

HCS HB 2058 -- MECHANIC'S LIENS AGAINST RESIDENTIAL REAL PROPERTY

SPONSOR: Hobbs (Diehl)

COMMITTEE ACTION: Voted "do pass" by the Committee on Insurance Policy by a vote of 11 to 0.

This substitute establishes procedures for asserting a mechanic's lien against residential real property other than a mechanic's lien for the repair, remodeling, or addition to owner-occupied residential property of four units or less. In its main provisions, the substitute:

(1) Requires a claimant seeking to retain the right to assert a mechanic's lien against residential real property to record a notice of rights with the recorder of deeds for each county in which the property is located. The notice will only apply to any work, labor, or materials performed or used to, on, or for the property in the future or in the immediately preceding 60 days from the date of the recording. Any claimant failing to record a notice of rights will be deemed to waive and forfeit any right to assert a mechanic's lien against the property but will retain rights and remedies allowed by law to collect payment for any work, labor, and materials;

(2) Requires a notice of rights to comply with Section 59.310, RSMo, and to be in a form as specified in the substitute;

(3) Requires, prior to commencement of any construction, an owner to record a notice of commencement identifying property on which the construction or improvement is to be made. The person recording the notice must also post a copy of the notice in a conspicuous place on the property. Any notice containing incorrect or incomplete information will make the owner liable for any resulting damages. If the owner fails to post or provide the notice of commencement, no claimant will be obligated to record or file a notice of rights;

(4) Specifies that any notice of rights or renewal notice of rights will be valid for only one year after recording unless the claimant records a new notice of rights prior to the expiration. If a claimant fails to file prior to the expiration date, the claimant's lien rights will be extinguished. Renewal notices of rights will be substantially the same as the notice of rights. A renewal notice of rights affecting multiple lots must omit any lot for which the claimant has executed an unconditional final lien waiver;

(5) Specifies that a claimant satisfies the just and true account requirement in Section 429.080 by providing the following

information and documentation as part of the mechanic's lien claim filed with the clerk of the circuit court:

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

(b) The name and address of the person the claimant contracted with to perform the work;

(c) A copy of any contract, purchase order, or proposal and any agreed change order or modification to the agreement;

(d) A general description of the scope of work agreed to be performed in the absence of any written agreement;

(e) All invoices submitted by a claimant for work on the property and any payments made, an accurate statement of account showing all payments or credits against the amount due for work performed, and the calculation for the amount claimed; and

(f) The last date that work or labor was performed or any materials or equipment provided;

(6) Allows any person having interest in a residential real property against which a mechanic's lien has been filed to release the lien by depositing in the office of the circuit clerk a sum of money in cash or certified check; an irrevocable letter of credit issued by a federally or state chartered bank, savings and loan association, or savings bank authorized to do business in Missouri; or a surety bond and by recording the amount of the deposit including the claimant's name and the amount being released on the property;

(7) Specifies that a deposit of substitute collateral and release of a claimant's mechanic's lien will not modify any aspect of the priority of the claimant's interest or obligations regarding enforcement of a mechanic's lien nor will it relieve any claimant of potential liability for slander of title or otherwise due to the filing of a claimant's mechanic's lien;

(8) Allows a claimant to waive his or her right to assert a mechanic's lien by executing a partial or full waiver of mechanic's lien rights, but this waiver will not be deemed to waive or release a mechanic's lien rights in exchange for a lesser payment unless the mechanic's lien waiver is an unconditional, final mechanic's lien waiver in compliance with these provisions;

(9) Specifies that an unconditional, final mechanic's lien

waiver will only be valid if it is on a form as specified in the substitute; and

(10) Requires any claimant who has recorded a notice of rights and who has been paid in full for the work performed to timely execute an unconditional, final mechanic's lien waiver; to not unreasonably withhold the waiver when circumstances require prompt execution; and in no event fail to provide a waiver any later than five calendar days after the claimant's receipt of a written request to do so by any person or entity. A claimant who fails or refuses to timely execute an unconditional, final lien waiver will be presumed liable for slander of title and for any damages sustained as a result, together with a statutory penalty of \$500.

The provisions of the substitute will not apply to a residential structure substantially completed prior to September 1, 2010. Any notice of rights recorded on or prior to October 1, 2010, will apply to all labor, material, services, or equipment supplied or used at any time in the improvement to any residential real property which was not substantially completed prior to September 1, 2010, and the provisions regarding a notice of rights recorded after the owner's conveyance of property to a bona fide purchaser for value will only apply to a conveyance occurring after October 1, 2010.

FISCAL NOTE: No impact on state funds in FY 2011, FY 2012, and FY 2013.

PROPOSERS: Supporters say that the bill will help contractors and subcontractors get paid and make getting a property title much easier and cleaner. This will help make closing on a new home much quicker and cheaper, help to find any hidden liens, and allow lenders and purchasers to see if there is any outstanding debt on a new home.

Testifying for the bill were Representative Diehl; Missouri Bankers Association; Missouri Land Title Association; David Townsend, Agents National Title Insurance; Bruce Harris, Callaway Bank of Fulton; James Bornauer, Central Bank Company; Jeffery Burger, Home Builders Association of Greater St. Louis; Missouri Title Legislative Study Group, Incorporated; and Patrice Donehue, Missouri Silver Haired Legislature.

OPPOSERS: Those who oppose the bill say that it is a step in the right direction but does not fix all of the problems with mechanic's liens. Filing these notices and paying the fees will cut into profits. If all subcontractors also have to file a notice, this could get very expensive.

Testifying against the bill were Jim Compton, American Subcontractors Association and Roofing and Siding Contractors Alliance; Associated General Contractors of Missouri, Incorporated; Richard Stockenberg, American Subcontractors Association; and Site Improvement Association.

Others testifying on the bill say that it is intended to be for the residential market and we are on the commercial market side of this industry. The definition of residential property needs to be further clarified.

Testifying for the bill was Robert Poetker, Associated General Contractors of St. Louis.