

without priority among themselves. If the sum realized at the sale under s. 779.10 is insufficient after paying the costs of the action and the costs of making the sale to pay the liens in full they shall be paid proportionally.

**History:** 1979 c. 32 ss. 57, 92 (9); 1979 c. 110 s. 60 (12); Stats. 1979 s. 779.11.

**779.12 Sale; notice and report; deficiency judgment; writ of assistance.** (1) All sales under judgments in accordance with s. 779.10 shall be noticed, conducted and reported in the manner provided for the sale of real estate upon execution and shall be absolute and without redemption. In case such sale is confirmed, the deed given thereon shall be effectual to pass to the purchaser all that interest in the premises which is directed to be sold.

(2) If any deficiency arises upon the sale in the payment of the sums adjudged to be due to any lien claimant, the court, upon confirming the sale, may render judgment for the deficiency if demanded in the pleadings against the defendant legally liable to pay the deficiency. The judgment may be entered in the judgment and lien docket and enforced in the same manner that ordinary judgments are. The purchasers at the sale shall be entitled to a writ of assistance under s. 815.63 to obtain possession of the premises sold.

**History:** Sup. Ct. Order, 67 Wis. 2d 585, 775 (1975); 1979 c. 32 ss. 57, 92 (9); Stats. 1979 s. 779.12; 1995 a. 224.

**779.13 Satisfaction of judgment or lien; correction of errors.** (1) Every lien claimant, or the attorney who executed and filed a claim for lien on the claimant's behalf, who has received satisfaction or tender of the claim with the costs of any action brought on the claim shall, at the request of any person interested in the premises affected and on payment of the costs of satisfying the same, execute and deliver the necessary satisfaction to the interested person. On filing the satisfaction with the clerk of circuit court, the clerk of circuit court shall enter satisfaction of the claim on the judgment and lien docket. Failure to execute and deliver the satisfaction or to satisfy the lien on the judgment and lien docket shall render the person so refusing liable to pay to the person requiring the satisfaction a sum equal to one-half of the sum claimed in the claim for lien.

(2) Every lien claimant, or the attorney who executed and filed a claim for lien on the claimant's behalf, who has received from any person interested in the premises described in the claim a written statement that the premises described in the claim are not in fact the premises on which the claimant performed, furnished, or procured the labor, services, materials, plans, or specifications to which the claim relates together with a written demand that the claim be satisfied of record shall, if in fact the statement of such person about the mistaken description is true, promptly satisfy the lien claim of record at the lien claimant's expense. Failure to satisfy the lien claim of record within a reasonable time, if in fact the statement asserting the mistaken description is true, shall render the person so failing liable to pay to the person demanding the satisfaction a sum equal to one-half of the sum claimed in the claim for lien.

**History:** 1979 c. 32 ss. 57; 1979 c. 176; Stats. 1979 s. 779.13; 1995 a. 224; 2005 a. 204.

**779.135 Construction contracts, form of contract.** The following provisions in contracts for the improvement of land in this state are void:

(1) Provisions requiring any person entitled to a construction lien to waive his or her right to a construction lien or to a claim against a payment bond before he or she has been paid for the labor, services, materials, plans, or specifications that he or she performed, furnished, or procured.

(2) Provisions making the contract subject to the laws of another state or requiring that any litigation, arbitration or other dispute resolution process on the contract occur in another state.

(3) Provisions making a payment to a prime contractor from any person who does not have a contractual agreement with the subcontractor, supplier, or service provider a condition precedent

to a prime contractor's payment to a subcontractor, supplier, or service provider. This subsection does not prohibit contract provisions that may delay a payment to a subcontractor until the prime contractor receives payment from any person who does not have a contractual agreement with the subcontractor, supplier, or service provider.

**History:** 1993 a. 213 ss. 164, 165; Stats. 1993 s. 779.135; 2005 a. 204.

Section 779.135 (1) voids a contract provision that requires a subcontractor to waive its right to a construction lien before it can get paid. Section 779.05 (1) specifically allows a subcontractor who has signed a contract containing a lien waiver provision to refuse to furnish the waiver unless paid in full for the work or material to which the waiver relates. Thus a subcontractor facing a void construction lien waiver contract provision with a choice: it can either tender a lien waiver prior to being paid or refuse to do so until it is paid. *Tri-State Mechanical, Inc. v. Northland College*, 2004 WI App 100, 273 Wis. 2d 471, 681 N.W.2d 302, 03-2182.

A contractual forum selection clause requiring litigation in another state contravened sub. (2) and was void. *McCloud Construction, Inc. v. Home Depot USA, Inc.* 149 F. Supp. 2d 695 (2001).

**779.14 Public works, form of contract, bond, remedy.**

(1) **DEFINITION.** In this section, "subcontractor, supplier, or service provider" means the following:

(a) Any person who has a direct contractual relationship, expressed or implied, with the prime contractor or with any subcontractor of the prime contractor to perform, furnish, or procure labor, services, materials, plans, or specifications, except as provided in par. (b).

(b) With respect to contracts entered into under s. 84.06 (2) for highway improvements, any person who has a direct contractual relationship, expressed or implied, with the prime contractor to perform, furnish, or procure labor, services, materials, plans, or specifications.

(1e) **CONTRACT REQUIREMENTS REGARDING DUTIES OF PRIME CONTRACTOR.** (a) All contracts involving \$10,000 or more for performing, furnishing, or procuring labor, services, materials, plans, or specifications, when the same pertains to any public improvement or public work shall contain a provision for the payment by the prime contractor of all claims for labor, services, materials, plans, or specifications performed, furnished, procured, used, or consumed that pertain to the public improvement or public work.

(b) All contracts that are in excess of \$30,000, as indexed under sub. (1s), and that are for performing, furnishing, or procuring labor, services, materials, plans, or specifications for a public improvement or public work shall contain a provision under which the prime contractor agrees, to the extent practicable, to maintain a list of all subcontractors, suppliers, and service providers performing, furnishing, or procuring labor, services, materials, plans, or specifications under the contract.

(1m) **PAYMENT AND PERFORMANCE ASSURANCE REQUIREMENTS.** (c) *State contracts.* The following requirements apply to contracts with the state for performing, furnishing, or procuring labor, services, materials, plans, or specifications for a public improvement or public work:

1. In the case of a contract with a contract price exceeding \$10,000, as indexed under sub. (1s), but not exceeding \$100,000, as indexed under sub. (1s):

a. The contract shall include a provision which allows the state to make direct payment to subcontractors or to pay the prime contractor with checks that are made payable to the prime contractor and to one or more subcontractors. This subd. 1. a. does not apply to any contract entered into by the state under authority granted under chs. 84, 85 and 86. This subd. 1. a. also does not apply to any contract with a town, city, village, county or school district for the construction, improvement, extension, repair, replacement or removal of a transportation facility, as defined under s. 84.185 (1) (d); bikeway, as defined under s. 84.60 (1) (a); bridge; parking lot or airport facility.

b. The contract shall comply with written standards established by the department of administration. Written standards established under this subd. 1. b. shall include criteria for determining whether the contract requires payment or performance