

JOINT SUBCOMMITTEE
ON
MECHANIC'S LIEN LAWS
AND
LANDLORD-TENANT LAW
OF THE
SENATE STANDING COMMITTEE ON JUDICIARY
AND
HOUSE STANDING COMMITTEE ON JUDICIARY AND LAW ENFORCEMENT

Report to the Members of the
First Session of the Sixty-sixth General Assembly

State of Iowa
1975

F I N A L R E P O R T

JOINT SUBCOMMITTEE ON MECHANICS' LIEN
LAWS AND LANDLORD - TENANT LAW

December, 1974

Senate Concurrent Resolution 122 introduced during the 1974 Session requested the creation of an interim study committee to make a comprehensive study of the mechanic's lien law and to report to the 1975 General Assembly with proposed legislation. House Concurrent Resolution 116, introduced during the same session requested the creation of a joint subcommittee of the appropriate standing committee to study the uniform residential landlord-tenant act, and to report to the 1975 General Assembly with any proposed legislation.

The Legislative Council created a joint subcommittee of the Senate Standing Committee on Judiciary and the House Standing Committee on Judiciary and Law Enforcement, to which were assigned the two studies requested by Resolutions.

Members of the subcommittee are as follows:

Senator Elizabeth Shaw
Senator C. Joseph Coleman
Senator Earl Willits
Senator Ralph Potter
Senator George Kinley
Representative Reid Crawford
Representative Rayman Logue
Representative Carl Nielsen
Representative Norman Jesse
Representative James West

The subcommittee held meetings on October 8, November 25 and 26, and December 12, 1974. Senator Shaw and Representative Reid Crawford were elected as Chairperson and Vice-Chairperson, respectively.

MECHANICS' LIENS

At its first meeting the subcommittee divided its study into two parts according to subject matter, and proceeded to consider the mechanic's lien law first. The subcommittee reviewed a research report on the Iowa law prepared by the Legislative Service Bureau and bill proposals filed in recent sessions of the General Assembly, and determined to hold a public hearing on proposed revisions of Chapter 572 of the Code.

The public hearing was held on November 25, 1974, and appearing were representatives of several firms involved in the construction industry, a spokesman for the Iowa Bar Association committee of trust, probate and real property, and a student from the law school of the University of Iowa.

Mr. Jack Peters of the Iowa Bar Association submitted a report of a subcommittee of that organization which investigated proposed changes in the Iowa mechanic's lien law. That subcommittee had concluded that major changes were not warranted, and had recommended only one new provision which would serve to protect individual homeowners from excessive liability.

Other persons appearing before the subcommittee made various proposals. The following is a summary of the proposals:

1. Mr. R.J. Canier, Executive-Vice President of the Iowa Plumbing, Heating and Cooling contractors recommended that subcontractors be given longer periods of time in which to file lien claims and to commence enforcement proceedings, and that they be given some protection from losses sustained through the acceptance of insufficient fund checks from contractors.
2. Mr. George Miller, President of the Iowa Lumbermen's Association, recommended that no changes be made which would impose limitations on the present right to acquire a lien. Mr. Miller stated that the construction industry relies heavily on lien rights, and material changes or exemptions would have detrimental affects on the economy as a whole.
3. Mr. Pat Richardson, Executive Director of the Iowa Ready-Mix Concrete Association, recommended that the present 60-day periods within which liens are to be filed be extended. He noted that his industry has difficulties under the present law because it is unclear whether concrete suppliers must file a lien claims for each delivery, or whether they can file one lien claim for an entire project.
4. Mr. Charles Steinmetz, Executive Director of the Iowa Engineering Society, recommended that engineers and architects be expressly included in the statutory description of persons entitled to liens. He commented that under Iowa law it is not clear whether those persons may acquire liens, and he expressed the opinion that those persons should be entitled to lien rights.
5. Mr. John Rossi, Legal Counsel for the Master Builders of Iowa, recommended that the present Iowa lien law remain unchanged because of its significance to the industry. He further recommended that some effort be made to educate the consumer to present protective devices under Iowa law, noting that the statute gives a property owner the right to withhold payment to a contractor unless either lien waivers or a bond is provided.
6. Ms. Pat Hirl, student from the University of Iowa law school distributed and discussed a research report she had prepared relative to the uniform construction lien act. Ms. Hirl noted several of the objections commonly made by

consumers and others respecting the present Iowa law, and recommended that the uniform act be adopted as a solution to these problems.

