

# MECHANIC'S LIENS IN IOWA

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DES MOINES, IOWA

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## MECHANIC'S LIENS IN IOWA

Mechanic's liens inevitably arise in the office in one of two ways; either an agitated homeowner calls having recently been served with a lien or a business you represent needs assistance in placing or defending against the lien. As the process is entirely statutory, counsel should closely examine a current edition of the Iowa Code. The statute has undergone a number of changes in recent years and an out of date Code in this area is fatal. Moreover, as a matter of a defense to such a claim, counsel should closely examine the statute (and contract) to defend against such a claim. John F. Fatino, "Liens and Creditor Issues" in Advanced Real Estate Law in Iowa, 341 (2000). Conversely, counsel planning to perfect such a lien should closely examine the statute as it can be a trap for the unwary.

There are two very useful treatises on Iowa Code Chapter 572 to assist those unfamiliar with the territory. See Stone, Mechanic's Liens in Iowa, 30 Drake L. Rev. 39 (1980-81); Stone, Mechanic's Liens in Iowa—Revisited, 49 Drake L. Rev. 1 (2000). Both Iowa appellate courts have relied upon Stone's treatment of the statute. Henning v. Security Bank, 564 N.W.2d 398 (Iowa 1997); Griess & Ginder Drywall, Inc. v. Moran, 561 N.W.2d 815 (Iowa 1997); Bidwell v. Midwest Solariums, Inc., 543 N.W.2d 293 (Iowa App. 1995); Louie's Floor Covering, Inc. v. DePhillips Interests, Ltd., 378 N.W.2d 923 (Iowa 1985); Clemens Graf Droste Zu Vischering v. Kading, 368 N.W.2d 702 (Iowa 1985); Barker's Inc. v. B.D.J. Development Co., 308 N.W.2d 78 (Iowa 1981); Northwestern Nat. Bank of Sioux City v. Metro Center, Inc., 303 N.W.2d 395 (Iowa 1981).

This presentation will deal only with mechanic's liens on private property. These actions are regulated by Iowa Code Chapter 572. All citations are to the 2001 edition of the Iowa Code. The claims process for public improvements are governed by Iowa Code Chapter 573; not Chapter 572 as some practitioners believe. Claims on federal jobs are governed by a federal law

commonly known as the Miller Act. See 40 U.S.C.S. §§ 270a\_270d. These areas are beyond the scope of this presentation.

## **1.0 WHO CAN FILE?**

Every person who furnishes material or labor, or performs labor upon any building or land for purposes of improvement, alteration, or repair can make a claim under the statute. Iowa Code § 572.2. Those persons are contractors, subcontractors, and persons who provide materials. Iowa Code § 572.1(2) & (3). Even off-site labor furnished by a sub-subcontractor is lienable. Baumhoefener Nursery, Inc. v. A & D Partners., 618 N.W.2d 363 (Iowa 2000).

Thus, it should be readily apparent that even a plumber can file a mechanic's lien; provided, that the plumber follows the statutory scheme. A person is not entitled to a mechanic's lien when the person takes any collateral security on a contract either before the formation of the contract or during the progress of the work. Iowa Code § 572.3. The taking of security after completion of the work shall not affect the right to establish a mechanic's lien unless that the parties agree otherwise. Iowa Code § 572.4.

## **1.1 TO WHAT DOES THE LIEN ATTACH?**

The lien attaches to all of the land upon which any building or improvement is situated. Iowa Code § 572.5. Special rules apply to leasehold interests. Iowa Code § 572.6.

## **1.2 WHEN MUST THE CLAIM BE FILED?**

The verified statement of account shall be filed within 90 days from the date on which the last of the material was furnished or the last of the labor was performed. Iowa Code § 572.9. Iowa follows a separate rule with respect to railway work. Iowa Code § 572.12.

