



Agents National Title
Insurance Company

MEMORANDUM

TO: Agents National Title Insurance Agents

FROM: David A. Townsend, President, CEO, Cheryl Cowherd, Underwriting Counsel, Mary Ingram, Claims Counsel.

RE: Missouri Mechanics Lien Law Update

DATE: August 24, 2009

Governor Nixon signed HB 2058 July 13, 2010, thus dramatically changing Missouri mechanics lien law. The following bulletin applies to **RESIDENTIAL** new construction where the builder/owner is selling the home and the lot **after** construction is complete. **THIS DOES NOT APPLY TO AN OWNER THAT HAS A HOME BUILT ON A LOT THEY ALREADY OWN.** The protections under the new law only extend to situations where the vested owner changes. It does not apply to the repair, remodeling or additions to owner occupied residential property. Our current underwriting guidelines still control for all new construction not covered by this bulletin.

Attached is the full text of the new mechanics lien law for your review. We have also provided sample forms for the Notice of Rights, Notice of Intended Sale, and Final Lien Waiver.

Agents National Title Insurance will issue mechanics lien coverage on **residential new construction involving a change in vesting following construction** when:

1. Notice of Intended Sale is recorded in the recorder of deeds of the county where the real property is located.
2. All Notices of Work recorded prior to five days prior to the date recorded on the Notice of Intended Sale must have corresponding Final Lien Waivers provided.
3. If lien waivers are not provided for all Notices of Work, you may not issue mechanics lien coverage on the property unless the proper deposit is made pursuant to RSMO 429.016.17.
4. If mechanics liens are to be removed using a deposit or surety bond, underwriting approval must be obtained.

Once the above items have been satisfied, mechanics lien coverage may be provided.

The new law applies to any transaction closing on or after November 1, 2010.

429.016. 1. The provisions of this section shall only apply to mechanic's liens asserted against residential real property, other than mechanic's liens for the repair, remodeling, or addition to owner-occupied residential property of four units or less which are governed by section 429.013 and other applicable sections of this chapter.

2. As used in this section, the term "residential real property" means any parcel of real estate, improved or unimproved, that is intended to be used or is used for the construction of residential structures and related improvements which support the residential use of the land where such residential structures are intended, upon completion, either to be occupied or sold by the current owner. Such residential structures shall include any residential dwelling of four units or less, whether or not a unit is occupied by an owner and shall also include any structures consisting solely of residential condominiums, townhouses or cooperatives regardless of the number of units. The definition of "residential real estate" shall exclude any mixed use or planned unit developments except to the extent that any residential uses of such developments are, or will be, located on separate, identifiable parcels from the non-residential uses and then only as to those residential uses. Residential real property shall also include any streets, sidewalks, utility services, improved common areas, or other facilities which are constructed within the defined residential use structures or located on or within the separate and identifiable parcels identified as for residential use.

3. Any person or entity, hereinafter referred to as claimant, who seeks to retain the right to assert a mechanic's lien against residential real property, hereinafter referred to as property, shall record a notice of rights in the office of the recorder of deeds for the county in which the property is located, not less than five calendar days prior to the intended date of closing stated in a notice of intended sale as contemplated in this section.

4. Notwithstanding subsection 3 of this section, a claimant that is accurately identified in any previously recorded notice of rights recorded as to the property is relieved of its duty to record a notice of rights.

5. If the last day to record the notice of rights falls on a Saturday, Sunday, or legal holiday recognized by the state of Missouri, the notice of rights shall be recorded not later than the next day that the office of the recorder of deeds is open for business.

6. Any claimant that fails to record such notice of rights shall be deemed to waive and forfeit any right to assert a mechanic's lien against such property. Despite any such waiver and forfeiture of mechanic's lien rights, the claimant shall retain all other rights and remedies allowed by law to collect payment for its work, labor, and materials.

7. Notwithstanding any other provision of this section, a notice of rights recorded after the owner's conveyance of the property to a bona fide purchaser for value shall not be effective to preserve the claimant's mechanic's lien rights to the property.

8. The notice of rights shall comply with section 59.310 and be on a form substantially as follows:

NOTICE OF RIGHTS

Date: The date of the document.

Owner: Identify Property owner, as "Grantor" by correct name.

