

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2058
95TH GENERAL ASSEMBLY

Reported from the Committee on General Laws, May 10, 2010, with recommendation that the Senate Committee Substitute do pass.

4976S.10C

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 429, RSMo, by adding thereto one new section relating to mechanic's liens, with penalty provisions.

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

Section A. Chapter 429, RSMo, is amended by adding thereto one new
2 section, to be known as section 429.016, to read as follows:

**429.016. 1. The provisions of this section shall only apply to
2 mechanic's liens asserted against residential real property, other than
3 mechanic's liens for the repair, remodeling, or addition to
4 owner-occupied residential property of four units or less which are
5 governed by section 429.013 and other applicable sections of this
6 chapter.**

7 **2. As used in this section, the term "residential real property"**
8 **means any parcel of real estate, improved or unimproved, that is**
9 **intended to be used or is used for the construction of residential**
10 **structures and related improvements which support the residential use**
11 **of the land where such residential structures are intended, upon**
12 **completion, either to be occupied or sold by the current owner. Such**
13 **residential structures shall include any residential dwelling of four**
14 **units or less, whether or not a unit is occupied by an owner and shall**
15 **also include any structures consisting solely of residential**
16 **condominiums, townhouses or cooperatives regardless of the number**
17 **of units. The definition of "residential real estate" shall exclude any**
18 **mixed use or planned unit developments except to the extent that any**
19 **residential uses of such developments are, or will be, located on**

20 separate, identifiable parcels from the non-residential uses and then
21 only as to those residential uses. Residential real property shall also
22 include any streets, sidewalks, utility services, improved common areas,
23 or other facilities which are constructed within the defined residential
24 use structures or located on or within the separate and identifiable
25 parcels identified as for residential use.

26 3. Any person or entity, hereinafter referred to as claimant, who
27 seeks to retain the right to assert a mechanic's lien against residential
28 real property, hereinafter referred to as property, shall record a notice
29 of rights in the office of the recorder of deeds for the county in which
30 the property is located. Such recorded notice of rights shall only apply
31 to any work, labor, or materials performed or used to, on, or for the
32 property in the future or in the immediately preceding sixty-day period
33 from the date of such recording.

34 4. Notwithstanding subsection 3 of this section, a claimant that
35 is accurately identified in any previously recorded notice of rights
36 recorded as to the property is relieved of its duty to record a notice of
37 rights.

38 5. If the last day to record the notice of rights falls on a
39 Saturday, Sunday, or legal holiday recognized by the state of Missouri,
40 the notice of rights shall be recorded not later than the next day that
41 the office of the recorder of deeds is open for business.

42 6. Any claimant that fails to record such notice of rights shall be
43 deemed to waive and forfeit any right to assert a mechanic's lien
44 against such property. Despite any such waiver and forfeiture of
45 mechanic's lien rights, the claimant shall retain all other rights and
46 remedies allowed by law to collect payment for its work, labor, and
47 materials.

48 7. Notwithstanding any other provision of this section, a notice
49 of rights recorded after the owner's conveyance of the property to a
50 bona fide purchaser for value shall not be effective to preserve the
51 claimant's mechanic's lien rights to the property.

52 8. The notice of rights shall comply with section 59.310 and be on
53 a form substantially as follows:

54 NOTICE OF RIGHTS

55 Date: The date of the document.

56 Owner: Identify Property owner, as "Grantor" by correct name.

57 **Claimant: Identify Claimant, as "Grantee" by correct name, current**
58 **address, contact persons, and current telephone number.**

59 **Property: The legal description of the property.**

60 **Person Contracting with Claimant for Work: Identify person or entity**
61 **contracting with Claimant by correct name, current address, and**
62 **current telephone number.**

63 **Persons performing work for or supplying materials to Claimant:**
64 **Claimant may, but is not obligated to, identify any persons or entities**
65 **which have or will be performing work or supplying materials on**
66 **behalf of Claimant for the Property. Said persons or entities must be**
67 **identified by correct legal name, address, and current telephone**
68 **number.**

69 **A recorded notice correctly identifies a person or entity so long as the**
70 **identifying information in the notice is neither deceptively similar to**
71 **another person or entity reasonably likely to provide labor, materials,**
72 **supplies, or equipment for the improvement of property nor so**
73 **deficient in information as to make it unreasonably difficult to identify**
74 **such person or entity. The form shall be signed by a person authorized**
75 **to execute the form on behalf of the claimant, and such signature shall**
76 **be notarized. The name of the person signing the form shall be printed**
77 **legibly or typed immediately below the signature.**

78 **9. The notice of rights shall be recorded by the claimant in the**
79 **office of the recorder of deeds of the county in which the property is**
80 **located.**

