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# *Understanding Illinois Mechanics Liens*

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Seminar Topic: This material explains relationships among all parties to construction projects, including owners, tenants, lenders, designers, general contractors, managers, trade subcontractors, material suppliers, equipment rental companies, construction workers, and temporary utility service providers. Discusses the risks and remedies available to all parties under the Illinois Mechanics Lien Act, as well as the short time deadlines for action, and procedures for recording, enforcing, and defending against mechanics lien claims.

This material is intended to be a guide in general and is not legal advice. If you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.



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Disclaimer: The views expressed herein are not a legal opinion. Every fact situation is different and the reader is encouraged to seek legal advice for their particular situation.

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# About the Author and Presenter

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## *James G. McConnell*

James G. McConnell concentrates in public and private construction contracting, arbitration and litigation. In his career of over 40 years, he has handled land acquisition, site remediation, zoning, contract drafting, financing, negotiations, arbitrations and lawsuits on major construction projects valued at more than \$19.2 billion. During these years he has represented public and private owners, developers, lenders, contractors, suppliers, and title insurers. He has performed legal work on projects in Illinois, California, Nevada, New York and Texas.

He received his law degree from Northwestern University School of Law in Chicago in 1973. He was admitted to practice in state and federal courts in Illinois in 1973, and he has been a member of the Northern District of Illinois Trial Bar since it was created in 1982. He was admitted to practice before the United States Court of Appeals in Chicago in 1973, and the United States Supreme Court in 1977. He has tried many civil jury cases in state and federal courts in Illinois, and he has been specially admitted as trial counsel in courts in seven other jurisdictions. He has handled numerous appeals, in the Illinois Appellate Court, the Illinois Supreme Court, United States Court of Appeals for the Seventh Circuit, and the United States Supreme Court.

Across his career as a trial lawyer, Mr. McConnell has represented clients in hundreds of cases involving complex construction claims, and other international commercial, financial and insurance issues, including the British Overseas Trade Board, J. C. Decaux, the Consul General of Mexico, the Public Building Commission of Chicago, Blue Cross/Blue Shield, Exelon Corporation, Bethlehem Steel, American Bridge Company, United States Steel, Youngstown Sheet & Tube, and Zenith Radio. He has handled litigation concerning such familiar construction projects as Chicago's Millennium Park, the John Hancock building, and the Sears Tower. He has served as an attorney and as an arbitrator in international construction and insurance claims.

Mr. McConnell is a national and international author and lecturer on public, private and international construction contracting. Most recently, he has been

involved in construction negotiations and disputes concerning Millennium Park's mixed public and private funded construction, Kennedy King Community College, Blue Cross/Blue Shield's Vertical Completion, homeland security improvements at the Port of Chicago, the Mexican Consulate in Chicago, the Illinois International Port District, Chicago's Central Police Headquarters, Harborside International Golf Center, Soldier Field, the Midwest Center for Green Technology, the Chicago Center for Children's Advocacy, Bronzeville Military Academy, and Chicago's Deep Tunnel storm runoff and flood control project. He has also handled litigation involving redevelopment of the former Glenview Naval Air Station property, the South Campus development of the University of Illinois at Chicago Circle, and the historic landmark Carson, Pirie, Scott & Company flagship store at State and Madison streets in Chicago.

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# Table of Contents

## Contents

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Table of Contents .....	5
Timed Agenda: .....	6
Understanding Illinois Mechanics Liens .....	7
Mechanics Liens On Private Projects .....	7
Illinois Mechanics Lien Act.....	7
Sworn Statement Essentials .....	7
Lien Waivers With Payment .....	7
Perfecting And Prosecuting Lien Claims .....	7
Lien Notice Information.....	8
Foreclosure Suit Information .....	8
Owner Occupied Single Family Homes .....	8
Mechanics Liens On Public Funds .....	8
Lien On Public Funds.....	8
Sworn Statement Essentials .....	9
Lien Waivers With Payment .....	9
Perfecting And Prosecuting Lien Claims .....	9
Lien Notice Information.....	9
Foreclosure Suit Information .....	9
Mechanics Lien Act .....	10