The subcommittee considered these recommendations, and the various statutory alternatives discussed in the Legislative Service Bureau Research Report, and presented in bill draft filed with the General Assembly. The subcommittee makes the following recommendations for changes in the Iowa mechanic's lien law, Chapter 572 of the Code:

1. Change the referent from "mechanic's lien" to "construction lien," thereby making the title and subject more reflective of the industry involved.
2. Require that contractors, as a condition precedent to their acquiring lien rights, give to residential homeowners who build for their own dwelling purposes "educational" notice at the time of executing the contract so that they are informed of their potential liabilities.
3. Require that subcontractors give notice to residential homeowners within 15 days after first supplying labor or material so that the homeowner is made aware of the existence of persons who have acquired potential lien rights, thereby alerting them to the need to protect themselves. Provide for the invalidity of any lien claim where this notice was not given.
4. Require that contractors, upon request, provide subcontractors with the property description and name and accurate mailing address of residential homeowners thereby facilitating the delivery of the subcontractor's notice.
5. Make corrections of grammar or syntax in existing Code sections as warranted.
6. Correct internal references and language to effectuate the mandatory notice provisions which shall operate as conditions precedent to the validity of lien claims.
7. Require lien claimants to perfect by the delivery of notice of filing personally or by certified mail whether or not the filing is timely, and irrespective of the type of project or nature of the parties.
8. Reduce the amount of bond required for the release of a filed lien claim from twice to one and one-half times the amount of the claim.
9. Add a provision to enable a property owner in a lien foreclosure proceeding to join other lien claimants and encumbrancers upon whom service can be made.

10. Amend section 572.8 of the Code to make the information required by that section consistent with that required by section 572.22.

These recommendations are contained in the bill draft which is attached to this report. The bill draft is reported to the respective standing committees without recommendation.

11. The subcommittee further recommends that the respective Standing Committees consider and propose for enactment the provisions of Senate File 187 (1973 Session). That measure would consolidate all lien and other filings affecting real property in the office of the county recorder, and would tend to eliminate the present inconvenience and confusion which results from requiring that certain filings to be made with the clerk of court and others with the recorder.

LANDLORD - TENANT LAW

The subcommittee generally reviewed the provisions of the Uniform Landlord Tenant Act, and the related provisions of current Iowa law where existing. The members of the subcommittee discussed the problems faced by both landlords and tenants under present Iowa law because of the absence of any statutory provisions, and concluded that it is desirable both to codify landlord-tenant law, and to provide the protections for both landlords and tenants which are necessary in modern landlord-tenant relationships.

The subcommittee recommends that no bill draft be submitted with the final report, but that the Legislative Service Bureau distribute copies of the Uniform Landlord-Tenant Act to members of the Standing Committees for their consideration and review. The Legislative Service Bureau is directed to distribute the Act as soon as the General Assembly convenes, and to prepare and distribute summaries of this subcommittees actions and comments respecting the various provisions of the Act.

SENATE FILE _____

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to mechanics' Liens.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 Section 1. Section five hundred seventy-two point one
2 (572.1), subsection one (1), Code 1975, is amended to read
3 as follows:

4 1. "Owner" shall include every person having the capacity
5 to contract, including guardians, for whose use or benefit
6 any building, erection, or other improvement is made, ~~having~~
7 ~~the capacity to contract, including guardians.~~

8 Sec. 2. Section five hundred seventy-two point one (572.1),
9 Code 1975, is amended by adding the following new subsection:

10 NEW SUBSECTION. "Homeowner" means an owner for whose use
11 or benefit a contract is executed when that contract involves
12 the repair, alteration, building, erection, or other
13 improvement upon the land which is occupied or intended to
14 be occupied by that owner for single family residential
15 purposes.

