company that will.

Do not sign the contract until you read it carefully. If the salesperson pressures you to sign before you've had a chance to read and understand all of the contract, **DO NOT SIGN IT**. Never rely on the salesperson to read or explain the contract to you. If you do not understand the contract, ask a trusted friend or lawyer to help you. Never sign a contract that has blank spaces. Finally, be sure to get a copy of everything you sign when you sign it.

Remember, you have three business days to cancel any contract, if the sale is made and signed at your home. The contractor **CANNOT** take this right away from you by initiating work, selling your contract to a lender, or any other tactic. (See the Illinois Attorney General fact sheet, Three Day Right to Cancel Home Repair Contracts. [Appendix B])

Paying for Home Repair Projects

Beware of contractors who ask you to pay for the entire job up front. Negotiate a payment schedule that is based on completion of specific stages of the job. Your down payment should be as little as you can negotiate with the contractor. You and the contractor may agree to deposit the contract money with an independent escrow agent, such as a bank or title company. By doing this, payments can be made as the work progresses and only if you are satisfied that the work is performed to your expectations and that subcontractors have been fully paid.

If you need to borrow money to pay for your home repairs, shop around first. The financing offered by a contractor may be expensive, so check with your local banks or your credit union to see if you can find better rates. Be extremely cautious about using your home as security for a home improvement loan. If you fail to repay the loan as agreed, you could lose your home. If you choose to take out a loan to pay for your home repairs, you should have a private attorney review the loan documents before you sign an agreement. (See the Illinois Attorney General fact sheet, Financing Home Repairs [Appendix C].)

Mechanic's Liens and Lien Waivers

A mechanic's lien protects a subcontractor in the event that the general contractor fails to pay for the subcontractor's services or supplies. In that event, the subcontractor can ask a court to put a lien, or hold, on your property until the debt is paid. As the property owner, you are responsible for the debt, and you will not be able to sell or finance your property until all liens are paid or lifted. See Chapter 2 for extensive coverage of mechanic's liens.

Duties of the General Contractor and Subcontractors

Under Illinois law, the homeowner must request—the contractor must provide—written list of the names and addresses of "all parties furnishing materials and labor and of the amounts due or to become due to each." This list, or affidavit, must appear either as part of the contract or in a separate printed statement, and it must contain the following language:

"THE LAW REQUIRES THAT THE CONTRACTOR SHALL SUBMIT A SWORN STATEMENT OF PERSONS FURNISHING MATERIALS AND LABOR BEFORE ANY PAYMENTS ARE REQUIRED TO BE MADE TO THE CONTRACTOR."

The law also requires every subcontractor listed in the affidavit to notify the homeowner, either personally or by certified letter, when he or she has furnished materials or performed labor on the homeowner's remodeling project. This notice preserves the subcontractor's right to put a lien on your property, and it must contain the name and address of the subcontractor or material provider, the starting date of the work performed, the type of work performed or materials provided, and the name of the general contractor who requested the work to be done. This notice is required by law to contain the following statement:

"NOTICE TO OWNER

"The subcontractor providing this notice has performed work for or delivered material to your home improvement contractor. These services or materials are being used in the improvements to your residence and entitle the subcontractor to file a lien against your residence if the services or materials are not paid for by your home improvement contractor. A lien waiver will be provided to your contractor when the subcontractor is paid, and you are urged to request this waiver from your contractor when paying for your home improvements."

Lien Waivers

By giving you a signed lien waiver, a supplier of materials or services for your home repair project acknowledges that he or she has no right to file a mechanic's lien against your property. In other words, the supplier acknowledges having been paid in full for those materials or services. It is important that you get these *written and signed waivers from every subcontractor who has worked on your home in the course of the project. Do not make the final payment to the contractor until you are satisfied with the work and have obtained signed waivers showing that every subcontractor has been paid. You can find blank "waivers of lien" forms at home stores, print shops, and on the Internet. [Sample forms Exhibits A-G]*

Protecting Yourself During the Project

Keep all paperwork related to your home repair project in one place. This includes copies of the contract, change orders (approving a substitution of materials or services), and correspondence with your contractors and suppliers. Keep a log of all phone calls, conversations, and activities associated with the project. You also might want to take photographs recording the work's progress. These records will prove important if problems arise with your project, during or after construction.

Before making the final payment and signing off, make sure that: the work meets the standards spelled out in the contract; the job site has been thoroughly cleaned up; you have written warranties for materials and workmanship; and you have written proof that all subcontractors and suppliers have been paid.

What You Can Do if You are the Victim of a Home Repair Scam

If you have a problem with your home improvement project, first try to resolve it with the contractor. Many disputes can be resolved at this level. Follow any phone calls with a letter summarizing the conversation. Send the letter to the contractor by certified mail, return receipt requested. The receipt will be your proof that the contractor received your letter. Keep a copy of the letter and receipt in your files.

You can also contact the Office of the Illinois Attorney General to file a consumer complaint for cooperative mediation at any time you feel you need help.

If you can't get satisfaction through personal negotiation or cooperative mediation, consider consulting a lawyer to explore what options you have for resolving your dispute in court. Keep in mind that there are time deadlines to cancel sales contracts and pursue legal claims. The Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/) allows you to sue if you have been damaged by unfair or deceptive acts or practices. You may be able to file a lawsuit for monetary damages and your attorney's fees.

Finally, don't be afraid or embarrassed to call the police if you are in a situation that makes you uncomfortable.

From Illinois Attorney General website

http://www.illinoisattorneygeneral.gov/consumers/homerepair_construction.html

Chapter 2. Mechanic's Liens

"A Layman's Manual to Mechanic's Lien Procedure"

As Presented by: Arthur Raphael

November 1997

PURPOSE

The purpose of this manual is to present procedures and suggestions to protect Illinois land owners, original contractors, and subcontractors affected by the Illinois Mechanic's Lien Act, 770 ILCS 60/1. This manual shall first discuss how owners can protect themselves against mechanic's liens. Next there shall be a list of suggestions and procedures for original contractors to preserve and enforce their lien rights. Finally, the manual will address the lien rights of subcontractors in private and public projects.

