

“Understanding Construction Liens”

**a topic included in the seminar: “Solving Lien-Related Title Problems,”
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by

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Who Can Place a Lien?

“Any person who shall do or perform any work or labor...” §429.010.

Architects, Professional Engineers, Land Surveyors and Landscape Architects

In addition to the above, “every registered architect or corporation...registered professional engineer or corporation registered to practice professional engineering...registered landscape architect or corporation...and registered land surveyor or corporation...who does any [such]...work...under or by virtue of any contract with the owner or lessee...contractor or subcontractor, or without a contract if ordered by a city...to abate the conditions caused by a structure...shall have...a lien upon the building or other improvements and upon the land...” §429.015. Any such person shall have the same opportunities to enforce its lien rights as do others covered by this chapter.

What Work is Covered?

Any person doing “any work or labor upon, or furnish[ing] any material, fixtures, engine, boiler or machinery for any building, erection or improvements

¹ Many statutory provisions have been paraphrased for brevity. Some sections are not covered at all in these materials. The reader is cautioned to read the statute in the entirety for clarity, context and completeness. The statute in its entirety is attached as part of these materials.

upon land, or for repairing the same,...under or by virtue of any contract with the owner or proprietor thereof, or his agent, trustee, contractor or subcontractor, or without a contract if ordered by a city...to abate the conditions that caused a structure on that property to be deemed a dangerous building...shall have...a lien upon such building, erection or improvements, and upon the land belonging to such owner or proprietor....” §429.010.

How Much Land?

The lien can cover up to “three acres [or if in any town, city or village]...or if such building, erection or improvements be for manufacturing, industrial or commercial purposes and not within any city, town or village, then such lien shall be upon such building, erection or improvements, and the lot, tract or parcel of land upon which the same are situated, and not limited to the extent of three acres, to secure the payment of such work or labor done.” §429.010.

Original Contractor Must Provide Notice to the Owner

Every original contractor who performs any work or labor and wants to secure a mechanic’s lien must provide to the owner prior to receiving payment of any form (a) either at the time of execution of the contract; (b) when the materials are delivered; (c) when the work is commenced or (d) delivered with first invoice, a written notice which shall include the following disclosure language in 10-point bold type:

NOTICE TO OWNER

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC’S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO.

TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR “LIEN WAIVERS” FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

§429.012.

This section requires that this notice is a “condition precedent” to the creation or existence of a valid mechanic’s lien by that original contractor.

§429.012.2. Any original contractor who fails to provide the written notice with an intent to defraud shall be guilty of a Class B misdemeanor and any contractor who knowingly issues a fraudulent lien waiver or a false affidavit shall be guilty of a Class C felony. §429.012.3. These provisions should not be taken lightly.

The section further provides that for new residences the buyer may receive mechanic’s and suppliers’ lien protection through a title insurance company registered in the State of Missouri, in which case application of these provisions shall not apply. §429.012.4.

Subcontractor’s Notice

Every person other than original contractor (typically a subcontractor) must provide to the owner at least ten days in advance of filing a mechanic’s lien a notice that such lien claimant holds a claim against the building or improvement and set forth the amount and from whom the same is due. §429.100. Such notice may be served by an officer whose official return endorsement shall be proof of service or it may be served by any other person, in which case service must then be verified by affidavit of the person so serving.

This notice must be provided in person to the owner, provided the owner is a resident of the State of Missouri. If the owner is a nonresident, then the notice shall be filed with the Recorder of Deeds in the county where the property is located. §429.110.

Work on Owner-Occupied Residential Property of Four Units or Less

No one who provides work on owner-occupied residential property consisting of four units or less, other than an original contractor, shall have a lien for such work or labor unless the owner of the building or structure pursuant to a written contract has agreed to be liable for such costs in the event the costs are not paid. §429.013. Such consent shall be printed in 10-point bold type and signed separately from the notice required in §429.012 and must contain the following words:

CONSENT OF OWNER

CONSENT IS HEREBY GIVEN FOR FILING OF MECHANIC'S LIENS BY ANY PERSON WHO SUPPLIES MATERIALS OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT ON THE PROPERTY ON WHICH IT IS LOCATED IF HE IS NOT PAID.

