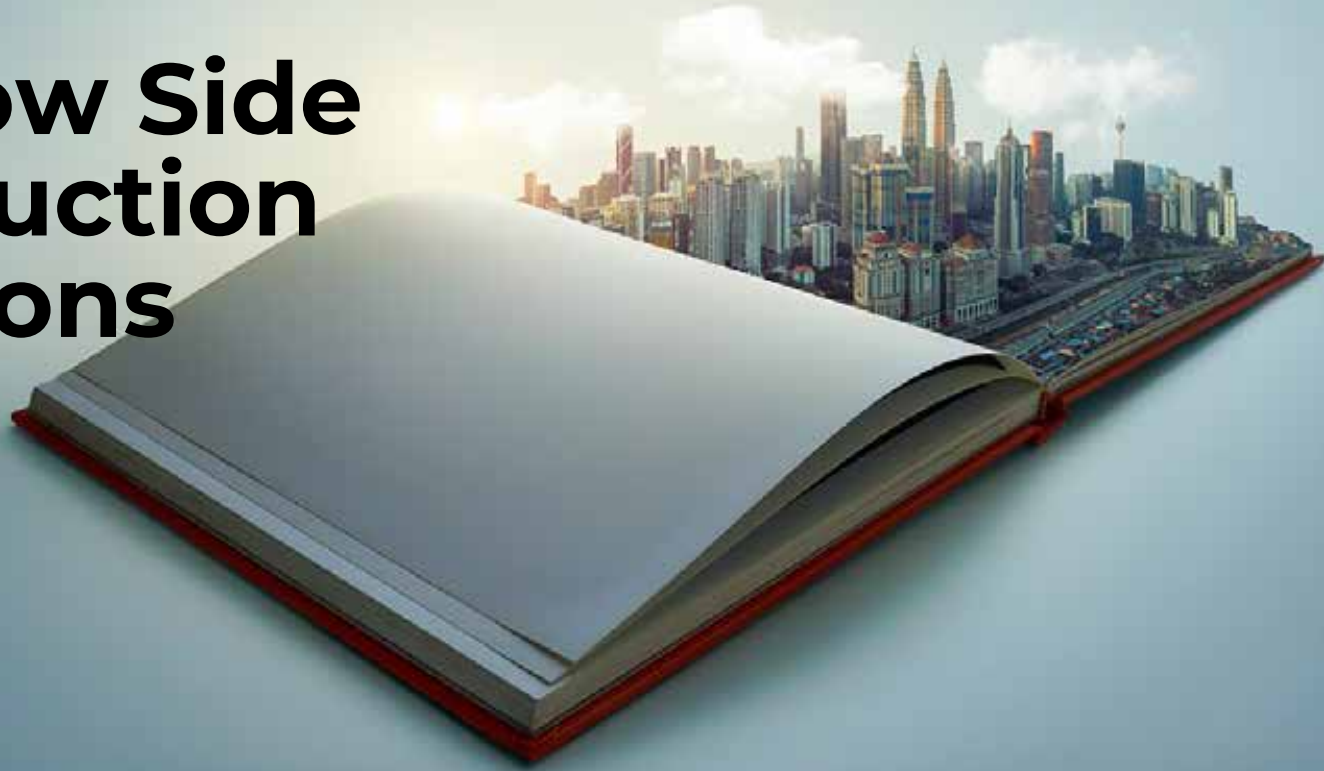


The Escrow Side of Construction Transactions

Presented by
Megan Toborg

Vice President, Operations Director – NCS Chicago

TITLE TENETS Webinar Series



Economic Impact of Construction Spending



CONSTRUCTION SPENDING

MARCH 2023	\$1,834.7 billion
FEBRUARY 2023 (revised)	\$1,829.6 billion

Next release: June 1, 2023

Seasonally Adjusted Annual Rate (SAAR)
Source: U.S. Census Bureau, May 1, 2023

The Code of Hammurabi

Around 1790 BC, the Mesopotamian ruler from the dynasty of Babylon, King Hammurabi, created what is widely considered one of the oldest sets of laws.



I don't think reading glasses will help

Enhanced image of the Code of Hammurabi

Hammurabi set down 282 laws, some of which dealt specifically with construction.

An “eye for an eye” was popular back then.



Thomas Jefferson – Inventor of Mechanic Lien Law?



MECHANIC LIEN ACT OF 1791

Plan of the City of Washington D.C.

Thomas Jefferson and friends, like James Madison, needed to make change in order to get tradespeople and contractors excited about building the nation's capital on the Potomac.



Specialization In Construction

In 1857, the American Institute of Architects (AIA) was founded. The AIA made it clear that architecture was a “specialized profession” and not general contracting.

Engineering associations soon formed as well, separating that specialization from both general contracting and architecture.



The American Institute of Architects

Dermott v Jones

In 1864, the Supreme Court ruled on contracts

“if a party by his contract charge himself with an obligation possible to be performed, he must make it good, unless its performance is rendered impossible by the act of God, the law, or the other party.”

DECISIONS

IN 1864

SUPREME COURT OF THE UNITED STATES,

DECEMBER TERM, 1864.

DERMOTT v. JONES.

