

Animal Law

The newsletter of the Illinois State Bar Association's Section on Animal Law

Dogs in cars—The Amended Humane Care for Animals Act

BY MELISSA ANNE MAYE

Most dogs love to ride in cars, and most dog owners enjoy taking their canine companions with them to run errands, go to the park, or just spend time together. As warmer weather approaches, people on social media frequently begin making rash

comments to the effect of, "If I see your dog in a hot parked car this summer, I will smash your window and save your dog." As attorneys, we are frequently asked, "What actions can a concerned person can
Continued on next page

Dogs in cars—The Amended Humane Care for Animals Act
1

Emotional support animals on campus
1

On the Listserve – "B-a-a-a-ning Goats"
5

Upcoming CLE programs
6

Emotional support animals on campus

BY ROBERT L. MILLER

A change is occurring at many university campuses across the country. Over the last few years, students have been requesting, with increasing frequency, permission from campus authorities to bring an emotional support animal to live in their residence hall or university owned apartment. Such requests have included dogs, guinea pigs, iguanas and snakes. For students who have emotional difficulties or anxieties, the benefits of having an assistance animal are real, and so are the

challenges for universities.

Many universities have enforced longstanding "no pet" policies in campus housing with the possible exception of tropical fish. Housing officials often have concerns animals may damage rooms and apartments, trigger allergies or phobias of other students, escape and multiply, or bite someone. However, these policies may not be in alignment with the needs of some students to have an emotional support

Continued on next page

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Dogs in cars—The Amended Humane Care for Animals Act

CONTINUED FROM PAGE 1

take if he or she sees an animal locked in a parked car on a hot day?” The answer, much to the dismay of many animal advocates, is emphatically not “smash out the car window and save the animal.” Although a person might feel that it’s worth taking the risk to save the dog, smashing in someone’s car window constitutes Criminal Damage to Property. 720 ILCS 5/21-1(a) provides:

Criminal damage to property.

(a) A person commits criminal damage to property when he or she:

(1) knowingly damages any property of another;

There is no exception for “good intentions.” A person who damages property faces a Class A misdemeanor if the property damages are less than \$300.00; however, if the property damages are valued at between \$300-\$10,000.00, the perpetrator faces a Class 4 felony conviction.

Clients should be advised not to break the window of a car if they see a dog or cat in distress. Instead, the client should call 911. Presently, only two states – Tennessee and Wisconsin – have passed “good Samaritan” laws that allow a person to break a car window to save a pet. In Illinois, however, only public officials, such as law enforcement, public safety and humane officers, can legally break into a car to rescue an animal in distress.

The good news, however, is that in 2015 the General Assembly amended the Humane Care for Animals Act to include leaving companion animals in unsafe conditions. 510 ILCS 70/3.01 provides: “No owner of a dog or cat that is a companion animal may expose the dog or cat in a manner that places the dog or cat in a life-threatening situation for a prolonged period of time in extreme heat or cold conditions that results in injury to or death of the animal.” The first offense is a Class A misdemeanor, and a second or subsequent offense is a Class 4 felony.

However, the amended statute is somewhat vague. For example:

Who is an “owner”? The Act defines “owner” as

“any person who (a) has a right of property in an animal, (b) keeps or harbors an animal, (c) has an animal in his care, or (d) acts as custodian of an animal.” Would this definition be broad enough to include a person who wrongfully took an animal from its legal owner? So, for example, if a couple broke up and one person vengefully took the other person’s dog or cat and left it in a hot car and the animal died, could that person be prosecuted as an “owner” under the statute?

How long is a “prolonged period of time”?

What constitutes “extreme heat or cold conditions”?

What if the animal is temporarily in distress, but ultimately recovers? Has an offense been committed?

Why limit the statute to only dogs and cats? Other pets could also suffer serious distress if left in a hot car.

