

FIRST REGULAR SESSION

SENATE BILL NO. 267

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS MAYER AND GREEN.

Read 1st time January 28, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1097S.011

AN ACT

To repeal sections 429.005, 429.015, 429.210, and 429.230, RSMo, and to enact in lieu thereof five new sections relating to statutory liens against real estate, with an effective date for a certain section.

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

Section A. Sections 429.005, 429.015, 429.210, and 429.230, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections
3 429.005, 429.015, 429.210, 429.230, and 429.231, to read as follows:

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

8 2. Nothing contained in this section shall be construed to prohibit
9 contractual provisions requiring lien waivers as a condition for payment.

10 3. **All lien waivers, whether provided for in an agreement or**
11 **otherwise, shall be subject to the following terms:**

12 (1) **No oral or written statement purporting to waive, release,**
13 **subordinate, impair, or otherwise adversely affect any right to enforce**
14 **or claim any lien authorized under this chapter shall be enforceable**
15 **unless it is under a waiver and release as prescribed in this section;**

16 (2) **The waiver and release given by any claimant under this**
17 **section shall be null, void, and unenforceable as against public policy**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 unless it follows substantially the following forms in the following
19 circumstances:

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

26 **CONDITIONAL WAIVER AND RELEASE UPON PROGRESS**

27 **PAYMENT**

28 Upon receipt by the undersigned of a check, electronic transfer of
29 funds, or other form of payment from (insert name of person
30 making payment or transfer of funds) in the sum of \$..... (insert
31 amount) payable to (insert name of person receiving payment
32 or funds) and when the payment or transfer of funds has become final,
33 this document shall become effective to release any mechanic's lien
34 right the undersigned has on the job of (insert name of
35 owner) located at (insert job description), but only to the
36 extent of the payment received. Before any recipient of this document
37 relies on it, such party should verify evidence of payment to the
38 undersigned.

39 Dated:

40 (Company name)

41 By: (signature)

42 Title:

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

48 **UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS**

49 **PAYMENT**

50 The undersigned has been paid and has received a progress payment
51 in the sum of \$..... (insert amount) for work, labor, services,
52 equipment, and/or material furnished to (insert name of
53 customer) on the job of (insert name of owner) located at
54 (insert job description) and does hereby release any

55 mechanic's lien right that the undersigned has on the above-referenced
56 job but only to the extent of the payment received.

57 Dated:

58 (Company name)

59 By: (signature)

60 Title:

61 Each conditional waiver shall contain the following language in a type
62 at least as large as the largest type otherwise on the document:

63 NOTICE: THIS DOCUMENT WAIVES LIEN RIGHTS
64 UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR
65 GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE
66 AGAINST YOU IF YOU SIGN IT EVEN IF YOU HAVE NOT BEEN PAID.
67 IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE
68 FORM.

69 (c) If the claimant is required to execute a waiver and release in
70 exchange for, or in order to induce the payment of a final payment and
71 the claimant has not, in fact, been paid in exchange for the waiver and
72 release or is given a single payee check or joint payee check in
73 exchange for the waiver and release, the waiver and release shall
74 follow substantially the following form:

75 CONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT
76 Upon receipt by the undersigned of a check, electronic transfer of
77 funds, or other form of payment from (insert name of person
78 making payment or transfer of funds) in the sum of \$..... (insert
79 amount) payable to (insert name of person receiving payment
80 or funds) and when the payment or transfer of funds has become final,
81 this document shall become effective to release any mechanic's lien
82 right the undersigned has on the job of (insert name of
83 owner) located at (insert job description). This release
84 covers the final payment to the undersigned for all labor, services,
85 equipment, or material furnished or provided on the job, except for
86 disputed claims in the amount of \$..... (insert amount). Before any
87 recipient of this document relies on it, the party should verify evidence
88 of payment to the undersigned.

89 Dated:

90 (Company name)

91 By: (signature)

92 Title:

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

98 UNCONDITIONAL WAIVER AND RELEASE UPON FINAL PAYMENT

99 The undersigned has been paid in full for all work, labor, services,
100 equipment, and/or material furnished or provided to (insert
101 name of customer) on the job of (insert name of owner)
102 located at (insert job description) and does hereby waive
103 and release any right to a mechanic's lien on the job, except for
104 disputed claims in the amount of \$..... (insert amount).