1. Performance of a contract to build a house for another on the soil of each person, and that the work shall be executed, finished, and ready for use and occupation, and be delivered over so finished and ready to the owner of the soil, at a day named, is not excused by the fact that there was a latent defect in the soil, in consequence of which the walls sank and cracked, and the house, having become uninhabitable and dangerous, had to be partially taken down and rebuilt on artificial foundations.
2. While a special contract remains executory the plaintiff must sue upon it. When it has been fully executed according to its terms, and nothing remains to be done but the payment of the price, he may sue either on it, or in *indolentus assumpsit*, relying, in this last case, upon the common counts; and in either case the contract will determine the rights of the parties.
3. When he has been guilty of fraud, or has wilfully abandoned the work, leaving it unfinished, he cannot recover in any form of action. Where he has in good faith fulfilled, but not in the manner nor within the time prescribed by the contract, and the other party has sanctioned or accepted the work, he may recover upon the common counts in *indolentus assumpsit*.
4. He must produce the contract upon the trial, and it will be applied as far as it can be traced; but if, by fault of the defendant, the cost of the work or material has been increased, in so far the jury will be warranted in departing from the contract price. In such case the defendant is entitled to recoup for the damages he may have sustained by the plaintiff's deviations from the contract, not induced by himself, both as to the manner and time of the performance.

JONES, a mason and house-builder, contracted with Miss Dermott to build a house for her, the soil on which the house was to be built being her own. The house was to be built

I Don't Trust You

The Supreme Court further states the following:

“the rule rests upon a solid foundation of reason and justice. It regards the sanctity of contracts. It requires parties to do what they have agreed to do.”



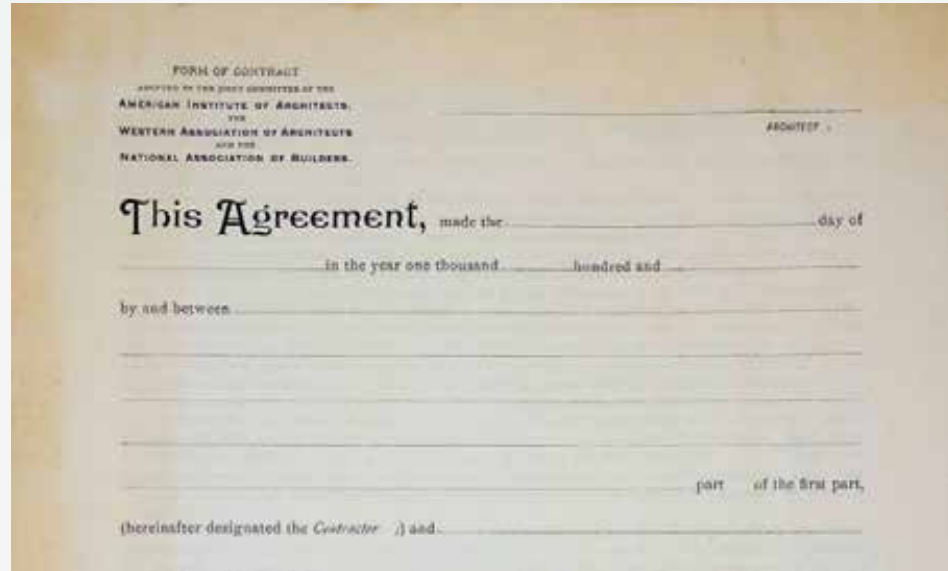
You're
IN THE
Right Place

Uniform Contract

Original Uniform Contract from 1888

The AIA and the National Association of Builders (now called the Associated General Contractors of America), co-sponsored the “Uniform Contract”.

Starting in 1911, the AIA (with approval from the AGCA) has since published thirteen editions of the standardized construction documents.



Standardized Construction Documents

STANDARD CONTRACT FOR THE CONSTRUCTION OF A BUILDING

THIS CONTRACT is made this _____ day of _____, 20____, between _____, hereinafter called the "OWNER", and _____, hereinafter called the "CONTRACTOR".

WITNESSES: _____

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals at _____, New York, New York, this _____ day of _____, 20____.

OWNER: _____

CONTRACTOR: _____

BY _____

STANDARD CONTRACT FOR THE CONSTRUCTION OF A BUILDING

THIS CONTRACT is made this _____ day of _____, 20____, between _____, hereinafter called the "OWNER", and _____, hereinafter called the "CONTRACTOR".

WITNESSES: _____

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals at _____, New York, New York, this _____ day of _____, 20____.

OWNER: _____

CONTRACTOR: _____

BY _____

STANDARD CONTRACT FOR THE CONSTRUCTION OF A BUILDING

THIS CONTRACT is made this _____ day of _____, 20____, between _____, hereinafter called the "OWNER", and _____, hereinafter called the "CONTRACTOR".

WITNESSES: _____

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals at _____, New York, New York, this _____ day of _____, 20____.