81 **10. The recorder of deeds shall record such notice of rights in**
82 **the land records and index notice of rights such that owners shall be**
83 **deemed grantors and claimants shall be deemed grantees, and the**
84 **grantor's signature shall not be required for recording.**

85 **11. (1) The owner of residential real property upon which a**
86 **claimant is to perform or provide work, labor, or materials, or such**
87 **owner's designated agent, shall provide any claimant with the name of**
88 **the current record property owner and the deed, which deed shall**
89 **include the legal description of the subject property, by which such**
90 **owner of record obtained the subject property, within five calendar**
91 **days after the owner, or its designated agent, receives a written request**
92 **for the same from any claimant. The claimant may further request a**
93 **copy of a survey of the subject property, a copy of the subdivision or**

94 other plat of the subject property, or such other information, document,
95 or instrument, as may allow the claimant to identify the subject
96 property with reasonable certainty, but the owner or its agent shall not
97 be required to provide the same. The owner, or its designated agent,
98 shall not be liable to any claimant, or other person, for any error,
99 omission, or inaccuracy in the content of the deed described above
100 which is provided and disclosed by the owner, or its designated agent,
101 except as otherwise expressly provided in this section.

102 (2) If any owner, or its designated agent, fails to comply with the
103 requirements of this section, the requesting claimant shall be entitled
104 to receive, as its sole and exclusive remedy for failure to comply with
105 this section, the claimant's actual and reasonable costs, excluding
106 attorney fees, to obtain a legal description of the subject property
107 necessary for the claimant to record its notice of rights. The costs
108 described in this section shall be lienable expenses.

109 (3) If a claimant receives from the owner, or its designated agent,
110 a copy of the deed by which the owner acquired title to the subject
111 residential real property as contemplated in this section and the
112 claimant relies in good faith upon the legal description contained in
113 such deed and includes such legal description in a notice of rights as
114 required in this section, and the claimant's notice of rights otherwise
115 complies with the requirements of this section, then any such
116 claimant's notice of rights shall be deemed to comply with the
117 requirements of this section, and such claimant's right to assert a
118 mechanic's lien as to the subject residential real property shall be
119 retained even if subsequently it is determined that such legal
120 description contained in such deed is in error or inaccurate as to the
121 subject residential real property.

122 12. Each notice of rights or renewal notice of rights as hereafter
123 provided shall only be valid for, and shall automatically expire, one
124 year after recording, unless the claimant shall record a renewal of
125 notice of rights with the recorder of deeds of the county in which the
126 property is located prior to the expiration of any previously recorded
127 notice of rights or renewal notice of rights, and any failure to record
128 a renewal of notice of rights prior to the expiration of any previously
129 recorded notice will constitute a waiver of lien rights as to the
130 property. If a claimant fails to file its mechanic's lien prior to the

131 expiration of any such one-year period, then the claimant's lien rights
132 will be extinguished.

133 13. The recording of a notice of rights, or any number of renewal
134 of notice of rights, shall not extend the time for filing a mechanic's lien
135 as provided under section 429.080.

136 14. The renewal of notice of rights shall be in substantially the
137 same form as the notice of rights. However, the renewal of notice of
138 rights shall be titled as such and shall contain the date and recording
139 information for the original notice of rights, as well as the dates and
140 recording information for any earlier renewals of rights applicable to
141 the property. A renewal of notice of rights affecting multiple lots must
142 omit any lot for which the claimant has executed an unconditional final
143 lien waiver.

144 15. A separate notice of rights shall be recorded for each lot or
145 parcel of residential real property upon which the claimant performs
146 its work. Nothing herein shall be construed to prohibit the claimant
147 from providing a notice of rights covering multiple lots in the same
148 subdivision if common ownership of lots exists. If the claimant
149 commences its work prior to the platting or subdivision of a tract of
150 land comprising residential real property, the claimant is only required
151 to record one notice of rights provided that the entire tract of land
152 upon which any such lien is to be asserted is described in such notice
153 of rights.

154 16. The claimant shall not be required to provide the notice
155 required under section 429.100, but compliance with the requirements
156 of this section shall not relieve the claimant of its duty to comply with
157 all other applicable sections of this chapter, except as specifically
158 modified herein, in order to preserve, assert, and enforce its mechanic's
159 lien rights.

