

FIRST REGULAR SESSION

HOUSE BILL NO. 595

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHOELLER.

1698L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 429.005, 429.015, 429.210, and 429.230, RSMo, and to enact in lieu thereof five new sections relating to statutory liens against real estate.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 429.005, 429.015, 429.210, and 429.230, RSMo, are repealed and
2 five new sections enacted in lieu thereof, to be known as sections 429.005, 429.015, 429.210,
3 429.230, and 429.231, to read as follows:

429.005. 1. An agreement by an original contractor, subcontractor, supplier or laborer
2 to waive any right to enforce or claim any lien authorized under this chapter, where the
3 agreement is in anticipation of and in consideration for the awarding of a contract or subcontract
4 to perform work or supply materials for an improvement upon real property, whether expressly
5 stated or implied, is against public policy and shall be unenforceable. The provisions of this
6 section shall not prohibit subordination or release of a lien authorized under this chapter.

7 2. Nothing contained in this section shall be construed to prohibit contractual provisions
8 requiring lien waivers as a condition for payment.

9 **3. All lien waivers, whether provided for in an agreement or otherwise, shall be**
10 **subject to the following terms:**

11 **(1) No oral or written statement purporting to waive, release, subordinate, impair,**
12 **or otherwise adversely affect any right to enforce or claim any lien authorized under this**
13 **chapter shall be enforceable unless it is under a waiver and release as prescribed in this**
14 **section;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (2) The waiver and release given by any claimant under this section shall be null,
16 void, and unenforceable as against public policy unless it follows substantially the
17 following forms in the following circumstances:

18 (a) If the claimant is required to execute a waiver and release in exchange for, or
19 in order to induce the payment of a progress payment and the claimant has not, in fact,
20 been paid in exchange for the waiver and release or is given a single payee check or joint
21 payee check in exchange for the waiver and release, the waiver and release shall follow
22 substantially the following form:

23 **CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT**

24

25 Upon receipt by the undersigned of a check, electronic transfer of funds, or other form of
26 payment from (insert name of person making payment or transfer of funds) in
27 the sum of \$...... (insert amount) payable to (insert name of person receiving
28 payment or funds) and when the payment or transfer of funds has become final, this
29 document shall become effective to release any mechanic's lien right the undersigned has
30 on the job of (insert name of owner) located at (insert job
31 description), but only to the extent of the payment received. Before any recipient of this
32 document relies on it, such party should verify evidence of payment to the undersigned.

33 Dated:

34 (Company name)

35 By: (signature)

36 Title:

37 (b) If the claimant is required to execute a waiver and release in exchange for, or
38 in order to induce payment of a progress payment and the claimant asserts in the waiver
39 it has, in fact, been paid the progress payment, the waiver and release shall follow
40 substantially the following form:

41 **UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT**

42

43 The undersigned has been paid and has received a progress payment in the sum of \$......
44 (insert amount) for work, labor, services, equipment, and/or material furnished to
45 (insert name of customer) on the job of (insert name of owner) located at
46 (insert job description) and does hereby release any mechanic's lien right that
47 the undersigned has on the above-referenced job but only to the extent of the payment
48 received.

49 Dated:

50 (Company name)

51 **By:** (signature)

52 **Title:**

53

54 **Each conditional waiver shall contain the following language in a type at least as large as**
55 **the largest type otherwise on the document:**

56 **NOTICE: THIS DOCUMENT WAIVES LIEN RIGHTS UNCONDITIONALLY**
57 **AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS.**
58 **THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT EVEN IF**
59 **YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A**
60 **CONDITIONAL RELEASE FORM.**

61 **(c) If the claimant is required to execute a waiver and release in exchange for, or**
62 **in order to induce the payment of a final payment and the claimant has not, in fact, been**
63 **paid in exchange for the waiver and release or is given a single payee check or joint payee**
64 **check in exchange for the waiver and release, the waiver and release shall follow**
65 **substantially the following form:**