OWNER: _____

CONTRACTOR: _____

BY _____

Construction Shows Owner's Statement
Stewart Title

Typical Parties on an SOS



General Contractor
Architect
Engineer
Surveyor
Attorneys
Local Municipalities
Permit offices
Real Estate Tax Treasurer
Title Insurance Company

[illegible]

The AIA, again

The G702 is the
standardized
“Application and
Certificate for
Payment” – or Pay
App, for short


AIA® Document G702®CW – 2021

Application and Certificate for Payment for Cost of the Work Projects without a Guaranteed Maximum Price

TO OWNER:	PROJECT:	APPLICATION NO:	Distribution to:
		PERIOD TO:	OWNER <input type="checkbox"/>
		CONTRACT FOR:	ARCHITECT <input type="checkbox"/>
		CONTRACT DATE:	CONTRACTOR <input type="checkbox"/>
		PROJECT NOS:	FIELD <input type="checkbox"/>
			<input type="checkbox"/>

FROM CONTRACTOR:	VIA ARCHITECT:	
------------------	----------------	--

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. AIA Document G703®CW, Continuation Sheet for Cost of the Work Projects, is attached.

1. ORIGINAL APPROVED CONTROL ESTIMATE..... \$ _____

2. NET CHANGE \$ _____

3. CONTROL ESTIMATE TO DATE (Line 1 + 2) \$ _____

4. TOTAL COMPLETED & STORED TO DATE (Column G on G703CW) \$ _____

5. RETAINAGE:

a. % of Completed Work
(Column D + E on G703CW) \$ _____

b. % of Stored Material
(Column F on G703CW) \$ _____

Total Retainage (Lines 5a + 5b, or Total in Column I of G703CW) \$ _____

6. TOTAL EARNED LESS RETAINAGE \$ _____
(Line 4 minus Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ _____
(Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE \$ _____

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information, and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

State of: _____

County of: _____

Subscribed and sworn to before me this _____ day of _____

Notary Public: _____

My commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information, and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

Who should be listed on a GC Sworn Statement?

BELOW ARE SOME
EXAMPLES:

PAINTERS

ELECTRICIANS

CARPENTERS

PLUMBERS

DESIGNERS

MATERIAL SUPPLIERS



Who is authorized to contract?

The Owner

The General Contractor

Subcontractor

Supplier



Lien Rights



WHO, WHAT, WHEN

Who has lien rights?

Contractors,
Sub-contractors,
Material suppliers,
Equipment rentals,
Workers,
Architects,
Engineers
And others

What are lien rights?

A legal guarantee of
payment

Legal authority to file a
mechanics' lien

When do lien rights relate back to?

Typically, the last date good
or services were supplied or
performed

WHERE, WHY, HOW

Where are mechanics liens filed?

They are filed with the county recorder or clerk of the county where the property is located

Why are mechanics liens filed?

\$\$ Money \$\$

How is a mechanics lien filed?

Simply preparing a document and submitting to the county recorder or clerk

Tick Tock

Time is important with regard to liens.

What time period does it relate back to?

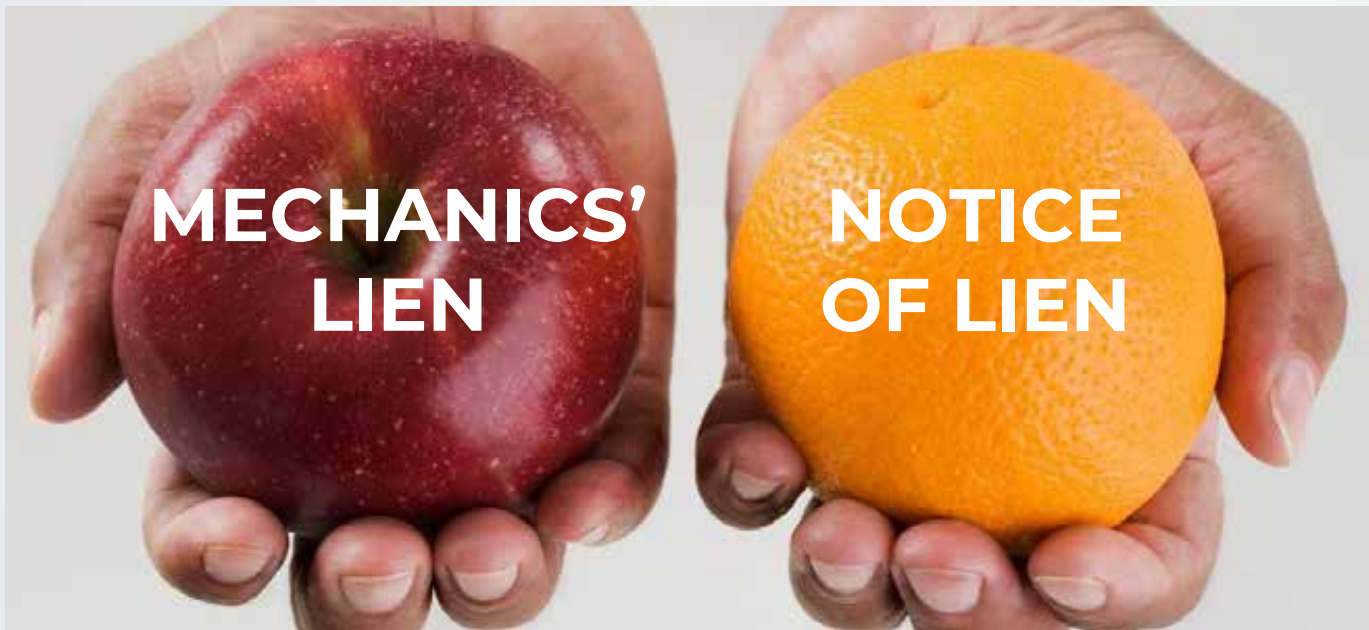
When does it have to be recorded to be valid?