§429.013.2.

Lien Fraud

Any person falsifying the signature of an owner on a consent form with intent to defraud shall be guilty of a Class C felony. Any original contractor who knowingly issues a fraudulent consent of owner shall be guilty of a Class C felony. §429.013.5.

Any original contractor or subcontractor or supplier who fails to pay another subcontractor or materialmen or supplier or laborer for services or

materials for which that person has been paid with the intent to defraud commits the crime of lien fraud even if the lien has not been perfected and was never filed in a timely manner. §429.014.1. Lien fraud is a Class C felony if the amount involved exceeds \$500.00. §429.014.3.

Time to File Lien

A mechanic's lien must be filed within six months "after the indebtedness shall have accrued." §429.080. This typically means within six months of the last day of work by that lien claimant provided it is one continuous account for such work. Filing a lien one day late is as bad as filing a lien one year late. Neither filing will be acceptable to preserve the lien.

Where Filed?

The lien must be filed in the circuit court of the county where the work was performed. §429.080.

Contents of Lien

The lien must contain a “just and true account of the demand due” “after all just credits have been given.” §429.080. The lien must contain a true description of the property “or so near as to identify the same, upon which the lien is intended to apply.” §429.080. The lien must contain the name of the owner or the contractor or both if known to the person filing the lien. The lien must be verified by the oath of the person filing the lien “or some credible person for him.”

Time to File Lawsuit

After filing the mechanic’s lien, the lien claimant must file its lawsuit within six months of the date of filing the lien to preserve the mechanic’s lien. §429.170. An exception exists if a lawsuit has already been filed by another lien claimant in a timely manner. Under this circumstance, a later lien claimant may be able to “piggyback” into the timely filed lawsuit and pursue its claim as if its own lawsuit had been filed within the six-month period. *Id.*

Lawsuit to Enforce the Mechanic’s Lien

If more than one lien claimant exists, the lawsuit to enforce the mechanic’s lien is called an equitable action pursuant to §429.270. An equitable action determines the rights and interests of everyone according to their “respective legal and equitable rights.” In an equitable lien action, everyone who claims an interest “shall” be made a party to the lawsuit. Accordingly, all pending actions that may exist are combined into one equitable

lawsuit pursuant to §429.300. One trial will resolve all claims and all disputes in one proceeding.

One Lien Claimant

If there is only one lien claimant, then the lawsuit is an action at law, not an equitable action. Under this circumstance, the court determines the respective priorities between the one lien claimant and the holder of any other lien or encumbrance (such as a mortgage holder) that may exist on the property and therefore enforces the mechanic's lien accordingly. §429.330.

The Pleading/Lawsuit

The actual lawsuit including the “pleadings, practice and process and other proceedings in cases arising under Sections 429.010 to 429.340 shall be the same as in ordinary civil actions and proceedings in circuit courts, except as herein otherwise provided.” §429.180. This means that Missouri's pleading practice and procedure applicable to other civil actions also apply to mechanic's lien actions as well.

Who Is a Party to the Mechanic's Lien Lawsuit?

All “parties to the contract” shall be made parties to a mechanic's lien lawsuit seeking its enforcement. §429.190. Everyone else “may” be included in this lawsuit, but the proceedings will not bind anyone who has not been made a party to the action. *Id.* A safer course of action is to include everyone with any known interest in the property so that the proceedings will be binding as to all of them.

Owner Remedy for Paying Twice

A property owner or lessee who pays anyone for services or goods claimed pursuant to a lien for which the original contractor, subcontractor or supplier has been paid thereafter has a claim against that original subcontractor or supplier who failed or refused to pay. §429.014.2.

Liens of a Smaller Amount Can Be Enforced in Associate Circuit Court

Associate circuit judges may exercise jurisdiction to enforce mechanic's liens when the amount or balance claimed does not exceed the monetary jurisdiction of that particular associate circuit court. §429.350.

Priority of Lien

A mechanic's lien shall have preference over "any prior lien or encumbrance or mortgage upon the land upon which said buildings, erections, improvements or machinery have been erected or put...." §429.050. In addition, any mechanic's lien shall have precedent over any subsequent encumbrance put in place after commencement of the building or improvement. §429.060.

