

SECOND REGULAR SESSION

HOUSE BILL NO. 2212

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WASSON.

Read 1st time February 20, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5106L.01I

AN ACT

To repeal sections 429.005, 429.010, and 429.015, RSMo, and to enact in lieu thereof three new sections relating to statutory liens against real estate.

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

Section A. Sections 429.005, 429.010, and 429.015, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 429.005, 429.010, and 429.015, to read as follows:

429.005. 1. An agreement by an original contractor, subcontractor, supplier or laborer to waive any right to enforce or claim any lien authorized under this chapter, where the agreement is in anticipation of and in consideration for the awarding of a contract or subcontract to perform work or supply materials for an improvement upon real property, whether expressly stated or implied, is against public policy and shall be unenforceable. The provisions of this section shall not prohibit subordination or release of a lien authorized under this chapter.

2. Nothing contained in this section shall be construed to prohibit contractual provisions requiring lien waivers as a condition for payment. **All lien waivers whether provided for in an agreement or otherwise shall be subject to the following terms:**

(1) **No oral or written statement purporting to waive, release, impair, or otherwise adversely affect any right to enforce or claim any lien authorized under this chapter shall be enforceable or creates any estoppel or impairment of such claim unless it is under a waiver and release prescribed in this section or the claimant actually received payment for such waiver, release, impairment, or adverse affect in which case the waiver, release,**

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.

15 impairment, or adverse affect shall be limited to the extent of the amount of the payment
16 received;

17 (2) The enforceability of either an accord and satisfaction regarding a bona fide
18 dispute or any agreement made in settlement of an action pending in any court provided
19 the accord and satisfaction or agreement made in settlement makes a specific reference to
20 the intent to waive or release lien rights under this chapter shall not be affected by this
21 section;

22 (3) The waiver and release given by any claimant under this section shall be null,
23 void, and unenforceable as against public policy unless it follows substantially the
24 following forms in the following circumstances:

25 (a) If the claimant is required to execute a waiver and release in exchange for, or
26 in order to induce the payment of, a progress payment and the claimant has not, in fact,
27 been paid in exchange for the waiver and release or is given a single payee check or joint
28 payee check in exchange for the waiver and release, the waiver and release shall follow
29 substantially the following form:

30

31 **CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT**

32 Upon receipt by the undersigned of a check from (insert maker of check) in the sum of
33 (insert amount) payable to (insert who check was payable to) and when the check has been
34 properly endorsed and has been paid by the bank upon which it is drawn, this document
35 shall become effective to release any mechanic's lien right the undersigned has on the job
36 of (insert owner's name) located at (insert job description), but only to the following extent.
37 This release covers a progress payment for labor, services, equipment, or materials
38 furnished to (insert customer's name) for the payment period ending on (insert date),
39 hereafter referred to as the release date, only and does not cover any retentions retained
40 before or after the release date; extras or additional work furnished or provided before the
41 release date for which payment has not been received; extras, additional work, or any
42 items or work provided or furnished after the release date. Rights based upon work
43 performed or items furnished or provided before the release date under a written change
44 order which has been fully executed by the parties prior to the release date are covered by
45 this release unless specifically reserved by the claimant in this release. This release of any
46 mechanic's lien right shall not otherwise affect the contract rights, including rights between
47 parties to the contract based upon rescission, impact, abandonment, or breach of contract,
48 or the right of the undersigned to recover compensation for furnished labor, services,
49 equipment, or material covered by this release if those furnished labor, services,
50 equipment, or material were not compensated by the progress payment. Before any

51 recipient of this document relies on it, such party should verify evidence of payment to the
52 undersigned.