Claimant: Identify Claimant, as "Grantee" by correct name, current address, contact persons, and current telephone number.

Property: The legal description of the property.

Person Contracting with Claimant for Work: Identify person or entity contracting with Claimant by correct name, current address, and current telephone number.

Persons performing work for or supplying materials to Claimant: Claimant may, but is not obligated to, identify any persons or entities which have or will be performing work or supplying materials on behalf of Claimant for the Property. Said persons or entities must be identified by correct legal name, address, and current telephone number.

A recorded notice correctly identifies a person or entity so long as the identifying information in the notice is neither deceptively similar to another person or entity reasonably likely to provide labor, materials, supplies, or equipment for the improvement of property nor so deficient in information as to make it unreasonably difficult to identify such person or entity. The form shall be signed by a person authorized to execute the form on behalf of the claimant, and such signature shall be notarized. The name of the person signing the form shall be printed legibly or typed immediately below the signature.

9. The notice of rights shall be recorded by the claimant in the office of the recorder of deeds of the county in which the property is located.

10. The recorder of deeds shall record such notice of rights in the land records and index notice of rights such that owners shall be deemed grantors and claimants shall be deemed grantees, and the grantor's signature shall not be required for recording.

11. (1) If the record title owner of residential real property, hereinafter the owner, has contracted with a claimant for the performance or provision of work, labor, or materials for the improvement of such property in order to facilitate the owner's sale of such property to a bona fide purchaser for value as contemplated in this section, then the owner or such owner's designated agent, shall 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 of intended sale shall be recorded not less than forty-five calendar days prior to the earliest calendar date the owner intends to close on the sale of such property to such purchaser. The notice of intended sale shall state the calendar date on which the owner intends to close on the sale of such property to such purchaser. Only one notice of intended sale shall be recorded, even if the intended date of closing stated therein is postponed to a date later than that stated in the notice of intended sale. The owner's, or its designated agent's, recording of a notice of intended sale as to the subject property, as contemplated herein, 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 mechanics lien rights as to such property.

(2) The owner, or its designated agent, shall post on the subject property, or at an entrance to the subject property, or at any jobsite office located at or near the subject property, a copy of the owner's notice of intended sale.

(3) The owner, or its designated agent, shall provide any claimant with a copy of the notice of intended sale and a copy of a legal description of the subject property, within five calendar days after the date the owner, or its designated agent, receives a written request for the same from any such claimant. The information contemplated herein shall be transmitted by U.S. mail addressed to the claimant's registered agent or principal place of business or transmitted by other commercially reasonable means. A claimant shall, in turn, provide any person or entity with which it has contracted to perform or provide work, labor, or materials for the improvement of the subject property, with written notice in the same form and manner, and containing the same information, as the written notice issued by the owner, all within ten calendar days after the date the claimant receives a written request for the same from any such person or entity.

(4) If any owner, or its designated agent, fails to comply with the requirements of this section, a claimant shall be entitled to receive, as its sole and exclusive remedy for such failure to comply with the section, the claimant's actual and reasonable costs, excluding

attorney fees, to obtain a legal description of the subject property necessary for the claimant to record its notice of rights. The costs described in this section shall be lienable expenses. The owner's, or its designated agent's failure to post or mail or transmit the information contemplated in this section, shall not relieve, and is not a condition precedent to, a claimant's obligation to record its notice of right in order to retain claimant's mechanic lien rights as to such property.

(5) The owner, or its designated agent, shall not be liable to any claimant, or other person, for any error, omission, or inaccuracy in the content of the information provided and disclosed by the owner, or its designated agent, except as otherwise expressly provided in this section. If a claimant receives a copy of the notice of intended sale and a legal description of the subject property from the owner, or its designated agent as contemplated in this section and the claimant relies in good faith upon the legal description and includes such legal description in a notice of rights as required in this section, and the claimant's notice of rights otherwise complies with the requirements of this section, then any such claimant's notice of rights shall be deemed to comply with the requirements of this section, and such claimant's right to assert a mechanic's lien as to the subject residential real property shall be retained even if subsequently it is determined that such legal description is in error or inaccurate as to the subject residential real property.

12. The recording of a notice of rights shall not extend the time for filing a mechanic's lien as provided under section 429.080.