The Court Judgment

"The court shall ascertain, by a fair trial in the usual way, the amount of the indebtedness for which the lien is prosecuted, and may render judgment thereof in any sum not exceeding the amount claimed in the demand filed with the lien, together with interest and costs...." §429.210. The judgment, in essence, is against the land and the improvements and execution upon it is accordingly limited to such property and to the amount of the lien or liens.

Executing on the Judgment

The ultimate remedy for a lien claimant after obtaining a judgment is to foreclose upon the land and improvements pursuant to §429.250. This can call for an advertisement, sale and conveyance of the real or personal estate that is the subject of the mechanic's lien.

Proceeds From the Foreclosure Sale Are Divided Pro Rata

In the case of a foreclosure sale, the proceeds from the sale are divided on a pro rata basis between the various lien claimants, in those instances where the sale did not yield enough money to cover in total all the lien claims. §429.260. The mechanic's lien claimants participate, per their pro rata share, on an equal basis regardless of who filed a lien first, who filed a lien last, and what work was performed in what order by said lien claimants.

After the Foreclosure Sale

The court may order delivery of possession of the premises after a foreclosure sale to the purchaser of the property at the foreclosure sale. §429.340. Although it is rare that this ever occurs, the law clearly provides for this eventuality.

CHAPTER 429. STATUTORY LIENS AGAINST REAL ESTATE IN MISSOURI

§429.005. Certain agreements to waive rights under this chapter are unenforceable--exception

1. An agreement by an original contractor, subcontractor, supplier or laborer to waive any right to enforce or claim any lien authorized under this chapter, where the agreement is in anticipation of and in consideration for the awarding of a contract or subcontract to perform work or supply materials for an improvement upon real property, whether expressly stated or implied, is

against public policy and shall be unenforceable. The provisions of this section shall not prohibit subordination or release of a lien authorized under this chapter.

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

**§429.010. Mechanics' and materialmen's lien, who may assert--
extent of lien**

1. Any person who shall do or perform any work or labor upon land, rent any machinery or equipment, or use any rental machinery or equipment, or furnish any material, fixtures, engine, boiler or machinery for any building, erection or improvements upon land, or for repairing, grading, excavating, or filling of the same, or furnish and plant trees, shrubs, bushes or other plants or provides any type of landscaping goods or services or who installs outdoor irrigation systems under or by virtue of any contract with the owner or proprietor thereof, or his or her agent, trustee, contractor or subcontractor, or without a contract if ordered by a city, town, village or county having a charter form of government to abate the conditions that caused a structure on that property to be deemed a dangerous building under local ordinances pursuant to [section 67.410, RSMo](#), upon complying with the provisions of sections 429.010 to [429.340](#), shall have for his or her work or labor done, machinery or equipment rented or materials, fixtures, engine, boiler, machinery, trees, shrubs, bushes or other plants furnished, or any type of landscaping goods or services provided, a lien upon such building, erection or improvements, and upon the land belonging to such owner or proprietor on which the same are situated, to the extent of three acres; or if such building, erection or improvements be upon any lot of land in any town, city or village, or if such building, erection or improvements be for manufacturing, industrial or commercial purposes and not within any city, town or village, then such lien shall be upon such building, erection or improvements, and the lot, tract or parcel of land upon which the same are situated, and not limited to the extent of three acres, to secure the payment of such work or labor done, machinery or equipment rented, or materials, fixtures, engine, boiler, machinery, trees, shrubs, bushes or other plants or any type of landscaping goods or services furnished, or outdoor irrigation systems installed; except that if such building, erection or improvements be not within the limits of any city, town or village, then such lien shall be also upon the land to the extent necessary to provide a roadway for ingress to and egress from the lot, tract or parcel of land upon which such building, erection or improvements are situated, not to exceed forty feet in width, to the nearest public road or highway. Such lien shall be enforceable only against the property of the original purchaser of such plants unless the lien is filed against the property

prior to the conveyance of such property to a third person. For claims involving the rental of machinery or equipment to others who use the rental machinery or equipment, the lien shall be for the reasonable rental value of the machinery or equipment during the period of actual use and any periods of nonuse taken into account in the rental contract, while the machinery or equipment is on the property in question.