66 **CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

67

68 **Upon receipt by the undersigned of a check, electronic transfer of funds, or other form of**
69 **payment from (insert name of person making payment or transfer of funds) in**
70 **the sum of \$..... (insert amount) payable to (insert name of person receiving**
71 **payment or funds) and when the payment or transfer of funds has become final, this**
72 **document shall become effective to release any mechanic's lien right the undersigned has**
73 **on the job of (insert name of owner) located at (insert job**
74 **description). This release covers the final payment to the undersigned for all labor,**
75 **services, equipment, or material furnished or provided on the job, except for disputed**
76 **claims in the amount of \$..... (insert amount). Before any recipient of this document**
77 **relies on it, the party should verify evidence of payment to the undersigned.**

78 **Dated:**

79 **(Company name)**

80 **By:** (signature)

81 **Title:**

82 **(d) If the claimant is required to execute a waiver and release in exchange for, or**
83 **in order to induce payment of a final payment and the claimant asserts in the waiver it has,**
84 **in fact, been paid the final payment, the waiver and release shall follow substantially the**
85 **following form:**

86 **UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

87

88 **The undersigned has been paid in full for all work, labor, services, equipment, and/or**
89 **material furnished or provided to (insert name of customer) on the job of**
90 **..... (insert name of owner) located at (insert job description) and does**
91 **hereby waive and release any right to a mechanic's lien on the job, except for disputed**
92 **claims in the amount of \$..... (insert amount).**

93 **Dated:**

94 **(Company name)**

95 **By: (signature)**

96 **Title:**

97

98 **Each unconditional waiver in this provision shall contain the following language in a type**
99 **at least as large as the largest type otherwise on the document:**

100 **NOTICE: THIS DOCUMENT WAIVES LIEN RIGHTS UNCONDITIONALLY**
101 **AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS.**
102 **THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT EVEN IF**
103 **YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A**
104 **CONDITIONAL RELEASE FORM.**

105 **4. This section shall become effective January 1, 2010.**

429.015. 1. Every registered architect or corporation registered to practice architecture,
2 every registered professional engineer or corporation registered to practice professional
3 engineering, every registered landscape architect or corporation registered to practice landscape
4 architecture, and every registered land surveyor or corporation registered to practice land
5 surveying, who does any landscape architectural, architectural, engineering or land surveying
6 work upon or performs any landscape architectural, architectural, engineering or land surveying
7 service directly connected with the erection or repair of any building or other improvement upon
8 land under or by virtue of any contract with the owner or lessee thereof, or such owner's or
9 lessee's agent, trustee, contractor or subcontractor, or without a contract if ordered by a city,
10 town, village or county having a charter form of government to abate the conditions that caused
11 a structure on that property to be deemed a dangerous building under local ordinances pursuant
12 to section 67.410, RSMo, upon complying with the provisions of this chapter, shall have for such
13 person's landscape architectural, architectural, engineering or land surveying work or service so
14 done or performed, a lien upon the building or other improvements and upon the land belonging
15 to the owner or lessee on which the building or improvements are situated, to the extent of [one
16 acre] **three acres**. If the building or other improvement is upon any lot of land in any town, city
17 or village, then the lien shall be upon such building or other improvements, and the lot or land

18 upon which the building or other improvements are situated, to secure the payment for the
19 landscape architectural, architectural, engineering or land surveying work or service so done or
20 performed. For purposes of this section, a corporation engaged in the practice of architecture,
21 engineering, landscape architecture, or land surveying, shall be deemed to be registered if the
22 corporation itself is registered under the laws of this state to practice architecture, engineering
23 or land surveying.

24 2. Every mechanic or other person who shall do or perform any work or labor upon or
25 furnish any material or machinery for the digging of a well to obtain water under or by virtue of
26 any contract with the owner or lessee thereof, or such owner's or lessee's agent, trustee,
27 contractor or subcontractor, upon complying with the provisions of sections 429.010 to 429.340
28 shall have for such person's work or labor done, or materials or machinery furnished, a lien upon
29 the land belonging to such owner or lessee on which the same are situated, to the extent of [one
30 acre] **three acres**, to secure the payment of such work or labor done, or materials or machinery
31 furnished as aforesaid.