13. A separate notice of rights shall be recorded for each lot or parcel of residential real property upon which the claimant performs its work. Nothing herein shall be construed to prohibit the claimant from providing a notice of rights covering multiple lots in the same subdivision if common ownership of lots exists. If the claimant commences its work prior to the platting or subdivision of a tract of land comprising residential real property, the claimant is only required to record one notice of rights provided that the entire tract of land upon which any such lien is to be asserted is described in such notice of rights.

14. The claimant shall not be required to provide the notice required under section 429.100, but compliance with the requirements of this section shall not relieve the claimant of its duty to comply with all other applicable sections of this chapter, except as specifically modified herein, in order to preserve, assert, and enforce its mechanic's lien rights.

15. For purposes of any mechanic's liens against residential real property only, a claimant satisfies the just and true account requirement contained in section 429.080 by

providing the following information and documentation as part of its mechanic's lien claim filed with the clerk of the circuit court:

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

(2) The name and address of the person or entity which claimant contracted with to perform work on the property;

(3) A copy of any contract or contracts, purchase order or orders, or proposal or proposals, hereinafter collectively referred to as agreements, and any agreed change orders or modifications to such agreement or agreements under which claimant performed its work on the property;

(4) In the absence of any written agreement or agreements, a general description of the scope of work agreed to be performed by claimant on the property and the basis for payment for such work as agreed to by claimant and the contracting party;

(5) All invoices submitted by claimant for its work on the property;

(6) An accurate statement of account which shows all payments or credits against amounts otherwise due to claimant for the work performed on the property and the calculation or basis for the amount claimed by claimant in its mechanic's lien statement; and

(7) The last date that claimant performed any work or labor upon, or provided any materials or equipment to, the property;

(8) The claimant shall attach a file-stamped copy of his or her notice of rights to claimant's mechanic's lien statement if and when filed with the circuit clerk under section 429.080.

16. To the extent that any error in the information contained in the claimant's notice of rights prejudices the owner, any lender, disbursing company, title insurance company, or subsequent purchaser of the property, the claimant's rights to assert a mechanic's lien shall be forfeited to the extent of the prejudice caused by such error.

17. A person having an interest in any residential real property against which a mechanic's lien has been filed may release such residential real property from any such mechanic's lien by:

(1) Depositing in the office of the circuit clerk a sum of money, in cash or certified check, an irrevocable letter of credit, which may be secured, issued by a federally or state chartered bank, savings and loan association or savings bank, referred to hereafter as a bank, authorized to and doing business in the state of Missouri, or a surety bond issued by a surety company authorized to do surety business in the state of Missouri and having a

certificate of authority to do business with the United States government in accordance with 31 CFR Section 223.1, in an amount not less than one hundred fifty percent of the amount of the mechanic's lien being released; and

(2) Recording with the recorder of deeds and filing with the circuit clerk a certificate of deposit signed by the circuit clerk which provides the following information:

(a) Amount of money deposited, amount of the letter of credit deposited, or penal sum of the bond deposited, along with the name and address of the bank issuing the letter of credit or surety company issuing the bond, as well as a service address for the bank or surety company;

(b) Name of claimant, number assigned to the mechanic's lien being released, and the amount of the mechanic's lien being released;

(c) Legal description of the property against which the mechanic's lien was filed;

(d) Name, address, and property interest of the person making the deposit of money, providing the letter of credit or providing the surety bond; and

(e) A certification by the person making the deposit of money, providing the letter of credit, or providing the surety bond that they have mailed a copy of the certificate of deposit to the claimant at the address listed on the mechanic's lien being released, along with a copy of any letter of credit or bond deposited by said person.

18. Any surety bond deposited as substitute collateral shall obligate the surety company, to the extent of the penal sum of the bond, to pay any judgment entered under section 429.210.

19. Any letter of credit deposited as substitute collateral shall obligate the issuing bank, to the extent of the amount of the letter of credit, to pay any judgment entered under section 429.210.

20. Upon release of the residential real property from a mechanic's lien by the deposit of substitute collateral, the claimant's rights are transferred from the residential real property to the substitute collateral.