2. There shall be no lien involving the rental of machinery or equipment unless:

- (1) The improvements are made on commercial property;
- (2) The amount of the claim exceeds five thousand dollars; and
- (3) The party claiming the lien provides written notice within five business days of the commencement of the use of the rental machinery or equipment to the property owner that rental machinery or equipment is being used upon their property. Such notice shall identify the name of the entity that rented the machinery or equipment, the machinery or equipment being rented, and the rental rate.

Nothing contained in subsection 2 of this section shall apply to persons who use rented machinery or equipment in performing the work or labor described in subsection 1 of this section.

§429.012. Original contractor to have lien, when--failure to provide notice, penalty, exception to requirement--agents, acceptance of fraudulent lien waiver or false affidavit for gain, penalty

1. Every original contractor, who shall do or perform any work or labor upon, or furnish any material, fixtures, engine, boiler or machinery for any building, erection or improvements upon land, or for repairing the same, under or by virtue of any contract, or without a contract if ordered by a city, town, village or county having a charter form of government to abate the conditions that caused a structure on that property to be deemed a dangerous building under local ordinances pursuant to [section 67.410, RSMo](#), shall provide to the person with whom the contract is made or to the owner if there is no contract, prior to receiving payment in any form of any kind from such person, (a) either at the time of the execution of the contract, (b) when the materials are delivered, (c) when the work is commenced, or (d) delivered with first invoice, a written notice which shall include the following disclosure language in ten-point bold type:

NOTICE TO OWNER

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

2. Compliance with subsection 1 of this section shall be a condition precedent to the creation, existence or validity of any mechanic's lien in favor of such original contractor.

3. Any original contractor who fails to provide the written notice set out in subsection 1 of this section, with intent to defraud, shall be guilty of a class B misdemeanor and any contractor who knowingly issues a fraudulent lien waiver or a false affidavit shall be guilty of a class C felony.

4. The provisions of subsections 1 and 2 of this section shall not apply to new residences for which the buyer has been furnished mechanics' and suppliers' lien protection through a title insurance company registered in the state of Missouri.

5. Any settlement agent, including but not limited to any title insurance company, title insurance agency, title insurance agent or escrow agent who knowingly accepts, with intent to defraud, a fraudulent lien waiver or a false affidavit shall be guilty of a class C felony if the acceptance of the fraudulent lien waiver or false affidavit results in a matter of financial gain to:

(1) The settlement agent or to its officer, director or employee other than a financial gain from the charges regularly made in the course of its business;

(2) A person related as closely as the fourth degree of consanguinity to the settlement agent or to an officer, director or employee of the settlement agent;

(3) A spouse of the settlement agent, officer, director or employee of the settlement agent; or

(4) A person related as closely as the fourth degree of consanguinity to the spouse of the settlement agent, officer, director or employee of the settlement agent.

§429.013. Definitions--subcontractor to have lien--when--consent of owner, form--requirements--penalties for violation

1. The provisions of this section shall apply only to the repair or remodeling of or addition to owner-occupied residential property of four units or less. The term "owner" means the owner of record at the time any contractor, laborer or materialman agrees or is requested to furnish any work, labor, material, fixture, engine, boiler or machinery. The term "owner-occupied" means that property which the owner currently occupies, or intends to occupy and does occupy as a residence within a reasonable time after the completion of the repair, remodeling or addition which is the basis for the lien sought, pursuant to this section. The term "residential property" means property consisting of four or less existing units to which repairs, remodeling or additions are undertaken. This section shall not apply to the building, construction or erection of any improvements constituting the initial or original residential unit or units or other improvements or appurtenances forming a part of the original development of the property. The provisions added to this subsection in 1990 are intended to clarify the scope and meaning of this section as originally enacted.