## **1.3 WHAT AND WHERE DO I FILE?**

A mechanic's lien is perfected by filing a verified statement of account with the District Court Clerk of the county in which the improvement is located and giving written notice to the owner, the owner's agent, or trustee. Iowa Code § 572.8. A copy of a mechanic's lien is attached hereto and marked as Exhibit 1. A number of useful and thought provoking forms may found in Mark C. Smith, Iowa Rules of Civil Procedure Forms, §§ 30.1-.12 (1984). However,

you are cautioned to make sure that you are using the correct time frames now required by the statute. The verified statement of account shall include information regarding the time when the material or labor was provided and when completed, the correct description of the property to be charged with the lien, and the name and last known mailing address of the owner, agent or trustee. Iowa Code § 572.8. An exhaustive “check-list” may be found in the Iowa Practice treatise. 1 M. Volz, Iowa Practice, § 35.10 (3d. ed. 1996) [hereinafter “Volz”]. Although the statute provides that the Clerk of Court shall mail the claim to the owner, agent, or trustee, you should read the statute to require that the lienholder should mail the lien. The filing fee is \$10. Iowa Code § 602.8105(2)(a). Careful drafting should take place as the statement can be supplemented but the amount of the claim cannot be increased. Iowa Code § 572.26.

#### **1.4 CAN I FILE AN UNTIMELY MECHANIC’S LIEN?**

Yes. However, your client may not be paid. Liens perfected after 90 days shall be enforced against the property or upon the bond (if any) only to the extent of the balance due from the owner to the contractor at the time of the service of the notice. Iowa Code § 572.11. Note that unlike the timely filed lien, the untimely one must be personally served. Iowa Code § 572.10. Yet, if a bond was given by the contractor, or a person contracting with a subcontractor filing the claim for lien, such bond shall be enforced to the full extent of the amount found due to the subcontractor. Iowa Code § 572.11.

#### **1.5 A CLOSING IS NEXT WEEK—CAN THE LIEN BE BONDED OFF?**

Yes, the lien may be discharged by a bond. Iowa Code § 572.15.

#### **1.6 WHAT CAN I DO TO DEMAND THAT THE LIEN BE REMOVED?**

In past history the answer was “not much.” The Iowa Code now allows two methods to remove the lien. Upon written demand of the owner, the lien holder shall commence the action within 30 days or the lien and the benefits derived therefrom are forfeited. Iowa Code § 572.28(1). The demand must be served in the manner of an original notice. Iowa Code § 572.28(2). An example of a demand to foreclose is attached as Exhibit 3. *Practice Pointer*: Prior to the change in the law which now allows for actions against persons who file liens, we merely

used a pleading to demand foreclosure. However, now, in light of the new statute which allows for actions to determine the validity of mechanic's liens and the recovery of attorney fees for doing so, we have find that the demand in letter form allows counsel an opportunity to fully explain what will happen in the event the lien is not removed. Upon the filing of proof of service of the demand with the Clerk, the lien will be cancelled if the action is not timely filed. Iowa Code § 572.28(2). The second method is discussed, infra, at ¶ 2.6.

### **1.7 I FILED MY LIEN AND I STILL HAVEN'T BEEN PAID—NOW WHAT?**

The lien does not start the lawsuit. You must file a separate action to foreclose the lien and pay the associated filing fee. An action to enforce the mechanic's lien, or an action brought upon any bond given in lieu of a mechanic's lien, shall be commenced in the district court after the lien is perfected in the county in which the property is located. Iowa Code § 572.27. A modest example of a Petition to Foreclose is attached hereto and marked as Exhibit 2. See also Volz, at § 35.26. Recall that the Petition will need to be personally served pursuant to the Iowa Rules of Civil Procedure. Volz, at § 35.20. An action to enforce the mechanic's lien must be brought within two years from the expiration of the 90 days from the filing of the claim. Iowa Code § 572.27.

### **1.8 HOW IS THE CASE TRIED?**

The Iowa Rules of Civil Procedure and the Iowa Rules of Evidence apply. As the case is tried in equity, there is no jury. Volz, at § 35.21. See discussion, infra, at ¶ 3.0 regarding the joinder of claims. The case proceeds in the manner of any other case, see e.g., Iowa R. Civ. P. 191, and the burden of proof is placed upon the lien holder "to prove every element of the contract...by a preponderance of the evidence, including the work to be performed, value, completion of the work...or that compliance was excused or waived by the defendant." Volz, at § 35.21. Appeals are conducted pursuant to the Iowa Rules of Appellate Procedure.