BACKGROUND

The Mechanic's Lien Law in Illinois is set forth in 770 ILCS 60/1 - 60/39. The law permits contractors, subcontractors, architects and others to place a lien on real estate as security for the payment of the value of materials, labor, fixtures and services provided to improve real estate. This lien was not recognized prior to the enactment of the law. Therefore, strict compliance with the terms of the statute is essential in order to preserve and enforce a valid lien. The purpose of this law is to protect persons who are not paid after providing labor and materials to enhance the value of real property.

DEFINITIONS

- **Mechanic's Lien:** A mechanic's lien is a legal interest in real estate, given by statute, as security for the payment of the value of the material, fixtures, labor or service which have been used to improve the real estate.
- **Real Estate:** Land and the improvements (buildings and fixtures) located upon the land.
- **Owner:** A person or other entity (i.e. corporation) who has an estate in fee, for life, for years, or any other estate or right of redemption, or other recognized interest in real estate.
- **Original Contractor:** (Frequently referred to in this manual as the Contractor) Any person or entity with whom the owner of the real estate or is agent has contracted or has given knowing permission for the improvement of the real estate.
- **SubContractor:** Any person or entity who furnished materials, apparatus, machinery or fixtures or performs services or labor for an original contractor in the improvement or for the purpose of improving real estate.
- **Performance (Completion) Bond:** A bond given to insure an owner (either a private party or a public authority) that a contract will be completed as awarded within a fixed period of time.
- **Payment Bond:** A bond provided by the original contractor, to insure payment to the subcontractors and material men.

HOW AN OWNER PROTECTS THE REAL ESTATE FROM MECHANIC'S LIENS

The first thing an owner should do before entering into a contract with the original contractor is to investigate the contractor's general reputation and experience. The owner should request from the original contractor the names and addresses of persons he had previously worked for, as well as the names of lending institutions he uses in business. The owner should also check with the material suppliers used by the original contractor to determine whether his credit is good. Determining the reputation and reliability of the original contractor before executing the contract can significantly reduce the risk that the owner will be burdened with a project that is either incomplete or improperly done.

When drafting the terms of the contract, various payment provisions may be used. Most construction contracts provide that a percentage of the contract price be withheld until completion of certain stages or percentages of the project. This provision can help assure the owner that the job will be completed to his satisfaction or, if not, that funds will have been retained to complete the job.

Once the owner is ready to enter into a contract with the original contractor, he should take certain steps to protect himself against liens from a subcontractor so that he does not pay more than the contract price. First, the owner should require from the contractor, at time of payment, a statement made under oath which states the names and addresses of the persons furnishing materials and labor and the amount of the subcontractor with each of them. 770 ILCS 60/5. The owner should also obtain from each subcontractor the names of parties furnishing materials and labor and the amount due to each under any sub-subcontract made by the subcontractor. 770 ILCS 60/32. Further, if the owner receives any notice of a claim for lien from a subcontractor or other party furnishing labor or materials, he should withhold such amount from any payments due the original contractor. 770 ILCS 60/27.

Each time the owner makes a payment to the contractor, the owner should require the contractor to submit a new sworn statement which states the amount paid to date to each subcontractor together with partial lien waivers [Exhibit A] from the contractor and each subcontractor, which would total, in the aggregate, the amount paid to date. These sworn statements and lien waivers will protect the owner's real estate from being affected as to the extent of the payments made to the contractor. Additionally, the owner, upon his final contract payment to the contractor, should require the contractor to submit sworn statements from himself and his subcontractors stating that all payments have been made together with final lien waivers [Exhibit B]. Thus, the owner will be protected against anyone named and shown to be paid in these statements from claiming a lien on his real estate.

To further protect the owner, he should give himself the option in his contract with the original contractor to make payments to the subcontractors based on the sworn statements and upon receipt of partial or final lien waivers from the subcontractors. An owner may also consider making these payments through an escrow with a reputable title insurance company. The title company will first examine the sworn statements and lien waivers, if they are satisfactory, the title insurance company will make payments to the contractors and subcontractors as well as issue title insurance to the owner in the aggregate amount of the payments made to that date against any potential lien claims though an endorsement referred to as "Armor Note" coverage. In the situation where the owner is financing the construction, the lender will normally require that proceeds of the loan be disbursed in this manner. In the latter case, title insurance will not be issued to the owner until the entire amount of the loan proceeds has been disbursed.

The Illinois Mechanic's Lien law, additionally assures the owner of receiving these sworn statements by requiring the original contractor to include the following statement in large boldface letters in the contract:

THE LAW REQUIRES THAT THE CONTRACTOR SHALL SUBMIT A SWORN STATEMENT OF PERSONS FURNISHING MATERIALS AND LABOR BEFORE ANY PAYMENTS ARE REQUIRED TO BE MADE TO THE CONTRACTOR. 770 ILCS 60/5.

A final way the owner can protect himself against mechanic's liens by contractors and subcontractors is to include a provision in the contract with the original contractor that waives all mechanic's liens on the owner's real estate. However, in order to assure that this waiver of liens provision is also binding on subcontractors, the owner must do at least one of the following:

- Require the original contractor to give actual notice of the waiver to the subcontractor before the subcontractor furnishes any material or labor; or
- File the contract containing the waiver in the Office of the Recorder of Deeds prior to commencement of work or within ten (10) days after the making of the original contract or not less than ten (10) days prior to the making of any subcontract. 770 ILCS 60/21.

Finally, when drafting a waiver of lien provision, special attention must be given so that the waiver is general enough to include both a waiver of the subcontractor's lien on the money due from the owner to the original contractor, as well as a waiver of the original contractor's and subcontractor's lien on the owner's real estate.

