

SECOND REGULAR SESSION

HOUSE BILL NO. 2058

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DIEHL.

4976L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 429, RSMo, by adding thereto three new sections relating to mechanic's liens, with penalty provisions.

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

Section A. Chapter 429, RSMo, is amended by adding thereto three new sections, to be known as sections 429.021, 429.022, and 429.023, to read as follows:

429.021. 1. All persons providing labor, materials, or services for the construction or improvement of residential real property, other than the repair, remodeling, or similar improvement of an existing, owner-occupied residential property of four units or less under section 429.013 who seek to retain the right to assert a mechanic's lien against such residential real property shall record, or be accurately identified in, a public notice as provided in this section which shall be recorded with the recorder of deeds for each county in which the residential real property is located.

2. As used in this section and in section 429.022, the term "residential real property" means any parcel of real estate, improved or unimproved, that is intended to be or is used for the construction of residential structures and related improvements or improvements which support the residential use of the land and which residential structures are intended to be owned by the inhabitant, including any residential dwelling of four units or less and residential condominiums, townhouses, and cooperatives regardless of the number of units and including mixed-use or planned unit developments regardless of the ratio of residential structures to other uses. Residential real property also includes any streets, sidewalks, utility services, improved common areas, or other facilities

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 which are or will be constructed for the use or benefit of the inhabitants of residential real
18 property.

19 3. Every original contractor or person identified in subsection 1 of section 429.015
20 who seeks to retain the right to assert a mechanic's lien against such residential real
21 property shall record, or be accurately identified in, a notice of intent to perform which
22 will be effective to initiate lien rights for any person identified in such notice as of the later
23 of the date such notice is recorded or the date such person identified in the notice
24 commences performing or providing labor, materials, or services intended for the
25 improvement of the property. Any person recording a notice of intent to perform shall also
26 post a copy of such notice on or immediately adjacent to the residential real property and
27 shall provide a copy of, or reasonable access to, such notice to every person identified in
28 such notice, provided, however, that the failure to post such notice or provide such notice
29 to each person identified therein shall not defeat the lien rights of any person identified in
30 such notice and it shall not relieve any person from the requirement to record notice or be
31 identified in a recorded notice.

32 4. Every subcontractor or supplier who is not an original contractor who seeks to
33 retain the right to assert a mechanic's lien against such residential real property and who
34 is not accurately identified in a previously recorded notice of intent to perform shall
35 record, or be accurately identified in, a notice of commencement which will be effective to
36 initiate lien rights for any person identified in such notice as of the later of ten days prior
37 to the recording of such notice or the date such person identified in the notice commences
38 performing or providing labor, materials, or services intended for the improvement of the
39 property. Any person recording a notice of commencement shall provide a copy of, or
40 reasonable access to, such notice to every person identified in such notice, provided,
41 however, that the failure to provide such notice to each person identified therein shall not
42 defeat the lien rights of any person identified in such notice and shall not relieve any
43 person from the requirement to record notice or be identified in a recorded notice.

44 5. Notwithstanding any provision of this chapter, a notice of commencement
45 recorded after a conveyance of the residential real property to a third party acting in good
46 faith who provides fair value to the seller will be not effective to preserve lien rights as to
47 that residential real property, but such person recording such notice of commencement will
48 not waive any right to recover the charges for such labor, materials, or services from the
49 seller of the residential real property and will, further, be entitled to recover treble the
50 charges for such labor, materials, or services from such seller upon proving that the seller
51 had actual knowledge that labor, materials, or services were provided by such person, that

52 such labor, materials, or services enhanced the value of the property, and that the seller
53 acted in bad faith and for the purpose of not paying such charges.

54 6. Any recorded notice shall comply with section 59.310 and shall contain the
55 following information:

56 (1) The name and, if known, the address of the owner of the residential real
57 property, who shall be designated as the grantor;

58 (2) The name, address, telephone number, email address, if any, and the facsimile
59 number, if any, of the person recording the notice, who shall be designated as the grantee;

60 (3) The legal description of the residential real property; and

61 (4) The name, address, telephone number, email address, if known, and facsimile,
62 if known, of every person with whom the grantee has contracted to provide labor,
63 materials, or services for the improvements to the residential real property.

64

65 In addition, any recorded notice may contain the name and, to the extent known by the
66 grantee, the address, email address, telephone number, and facsimile number of every
67 person who is providing or will provide labor, materials, or services for the improvement
68 of the residential real property who do not have a contractual relationship with the grantee
69 and who are not identified in a previously recorded notice to the knowledge of the grantee.