### **1.9 HOW ARE PRIORITIES DETERMINED ON A MECHANIC'S LIEN?**

As to competing lien holders, the lien's priority is determined by order of filing of the liens. Iowa Code § 572.17. Mechanic's liens trump all other liens except liens of record which

were in place prior to the time the work began. Iowa Code § 572.18. The Iowa Legislature has specifically articulated that construction mortgage liens also trump all mechanic's liens which were perfected after the filing of the construction mortgage liens. Iowa Code § 572.18. Mechanic's liens have preference over garnishments on the owner. Iowa Code § 572.19. A county property tax lien will, however, trump a mechanic's lien. Volz, at § 35.6. A purchaser or other person who acquires an interest in good faith for valuable consideration without notice after the expiration of the time for the filing of mechanic's liens has priority over all contractors or subcontractors who have not, as of the date of acquisition of the interest, filed their lien. Iowa Code § 572.18. The Code provides a procedure for the foreclosure of a lien upon an original and independent building, Iowa Code § 572.21(1) (using separate value), and foreclosure of a lien on an existing building. Iowa Code § 572.21(1) (using enhanced value). The practical effect of the statute is that most liens and interests prior perfected will usually be satisfied in full from the proceeds of a foreclosure sale regardless of the priority granted by the statute. Stone, supra, 30 Drake L. Rev. at 107.

## **2.0 SPECIAL RULES FOR SUBCONTRACTORS ON A COMMERCIAL JOB.**

A person furnishing labor or materials to a subcontractor shall not be entitled to a lien under the Chapter unless the person furnishing labor or material notifies the principal contractor within 30 days of the first furnishing of the labor or materials for which the lien is claimed and such notice must include information regarding the party making the notice, and the subcontractor to whom labor or materials were provided. Iowa Code § 572.33(1)(a). The lien claim must be supported by a certified statement that the principal contractor was notified within thirty days after the labor or materials were first furnished. Iowa Code § 572.33(1)(b). This requirement does not apply to single-family or two-family dwellings occupied or used or intended to be occupied or used for residential purposes. Iowa Code § 572.33(2). Apparently, the Iowa Legislature sought to draw a distinction between the definition employed in subsection 33 and an owner-occupied dwelling. See Iowa Code § 572.1(4).

### **2.1 WHEN MUST THE OWNER PAY OR STATED DIFFERENTLY**

## **WHEN SHOULD THE OWNER PAY IN THE ABSENCE OF A VERIFIED WAIVER OF MECHANIC'S LIEN?**

An owner of a building, land, or improvement is not required to pay the original contractor for compensation for work done until the expiration of 90 days from the completion of the building or improvement unless the original contractor furnishes to the owner receipts and waivers of claims for mechanic's liens signed by all persons who furnished materials or performed labor for the building, land or improvement or a sufficient bond. Iowa Code § 572.13(1).

### **2.2 WHAT NOTICES ARE REQUIRED FOR AN OWNER-OCCUPIED JOB?**

When an original contractor enters into a contract for an owner-occupied dwelling and will use subcontractors to provide labor or furnish materials, the original contractor shall include the following notice in any written contract with the owner:  
persons or companies furnishing labor or materials for the improvement of real property may enforce a lien upon the improved property if they are not paid for their contributions, even if the parties have no direct contractual relationship with the owner.