Ultimately, there are two potential criminal consequences in a “hot car” scenario: the criminal penalties faced by the owner of the pet who leaves the animal in the car, and the equally or possibly more severe criminal penalties faced by an unauthorized animal rescuer if he or she breaks out the car window to save an animal. Well-intentioned rescuers need to be aware that only the police, public safety, or humane officers have the legal right in Illinois to break into a car and rescue an animal in distress. These clients, no matter how ardently they love animals, should be advised to limit their involvement to dialing 911 and reporting the matter to law enforcement. ■

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Published at least four times per year. Annual subscription rates for ISBA members: \$25.

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Emotional support animals on campus

CONTINUED FROM PAGE 1

animal in their living space.

There are two important legal questions that universities must consider. The first is whether the Fair Housing Act (FHA) applies to campus housing, and an equally important question is whether the Rehabilitation Act of 1973 provides students the accommodation of having an emotional support animal on campus. If the answer to the first question is yes, then the living space issue is resolved because the Federal Department of Housing and Urban Development has stated that reasonable accommodation requests may include emotional support animals.¹ If the answer to the second question is yes, then entities subject to the Rehabilitation Act may see requests for emotional support animals in the workplace and common areas.

University and college students are able to seek reasonable accommodations for their disability under section 504 of the Rehabilitation Act of 1973 (Rehab Act).² The Rehab Act, which prohibits acts of discrimination by programs that receive federal financial assistance, aligns in many ways with a more well-known disability law, the Americans with Disabilities Act (ADA), which prohibits discrimination by a public entity.³ However, as it pertains to emotional support animals, there appears to be some daylight between these two laws which creates some uncertainty.

The ADA is clear enough in that it requires public entities to immediately accommodate persons who utilize trained service animals.⁴ Under the ADA, “[s]ervice animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.”⁵ There are only two exceptions that permit a public entity to refuse to accept a service dog: (1) when

the animal is out of control and the handler cannot control it, or (2) the animal is not housebroken.⁶

The ADA expressly excludes all animals other than dogs (and miniature horses) from the definition of service animals. If it did not, society would be left to deal with very serious and complicated questions. For example, if a boa constrictor served as a service animal under the ADA, places of public accommodation—restaurants, theaters, trains, etc.—must permit the animal to accompany its owner. The ADA exceptions may not be useful because some animals do not appear unruly or dangerous at first glance.

Unlike the ADA, the Rehab Act does not define service animal and does not address the possibility that students may need emotional support animals. The Rehab Act does clearly state that students with disabilities cannot be excluded from any program or activity that receives federal financial assistance.⁷ The Rehab Act further states that campus housing must be accessible to students and cannot result in discriminatory treatment based on a disability.⁸ Accordingly, because a failure to provide reasonable accommodations can support a claim of discriminatory treatment, and because the Rehab Act does not address or exclude emotional support animals, it is possible that a student is entitled to this accommodation assuming the request is reasonable. At least one court has held that a student may be able to state a failure to accommodate claim under the Rehab Act, even though the claim could not be made under the ADA.⁹

If the Rehab Act is broader than the ADA in this instance, students may be able to request the use of an emotional support animal in both their living space and other spaces on campus, including spaces where an ADA defined service animal is permitted. This would include public spaces and the classroom. Each request would be independently assessed so it is unlikely that every classroom would become a

menagerie of exotic animals, but with the increasing number of students making such requests, it is timely for state and federal legislators to address the issue of emotional support animals in more detail.

In drafting the Rehab Act, Congress likely did not consider emotional support animals as a potential disability accommodation, and new regulations could serve to identify whether such animals are permitted as an accommodation. If a university must accommodate animals in residence halls, it would be helpful to have a list of permitted animals or additional parameters regarding the suitability of a particular animal. Without this help, universities must assess animals that have been prescribed by a physician or counselor on a case by case basis to determine whether to permit the accommodation. Assuming that a university has discretion to permit or deny exotic animals, trying to determine whether an iguana is too big for a small residence hall room can create inconsistent results and unnecessary turmoil and delay for the student. As seen below, under the Fair Housing Act, a housing provider is likely limited in its assessment regarding the suitability of emotional support animals.

