

SECOND REGULAR SESSION

# SENATE BILL NO. 934

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GRIESHEIMER.

Read 1st time February 11, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

5008S.011

## AN ACT

To amend chapter 429, RSMo, by adding thereto three new sections relating to mechanics' 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 429.016, 429.017, and 429.018, to read as follows:

**429.016. 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 429.017, 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**

21 areas, or other facilities which are or shall be constructed for the use  
22 or benefit of the inhabitants of residential real property.

23           3. Every original contractor or person identified in subsection  
24 1 of section 429.015 who seeks to retain the right to assert a mechanic's  
25 lien against such residential real property shall record, or be  
26 accurately identified in, a "notice of intent to perform" which shall be  
27 effective to initiate lien rights for any person identified in such notice  
28 as of the later of the date such notice is recorded or the date such  
29 person identified in the notice commences performing or providing  
30 labor, materials, or services intended for the improvement of the  
31 property. Any person recording a notice of intent to perform shall also  
32 post a copy of such notice on or immediately adjacent to the residential  
33 real property and shall provide a copy of, or reasonable access to, such  
34 notice to every person identified in said notice, provided, however, that  
35 the failure to post said notice or provide such notice to each person  
36 identified therein shall not defeat the lien rights of any person  
37 identified in such notice, neither shall it relieve any person from the  
38 requirement to record notice or be identified in a recorded notice.

39           4. Every subcontractor or supplier who is not an original  
40 contractor who seeks to retain the right to assert a mechanic's lien  
41 against such residential real property and who is not accurately  
42 identified in a previously recorded notice of intent to perform shall  
43 record, or be accurately identified in, a "notice of commencement"  
44 which shall be effective to initiate lien rights for any person identified  
45 in such notice as of the later of ten days prior to the recording of such  
46 notice or the date such person identified in the notice commences  
47 performing or providing labor, materials, or services intended for the  
48 improvement of the property. Any person recording a notice of  
49 commencement shall provide a copy of, or reasonable access to, such  
50 notice to every person identified in said notice, provided, however, that  
51 the failure to provide such notice to each person identified therein  
52 shall not defeat the lien rights of any person identified in such notice,  
53 neither shall it relieve any person from the requirement to record  
54 notice or be identified in a recorded notice.

55           5. Notwithstanding any provision of this chapter, a notice of  
56 commencement recorded after a conveyance of the residential real  
57 property to a third party acting in good faith who provides fair value

58 to the seller shall not be effective to preserve lien rights as to that  
59 residential real property, but such person recording said notice of  
60 commencement shall not waive any right to recover the charges for  
61 such labor, materials, or services from the seller of the residential real  
62 property and shall, further, be entitled to recover treble the charges for  
63 such labor, materials, or services from such seller upon proving that  
64 the seller had actual knowledge that labor, materials, or services were  
65 provided by such person, that said labor, materials, or services  
66 enhanced the value of the property and that the seller acted in bad  
67 faith and for the purpose of not paying such charges.

68 6. Any recorded notice shall comply with section 59.310, and  
69 shall contain the following information:

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

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

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

76 (4) The name, address, telephone number, email address, if  
77 known, and facsimile number, if known, of every person with whom the  
78 grantee has contracted to provide labor, materials, or services for the  
79 improvements to the residential real property. In addition, any  
80 recorded notice may contain the name and, to the extent known by the  
81 grantee, the address, email address, telephone number and facsimile  
82 number of every person who is providing or shall provide labor,  
83 materials, or services for the improvement of the residential real  
84 property who does not have a contractual relationship with the  
85 grantee, and who is not identified in a previously recorded notice to  
86 the knowledge of the grantee. An owner of residential real property,  
87 an agent thereof, or any person having a security interest in the  
88 property may record a notice of intent to perform for the purpose of  
89 complying with this section.

90 7. Any person failing to record a notice or any person whose  
91 name is not accurately identified in any recorded notice shall be  
92 deemed to have waived any rights to assert a lien under this chapter.  
93 A recorded notice accurately identifies a person so long as the  
94 identifying information in the notice is neither deceptively similar to

95 another person reasonably likely to provide labor, materials, or  
96 services for the improvement of residential real property nor so  
97 deficient in information as to make it unreasonably difficult to identify  
98 such person. Any person who provides labor, materials, or services  
99 prior to the effective date of a recorded notice accurately identifying  
100 them shall be deemed to have waived any rights to assert a lien under  
101 this chapter only as to the labor, materials, and services provided prior  
102 to the effective date of the recorded notice accurately identifying them,  
103 but any original contractor or other person who is determined to be an  
104 original contractor shall have lien rights only for labor, materials, and  
105 services provided after a recorded notice accurately identifying such  
106 person is filed, regardless of the type of notice recorded. This section  
107 is only intended to limit what claims for labor, services and materials  
108 may be enforced in an action under this chapter and nothing herein  
109 shall affect any other remedies afforded by law, including, but not  
110 limited to, remedies available for an action on the contract, for a claim  
111 of undue enrichment or for other common law or equitable actions.

