

“He Sai d, She Sai d”

Law Offices of Burton A. Brown

Volume I, Issue I

Special points of interest:

- Our website has a new look—log on to [www. babrownlaw.com](http://www.babrownlaw.com)
- Upcoming seminars on Estate Planning, Wealth Management & Distribution
- Legal updates
- Additional services offered by the firm
- Send us your comments and questions; call or email info@babrownlaw.com

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Welcome to Our First Issue!

The Law Offices of Burton A. Brown is pleased to announce that, starting with this issue, we will be sending out a new quarterly newsletter to our clients and friends. We are excited about our new publication!

In the coming months, we hope to provide you with helpful news and information that will be both interesting and professionally useful. We will also be including announcements about seminars, legal updates, and new cases that could affect your business.

For example, in this issue, we want you to know about several new developments in the law:

- *Did you know* that your business can recover unpaid bills for renting out equipment



under the Mechanics Lien Act?

- *Did you know* that Illinois recently enacted a new Prompt Payment law, requiring most contractors to be paid within 15 days?
- *Did you know* that a new law

affecting the construction industry makes it harder to classify employees as independent contractors?

We hope that you'll find our newsletter informative and helpful. We're also pleased to announce a new look to our website, along with some additions such as links to past seminars and some information on our additional areas of practice.

As we continue, we welcome your comments, suggestions, and any questions. You can call our office, or simply send us an e-mail. We'll answer your questions in the next issue—who knows, maybe other readers will have wondered the same thing.

Thanks for joining us!

Property Tax Exemptions for Seniors in Cook County

For Cook County residents, property tax time will be here before you know it. Make sure you are taking advantage of any tax exemptions available to you!

If you are a senior citizen, you may be eligible for either a senior citizen exemption, or a senior freeze exemption.

Seniors who receive the senior

citizen exemption automatically receive the homeowner's exemption, without having to separately apply. The savings comes in on your second-installment tax bill.

To be eligible, you must (1) be 65 or older; (2) own the property or pay its real estate taxes; and (3) the property must be your principal residence. An application form

is available on the Cook County Assessor's website.

In addition, you may be eligible for the senior freeze exemption. This is important because it freezes the property assessment to the level when the owner was 65 years of age.

If you have questions about either of these, feel free to contact us.

“He Said, She Said”

Contractors To Be Paid Promptly: New Law



If you are contractor or subcontractor, a new law may come in handy when it comes to getting paid on time.

The Contractor Prompt Payment Act makes it illegal for contractors to be paid after 15 days of the work being completed. The law provides for contractors to be paid interest for late payments, but even tougher, allows for unpaid contractors (and subs) to stop work seven days after giving notice to do so.

As for owners, they must give the

reasons for not paying within 25 days of withholding payment on the unapproved portions of the work. The same applies to contractors who employ subs, and subcontractors who employ sub-subs, and so forth.

The law applies to construction contracts entered into after August 31, 2007, including both general contracts and subcontracts. It also applies to design contracts (as does the Mechanic’s Lien law).

The new law raises some interesting issues. For example, can you

waive the prompt payment requirement through your contract? It appears the answer is “no.” Also, how detailed must the owner be when describing the work that he or she is withholding payment for? Does the law’s 10% interest rate trump the interest rate supplied in a contract?

These and other issues will be sorted out as the courts interpret the new law. We will keep you posted—in the meantime, call us with any questions on this new and detailed law.

“The Contractor Prompt Payment Act makes it illegal for contractors to be paid after 15 days of the work being completed.”

Updates in Real Estate: Radon Awareness;Mold Remediation

Two new laws of interest to the real estate industry in Illinois recently took effect.

On January 1, 2008, the state enacted the Illinois Radon Awareness Act. The law requires the seller of a residential real property to provide a prospective buyer with a pamphlet called “Radon Testing Guidelines for Real Estate Transactions,” published by the state Emergency Management

Agency (or an approved equivalent). Sellers must also provide the statutory notice that the property may present the potential for radon exposure. There are certain exemptions, including properties transferred through wills, from certain relatives, and through court ordered foreclosures and other actions.

Also on Jan. 1, 2008, the state enacted the Mold Remediation

Registration Act. This requires the state Dept. of Public Health to report on health monitoring procedures related to mold. It also authorizes the Department to create rules requiring parties providing mold remediation services to register with the state and provide proof of financial health.

For further information on these new laws, contact us or visit www.ilga.gov.

Court OKs Worker’s Suit Against General Contractor



A worker who fell from the second floor of a construction project may sue the general contractor, an Illinois court recently held.

The construction worker (an independent contractor) was installing joints on the second floor, without fall protection. Earlier, the general contractor had told the worker’s bosses that there was inadequate fall protection on the

jobsite.

Although general contractors cannot be sued in general for accidents involving independent contractors, there are exceptions where the general “retains control” of the jobsite, or knew about a problem and failed to correct it.

Here, the court found that because the general contractor had written to the worker’s employer

that its jobsite had unsafe practices—specifically, a lack of fall protection—that the employer both had retained enough control of the jobsite, and had known about the unsafe condition, to allow the lawsuit to proceed.

This case shows just how sensitive the courts are to the facts in any given case. If you have questions, feel free to contact us.