Another important piece of this puzzle is the Department of Housing and Urban Development (HUD) and its application of the FHA to university campuses. The FHA applies to dwellings which includes accommodations that are transitory in nature such as migrant farmworker housing, and while the FHA does not specifically include university housing in its definition of a dwelling, at least one court has ruled that campus housing does fall under the purview of HUD and the FHA.¹⁰ In addition, HUD has firmly posited that campus housing is subject to its authority.¹¹ Consequently, HUD’s definition of assistance animal likely determines whether students can have emotional support animals in their residence hall rooms.

When a housing provider is presented

with a request for an emotional support animal accommodation, it can consider whether the specific animal, not the breed or variety, is a direct threat to the safety of others, and it can consider whether the specific animal is a threat to cause substantial damage to the property of others.¹² However, the housing provider must base its determination on actual evidence and not speculation.¹³ Presumably, this means that bad behavior must occur and be observed before a denial can be made. In addition, it is noteworthy that the HUD notice states that there are no size or weight limits on assistance animals.¹⁴ It is also noteworthy that residence hall rooms are generally not very large.

Consistent with a notice issued to its field offices in 2013, HUD has issued charges of discrimination against universities and against individual employees of those campuses who have refused to permit emotional support animals.¹⁵ The effect of HUD's enforcement activities has had a substantial impact

on campus decision-makers tasked with accommodating students with disabilities while they also try to balance the impact of such requests on the campus community.

While requests for emotional support animals on campuses are not new, the frequency and variety of these requests has been growing over the last several years. Universities are generally very welcoming of students with disabilities, and campuses are trying to navigate this complex issue without the benefit of clear legal guidelines. Having more clearly defined rules would also be very helpful for a young student contemplating leaving home for the first time who wonders whether her hamster, cat, or other beloved and helpful animal will be going with her to college or staying home. ■

Robert L. Miller is general counsel at Eastern Illinois University.

1. U.S. Department of Housing and Urban Development FHEO Notice: FHEO-2013-1, issued April 25, 2013.
2. 29 U.S.C. §794.

3. *CTL v. Ashland School District*, 743 F.3d 524 (7th Cir. 2014); Americans with Disabilities Act of 1990 as amended 42 U.S.C. 12132.

4. 28 C.F.R. §35.136(a) and (b).

5. 28 C.F.R. §34.104 (emphasis added).

6. *Id.*

7. 34 C.F.R. 104.4(a).

8. 34 C.F.R. 104.45.

9. *Velzen v. Grand Valley State Univ.*, 902 F.Supp.2d 1038, 1047 (W.D. Mich. 2012), plaintiff sought accommodations to the no pet policy so she could live with her prescribed emotional support animal, a guinea pig named Blanca, to assist with her depression.

10. *United States v. Univ. of Neb. at Kearney*, 940 F.Supp.2d 974, 983 (D. Neb. 2013).

11. U.S. Department of Housing and Urban Development FHEO Notice: FHEO-2013-1, issued April 25, 2013.

12. *Id.*

13. *Id.*

14. *Id.*

15. *U.S. Department of Housing and Urban Development v. Kent State Univ. et al.*, FHEO Nos. 05-10-0670-8, 05-10-0669-8 (August 1, 2014).

(HUD charged the university and four employees with violations of the FHA due to the university's refusal to permit an emotional support animal in a campus-style apartment. HUD seeks \$16,000 from each defendant.)

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On the Listserve – “B-a-a-a-a-ning Goats”

BY MELISSA A. MAYE

Practitioners of Animal Law often comment upon the fact that Animal Law is interesting because it touches so many diverse areas of the law. This fact was highlighted in a discussion initiated on the ISBA’s Main Discussion Group by Kurt R. Dittmer regarding a family who had recently moved into a local village, bringing their goats with them.

