

IC 32-33-20

Chapter 20. Special Tool Liens

IC 32-33-20-1

"Customer"

Sec. 1. As used in this chapter, "customer" means a person who:

- (1) causes a special tool builder to design, develop, manufacture, assemble for sale, or otherwise make a special tool; or
- (2) causes an end user to use a special tool.

As added by P.L. 73-2009, SEC.4.

IC 32-33-20-2

"End user"

Sec. 2. As used in this chapter, "end user" means a person who uses a special tool as part of the person's manufacturing process.

As added by P.L. 73-2009, SEC.4.

IC 32-33-20-3

"Special tool"

Sec. 3. As used in this chapter, "special tool" means tools, dies, jigs, gauges, gauging fixtures, special machinery, cutting tools, injection molds, or metal castings used in the design, development, manufacture, assembly or fabrication of parts.

As added by P.L. 73-2009, SEC.4.

IC 32-33-20-4

"Special tool builder"

Sec. 4. As used in this chapter, "special tool builder" means a person who designs, develops, manufactures, or assembles special tools for sale.

As added by P.L. 73-2009, SEC.4.

IC 32-33-20-5

Transfer of rights, title, and interest in a special tool to an end user

Sec. 5. (a) This section does not apply if an end user retains title to and possession of a special tool.

(b) Unless otherwise agreed in writing, if a customer does not claim possession of a special tool from an end user within three (3) years after the date the special tool is last used by the end user, at the option of the end user, all rights, title, and interest in the special tool may be transferred by operation of law to the end user for the purpose of destroying the special tool.

(c) After the three (3) year period described in subsection (b) expires, if an end user chooses to have all rights, title, and interest in a special tool transferred to the end user, the end user shall send written notice by registered mail, return receipt requested:

- (1) to an address designated in writing by the customer; or

(2) if the customer has not designated an address in writing, to the customer's last known address;
that indicates the end user intends to terminate the customer's rights, title, and interest in the special tool by having all rights, title, and interest in the special tool transferred to the end user under this section.

(d) If a customer does not:

- (1) claim possession of the special tool within one hundred twenty (120) days after the date the end user receives the return receipt of the notice sent under subsection (c); or
- (2) make other arrangements with the end user for storage of the special tool within one hundred twenty (120) days after the date the end user receives the return receipt of the notice sent under subsection (c);

all rights, title, and interest of the customer in the special tool are transferred by operation of law to the end user for the purpose of destroying the special tool.

(e) This section may not be construed to:

- (1) affect a right of a customer under a:
 - (A) federal patent or copyright law; or
 - (B) state or federal law concerning unfair competition; or
- (2) grant a customer rights, title, or interest in a special tool.

As added by P.L. 73-2009, SEC.4. Amended by P.L. 1-2010, SEC.130.

IC 32-33-20-6

End user lien on a special tool

Sec. 6. (a) An end user has a lien, dependent on possession, on any special tool in the end user's possession belonging to a customer for the amount due the end user from the customer for:

- (1) metal fabrication work performed with the special tool; or
- (2) making or improving the special tool.

(b) An end user may retain possession of the special tool until the amount due is paid.

As added by P.L. 73-2009, SEC.4.

IC 32-33-20-7

Notice to customer of end user lien

Sec. 7. (a) Before enforcing a lien created under section 6 of this chapter, the end user must give written notice to the customer that is:

- (1) delivered personally; or
- (2) sent by registered mail to the last known address of the customer.

(b) The notice required under subsection (a) must:

- (1) state that a lien is claimed for the amount due for:
 - (A) metal fabrication work; or
 - (B) making or improving the special tool; and
- (2) include a demand for payment.

As added by P.L. 73-2009, SEC.4.

IC 32-33-20-8

Sale of special tool at public auction

Sec. 8. If an end user has not been paid the amount due within ninety (90) days after the date the notice is received by the customer as provided in section 7 of this chapter, the end user may sell the special tool at a public auction if:

- (1) the special tool is still in the end user's possession; and
- (2) the end user complies with section 9 of this chapter.

As added by P.L. 73-2009, SEC. 4.

IC 32-33-20-9

Notice to customer of special tool sale

Sec. 9. (a) Before an end user may sell a special tool, the end user must notify:

- (1) the customer; and
- (2) any person whose security interest in the special tool is perfected by filing;

by registered mail, return receipt requested, that the end user intends to sell the special tool.

(b) The notice required under subsection (a) must include the following information:

- (1) The end user's intention to sell the special tool sixty (60) days after the date the customer receives the notice.
- (2) A description of the special tool to be sold.
- (3) The date, time, and place of the sale.
- (4) An itemized statement for the amount due.
- (5) A statement that the product produced by the special tool complies with the quality and quantity ordered.

(c) If:

- (1) there is no return of the receipt of the mailing; or
- (2) the postal service returns the notice as being undeliverable;

the end user shall publish notice of the end user's intention to sell the special tool in a newspaper of general circulation in the place where the special tool is being held for sale by the end user and in the place of the customer's last known address. The notice must include a description of the special tool and the name of the customer.