16 Sec. 3. Section five hundred seventy-two point two (572.2),
17 Code 1975, is amended by striking the section and inserting
18 in lieu thereof the following:

19 572.2 PERSONS ENTITLED TO LIEN -- NOTICE REQUIRED.

20 1. Every person who shall furnish any material or labor for,
21 or perform any labor upon, any building or land for
22 improvement, alteration, or repair, including those engaged
23 in the construction or repair of any work of internal or
24 external improvement, and those engaged in grading, sodding,
25 installing nursery stock, landscaping, sidewalk building,
26 fencing on any land or lot, by virtue of any contract with
27 the owner, his agent, trustee, contractor, or subcontractor
28 shall have, upon complying with the applicable notice
29 requirements of this section, if any, a lien upon such building
30 or improvement, and land belonging to the owner on which the
31 same is situated or upon the land or lot so graded, landscaped,
32 fenced, or otherwise improved, altered, or repaired, to secure
33 payment for material or labor furnished or labor performed.

34 2. Contractor's notice obligations.

35 a. Notice to homeowner. Every person who enters into

1 a contract with a homeowner shall give the notice required
2 in this paragraph. The notice shall be delivered personally
3 to the owner or his authorized agent at the time the contract
4 is agreed upon. The notice shall be in at least ten-point
5 bold type, if printed, or in capital letters, if typewritten,
6 and shall be in the following form:

7 NOTICE TO HOMEOWNER

8 (1) Iowa law requires every contractor to give this notice
9 to a homeowner at the time of making the contract.

10 (2) Persons or companies furnishing labor or materials
11 for the improvement of real property may enforce a lien upon
12 the property if they are not paid for the labor or material
13 furnished, even if they do not have a contract directly with
14 the owner.

15 (3) Iowa law permits you to withhold payment of the entire
16 contract price from the contractor until the expiration of
17 60 days from the completion of such improvement unless the
18 contractor furnishes you with waivers of lien claims signed
19 by all persons who furnished labor or material for the
20 improvement, and who provided you with notice of their lien
21 right, or unless the contractor provides you with a bond
22 protecting you against loss.

23 (4) If you make payment to the contractor before the
24 expiration of 60 days from completion, and the contractor
25 has not provided you with lien waivers or a bond, you may
26 be forced to pay more than the contract price.

27 A contractor who fails to provide this notice where required
28 shall not have the lien provided by this chapter.

29 b. Notice to subcontractors. Where a contractor is
30 required to give notice to a homeowner, the contractor, upon
31 request, shall give notice to any person supplying labor or
32 materials on credit, which notice shall include the name of
33 the contracting homeowner, the correct description of the
34 property chargeable with liens, and the correct mailing address
35 of the contracting homeowner as of the time of making of the

1 contract, whether or not it is the same as the location of
2 the property.

3 c. Where notice by contractor not required. The notice
4 prescribed by paragraph a of this subsection is not required
5 of any contractor who is the contracting homeowner.

6 3. Subcontractor's notice obligations. Every person,
7 except a person under direct contract with the homeowner,
8 as a condition precedent to the validity of any claim for
9 lien against the homeowner, must cause to be delivered to
10 the homeowner or an authorized agent, either personally or
11 by certified mail, not later than fifteen days after the
12 person first furnished labor or materials, a written notice
13 in at least ten-point bold type, if printed, or in capital
14 letters, if typewritten, which shall be in the following form:

15 NOTICE TO HOMEOWNER

16 TO: (name and address of homeowner)

17 We are required by law to provide you with this notice.
18 Your failure to read it carefully could result in unnecessary
19 expense to you or in the loss of your property at
20(address of property).

21 We,(name of subcontractor) have been hired by your
22 contractor(name of contractor) to provide
23 (type of service or materials) for use in improving your
24 property. If we are not paid by your contractor we can file
25 a claim against your property for the price of our services.
26 Enforcement of our claim could mean the loss of your property
27 if you are unable to pay us for our services.