2. No person, other than an original contractor, who performs any work or labor or furnishes any material, fixtures, engine, boiler or machinery for any building or structure shall have a lien under this section on such building or structure for any work or labor performed or for any material, fixtures, engine, boiler, or machinery furnished unless an owner of the building or structure pursuant to a written contract has agreed to be liable for such costs in the event that the costs are not paid. Such consent shall be printed in ten point bold type and signed separately from the notice required by [section 429.012](#) and shall contain the following words:

CONSENT OF OWNER

CONSENT IS HEREBY GIVEN FOR FILING OF MECHANIC'S LIENS BY ANY PERSON WHO SUPPLIES MATERIALS OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT ON THE PROPERTY ON WHICH IT IS LOCATED IF HE IS NOT PAID.

3. In addition to complying with the provisions of [section 429.012](#), every original contractor shall retain a copy of the notice required by that section and any consent signed by an owner and shall furnish a copy to any person performing work or labor or furnishing material, fixtures, engines, boilers or machinery upon his request for such copy of the notice or consent. It shall be a condition precedent to the creation, existence or validity of any lien by anyone other than an original contractor that a copy of a consent in the form prescribed in subsection 2 of this section, signed by an owner, be attached to the recording of a claim of lien. The signature of one or more of the owners

shall be binding upon all owners. Nothing in this section shall relieve the requirements of any original contractor under [sections 429.010](#) and [429.012](#).

4. In the absence of a consent described in subsection 2 of this section, full payment of the amount due under a contract to the contractor shall be a complete defense to all liens filed by any person performing work or labor or furnishing material, fixtures, engines, boilers or machinery. Partial payment to the contractor shall only act as an offset to the extent of such payment.

5. Any person falsifying the signature of an owner, with intent to defraud, in the consent of owner provided in subsection 2 of this section shall be guilty of a class C felony. Any original contractor who knowingly issues a fraudulent consent of owner shall be guilty of a class C felony.

§429.014. Lien fraud, penalties--claim against original contractor, when

1. Any original contractor, subcontractor or supplier who fails or refuses to pay any subcontractor, materialman, supplier or laborer for any services or materials provided pursuant to any contract referred to in [section 429.010](#), [429.012](#) or [429.013](#) for which the original contractor, subcontractor or supplier has been paid, with the intent to defraud, commits the crime of lien fraud, regardless of whether the lien was perfected or filed within the time allowed by law.

2. A property owner or lessee who pays a subcontractor, materialman, supplier or laborer for the services or goods claimed pursuant to a lien, for which the original contractor, subcontractor or supplier has been paid, shall have a claim against the original contractor, subcontractor or supplier who failed or refused to pay the subcontractor, materialman, supplier or laborer.

3. Lien fraud is a class C felony if the amount of the lien filed or the aggregate amount of all liens filed on the subject property as a result of the conduct described in subsection 1 of this section is in excess of five hundred dollars, otherwise lien fraud is a class A misdemeanor. If no liens are filed, lien fraud is a class A misdemeanor.

§429.015. Lien authorized for architectural, professional engineering, land survey, or landscape architecture--extent of lien

1. Every registered architect or corporation registered to practice architecture, every registered professional engineer or corporation registered to practice professional engineering, every registered landscape architect or corporation registered to practice landscape architecture, and every registered land surveyor or corporation registered to practice land surveying, who does any landscape architectural, architectural,

engineering or land surveying work upon or performs any landscape architectural, architectural, engineering or land surveying service directly connected with the erection or repair of any building or other improvement upon land under or by virtue of any contract with the owner or lessee thereof, or such owner's or lessee's agent, trustee, contractor or subcontractor, or without a contract if ordered by a city, town, village or county having a charter form of government to abate the conditions that caused a structure on that property to be deemed a dangerous building under local ordinances pursuant to [section 67.410, RSMo](#), upon complying with the provisions of this chapter, shall have for such person's landscape architectural, architectural, engineering or land surveying work or service so done or performed, a lien upon the building or other improvements and upon the land belonging to the owner or lessee on which the building or improvements are situated, to the extent of one acre. If the building or other improvement is upon any lot of land in any town, city or village, then the lien shall be upon such building or other improvements, and the lot or land upon which the building or other improvements are situated, to secure the payment for the landscape architectural, architectural, engineering or land surveying work or service so done or performed. For purposes of this section, a corporation engaged in the practice of architecture, engineering, landscape architecture, or land surveying, shall be deemed to be registered if the corporation itself is registered under the laws of this state to practice architecture, engineering or land surveying.

