

## HOW A MECHANICS LIEN CAN HELP YOU GET PAID FOR YOUR WORK

by Matthew C. Wasserman



MATTHEW C. WASSERMAN

If done correctly, a contractor can protect its interest in getting paid for its work by seeking to foreclose on its lien and taking priority over the lender.

The current state of the economy has made it increasingly difficult for contractors to get paid. Whether acting as a general contractor, sub-contractor, sub-sub-contractor or materialman, the Illinois Mechanics Lien Act provides protection to those who furnish labor or materials in connection with the construction of improvements on real property, regardless of whether the project was completed on privately or publicly owned property. Needless to say, without this benefit the contractor would often be left without payment because the lender's mortgage would eat up all of the proceeds from the foreclosure sale.

Very specific requirements must be met before a contractor may lien a property. Generally, the requirements include: (i) a contract, either between the contractor and the owner or between the contractor and a third party authorized or knowingly permitted by the owner (*i.e.*, general, sub, construction manager, *etc.*); (ii) furnishing labor or materials; and (iii) failure to receive payment for the labor or materials.

If these requirements are met, the contractor still must comply with the very rigid, technical requirements for drafting and filing the lien. A lien must properly identify the property, be recorded in the correct county and, most importantly, meet the very specific time and notice requirements of the Act.

Once all of these requirements are met, the contractor must remain mindful of additional deadlines regarding filing suit to foreclose on the lien. If the requirements and/or deadlines are not met, the contractor may forfeit the lien, ultimately jeopardizing the ability to get paid.

Golan & Christie LLP can help your business make the most of its mechanic's lien rights by ensuring compliance with the strict requirements of the Act so you can maximize your recovery. For more information regarding the Act or filing a lien, please contact attorneys Margaret A. Gisch or Matthew C. Wasserman.

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## FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009

by Howard Z. Gopman



HOWARD Z. GOPMAN

This is a brief summary of the Fraud Enforcement and Recovery Act of 2009, Public Law 111-21. The Act contains both civil and criminal provisions.

One of the criminal provisions amends the definition of a financial institution to include “any person or entity that makes in whole or in part a federally related mortgage loan” as defined in the Real Estate Settlement Procedures Act of 1974.

The Act also defines a mortgage lending business to include an organization which finances or refinances any debt secured by an interest in real estate.

Now, with this Act, a false statement in a mortgage application can implicate the mortgage broker and agents of a mortgage lending business as well as the mortgage applicant.

It is now considered to be major fraud, including unlawful activities involving the economic relief and the federal TARP Program.

Securities Fraud is amended to include fraud involving options and futures in commodities.

It broadens the definition of money laundering to include proceeds to mean property derived or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.

The Act authorizes additional funding to combat mortgage fraud, securities and commodities fraud and other frauds involving federal economic assistance. The total amount of the appropriation is \$165 million to be used for the Department of Justice and the FBI, and the various offices of the United States Attorneys. There are also separate authorizations for additional funds for the Postal Inspection Service, the Department of Housing and Urban Development, and the U.S. Secret Service. Yet another authorization gives an additional \$40 million to the Securities Exchange Commission.

These additional funds are to be used to prosecute both criminally and civilly violations of financial crimes and related matters including mortgage fraud, securities and commodities fraud, financial institution fraud, and other frauds related to Federal assistance and relief programs.

It authorizes the expenditure of funds for training to improve the detection of financial fraud and mortgage fraud.

The statute calls for the establishment of a Financial Crisis Inquiry Commission within the legislative branch. The purpose of the commission is to try to get to the bottom of what caused the current financial crisis.

The Commission has a long list of items to investigate, which seems to run the whole gamut from fraud and abuse to the quality of due diligence. The Commission is to submit a report and has subpoena powers.

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# REAL ESTATE TAXATION

by Liat Meisler



If you currently own, lease or manage commercial, industrial or residential property in Cook County or the surrounding counties, you know the serious consequences your tax bill can have on your business' bottom line.