PROCEDURES FOR ORIGINAL CONTRACTOR ACQUIRING A MECHANIC'S LIEN

Before the original contractor executes a contract with the owner, he should be assured that the owner has funds available to pay for the work. If the building is being financed by a mortgage, the original contractor should be furnished with a copy of the mortgage commitment. If, however, the project is not being financed by the owner is funding the construction himself, then the contract sum should be deposited in escrow. Additionally, the original contractor should request from the owner evidence of title to the real estate. This evidence can be in the form of a title insurance policy or a torrens certificate.

Assuming a contract has now been executed and performed by the original contractor, payment is expected. If, however, the owner fails to pay, the contractor may seek to attach a mechanic's lien to the real estate. Before the contractor can proceed, the following four factors must first exist in order to establish a valid, perfected mechanic's lien in favor of the original contractor:

- The original contractor and owner must have a valid contract for the furnishing of labor, services or materials to improve the real estate;
- The contract must be with a party that has an interest in the real estate, such as the owner;
- The labor, service or material furnished must be sufficiently related to the contract for improving the real estate (the material or services must be lienied); and
- The original contractor must have performed the contract or shown a valid excuse for nonperformance, such as the owner's breach.

If these four requirements are satisfied, the original contractor must carefully comply with the following procedures to perfect or establish its claim for a mechanic's lien:

- When the original contractor should file its claim: In order for the contractor to enforce its mechanic's lien against third parties such as new purchasers or creditors that take or encumber the original owner's title to the real estate, the contractor must file its lien claim (see Exhibit C for a claim form) within four (4) months after completing the last work on the project. If, however, the contractor waits more than four (4) months to file a claim, the contractor will only be able to enforce its mechanic's lien claim against the original owner, provided the claim is filed within two (2) years after the contractor has completed all work under the contract. Therefore, the contractor should file its mechanic's lien claims within four (4) months after completing its work, thus preserving its lien claims against third parties as well as the original owner. Note: The term completion does not require that the original contractor fully perform the contract. If the contractor begins work and before completing the job the owner breaches the contract, the contractor can still perfect a valid mechanic's lien on the real estate for the contractor's performance.
- Where the contractor should file the claim: The contractor must file a claim for lien at the Office of the Recorder of Deeds in the county where the real estate is located.
- The contractor's claim for lien should include the following:
 - a) Be verified by the affidavit of the contractor, his agent or employee.
 - b) Contain a brief statement of the contract.
 - c) State the balance due after allowing all credits.
 - d) Give a sufficiently correct description of the real estate to which the contract relates as well as describe the work performed (street address, legal description, and P.I.N. is required).
 - e) Set forth the date of the contract.
 - f) Claim a lien for a definite amount.

Assuming the contractor's right to a lien exists, and the contractor carefully follows the procedures outlined, (paying particular attention to the 4 month or 2 year time limit for filing), a valid mechanic's lien will be perfected. Frequently the owner will pay the contractor after he has attached a perfected mechanic's lien to the real

estate. However, if the owner does not pay the amount due, the perfected mechanic's lien will allow the contractor to bring a foreclosure proceeding against the owner as well as subsequent owners and other parties in interest provided the lien was perfected within the four (4) month period. The foreclosure proceeding must be commenced within two (2) years after the contractor's completion of the work, or otherwise the lien expires.

When the original contractor enters into a contract with the subcontractor, it should follow these additional procedures:

- The contract should specify the services and materials provided by the subcontractor as well as the price of these materials and services;
- The following statement should be included on the face of the contract in bold type:
THE LAW REQUIRES THAT THE SUBCONTRACTOR SHALL SUBMIT A SWORN STATEMENT OF PERSONS FURNISHING MATERIALS AND LABOR BEFORE ANY PAYMENTS ARE REQUIRED TO BE MADE TO THE SUBCONTRACTOR; (see form of original contractor's sworn statement as shown in Exhibit D.)
- The original contractor should require subcontractors to submit a statement showing their subcontracts (form of subcontractor's sworn statement is shown in Exhibit E). This statement should be furnished prior to any substantial payment to the sub-subcontractor. After receiving the sworn statements from the subcontractors, the original contractor should verify its accuracy. This should be done by addressing registered mail inquiries to all of the sub-subcontractors named in the statement, advising each as to the amount assigned to him and advising each that the original contractor will consider the stated amount correct unless notified to the contrary within five (5) days;
- The original contractor should then make payments directly to the sub-subcontractors named in the statement, and in each instance obtain a waiver of the mechanic's lien claim from both the sub-subcontractor and the subcontractor. The waiver should waive both the lien to the real estate and the funds due from the owner to the original contractor. The waiver should state the exact amount of the payment and, if from a corporation, it should bear the corporate seal and signature of the corporate officer authorized to act for the corporation (see Exhibit A for a form of partial waiver); and
- When the original contractor makes its final payment under the contract to the subcontractor, it should obtain a full and complete waiver from each subcontractor and all sub-subcontractors (see Exhibit B for a form of complete waiver). The original contractor should also obtain an affidavit from the subcontractor that all bills have been paid.

PROCEDURES FOR PROTECTING A SUBCONTRACTOR'S MECHANIC'S LIEN RIGHTS

A subcontractor is one who contracts with an original contractor to do a portion of the work. The subcontractor does not have a contract with the owner, therefore, the subcontractor's right to a lien is dependent upon the contract between the original contractor and the owner. Thus, if the original contractor waives all lien rights in the contract with the owner, the subcontractor will have no lien rights. The subcontractor can, however, avoid the effect of this waiver if the original contractor fails to notify him that such a waiver was a provision of the contract between the owner and the original contractor.

Assuming there is no waiver of lien rights in the original contractor or the waiver is ineffective, the subcontractor may have a right to a mechanic's lien against the owner, provided these four requirements are met:

- 1) A valid contract has been entered into between the contractor and subcontractor for furnishing labor, services or materials in respect of the real estate;
- 2) The subcontractor's contract is with the original contractor;
- 3) The contract provides for furnishing of lienable services or materials; and
- 4) The subcontractor performed the contract or had a valid excuse for nonperformance.

