

NEW REPS

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Illinois Construction Stuff and Stuff

By Norm Cowie, CCE

Howdy, welcome to another edition of Illinois Construction Stuff, where you will learn all kinds of important stuff, like how to grow volunteer tomatoes by accident, how best to trim your ear hair and why you should never look a gift clown in the mouth (they generally have bad halitosis - as opposed to good halitosis, which comes in handy when it comes to getting people to keep from crowding your personal space.)

Today I'm going to vent for a bit about Section 34 of the Illinois Mechanics Lien Act. Mostly because I'm a bit ticked off about it.

We recently liened a job for \$2,500. We did everything right, noticing everyone within 90 days of last shipment, liening the job within four months of same. But we didn't do the next thing ... foreclosure.

There were a lot of reasons ... no, just one ... for not filing foreclosure. It would be too expensive. At roughly four hundred bucks an hour, we'd spend the amount of our lien in just six or seven hours of attorney time.

So it wasn't worth it, and I figured we'd just sit on the lien.

Meanwhile, the owner of the job knew about our lien. They asked for copies of our invoices and proof of delivery. We sent them. They admitted they didn't obtain waivers from the contractor. More than that, they didn't even pay them. The contractor was on our side and wanted us to get paid.

So we waited for awhile. While waiting, I did all that stuff guys normally do - eat, drink, go potty, read, write, watch reality TV. And I figured sooner or later the owner would cough up the

dough so I could make some bread.

Well, they did cough something up a couple of months later, and it dem near made me spit up my coffee (but I didn't because that would be a shameful waste of coffee).

Anyway, I received a certified letter from the owner's attorney demanding that we file suit, pursuant to Section 34 of the lien laws.

Crap.

They have that right. As you know from religiously reading my column over the last years, Section 34 says that upon written demand by the owner or anyone else with an interest in the property, a lienor must file suit to enforce the lien within thirty days of notice, or the lien '... shall be forfeited.'

Crap, again.

Worse, although their demand didn't say it, I knew that if we failed to release our lien, Section 35 of the lien law says we would be liable to the owner for \$2,500, which they could recover by civil action

Did you hear that? If we didn't release our lien, WE'D owe THEM money.

Crap, again.

So we'd be out five thousand instead of half that. Then, to rub salt in the wound, we would have to prepare a release and spend a few bucks to release the lien.

... even though they didn't pay me,

... even though they know they owe it,

...all because they knew a loophole would make it prohibitive to take action to keep our lien.

I gotta tell you, I was tempted to file the foreclosure.

But the dollars just didn't make it worth the expense, so I gritted my teeth, and filed the release. (I have to admit, in a fit of immaturity, I stepped on the lien notice a few times to get shoe marks on it.) And no, it didn't make me feel any better.

Section 34 can be used for other purposes, other than leveraging a valid lien claimant out of his claim. It can be used to sweep aside old liens that are no longer good for other reasons, such as those that expired due to the two year rule or where someone simply neglected to file a release. Smart title companies ignore old liens, though they may send out Section 34 demands, keep the notice and green cards, and then waive and title commit a property.

So it wasn't used just for debt avoidance.

But every once in awhile it is.

(Sigh)

-Norm

Hey, have you downloaded my FREE book yet? *The Guy'd Book to Guys*, why we leave the seat up... and other stuff" can be downloaded for free as a PDF from my Web site www.normcowie.com. Parts of *The Guy'd Book* have gone into the *Chicago Tribune* and *Cynic Magazine*. And while you're there, check out my other Kindle and other ebook-ready books.

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