How long is the lien good for?

**EVERY JURISDICTION IS
DIFFERENT – DO YOUR
RESEARCH**



Words are important



CLOUDY DAYS



What is a lien waiver?

A lien waiver is an executed, legally binding document that is provided by a contractor, subcontractor, or supplier in exchange for payment for services or supplies provided. Upon receipt of payment, the document waives the claimant's rights to file a lien against the property.

Types of Lien Waivers

Partial Conditional

Final Conditional

Partial Unconditional

Final Unconditional

STATE SPECIFICS

Arizona

Massachusetts

Nevada

California

Michigan

Texas

Florida

Mississippi

Utah

Georgia

Missouri

Wyoming

Arizona – Title 33, Chapter 7, Article 6, section 1008 (33-7-6-1008)

A. An owner or contractor by any term of their contract, or otherwise, may not waive or impair the claims or liens of other persons whether with or without notice except by their written consent or as prescribed by section 33-1003. Any term of the contract to that effect shall be void. Any written consent given by any claimant pursuant to this section is unenforceable unless the claimant executes and delivers a waiver and release. This waiver and release is effective to release the property for the benefit of the owner, the construction lender, the contractor and the surety on a payment bond from claims and liens only if the waiver and release follows substantially one of the forms set forth in this section and is signed by the claimant or his authorized agent, and, in the case of a conditional release, if there is evidence of payment to the claimant. Evidence of payment may be by the claimant's endorsement on a single or joint payee check that has been paid by the bank on which it was drawn or by written acknowledgment of payment given by the claimant.

B. No oral or written statement purporting to waive, release or otherwise adversely affect a claim is enforceable or creates any estoppel or impairment of a claim unless it is pursuant to a waiver and release prescribed by this section or the claimant had actually received payment in full for the claim.

C. This section does not affect the enforceability of either an accord and satisfaction regarding a bona fide dispute or any agreement made in settlement of an action pending in any court provided the accord and satisfaction or agreement and settlement make specific reference to the mechanic's lien or bond claims.

D. The waiver and release given by any claimant is unenforceable unless it follows substantially the following forms in the following circumstances:

1. Where the claimant is required to execute a waiver and release in exchange for or in order to induce the payment of a progress payment and the claimant is not in fact paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall follow substantially the following form:

Conditional waiver and release on progress payment

California – Division 4, Part 6, Title 1, Chapter 3, Article 8132-8138 (4-6-1-3-8132-8138)

8132. If a claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form:

8134. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a progress payment and the claimant asserts in the waiver that the claimant has, in fact, been paid the progress payment, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form, with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

8136. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant is not, in fact, paid in exchange for the waiver and release or a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form:

8138. If the claimant is required to execute a waiver and release in exchange for, or in order to induce payment of, a final payment and the claimant asserts in the waiver that the claimant has, in fact, been paid the final payment, the waiver and release shall be null, void, and unenforceable unless it is in substantially the following form, with the text of the "Notice to Claimant" in at least as large a type as the largest type otherwise in the form:

Florida – Title XL, Chapter 713, Section 20 (XL-713.20)

713.20 Waiver or release of liens.—

(1) The acceptance by the lienor of an unsecured note for all or any part of the amount of his or her demand shall not constitute a waiver of his or her lien therefor unless expressly so agreed in writing, nor shall it in any way affect the period for filing the notice under s. 713.06(2), or the claim of lien under s. 713.08.

(2) A right to claim a lien may not be waived in advance. A lien right may be waived only to the extent of labor, services, or materials furnished. Any waiver of a right to claim a lien that is made in advance is unenforceable.

(3) Any person may at any time waive, release, or satisfy any part of his or her lien under this part, either as to the amount due for labor, services, or materials furnished or for labor, services, or materials furnished through a certain date subject to exceptions specified at the time of release, or as to any part or parcel of the real property.

(4) When a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, a progress payment, the waiver or release may be in substantially the following form:

Florida – Title XL, Chapter 713, Section 20 (XL-713.20)

**WAIVER AND RELEASE OF LIEN
UPON PROGRESS PAYMENT**

The undersigned lienor, in consideration of the sum of \$, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished through insert date, to insert the name of your customer, on the job of insert the name of the owner, to the following property:

Description of property:

This waiver and release does not cover any retention or labor, services, or materials furnished after the date specified.

DATED on insert, insert By:

(5) When a lienor is required to execute a waiver or release of lien in exchange for, or to induce payment of, the final payment, the waiver and release may be in substantially the following form:

**WAIVER AND RELEASE OF LIEN
UPON FINAL PAYMENT**

The undersigned lienor, in consideration of the final payment in the amount of \$, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to insert the name of your customer, on the job of insert the name of the owner, to the following described property:

Description of property:

DATED on insert, insert By:

(6) A person may not require a lienor to furnish a lien waiver or release of lien that is different from the forms in subsection (4) or subsection (5).

(7) A lienor who executes a lien waiver and release in exchange for a check may condition the waiver and release on payment of the check. However, in the absence of a payment bond protecting the owner, the owner may withhold from any payment to the contractor the amount of any such unpaid check until any such condition is satisfied.

(8) A lien waiver or lien release that is not substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release.