53 Dated_____.

54 COMPANY NAME

55 By:_____

56 (Signature)

57 Title:_____

58 (b) If the claimant is required to execute a waiver and release in exchange for, or
59 in order to induce payment of, a progress payment and the claimant asserts in the waiver
60 it has, in fact, been paid the progress payment, the waiver and release shall follow
61 substantially the following form:

62

63 **UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT**

64 The undersigned has been paid and has received a progress payment in the sum of (insert
65 amount) for labor, services, equipment, or material furnished to (insert customer's name)
66 on the job (insert owner's name) located at (insert job description) and does hereby release
67 any mechanic's lien right that the undersigned has on the above-referenced job but only
68 to the following extent. This release covers progress payment for labor, services,
69 equipment, or materials furnished to (insert customer's name) for the payment period
70 ending on (insert date), hereafter referred to as the release date, only and does not cover
71 any retentions retained before or after the release date; extras or additional work
72 furnished or provided before the release date for which payment has not been received;
73 extras, additional work, or any items or work furnished or provided after the release date.
74 Rights based upon work performed or items furnished or provided before the release date
75 under a written change order which has been fully executed by the parties prior to the
76 release date are covered by this release unless specifically reserved by the claimant in this
77 release. This release of any mechanic's lien right shall not otherwise affect the contract
78 rights, including rights between parties to the contract based upon rescission, impact,
79 abandonment, or breach of the contract, or the right of the undersigned to recover
80 compensation for furnished labor, services, equipment, or material covered by this release
81 if those furnished labor, services, equipment, or material covered were not compensated
82 by the progress payment.

83 Dated_____.

84 COMPANY NAME

85 By:_____

86 (Signature)

87 Title:_____

88

89 Each unconditional waiver in this provision shall contain the following language in at least
90 as large type as the largest type otherwise on the document: "NOTICE: THIS
91 DOCUMENT WAIVES LIEN RIGHTS UNCONDITIONALLY AND STATES THAT
92 YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS
93 ENFORCEABLE AGAINST YOU IF YOU SIGN IT EVEN IF YOU HAVE NOT BEEN
94 PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.";

95 (c) If the claimant is required to execute a waiver and release in exchange for, or
96 in order to induce the payment of, a final payment and the claimant has not, in fact, been
97 paid in exchange for the waiver and release or is given a single payee check or joint payee
98 check in exchange for the waiver and release, the waiver and release shall follow
99 substantially the following form:

100

101 **CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

102 Upon receipt by the undersigned of a check from (insert maker of check) in the sum of
103 (insert amount of check) payable to (insert who check was payable to) and when the check
104 has been properly endorsed and has been paid by the bank upon which it is drawn, this
105 document shall become effective to release any mechanic's lien right the undersigned has
106 on the job of (insert name of owner) located at (insert job description). This release covers
107 the final payment to the undersigned for all labor, services, equipment, or material
108 furnished or provided on the job, except for disputed claims in the amount of (insert
109 amount). Before any recipient of this document relies on it, the party should verify
110 evidence of payment to the undersigned.

111 Dated_____.

112 COMPANY NAME

113 By:_____

114 (Signature)

115 Title:_____

116 (d) If the claimant is required to execute a waiver and release in exchange for, or
117 in order to induce payment of, a final payment and the claimant asserts in the waiver it
118 has, in fact, been paid the final payment, the waiver and release shall follow substantially
119 the following form:

120

121 **UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT**

122 The undersigned has been paid in full for all labor, services, equipment, or material
123 furnished or provided to (insert customer's name) on the job of (insert name of owner)
124 located at (insert job description) and does hereby waive and release any right to a
125 mechanic's lien on the job, except for disputed claims in the amount of (insert amount).

126 Dated:_____.

127 COMPANY NAME

128 By:_____

129 (Signature)

130 Title:_____

131

132 Each unconditional waiver in this provision shall contain the following language in at least
133 as large type as the largest type otherwise on the document: "NOTICE: THIS
134 DOCUMENT WAIVES LIEN RIGHTS UNCONDITIONALLY AND STATES THAT
135 YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS
136 ENFORCEABLE AGAINST YOU IF YOU SIGN IT EVEN IF YOU HAVE NOT BEEN
137 PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.".