28 For your protection, Iowa law permits you to withhold all
29 payments to your contractor for 60 days from the completion
30 of the improvement, or until the contractor provides you
31 either with waivers of lien claims signed by all persons
32 who provide you with this notice or with a bond protecting
33 you against loss.

34 Sec. 4. Section five hundred seventy-two point four,
35 (572.4), Code 1975, is amended to read as follows:

1 572.4 SECURITY AFTER COMPLETION OF WORK. After the
2 completion of such work, the taking of security of any kind
3 shall not affect the right to establish a mechanic's
4 construction lien unless such new security shall ~~be express~~
5 ~~agreement~~, be given and received in lieu of such lien by
6 express agreement.

7 Sec. 5. Section five hundred seventy-two point eight
8 (572.8), Code 1975, is amended by striking the section and
9 inserting in lieu thereof the following section:

10 572.8 PERFECTION OF LIEN. Every person who wishes to
11 avail himself of a construction lien shall perfect the lien
12 by completing both of the following:

13 1. By filing with the clerk of the district court of the
14 county in which the building, land, or improvement to be
15 charged with the lien is situated a verified statement or
16 account of the demand due him, after allowing all credits,
17 setting forth:

18 a. The time when such material was furnished or labor
19 performed, and when completed.

20 b. The correct description of the property to be charged
21 with the lien.

22 c. The name of the lien claimant.

23 d. The name of the person against whom filed.

24 2. By delivering to the owner or his agent or trustee
25 either personally or by certified mail, within five days from
26 the date of filing, a copy of the lien claim filed pursuant
27 to subsection one (1) of this section.

28 A perfection against a homeowner by a contractor or
29 subcontractor who failed to give a notice to the homeowner
30 as required by section three (3) of this Act shall be void.

31 Sec. 6. Section five hundred seventy-three point thirteen
32 (573.13), Code 1975, is amended by adding the following new
33 paragraph:

34 NEW PARAGRAPH. The lien claim of a contractor against
35 a homeowner is unenforceable where the contractor failed to

1 deliver to the homeowner the notice required by section three
2 (3) of this Act.

3 Sec. 7. Section five hundred seventy-two point fourteen
4 (572.14), Code 1975, is amended by adding the following new
5 paragraph:

6 NEW PARAGRAPH. The lien claim of a subcontractor against
7 a homeowner is unenforceable where the subcontractor failed
8 to deliver to the homeowner the notice required by section
9 three (3) of this Act.

10 Sec. 8. Section five hundred seventy-two point fifteen
11 (572.15), Code 1975, is amended to read as follows:

12 572.15 DISCHARGE OF A SUBCONTRACTOR'S LIEN. Every
13 ~~mechanic's~~ construction lien of a subcontractor may be
14 discharged at any time by the owner, principal contractor,
15 or intermediate contractor by filing with the clerk of the
16 district court of the county in which the property is located
17 a bond ~~in-twice~~ equal to one and one-half times the amount
18 of the sum for which the claim for lien is filed, with surety
19 or sureties, to be approved by said clerk, conditioned for
20 the payment of any sum for which the claimant may obtain
21 judgment upon his claim.

22 Sec. 9. Section five hundred seventy-two point twenty-
23 six (572.26), Code 1975, is amended by adding the following
24 new paragraph:

25 NEW PARAGRAPH. In any action to enforce a construction
26 lien, the owner may join as parties to the action all other
27 lien claimants and other persons claiming an interest in the
28 property. The district court may consolidate pending lien
29 enforcement actions brought by different claimants.

30 Sec. 10. Sections eighty-four point twenty-five (84.25),
31 five hundred seventy-two point three (572.3), five hundred
32 seventy-two point four (572.4), five hundred seventy-two point
33 five (572.5), five hundred seventy-two point six (572.6),
34 five hundred seventy-two point eight (572.8), five hundred
35 seventy-two point ten (572.10), five hundred seventy-two point