Iowa Code § 572.13(2). Although a house is inevitably built for an owner to occupy as homestead, a home builder cannot claim the protection of the statute, relative to the notice requirements under 572.14(2), against its subcontractors. Schaffer v. Frank Moyer Const., Inc., 628 N.W.2d. 11, 19. Apparently, the subcontractor would also be relieved from the duty of notice under section 372.33. See, discussion, supra, at ¶ 2.0. If no written contract is entered into, the original contractor shall within 10 days of commencement of the work provide written notice to the dwelling owner stating the name and addresses of all subcontractors and that the subcontractors or suppliers may have lien rights in the event that they are not paid for their labor or material. Iowa Code § 572.13(2). An original contractor who fails to provide the notice is not entitled to the lien as it pertains to any labor performed or material furnished by a subcontractor not included in the notice. Iowa Code § 572.13(2).

A similar provision limits the recovery of a subcontractor. Payment to the contractor prior to the end of the 90 day period for the filing of claims does not relieve the owner from liability to a subcontractor provided the lien is timely filed and the notice provisions of Iowa Code section 572.14(2) (in the case of an owner-occupied dwelling) are complied with by the subcontractor). Iowa Code § 572.14(1). The notice must be served upon the owner (or spouse) or by mailing certified mail return receipt request. Iowa Code § 572.14(2). The notice must provide the name of the owner, the address of the property charged, and the name, address, and telephone number of the claimant. Iowa Code § 572.14(3). The notice must state: The person named in this notice is providing labor or materials or both in connection with improvements to your residence or real property. Chapter 572 of the Code of Iowa may permit the enforcement of a lien against this property to secure payment for labor and materials supplied. You are not required to pay more to the person claiming the lien than the amount of money due from you to the person with whom you contracted to perform the improvements. You should not make further payments to your contractor until the contractor presents you with a waiver of the lien claimed by the person named in this notice. If you have any questions regarding this notice you should call the person named in this notice at the phone number listed in this notice or contact an attorney. You should obtain answers to your questions before you make any payments to the contractor.

Iowa Code § 572.14(3). Otherwise, in the absence of the notice, the lien is enforceable only to the extent of the amount due the contractor prior to the owner being served with the notice. Iowa Code § 572.14(2).

### **2.3 WHAT DEFENSE DOES A LANDOWNER HAVE?**

All pertinent contract defenses apply. While the following list is not exhaustive, it has been helpful in past cases. The person placing the lien has a duty to perform the contract in a good and workman-like manner. Otherwise, the homeowner is entitled to damages for needed repairs. Flom v. Stahly, 569 N.W.2d 135, 142 (Iowa 1997); Nepstad Custom Homes, Co. v. Krull, 527 N.W.2d 402, 407 (Iowa Ct. App. 1994). Thus, the Plaintiff must prove substantial compliance with the agreement. Nepstad, 527 N.W.2d at 406. The court would be well within its power to award a Defendant damages. See Moore's Builder & Contractor v. Hoffman, 409 N.W.2d 191, 194\_95 (Iowa Ct. App. 1987). Furthermore, abandonment of the project may be a defense. Abandoning the job, prior to completion, gives rise to a claim for damages for a total breach of the agreement. Restatement (Second) of Contracts §§ 243(2), 243(4).



## **2.4 SPECIAL CONCERNS FOR THE HOMEOWNER.**

In the case of owner occupied dwelling, a mechanic's lien perfected is enforceable only to the extent of the balance due from the owner to the principal contractor, less any advancements by the owner, at the time of the written notice required by the statute for owner occupied dwellings. Iowa Code § 572.14(2). This is also discussed, supra, at ¶ 2.2. In practice, the notice needs to be served very early in the process. Furthermore, you should advise your client that at the time of payment (or payments in the case of progress payments) lien waivers should be obtained from the contractor and subcontractors. An example of a lien waiver is attached hereto and marked as Exhibit 5. Service of the notice alone is insufficient to perfect a mechanic's lien. Griess & Ginder Drywall, Inc. v. Moran, 561 N.W.2d 815, 817 (Iowa 1997) (as subcontractor filed lien 134 days after work was performed and owner no longer owed the contractor, subcontractor was owed "nothing").

## **2.5 WHAT MUST I DO IF I REPRESENT THE CLAIMANT AND**

### **THE CLAIM HAS BEEN PAID AFTER THE LIEN IS FILED?**

When a mechanic's lien is satisfied by payment of the claim, the claimant must acknowledge satisfaction in writing. Iowa Code § 572.23(1). Otherwise, the claimant, upon written demand personally served, shall be liable for \$25.00 to the owner or contractor and actual injuries. Id.