112 8. A recorded notice shall expire two years after the date on  
113 which it is recorded unless extended by the recording, prior to the  
114 expiration of such two years, of a continuation notice which shall  
115 contain the information set forth in subsection 4 of this section and  
116 shall further include the book and page number of any prior recorded  
117 notice or continuation notice which is to be continued in  
118 effect. Notwithstanding any provision of law to the contrary, the  
119 failure to record a continuation notice prior to the expiration of any  
120 previously recorded notice shall constitute the waiver of any lien rights  
121 as to any residential real property described in said continuation  
122 notice unless a lien statement under section 429.080 has been filed with  
123 respect to said residential real property.

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

9 waiver in compliance with this section.

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

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

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

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

26           (3) A statement either that all work, other than remedial or  
27 additional work, has been completed or identifying what work shall be  
28 completed, the cost or charges for that work and the agreed means for  
29 paying those charges; and

30           (4) An acknowledgment by the person executing the  
31 unconditional, final lien waiver that all rights granted by this chapter  
32 are waived as to the residential real property described in the  
33 unconditional, final lien waiver for all labor, services, and materials  
34 provided to such property prior to the date of such unconditional, final  
35 lien waiver, and for such labor, services and materials thereafter  
36 provided for remedial or additional work, or work otherwise  
37 reasonably related to the work to be completed.

38           4. A person executing an unconditional, final lien waiver for less  
39 than full consideration shall still be bound by the waiver as it relates  
40 to any rights arising under this chapter, but the waiver shall not  
41 constitute a release of any other claim, remedy or cause of action.

42           5. An unconditional, final lien waiver is valid under this chapter  
43 notwithstanding any nonperformance, failure of performance, or fraud  
44 not attributable to all persons relying on such unconditional, final lien  
45 waiver.

46           **6. A person recording or identified in a recorded notice of intent**  
47 **to perform or a recorded notice of commencement who knowingly**  
48 **refuses, or who knowingly fails within ten business days following a**  
49 **written request therefor, to execute an unconditional, final lien waiver**  
50 **for said property and who either has provided no labor, materials, or**  
51 **services for, or benefitting said property or has been paid in full for**  
52 **such labor, materials, or services for, or benefitting said property,**  
53 **commits the crime of lien fraud, punishable under this section as a**  
54 **class B misdemeanor. A person recording or identified in a recorded**  
55 **notice of intent to perform or a recorded notice of commencement who**  
56 **intentionally refuses, or who intentionally fails within ten business**  
57 **days following a written request therefor, to reasonably identify the**  
58 **labor, materials, and services provided for or benefitting said property**  
59 **and the amount claimed owed, less credit for any payments previously**  
60 **received, for such labor, materials, and services commits the crime of**  
61 **lien fraud, punishable under this section as a class C misdemeanor.**

62           **7. In the alternative to section 429.016, a lien shall not attach to**  
63 **residential real property on behalf of any person recording or**  
64 **identified in a notice of intent to perform or a notice of commencement**  
65 **if, prior to the filing of a lien statement under section 429.080, the**  
66 **owner has procured from a surety company authorized to do business**  
67 **in this state a bond in an amount not less than one and one-half times**  
68 **the charges claimed by said person or persons to be due or to become**  
69 **due for labor, materials, or services provided or to be provided to the**  
70 **owner for the construction or improvement of the residential real**  
71 **property. Such bond shall obligate the surety company, to the extent**  
72 **of the sum of the bond, to pay all sums determined to be owed for the**  
73 **labor, materials and services provided or to be provided by the persons**  
74 **claiming under such bond, which determination shall be made by either**  
75 **a written agreement of the owner and said person or persons or a final**  
76 **decision of a court. The owner shall furnish on request a true copy, at**  
77 **no more than actual cost of reproduction, to said person or persons,**  
78 **and shall be liable to the requesting person for any damages caused by**  
79 **failure, without justification, to furnish a copy.**

80           **8. A person shall not recover under the bond provided for in this**  
81 **section unless such person:**

82           **(1) Institutes suit against both the surety and the party-in-privity**

83 from whom the payment was due within one year after the completion  
84 of the provision of labor, materials, and services for the construction  
85 or improvement of the residential real property, or within such longer  
86 time permitted by the terms of the bond; and

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

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

92 9. A person claiming under the bond may proceed directly  
93 against the surety and the party-in-privity without bringing a judicial  
94 proceeding against the owner or an original contractor, unless required  
95 by subdivision (1) of subsection 8 of this section, and without further  
96 complying with the notice and filing procedures of this chapter. In any  
97 judicial proceeding brought on the bond, the court may award to the  
98 prevailing party or parties such reasonable attorney's fees and court  
99 costs as the court determines appropriate, and may apportion such  
100 award, if any, among the non-prevailing parties in the discretion of the  
101 court, but the total liability of the surety shall not exceed the amount  
102 of the bond.

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

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

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

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

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

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

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

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

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

Bill ✓

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