

LEGAL UPDATES

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Construction &
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Professionals

J. MICHAEL BRIDGES
SPRINGFIELD:
417.268.4053
MICHAEL.BRIDGES@
HUSCHBLACKWELL.COM

DAVID B. RAYMOND
KANSAS CITY:
816.983.8156
DAVID.RAYMOND@
HUSCHBLACKWELL.COM

Missouri's New Residential Mechanic's Lien Procedure

The requirements to assert a mechanic's lien against residential property in Missouri changed under a new law signed by Governor Nixon on July 12, 2010. The law places additional responsibilities on property owners to notify contractors and other potential lien holders of the owner's intent to sell the property, and requires potential claimants to follow certain procedures to preserve their right to file a mechanic's lien in connection with work performed on new residential construction projects. The law will affect closings that occur on or after November 1, 2010.

Recorded Notices

If a residential property owner contracts to improve their property with the intent to sell it after the improvements are complete, the new law requires the owner to record a notice of intended sale in the office of the Recorder of Deeds for the county in which the property is located. The notice must be recorded at least 45 calendar days before the earliest date that the owner plans to close on the sale and must include the calendar date of the intended sale. The owner is also required to post a copy of the notice at the property or any jobsite office.

After the owner files the notice of intended sale, a contractor or other individual or entity seeking to retain the right to assert a mechanic's lien against the property in connection with the work is required to record a notice of rights. This notice must be filed according to existing recording requirements and must identify the claimant, the property, the property owner, the person or entity with whom the claimant contracted to perform services, and may include other potential claimants such as suppliers and sub-contractors. The notice of rights must be recorded in the Recorder of Deeds office at least five calendar days before the intended date of closing identified in the owner's notice of intended sale.

A contractor or other potential claimant who fails to record a notice of rights will forfeit any right to assert a lien against the property.

Duty To Provide Information

In addition to recording and posting the notice of intended sale, the owner or its designated agent must also provide a copy of the notice and a copy of a legal description of the residential property within five calendar days to a contractor or other potential claimant who requests it in writing. The law prescribes special delivery requirements to satisfy this obligation. If the owner fails to comply with this provision, a claimant is entitled to receive its actual and reasonable costs (excluding attorney fees) to obtain a legal description and these costs are also lienable.

Claimants are required to provide written notice of the same information within ten calendar days of written request to any person or entity performing work for the claimant.

Other Changes

In addition to these affirmative responsibilities on residential property owners and contractors to notify and take steps to preserve rights, the law addresses the following procedural issues associated with these types of mechanic's liens:

Claimants acting as subcontractors performing work on residential property will no longer need to file the notice of intent required under current law, if all other lien requirements are satisfied.

Claimants will be deemed to have satisfied the requirements for creating a "just and true account" of the amount owed to the claimant by providing the information specifically identified in the new law to the clerk of the circuit court as part of its mechanic's lien claim.

Errors in the information contained in a claimant's notice of rights that may prejudice the owner, lender, title company, disbursing company or subsequent purchaser will cause forfeiture of claimant's lien to the extent of the prejudice.

Owners may cause a lien to be released by providing substitute collateral (i.e., cash, certified check, surety bond or irrevocable letter of credit) in an amount not less than 150% of the lien.

Claimants may waive their lien rights with partial or final lien waivers, but no lien waiver will be deemed to waive lien rights in exchange for a payment of less than the amount claimed due at that time unless the waiver is an unconditional, final lien waiver in substantially the form prescribed.

Claimants who have been paid in full must provide an unconditional, final lien waiver within five calendar days of written request for the same. A claimant who fails to comply with this provision is

presumed liable for slander of title and for any damages sustained as a result thereof, together with a statutory penalty of \$500.

What This Means To You

The new law places affirmative duties on residential property owners to notify potential lien holders of an owner's intent to sell the property soon after improvements are complete and requires contractors to preserve their rights to assert a lien through a series of filings. It is important to understand the implications of the new requirements and prepare for their execution. Missed deadlines or erroneous filings may result in the loss of rights to collect for work performed.

Contact Information

If you have any questions about this or other construction or real estate matters, please contact your Husch Blackwell Sanders attorney or one of the following attorneys:

Kansas City

David Raymond - 816.983.8156

Springfield

Michael Bridges - 417.268.4053

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