70 An owner of residential real property, an agent thereof, or any person having a security
71 interest in the property may record a notice of intent to perform for the purpose of
72 complying with this section.

73 7. Any person failing to record a notice or any person whose name is not accurately
74 identified in any recorded notice will be deemed to have waived any rights to assert a lien
75 under this chapter. A recorded notice accurately identifies a person so long as the
76 identifying information in the notice is neither deceptively similar to another person
77 reasonably likely to provide labor, materials, or services for the improvement of residential
78 real property nor so deficient in information as to make it unreasonably difficult to identify
79 such person. Any person who provides labor, materials, or services prior to the effective
80 date of a recorded notice accurately identifying himself or herself will be deemed to have
81 waived any rights to assert a lien under this chapter only as to the labor, materials, or
82 services provided prior to the effective date of the recorded notice accurately identifying
83 himself or herself, but any original contractor or other person who is determined to be an
84 original contractor shall have lien rights only for labor, materials, or services after a
85 recorded notice accurately identifying such person is filed, regardless of the type of notice
86 recorded. This section is only intended to limit what claims for labor, service, and
87 materials may be enforced in an action under this chapter, and nothing herein shall affect

88 any other remedies afforded by law, including, but not limited to, remedies available for
89 an action on the contract for a claim of undue enrichment or for other common law or
90 equitable actions.

91 8. A recorded notice shall expire two years after the date on which it is recorded
92 unless extended by the recording, prior to the expiration of such two years, of a
93 continuation notice which shall contain the information set forth in subsection 4 of this
94 section and shall further include the book and page number of any prior recorded notice
95 or continuation notice which is to be continued in effect. Notwithstanding any provision
96 of this section, chapter, or any other enactment to the contrary, the failure to record a
97 continuation notice prior to the expiration of any previously recorded notice will constitute
98 the waiver of any liens rights as to any residential real property described in such
99 continuation notice unless a lien statement under section 429.080 has been filed with
100 respect to such residential real property.

429.022. 1. A person providing labor, services, or materials for the improvement
2 of residential real property may waive his or her right to assert a mechanic's lien by
3 executing a partial or full waiver of lien rights, whether conditioned upon receipt of
4 payment or unconditional, provided that a waiver shall not be deemed or interpreted to
5 waive or release lien rights in exchange for a payment of less than the amount claimed due
6 or arising subsequent to the date on which the waiver of lien rights is executed unless such
7 waiver is an unconditional, final lien waiver in compliance with this section.

8 2. An unconditional, final lien waiver is a complete and absolute waiver of any lien
9 rights on the residential real property described in the lien waiver, including any rights
10 which might otherwise arise from remedial or additional labor, services, or materials
11 provided to the residential real property or which might benefit the residential real
12 property under an initial agreement or a supplemental agreement entered into by the same
13 parties prior to the execution of the unconditional, final lien waiver.

14 3. An unconditional, final lien waiver shall only be valid if it contains a heading,
15 title, or label in at least twelve- point bold type stating "Unconditional Final Lien Waiver"
16 and shall further include the following information, to the extent applicable:

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

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

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

24 **(4) An acknowledgment by the person executing the unconditional, final lien waiver**
25 **that all rights granted under this chapter are waived as to the residential real property**
26 **described in the unconditional, final lien waiver for all labor, services, or materials**
27 **provided to such property prior to the date of such unconditional, final lien waiver and for**
28 **such labor, services, and materials thereafter provided for remedial or additional work or**
29 **work otherwise reasonably related to the work to be completed.**

30 **4. A person executing an unconditional, final lien waiver for less than full**
31 **consideration shall still be bound by such waiver as it relates to any rights arising under**
32 **this chapter, but such waiver shall not constitute a release of any other claim, remedy, or**
33 **cause of action.**

34 **5. An unconditional, final lien waiver is valid under this chapter notwithstanding**
35 **any nonperformance, failure of performance, or fraud not attributable to all persons**
36 **relying on such unconditional, final lien waiver.**

