

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Mechanics Lien Act is amended by adding
Section 38.1 as follows:

(770 ILCS 60/38.1 new)

Sec. 38.1. Substitution of bond for lien.

(a) As used in this Section:

(1) "Applicant" means:

(A) an owner, other lien claimant, or other person
having an interest in the property against which a lien
claim under this Act is asserted;

(B) an association representing owners organized
under any statute or to which the Common Interest
Community Association Act applies; or

(C) any person who may be liable for the payment of
a lien claim, including an owner, former owner,
association representing owners organized under any
statute or to which the Common Interest Community
Association Act applies, or the contractor or
subcontractor.

(2) "Eligible surety bond" means a surety bond that
meets all of the following requirements:

(A) it specifically states that the principal and surety thereunder submit to the jurisdiction of the circuit court of the county where the property being improved is located and that a final non-appealable judgment or decree entered in a proceeding in favor of the lien claimant based on the lien claim that is the subject of an eligible surety bond shall constitute a judgment against the principal and surety of the bond for the amount found due to the lien claimant, including interest and attorney's fees, limited as to the principal and surety to the full amount of the bond;

(B) it continues in effect until the complete satisfaction of the adjudicated amount due under the lien claim or the payment of the full amount of the bond or to a final determination, and the expiration of all appeal periods, that the lien claim is invalid, void, has been released by the lien claimant, or the time to enforce the lien claim has expired without the required action by the lien claimant;

(C) it is in an amount equal to 175% of the amount of the lien claim;

(D) it has as its surety a company that has a certificate of authority from the Department of Insurance specifically authorizing the company to execute surety bonds;

(E) the surety has a current financial strength rating of not less than A with no rating modifier, an outlook which is either positive or stable, and a financial size category of not less than IX, as rated by A.M. Best Company, Inc.; and

(F) if property affected by a mechanics lien is in a judicial circuit that has its own list of approved sureties, the bond shall be issued by a surety company specifically authorized to issue surety bonds for that circuit court by order or rule.

(3) "Lien claim" means a claim, excluding interest and attorney's fees, on account of which (A) a notice or amended notice of claim for lien under Section 24 of this Act has been served; (B) a claim or amended claim for lien under Section 7 of this Act has been recorded; or (C) a suit to enforce a lien under this Act, including, but not limited to, an action under Section 9, 27, or 28 of this Act, has been filed. Unless otherwise indicated in this Section, "lien claim" is the lien claim to be affected by an eligible surety bond.

(4) "Lien claimant" means the party whose lien claim is to be affected by an eligible surety bond.

(5) "Prevailing party" means a lien claimant that is awarded a judgment equal to at least 75% of the amount of its lien claim, or the principal of the bond if the lien claimant is awarded a judgment equal to less than 25% of

the amount of its lien claim; otherwise, no party is the prevailing party. For purposes of determining the prevailing party, the amount of the lien claim shall be reduced by any payments received by the lien claimant from any source before the entry of judgment or otherwise upon petition by the lien claimant, but only for good cause shown. If any party makes a payment to the lien claimant within 5 months of the filing of a complaint under this Section, the principal on the bond may petition the court for a reduction of the bond equal to the amount of the payment made.

Except as otherwise expressly provided in this Section, the terms not expressly defined in this Section have the same meaning as they have under other provisions of this Act.

(b) This Section applies to liens arising under Section 1 or 21 of this Act and to claims or actions arising under Section 9, 27, or 28 of this Act.

(c) An applicant may file a petition to substitute a bond for the property subject to a lien claim with the clerk of the circuit court of the county in which the property against which the lien claim is asserted is located, or if there is a pending action to enforce the lien claim, an applicant may at any time prior to 5 months after the filing of a complaint or counterclaim by a mechanics lien claimant to enforce its mechanics lien claim. The petition shall be verified and shall include:

(1) the name and address of the applicant and the applicant's attorney, if any;

(2) the name and address of the lien claimant;

(3) if there is a suit to enforce the lien claim, the name of the attorney of record for the lien claimant, or if no suit has been filed but a lien claim has been recorded by the lien claimant, the name of the preparer of the lien claim;

(4) the name and address of the owner of record of any real estate subject to the lien claim or the name and address of any condominium association or association to which the Common Interest Community Association Act applies representing owners of record if the association is an obligor under the bond;

(5) a description of the property subject to the lien claim and, if the property includes real estate, both a common and legal description of the real estate, including the address, if any;

(6) an attached copy of the lien claim which includes the date of its recording, where it was recorded, and the number under which it was recorded if there is no pending proceeding to enforce the lien claim;

(7) an attached copy of the proposed eligible surety bond;

(8) a certified copy of the surety's certificate of authority from the Department of Insurance or other State

agency charged with the duty to issue such a certificate;
and

(9) an undertaking by the applicant to replace the bond
with another eligible surety bond in the event that the
proposed eligible surety bond at any time ceases to be an
eligible surety bond.