## **2.6 WHAT IF A MECHANIC'S LIEN IS WRONGFULLY FILED**

### **AGAINST THE CLIENT'S PROPERTY?**

Iowa Code § 572.24(2) provides a vehicle against persons wrongfully filing mechanic's liens. The section allows a person to bring an action to challenge a mechanic's lien by filing in either district court or small claims court if the amount of the lien is within jurisdictional limits. "The court shall make written findings regarding the lawful amount and the validity of the mechanic's lien. In addition to any other appropriate order, the court may enter judgment on a permissibly joined claim or counterclaim. If the court determines that the mechanic's lien is invalid, valid for a lesser amount, frivolous, fraudulent, forfeited, expired, or for any other reason unenforceable, the Clerk of the District Court shall make an entry of record to the mechanic's lien book regarding the proper amount of the lien or, if warranted, canceling the lien." Id. Attorney fees are also recoverable. Section 572.32(2) provides:

[i]n a court action to challenge a mechanic's lien filed on an owner\_occupied dwelling, if the person challenging the lien prevails, the court may award reasonable attorney fees and actual damages. If the court determines that the mechanic's lien was filed in bad faith or the supporting affidavit was materially false, the court shall award the owner reasonable attorney fees plus an amount not less than five hundred dollars or the amount of the lien, whichever is less.

**2.7                                 WHAT IF MY CLIENT  
PROVIDED ONLY LABOR OR  
MATERIALS TO A SUBCONTRACTOR?**

See discussion, supra, at ¶ 2.0.

**2.8 WHAT IF MY CLIENT DOES NOT  
HAVE A CONTRACTUAL  
RELATIONSHIP WITH THE OWNER? CAN I STILL RELY ON  
QUANTUM MERIT IF MY CLIENT HAS NOT PERFORMED  
CORRECTLY UNDER THE STATUTE?**

No. The case law makes clear that “absent contractual privity with the homeowner a subcontractor may not assert a common-law action against homeowner on an implied contract.” Henning v. Security Bank, 564 N.W.2d 398, 403 (Iowa 1997) (citing Guldborg v. Greenfield, 259 Iowa 873, 883, 146 N.W.2d 298, 304 (1966)).

**2.9 WHY CAN'T I BE A NICE GAL (OR  
GUY) AND JUST TELL  
MY CLIENT TO PAY—AFTER ALL IF WE ALL MAKE NICE  
WON'T THE WORLD BE A BETTER PLACE?**

In short, no. There is a recent case of interest which demonstrates the only person who will gain in such a scenario is your client in the malpractice action against you. The case involved a lawsuit between homeowners and a bank wherein the homeowners sued the bank alleging that the bank had caused the homeowners to pay the subcontractors twice because the bank had required mechanic’s lien waivers from the subcontractors despite the fact that the general contractor had been paid in full. Henning v. Security Bank, 564 N.W.2d 398 (Iowa 1997). The Iowa Supreme Court held that because the subcontractors never sent the homeowners statutory notices, homeowners did not owe the subcontractors and thus no legal obligation existed for the bank to indemnify.

The Supreme Court noted the following facts. Hennings and Morris New Home Builders entered into a contract in 1994 for the construction of a new home in the sum of \$91,400. Id. at 399. By the time the construction began in the fall, the price had increased to \$106,155. Id. Morris was the general contractor and made all the arrangements with the subcontractors. Id. Security Bank provided interim construction financing in the amount of \$79,000. Id. Hennings contend that the bank assured them that the bank would take care of the lien waivers. Id. at 399-400. However, subsequent correspondence from the bank indicated it was the Hennings duty to provide lien waivers to the bank. Id. at 400.

