



# American Subcontractors Association

September 2010

## **New Missouri Law Affects Mechanic's Lien Rights on Residential Property**

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Contractors, subs, and suppliers who perform work on residential property intended for sale must comply with new notice provisions in order to preserve their mechanic's lien rights. The new provisions to the mechanic's lien statutes were signed into law last July by Governor Nixon. The amendments place new responsibilities on owners of residential property to provide notice to potential lien claimants of the owner's intent to sell the property, and requires potential lien claimants to comply with certain pre-lien notice procedures to preserve their mechanic's lien rights on residential property. The law will affect closings that occur on or after November 1, 2010.

The purpose of the new provisions is apparently to protect innocent home buyers who unexpectedly find themselves subject to mechanic's lien claims. This can occur when liens are filed after closing or so close to a property's closing date that the liens are not reflected in the purchaser's title search.

Work performed on new construction homes, residential condominiums, townhouses and cooperatives are all subject to the new provisions, regardless of the number of units in the properties. The new requirements also apply to repair, remodeling, and additions to residential properties, unless they are owner-occupied residential properties consisting of four or less units.

There are two primary obligations that the new provisions impose—owners have an obligation to file a “Notice of Intended Sale,” and claimants must file a “Notice of Rights” to preserve their mechanic's lien rights.

**The owner's obligation:** The property owner who intends to sell the residential property must file a “Notice of Intended Sale,” with the recorder of deeds in the county in which the property is located at least 45 days prior to the “intended” closing date. The same notice should also be posted at the job site. An owner's failure to *file* the Notice of Intended Sale with the recorder of deeds excuses the claimant's notice obligation—but an Owner's failure to *post, mail, or transmit* the Notice of Intended Sale to potential claimants does not.

**The claimant's obligation:** All claimants who have lien rights must file a “Notice of Rights” at least *5 days before* the “**intended**” sale date provided in the owner's Notice of Intended Sale. Even if the *actual* closing date changes, the claimant's deadline remains the same—it is always 5 days prior to the “intended” closing date provided in the Notice of Intended Sale.

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The claimant's notice must state, at a minimum:

- the identity of the claimant;
- claimant's address and telephone number;
- a legal description of the property claimed against; and
- the person with whom the claimant contracted, including address and telephone number.

Following the notice provisions is extremely important. A claimant's failure to comply with this notice provision will result in a *waiver of all mechanic's lien rights*.

In addition to imposing new notice requirements on owners of residential property intended for sale and potential lien claimants who perform work on the property, the new law addresses procedural issues associated with liens on residential property. For the first time ever Missouri law provides a mechanism for property owners to post collateral to compel the release of a mechanic's lien on residential property. In addition, for the first time, the Missouri legislature has defined the requirements for a "just and true account." However, this definition applies only to mechanic's liens against residential real property. It will be interesting to see whether this definition is extended to commercial property by the Courts or the legislature.

But, contractors beware! A lien claimant who has been paid in full must sign and deliver an unconditional, final mechanic's lien waiver within 5 days after receiving a written request to do so. Failure to timely provide such a lien waiver after payment in full may result in liability for damages sustained for slander of title, as well as a statutory penalty of \$500.00. The good news is the statute now affords some protection for contractors who sign lien waivers. Specifically, no waiver given for less than full payment for the work performed on residential property shall be effective unless it is designated as an "unconditional final lien waiver" and presented on a form substantially similar to the form specified by the statute.

If your company assists in the building of or improvements of residential properties intended for sale, contact an attorney to ensure that you are following the necessary steps to protect your mechanic's lien rights.

THIS ARTICLE MAKES NO WARRANTIES AND IS NOT LEGAL ADVICE: CONSULT YOUR ATTORNEY.