Apparently, the newcomers were unaware that bringing goats into the village was so obviously wrong that village officials had never bothered to pass an ordinance prohibiting it. The village, despite being confronted with 71 years of evidence from the Cubs that banning goats is generally a bad idea, insisted that there must be some legal way to keep the goats out. Although Mr. Dittmer’s possessed an admitted childhood affinity for goats, he gamely sought assistance from the listserve regarding, among other issues, whether the goats would be “grandfathered in” as a result of the village passing an ordinance prohibiting their presence following the *fait accompli* of their arrival.

After Mr. Dittmer had endured some unavoidable yet good-natured ribbing from fellow attorneys, Sherwin D. Abrams posted the following cases:

City of Peoria v. Ohl, 262 Ill. App. 3d 522 (3d Dist. 1994) – Zoning ordinance prohibiting farm animals, including members of the swine family, from area zoned residential did not preclude property owner within residential zone from keeping pet Vietnamese pot-bellied pig; ordinance did not prohibit keeping of farm animals, but only applied to keeping of animals for farm purposes.

Vill. Of Glenview v. Ramaker, 282 Ill. App. 3d 368 (1st Dist. 1996) – Village resident who kept pig as household pet was served with complaint for violating village ordinance prohibiting residents from keeping any swine within village. The court found resident to be guilty of violating ordinance.

(Perhaps the fact that one ordinance was

in Cook County, and the other ordinance in the more rural 3rd District made the difference...?)

City of Rolling Meadows v. Kyle, 145 Ill. App. 3d 168, 174 (1st Dist. 1986) – Here, the evidence shows that Yondi is a lesser spotted white nose quennon monkey, registered as an endangered species pursuant to the Endangered Species Act (16 U.S.C. Sect. 1531 *et seq.* 1982)), born in captivity in Kenya, Africa, and raised by defendant since the age of two days. Yondi is now approximately 15 years old and weighs six pounds. The uncontroverted evidence is that Yondi makes intelligent communications through a variety of vocalizations and gestures, and that she is toilet trained. She receives the same inoculation and vaccinations as child, including tuberculosis, polio, diphtheria and booster shots. Yondi has accompanied defendant and her husband on trips to Europe, Asia, Africa and Latin America. The record also shows that Yondi is a highly sociable animal and interacts equally well with people and animals. Moreover, the record is devoid of any evidence that Yondi poses a danger to the community.

And finally:

65 ILCS 5/11-13-1. In all ordinances passed under the authority of this Division 13, due allowance shall be made for existing conditions, the conservation of property values, the direction of building development to the best advantage of the entire municipality and the uses to which the property is devoted at the time of the enactment of such an ordinance. The powers conferred by this Division 13 shall not be exercised so as to deprive the owner of any existing property of its use or maintenance for the purpose to which it is then lawfully devoted, but provisions may be made for the gradual elimination of uses, buildings and structures which are incompatible with the character of the districts in which they are made or located, including, without being limited thereto, provisions (a) for the elimination of such

uses of unimproved lands or lot areas when the existing rights of the persons in possession thereof are terminated or when the uses to which they are devoted are discontinued; (b) for the elimination of uses to which such buildings and structures are devoted, if they are adaptable for permitted usages; and (c) for the elimination of such buildings and the structures when they are destroyed or damaged in major part, or when they have reached the age fixed by the corporate authorities of the municipality as the normal useful life of such buildings or structures.

In conclusion, the consensus of opinion was, as so often occurs in law, “That’s a really good question.” No definitive consensus was reached. The village is still looking into it. We look forward to an update from Mr. Dittmer regarding the plight of the village goats. ■

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What Business Lawyers Need to Know About Licenses, Part 1. Presented by the ISBA. 12-1 pm.