Once the subcontractor begins performance it is critical that he keep accurate records. The subcontractor should maintain a daily record of materials and labor hours furnished to a particular job site. Subcontractors who furnish materials only (material dealers) must maintain complete day-to-day business records, which describe the type of materials, the project these materials are to be used on, as well as the address and time the materials were delivered. The subcontractor, after delivering the materials, should also get a signed receipt from the party to whom the materials were delivered. The reason for maintaining these accurately documented records is to enable the subcontractor to prove how much money is actually owed to him when he seeks to enforce his lien. It is not unusual for a trial in a mechanic's lien foreclosure suit to occur several years after the subcontractor has either performed the work or delivered the materials. Therefore, carefully documented records will be far more convincing evidence of the work actually done by the subcontractor than oral statements by witnesses attempting to recall several years later the specific work completed or materials furnished by the subcontractor.

In order for a subcontractor who has not been paid in full to preserve his lien rights, he must serve a written notice of claim (see Exhibits F-1, F-2, and F-3 for notice of claim forms). This notice must be filed within 90 days after completion of the subcontractor's performance. Note: Unlike the original contractor who has four (4) months to file his lien claim against third parties and two (2) years to file a lien claim against the original owner, the subcontractor has only 90 days to serve his notice of lien claim against either the original owner or third parties, otherwise the subcontractor forfeits the right to enforce his mechanic's lien. Once, however, the subcontractor preserves his lien by filing the notice, the subcontractor is under the same time limits as the original contractor as to when he must file his lien claims. Specifically, the subcontractor after completing his work has four (4) months to file his claim against third parties and two (2) years to file against the original owner. When the subcontractor serves his notice of lien, it must be served by registered or certified mail or personally served on the owner, his agent, architect or superintendent in charge of the building and to the lending agency, if known. If the lending agency has recorded a mortgage or trust deed against the real estate, the subcontractor is put on constructive notice of the lender and will be required to serve the notice on such lender or forfeit its mechanic's lien with respect to the lender's interest in the real estate.

In the event the subcontractor cannot locate the owner, the Act provides for alternative methods of notice in order to preserve the subcontractor's lien. 770 ILCS 60/25. The Act provides that if the owner is a non-resident, or upon due diligence cannot be found in the county, the notice of lien may be filed with the Recorder of Deeds in the county where the real estate is located. In addition, the subcontractor need not give a notice of lien if a sworn statement by the original contractor is delivered to the owner disclosing the subcontract. 770 ILCS 60/24.

It should be noted that the subcontractor who furnishes labor or materials for an existing owner-occupied single-family residence has an additional responsibility. A subcontractor in this situation must serve his notice of lien on the occupant of the residence either personally or by certified mail within 60 days after furnishing labor or materials in order to preserve his lien. 770 ILCS 60/5. Any notice given after 60 days shall preserve the lien, but only to the extent that the owner has not been prejudiced by payments made before receipt of the notice. The four (4) month and two (2) year periods for filing a mechanic's lien remain in effect in this situation.

Once notice has been served, the owner has 10 days to pay the money due. If the money is not paid within 10 days, the subcontractor should file a claim for lien (see Exhibit G for claim form) with the Office of the Recorder of Deeds in the county where the real estate is located. Note: any claim for lien filed within the 10 day waiting period may be ineffective and therefore a subcontractor should wait a couple of extra days after the expiration of the 10 day period before filing the claim. If the owner fails to pay the subcontractor after the filing of his lien claims, the subcontractor must then file a suit to enforce its mechanic's lien within two (2) years after the date of completion of its work on the project. The failure to file the suit within two years will result in the expiration of the lien.

QUALIFICATION

Although we have attempted through this manual to summarily outline the procedures to be used in protecting against mechanic's liens as well as the necessary procedures for filing and perfecting mechanic's liens and related rights, the governing statutes are fraught with technical quirks and pitfalls. Therefore, one can avoid the legal problems that are inherent with these statutes by consulting counsel early to assist in setting up an appropriate system to protect owners against potential mechanic's liens and preserving the lien rights of contractors and subcontractors.

CAVEAT

This publication is intended to provide accurate information on the subject matter covered. It is provided with the understanding that the publisher is not rendering a legal service, and assume no liability whatsoever in connection with its use.

If you would like more information contact:

[Arthur Raphael](#)

Teller, Levit & Silvertrust, P.C.

11 East Adams Street, Suite 800

Chicago, Illinois 60603

1-800-922-0342 or 312-922-3030

UPDATE:

Public Act 096-0654 amends the Mechanics Lien Act as follows:

(d) 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.

Effective Date: 1/1/2010

**EXHIBIT A
PARTIAL WAIVER**

STATE OF ILLINOIS)
) SS.
COUNTY OF)

_____, 20__

TO ALL WHOM IT MAY CONCERN:

Whereas, the undersigned, (2) _____, has been employed by _____, contractor of _____, the owner of the premises, hereinafter described to furnish (3) _____ for the said premises, which are known as _____, in the _____ of _____, County of _____, Illinois, and which are also described by legal description as: _____ in the County of _____, State of Illinois;

Now, therefore know ye, that the undersigned, for and in consideration of the sum of _____ Dollars, and other good and valuable considerations, the receipt whereof is hereby acknowledged by the undersigned, do hereby waive and release to the extent only of the aforesaid amount of Dollars, paid simultaneously herewith, the lien of right to, or claim of, lien under the statutes of the State of Illinois, relating to mechanics' liens, with respect to and on said above-described premises, and the improvements thereon, and on the material fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due the contractor from the owner, on account of labor, services, material, fixtures, apparatus or machinery, furnished by the undersigned, to the extent only of the aforesaid payment, to or on account of the said contractor or the said owner, for the above-described premises.

