

SS SCS HCS HB 2058 -- MECHANIC'S LIENS AGAINST RESIDENTIAL REAL PROPERTY

This bill establishes procedures for asserting a mechanic's lien against residential real property other than a mechanic's lien for the repair, remodeling, or addition to owner-occupied residential property of four units or less. In its main provisions, the bill:

(1) Requires a claimant seeking to retain the right to assert a mechanic's lien against residential real property to record a notice of rights with the recorder of deeds in the county in which the property is located not less than five days prior to the intended date of closing stated in a notice of intended sale as contemplated in these provisions. A claimant who is correctly identified in a previously recorded notice of rights recorded as to the property is relieved of his or her duty to record a notice of rights. Any claimant failing to record a notice of rights will be deemed to waive and forfeit any right to assert a mechanic's lien against the property but will retain the rights and remedies allowed by law to collect payment for any work, labor, and materials;

(2) Requires a notice of rights to comply with the provisions of Section 59.310, RSMo, and to be in a form as specified in the bill;

(3) Requires the title owner of residential real property who has contracted with a claimant for the performance or provision of work, labor, or materials for the improvement of the property in order to facilitate the sale of the property to record with the recorder of deeds for the county in which the property is located a notice of intended sale not less than 45 days prior to the earliest date the owner intends to close on the sale of the property. The notice must state the date on which the owner intends to close. Recording the notice is a condition precedent to a claimant's obligation to record a notice of rights as to the subject property in order to retain a claimant's mechanic's lien rights as to the property. The owner or designated agent must provide a copy of the notice to any claimant within five days after receiving a written request from the claimant and must post a copy of the notice on the subject property, at an entrance to the subject property, or at any jobsite office located at or near the subject property. If the owner or agent fails to comply with these provisions, the claimant will be entitled to receive his or her actual and reasonable costs, excluding attorney fees, to obtain the necessary legal description for the claimant to record his or her notice of rights. The owner or agent's failure to post, mail, or transmit the required information will not relieve the claimant from his or her obligation to record a notice of

rights in order to retain his or her mechanic's lien rights as to the property. The owner or agent will not be liable to any claimant or other person for an error, omission, or inaccuracy in the content of the information provided and disclosed by the owner or agent with certain specified exceptions;

(4) Specifies that a claimant satisfies the just and true account requirement in Section 429.080 by providing the following information and documentation as part of the mechanic's lien claim filed with the clerk of the circuit court:

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

(b) The name and address of the person the claimant contracted with to perform the work;

(c) A copy of any contract, purchase order, or proposal and any agreed change order or modification to the agreement;

(d) A general description of the scope of work agreed to be performed in the absence of any written agreement;

(e) All invoices submitted by a claimant for work on the property;

(f) An accurate statement of account showing all payments or credits against the amount due for work performed and the calculation or basis for the amount claimed; and

(g) The last date that work or labor was performed or any materials or equipment provided;

(5) Allows any person having interest in a residential real property against which a mechanic's lien has been filed to release the property from lien by depositing in the office of the circuit clerk a sum of money in cash or certified check; an irrevocable letter of credit issued by a federally or state-chartered bank, savings and loan association, or savings bank authorized to and doing business in Missouri; or a surety bond of at least 150% of the amount of the mechanic's lien being released and by recording with the recorder of deeds and filing with the circuit clerk the amount of the deposit including the claimant's name and the amount being released on the property;

(6) Specifies that a deposit of substitute collateral and release of a claimant's mechanic's lien claim will not modify any aspect of the priority of the claimant's interest or obligations regarding enforcement of a mechanic's lien claim nor will it

relieve any claimant of potential liability for slander of title or otherwise due to the filing of a claimant's mechanic's lien;

(7) Allows a claimant to waive his or her right to assert a mechanic's lien by executing a partial or full waiver of mechanic's lien rights, but this waiver will not be deemed to waive or release a mechanic's lien rights in exchange for a lesser payment unless the mechanic's lien waiver is an unconditional, final mechanic's lien waiver in compliance with these provisions;

(8) Specifies that an unconditional, final mechanic's lien waiver will only be valid if it is on a form as specified in the bill; and

(9) Requires any claimant who has recorded a notice of rights and who has been paid in full for the work performed to timely execute an unconditional, final mechanic's lien waiver; to not unreasonably withhold the waiver when circumstances require prompt execution; and to in no event fail to provide a waiver any later than five days after the claimant's receipt of a written request to do so by any person or entity. A claimant who fails or refuses to timely execute an unconditional, final lien waiver when he or she has been paid in full will be presumed liable for slander of title and for any damages sustained as a result, together with a statutory penalty of \$500.

The provisions of the bill will apply to any residential real property conveyance closing on or after November 1, 2010.