HISTORY—s. 1, ch. 93-118; s. 18, ch. 87-254; s. 5, ch. 88-197; s. 6, ch. 94-38; s. 1799, ch. 87-102; s. 5, ch. 97-219; s. 30, ch. 99-6.

Note.—Former s. 84.202.

Georgia – Title 44, Chapter 14, Article 8, Part 3, Section 366 (44-14-8-3-366)

44-14-366. Waiver of lien or claim upon bond in advance of furnishing labor, services, or materials void; interim waiver and release upon payment; unconditional waiver and release upon final payment; affidavit of nonpayment.

(a) Waivers and releases provided for under this Code section shall be limited to waivers and releases of lien and labor or material bond rights and shall not be deemed to affect any other rights or remedies of the claimant.

(b) A right to claim a lien or to claim upon a bond may not be waived in advance of furnishing of labor, services, or materials. Any purported waiver or release of lien or bond claim or of this Code section executed or made in advance of furnishing of labor, services, or materials is null, void, and unenforceable.

(c) No oral or written statement by the claimant purporting to waive, release, impair, or otherwise adversely affect a lien or bond claim is enforceable or creates an estoppel or impairment of claim of lien or claim upon a bond unless:

- (1)** It is pursuant to a waiver and release form duly executed by the claimant prescribed below; and
- (2)** The claimant has received payment for the claim as set forth in subsection (g) of this Code section.

(d) When a claimant is requested to execute a waiver and release in exchange for or in order to induce payment other than final payment, the waiver and release shall substantially follow the language of the following form, be in at least 12 point font, and need not be in boldface capital letters, and the priority of such claimant's lien rights, except as to retention, shall upon such payment thereafter run from the day after the date specified in such Waiver and Release of Lien and Payment Bond Rights Upon Interim Payment form:

Massachusetts – Part III, Title IV, Chapter 254, Section 32 (III-IV-254-32)

Section 32. A covenant, promise, agreement of understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenance and appliance or other improvement to real property, including moving, demolition, professional services and excavating connected therewith, purporting to bar the filing of a notice of contract or the taking of any steps to enforce a lien as set forth in this chapter or purporting to subordinate such rights to the rights of other persons is against public policy and is void and unenforceable, but this section shall not apply to:

- (1) waivers of liens given by any person named as a principal on a lien bond provided under section twelve in connection with an interim or final payment received by such persons;
- (2) statements by persons entitled to file documents under this chapter of amounts due or paid to them;
- (3) dissolutions of liens under section ten;
- (4) partial waivers and subordinations of liens given by persons who have filed or recorded notices of contract under section two substantially in the following form with no material deviation therefrom:

Michigan – Chapter 570, Act 497 of 1980, Section 115 (570.1115)

570.1115 Waiver of construction lien.

Sec. 115.

(1) A person shall not require, as part of any contract for an improvement, that the right to a construction lien be waived in advance of work performed. A waiver obtained as part of a contract for an improvement is contrary to public policy, and shall be invalid, except to the extent that payment for labor and material furnished was actually made to the person giving the waiver. Acceptance by a lien claimant of a promissory note or other evidence of indebtedness from an owner, lessee, or contractor shall not of itself serve to waive or discharge otherwise valid construction lien rights.

(2) A lien claimant who receives full payment for his or her contract shall provide to the owner, lessee, or designee a full unconditional waiver of lien.

(3) A lien claimant who receives partial payment for his or her contract shall provide to the owner, lessee, or designee a partial unconditional waiver of the lien for the amount which the lien claimant has received, if the owner, lessee, or designee requests the partial unconditional waiver.

(4) A partial conditional waiver of lien or a full conditional waiver of lien shall be effective upon payment of the amount indicated in the waiver.

(5) For purposes of this act, retainage that is not payable under a contract until the happening of a certain event in addition to the providing of an improvement is not due as of the date of the providing of the improvement.

(6) A waiver of a lien under this section shall be effective when a person makes payment relying on the waiver unless at the time payment was made the person making the payment has written notice that the consideration for the waiver has failed.

(7) Subject to subsection (8), if the improvement is provided to property that is a residential structure, an owner, lessee, or designee shall not rely on a full or partial unconditional or conditional waiver of lien provided by a person other than the lien claimant named in the waiver if the lien claimant has either filed a notice of furnishing under section 109 or is excused from filing a notice of furnishing under section 108 or 108a unless the owner, lessee, or designee has first verified the authenticity of the lien waiver with the lien claimant either in writing, by telephone, or personally.

(8) An agent who is authorized to prepare and serve a notice of furnishing or to prepare, record, and serve a claim of lien on behalf of a laborer or group of laborers is automatically authorized to provide and responsible for providing waivers of lien, unless or until the laborer or group of laborers notifies the designee in writing that someone other than the agent is authorized to provide appropriate waivers. An individual laborer may also provide waivers under this section instead of the agent.

(9) The following forms shall be used in substantially the following format to execute waivers of construction liens:

(a) PARTIAL UNCONDITIONAL WAIVER

I/we have a contract with to

Mississippi – Title 85, Chapter 7, Article 21, Section 433 (85-7-21-433)

§ 85-7-433. Forms; interim waiver and release upon payment; waiver and release upon final payment; affidavit of nonpayment; notice of contest of lien; pre-lien notice to owner.