Given under the hand and seal of the undersigned, this ____ Day of _____, 20__.

Notary Public

1. Always make and retain an exact copy.
2. If a co-partnership or corporation, state that fact.
3. State the nature of the services, fixtures, work, labor or material furnished or to be furnished.

**EXHIBIT B
FINAL WAIVER**

STATE OF ILLINOIS)
) SS.
COUNTY OF)

_____, 20__

TO ALL WHOM IT MAY CONCERN:

Whereas, the undersigned, (2) _____, has been employed by _____, contractor of _____, the owner of the premises, hereinafter described to furnish (3) _____ for the said premises, which are known as _____, in the _____ of _____, County of _____, Illinois, and which are also described by legal description as: _____ in the County of _____, State of Illinois;

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 by the undersigned, do hereby waive and release any and all lien or claim of, or right to, lien, under the statutes of the State of Illinois, relating to mechanics' liens, with respect to and on said above-described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the moneys, funds or other considerations due or to become due the contractor from the owner, on account of labor, services, material, fixtures apparatus or machinery heretofore furnished, or which may be furnished at any time hereafter, by the undersigned, to or on account of the said contractor of the said owner, for the above-described premises.

Given under the hand and seal of the undersigned, this ____ Day of _____, 20__.

Notary Public

1. Always make and retain an exact copy.
2. If a co-partnership or corporation, state that fact.
3. State the nature of the services, fixtures, work, labor or material furnished or to be furnished.

**EXHIBIT C
ORIGINAL CONTRACTOR'S FORM OF LIEN CLAIM**

STATE OF ILLINOIS)
) SS.
COUNTY OF)

The claimant, _____, County of _____, State of _____, hereby files a claim for lien against _____ (hereinafter referred to as "owner"), of _____ County, _____, and states:

That on _____, the owner owned the following described land in the County of _____, State of _____, to wit: _____.

That on _____, the claimant made a contract with said owner (1) _____ (2) being erected on said land for the sum of \$ _____ and on _____, completed thereunder (3) all required to be done by said contract.

That said owner is entitled to credits on account thereof as follows, to-wit: _____ Dollars, leaving due, unpaid and owing to the claimant, after allowing all credits, the balance of _____ Dollars, for which, with interest, the claim claims a lien on said land and improvements.

(Name of Claimant)

By: _____

Its: _____

STATE OF ILLINOIS)
) SS.
COUNTY OF)

The affiant, _____, being first duly sworn, on oath deposes and says that he is _____ of _____, the claimant; that he as read the foregoing claim for lien and knows the contents thereof; and that all the statements therein contained are true.

Subscribed and sworn to before me this ____ day of _____, 20__.

Notary public

1. If contract made with another other than the owner, delete "said owner," name such person and add "authorized or knowingly permitted by said owner to make said contract."
2. State what was to be done.
3. "being," or "to be," as the case may be.
4. "All required to be done by said contract"; or "work to be value of"; or, "delivery of materials to be value of \$ _____," etc.

**EXHIBIT D
ORIGINAL CONTRACTOR'S SWORN STATEMENT**

STATE OF ILLINOIS)
) SS.
COUNTY OF)

The under signed, being duly sworn, deposes and says that he is (title) _____ (1) _____ of the Company (2) _____ who is the contractor for the (3) _____ work on the building located at Address (3) _____ owned by (4) _____.

That the total amount of the contract including extras is \$ _____ on which he has received payment of \$ _____ prior to this payment. That all waivers are true, correct, and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers.

That the following are the names of all parties who have furnished material or labor, or both, for said work and all parties having contracts or subcontracts for specific portions of said work or for material entering into the construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specifications.

| Name and Address | Labor/Material Supplied | Contract Price | Amount Paid | Current Payment | Balance Due |
|------------------|-------------------------|----------------|-------------|-----------------|-------------|
| | | | | | |
| | | | | | |
| | | | | | |

That there are no other contracts for said work outstanding and that 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 upon or in connection with said work done other than above stated.

Signed this ____ day of _____, 20____.

(Contractor)

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public

(SEAL)

**EXHIBIT E
SUBCONTRACTOR'S SWORN STATEMENT**

STATE OF ILLINOIS)
) SS.
COUNTY OF)

To: _____, being first duly sworn on oath, deposes and says, that he is (1) _____ who is the sub-contractor with (2) _____ as (3) _____, for the furnishing of (4) _____ in _____, Illinois, also known by legal description as: _____, _____ County, Illinois.

That for the purpose of the said contract, the following persons, firms, or corporations, have been contracted with to furnish and have furnished or prepared, or will furnish or prepare, labor, services, material, fixtures, apparatus, or machinery, or are furnishing and preparing material for, the said improvement; that there are due and to become due them, respectively, the amounts set opposite their names for material, fixtures, services, apparatus, machinery, or labor as stated; that the cost of the material, services, apparatus, labor, fixtures or machinery necessary properly to complete the said improvement in accordance with the contract, but not yet contracted for, has been estimated and that the following statement includes a full, true, and complete list of the estimated costs of all such material, labor, fixtures, machinery, and services; that this statement is made to the said contractor, the agent of the contractor for the purpose of procuring a (5) _____ payment of said contract, leaving a balance of \$ _____ Dollars, still due on the said contract; that there are no other contracts outstanding, and that there is nothing due, or to become due, to any person, firm or corporation, for material, fixtures, services, apparatus, machinery or labor, other than as herein stated; that the amount set forth as being due upon completion is sufficient to complete performance of the above contract; that the following is a full, true and complete statement and listing of all such persons, firms or corporation, and of the amounts paid, due or to become due to each of them, namely:

| Name and Address | Labor / Material Supplied | Contract For | Amount of Contract | Amount Paid to Date | Balance Due | Amount Due Upon Completion |
|------------------|---------------------------|--------------|--------------------|---------------------|-------------|----------------------------|
| | | | | | | |
| Totals | | \$ | \$ | \$ | \$ | \$ |

| | |
|---|----|
| Amount of Contract | \$ |
| Extras | \$ |
| Total | \$ |
| Amount Heretofore Drawn | \$ |
| Balance Unpaid Under Contract and For Extras | \$ |
| Amount Now desired | \$ |
| Thereafter Amount To Be Paid To Be Paid To Complete Contract & Extras | \$ |

(Signed)

Subscribed and sworn to before me this ___ day of _____, 20__.