Get it In Writing When Doing Home Remodeling or Repair Work

The cliché says “get it in writing,” but that is true if you want to enforce your mechanic’s lien for home remodeling or repair work over \$1,000.

So says the Illinois appellate courts, who have recently held that under the Home Repair and Remodeling Act, oral contracts for residential construction work are illegal.

In one case, an electrician tried to collect on its mechanic’s lien for \$14,000 based on an oral contract for electrical work to the client’s

home. However, the electrician had not provided an initial written estimate of the work to be done, as required by the statute. The court held that because of this, the electrician could not recover on its (otherwise valid) lien—even though the client was constantly changing the scope of the work to be done.

In a second case, a contractor again had not secured a written contract before performing a home remodeling project (he had given an oral estimate “\$20,000 or

less”). The homeowners had paid the first \$15,000 owed, but the last \$10,500 remained due. The contractor sued the homeowners to recover the rest of the funds. Again, the court threw out the case because there was no written contract for the work to be done, and there was no consumer rights pamphlet provided (also required).

The lesson to be learned is: before doing home remodeling or repair work, always take a close look at the statute. If you have questions, call us!



New Changes to Mechanic’s Lien Law for Public Projects

On August 17, 2007, the state enacted new changes to the mechanic’s lien laws that deal with public works. These changes came about a year after the 2006 changes to the mechanic’s lien laws dealing with private works, due to time constraints and other issues.

Nevertheless, several new changes to public liens are in effect that you should know about. Here are

just a couple of the highlights:

First, the changes affect state and local governments, and certain governmental non-profits. The lienable items now include labor, services, apparatus forms or form work, which is similar to the lienable items for the private sector.

Also similar to private liens, public lien law now states that for materials, proof that the materials actu-

ally entered the building is no longer required, so long as the material was delivered to the owner or to the place of construction specified in the contract. This is so even if it is shown that the material never entered the building.

Mechanic’s lien law continues to be complex, with strict requirements. An experienced attorney can guide you in this area.

“The electrician could not recover on its (otherwise valid) lien—even though the client was constantly changing the scope of the work to be done.”

Learn Something from a Seminar—It’s Inexpensive and Easy!

Are you considering starting a business? You might know that there are a slew of different options available, from corporation to sole proprietorship. Which one is best for you?

This question and others were addressed by attorney Burton Brown in a seminar called “Business Formation & Incorporation.” If you missed it, don’t

worry—it’s available online at our website.

In the future, we will offer additional seminars in business related areas, as well as those important for planning your family’s future. We provide full service planning and advice in the areas of Estate and Gift Planning, Wealth Transfer, Buy-Sell Agreements, and planning for retirement and dis-

ability.

We are also experienced in the areas of created estate plans for blended families, special-needs children, caregivers, and incentive trusts. If you want to take special care of your poodle, we can create pet trusts, too.

If you miss them, the slides are always available at our website.





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A full service law firm that gets results, efficiently.

The Law Offices of Burton A. Brown is a full service law firm with attorneys practicing in both Illinois State and Federal courts. We provide a broad range of services to meet the needs of large corporations, small businesses, and individuals across a multitude of industry groups. We provide integrated services along the following broad practice areas:

- **Business and Real Estate Transactions;**
- **Litigation and Dispute Resolution;**
- **Construction Law;**
- **Estate Planning and Wealth Management;**
- **Guardianships and Probate;**
- **Tax Deed Litigation; and**
- **Elder Law**

To contact us, please call (312) 236-5582, or e-mail info@babrownlaw.com.

Your Referrals Are Appreciated!

We appreciate your business and we appreciate your referrals. The best measure of your satisfaction with our services is your confidence in referring us to others. Thank you!

Disclaimer: This newsletter provides legal information and updates to clients and friends of our firm. This general information should not be acted upon without first determining its application to your specific situation. For further details on any article, please contact us at (312) 236-5582.

Independent Contractor Or Employee? A New Law In Illinois



Illinois has joined a growing national trend of the federal and state governments paying closer attention to how workers are classified in the construction industry.

The Illinois Employee Classification Act, which took effect on January 1, 2008, is intended to prevent employers from misclassifying employees as independent contractors. The idea is to prevent contractors from avoiding overtime, unemployment wages, payroll taxes and other costs that can be saved by calling someone an IC rather than an employee. The law applies to employers in the "construction"

industry, which includes everyone from general contractors to home decorators. It also includes people (like truckers) who move materials to and from the job site.

The new law says that anyone doing work for a contractor is now presumed to be an employee, not an IC—unless proven otherwise. The law makes employers satisfy a three-part test (control, usual course of business, independent business) to prove otherwise. There is a separate 12-part test as well, similar to the standard the IRS uses to determine IC status.

If an employee is misclassified,

there are stiff penalties: up to \$2,500 *per day* of each violation. More worrisome, if the violation is intentional, you can be hit for punitive damages or even a class C misdemeanor. Last but not least, the law allows employees and others to sue the employer, and their lawyers to recover attorney's fees.

This creates a tough situation for employers who want to keep using independent contractors. There are solutions, though. Be sure to have experienced counsel review your contracts before using independent contractors to ensure compliance with this new law!