

REVISIONS TO MISSOURI MECHANIC'S LIEN STATUTE IMPACT RESIDENTIAL PROJECTS

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On August 28, 2010, a new section of the Missouri Mechanic's Lien Statute (Chapter 429 MO Rev. Stat.) will take effect. Section 429.016 applies only to "residential real property" on which structures are to be built or renovated with the intent of being used for residential purposes upon completion. Condominiums, townhouses and co-ops are included, regardless of the number of units. Mixed use or planned unit developments are excluded except for residential units located on separate identifiable parcels. The Statute imposes new requirements on owners, contractors and suppliers.

Notices

Any owner who contracts for improvements with the intent of selling residential real property must record a notice with the Recorder of Deeds at least 45 days before the intended date of sale. The owner must also post a copy of that notice on the property. The owner shall provide any contractor with a copy of the notice and the legal description of the property within five days after receipt of a written request. In turn, the contractor must provide a copy of that notice, within ten days after receiving a written request, to any person or entity with which it has contracted to perform work or provide materials for the improvement of the property.

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Contractors or suppliers who wish to assert a mechanic's lien against the property must record a notice of rights with the Recorder of Deeds in the county where the property is located not less than five days before the intended date of sale set forth in the owner's notice. Claimants or potential claimants who are identified in any previously recorded notice of rights are exempt from this requirement. This notice supplants the requirement in Section 429.100 that sub-contractors or suppliers provide the owner with written notice at least ten days before filing a mechanic's lien.

Just and True Account

For the first time, the Missouri legislature has defined the "just and true account" requirement contained in Section 429.080. However, this definition applies only to mechanic's liens against residential real property.

Such claimants must file with the Clerk of the Circuit Court:

- A photocopy of the file-stamped notice of rights;
- The name and address of the person or entity with whom the claimant contracted;
- A copy of the contract, purchase order(s), proposal(s), and any agreed change orders or modifications;
- If there is no written agreement, a general description of the scope of work and the basis for payment;
- All invoices;
- An accurate statement of account explaining the amount claimed; and
- The last date the claimant performed work or provided materials or equipment to the project.

To the extent any error in the claimant's notice of rights prejudices the owner, any lender, disbursing company, title company or subsequent buyer of the property, the claimant's rights to assert a mechanic's lien shall be forfeited.

Substitute Bond

Also for the first time, the Missouri legislature has provided a means for property owners to compel the release of a mechanic's lien by posting in substitution cash, a letter of credit, or surety bond for at least 150% of the amount asserted in the mechanic's lien.

Lien Waivers

The Statute also contains provisions governing partial and full waivers of mechanic's lien rights. Interestingly, partial waivers are ineffective unless presented in exchange for payment of the full amount claimed. No waiver given for less than full payment shall be effective unless it is designated as an "unconditional final lien waiver" and presented on a form substantially similar to the form specified by the Statute. Such an unconditional, final waiver is an absolute waiver of all mechanic's lien rights, including any rights which might otherwise arise from remedial or additional labor,

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services or material provided to the property.

Notwithstanding the foregoing, the Statute provides that a claimant executing an unconditional, final mechanic's lien waiver for less than full consideration shall not be deemed to have waived or released any other claims, remedies or causes of action besides its mechanic's lien rights. Thus, a claimant could conceivably recover from a property owner for additional contractual damages or equitable claims after delivering an unconditional, final mechanic's lien waiver in exchange for less than full payment for the amount claimed by the contractor. **Owner beware!**

Any claimant who has been paid in full for the work performed must timely execute an unconditional, final mechanic's lien waiver, in no event more than five days after receipt of a written request. A claimant who fails to do so shall be presumed liable for slander of title and related damages.

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