Thursday, 07/07/16- Webinar—
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Friday, 07/08/16- Teleseminar—What Business Lawyers Need to Know About Licenses, Part 2. Presented by the ISBA. 12-1 pm.

Tuesday, 07/12/16- Teleseminar—
Income Tax Issues for Estate Planners, Part 1. Presented by the ISBA. 12-1 pm.

Wednesday, 07/13/16- Teleseminar—
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Thursday, 07/14/16- Webinar—
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Friday, 07/15/16—The Ethics of Creating Attorney-Client Relationships in the Electronic Age. Presented by the ISBA. 12-1 pm.

Tuesday, 07/19/16- Teleseminar—
Tricks and Traps in the Assumption of Liabilities in Transactions. Presented by the ISBA. 12-1 pm.

Thursday, 07/21/16- Teleseminar—
Drafting Sales Agents' Agreements. Presented by the ISBA. 12-1 pm.

Thursday, 07/21/16- Webinar—
Introduction to Boolean (Keyword)

Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Friday, 07/22/16- Teleseminar LIVE REPLAY—Ethics of Going Into Business With Clients. Presented by the ISBA. 12-1 pm.

Tuesday, 07/26/16- Teleseminar—
Buying and Selling Distressed Real Estate, Part 1. Presented by the ISBA. 12-1 pm.

Wednesday, 07/27/16- Teleseminar—
Buying and Selling Distressed Real Estate, Part 2. Presented by the ISBA. 12-1 pm.

August

Tuesday, 08/02/16- Teleseminar—Due Diligence in Real Estate Acquisitions. Presented by the ISBA. 12-1 pm.

Wednesday, 08/03/16- Teleseminar LIVE REPLAY—2016 UCC Update – Secured Transactions, Notes, Leases, Sales & More. Presented by the ISBA. 12-1 pm.

Thursday, 08/04/16- Webinar—
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Monday, 08/08/16- Teleseminar LIVE REPLAY— Post-Closing Adjustments & Issues in Business Transactions. Presented by the ISBA. 12-1 pm.

Tuesday, 08/09/16- Teleseminar—
Charging Orders in Business Transactions. Presented by the ISBA. 12-1 pm.

Wednesday, 08/10/16- Teleseminar—
Role of Public Benefits in Estate Planning. Presented by the ISBA. 12-1 pm.

Thursday, 08/11/16- Webinar—
Advanced Tips for Enhanced Legal

Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Tuesday, 08/16/16- Teleseminar—Real Estate Finance, Part 1. Presented by the ISBA. 12-1 pm.

Wednesday, 08/17/16- Teleseminar—
Real Estate Finance, Part 2. Presented by the ISBA. 12-1 pm.

Tuesday, 08/23/16- Teleseminar—
Drafting Employment Separation Agreements. Presented by the ISBA. 12-1 pm.

Wednesday, 08/24/16- Teleseminar—
Sales of Family Businesses: An Interdisciplinary Approach, Part 1. Presented by the ISBA. 12-1 pm.

Thursday, 08/25/16- Teleseminar—
Sales of Family Businesses: An Interdisciplinary Approach, Part 2. Presented by the ISBA. 12-1 pm.

Thursday, 08/25/16- Webinar—
Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Wednesday, 08/31/16- Teleseminar—
Lawyer Ethics and Disputes with Clients. Presented by the ISBA. 12-1 pm.

September

Thursday, 09/01/16- Webinar—
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 09/08/16- Webinar—
Advanced Tips for Enhanced Legal Research on Fastcase. Presented by

the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 09/08/16- Webcast— Monetizing Intellectual Property. Presented by IP. 12:30 p.m. – 2:15 p.m.

Wednesday, 09/14/16- Webcast—Hot Topic: Union Dues/Fair Share—Friedrichs v. California Teachers Association. Presented by Labor and Employment. 10:00 a.m. – 12:00 p.m.