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

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

materials, fixtures, engine, boiler or machinery furnished, a lien upon the land belonging to such owner or lessee on which the same are situated, to the extent of one acre. If the building or buildings to be demolished or razed are upon any lot of land in any town, city or village, then the lien shall be upon the lot or lots or land upon which the building or other improvements are situated, to secure the payment for the labor and materials performed.

4. The provisions of [sections 429.030](#) to [429.060](#) and [sections 429.080](#) to [429.430](#) applicable to liens of mechanics and other persons shall apply to and govern the procedure with respect to the liens provided for in subsections 1, 2 and 3 of this section.

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

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

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

6. Priority between a design professional or corporation lien claimant and any other mechanic's lien claimant shall be determined pursuant to the provisions of [section 429.260](#) on a pro rata basis.

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

8. The agreement is in writing.

§429.020. Lien for street, sidewalk, sewer or pipeline adjacent to land

Every mechanic or other person who shall do or perform any work or labor upon or furnish any material for the construction of any street, curb, sidewalk, sewerline, waterline, or other pipeline in front of, adjacent to, along or adjoining any lot, tract or parcel of land in any town, city or village, under or by virtue of any contract with the owner or proprietor of such lot, tract or parcel of land, or his agent, trustee, contractor or subcontractor, or without a contract if ordered by a city, town, village or county having a charter form of government to abate the conditions that caused a structure on that property to be deemed

a dangerous building under local ordinances pursuant to [section 67.410, RSMo](#), shall, upon complying with the provisions of [sections 429.010 to 429.340](#), have a lien upon such lot, tract or parcel of land for his work or labor done, or material furnished.

§429.030. Amount of property subject to lien

The entire land, to the extent aforesaid, upon which any such building, erection or improvement is situated, or in front or alongside of which such street, curb, sidewalk, sewerline, waterline or other pipeline shall have been built, including as well that part of said land which is not covered with such building, erection or other improvement as that part thereof which is covered with the same, shall be subject to all liens created by [sections 429.010 to 429.340](#) to the extent, and only to the extent, of all the right, title and interest owned therein by the owner or proprietor of such building, erection or improvement, and for whose immediate use or benefit the labor was done or the things furnished.

§429.032. Partial release when lien is on multiple lots or tracts-- mechanic's lien claimant to file record in circuit court, content-- form for partial release

1. When multiple lots, tracts or parcels are the subject of one mechanic's lien created by virtue of [sections 429.010 to 429.340](#), it shall be permissible for every mechanic or other person who has a lien upon such multiple lots, tracts or parcels to release one or more of the lots, tracts or parcels from the mechanic's lien. The lots, tracts or parcels released, and the amount of mechanic's lien debt attributable to such lot, tract or parcel so released shall be specified by the mechanic's lien claimant.

2. Whenever a mechanic's lien filed upon multiple lots, tracts or parcels is partially released as to one or more of the lots, tracts or parcels, it shall be the duty of the mechanic's lien claimant to acknowledge upon the record or the margin thereof, in the office of the clerk of the circuit court, the portion of the mechanic's lien debt that is satisfied and the lots, tracts or parcels which are being released. The acknowledgment shall be sufficient if filed with the clerk of the circuit court in the following form:

PARTIAL RELEASE OF MECHANIC'S LIEN

STATE OF MISSOURI)
) SS.
COUNTY OF _____)

COMES NOW, (name of lien claimant) the lien claimant and does hereby partially release its mechanic's lien filed on, (date lien filed) and filed for record as lien number, (lien number or book and page numbers)

The amount of the original mechanic's lien debt is \$.....

The amount of the original mechanic's lien debt which is now satisfied is \$.....

The lots, tracts or parcels which are being released are more fully described as follows:

(Legal description of lots, tracts or parcels which are being released)

.....
Lien Claimant
By
(Signature of authorized representative)

(FOR INDIVIDUAL LIEN CLAIMANT)

On this day of, 19..., before me personally appeared, to me [\[FN1\]](#) known to be the person described in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid, the day and year first above written.