160 17. For purposes of any mechanic's liens against residential real
161 property only, a claimant satisfies the just and true account
162 requirement contained in section 429.080 by providing the following
163 information and documentation as part of its mechanic's lien claim
164 filed with the clerk of the circuit court:

165 (1) A photocopy of the file-stamped notice of rights and any
166 renewals of notice of rights recorded by or identifying claimant;

167 (2) The name and address of the person or entity which claimant

168 contracted with to perform work on the property;

169 (3) A copy of any contract or contracts, purchase order or orders,
170 or proposal or proposals, hereinafter collectively referred to as
171 agreements, and any agreed change orders or modifications to such
172 agreement or agreements under which claimant performed its work on
173 the property;

174 (4) In the absence of any written agreement or agreements, a
175 general description of the scope of work agreed to be performed by
176 claimant on the property and the basis for payment for such work as
177 agreed to by claimant and the contracting party;

178 (5) All invoices submitted by claimant for its work on the
179 property;

180 (6) An accurate statement of account which shows all payments
181 or credits against amounts otherwise due to claimant for the work
182 performed on the property and the calculation or basis for the amount
183 claimed by claimant in its mechanic's lien statement; and

184 (7) The last date that claimant performed any work or labor
185 upon, or provided any materials or equipment to, the property;

186 (8) The claimant shall attach a file-stamped copy of his or her
187 notice of rights to claimant's mechanic's lien statement if and when
188 filed with the circuit clerk under section 429.080.

189 18. To the extent that any error in the information contained in
190 the claimant's notice of rights prejudices the owner, any lender,
191 disbursing company, title insurance company, or subsequent purchaser
192 of the property, the claimant's rights to assert a mechanic's lien shall
193 be forfeited to the extent of the prejudice caused by such error.

194 19. A person having an interest in any residential real property
195 against which a mechanic's lien has been filed may release such
196 residential real property from any such mechanic's lien by:

197 (1) Depositing in the office of the circuit clerk a sum of money,
198 in cash or certified check, an irrevocable letter of credit, which may be
199 secured, issued by a federally or state chartered bank, savings and loan
200 association or savings bank (referred to hereafter as a bank) authorized
201 to and doing business in the state of Missouri, or a surety bond issued
202 by a surety company authorized to do surety business in the state of
203 Missouri and having a certificate of authority to do business with the
204 United States government in accordance with 31 CFR Section 223.1, in

205 an amount not less than one hundred fifty percent of the amount of the
206 mechanic's lien being released; and

207 (2) Recording with the recorder of deeds and filing with the
208 circuit clerk a certificate of deposit signed by the circuit clerk which
209 provides the following information:

210 (a) Amount of money deposited, amount of the letter of credit
211 deposited, or penal sum of the bond deposited, along with the name and
212 address of the bank issuing the letter of credit or surety company
213 issuing the bond, as well as a service address for the bank or surety
214 company;

215 (b) Name of claimant, number assigned to the mechanic's lien
216 being released, and the amount of the mechanic's lien being released;

217 (c) Legal description of the property against which the
218 mechanic's lien was filed;

219 (d) Name, address, and property interest of the person making
220 the deposit of money, providing the letter of credit or surety bond; and

221 (e) A certification by the person making the deposit of money,
222 letter of credit, or surety bond that they have mailed a copy of the
223 certificate of deposit to the claimant at the address listed on the
224 mechanic's lien being released, along with a copy of any letter of credit
225 or bond deposited by said person.

226 20. Any surety bond deposited as substitute collateral shall
227 obligate the surety company, to the extent of the penal sum of the bond,
228 to pay any judgment entered under section 429.210.

229 21. Any letter of credit deposited as substitute collateral shall
230 obligate the issuing bank, to the extent of the amount of the letter of
231 credit, to pay any judgment entered under section 429.210.

232 22. Upon release of the residential real property from a
233 mechanic's lien by the deposit of substitute collateral, the claimant's
234 rights are transferred from the residential real property to the
235 substitute collateral.

236 23. Upon determination of the amount of claimant's claim, if any,
237 against the substitute collateral, the court shall either:

238 (1) Order the circuit clerk to pay the claimant any sums awarded
239 out of the deposited funds and release any remainder to the person or
240 entity who made the cash deposit;

241 (2) Order the bank to issue payment under the letter of credit for

242 the awarded amount but not exceeding the amount of the letter of
243 credit;

244 (3) Render judgment against the surety company on the bond for
245 the amount awarded up to but not exceeding the penal sum of the bond;
246 or

247 (4) Release the substitute collateral
248 all as deemed appropriate by the court.

249 24. The deposit of substitute collateral and release of claimant's
250 mechanic's lien shall not modify any aspect of the priority of claimant's
251 interest, claimant's burden of proving compliance with the mechanic's
252 lien statute, or claimant's obligations with respect to enforcement of its
253 mechanic's lien claim, including, but not limited to, time for filing suit
254 to enforce and necessary parties to the suit to enforce. It is the intent
255 only that the deposited substitute collateral shall be the ultimate
256 source of any potential recovery by claimant instead of the funds
257 generated by foreclosure of the residential real property.

