

HB 2058 -- Mechanic's Liens Against Residential Real Property

Sponsor: Diehl

This bill establishes procedures for asserting a mechanic's lien against residential real property. In its main provisions, the bill:

(1) Requires certain persons seeking to retain the right to assert a mechanic's lien against residential real property to record, or be accurately identified in, a public notice which must be recorded with the recorder of deeds for each county in which the property is located;

(2) Requires every original contractor, registered architect, registered professional engineer, registered landscape architect, registered land surveyor, or a corporation registered to practice those professions who seeks to retain the right to assert a mechanic's lien against the residential real property to record, or be accurately identified in, a notice of intent to perform. The notice will be effective to initiate lien rights for any person identified in the notice. A person recording the notice must also post a copy of the notice on or immediately adjacent to the property and provide a copy of or reasonable access to the notice to every person identified in the notice. Failure to post or provide the notice will not defeat the lien rights of any person identified in the notice and it will not relieve any person from the requirement to record notice or be identified in a recorded notice;

(3) Requires every subcontractor or supplier who is not an original contractor and who seeks to retain the right to assert a mechanic's lien against residential real property and is not accurately identified in a previously recorded notice of intent to perform to record, or be accurately identified in, a notice of commencement which is effective to initiate lien rights for any person identified in the notice within certain specified time frames. A person recording the notice must provide a copy of, or reasonable access to, the notice to every person identified on the notice. Failure to post or provide the notice does not defeat the lien rights of any person identified in the notice and it will not relieve any person from the requirement to record notice or be identified in a recorded notice;

(4) Specifies that a notice of commencement recorded after the residential real property has been conveyed to a third party, who has provided fair value and acted in good faith, will be not effective to preserve lien rights. The person recording the notice of commencement will not waive any right to recover the charges for the labor, materials, or services from the seller of

the property and will be entitled to recover three times the charges upon proving that the seller had actual knowledge that the labor, materials, or services were provided by the person, enhanced the value of the property, and that the seller acted in bad faith and for the purpose of not paying the charges;

(5) Requires any recorded notice to contain the name and, if known, the address of the owner of the residential real property; the name, address, telephone number, and email address and facsimile number, if any, of the person recording the notice; the legal description of the property; and the name, address, telephone number, and email address and facsimile number, if known, of every person with whom the person recording the notice has contracted to provide labor, materials, or services for the improvements to the property;

(6) Specifies that any person who fails to record a notice or any person whose name is not accurately identified in any recorded notice will be deemed to have waived any rights to assert a mechanic's lien;

(7) Requires a recorded notice to expire two years after the date on which it is recorded unless extended by the recording of a continuation notice prior to the two years;

(8) Allows a person providing labor, services, or materials for the improvement of residential real property to waive his or her right to assert a mechanic's lien by executing a partial or full waiver of lien rights;

(9) Specifies that an unconditional, final lien waiver is a complete and absolute waiver of any lien rights; is only valid if it contains a heading, title, or label in at least 12-point bold type stating "Unconditional Final Lien Waiver"; and must include, to the extent applicable:

(a) The name, address, and telephone number of the person executing the unconditional final lien waiver;

(b) The legal description or address of the property for which the lien waiver applies;

(c) A statement that all work, other than remedial or additional, has been completed or identifying what work must be completed, the cost or charges for that work, and the agreed means for paying the charges; and

(d) An acknowledgment by the person executing it that all lien rights are waived as to the property;

(10) Creates the crime of lien fraud, a class B misdemeanor, when a person knowingly refuses or knowingly fails within 10 business days after receiving a written request to execute an unconditional, final lien waiver for the property and who has provided no labor, materials, or services for the property or who has been paid in full for the labor, materials, or services. A person will be guilty of lien fraud, a class C misdemeanor, if he or she intentionally refuses or intentionally fails within 10 business days after receiving a written request to reasonably identify the labor, materials, or services provided for the property less any payments received;

(11) Prohibits a lien from being attached to residential real property if a bond in the amount of at least one and one-half times the charges claimed has been procured from a surety company; and

(12) Prohibits a lien from being attached to the real property if the owner or the original contractor has procured a bond from a surety company in the amount of at least 150% of all mechanics' lien claims filed prior to the recorded notice of the bond and has recorded a notice of the bond.