.....
Notary Public
My commission expires:
.....

OR

(FOR CORPORATE LIEN CLAIMANT)

On this day of, 19..., before me personally appeared, to me personally known, who, being by me duly sworn, did say that he is the of, a Missouri corporation, and that the seal affixed to the foregoing corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors; and said acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the county and state aforesaid, the day and year first above written.

.....
Notary Public

My commission expires:

.....

[\[FN1\]](#) Revisor's note--1992: Word "be" appears in original rolls.

§429.040. Buildings on same or adjacent lots

When the improvements consist of two or more buildings, united together and situated upon the same lot or contiguous lots, or separate buildings upon contiguous lots, or a continuous or connected sidewalk in front or alongside of contiguous lots, and erected under one general contract, it shall not be necessary to file a separate lien upon each building or lot for the work done or materials furnished in the erection of such improvements.

§429.050. Priority of lien--improvements removed when--exception

The lien for the things aforesaid, or work, shall attach to the buildings, erections or improvements for which they were furnished or the work was done, in preference to any prior lien or encumbrance or mortgage upon the land upon which said buildings, erections, improvements or machinery have been erected or put; and any person enforcing such lien may have such buildings, erections or improvements sold under execution, and the purchaser may remove the same within a reasonable time thereafter; provided, that

nothing contained in this section shall be so construed as to allow any such sidewalk as is mentioned in [sections 429.010](#) to [429.340](#) to be so sold under execution or so removed.

§429.060. Lien shall have precedence over subsequent encumbrances

The lien for work and materials as aforesaid shall be preferred to all other encumbrances which may be attached to or upon such buildings, bridges or other improvements, or the ground, or either of them, subsequent to the commencement of such buildings or improvements.

§429.070. Lien in case of licensed or leased property

1. Every building, erection, improvement and plant erected or constructed, and all materials, fixtures, engines, boilers, pumps, belting, pulleys, shafting, machinery and other personal property furnished, or placed on licensed or leased lots or lands shall, regardless of whether or not the owner of the license or lease has the right thereunder to remove the same or other personal property from such licensed or leased premises during or at the end of the term thereof, be held for the debt contracted for on account of the same and also the licensed interest or leasehold term for such lot and land on which the same is placed or erected.

2. Every mechanic, person or corporation who shall erect or construct any building, plant, improvement, or erection, or who shall furnish any material, fixture, engine, boiler, pump, belting, pulley, shafting, machinery or other personal property upon either licensed or leased lots or lands under or by virtue of any contract or account with the owner or proprietor of the license or lease or with his or its agent, or without a contract if ordered by a city, town, village or county having a charter form of government to abate the conditions that caused a structure on that property to be deemed a dangerous building under local ordinances pursuant to [section 67.410, RSMo](#), upon complying with the provisions of [sections 429.010](#) to [429.340](#), shall have a lien upon such building, plant, improvement, erection, and also upon such materials, fixtures, engines, boilers, pumps, belting, pulleys, shafting, machinery and such other personal property and also upon the license or lease on such lots or lands to the full extent of the number of acres or lots held under such license or lease by the owner thereof, and regardless of whether or not the owner of such license or lease has the right thereunder to remove either during or at the end of the term thereof such building, plant, improvement, erection, materials, fixtures, engines, boilers, pumps, belting, pulleys, shafting or machinery or other personal property thereon.

3. Every mechanic, person or corporation who shall do or perform any work or labor upon or repair any fixture, engine, boiler, pump, belting, pulley, shafting, machinery or other personal property belonging to a licensee or lessee and located upon either licensed or leased lots shall have for his work or labor done in repairing such personal property of the lessee or licensee, a lien upon such fixtures, engines, boilers, pumps, belting, pulleys, shafting, machinery or other personal property belonging to the lessee.

