



## SUMMARY OF WISCONSIN'S "SPECIAL TOOL BUILDER" LIEN LAW

In April 2006, the Wisconsin Legislature passed a "special tool builder" lien law, which allows a person or company who designs, develops, manufactures, fabricates, or assembles a "*special tool*" to create a lien on the tool to secure payment. A "*special tool*" is defined as "a tool, die, jig, gauge, gauge fixture, metal casting, pattern, forging, machinery, ferrous or nonferrous machined part, or intellectual property used for the purpose of designing, developing, manufacturing, assembling, or fabricating a metal part."

In order to create a lien, the tool builder must:

1. Permanently record on the special tool the tool builder's name, street address, city, and state, or other traceable identification.
2. File a UCC Financing Statement for the special tool.

### LIEN PRIORITY

A tool builder's lien does not automatically have priority over other liens. Top priority exists only if the tool builder "perfects" the lien by *retaining possession* of the special tool *until after* the tool builder's traceable identification is permanently recorded on the special tool *and after* the UCC Financing Statement is filed. Unlike certain other types of liens, there is no twenty (20) day grace period during which a UCC filing can be made so that the lien would be retroactive to the time possession is relinquished. Therefore, if the tool is given to the customer before the lien is properly "perfected," the tool maker runs the risk of having its lien preempted by other liens.

Once "perfected", the tool builder's lien remains valid until the tool builder is paid or the Financing Statement is terminated.

### ENFORCEMENT OF LIEN RIGHTS

If a customer or its manufacturer has possession of a tool and the customer fails to pay for it, the tool builder can enforce its lien rights by obtaining possession of the tool *provided* the necessary steps are followed. Those steps include:

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1. Giving written notice of the tool builder's lien and amount owed, together with a demand for payment. Written notice must be delivered personally or by registered mail, return receipt requested. (Publication of a notice in the newspaper is required if the post office returns a mailed notice.)
2. Waiting ninety (90) days after the customer and/or manufacturer receives written notice to see if payment will be made.

If payment is not made within ninety (90) days after delivery of proper written notice, the tool builder can obtain return of the tool without going to court, *provided* this is done without a "breach of the peace." If the tool cannot be repossessed without a "breach of the peace", then a lawsuit is required.

### **FREQUENTLY ASKED QUESTIONS FOR PERFECTING AND ENFORCING SPECIAL TOOL BUILDER'S LIENS**

#### **How does a tool builder perfect the special tool builder's lien under '779.485, Wis. Stats.?**

- A. The tool builder must permanently record, by stamping or other process, the following information on the special tool:
  - (1) Tool builder's name.
  - (2) Tool builder's street address, city, and state.
  - (3) Other traceable information (identification number or batch number).
- B. The tool builder must file a UCC Financing Statement with:
  - (1) The Wisconsin Department of Financial Institutions and
  - (2) The Department of Financial Institutions or Secretary of State's Office of the state in which the customer/collateral is located.

#### **How can a tool builder file a UCC Financing Statement?**

UCC Financing Statements can be filed "on line" in Wisconsin and in most states. The tool builder must verify all of the information required on the standard UCC-1 form before shipping the order out, as the financing statement should be filed before delivery of the tool. The information the tool builder needs in order to file the financing statement is the address, location of collateral, location of the customer, the organizational identification number for the customer, (if the customer cannot give that number or does not know that number, it can be found by searching the web site for the state in which

the customer is located), and a description of the specific tool being sent (ID# or specific trade name and description).

If the tool is simply going to be used in the machining/manufacturing process of the customer and is not an “attachment” or “fixture”, the tool builder can file the Financing Statements with the Wisconsin Department of Financial Institutions.

Additionally, a computer internet search for the state in which the customer/collateral is located should be completed to locate that individual state’s online filing procedures.

### **What if the tool is going to be attached to the customer’s property?**

In the event the tool is such that it will become “attached” or a “fixture” on the property of the customer, the tool builder must effectively file a fixture filing in Wisconsin and/or the state where the customer is located.

### **How long does the special tool builder’s lien last?**

The special tool builder’s lien lasts until amounts owed for the tool are paid in full or until the UCC Financing Statement expires. UCC Financing Statements last for five (5) years. However, in the event the customer changes addresses or changes the location of the collateral, the tool builder must re-file the financing statement in the new state within 4 months. Therefore, the tool builder should indicate that the customer must give notice of any change of address for the customer or the location of the tool. If the customer has failed to pay within five (5) years, it will be necessary to file a Financing Continuation Statement in the same locations that the original Financing Statement was filed. We advise all tool builders to not allow any payments for tools to exceed the five year period.

### **Does the special tool builder’s lien have priority?**

Yes, if properly perfected, the special tool builder’s lien has priority over any other liens that subsequently attach to the tool.

### **How can a tool builder enforce its lien rights?**

- A. In order to enforce its lien rights, the tool builder must send notice via registered mail to the customer stating that the tool builder is claiming a lien for the amount owed (or owing) for designing, developing, manufacturing, fabricating, assembling, repairing, or modifying the special tool and that the tool builder demands payment for that amount.

If the registered mail is returned undeliverable, the tool builder must publish this Notice in the newspaper of general circulation in the place where the special tool is last known to be located and the last known address of the customer.

- B. If the tool builder is not paid within ninety (90) days of the customer receiving the Notice (or within ninety days of the last publication, if applicable), the tool builder may take possession of the tool.

**How can the tool builder take possession of the tool?**

The tool builder can take possession of the tool through a non-judicial process. What this means is that the tool builder can enter into the customer's property and take the tool back **ONLY IF** the taking is done without a breach of the peace. If there is a breach of the peace, the tool builder can be sued for trespass, injury, and other damages. Tool builders should not enter onto the premises of the customer and take the tool unless the tool builder is certain that there will be no resistance from the customer.

In the event there will be resistance from the customer or in the event the tool builder believes there might be a breach of the peace, the tool builder can sue the customer for a replevin order requesting that the sheriff take possession of the tool and make the tool available for the tool builder to pick up.

Should you desire to have our office assist you in filing the necessary UCC Financing Statement or enforcing your lien rights, please call us at 262-334-3471.

**SCHLOEMER LAW FIRM, S.C.**