37 **6. A person recording or identified in a recorded notice of intent to perform or a**
38 **recorded notice of commencement who knowingly refuses, or who knowingly fails within**
39 **ten business days following a written request therefor, to execute an unconditional, final**
40 **lien waiver for such property and who either has provided no labor, materials, or services**
41 **for or benefitting such property or has been paid in full for such labor, materials, or**
42 **services for or benefitting such property commits the crime of lien fraud, punishable under**
43 **this section as a class B misdemeanor. A person recording or identified in a recorded**
44 **notice of intent to perform or a recorded notice of commencement who intentionally**
45 **refuses, or who intentionally fails within ten business days following a written request**
46 **therefor, to reasonably identify the labor, materials, or services provided for or benefitting**
47 **such property and the amount claimed owed, less credit for any payments previously**
48 **received, for such labor, materials, or services commits the crime of lien fraud, punishable**
49 **under this section as a class C misdemeanor.**

50 **7. In the alternative to this section, a lien shall not attach to residential real**
51 **property on behalf of any person recording or identified in a notice of intent to perform**
52 **or a notice of commencement if, prior to the filing of a lien statement under section**
53 **429.080, the owner has procured from a surety company authorized to do business in this**
54 **state a bond in an amount not less than one and one-half times the charges claimed by such**
55 **person or persons to be due or to become due for labor, materials, or services provided or**
56 **to be provided to the owner for the construction or improvement of the residential real**
57 **property. Such bond shall obligate the surety company, to the extent of the sum of the**
58 **bond, to pay all sums determined to be owed for the labor, materials, and services provided**
59 **or to be provided by the persons claiming under the bond, which determination shall be**

60 made by either a written agreement of the owner and such person or persons or a final
61 decision of a court. The owner shall furnish on request a true copy, at no more than actual
62 cost of reproduction, to such person or persons and shall be liable to the requesting person
63 for any damages caused by failure, without justification, to furnish a copy.

64 8. A person shall not recover under the bond provided for in this section unless
65 such person:

66 (1) Institutes suit against both the surety and the party-in-privity from whom the
67 payment was due within one year after the completion of the provision of labor, materials,
68 and services for the construction or improvement of the residential real property or within
69 such longer time permitted by the terms of the bond; and

70 (2) Pleads and proves in such suit that such person is identified in a recorded notice
71 of intent to perform or a recorded notice of commencement describing the residential real
72 property; and

73 (3) Pleads and proves in such suit that such person has not violated the provisions
74 of subsection 6 of this section.

75 9. A person claiming under the bond may proceed directly against the surety and
76 the party-in-privity without bringing a judicial proceeding against the owner or an original
77 contractor, unless required by subdivision (1) of subsection 8 of this section, and without
78 further complying with the notice and filing procedures of this chapter. In any judicial
79 proceeding brought on the bond, the court may award to the prevailing party or parties
80 such reasonable attorney's fees and court costs as the court determines appropriate, and
81 may apportion such award, if any, among the nonprevailing parties in the discretion of the
82 court. However, the total liability of the surety shall not exceed the amount of the bond.

429.023. 1. A lien does not attach to the real estate on behalf of any claimant
2 claiming through a particular original contractor if the owner or the original contractor
3 has procured from a surety company authorized to do business in this state a bond meeting
4 the requirements of this section and has recorded a notice of surety bond.

5 2. The bond shall obligate the surety company, to the extent of the sum of the bond,
6 to pay all sums due to construction lien claimants other than the original contractor for
7 services and materials supplied under the contract under which the lien would otherwise
8 arise.

9 3. The sum of the bond shall not be less than one hundred fifty percent of all
10 mechanics' lien claims filed prior to the recorded notice of the bond and shall only
11 substitute collateral as set out herein to those mechanics' liens filed prior to the recorded
12 notice of the bond.

13 **4. The person procuring the bond shall furnish on request a true copy at cost of**
14 **reproduction to any claimant and is liable to the requesting claimant for any damages**
15 **caused by failure, without justification, to furnish a copy.**

16 **5. A claimant shall not recover under the bond provided for in this section unless**
17 **he or she:**

18 **(1) Institutes suit against the surety within one year after the completion of his or**
19 **her performance or within any longer period of time permitted by the terms of the bond;**
20 **and**

21 **(2) If he or she is a claimant not having a direct contract relationship with the**
22 **original contractor, within ninety days after completion of his or her performance gives the**
23 **original contractor written notice of the amount due.**

24 **6. A claimant having a claim under the bond may proceed directly against the**
25 **surety. A judicial proceeding on the bond may be maintained separately from and without**
26 **bringing a judicial proceeding against the original contractor and without complying with**
27 **the notice and recoding procedures of sections 429.010 to 429.360.**

28 **7. The obligation of a surety under this section is not affected by any change or**
29 **modification of the contract between the original contractor and the owner, but the total**
30 **liability of the surety shall not exceed the sum of the bond.**

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