

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 2058

95TH GENERAL ASSEMBLY

4976L.08P

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

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

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

Section A. Chapter 429, RSMo, is amended by adding thereto one new section, to be  
2 known as section 429.016, to read as follows:

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

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

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.

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

20       **3. Any person or entity, hereinafter referred to as claimant, who seeks to retain the**  
21 **right to assert a mechanic's lien against residential real property, hereinafter referred to**  
22 **as property, shall record a notice of rights in the office of the recorder of deeds for the**  
23 **county in which the property is located. Such recorded notice of rights shall only apply to**  
24 **any work, labor, or materials performed or used to, on, or for the property in the future**  
25 **or in the immediately preceding sixty-day period from the date of such recording.**

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

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

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

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

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

41

42       **NOTICE OF RIGHTS**

43

44       **Date: The date of the document.**

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

46       **Claimant: Identify Claimant, as "Grantee" by correct name, current address, contact**  
47 **persons and current telephone number.**

48       **Property: The legal description of the property.**

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

51

52       **Persons performing work for or supplying materials to Claimant:**

53       **Claimant may, but is not obligated to, identify any persons or entities which have or will**  
54 **be performing work or supplying materials on behalf of Claimant for the Property. Said**

55 persons or entities must be identified by correct legal name, address, and current telephone  
56 number.

57

58 A recorded notice correctly identifies a person or entity so long as the identifying  
59 information in the notice is neither deceptively similar to another person or entity  
60 reasonably likely to provide labor, materials, supplies, or equipment for the improvement  
61 of property nor so deficient in information as to make it unreasonably difficult to identify  
62 such person or entity. The form shall be signed by a person authorized to execute the form  
63 on behalf of the claimant, and such signature shall be notarized. The name of the person  
64 signing the form shall be printed legibly or typed immediately below the signature.

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

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

70 11. (1) The owner of residential real property upon which a claimant is to perform  
71 or provide work, labor, or materials, or such owner's designated agent, shall provide any  
72 claimant with the name of the current record property owner and the deed (which deed  
73 shall include the legal description of the subject property) by which such owner of record  
74 obtained the subject property, within five calendar days after the owner, or its designated  
75 agent, receives a written request for the same from any claimant. The claimant may  
76 further request a copy of a survey of the subject property, a copy of the subdivision or  
77 other plat of the subject property, or such other information, document, or instrument, as  
78 may allow the claimant to identify the subject property with reasonable certainty, but the  
79 owner or its agent shall not be required to provide the same.

80 (2) If any owner, or its designated agent, fails to comply with the requirements of  
81 this section, the requesting claimant shall be entitled to receive, as its sole and exclusive  
82 remedy for failure to comply with this section, the claimant's actual and reasonable costs  
83 (excluding attorney fees) to obtain a legal description of the subject property necessary for  
84 the claimant to record its notice of rights. The costs described in this section shall be  
85 lienable expenses.

86 (3) Nothing herein, including, without limitation, the claimant receiving a legal  
87 description with an error, omission, or inaccuracy in the content or the owner or its  
88 designated agent's failure to otherwise comply with this section, shall relieve any claimant  
89 of its obligation to record a notice of rights in full compliance with this section in order to  
90 retain its mechanic's lien rights as to any residential real property.

12. Each notice of rights or renewal notice of rights as hereafter provided shall only be valid for, and shall automatically expire, one year after recording, unless the claimant shall record a renewal of notice of rights with the recorder of deeds of the county in which the property is located prior to the expiration of any previously recorded notice of rights or renewal notice of rights, and any failure to record a renewal of notice of rights prior to the expiration of any previously recorded notice will constitute a waiver of lien rights as to the property. If a claimant fails to file its mechanic's lien prior to the expiration of any such one-year period, then the claimant's lien rights will be extinguished.

13. The recording of a notice of rights, or any number of renewal of notice of rights, shall not extend the time for filing a mechanic's lien as provided under section 429.080.