(d) If a customer disagrees that the product produced by the special tool complies with the quality and quantity ordered, the customer shall notify the end user in writing by registered mail, return receipt requested, that the product produced by the special tool did not meet the quality or quantity of product ordered. An end user who receives a notice under this subsection may not sell the special tool until the dispute is resolved.

As added by P.L. 73-2009, SEC. 4.

IC 32-33-20-10

Proceeds of special tool sale

Sec. 10. (a) The proceeds of a sale of a special tool under section 8 of this chapter shall be paid as follows:

(1) The proceeds shall be paid first to the prior lienholder who has a perfected lien in an amount sufficient to satisfy the lienholder's interest.

(2) Any remainder after payment is made under subdivision (1) shall be paid to the end user who possesses a lien under this chapter in an amount sufficient to extinguish that interest.

(3) Any remainder after payment is made under subdivision (2) shall be paid to the customer.

(b) A sale may not be made under this chapter if it would violate a right a customer has under federal patent or copyright law.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-11

Special tool builder security interest on a special tool

Sec. 11. (a) A special tool builder has an unperfected purchase money security interest under IC 26-1-9.1 on a special tool that the special tool builder fabricates, repairs, or modifies.

(b) The amount of the lien is the amount that a customer or end user owes the special tool builder for the fabrication, repair, or modification of the special tool.

(c) A special tool builder may perfect its purchase money security interest in a special tool by filing a financing statement in accordance with IC 26-1-9.1-317(e).

As added by P.L.73-2009, SEC.4.

IC 32-33-20-12

Enforcement of special tool builder lien

Sec. 12. To enforce a lien that attaches under section 11 of this chapter, a special tool builder must give notice of the lien in writing to the customer and the end user. The notice must:

(1) be delivered personally or by certified mail, return receipt requested, to the last known address of the customer and to the last known address of the end user; and

(2) state:

(A) that a lien is claimed;

(B) the amount that the special tool builder claims it is owed for fabrication, repair, or modification of the special tool; and

(C) a demand for payment.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-13

Special tool builder right to possession of a special tool

Sec. 13. (a) Subject to section 14 of this chapter, if a special tool builder has not been paid the amount claimed in the notice required under section 12 of this chapter within ninety (90) days after the date the notice required under section 12 of this chapter has been received by the customer and the end user, the special tool builder:

(1) has a right to possession of the special tool; and

(2) may enforce the right to possession of the special tool by judgment, foreclosure, or any available judicial procedure.

(b) The special tool builder may do one (1) or more of the following:

(1) Take possession of the special tool. The special tool builder may take possession without judicial process if possession can be taken without breach of the peace.

(2) Sell the special tool in a public auction.

(c) A special tool builder is entitled to court costs and reasonable attorney's fees for expenses incurred under this section.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-14

Notice by special tool builder; sale of a special tool

Sec. 14. (a) Before a special tool builder may enforce its security interest in a special tool for which the special tool builder claims a security interest under this chapter and for which the required notice has been sent under section 12 of this chapter, the special tool builder must notify the customer, the end user, and all other persons that have a perfected security interest in the special tool by certified mail, return receipt requested, of all the following:

(1) The special tool builder's intention to sell the special tool sixty (60) days after the receipt of the notice.

(2) A description of the special tool to be sold.

(3) The last known location of the special tool.

(4) The time and place of the sale.

(5) An itemized statement of the amount due.

(6) A statement that the special tool was accepted and the acceptance was not subsequently rejected.

(b) If:

(1) there is no return of the receipt of the mailing; or

(2) the postal service returns the notice as being undeliverable; the special tool builder shall publish notice of the special tool builder's intention to sell the special tool in a newspaper of general circulation in the place where the special tool was last known to be located, in the place of the customer's last known address, and in the place of the end user's last known address. The published notice must include a description of the special tool and the name of the customer and the end user.

(c) If a customer or an end user against whom the lien is asserted disagrees that the special tool was accepted or that the acceptance was not subsequently rejected, the customer or end user shall notify the special tool builder in writing by certified mail, return receipt requested, that the special tool was not accepted or that the acceptance was subsequently rejected. A special tool builder who receives notice under this subsection may not sell the special tool until the dispute is resolved.

As added by P.L.73-2009, SEC.4.

IC 32-33-20-15

Proceeds of special tool sale

Sec. 15. (a) The proceeds of a sale of a special tool under section 13 of this chapter shall be paid as follows:

(1) The proceeds shall be paid first to the prior lienholder who has a perfected lien in an amount sufficient to satisfy the lienholder's interest.

(2) Any remainder after payment is made under subdivision (1) shall be paid to the special tool builder who possesses a lien under this chapter in an amount sufficient to extinguish that interest.

(3) Any remainder after payment is made under subdivision (2) shall be paid to the customer.

(b) A sale may not be made or possession may not be obtained under section 13 of this chapter if the sale or possession would violate any right a customer or an end user has under federal patent, bankruptcy, or copyright law.

As added by P.L. 73-2009, SEC.4.