Morris' financial condition deteriorated while the Hennings continued to pay Morris; Morris was not paying the subcontractors. Id. When the bank was informed of this fact, the Hennings were told to seek the advice of an attorney. Id. The court found that the bank disbursed the funds to the homeowners who in turn paid the general contractor the contractually required progress payment. Id. Upon the advice of counsel, the Hennings settled with the subcontractors who had been unpaid and finished the contract. Id. At that time, there was approximately \$13,155 left in the bank to finish the work but it would not have been enough to pay the unpaid subcontractors and finish the work. Id.

The court found that none of the subcontractors had given the homeowners the notice required by Iowa Code § 572.14(3). Id. Otherwise, in the case of an owner-occupied dwelling "a subcontractor... can only enforce... [a mechanic's lien] to the extent of any sum of money the owner owes the contractor at the time the subcontractor gives the owner a written notice in the form specified in Iowa Code section 572.14(3)." Id. The court found the homeowners paid the subcontractors notwithstanding the plain language of the statute. Id.

The homeowners sued the bank alleging negligence, breach of the loan agreement, and for indemnity. Id. The district court found for the bank because the homeowners had no legal responsibility to pay the subcontractors based upon the statute. Id. at 401. Likewise, the Iowa Supreme Court found the "unpaid subcontractors could not have asserted valid mechanic's liens... without substantially complying with the statute." Id. at 402. The Court concluded the

subcontractors could not maintain an action against the homeowners for quantum merit. In light of the lack of contractual privity between the homeowner and the subcontractors, the subcontractors had no remedy against homeowners except those created by the mechanic's lien statute. Id. Absent contractual privity between a homeowner and a subcontractor, "a subcontractor may not assert a common law action against a homeowner premised on an implied contract." Id. at 403. Similarly, the subcontractors could not recover on a theory of restitution or unjust enrichment. Id. Consequently, the homeowners payments to the subcontractors were determined voluntary and indemnity does not cover voluntary payments. Id. at 404.

### **3.0 MAY I BRING OTHER CLAIMS, AS THE PLAINTIFF IN A FORECLOSURE ACTION, AT THE SAME TIME?**

The Plaintiff in a mechanic's lien foreclosure action is prevented from having multiple causes of action. See e.g., Gilcrest/Jewett Lumber Co. v. Moyer, 448 N.W.2d 711 (Iowa Ct. App. 1989) (not error to strike count for personal judgment). However, in practice, most courts will allow it under the premise that the action can be consolidated in a single case and avoid the attendant waste of judicial resources. The defendant may plead "set-off" or counter-claim. Volz, at § 35.14. Note, further that pleading, such defenses may open the door to separate claims without the ability to complain of misjoinder. Id.; Capitol City Drywall Corp. v. C.G. Smith Constr. Co., Inc., 270 N.W.2d 608 (Iowa 1978). See also discussion, supra, at ¶ 2.6.

### **3.1 ARE ATTORNEY FEES RECOVERABLE?**

Yes. Iowa Code § 572.32. It is noteworthy, however, that fees are only available to the Plaintiff in the event of recovery, not just the prevailing party. Iowa Code § 572.32(1). The exception is found in cases dealing with a challenge to the lien itself - - not mere defense of the claim. If a challenge to the lien is filed and the owner prevails, the owner is entitled to reasonable attorney fees. Iowa Code § 572.32(2). In addition, in the event the owner prevails and if the court finds the lien was filed in bad faith or the supporting statement was materially

false, the court may award reasonable attorney fees plus \$500 dollars or the amount of the lien, whichever is less. Id. See also discussion, supra, at ¶ 2.6. *Practice Pointer:* You will need to file an Affidavit of Attorney Fees before fees are recoverable. The language of the Code is somewhat cumbersome as the statute, Iowa Code § 625.24, requires the affidavit be filed before fees can be taxed as a cost. In practice, you will need to file the affidavit and documentation to support the reasonableness of your fee claim e.g., billing logs.

### **CONCLUSION**

By becoming aware of the statute and the deadlines for filing and required notices, counsel can become a formidable adversary. The client will be well served by knowledgeable counsel. The failure to follow the statutory requisite can be disastrous for both counsel and the client as well.