258 25. A release of a mechanic's lien under the deposit of substitute
259 collateral shall not relieve any claimant of potential liability for
260 slander of title or otherwise due to the filing of claimant's mechanic's
261 lien.

262 26. The surety company for any bond or the bank which issued
263 the letter of credit deposited under this section shall be made a party
264 to any mechanic's lien enforcement action with respect to any
265 mechanic's lien released by the deposit of said bond or letter of credit.

266 27. Any claimant may waive its right to assert a mechanic's lien
267 against residential real property by executing a partial or full waiver
268 of mechanic's lien rights, whether conditioned upon receipt of payment
269 or unconditional, provided that a waiver of mechanic's lien rights shall
270 not be deemed or interpreted to waive or release mechanic's lien rights
271 in exchange for a payment of less than the amount claimed due at that
272 time unless such mechanic's lien waiver is an unconditional, final
273 mechanic's lien waiver in compliance with this section.

274 28. An unconditional, final lien waiver is a complete and absolute
275 waiver of any mechanic's lien rights against the residential real
276 property described in the mechanic's lien waiver, including any rights
277 which might otherwise arise from remedial or additional labor,
278 services, or materials provided to the residential real property, or

279 which might benefit the residential real property, under either an
280 initial agreement or a supplemental agreement entered into by the
281 same parties prior to the execution of the unconditional, final
282 mechanic's lien waiver.

283 **29. An unconditional, final mechanic's lien waiver shall only be**
284 **valid if it is on a form that is substantially as follows:**

285 **UNCONDITIONAL FINAL LIEN WAIVER FOR RESIDENTIAL**
286 **REAL PROPERTY**

287 **Claimant (provide legal name and address of Claimant) hereby fully,**
288 **finally, and unconditionally waives and releases any right to assert or**
289 **enforce a mechanic's lien claim against the residential real property**
290 **identified below for all work performed by Claimant prior to the date**
291 **set forth below and for any work hereafter performed by or on behalf**
292 **of Claimant under any agreements executed by Claimant prior to said**
293 **date set forth below:**

294 **(Provide legal description of the Property)**

295 **Claimant's legal name and the name, title or position, address, and**
296 **telephone number of the person executing the unconditional final lien**
297 **waiver on behalf of claimant shall be typed or legibly printed**
298 **immediately above or below the signature, and the date that the**
299 **document was signed shall be typed or legibly printed immediately**
300 **adjacent to the signature.**

301 **30. A claimant executing an unconditional, final mechanic's lien**
302 **waiver for less than full consideration shall be bound by such**
303 **mechanic's lien waiver as it relates to any rights to assert a mechanic's**
304 **lien against the property, but such mechanic's lien waiver shall not**
305 **constitute a waiver or release of any other claim, remedy, or cause of**
306 **action.**

307 **31. An unconditional, final mechanic's lien waiver meeting the**
308 **requirements of this section is valid and enforceable as to claimant's**
309 **mechanic's lien rights as to the property identified on the**
310 **unconditional, final mechanic's lien waiver notwithstanding claimant's**
311 **failure to receive any promised payment or other consideration.**

312 **32. Any claimant who has recorded a notice of rights and who**
313 **has been paid in full for the work performed on the property shall**
314 **timely execute an unconditional, final mechanic's lien waiver, shall not**
315 **unreasonably withhold such a waiver when circumstances require**

316 **prompt execution, and in no event shall fail to provide a waiver any**
317 **later than five calendar days after claimant's receipt of a written**
318 **request to do so by any person or entity. A claimant who fails or**
319 **refuses timely to execute an unconditional, final lien waiver when such**
320 **claimant has been paid in full for any labor, materials, services, or**
321 **equipment supplied or used in the improvement to the property shall**
322 **be presumed liable for slander of title and for any damages sustained**
323 **as a result thereof, together with a statutory penalty of five hundred**
324 **dollars.**

325 **33. The provisions of this section shall not apply to a residential**
326 **structure which was substantially completed prior to September 1,**
327 **2010. Notwithstanding the provisions of subsection 3 of this section, a**
328 **notice of rights recorded on or prior to October 1, 2010, shall apply to**
329 **all labor, material, services, or equipment supplied or used at any time**
330 **in the improvement to any residential real property which was not**
331 **substantially completed prior to September 1, 2010, and the provisions**
332 **of subsection 7 shall only apply to a conveyance of property occurring**
333 **after October 1, 2010.**

✓