(1) The following form is the Interim Waiver and Release Upon Payment form referred to in Section 85-7-419:

INTERIM WAIVER AND RELEASE UPON PAYMENT

STATE OF MISSISSIPPI

COUNTY OF _____

THE UNDERSIGNED MECHANIC AND/OR MATERIALMAN HAS BEEN EMPLOYED BY _____ (NAME OF CONTRACTOR) TO FURNISH _____ (DESCRIBE MATERIALS AND/OR LABOR) FOR THE CONSTRUCTION OF IMPROVEMENTS KNOWN AS _____ (TITLE OF THE PROJECT OR BUILDING) WHICH IS LOCATED IN THE CITY OF _____, COUNTY OF _____, AND IS OWNED BY _____ (NAME OF OWNER) AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

(DESCRIBE THE PROPERTY UPON WHICH THE IMPROVEMENTS WERE MADE BY USING EITHER A METES AND BOUNDS DESCRIPTION, THE LAND LOT DISTRICT, BLOCK AND LOT NUMBER, OR STREET ADDRESS OF THE PROJECT.)

UPON THE RECEIPT OF THE SUM OF \$_____, THE MECHANIC AND/OR MATERIALMAN WAIVES AND RELEASES ANY AND ALL LIENS OR CLAIMS OF LIENS IT HAS UPON THE FOREGOING DESCRIBED PROPERTY OR ANY RIGHTS AGAINST ANY LABOR AND/OR MATERIAL BOND THROUGH THE DATE OF _____ (DATE) AND EXCEPTING THOSE RIGHTS AND LIENS THAT THE MECHANIC AND/OR MATERIALMAN MIGHT HAVE IN ANY RETAINED AMOUNTS, ON ACCOUNT OF LABOR OR MATERIALS, OR BOTH, FURNISHED BY THE UNDERSIGNED TO OR ON ACCOUNT OF SAID CONTRACTOR FOR SAID BUILDING OR PREMISES.

Missouri – Title XXVII, Chapter 429, Section 016, Item 27 (XXVII-429-016-27)

STATE OF MISSOURI OFFICE OF ADMINISTRATION DIVISION OF FACILITIES MANAGEMENT, DESIGN AND CONSTRUCTION PARTIAL RECEIPT OF PAYMENT AND RELEASE		PROJECT NUMBER
SUBTRACTOR OR SUPPLIER STATE		
CONTRACTOR NAME		
PROJECT TYPE		
PROJECT LOCATION		
<p>KNOW ALL MEN BY THESE PRESENT: the Subcontractor or Supplier named herein has heretofore entered into a subcontract with the above named Contractor for the performance of work and/or furnishing of material for the construction of this project for the State of Missouri (Owner), which said subcontract is by this for and in consideration of payment by Contractor.</p> <p>DOES HEREBY:</p> <ol style="list-style-type: none">1. ACKNOWLEDGE that he has been paid all sums due him through _____ for everything done by him, or done by his Subcontractors, material Vendors, equipment and fixture Suppliers, Agents, and employees, or otherwise in the performance of the Work called for by the aforesaid contract and all modifications or extras or additions approved to date, for the construction or said project or otherwise.2. REPRESENT that all of his employees Subcontractors, material Vendors, equipment and fixture Suppliers, and others have been paid all sums due them to date in Connection with performance of said Work.3. RELEASE the Owner from any claim for non-payment for any Work performed or materials supplied through the above noted date.		
DATE		
NAME OF SUBCONTRACTOR OR SUPPLIER		
PRINTED OR PRINTED NAME		
SIGNATURE		
TITLE		

Nevada Chapter 108, Section 2453 (108.2453)

NRS 108.2453 Waiver or modification of right, obligation or liability set forth in [NRS 108.221](#) to [108.246](#), inclusive, prohibited; certain conditions, stipulations or provisions of contract for improvement of property or construction, alteration or repair of work of improvement void and unenforceable.

1. Except as otherwise provided in [NRS 108.221](#) to [108.246](#), inclusive, a person may not waive or modify a right, obligation or liability set forth in the provisions of [NRS 108.221](#) to [108.246](#), inclusive.

2. A condition, stipulation or provision in a contract or other agreement for the improvement of property or for the construction, alteration or repair of a work of improvement in this State that attempts to do any of the following is contrary to public policy and is void and unenforceable:

(a) Require a lien claimant to waive rights provided by law to lien claimants or to limit the rights provided to lien claimants, other than as expressly provided in [NRS 108.221](#) to [108.246](#), inclusive;

(b) Relieve a person of an obligation or liability imposed by the provisions of [NRS 108.221](#) to [108.246](#), inclusive;

(c) Make the contract or other agreement subject to the laws of a state other than this State;

(d) Require any litigation, arbitration or other process for dispute resolution on disputes arising out of the contract or other agreement to occur in a state other than this State; or

(e) Require a prime contractor or subcontractor to waive, release or extinguish a claim or right that the prime contractor or subcontractor may otherwise possess or acquire for delay, acceleration, disruption or impact damages or an extension of time for delays incurred, for any delay, acceleration, disruption or impact event which was unreasonable under the circumstances, not within the contemplation of the parties at the time the contract was entered into, or for which the prime contractor or subcontractor is not responsible.

