

FALSE PROMISES OF PAYMENT AND MAKING DOWNSTREAM PAYMENTS WHEN PAID

The Illinois Mechanics Lien Act (“Act”) provides that any party that fraudulently induces a waiver is guilty of a misdemeanor. In addition, any party that receives funds is a “trustee” responsible to ensure the delivery of funds to its intended recipient.

Promising payment to induce lien waiver

§21.01 of the Act provides that any contractor (or subcontractor) that, with intent to defraud, induces a subcontractor (or supplier) to execute and deliver a waiver of lien for purposes of obtaining a final payment, and fails to pay that subcontractor (or supplier) within 30 days of receipt of their final payout, is guilty of a misdemeanor. A **subcontractor** is defined by the Act in this context as any “mechanic, worker or other person” who furnishes “any materials, apparatus, machinery or fixtures” to the job.

Failing to pay downstream when paid

§21.02 of the Act provides that every person who performs services for the contractor and, in turn, requires the execution and delivery of a waiver of lien by a supplier, holds the funds paid by the contractor as trustee for their supplier. It would appear that, under this section of the Act, any contractor or subcontractor that knowingly retains or uses the moneys received for any purpose other than to pay their subcontractor or supplier is liable for **all damages sustained, including costs of collection**.