Attorney Name \_\_\_\_\_ ISBA # \_\_\_\_\_

**MECHANIC'S LIEN**

STATE OF IOWA, \_\_\_\_\_ COUNTY, ss:

I, the undersigned affiant, \_\_\_\_\_ (affiant title) of the Claimant, being duly sworn, depose and say that the following statement is true to the best of my knowledge and belief, and is made of my personal knowledge:

On the dates set forth in the Statement of Account attached as Exhibit "A", \_\_\_\_\_ (claimant name), (the "Claimant") furnished material or labor for, or performed labor upon, the building or land for improvement, alteration, or repair thereof, situated upon, or being identical with the following described real estate in \_\_\_\_\_ County, Iowa (the "Real Estate"):

[insert legal]

The items in Exhibit "A" were furnished pursuant to a contract made by the then owner of the Real Estate, the owner's agent, trustee, contractor, or subcontractor and were furnished by Claimant who is a (sub) contractor thereunder. These items were furnished beginning the \_\_\_\_\_ (claim begin date), and ending on the \_\_\_\_\_ (claim end date), at the respective dates, amounts and prices stated in Exhibit "A", which is a true and just statement of account after allowing all credits.

The owner, agent or trustee of the Real Estate was then \_\_\_\_\_ (re orig owner) whose last known mailing address is \_\_\_\_\_, and \_\_\_\_\_ (re current owner) whose last known mailing address is \_\_\_\_\_, is now the owner, agent or trustee of the Real Estate.

There is now due and owing to Claimant the principal sum of \$\_\_\_\_\_ (lien amount) with interest thereon at \_\_\_\_\_ (claim int rate) \_\_\_\_\_% per annum from the \_\_\_\_\_ (claim begin date), for which sum and interest, together with costs and attorney fees as provided by law, Claimant asserts a mechanic's lien against such building, improvement and the Real Estate.

\_\_\_\_\_  
(Claim subcontract) Check here if this claim is being made by a person who has furnished labor or materials to a subcontractor, this box must be checked for the purpose of making the following certification:

The undersigned affiant hereby certifies that within thirty days after the above referred to labor or materials were first furnished, the principal contractor was notified in writing with a one\_time notice containing the below claimant's name mailing address, and telephone number and the name of the subcontractor to whom the labor or materials were furnished.

\_\_\_\_\_  
Acting for \_\_\_\_\_, Affiant  
\_\_\_\_\_ , Claimant

Subscribed in my presence and sworn to before me by the above named Affiant this \_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_.

\_\_\_\_\_  
Notary Public in and for the said  
State of Iowa

EXHIBIT 1

PETITION TO FORECLOSE MECHANIC'S LIEN

COMES NOW the Plaintiff, \_\_\_\_\_, and for his Petition to Foreclose Mechanic's Lien states as follows:

1. At all times relevant to this action, the Plaintiff was a resident of \_\_\_\_\_ County, Iowa.
2. At all times relevant hereto, the Defendant was a resident of \_\_\_\_\_ County, Iowa.
3. At all times relevant hereto the Defendant owned the following real estate:  
  
[Insert legal description]
4. On \_\_\_\_\_, 200\_\_, the Plaintiff and the Defendant made an oral agreement whereby Plaintiff agreed to furnish labor and material for plumbing improvements to the dwelling of the Defendant located on the above-referenced parcel of property and said Defendant agreed to pay therefore.
5. The Plaintiff began to perform on \_\_\_\_\_, 200\_\_, and completed performance on \_\_\_\_\_, 200\_\_.
6. A true account of the labor and materials which Plaintiff furnished for said improvements and the fair and reasonable prices of each is attached hereto and marked as Exhibit A. The exhibit was attached to the Mechanic's Lien filed in this case.
7. The account shows that the Plaintiff had advanced all costs and that there are no credits or payments made on the behalf of the Defendant and there is hereby due to the Plaintiff the sum of \$\_\_\_\_\_ as shown thereby.
8. On \_\_\_\_\_, 200\_\_, Plaintiff filed with the Clerk of this Court a Mechanic's Lien.
9. On the \_\_\_ day of \_\_\_\_\_, 200\_\_, the Defendant filed an Amended Mechanic's Lien.
10. Plaintiff's labor and material enhanced the value of said building.
11. Plaintiff is entitled to attorney fees pursuant to Iowa Code § 572.32 (2000). An Affidavit of Attorney Fees has been filed simultaneously with this Petition and incorporated herein by reference.