21. Upon determination of the amount of claimant's claim, if any, against the substitute collateral, the court shall either:

(1) Order the circuit clerk to pay the claimant any sums awarded out of the deposited funds and release any remainder to the person or entity who made the cash deposit;

(2) Order the bank to issue payment under the letter of credit for the awarded amount but not exceeding the amount of the letter of credit;

(3) Render judgment against the surety company on the bond for the amount awarded up to but not exceeding the penal sum of the bond; or

**(4) Release the substitute collateral
all as deemed appropriate by the court.**

22. The deposit of substitute collateral and release of claimant's mechanic's lien shall not modify any aspect of the priority of claimant's interest, claimant's burden of proving compliance with the mechanic's lien statutes, or claimant's obligations with respect to enforcement of its mechanic's lien claim, including, but not limited to, time for filing suit to enforce and necessary parties to the suit to enforce. It is the intent only that the deposited substitute collateral shall be the ultimate source of any potential recovery by claimant instead of the funds generated by foreclosure of the residential real property.

23. A release of a mechanic's lien under the deposit of substitute collateral shall not relieve any claimant of potential liability for slander of title or otherwise due to the filing of claimant's mechanic's lien.

24. The surety company for any bond or the bank which issued the letter of credit deposited under this section shall be made a party to any mechanic's lien enforcement action with respect to any mechanic's lien released by the deposit of said bond or letter of credit.

25. Any claimant may waive its right to assert a mechanic's lien against residential real property by executing a partial or full waiver of mechanic's lien rights, whether conditioned upon receipt of payment or unconditional, provided that a waiver of mechanic's lien rights shall not be deemed or interpreted to waive or release mechanic's lien rights in exchange for a payment of less than the amount claimed due at that time unless such mechanic's lien waiver is an unconditional, final mechanic's lien waiver in compliance with this section.

26. An unconditional, final lien waiver is a complete and absolute waiver of any mechanic's lien rights against the residential real property described in the mechanic's lien waiver, including any rights which might otherwise arise from remedial or additional labor, services, or materials provided to the residential real property, or which might benefit the residential real property, under either an initial agreement or a supplemental agreement entered into by the same parties prior to the execution of the unconditional, final mechanic's lien waiver.

27. An unconditional, final mechanic's lien waiver shall only be valid if it is on a form that is substantially as follows:

UNCONDITIONAL FINAL LIEN WAIVER FOR RESIDENTIAL REAL PROPERTY

Claimant (provide legal name and address of Claimant) hereby fully, finally, and unconditionally waives and releases any right to assert or enforce a mechanic's lien claim against the residential real property identified below for all work performed by Claimant prior to the date set forth below and for any work hereafter performed by or on behalf of Claimant under any agreements executed by Claimant prior to said date set forth below:

(Provide legal description of the Property)

Claimant's legal name and the name, title or position, address, and telephone number of the person executing the unconditional final lien waiver on behalf of claimant shall be typed or legibly printed immediately above or below the signature, and the date that the document was signed shall be typed or legibly printed immediately adjacent to the signature.

28. A claimant executing an unconditional, final mechanic's lien waiver for less than full consideration shall be bound by such mechanic's lien waiver as it relates to any rights to assert a mechanic's lien against the property, but such mechanic's lien waiver shall not constitute a waiver or release of any other claim, remedy, or cause of action.

29. An unconditional, final mechanic's lien waiver meeting the requirements of this section is valid and enforceable as to claimant's mechanic's lien rights as to the property identified on the unconditional, final mechanic's lien waiver notwithstanding claimant's failure to receive any promised payment or other consideration.

30. Any claimant who has recorded a notice of rights and who has been paid in full for the work performed on the property shall timely execute an unconditional, final mechanic's lien waiver, shall not unreasonably withhold such a waiver when circumstances require prompt execution, and in no event shall fail to provide a waiver any later than five calendar days after claimant's receipt of a written request to do so by any person or entity. A claimant who fails or refuses timely to execute an unconditional, final lien waiver when such claimant has been paid in full for any labor, materials, services, or equipment supplied or used in the improvement to the property shall be presumed liable for slander of title and for any damages sustained as a result thereof, together with a statutory penalty of five hundred dollars.

31. The provisions of this section shall apply to any residential real property conveyance closing on or after November 1, 2010.