Thursday, 09/15/16- CRO—Family Law Table Clinic Series (Series 1). Presented by Family Law. 8:30 am – 3:10 pm.

Friday, 09-16-06- CRO and Live Webcast—The Fear Factor: How Good Lawyers Get Into (and avoid) Bad Ethical Trouble. Master Series Presented by the ISBA—WILL NOT BE RECORDED OR ARCHIVED. 9:00 a.m. – 12:15 p.m.

Thursday, 09-22-16- Webcast—Family Law Changes and Mediation Practice. Presented by Women and the Law. 11:00 a.m. – 12:00 p.m.

Thursday, 09/22/16- CRO and Webcast—Recent Developments in E-Discovery in Litigation. Presented by Antitrust. 1:00- 5:15 pm.

Thursday, 09/22/16- Webinar—Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Monday, 09/26/16- Friday, 09/30/16—CRO—40 Hour Mediation/Arbitration Training Master Series. Presented by the ISBA. 8:30 am – 5:45 pm each day.

Friday, 09-30-16—DoubleTree Springfield—Solo and Small Firm Practice Institute Series. Title TBD. Presented by GP, SSF. ALL DAY.

October

Thursday, 10/06/16- Webinar—Introduction to Legal Research on

Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Thursday, 10-06-16—Webcast—Nuts and Bolts of EEOC Practice. Presented by Labor and Employment. 11:00 a.m. – 12:30 p.m.

Monday, 10-10-16—CRO and Fairview Heights, Four Points Sheraton—What You Need to Know to Practice before the IWCC. Presented by Workers Compensation. 9:00 a.m. – 4:00 p.m.

Thursday, 10/13/16- Webinar—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Wednesday, 10-19-16- CRO and Live Webcast—From Legal Practice to What's Next: The Boomer-Lawyer's Guide to Smooth Career Transition. Presented by Senior Lawyers. 12:00 p.m. to 5:00 p.m.

Wednesday, 10-19-16—DoubleTree Bloomington—Real Estate Law Update 2016. Presented by Real Estate. 8:15 a.m. – 4:45 p.m.

Thursday, 10/20/16- Webinar—Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Friday, 10/21/16- Galena, Eagle Ridge Resort—Obtaining a Judgement and Collections Issues. Presented by: Commercial Banking, Collections, and Bankruptcy. 8:50 am - 4:30 pm.

Friday, 10-28-16—CRO—Solo and Small Firm Practice Institute Series. Title TBD. Presented by GP, SSF. ALL DAY.

November

Wednesday, 11-02-16—Linder Conference Center, Lombard—Real Estate Law Update 2016. Presented by Real Estate.

8:15 a.m. – 4:45 p.m.

Thursday, 11/03/16- Webinar—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm

Thursday, 11/10/16- Webinar—Advanced Tips for Enhanced Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm.

Friday, 11-11-16—CRO and live Webcast—Motion Practice from Pretrial through Post Trial. Presented by Civil Practice and Procedure. 8:50 a.m. - 4:00 p.m.

Thursday, 11/17/16- CRO—Family Law Table Clinic Series (Series 2). Presented by Family Law. 8:30 am – 3:10 pm.

Thursday, 11/17/16- Webinar—Introduction to Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members Only. 12:00- 1:00 pm ■



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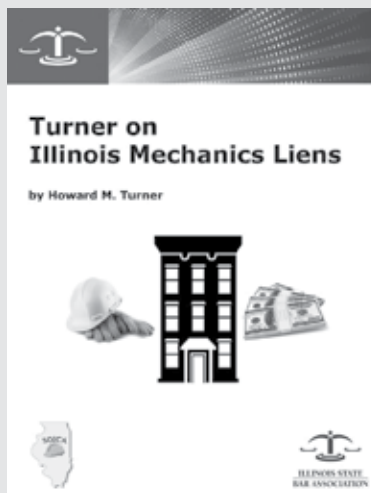
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