WHEREFORE, Plaintiff prays for judgment against the Defendant for \$\_\_\_\_\_, with interest, costs including cost of said lien and attorney fees and that said judgment be established as a lien against said land and building prior to all of their right, title, and interest therein and foreclosed against them. Also that said lien be declared prior and superior to all rights of the Defendant and that said premises be sold under special execution free of the rights of the Defendant, and after taking the account and that Plaintiff be awarded so much of the proceeds of said sale to apply on said judgment as provided by statute and for such other relief as this Court deems equitable and just.

\_\_\_\_\_  
ATTORNEY FOR PLAINTIFF  
Original Filed

Mr. Evil Subcontractor  
Evil Subcontractor, Inc.  
Des Moines, Iowa

RE: Mechanic's Lien—Polk County LNLN 010101

Dear Mr. Subcontractor:

The Law Firm of Best Lawyers, Inc.<sup>SM</sup> is the legal representative of Superior Contractors, against whom your company has caused to be placed a Mechanic's Lien regarding land located in Polk County, Iowa. This firm has had the opportunity to review the Mechanic's Lien and other pertinent documentation concerning your company's poor performance on the job. As such, Superior Contractors has authorized this firm to proceed to demand foreclosure of the Mechanic's Lien and hereby does so based upon this letter which has been served upon you.

((insert other boisterous comments to denigrate lien holder, hype affirmative defenses, and pontificate about counter-claims)).

Superior Contractors will give you until the close of business on Friday, February 16, 2002 to provide the undersigned with a file stamped copy of the release of the aforementioned lien. In the meantime, please consider this letter a written demand for foreclosure of the Lien which is required by Iowa Code § 572.28. I look forward to your response.

Sincerely,

One of the Best Lawyers, Inc.<sup>SM</sup>

EXHIBIT 3



AFFIDAVIT

STATE OF IOWA     )  
                          )     ss.  
COUNTY OF \_\_\_\_\_ )

On or about February 2, 2001, \_\_\_\_\_ filed a mechanic's lien under the above-captioned number in the Iowa District Court for \* County.

On or about February 21, 2001, on the behalf of Superior Company, a demand to foreclose the mechanic's lien was served on \_\_\_\_\_. The affidavit of service and attached demand are attached hereto and marked as Exhibit A.

As of the 26th day of March, 2001, no action to foreclose the mechanic's lien is pending in the Iowa District Court for \* County.

Accordingly, pursuant to Iowa Code §572.28(2), the above-captioned mechanic's lien has been forfeited and canceled.

This Affidavit is made in compliance with Iowa Code Chapter 572.

\_\_\_\_\_

Subscribed and sworn to before me, a notary public, by \_\_\_\_\_ this 26th day of March, 2001.

\_\_\_\_\_

Notary Public

EXHIBIT 4

Atty name \_\_\_\_\_ ISBA # \_\_\_\_\_

## WAIVER OF MECHANIC'S LIEN

The undersigned, having furnished material or labor for, or performed labor upon, a building or land for improvement, alteration or repair thereof, situated on or being real estate described as:

[Insert legal]

For and in consideration of the sum of \_\_\_\_\_ Dollars and other valuable consideration, the receipt of which is hereby acknowledged, does hereby waive and release any and all liens, and rights or claim of rights to file and establish a mechanic's lien against the above described premises, for material furnished or labor performed through the \_\_\_\_\_ (mech lien waiver date).

Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context.

Dated at \_\_\_\_\_, Iowa, this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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ACKNOWLEDGMENTS SHOULD BE REQUIRED:

EXHIBIT 5