(d) The person filing a petition under this Section shall
personally serve or send via certified mail, return receipt
requested, to each person whose name and address is stated in
the petition and his or her attorney of record in a pending
action on the lien claim, a copy of the petition attached
together with the following notice:

"PLEASE TAKE NOTICE that on(date), the
undersigned,, filed a petition to substitute a
bond for property subject to a lien claim, a copy of which is
attached to this notice.

PLEASE TAKE FURTHER NOTICE that if you fail to file an
objection to the substitution of a bond for the lien claim with
the clerk of the circuit court of County under
general number or case number, within 30
days after you receive this notice or 33 days after this notice
is mailed by certified mail, whichever date is earlier, you
will have waived your right to object and an order will be
entered substituting the security of the bond for the property

securing the lien claim and discharging the property described in the petition as being subject to the lien, such as the real estate and the moneys or other considerations due or to become due from the owner to the contractor under the original contract giving rise to the lien claim."

(e) If no objection is filed to the substitution of the proposed eligible surety bond for the property securing the lien claim within 30 days after all persons entitled to notice under subsection (d) of this Section have either received the notice or have been served with the notice, or have waived any objections to the substitution, if the petition complies with the requirements of this Section, the court, on ex parte motion of the petitioner, shall, if the court finds that the proposed bond is in fact an eligible surety bond, enter an order:

(1) substituting the eligible surety bond for the property securing the lien claim; and

(2) substituting the lien claimant's right to recover on the bond for the lien claimant's causes of action that could be asserted by the lien claimant under Section 9, 27, or 28 of this Act.

(f) If an objection is filed within 30 days of service of notice required by this Section, the petitioner may, upon notice to all parties to whom the notice was required to be served, move for a hearing as to the adequacy of the proposed eligible surety bond. The burden shall be upon the petitioner to establish prima facie that the proposed surety bond is an

eligible surety bond. If it is established prima facie that the bond is an eligible surety bond, the burden is on the objector to prove that a proposed surety bond is not an eligible surety bond. If at the conclusion of the hearing the court finds that the proposed bond is in fact an eligible surety bond, it shall enter an order:

(1) substituting the eligible surety bond for the property securing the lien claim; and

(2) substituting the lien claimant's right to recover on the bond for the lien claimant's causes of action that could be asserted by the lien claimant under Section 9, 27, or 28 of this Act.

(g) If the court enters an order discharging as security for the lien claim the real estate and claims under Sections 1, 9, 21, 27, and 28 of this Act, and substitutes the eligible surety bond as security for the lien claim, the petitioner shall:

(1) send copies of the order to the lien claimant and all persons who were to receive copies of the petition and, if there is a pending proceeding to enforce the lien claim, to all parties who have appeared in the proceeding; and

(2) record a copy of the order, together with an executed copy of the approved eligible surety bond, with the recorder of deeds of any county where the property is located.

(h) If the eligible surety bond is approved either before

or after any suit is brought to enforce the lien claim, the action on the bond shall be in equity against the principal and surety of the bond. If the eligible surety bond is approved and a proceeding to enforce the lien claim is pending, the bond principals and sureties shall, by approval of the bond, ipso facto become parties to the proceeding. All other parties to the lien claim count or counts may be dismissed. An action under this Section does not preclude a claimant from bringing any other actions that do not arise under this Act.

(i) Subject to the defenses allowable under subsection (j) of this Section, the principal and surety of a surety bond shall be jointly and severally liable to the lien claimant for the amount that the lien claimant would have been entitled to recover under this Act if no surety bond had been furnished, subject to the limitation of liability of the surety to the face amount of the bond. The prevailing party in an action brought under this Section shall be awarded its reasonable attorney's fees, but the attorney's fees for a lien claimant that is a prevailing party shall be limited to the amount remaining on the bond after the payment of the claim and interest, and the attorney's fees awarded to a bond principal shall be limited to 50% of the amount of the lien claim. Judgment in favor of the lien claimant and against the principal and surety shall be entered for the amount of their liability to the lien claimant.

(j) The principal and surety of the bond may assert only

those defenses that could have been asserted against the lien claim by the principal of the eligible surety bond or the owner of record of the real estate at the time the contractor's contract under which the lien claimant is claiming was let as if no surety bond had been issued.

(k) Liability of the principal and surety on a bond that has ceased to be an eligible surety bond shall continue until a court order is entered replacing the bond with another eligible surety bond. Even if a bond ceases to be an eligible surety bond, the original bond remains in effect as substitute security until it is replaced.

(l) It is the express intent of the General Assembly in enacting this Section that the entry of an order under this Section substitutes an action on the bond for the actions the lien claimant would otherwise have under Sections 9, 17, 27, and 28 of this Act.