Notary Public

1. "A member of the co-partnership of _____"; or "secretary" or "president" of _____, a corporation; if affiant is proprietor of business," ignore this blank and also eliminate the following word who."
2. Name of the person or persons with whom contract was made.
3. As "contractor" or "as the duly authorized agent of _____, the contractor" as the case may be.
4. Describe what labor, work, services, material or fixtures were covered by the contract.
5. Partial or final payment, as the case may be.

EXHIBIT F-1
NOTICE OF INTENT TO FILE MECHANICS LIEN CLAIM

STATE OF ILLINOIS)
) SS.
COUNTY OF)

CERTIFIED MAIL, RETURN RECEIPT REQUESTED
RESTRICTED DELIVERY

- TO:

- OWNER:

- TENANT:

- LENDER:

- SURETY:

- ARCHITECT:

- CONTRACTOR:

The following notice is given pursuant to the requirements of the Illinois Mechanics Lien Act and is not intended to adversely reflect on the character, credit or capacity of any party named herein.

Your are hereby notified that _____ with offices at _____ has been employed by _____, the "Original Contractor", to furnish and install plumbing labor, materials and supplies under said Original Contractor's contract with you or your tenant and of which you knew and approved, on your property commonly known as: _____ and more legally described as follows:

and that the amount due to Claimant, less all amounts paid to date, is \$_____.

The undersigned claims a lien therefor as against your interest in the above described property and also as against the money due from you to the Original Contractor. Pursuant to the Illinois Mechanics Lien Act, 770 ILCS 60/1 et. seq. (West, 1994), the undersigned will file its claim for lien unless the aforesaid sum shall be paid within 10 days of this Notice.

To the extent permitted by law, all waivers of lien heretofore given by claimant, if any, in order to induce payment not received are hereby revoked. Acceptance of payment by claimant of part, but not all, of the amount claimed due hereunder shall not operate to invalidate this notice.

Dated at Chicago, Illinois, this ____ day of _____, 200__.

By: _____
 Arthur Raphael,

Its Attorney

PROOF OF SERVICE

_____, being first duly sworn, deposes and says that he/she served the within Notice upon the
aforementioned parties by placing copies of the same in an envelope addressed to each party, CERTIFIED MAIL RECEIPT
REQUESTED, RESTRICTED DELIVERY with prepaid postage, and depositing the same in the U.S. Mail at Chicago, Illinois, 60603
at or about the hour of 5:00 p.m. on the ____ day of _____, 200____.

Subscribed and sworn to before me this ____ Day of _____, 200____.

Notary Public

**EXHIBIT F-2
SUBCONTRACTOR'S NOTICE OF CLAIM**

STATE OF ILLINOIS)
) SS.
COUNTY OF)

To:(1)_____

You are hereby notified that _____ has
(Name and Address of Subcontractor)
been employed by (2)_____ to furnish (3)_____ under
its contract with you, on your property at (4)_____ and that there (5)_____ due the undersigned
therefore, the sum of _____ Dollars.

Dated at _____, Illinois, this ____ Day of _____, 20____.

(Subcontractor)

By: _____

Its: _____

1. Insert owners' names here.
2. Insert name of contractor.
3. State here what was the contract or what was done, or to be done, or what the claims is for.
4. Here state substantial description of property.
5. "Was" or "is to become."

Note: Make in duplicate, preserve copy and complete thereon affidavit of service.

STATE OF ILLINOIS)
) SS.
COUNTY OF)

_____, being first duly sworn, on oath deposes and says that he served the within notice by
delivering a true copy thereof to _____ at _____, on _____,
20____, at _____ o'clock __.M.

(Signed)

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public

EXHIBIT F-3

TO: NAME OF OWNER, ARCHITECT OR SUPERINTENDENT OR TENANT AND LENDER

Dear Sir:

Please be advised that we have awarded the _____ Contract by the _____, general contractor for the job located at: _____
(give street address or substantial description of property)

This contract is in the amount of \$_____.

You may be assured that the labor and materials furnished will be of the highest quality. The necessary steps will be taken to insure completion as scheduled.

Very truly yours,

_____ Company

By: _____

(Please note that this letter must be served in compliance with the Statute which would require either personal service or that it be sent out by Certified or Registered Mail, Return Receipt Requested. Naturally, a carbon copy of the letter should be retained for future use.)

**EXHIBIT G
SUBCONTRACTOR'S CLAIM FOR LIEN**

STATE OF ILLINOIS)
) SS.
COUNTY OF)

IN THE OFFICE OF THE
RECORDER OF DEEDS OF
_____, ILLINOIS
(County)

The undersigned Claimant, _____, of the City of _____, County of _____ and State of _____, makes the following statement and claims a mechanic's lien under the Illinois Mechanic Lien Act, 770 ILCS 60/1 to 60/39, and states:

1. The real property known and described as follows is now owned by:

Legal Description: _____

Permanent Real Estate Index No. _____

2. On or before _____, the owner or owners then contracted with _____ as an original contractor for the furnishing and supplying of materials, services, labor, work and fixtures for the construction of a _____ and other improvements on the above-described premises; on or before _____, the original contractor made a contract with the Claimant to _____ perform certain labor and furnish materials, supplies, equipment and services for said work, and in the improvement of the above-described premises, for a total value of \$_____, which is the fair, usual, customary, and reasonable value of such materials, equipment, supplies, labor and services. Claimant has furnished such service and labor to the extent required by contract, all of which were furnished and delivered to and used in and about the improvement of the premises and of the building and other improvements thereon. The last of said materials, fixtures, work, labor and services so furnished as a subcontractor were furnished on about _____.