14. The renewal of notice of rights shall be in substantially the same form as the notice of rights. However, the renewal of notice of rights shall be titled as such and shall contain the date and recording information for the original notice of rights, as well as the dates and recording information for any earlier renewals of rights applicable to the property. A renewal of notice of rights affecting multiple lots must omit any lot for which the claimant has executed an unconditional final lien waiver.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Depositing in the office of the circuit clerk a sum of money, in cash or certified check, an irrevocable letter of credit, which may be secured, issued by a federally or state chartered bank, savings and loan association or savings bank (referred to hereafter as a bank) authorized to and doing business in the state of Missouri, or a surety bond issued by a surety company authorized to do surety business in the state of Missouri and having a certificate of authority to do business with the United States government in accordance with 31 CFR Section 223.1, in an amount not less than one hundred fifty percent of the amount of the mechanic's lien being released; and

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

(a) Amount of money deposited, amount of the letter of credit deposited, or penal sum of the bond deposited, along with the name and address of the bank issuing the letter

163 of credit or surety company issuing the bond, as well as a service address for the bank or  
164 surety company;

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

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

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

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

174 20. Any surety bond deposited as substitute collateral shall obligate the surety  
175 company, to the extent of the penal sum of the bond, to pay any judgment entered under  
176 section 429.210.

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

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

183 23. Upon determination of the amount of claimant's claim, if any, against the  
184 substitute collateral, the court shall either:

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

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

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

192 (4) Release the substitute collateral  
193  
194

195 all as deemed appropriate by the court.

196 24. The deposit of substitute collateral and release of claimant's mechanic's lien  
197 shall not modify any aspect of the priority of claimant's interest, claimant's burden of  
198 proving compliance with the mechanic's lien statute, or claimant's obligations with respect  
199 to enforcement of its mechanic's lien claim, including, but not limited to, time for filing suit

to enforce and necessary parties to the suit to enforce. It is the intent only that the deposited substitute collateral shall be the ultimate source of any potential recovery by claimant instead of the funds generated by foreclosure of the residential real property.

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

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

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

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

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

**UNCONDITIONAL FINAL LIEN WAIVER FOR RESIDENTIAL REAL PROPERTY**

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

(Provide legal description of the Property)

237 Claimant's legal name and the name, title or position, address, and telephone number of  
238 the person executing the unconditional final lien waiver on behalf of claimant shall be  
239 typed or legibly printed immediately above or below the signature, and the date that the  
240 document was signed shall be typed or legibly printed immediately adjacent to the  
241 signature.

242 30. A claimant executing an unconditional, final mechanic's lien waiver for less  
243 than full consideration shall be bound by such mechanic's lien waiver as it relates to any  
244 rights to assert a mechanic's lien against the property, but such mechanic's lien waiver  
245 shall not constitute a waiver or release of any other claim, remedy, or cause of action.

246 31. An unconditional, final mechanic's lien waiver meeting the requirements of this  
247 section is valid and enforceable as to claimant's mechanic's lien rights as to the property  
248 identified on the unconditional, final mechanic's lien waiver notwithstanding claimant's  
249 failure to receive any promised payment or other consideration.

250 32. Any claimant who has recorded a notice of rights and who has been paid in full  
251 for the work performed on the property shall timely execute an unconditional, final  
252 mechanic's lien waiver, shall not unreasonably withhold such a waiver when circumstances  
253 require prompt execution, and in no event shall fail to provide a waiver any later than five  
254 calendar days after claimant's receipt of a written request to do so by any person or entity.  
255 A claimant who fails or refuses timely to execute an unconditional, final lien waiver when  
256 such claimant has been paid in full for any labor, materials, services, or equipment  
257 supplied or used in the improvement to the property shall be presumed liable for slander  
258 of title and for any damages sustained as a result thereof, together with a statutory penalty  
259 of five hundred dollars.

260 33. The provisions of this section shall not apply to a residential structure which  
261 was substantially completed prior to September 1, 2010. Notwithstanding the provisions  
262 of subsection 3 of this section, a notice of rights recorded on or prior to October 1, 2010,  
263 shall apply to all labor, material, services, or equipment supplied or used at any time in the  
264 improvement to any residential real property which was not substantially completed prior  
265 to September 1, 2010, and the provisions of subsection 7 shall only apply to a conveyance  
266 of property occurring after October 1, 2010.

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