## Timed Agenda:

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Time	Description
00:00:00	Program Start
00:00:20	Introduction
00:01:37	Understanding Illinois Mechanics Liens
00:01:45	Mechanics Liens On Private Projects
00:02:16	Illinois Mechanics Lien Act
00:08:57	Sworn Statement Essentials
00:14:48	Lien Waivers With Payment
00:24:54	Perfecting And Prosecuting Lien Claims
00:31:23	Lien Notice Information
00:40:00	Foreclosure Suit Information
00:46:23	Owner Occupied Single Family Homes
00:53:45	Mechanics Liens On Public Funds
00:57:22	Sworn Statement Essentials
00:59:45	Lien Waivers With Payment
01:03:00	Perfecting And Prosecuting Lien Claims
01:06:45	Lien Notice Information
01:13:20	Foreclosure Suit Information
01:20:20	Mechanics Liens Act
01:31:51	Program End

# **Understanding Illinois Mechanics Liens**

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## **Mechanics Liens On Private Projects**

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### **Illinois Mechanics Lien Act**

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- Illinois Mechanic's Lien Act, Section 5
- 770 ILCS 60/5
- Every owner is required to obtain sworn statements
- Every contractor is required to provide sworn statements
- Sworn statement must show names and addresses of all parties furnishing materials and labor
- Sworn statement must show the amounts due or to become due to each supplier

### **Sworn Statement Essentials**

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- Sworn statement must balance
- All work must be included
- Scope changes must be documented
- Disputed items must be identified
- No payment for "to be let" trades
- Typical contract calls for architect certificate in support of progress

### **Lien Waivers With Payment**

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- Trailing or current lien waivers
- Trade contractor waivers identify and include material suppliers
- Checks tendered for current waivers
- Waivers must balance to sworn statement
- Joint checks to protect owner interests

### **Perfecting And Prosecuting Lien Claims**

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- Time runs from substantial completion of work on site – punch list work does not extend or revive time limits
- Notice of claim to owner and lender – 90 days

- Recording notice of lien – Four calendar months [not 120 days]
- Suit to foreclose lien - Two years

### **Lien Notice Information**

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- Street Address
- Real Estate Tax Permanent Index Number
- Legal Description
- Date of general contract
- Date and scope of subcontract
- Date of last work on site
- Total value of work performed
- Total payments received
- Amount claimed as lien
- Affidavit in support from claimant

### **Foreclosure Suit Information**

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- Recorded lien document number
- Date lien notice recorded
- Minutes of foreclosure
  - Identifies parties claiming interests
  - Identifies documents supporting claims
- Successors to documented parties
  - Assignees
  - Heirs and legatees
  - Corporate mergers or acquisitions

### **Owner Occupied Single Family Homes**

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- Contract must include sworn statement notice
- Owner must receive statutory home repair brochure
- Subcontractors must notify owner within 60 days of STARTING work

## **Mechanics Liens On Public Funds**

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### **Lien On Public Funds**

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- No liens on public property
- Recording lien notice has no effect



- Substitute lien on unspent, appropriated funds for state and local projects
- No lien protection on federally owned projects

### **Sworn Statement Essentials**

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- Sworn statement must balance
- All work must be included
- Scope changes must be documented
- Disputed items must be identified
- Architect certificate in support of progress

### **Lien Waivers With Payment**

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- Trailing or current lien waivers
- Trade contractor waivers identify and include material suppliers
- Waivers must balance to sworn statement
- Joint checks to protect owner interests

### **Perfecting And Prosecuting Lien Claims**

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- Lien valid as long as appropriated funds remain unexpended
- Lien perfected with service of notice on appropriate official
- Service of notice freezes cash to the extent of claimed lien amount
- Foreclosure action must be filed within 90 days after notice

### **Lien Notice Information**

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- Proper public official
- Correct identification of public contract
- Date and scope of subcontract
- Total value of work performed
- Total payments received
- Amount claimed as lien

### **Foreclosure Suit Information**

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- Date lien notice served

- Other notices on project
- Appropriated funds remaining unspent
  - Balance to complete from sworn statement
  - “Funding strips” from all sources

### **Mechanics Lien Act**

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- Owners
- Design Professionals Group
- Contractors
- Subcontractors