105 Dated:

106 (Company name)

107 By: (signature)

108 Title:

109 Each unconditional waiver in this provision shall contain the following
110 language in a type at least as large as the largest type otherwise on the
111 document:

112 NOTICE: THIS DOCUMENT WAIVES LIEN RIGHTS
113 UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR
114 GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE
115 AGAINST YOU IF YOU SIGN IT EVEN IF YOU HAVE NOT BEEN PAID.
116 IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE
117 FORM.

118 4. This section shall become effective January 1, 2010.

429.015. 1. Every registered architect or corporation registered to practice
2 architecture, every registered professional engineer or corporation registered to
3 practice professional engineering, every registered landscape architect or
4 corporation registered to practice landscape architecture, and every registered
5 land surveyor or corporation registered to practice land surveying, who does any
6 landscape architectural, architectural, engineering or land surveying work upon
7 or performs any landscape architectural, architectural, engineering or land
8 surveying service directly connected with the erection or repair of any building
9 or other improvement upon land under or by virtue of any contract with the
10 owner or lessee thereof, or such owner's or lessee's agent, trustee, contractor or

11 subcontractor, or without a contract if ordered by a city, town, village or county
12 having a charter form of government to abate the conditions that caused a
13 structure on that property to be deemed a dangerous building under local
14 ordinances pursuant to section 67.410, RSMo, upon complying with the provisions
15 of this chapter, shall have for such person's landscape architectural,
16 architectural, engineering or land surveying work or service so done or performed,
17 a lien upon the building or other improvements and upon the land belonging to
18 the owner or lessee on which the building or improvements are situated, to the
19 extent of [one acre] **three acres**. If the building or other improvement is upon
20 any lot of land in any town, city or village, then the lien shall be upon such
21 building or other improvements, and the lot or land upon which the building or
22 other improvements are situated, to secure the payment for the landscape
23 architectural, architectural, engineering or land surveying work or service so done
24 or performed. For purposes of this section, a corporation engaged in the practice
25 of architecture, engineering, landscape architecture, or land surveying, shall be
26 deemed to be registered if the corporation itself is registered under the laws of
27 this state to practice architecture, engineering or land surveying.

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

37 3. Every mechanic or other person who shall do or perform any work or
38 labor upon, or furnish any material, fixtures, engine, boiler or machinery, for the
39 purpose of demolishing or razing a building or structure under or by virtue of any
40 contract with the owner or lessee thereof, or such owner's or lessee's agent,
41 trustee, contractor or subcontractor, or without a contract if ordered by a city,
42 town, village or county having a charter form of government to abate the
43 conditions that caused a structure on that property to be deemed a dangerous
44 building under local ordinances pursuant to section 67.410, RSMo, upon
45 complying with the provisions of sections 429.010 to 429.340, shall have for such
46 person's work or labor done, or materials, fixtures, engine, boiler or machinery

47 furnished, a lien upon the land belonging to such owner or lessee on which the
48 same are situated, to the extent of [one acre] **three acres**. If the building or
49 buildings to be demolished or razed are upon any lot of land in any town, city or
50 village, then the lien shall be upon the lot or lots or land upon which the building
51 or other improvements are situated, to secure the payment for the labor and
52 materials performed.

53 4. The provisions of sections 429.030 to 429.060 and sections 429.080 to
54 429.430 applicable to liens of mechanics and other persons shall apply to and
55 govern the procedure with respect to the liens provided for in subsections 1, 2 and
56 3 of this section.

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

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

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

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

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

73 8. The agreement is in writing.

429.210. The court shall ascertain, by a fair trial in the usual way, the
2 amount of the indebtedness for which the lien is prosecuted, and may render
3 judgment therefor in any sum not exceeding the amount claimed in the demand
4 filed with the lien, [together with interest and costs,] **and shall include**
5 **interest, costs, and reasonable attorneys' fees to be levied against the**
6 **property charged with the lien**, although the creditor may have
7 unintentionally failed to enter in [his] **the creditor's** account filed the full
8 amount of credits to which the debtor may be entitled.

429.230. When the debtor has not been served with summons according

2 to law, and has not appeared, but has been lawfully notified by publication, the
3 judgment, if for the plaintiff, shall be that [he] **the plaintiff** recover the amount
4 of the indebtedness found to be due, [and] **interest**, costs of suit, **and**
5 **reasonable attorneys' fees**, to be levied [of] **against** the property charged with
6 the lien therefor, which said property shall be correctly described in said
7 judgment.