429.010. 1. Any person who shall do or perform any work or labor upon land, rent any
2 machinery or equipment, or use any rental machinery or equipment, or furnish any material,
3 fixtures, engine, boiler or machinery for any building, erection or improvements upon land, or
4 for repairing, grading, excavating, or filling of the same, or furnish and plant trees, shrubs,
5 bushes or other plants or provides any type of landscaping goods or services or who installs
6 outdoor irrigation systems under or by virtue of any contract with the owner or proprietor thereof,
7 or his or her agent, trustee, contractor or subcontractor, or without a contract if ordered by a city,
8 town, village or county having a charter form of government to abate the conditions that caused
9 a structure on that property to be deemed a dangerous building under local ordinances pursuant
10 to section 67.410, RSMo, upon complying with the provisions of sections 429.010 to 429.340,
11 shall have for his or her work or labor done, machinery or equipment rented or materials,
12 fixtures, engine, boiler, machinery, trees, shrubs, bushes or other plants furnished, or any type
13 of landscaping goods or services provided, a lien upon such building, erection or improvements,
14 and upon the land belonging to such owner or proprietor on which the same are situated, to the
15 extent of three acres; or if such building, erection or improvements be upon any lot of land in any
16 town, city or village, or if such building, erection or improvements be for manufacturing,
17 industrial or commercial purposes and not within any city, town or village, then such lien shall
18 be upon such building, erection or improvements, and the lot, tract or parcel of land upon which
19 the same are situated, and not limited to the extent of three acres, to secure the payment of such
20 work or labor done, machinery or equipment rented, or materials, fixtures, engine, boiler,

21 machinery, trees, shrubs, bushes or other plants or any type of landscaping goods or services
22 furnished, or outdoor irrigation systems installed **and reasonable attorney's fees and costs to**
23 **collect the same**; except that if such building, erection or improvements be not within the limits
24 of any city, town or village, then such lien shall be also upon the land to the extent necessary to
25 provide a roadway for ingress to and egress from the lot, tract or parcel of land upon which such
26 building, erection or improvements are situated, not to exceed forty feet in width, to the nearest
27 public road or highway. Such lien shall be enforceable only against the property of the original
28 purchaser of such plants unless the lien is filed against the property prior to the conveyance of
29 such property to a third person. For claims involving the rental of machinery or equipment to
30 others who use the rental machinery or equipment, the lien shall be for the reasonable rental
31 value of the machinery or equipment during the period of actual use and any periods of nonuse
32 taken into account in the rental contract, while the machinery or equipment is on the property in
33 question.

34 2. There shall be no lien involving the rental of machinery or equipment unless:

35 (1) The improvements are made on commercial property;

36 (2) The amount of the claim exceeds five thousand dollars; and

37 (3) The party claiming the lien provides written notice within [five] **forty-five** business
38 days of the commencement of the use of the rental machinery or equipment to the property owner
39 that rental machinery or equipment is being used upon their property. Such notice shall identify
40 the name of the entity that rented the machinery or equipment, the machinery or equipment being
41 rented, and the rental rate.

42

43 Nothing contained in this subsection shall apply to persons who use rented machinery or
44 equipment in performing the work or labor described in subsection 1 of this section.

