

WAIVING LIEN RIGHTS RELATED TO “ORAL AND WRITTEN CHANGE ORDERS”

The standard lien waiver provided by Chicago Title (f.1722 R5/96) says the signer accepts payment for all work and materials **including extras**, which **include but are not limited to change orders, both oral and written, to the contract**. While a change order is generally understood to mean any deviation from the original scope or specifications of a construction contract, Illinois law states that only written change orders are enforceable, and then only when they comply with the so-called “Watson Requirements.” That is, when:

- (a) The work and materials constituting the extra was outside the scope of the contract
- (b) The extra was ordered by the owner of the property or their authorized agent
- (c) The owner or their agent agreed to pay additional sums for the extra
- (d) The extra was not furnished voluntarily by the contractor or subcontractor
- (e) The extra was not furnished in order to cure non-conforming work

Conclusion: The language of the form benefits the subcontractor that is waiving its lien rights because the language encompasses enforceable, written, change orders as well as commonly used but technically unenforceable oral change orders.