32 3. Every mechanic or other person who shall do or perform any work or labor upon, or
33 furnish any material, fixtures, engine, boiler or machinery, for the purpose of demolishing or
34 razing a building or structure under or by virtue of any contract with the owner or lessee thereof,
35 or such owner's or lessee's agent, trustee, contractor or subcontractor, or without a contract if
36 ordered by a city, town, village or county having a charter form of government to abate the
37 conditions that caused a structure on that property to be deemed a dangerous building under local
38 ordinances pursuant to section 67.410, RSMo, upon complying with the provisions of sections
39 429.010 to 429.340, shall have for such person's work or labor done, or materials, fixtures,
40 engine, boiler or machinery furnished, a lien upon the land belonging to such owner or lessee on
41 which the same are situated, to the extent of [one acre] **three acres**. If the building or buildings
42 to be demolished or razed are upon any lot of land in any town, city or village, then the lien shall
43 be upon the lot or lots or land upon which the building or other improvements are situated, to
44 secure the payment for the labor and materials performed.

45 4. The provisions of sections 429.030 to 429.060 and sections 429.080 to 429.430
46 applicable to liens of mechanics and other persons shall apply to and govern the procedure with
47 respect to the liens provided for in subsections 1, 2 and 3 of this section.

48 5. Any design professional or corporation authorized to have lien rights under subsection
49 1 of this section shall have a lien upon the building or other improvement and upon the land,
50 whether or not actual construction of the planned work or improvement has commenced if:

51 (1) The owner or lessee thereof, or such owner's or lessee's agent or trustee, contracted
52 for such professional services directly with the design professional or corporation asserting the
53 lien; and

54 (2) The owner or lessee is the owner or lessee of such real property either at the time the
55 contract is made or at the time the lien is filed.

56 6. Priority between a design professional or corporation lien claimant and any other
57 mechanic's lien claimant shall be determined pursuant to the provisions of section 429.260 on
58 a pro rata basis.

59 7. In any civil action, the owner or lessee may assert defenses which include that the
60 actual construction of the planned work or improvement has not been performed in compliance
61 with the professional services contract, is impracticable or is economically infeasible.

62 8. The agreement is in writing.

429.210. The court shall ascertain, by a fair trial in the usual way, the amount of the
2 indebtedness for which the lien is prosecuted, and may render judgment therefor in any sum not
3 exceeding the amount claimed in the demand filed with the lien, [together with interest and
4 costs,] **and shall include interest, costs, and reasonable attorneys' fees to be levied against**
5 **the property charged with the lien**, although the creditor may have unintentionally failed to
6 enter in [his] **the creditor's** account filed the full amount of credits to which the debtor may be
7 entitled.

429.230. When the debtor has not been served with summons according to law, and has
2 not appeared, but has been lawfully notified by publication, the judgment, if for the plaintiff,
3 shall be that [he] **the plaintiff** recover the amount of the indebtedness found to be due, [and]
4 **interest**, costs of suit, **and reasonable attorneys' fees**, to be levied [of] **against** the property
5 charged with the lien therefor, which said property shall be correctly described in said judgment.

429.231. A lien claimant's award of reasonable attorneys' fees shall be levied
2 **against the property charged with the lien subject to the following terms:**

3 (1) **If the lien claimant is an original contractor whose contract is with the owner**
4 **of the property, no additional notice to the owner is required;**

5 (2) **If the lien claimant is a material supplier, subcontractor, or sub-subcontractor**
6 **at any tier, no additional notice is required unless the owner of the property shall post at**
7 **the jobsite a notice substantially in the following form:**

8 **Notice From Owner to Subcontractors and Suppliers**

9 **Date Posted:**

10 **You are hereby notified that is the owner of the property**
11 **upon which the project is being built. The owner's name, address, telephone number, fax**
12 **number, and e-mail address are as follows:**