3. There is now justly due and owing to the Claimant for the furnishing, delivery, or performance of such materials, equipment, labor and services aforesaid by Claimant the sum of \$_____, which is still due and unpaid. Notice has been given to the Owner and Contractor in the manner provided by law not less than 10 days prior hereto.

4. Claimant now claims a lien upon the above-described premises and all improvements thereon against all persons interested and also claims a lien upon the monies or other consideration due from the aforesaid owner to the original contractor for the amount of \$_____, together with interest as provided by statute.

5. Notice has been duly given to the owner, and persons otherwise interested in the above-described real estate, as to the status of the undersigned as subcontractor as provided by 770 ILCS 60/2.

(NAME OF CLAIMANT)

STATE OF ILLINOIS)
) SS.
COUNTY OF)

_____, the undersigned, being duly sworn, states that I have read the foregoing instrument and know the contents are true, in substance and in fact.

Subscribed and sworn to before this ___ Day of _____, 20__.

Notary Public

AVOIDING

HOME REPAIR FRAUD

Please use extreme caution when confronted with the following warning signs of a potential scam:

- (1) Door-to-door salespersons with no local connections who offer to do home repair work for substantially less than the market price.
- (2) Solicitations for repair work from a company that lists only a telephone number or a post-office box number to contact, particularly if it is an out-of-state company.
- (3) Contractors who fail to provide customers references when requested.
- (4) Persons offering to inspect your home for free. Do not admit anyone into your home unless he or she can present authentic identification establishing his or her business status. When in doubt, do not hesitate to call the worker's employer to verify his or her identity.
- (5) Contractors demanding cash payment for a job or who ask you to make a check payable to a person other than the owner or company name.
- (6) Offers from a contractor to drive you to the bank to withdraw funds to pay for the work.

IF YOU THINK YOU HAVE BEEN DEFRAUDED OR YOU HAVE QUESTIONS

If you think you have been defrauded by a contractor or have any questions, please bring it to the attention of your State's Attorney or the Illinois Attorney General's Office.

Attorney General

Toll-Free Numbers:

| | |
|-------------|----------------|
| Springfield | (800) 243-0618 |
| TTY | (877) 844-5461 |
| Chicago | (800) 386-5438 |
| TTY | (800) 964-3013 |
| Carbondale | (800) 243-0607 |
| TTY | (877) 675-9339 |

Visit the Attorney General's Web site at
www.IllinoisAttorneyGeneral.gov/

HOME REPAIR: KNOW YOUR CONSUMER RIGHTS

As you plan for your home repair/improvement project, it is important to ask the right questions in order to protect your investment. The tips in this fact sheet should allow you to protect yourself and minimize the possibility that a misunderstanding may occur.

CONTRACTS

Consumer Rights Acknowledgement Form

Homeowner Keep This Part & Pamphlet
I, the homeowner, have received from the contractor a copy of the pamphlet entitled "Home Repair: Know Your Consumer Rights."

Signature (Homeowner) Date

Signature (Contractor or Representative)

Date

Name and Address of Contractor's Business

Consumer Rights Acknowledgement Form

Contractor Keep This Part Only
I, the homeowner, have received from the contractor a copy of the pamphlet entitled "Home Repair: Know Your Consumer Rights."

Signature (Homeowner) Date

Signature (Contractor or Representative)

Date

Name and Address of Contractor's Business

- (1) Get all estimates in writing.
- (2) Do not be induced into signing a contract by high-pressure sales tactics.
- (3) Never sign a contract with blank spaces or one you do not fully understand. If you are taking out a loan to finance the work, do not sign the contract before your lender approves the loan.
- (4) Remember, you have 3 business days from the time you sign your contract to cancel any contract if the sale is made at your home. The contractor cannot deprive you of this right by initiating work, selling your contract to a lender, or any other tactic.
- (5) If the contractor does business under a name other than the contractor's real name, the business must either be incorporated or registered under the Assumed Business Name Act. Check with the Secretary of State to see if the business is incorporated or with the county clerk to see if the business has registered under the Assumed Business Name Act.
- (6) Homeowners should check with local and county units of government to determine if permits or inspections are required.
- (7) Determine whether the contractor will guarantee his or her work and products.
- (8) Determine whether the contractor has the proper insurance.
- (9) Do not sign a certificate of completion or make final payment until the work is done to your satisfaction.
- (10) Remember, homeowners should know who provides supplies and labor for any work performed

on your home. Suppliers and subcontractors have a right to file a lien against your property if the general contractor fails to pay them. To protect your property, request lien waivers from the general contractor.

BASIC TERMS TO BE INCLUDED IN A CONTRACT

- (1) Contractor's full name, address, and telephone number. Illinois law requires that persons selling home repair and improvement services provide their customers with notice of any change to their business name or address that comes about prior to the agreed dates for beginning or completing the work.
 - (2) A description of the work to be performed.
 - (3) Starting and estimated completion dates.
 - (4) Total cost of work to be performed.
 - (5) Schedule and method of payment, including down payment, subsequent payments, and final payment.
 - (6) A provision stating the grounds for termination of the contract by either party. However, the homeowner must pay the contractor for work completed. If the contractor fails to commence or complete work within the contracted time period, the homeowner may cancel and may be entitled to a refund of any down payment or other payments made towards the work, upon written demand by certified mail.
- Homeowners should obtain a copy of the signed contract and keep it in a safe place for reference as needed.



Three Day Right to Cancel Home Repair

Do you get a three day cooling off period?

In Illinois, three day rights to cancel are required to be given in specific types of transactions. In many cases, home repair or remodeling contracts are required to contain wording that gives you this important legal right and explains how you can exercise it. It is important to understand the specific circumstances in which Illinois law gives you this right.