429.015. 1. Every registered architect or corporation registered to practice architecture,
2 every registered professional engineer or corporation registered to practice professional
3 engineering, every registered landscape architect or corporation registered to practice landscape
4 architecture, and every registered land surveyor or corporation registered to practice land
5 surveying, who does any landscape architectural, architectural, engineering or land surveying
6 work upon or performs any landscape architectural, architectural, engineering or land surveying
7 service directly connected with the erection or repair of any building or other improvement upon
8 land under or by virtue of any contract with the owner or lessee thereof, or such owner's or
9 lessee's agent, trustee, contractor or subcontractor, or without a contract if ordered by a city,
10 town, village or county having a charter form of government to abate the conditions that caused
11 a structure on that property to be deemed a dangerous building under local ordinances pursuant
12 to section 67.410, RSMo, upon complying with the provisions of this chapter, shall have for such

13 person's landscape architectural, architectural, engineering or land surveying work or service so
14 done or performed, a lien upon the building or other improvements and upon the land belonging
15 to the owner or lessee on which the building or improvements are situated, to the extent of [one
16 acre] **three acres**. If the building or other improvement is upon any lot of land in any town, city
17 or village, then the lien shall be upon such building or other improvements, and the lot or land
18 upon which the building or other improvements are situated, to secure the payment for the
19 landscape architectural, architectural, engineering or land surveying work or service so done or
20 performed **and reasonable attorney's fees and costs to collect the same**. For purposes of this
21 section, a corporation engaged in the practice of architecture, engineering, landscape architecture,
22 or land surveying, shall be deemed to be registered if the corporation itself is registered under
23 the laws of this state to practice architecture, engineering or land surveying.

24 2. Every mechanic or other person who shall do or perform any work or labor upon or
25 furnish any material or machinery for the digging of a well to obtain water under or by virtue of
26 any contract with the owner or lessee thereof, or such owner's or lessee's agent, trustee,
27 contractor or subcontractor, upon complying with the provisions of sections 429.010 to 429.340
28 shall have for such person's work or labor done, or materials or machinery furnished, a lien upon
29 the land belonging to such owner or lessee on which the same are situated, to the extent of one
30 acre, to secure the payment of such work or labor done, or materials or machinery furnished as
31 aforesaid.

32 3. Every mechanic or other person who shall do or perform any work or labor upon, or
33 furnish any material, fixtures, engine, boiler or machinery, for the purpose of demolishing or
34 razing a building or structure under or by virtue of any contract with the owner or lessee thereof,
35 or such owner's or lessee's agent, trustee, contractor or subcontractor, or without a contract if
36 ordered by a city, town, village or county having a charter form of government to abate the
37 conditions that caused a structure on that property to be deemed a dangerous building under local
38 ordinances pursuant to section 67.410, RSMo, upon complying with the provisions of sections
39 429.010 to 429.340, shall have for such person's work or labor done, or materials, fixtures,
40 engine, boiler or machinery furnished, a lien upon the land belonging to such owner or lessee on
41 which the same are situated, to the extent of one acre. If the building or buildings to be
42 demolished or razed are upon any lot of land in any town, city or village, then the lien shall be
43 upon the lot or lots or land upon which the building or other improvements are situated, to secure
44 the payment for the labor and materials performed.

45 4. The provisions of sections 429.030 to 429.060 and sections 429.080 to 429.430
46 applicable to liens of mechanics and other persons shall apply to and govern the procedure with
47 respect to the liens provided for in subsections 1, 2 and 3 of this section.

48 5. Any design professional or corporation authorized to have lien rights under subsection
49 1 of this section shall have a lien upon the building or other improvement and upon the land,
50 whether or not actual construction of the planned work or improvement has commenced if:

51 (1) The owner or lessee thereof, or such owner's or lessee's agent or trustee, contracted
52 for such professional services directly with the design professional or corporation asserting the
53 lien; and

54 (2) The owner or lessee is the owner or lessee of such real property either at the time the
55 contract is made or at the time the lien is filed.

56 6. Priority between a design professional or corporation lien claimant and any other
57 mechanic's lien claimant shall be determined pursuant to the provisions of section 429.260 on
58 a pro rata basis.

59 7. In any civil action, the owner or lessee may assert defenses which include that the
60 actual construction of the planned work or improvement has not been performed in compliance
61 with the professional services contract, is impracticable or is economically infeasible.

62 8. The agreement is in writing.

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