Although real estate values are depressed and, most likely, will continue to be during the foreseeable future, local governments are looking to property owners to solve their budget deficits. Now more than ever, taxpayers need to be aggressive in making sure their tax assessments reflect the true value of their real estate. While it is every taxpayer's obligation to pay his or her fair share of the overall tax burden, you should make sure you are not paying more than your fair share.

Appealing a real estate tax assessment occurs at four different venues. Typically, the administrative appeal process begins with the filing of a Complaint at the Assessor's Office. If no relief is granted, or if the relief granted is inadequate, the appeal process continues at the Board of Review. The final stage of the appeal process, after all other administrative remedies have been exhausted, is to file a Complaint with the Illinois Property Tax Appeal Board (PTAB) or in the Circuit Court. Deciding which venue should be used depends on the evidence and facts of each individual case. Filing deadlines during all stages of the appeal are strictly enforced and all complaints must be filed on or before the official closing date for the township in which the property is located.

Formulating the basis for each individual appeal can be wide-ranging. Arguments can be as simple as correcting information relating to a property's characteristics, or as complex as utilizing an income capitalization approach to determine the fair cash value of an income producing property. Typically, the most effective way to establish a property's market value is to engage an appraiser who can provide expert testimony as to the property's value as of a certain date. Other times, temporary, but significant relief can be sought when the property suffers from a period of sustained vacancy.

At Golan & Christie, LLP, the goal of our property tax department is to minimize the tax liabilities of our clients by challenging the values placed on properties through assessment appeals before the Assessor, Board of Review, PTAB and the courts. If you have any questions, please contact Liat Meisler at 312-696-1360.

**ANNOUNCEMENTS**

**GOLAN & CHRISTIE WELCOMES A NEW ATTORNEY**



RICHARD WALLACE

The Golan & Christie roster of attorneys has expanded yet again to include corporate lawyer Richard Wallace as the newest member of the firm. Mr. Wallace, formerly of Jenner & Block, LLP is a 2008 graduate of The University of Detroit Mercy School of Law and graduated magna cum laude. While at Mercy, he served as Associate Editor on the Law Review. Mr. Wallace received his Bachelor of Arts in Sports Management and Communications from the University of Michigan in 2004 and, prior to becoming an attorney, worked for Integrity Sports Player Representation, where he assisted in the representation of professional athletes. The Golan & Christie firm is proud to have Mr. Wallace as the newest member of our team.



**GOLAN & CHRISTIE AND THE COMMUNITY**



*Pictured from left, Mary Lou Lowery, Laura A. Balson, Madame Annette Hsiu-lien Lu (Vice President of Taiwan, 2000-2008), and Barbara L. Yong. The Photo was taken during a meeting of a local chapter of Business and Professional Women, generously hosted by Golan & Christie.*



*Members of the Golan & Christie firm (along with partner Donna Hartl's daughter Natalie) celebrate the World Champion Blackhawks victory over the Philadelphia Flyers on June 10, 2010, Chicago's official "Blackhawks Day". Go Hawks!*



*Participants from Golan & Christie who ran/walked in the JP Morgan Chase Corporate Run on May 27, 2010. Partner Tony Taglia (2nd row, first on the left) was the in-house champion, closely followed by David Diaz (seated at far right).*



## GOLAN & CHRISTIE SCORES A KO IN CASE OF FIRST IMPRESSION

In our Winter Newsletter we announced that Golan & Christie had prevailed on a partial motion for summary judgment in the United States District Court for the Northern District of Illinois on a tax issue of first impression (*i.e.* an issue not previously decided by any court nationwide). Our client was sued for filing a Form 1099-C reporting the cancellation of a personal loan, a filing which the plaintiff (the borrower) alleged constituted an act of tax fraud because Code Section 6050P affirmatively requires that only financial institutions and other applicable entities file a Form 1099-C. However, Code Section 6050P is completely silent as to whether individuals not required to file a Form 1099-C, may nevertheless voluntarily make the filing when a debt has become uncollectable. Motion for summary judgment was granted in our favor and the court ruled that as a matter of law, individuals may voluntarily file a truthful Form 1099-C to report cancellation of indebtedness without violating the Internal Revenue Code.