(Added to NRS by [2003, 2590](#); A [2005, 1913](#))

Texas – Title 5, Subtitle B, Chapter 53, Subchapter L, 284 (5-B-53-L-284)

Sec. 53.284. FORMS FOR WAIVER AND RELEASE OF LIEN OR PAYMENT BOND CLAIM. (a) A waiver and release given by a claimant or potential claimant is unenforceable unless it substantially complies with the applicable form described by Subsections (b)-(e).

(b) If a claimant or potential claimant is required to execute a waiver and release in exchange for or to induce the payment of a progress payment and is not paid in exchange for the waiver and release or if a single payee check or joint payee check is given in exchange for the waiver and release, the waiver and release must read:

"CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT

Utah – Title 38, Chapter 1a, Part 8, Section 802 (38-1a-801)

38-1a-802 Waiver or limitation of a lien right -- Forms -- Scope.

(1) As used in this section:

(a) "Check" means a payment instrument on a depository institution including:

- (i) a check;**
- (ii) a draft;**
- (iii) an order; or**
- (iv) other instrument.**

(b) "Depository institution" is as defined in Section 7-1-103.

(c) "Receives payment" means, in the case of a restrictive endorsement, a payee has endorsed a check and the check is presented to and paid by the depository institution on which it is drawn.

(2) Notwithstanding Section 38-1a-105, a claimant's written consent that waives or limits the claimant's lien rights is enforceable only if the claimant:

(a)

- (i) executes a waiver and release that is signed by the claimant or the claimant's authorized agent; or**
- (ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a check that is:**

- (A) signed by the claimant or the claimant's authorized agent; and**
- (B) in substantially the same form set forth in Subsection (4)(d); and**

(b) receives payment of the amount identified in the waiver and release or check that includes the restrictive endorsement:

- (i) including payment by a joint payee check; and**
- (ii) for a progress payment, only to the extent of the payment.**

Wyoming – Title 29, Chapter 10, 101 (29-10-101)

§ 29-10-101. Preliminary notice of right to lien; lien waiver form.

(a) Preliminary notice of right to a lien shall be sent to the record owner of the property against which the lien may be filed and shall be completed in substantially the following form:

Note to Lien Claimant: This form, if filled out correctly and sent within the time periods specified in W.S. 29-2-112, constitutes prima facie evidence that you have provided the content of the notice required by W.S. 29-2-112(a)(i). If you have any questions regarding how to fill out this form or whether it has been filled out properly, you should consult a attorney.

NOTICE TO OWNER

The undersigned party is providing work or materials to the property described below. Failure of payment due and owing to a contractor, subcontractor or materialman for work performed or materials provided to the project located on the property can result in the filing of a lien against the property. To avoid this result, when paying for labor and materials you may ask the contractor, subcontractor or materialman for "lien waivers" from all persons supplying materials or services. Failure to secure lien waivers may result in your paying for labor and materials twice. A form of lien waiver is attached to this notice.

STATE SPECIFICS



Only three states
require that lien
waivers be notarized:

Georgia

Mississippi

Wyoming

As a reminder, if you are in one of the 12 states previously discussed, the statutory form will need to be used.

**Waiver of Lien to Date
(Partial)**

State of Illinois } ss.
County

To Whom It May Concern:

WHEREAS the undersigned has been employed by _____
to furnish _____
for the premises known as _____
of which _____ is the owner.

The undersigned, for and in consideration of _____ Dollars, and other good and valuable consideration, the receipt whereof is hereby acknowledged, doing hereby waive and release any and all lien or claim of, or right to lien, under the statutes of the State of Illinois, relating to mechanics' liens, with respect to and on said above-described premises, and the improvements thereon, and on the material, fixtures, apparatus or machinery furnished, and on the monies, funds or other considerations due or to become due from the owner, on account of labor services, material, fixtures, apparatus or machinery, furnished to this date by the undersigned for the above-described premise.

Date _____ Company Name _____
Address _____

Signature and Title _____

CONTRACTOR'S AFFIDAVIT

State of Illinois } ss.
County

To Whom It May Concern:

The undersigned, (Name) _____ being duly sworn, deposes and says that he or she is (Position/Title) _____ of (Company Name) _____ who is the contractor furnishing work on the building located at _____ owned by _____ that the total amount of the contract including extras is \$ _____ on which he or she has received payment of \$ _____ prior to this payment. That all waivers are true, correct and genuine and delivered unconditionally and that there is no claim either legal or equitable to defeat the validity of said waivers. That the following are the names of all parties who have furnished material or labor, or both, for said building and all parties having contracts or sub contracts for specific portions of said work or for material entering into this construction thereof and the amount due or to become due to each, and that the items mentioned include all labor and material required to complete said work according to plans and specification:

SUBMITTAL ADDRESS	WHAT WORK	CONTRACT PRICE	PRIOR PAYMENT	THIS PAYMENT	REFERENCE TO SCHEDULE DEED
TOTAL LABOR AND MATERIAL RECEIVABLE					

That there are no other contracts for said work outstanding, and that there is nothing due or to become due to any person for material, labor or other work of any kind done or to be done upon or for the issuance hereof, than those stated.

Date _____ Signature _____

Subscribed and sworn to before me this _____ day of _____,

Notary Public

Construction, Partial Lien Waiver
Worksheet Title - Illinois LYN000001/2013-08

A Lien Waiver Dissected

The lien waiver portion is the top half and actually waives lien rights based on payments received.

