

SECOND REGULAR SESSION

# HOUSE BILL NO. 1733

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES MILLER (Sponsor), KORMAN AND SCHATZ (Co-sponsors).

5417H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 429.016, RSMo, and to enact in lieu thereof one new section relating to statutory liens against real estate.

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

Section A. Section 429.016, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 429.016, to read as follows:

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

2. As used in this section, the term "residential real property" means any parcel of real estate, improved or unimproved, that is intended to be used or is used for the construction of residential structures and related improvements which support the residential use of the land where such residential structures are intended, upon completion, either to be occupied or sold by the current owner. Such residential structures shall include any residential dwelling of four units or less, whether or not a unit is occupied by an owner, and shall also include any structures consisting solely of residential condominiums, townhouses or cooperatives regardless of the number of units. The definition of "residential real estate" shall exclude any mixed use or planned unit developments except to the extent that any residential uses of such developments are, or will be, located on separate, identifiable parcels from the nonresidential uses and then only as to those residential uses. Residential real property shall also include any streets, sidewalks, utility services, improved common areas, or other facilities which are constructed

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.

17 within the defined residential use structures or located on or within the separate and identifiable  
18 parcels identified as for residential use.

19 3. Any person or entity, hereinafter referred to as claimant, who seeks to retain the right  
20 to assert a mechanic's lien against residential real property, hereinafter referred to as property,  
21 shall record a notice of rights in the office of the recorder of deeds for the county in which the  
22 property is located, not less than five calendar days prior to the intended date of closing stated  
23 in a notice of intended sale as contemplated in this section.

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

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

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

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

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

39 NOTICE OF RIGHTS

40 Date: The date of the document.

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

42 Claimant: Identify Claimant, as "Grantee" by correct name, current address, contact persons, and  
43 current telephone number.

44 Property: The legal description of the property.

45 Person Contracting with Claimant for Work: Identify person or entity contracting with Claimant  
46 by correct name, current address, and current telephone number.

47 Persons performing work for or supplying materials to Claimant: Claimant may, but is not  
48 obligated to, identify any persons or entities which have or will be performing work or supplying  
49 materials on behalf of Claimant for the Property. Said persons or entities must be identified by  
50 correct legal name, address, and current telephone number.

51 A recorded notice correctly identifies a person or entity so long as the identifying information  
52 in the notice is neither deceptively similar to another person or entity reasonably likely to provide

53 labor, materials, supplies, or equipment for the improvement of property nor so deficient in  
54 information as to make it unreasonably difficult to identify such person or entity. The form shall  
55 be signed by a person authorized to execute the form on behalf of the claimant, and such  
56 signature shall be notarized. The name of the person signing the form shall be printed legibly  
57 or typed immediately below the signature.

58         9. The notice of rights shall be recorded by the claimant in the office of the recorder of  
59 deeds of the county in which the property is located.

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

63         11. (1) If the record title owner of residential real property, hereinafter the owner, has  
64 contracted with a claimant for the performance or provision of work, labor, or materials for the  
65 improvement of such property in order to facilitate the owner's sale of such property to a bona  
66 fide purchaser for value as contemplated in this section, then the owner or such owner's  
67 designated agent shall record a notice of intended sale in the office of the recorder of deeds for  
68 the county in which the property is located. The notice of intended sale shall be recorded not less  
69 than forty-five calendar days prior to the earliest calendar date the owner intends to close on the  
70 sale of such property to such purchaser. The notice of intended sale shall state the calendar date  
71 on which the owner intends to close on the sale of such property to such purchaser. Only one  
72 notice of intended sale shall be recorded, even if the intended date of closing stated therein is  
73 postponed to a date later than that stated in the notice of intended sale. The owner's, or its  
74 designated agent's, recording of a notice of intended sale as to the subject property, as  
75 contemplated herein, is a condition precedent to a claimant's obligation to record a notice of  
76 rights as to the subject property in order to retain a claimant's mechanic's lien rights as to such  
77 property.

78         (2) The owner, or its designated agent, shall post on the subject property, or at an  
79 entrance to the subject property, or at any jobsite office located at or near the subject property,  
80 a copy of the owner's notice of intended sale.

81         (3) The owner, or its designated agent, shall provide any claimant with a copy of the  
82 notice of intended sale and a copy of a legal description of the subject property, within five  
83 calendar days after the date the owner, or its designated agent, receives a written request for the  
84 same from any such claimant. The information contemplated herein shall be transmitted by U.S.  
85 mail addressed to the claimant's registered agent or principal place of business or transmitted by  
86 other commercially reasonable means. A claimant shall, in turn, provide any person or entity  
87 with which it has contracted to perform or provide work, labor, or materials for the improvement  
88 of the subject property with written notice in the same form and manner, and containing the same

89 information, as the written notice issued by the owner, all within ten calendar days after the date  
90 the claimant receives a written request for the same from any such person or entity.