As a result of the ruling, the plaintiff's sole path to victory in the case was dependent upon proving by clear and convincing evidence that the 1099-C in question was filed with fraudulent intentions; a formidable obstacle to say the least. In the proceeding, Golan & Christie also filed a counter claim against the plaintiff for breach of contract, seeking to recover for our client the amount of the personal loan.

On July 1, 2010, the Honorable David H. Coar issued his order where he ruled that the plaintiff failed miserably in attempting to prove the existence of tax fraud. The opinion stated, "in sum, there is absolutely no evidence, much less clear and convincing evidence" that an act of tax fraud was committed. Adding to the victory, Judge Coar also granted our client's breach of contract claim for the full amount and awarded interest on the unpaid sum for vexatious delay in repayment. Barbara Yong's meticulous examination of the plaintiff at trial caused Judge Coar to describe the plaintiff's testimony as "hedged and conflicting" which "the court did not believe."

Barbara Yong's meticulous examination of the plaintiff at trial caused Judge Coar to describe the plaintiff's testimony as "hedged and conflicting" which "the court did not believe."

The opinion of the case and the motion for summary judgment are significant and have national implications as established case law now holds that private creditors may voluntarily file a Form 1099-C to report the cancellation of an uncollectable business or personal debt. This means that individuals and businesses, who have decided that a debt is uncollectable, take all the necessary steps to show uncollectability, and want to take a bad debt deduction, may voluntarily file a truthful Form 1099-C to report the cancelled debt without violating the Internal Revenue Code. The recipients of these 1099-Cs will now be much more likely to hear from Uncle Sam if they fail to report income from the discharge of indebtedness as is required under Code Section 108. The ramifications arising from the case are so significant and novel that the case has been published by both the American Federal Tax Reporter and Westlaw, two prominent legal resources.

Congratulations to Donna Hartl, Barbara Yong, Justin Clark and all of the Golan & Christie staff members who contributed to this ground-breaking victory.



DONNA HARTL



BARBARA YONG



JUSTIN CLARK

# newsletter

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*This newsletter and others can also be viewed online at:*

**[www.golanchristie.com/news.html](http://www.golanchristie.com/news.html)**

*If you no longer want to receive Golan & Christie's newsletter, please contact Cathy Kuczek at 312-696-1357 or [ckuczek@golanchristie.com](mailto:ckuczek@golanchristie.com) to be removed from the list*

Golan & Christie's newsletter will soon be available in electronic form! Please send an email to [newsletter@golanchristie.com](mailto:newsletter@golanchristie.com) if you would like to be added to the list.

GOLAN  CHRISTIE

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YOUR SUCCESS. OUR FOCUS.

## A COLLABORATIVE APPROACH

The attorneys of Golan & Christie offer sophisticated legal services to you and your organization in a supportive and collaborative environment. We are as much business partners as legal counsel—problem solvers as well as legal experts.

We are highly knowledgeable, accessible and reliable. And we come highly recommended: Our Martindale-Hubbell Peer Review Ratings, along with our membership in the Leading Lawyers Network and inclusion in SuperLawyers, underscore our professional ability, integrity and ethical standards.

### OUR PRACTICE

*Our practice covers many aspects of law and business, with an emphasis on the areas listed below:*

- Business Law & Governance
- Commercial & Corporate Litigation
- Commercial Real Estate
- Employment Law
- Estate Planning & Taxation
- Finance
- Reorganization & Bankruptcy
- Property Tax Appeals