1 thirteen (572.13), five hundred seventy-two point fourteen
2 (572.14), five hundred seventy-two point fifteen (572.15),
3 five hundred seventy-two point sixteen (572.16), five hundred
4 seventy-two point seventeen (572.17), five hundred seventy-
5 two point eighteen (572.18), five hundred seventy-two point
6 nineteen (572.19), five hundred seventy-two point twenty
7 (572.20), five hundred seventy-two point twenty-one (572.21),
8 five hundred seventy-two point twenty-two (572.22), five
9 hundred seventy-two point twenty-three (572.23), five hundred
10 seventy-two point twenty-four (572.24), five hundred seventy-
11 two point twenty-five (572.25), five hundred seventy-two point
12 twenty-six (572.26), five hundred seventy-two point twenty-
13 seven (572.27), and five hundred seventy-two point twenty-
14 nine (572.29), Code 1975, are amended by striking the words
15 "mechanic's" and "mechanics'" wherever either of these appear
16 and by inserting in lieu thereof the word "construction".
17 Chapter 572 shall be titled by the code editor to read
18 "Construction Liens".

19 Sec. 11. Sections eighty-four point twenty-five (84.25),
20 six hundred two point nine (602.9), six hundred twenty-six
21 point seventy (626.70), and six hundred twenty-six point
22 seventy-three (626.73), Code 1975, are amended by striking
23 the words "mechanic's liens" or "mechanics' liens" wherever
24 in those sections they appear and inserting in lieu thereof
25 the words "construction liens".

26 Sec. 12. Section three hundred twenty-six point twelve
27 (326.12), subsection two (2), Code 1975, is amended by striking
28 the words "mechanic's lien" wherever in that subsection they
29 appear and inserting in lieu thereof the words "artisan's
30 lien".

31 Sec. 13. Sections five hundred seventy-four point one
32 (574.1), six hundred six point fifteen (606.15), subsection
33 twelve (12), and six hundred twenty-eight point six (628.6),
34 Code 1975, are amended by striking the words "mechanic's lien"
35 wherever they appear and inserting in lieu thereof the words

1 "construction lien".

2 EXPLANATION

3 This bill amends the mechanic's lien law as follows:

4 Section 1 makes a technical correction to sentence
5 structure.

6 Section 2 adds a definition of "homeowner" to facilitate
7 the new required notices.

8 Section 3 retains the present law respecting who is entitled
9 to a lien, but specifies certain new notices which must be
10 given as a condition precedent to the validity of a lien claim
11 against a homeowner as defined. Subsection 2 of section 2
12 requires each contractor to give an "educational" notice to
13 a homeowner at the time of contracting, which informs the
14 homeowner generally of his rights and liabilities under the
15 lien law. The subsection also requires, but without legal
16 sanction, that the contractor give to subcontractors, upon
17 request, the name, property address, and mailing address of
18 the homeowner to aid the subcontractor in giving his required
19 notice. Subsection 3 of section 2 requires a subcontractor
20 to give the specified notice to a homeowner within fifteen
21 days of his subcontracting, as a condition precedent to the
22 validity of his lien claim.

23 These notice provisions apply only to the limited category
24 of construction projects which involve improvements by a
25 homeowner to his own single family residential property.
26 This limitation arises from the definition of homeowner.

27 Section 4 makes a technical change in sentence structure
28 and grammar.

29 Section 5 adds the requirement, applicable to all lien
30 filings whether or not a "homeowner" is involved, that the
31 person filing the lien claim must also deliver a copy of the
32 claim to the property owner in order to perfect the claim.

33 Section 5 also adds language to make the section consistent
34 with the new notice provisions, and with unamended section
35 572.22.

1 Sections 5, 6, and 7 amend various sections of the chapter
2 in order to recognize and give effect to the new notice to
3 homeowner requirements.

4 Section 8 reduces the amount of the bond currently required
5 to be filed to discharge a lien claim for twice to one and
6 one-half times the amount claimed.

7 Section 9 adds language which permits a property owner,
8 whether a "homeowner" or not, to join other lien claimants
9 or encumbrancers as parties in all lien enforcement actions.
10 The new paragraph also authorizes the consolidation of pending
11 lien actions brought by different claimants.

12 Sections 10, 11, 12 and 13 amend chapter 572 and other
13 sections of the Code to change "mechanics liens" to
14 "construction liens".

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35