91 (4) If any owner, or its designated agent, fails to comply with the requirements of this  
92 section, a claimant shall be entitled to receive, as its sole and exclusive remedy for such failure  
93 to comply with the section, the claimant's actual and reasonable costs, excluding attorney fees,  
94 to obtain a legal description of the subject property necessary for the claimant to record its notice  
95 of rights. The costs described in this section shall be lienable expenses. The owner's or its  
96 designated agent's failure to post or mail or transmit the information contemplated in this section  
97 shall not relieve, and is not a condition precedent to, a claimant's obligation to record its notice  
98 of right in order to retain claimant's mechanic lien rights as to such property.

99 (5) The owner, or its designated agent, shall not be liable to any claimant, or other  
100 person, for any error, omission, or inaccuracy in the content of the information provided and  
101 disclosed by the owner, or its designated agent, except as otherwise expressly provided in this  
102 section. If a claimant receives a copy of the notice of intended sale and a legal description of the  
103 subject property from the owner or its designated agent as contemplated in this section and the  
104 claimant relies in good faith upon the legal description and includes such legal description in a  
105 notice of rights as required in this section, and the claimant's notice of rights otherwise complies  
106 with the requirements of this section, then any such claimant's notice of rights shall be deemed  
107 to comply with the requirements of this section, and such claimant's right to assert a mechanic's  
108 lien as to the subject residential real property shall be retained even if subsequently it is  
109 determined that such legal description is in error or inaccurate as to the subject residential real  
110 property.

111 12. The recording of a notice of rights shall not extend the time for filing a mechanic's  
112 lien as provided under section 429.080.

113 13. A separate notice of rights shall be recorded for each lot or parcel of residential real  
114 property upon which the claimant performs its work. Nothing herein shall be construed to  
115 prohibit the claimant from providing a notice of rights covering multiple lots in the same  
116 subdivision if common ownership of lots exists. If the claimant commences its work prior to the  
117 platting or subdivision of a tract of land comprising residential real property, the claimant is only  
118 required to record one notice of rights provided that the entire tract of land upon which any such  
119 lien is to be asserted is described in such notice of rights.

120 14. The claimant shall not be required to provide the notice required under section  
121 429.100, but compliance with the requirements of this section shall not relieve the claimant of  
122 its duty to comply with all other applicable sections of this chapter, except as specifically  
123 modified herein, in order to preserve, assert, and enforce its mechanic's lien rights.

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

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

130           (2) The name and address of the person or entity which claimant contracted with to  
131 perform work on the property;

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

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

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

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

143           (7) The last date that claimant performed any work or labor upon, or provided any  
144 materials or equipment to, the property; **and**

145           (8) The claimant shall attach a file-stamped copy of his or her notice of rights to  
146 claimant's mechanic's lien statement if and when filed with the circuit clerk under section  
147 429.080.

148           16. To the extent that any error in the information contained in the claimant's notice of  
149 rights prejudices the owner, any lender, disbursing company, title insurance company, or  
150 subsequent purchaser of the property, the claimant's rights to assert a mechanic's lien shall be  
151 forfeited to the extent of the prejudice caused by such error.

152           17. A person having an interest in any residential real property against which a  
153 mechanic's lien has been filed may release such residential real property from any such  
154 mechanic's lien by:

155           (1) Depositing in the office of the circuit clerk a sum of money, in cash or certified  
156 check, an irrevocable letter of credit, which may be secured, issued by a federally or  
157 state-chartered bank, savings and loan association or savings bank, referred to hereafter as a  
158 bank, authorized to and doing business in the state of Missouri, or a surety bond issued by a  
159 surety company authorized to do surety business in the state of Missouri and having a certificate

160 of authority to do business with the United States government in accordance with 31 CFR  
161 Section 223.1, in an amount not less than one hundred fifty percent of the amount of the  
162 mechanic's lien being released; and

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

165 (a) Amount of money deposited, amount of the letter of credit deposited, or penal sum  
166 of the bond deposited, along with the name and address of the bank issuing the letter of credit  
167 or surety company issuing the bond, as well as a service address for the bank or surety company;

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

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

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

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

177 18. Any surety bond deposited as substitute collateral shall obligate the surety company,  
178 to the extent of the penal sum of the bond, to pay any judgment entered under section 429.210.

179 19. Any letter of credit deposited as substitute collateral shall obligate the issuing bank,  
180 to the extent of the amount of the letter of credit, to pay any judgment entered under section  
181 429.210.

182 20. Upon release of the residential real property from a mechanic's lien by the deposit  
183 of substitute collateral, the claimant's rights are transferred from the residential real property to  
184 the substitute collateral.

185 21. Upon determination of the amount of claimant's claim, if any, against the substitute  
186 collateral, the court shall either:

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

189 (2) Order the bank to issue payment under the letter of credit for the awarded amount but  
190 not exceeding the amount of the letter of credit;

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

193 (4) Release the substitute collateral

194 all as deemed appropriate by the court.