13 **Owner:**

14 **Street Address (Do not use post office box):**

15 **Telephone No.:**

16 **Facsimile No.:**

17 **E-mail Address:**

18 **The owner's agent or original contractor is as follows:**

19 **Name:**

20 **Street Address (Do not use post office box):**

21 **Telephone No.:**

22 **Facsimile No.:**

23 **E-mail Address:**

24 **The owner's architect is as follows:**

25 **Name:**

26 **Street Address (Do not use post office box):**

27 **Telephone No.:**

28 **Facsimile No.:**

29 **E-mail Address:**

30

31 **To be effective, the above shall completely and accurately identify one or more of the above**
32 **parties, at least one of whom shall be located within the state of Missouri, and shall be**
33 **conspicuously posted in one or more locations at the jobsite where the project is being built**
34 **so that it is visible and accessible to all suppliers and subcontractors at any tier who deliver**
35 **materials to, or provide or furnish labor, work, or services at the jobsite. The notice shall**
36 **be posted no later than the first day upon which any materials are delivered or any work**
37 **is performed at the jobsite. The notice shall remain continuously posted so long as**
38 **materials are being delivered to, or work is being performed at the jobsite. The notice may**
39 **be posted alongside the building permit, the main entrance to the jobsite used by suppliers**
40 **and subcontractors, or the location where deliveries of materials and supplies are made to**
41 **the jobsite so long as the notice is posted so that it is conspicuous, visible, and accessible to**
42 **both subcontractors and suppliers. The owner of the project shall not be required to post**
43 **a notice, but failure to do so shall relieve suppliers, subcontractors, and sub-subcontractors**
44 **at any tier from giving the notice to the owner under subdivision (3) of this section;**

45 **(3) On projects where the owner has substantially complied with the requirements**
46 **in subdivision (2) of this section, a lien claimant who is a material supplier, subcontractor,**
47 **or sub-subcontractor at any tier shall, in order to have payment of its award of attorneys'**
48 **fees secured by the mechanic's lien levied against the owner's property, give notice no later**
49 **than twenty-five days after first delivering material to the jobsite or within twenty-five**
50 **days after first performing labor at the jobsite, to the owner of the property or to the**
51 **owner's agent or architect. The notice shall be substantially in the following form:**

52 **Notice to Owner**

53 **You are hereby notified that the undersigned is furnishing and/or providing materials**
54 **and/or labor for the project.**

55 **Owner:**

56 **Project:**

57 **Type of Materials and/or Labor:**

58 **Claimant's Name:**

59 **Address:**

60 **Telephone No.:**

61 **Facsimile No.:**

62 **Name of Person/Entity Through Whom Claimant is**

63 **Furnishing/Providing Labor/Material:**

64

65 **The notice shall be deemed to have been given timely even if given more than twenty-five**
66 **days after the first delivery of material or performing labor at the jobsite if the notice is**
67 **given to the owner or the owner's agent or the owner's original contractor or architect**
68 **before the owner has made payment to the original contractor for the labor or material**
69 **furnished or provided by the lien claimant. The notice shall be deemed properly given**
70 **upon timely receipt of the notice by the owner, agent, original contractor, or architect. If**
71 **the notice is given by certified mail, return receipt requested, it shall be deemed to have**
72 **been given and received timely if mailed to one or more of the addresses disclosed in the**
73 **owner's notice described in subdivision (2) of this section within the period prescribed in**
74 **this subdivision. Nothing contained in this subdivision shall be construed to eliminate the**
75 **need for a lien claimant, other than an original contractor, to comply with the notice**
76 **requirements of section 429.100;**

77 **(4) If the owner of the project posts a notice as described in subdivision (2) of this**
78 **section, the owner shall contemporaneously furnish a copy of the said notice to its original**
79 **contractor. The original contractor shall immediately furnish a copy of the owner's notice**
80 **to any supplier, subcontractor, or sub-subcontractor at any tier who requests the notice.**

✓