For material suppliers, this is the only portion that needs to be completed.

The bottom half is the “Contractor’s Affidavit Portion” which is a sworn statement that includes information for material and labor suppliers hired by the contractor and subcontractor.

State of Illinois }
County of } ss.

ENCLOSURE # 11-045705

To Whom It May Concern:

WHEREAS the undersigned has been employed by (1) Riverside Remodeling LLC
to furnish (3) Flooring
for the premises known as (4) 19 S. Riverside Plaza, Chicago IL
of which (2) Stewart Chilton LP is the owner.
The undersigned, for and in consideration of (5) Fifty Thousand (\$50,000.00)
(\$ 50,000.00) Dollars, and other good and valuable consideration, the receipt whereof is
hereby acknowledged, do hereby waive and release any and all lien or claim of, or right in, lien, under
the statutes of the State of Illinois, relating to mechanics' liens, with respect to and in said above-
described premises, and the improvements thereon, and on the materials, fixtures, apparatus or machinery
furnished, and on the monies, funds or other considerations due or to become due from the owner, on
account of labor services, material, fixtures, apparatus or machinery, hereby furnished, at which may
be furnished at any time hereafter, by the undersigned for the above-described premises.

Date (01-16-2021) Company Name (1) Floor Forever Inc.
Address (101 123 State
Street, Chicago IL
Signature and Title (11) John Smith, President

CONTRACTOR'S AFFIDAVIT

State of Illinois }
County of } ss.

To Whom It May Concern:

The undersigned (Client) (2) John Smith being
duly sworn, deposes and says that he or she is (Contractor/Firm)
of Company Name (1) Floor Forever Inc. who is the contractor furnishing
(3) Flooring
work on the building located at (4) 19 S. Riverside Plaza, Chicago IL
owned by (5) Stewart Chilton LP that the total amount of
the contract including taxes is \$ (15,000.00) on which he or
she has received payment of \$ (15,000.00) prior to this payment.
The all materials are true, correct and genuine and delivered unconditionally and that there is no claim
either legal or equitable to deprive the validity of said waivers. That the following are the names of all
parties who have furnished material or labor, or both, for said work and all parties having contracts or sub-
contracts for specific portions of said work or for material entering into the construction thereof and the
amount due or to become due to each, and that the items submitted include all labor and material received
to complete said work according to plans and specifications.

SUPPLIER INFORMATION & MATERIAL WAIVER

NAME/ADDRESS	AMOUNT PAID	CONTRACT PRICE	AMOUNT PAID/RECEIVED	TOTAL PAID/RECEIVED	BALANCE TO SUPPLIER
(1) Floor Forever Inc.	Flooring installation	\$1000.00	\$4500.00	\$1500.00	\$0.00
All materials from fully paid company truck, delivered on company vehicle					

HOW TO COMPLETE A LIEN WAIVER

1. File number, if available
2. Name of party who hired subcontractor (either GC or owner)
3. Type of service providing (painting, HVAC, plumbing etc.)
4. Address of the property
5. Owner of the property (if known, can remain blank but cannot be incorrect)
6. Amount of payment the subcontractor is to receive, by words (i.e., ten thousand dollars and 00/100)
7. Amount of payment the subcontractor is to receive by digits (\$10,000.00)
8. Date of signing documents
9. Subcontractor Company name
10. Subcontractor Company address
11. Signature of subcontractor signing and position in company
12. Name of subcontractor signing waiver
13. Title or position in the company (only an officer of a company can sign a waiver)
14. Subcontractor company name
15. Type of service providing
16. Address of the property
17. Owner of the property (if known, can remain blank but cannot be incorrect)
18. Dollar amount of contract
19. Dollar amount of prior payment
20. All materials delivered to the site by the subcontractor's material supplier or funds owed to material supplier for these materials begin next, then list material supplier's name, type of material, contract price, amount paid prior to this draw (if any), this payment and the balance owed to supplier. The material supplier must furnish a supporting material waiver to be attached to this waiver.
21. If the material was delivered to the site by the initial subcontractor and was not of his own or hand paid stock, then in this space he would state the following: "All materials taken from fully paid stock and delivered to site in my own truck (s). My principal supplier is _____ (name of supplier AND city/state located in)"
22. NOTE: very true state with a stock statement be accepted, this will be determined by office(s)
23. Date of signature (must be the SAME date as #8)
24. Signature (must be the SAME signature as #11)
25. Date of notary (must be the SAME as # & 11)
26. Signature of notary with notary seal

Common Mistakes

Not clearly identifying reimbursements

Attaching exhibits to sworn statements but not reflecting on the sworn statement that there is an exhibit

Putting important and/or contradictory payment instructions in a side letter or email

Not balancing

Sending the draw package to the lender, but not including the construction escrow team

Forgetting to include title updates in timing



Last, but not least



If the executed Sworn Statement or exhibits are not clear, please send the unexecuted versions as well.

The easier to read, the faster the disbursements go out, and the sooner everyone gets paid.

Thank You

Stewart Title Guaranty Company

10 S Riverside Plaza Suite 1450

Chicago, IL 60606

stewart.com/commercial/chicago



Stewart Title Guaranty Company National Commercial Services

Megan Toborg

Vice President, Operations Director – NCS Chicago

mtoborg@stewart.com

stewart.com/commercial/chicago