195           22. The deposit of substitute collateral and release of claimant's mechanic's lien shall not  
196 modify any aspect of the priority of claimant's interest, claimant's burden of proving compliance  
197 with the mechanic's lien statutes, or claimant's obligations with respect to enforcement of its  
198 mechanic's lien claim, including, but not limited to, time for filing suit to enforce and necessary  
199 parties to the suit to enforce. It is the intent only that the deposited substitute collateral shall be  
200 the ultimate source of any potential recovery by claimant instead of the funds generated by  
201 foreclosure of the residential real property.

202           23. A release of a mechanic's lien under the deposit of substitute collateral shall not  
203 relieve any claimant of potential liability for slander of title or otherwise due to the filing of  
204 claimant's mechanic's lien.

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

208           25. Any claimant may waive its right to assert a mechanic's lien against residential real  
209 property by executing a partial or full waiver of mechanic's lien rights, whether conditioned upon  
210 receipt of payment or unconditional, provided that a waiver of mechanic's lien rights shall not  
211 be deemed or interpreted to waive or release mechanic's lien rights in exchange for a payment  
212 of less than the amount claimed due at that time unless such mechanic's lien waiver is an  
213 unconditional, final mechanic's lien waiver in compliance with this section.

214           26. An unconditional, final lien waiver is a complete and absolute waiver of any  
215 mechanic's lien rights against the residential real property described in the mechanic's lien  
216 waiver, including any rights which might otherwise arise from remedial or additional labor,  
217 services, or materials provided to the residential real property, or which might benefit the  
218 residential real property, under either an initial agreement or a supplemental agreement entered  
219 into by the same parties prior to the execution of the unconditional, final mechanic's lien waiver.

220           27. An unconditional, final mechanic's lien waiver shall only be valid if it is on a form  
221 that is substantially as follows:

222           UNCONDITIONAL FINAL LIEN WAIVER FOR RESIDENTIAL REAL PROPERTY

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

228 (Provide legal description of the Property)

229 Claimant's legal name and the name, title or position, address, and telephone number of the  
230 person executing the unconditional final lien waiver on behalf of claimant shall be typed or

231 legibly printed immediately above or below the signature, and the date that the document was  
232 signed shall be typed or legibly printed immediately adjacent to the signature.

233 28. [A claimant executing an unconditional, final mechanic's lien waiver for less than  
234 full consideration shall be bound by such mechanic's lien waiver as it relates to any rights to  
235 assert a mechanic's lien against the property, but such mechanic's lien waiver shall not constitute  
236 a waiver or release of any other claim, remedy, or cause of action.] **(1) No oral or written  
237 statement, whether provided for in an agreement or otherwise, given or purporting to  
238 waive, release, subordinate, impair, or otherwise limit or adversely affect any right to  
239 enforce or claim any lien authorized under this chapter shall be enforceable except to the  
240 extent prescribed in this subsection.**

241 **(2) A waiver or release of lien given by any claimant shall, notwithstanding any  
242 language to the contrary contained therein, be null, void, and unenforceable against the  
243 lien claimant as against public policy except to the extent of the amount of the payment  
244 received by the claimant in exchange for the waiver and release of lien; provided, however,  
245 a lien waiver given by a lien claimant after completion of all of its work or after the  
246 furnishing of all of its goods, materials, or services that contains the heading  
247 "UNCONDITIONAL FINAL LIEN WAIVER" in at least fourteen-point bold type is a  
248 waiver of any lien rights under this chapter on the property described in the lien waiver  
249 for all labor, materials, and services provided as of the date the lien waiver is given, but a  
250 person executing an unconditional final lien waiver for less than the full amount of the lien  
251 claimant's claim does not by virtue of its waiver of lien rights against the property  
252 discharge or release any other claim, remedy, or cause of action for the unpaid portion of  
253 its claim.**

254 **(3) Nothing contained in this subsection shall be construed to render null and void  
255 the provisions of subsections 25 and 26 of this section.**

256 29. An unconditional, final mechanic's lien waiver meeting the requirements of this  
257 section is valid and enforceable as to claimant's mechanic's lien rights as to the property  
258 identified on the unconditional, final mechanic's lien waiver notwithstanding claimant's failure  
259 to receive any promised payment or other consideration.

260 30. Any claimant who has recorded a notice of rights and who has been paid in full for  
261 the work performed on the property shall timely execute an unconditional, final mechanic's lien  
262 waiver, shall not unreasonably withhold such a waiver when circumstances require prompt  
263 execution, and in no event shall fail to provide a waiver any later than five calendar days after  
264 claimant's receipt of a written request to do so by any person or entity. A claimant who fails or  
265 refuses timely to execute an unconditional, final lien waiver when such claimant has been paid  
266 in full for any labor, materials, services, or equipment supplied or used in the improvement to



267 the property shall be presumed liable for slander of title and for any damages sustained as a result  
268 thereof, together with a statutory penalty of five hundred dollars.

269           31. The provisions of this section shall apply to any residential real property conveyance  
270 closing on or after November 1, 2010.

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