429.231. A lien claimant's award of reasonable attorneys' fees
2 **shall be levied against the property charged with the lien subject to the**
3 **following terms:**

4 (1) **If the lien claimant is an original contractor whose contract**
5 **is with the owner of the property, no additional notice to the owner is**
6 **required;**

7 (2) **If the lien claimant is a material supplier, subcontractor, or**
8 **sub-subcontractor at any tier, no additional notice is required unless**
9 **the owner of the property shall post at the jobsite a notice substantially**
10 **in the following form:**

11 **Notice From Owner to Subcontractors and Suppliers**

12 **Date Posted:**

13 **You are hereby notified that is the owner**
14 **of the property upon which the project is being built. The owner's**
15 **name, address, telephone number, fax number, and e-mail address are**
16 **as follows:**

17 **Owner:**

18 **Street Address (Do not use post office box):**

19 **Telephone No.:**

20 **Facsimile No.:**

21 **E-mail Address:**

22 **The owner's agent or original contractor is as follows:**

23 **Name:**

24 **Street Address (Do not use post office box):**

25 **Telephone No.:**

26 **Facsimile No.:**

27 **E-mail Address:**

28 **The owner's architect is as follows:**

29 **Name:**

30 **Street Address (Do not use post office box):**

31 **Telephone No.:**

32 Facsimile No.:

33 E-mail Address:

34 To be effective, the above shall completely and accurately identify one
35 or more of the above parties, at least one of whom shall be located
36 within the state of Missouri, and shall be conspicuously posted in one
37 or more locations at the jobsite where the project is being built so that
38 it is visible and accessible to all suppliers and subcontractors at any
39 tier who deliver materials to, or provide or furnish labor, work, or
40 services at the jobsite. The notice shall be posted no later than the first
41 day upon which any materials are delivered or any work is performed
42 at the jobsite. The notice shall remain continuously posted so long as
43 materials are being delivered to, or work is being performed at the
44 jobsite. The notice may be posted alongside the building permit, the
45 main entrance to the jobsite used by suppliers and subcontractors, or
46 the location where deliveries of materials and supplies are made to the
47 jobsite so long as the notice is posted so that it is conspicuous, visible,
48 and accessible to both subcontractors and suppliers. The owner of the
49 project shall not be required to post a notice, but failure to do so shall
50 relieve suppliers, subcontractors, and sub-subcontractors at any tier
51 from giving the notice to owner under subdivision (3) of this section;

52 (3) On projects where the owner has substantially complied with
53 the requirements in subdivision (2) of this section, a lien claimant who
54 is a material supplier, subcontractor, or sub-subcontractor at any tier
55 shall, in order to have payment of its award of attorneys' fees secured
56 by the mechanic's lien levied against the owner's property, give notice
57 no later than twenty-five days after first delivering material to the
58 jobsite or within twenty-five days after first performing labor at the
59 jobsite, to the owner of the property or to the owner's agent or
60 architect. The notice shall be substantially in the following form:

61 Notice to Owner

62 You are hereby notified that the undersigned is furnishing and/or
63 providing materials and/or labor for the project.

64 Owner:

65 Project:

66 Type of Materials and/or Labor:

67 Claimant's Name:

68 Address:

69 Telephone No.:

70 Facsimile No.:

71 Name of Person/Entity Through Whom Claimant is

72 Furnishing/Providing Labor/Material:.....

73 The notice shall be deemed to have been given timely even if given
74 more than twenty-five days after the first delivery of material or
75 performing labor at the jobsite if the notice is given to the owner or the
76 owner's agent or the owner's original contractor or architect before the
77 owner has made payment to the original contractor for the labor or
78 material furnished or provided by the lien claimant. The notice shall
79 be deemed properly given upon timely receipt of the notice by the
80 owner, agent, original contractor, or architect. If the notice is given by
81 certified mail, return receipt requested, it shall be deemed to have been
82 given and received timely if mailed to one or more of the addresses
83 disclosed in the owner's notice described in subdivision (2) of this
84 section within the period prescribed in this subdivision. Nothing
85 contained in this subdivision shall be construed to eliminate the need
86 for a lien claimant, other than an original contractor, to comply with
87 the notice requirements of section 429.100;

88 (4) If the owner of the project posts a notice as described in
89 subdivision (2) of this section, the owner shall contemporaneously
90 furnish a copy of the said notice to its original contractor. The original
91 contractor shall immediately furnish a copy of the owner's notice to
92 any supplier, subcontractor, or sub-subcontractor at any tier who
93 requests the notice.

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