You are required to be given a three day right to cancel a home repair contract if:

- the sale of services or merchandise involves \$25 or more, and
- the contract is signed when the salesperson or contractor is physically present in your residence.

The law requires notice of your three day right to cancel to be given **both orally and as part of the written contract**. Do not sign any contract that does not fully describe the three day right to cancel, fails to state the date of sale, or contains blank spaces.

Exclusions

There are exclusions in the three day cooling off law that affect transactions for home repair or remodeling. You are not allowed a three day right to cancel in the following situations:

- **Emergencies**

If you have initiated the contact *and* you need the goods or services to meet an emergency, you are not entitled to a three day right to cancel. In such cases, Illinois law requires you, the consumer, to furnish the home repair contractor with a separate dated and signed personal statement in your own handwriting describing the emergency situation and expressly acknowledging and waiving your right to cancel within three business days.

- **Prior Contact by the Consumer**

You are not entitled to a three day right to cancel if you negotiate the terms of your home repair agreement during an earlier visit to the retail business where the goods are displayed or the services are offered. This exception holds true even if you sign the final written agreement in your home. You also are not entitled to a three day right to cancel if you conduct and consummate the transaction entirely by mail or phone, without any other contact between you and the home repair contractor.

Illinois Law Requires

Under Illinois law, when you make an agreement for home repair that meets the criteria for a three day right to cancel, the seller must furnish you with a fully completed written receipt or contract that reflects the terms of the oral agreement and states the date of the transaction. The receipt or contract must also contain a "Notice of Cancellation" stating that you may cancel the transaction at any time within three days. Next to the space where you sign the contract—or on the front page of the receipt, if a contract isn't used—the following statement must appear, in bold face, 10-point type:

"YOU, THE CONSUMER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN 3 BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU UNDER THE CONTRACT OR TRANSACTION WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE IN SUBSTANTIALLY AS GOOD A CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR TRANSACTION, OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION.

IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (name of seller), AT (address of seller's place of business) NOT LATER THAN MIDNIGHT OF (date).

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

please visit
www.IllinoisAttorneyGeneral.gov



Chicago
1-800-386-5438
TTY: 1-800-964-3013

Springfield
1-800-243-0618
TTY: 877-844-5461

Carbondale
1-800-243-0607
TTY: 877-675-9339



Financing Home Repairs

You've decided to fix up your home or add that room you've always wanted. Congratulations. Just be sure to think carefully when considering payment options. Remember, home repair or improvement can involve many thousands of dollars. A mistake in your financing decision can cost you thousands more.

Paying for Home Repair Projects

There are really only three options to financing your project. You can finance through your home repair contractor, finance through an independent lender, or pay cash. For most consumers, cash payment is not realistic except for small projects, so financing will probably be necessary.

Keep in mind that you are under no obligation to use any particular lender. The choice is yours.

Contractor Secured Financing

If you finance directly through the contractor, you will likely be offered a Retail Installment Contract. The contractor is allowing you to pay for the project over a period of time rather than all at once. The interest rate and all fees must be fully disclosed to you before you sign the contract. Do not sign the contract if any of the spaces are left blank. Be aware that it is common practice for the contractor to sell or assign the Retail Installment Contract to another party, such as a bank. You would then make your payments to that party.

Banks and Credit Unions

You may also finance through an independent lender, such as a bank or credit union. Your contractor may refer you to a lender; while you certainly may consider your contractor's recommendation, it's probably best to shop around and compare. Once again, the lender must disclose all terms of the loan to you in advance.

Loans for Home Repair Projects

It is all but certain that any loan you obtain, whether from the contractor or an independent lender, will be secured by your home. That is, it will be a type of mortgage. Your home is the collateral. If you do not make the payments, you could lose your home. Therefore, you should be absolutely certain that you can afford the monthly payment.

Accept no oral agreements concerning the loan. Insist that all agreements be in writing so that they will be enforceable later.

As with any loan, read the documents carefully before you sign them. Be sure the terms in the written documents are consistent with those promised to you and that there are no blank spaces. If you do not understand something, ask questions. Do not allow yourself to be rushed or pressured to sign.

Never allow the work to begin until your loan has been fully approved, any right to cancel period has passed, and the funds may be disbursed. If your project will require financing, insist on language in

your construction contract that no work will begin until financing acceptable to you has been secured, and that the contract is voidable by you if you are unable to obtain a loan. Do not agree to a contract that contains nothing more than vague language such as “subject to financing.”

Right to Cancel

Right-to-cancel notices can be confusing. It is important to remember that there are two separate and distinct right-to-cancel provisions in a financed construction project. One applies to the construction contract and one applies to the loan. It could happen that your right to cancel the construction contract has expired while your right to cancel the loan has not. In this situation, you may find yourself in a position where you are able to cancel the loan but not the construction contract. You would then be obligated to complete the construction project even if you cancel the loan. The contractor might then attempt to impose unacceptable loan terms on you. This is why the language where no work will begin until acceptable financing has been secured is so important.

It is best that the funds from your loan be given directly to you by the lender rather than to your contractor. You then pay the contractor. This puts you in a stronger position if a dispute should arise. If your lender requires that the checks be made payable to the contractor, insist that your name appears on the checks as a co-payee. This way you must endorse the check before the contractor can cash it.

There is much more information available regarding home repair, financing, and the three-day right to cancel at the Web site of **Illinois Attorney General Lisa Madigan**, including the following:

<http://www.illinoisattorneygeneral.gov/consumers/creditcards.pdf>

<http://www.illinoisattorneygeneral.gov/consumers/3dayright.pdf>

<http://www.illinoisattorneygeneral.gov/consumers/homeequity.pdf>

please visit
www.IllinoisAttorneyGeneral.gov



Chicago
1-800-386-5438
TTY: 1-800-964-3013

Springfield
1-800-243-0618
TTY: 877-844-5461

Carbondale
1-800-243-0607
TTY: 877-675-9339