4. In case the licensee or lessee shall have forfeited his license or lease, the purchaser of the buildings, plants, erections, improvements, materials, fixtures, engines, boilers, pumps, belting, pulleys, shafting, machinery or other personal property and licensed interest or leasehold term or so much thereof as remains unexpired under the provisions of [sections 429.010 to 429.340](#) shall be held to be the assignee of such licensed interest or leasehold term and as such shall be entitled to pay to the licensor or lessors all arrears of rents or other money, interest and costs due under said license or lease unless the licensor or lessor shall have regained possession of the licensed, or leasehold land, or obtained judgment for the possession thereof on account of the noncompliance by the licensee or lessee with the terms of the license or lease prior to the commencement of the buildings, erections, plants, or improvements erected or constructed prior to the time the materials, fixtures, engines, boilers, pumps, belting, pulleys, shafting, machinery or other personal property is furnished, or placed thereon, in which case the purchaser of the buildings, erections, plants, improvements, materials, fixtures, engines, boilers, pumps, belting, pulleys, shafting, machinery or other personal property shall have the right to remove the same within sixty days after the purchase thereof, and the owner of the ground shall receive the rent due to him payable out of the proceeds of the sale, according to the terms of the license or lease, down to the time of removing the building, erections, plants, improvements, materials, fixtures, engines, boilers, pumps, belting, pulleys, shafting, machinery or other personal property.

§429.080. Lien filed with circuit clerk, when

It shall be the duty of every original contractor, every journeyman and day laborer, including persons who use rented machinery or equipment in performing such work or labor, and every other person seeking to obtain the benefit of the provisions of [sections 429.010 to 429.340](#), within six months after the indebtedness shall have accrued, or, with respect to rental equipment or machinery rented to others, then, within sixty days after the date the last of the rental equipment or machinery was last removed from the property, to file with the clerk of the circuit court of the proper county a just and true account of the demand due him or them after all just credits have been given, which is to be a lien upon such building or other improvements, and a true description of the property, or so near as to identify the same, upon which the lien is

intended to apply, with the name of the owner or contractor, or both, if known to the person filing the lien, which shall, in all cases, be verified by the oath of himself or some credible person for him.

§429.090. Abstract of lien by clerk

It shall be the duty of the clerk of the circuit court to endorse upon every account the date of its filing, and maintain an abstract thereof, containing the date of its filing, the name of the person seeking to enforce the lien, the amount claimed, the name of the person against whose property the lien is filed, and a description of the property charged with the same.

§429.100. Notification by subcontractors and others

Every person except the original contractor, who may wish to avail himself of the benefit of the provisions of [sections 429.010 to 429.340](#), shall give ten days' notice before the filing of the lien, as herein required, to the owner, owners or agent, or either of them, that he holds a claim against such building or improvement, setting forth the amount and from whom the same is due. Such notice may be served by any officer authorized by law to serve process in civil actions, or by any person who would be a competent witness. When served by an officer, his official return endorsed thereon shall be proof thereof, and when served by any other person, the fact of such service shall be verified by affidavit of the person so serving.

§429.110. When owner nonresident--notice, how given

Whenever property is sought to be charged with a lien under [sections 429.010 to 429.340](#), and the owner of the property so sought to be charged shall not be a resident of this state, or shall have no agent in the county in which said property is situate, or when such owner shall be a resident of the state, but conceals himself, or has absconded, or absents himself from his usual place of abode, so that the notice required by [section 429.100](#) cannot be served upon him, then, and in every such case, such notice may be filed with the recorder of deeds of the county in which such property is situate, and when filed shall have like effect as if served upon such owner or his agent in the manner contemplated by [section 429.100](#); and a copy of such notice so filed, together with the certificate of such recorder of deeds that the same is a correct copy of the notice so filed, shall be received in all courts of this state as evidence of the service, as herein provided, of such notice; and the recorder of deeds in each county of this state shall receive, file and keep every such notice so presented to him for filing, and shall further record the same at length in a separate book appropriately entitled; and for such service so performed, such recorder shall receive for each notice the sum of twenty-five cents, and for each copy so

certified as aforesaid of each of said notices, shall receive the sum of fifty cents, to be paid by the party so filing or procuring such certified copy, as the case may be, and the costs of filing and of one certified copy shall be taxed as costs in any lien suit to which the same pertains, to abide the result of the suit.

§429.120. Satisfaction to be entered, when

Whenever any debt, which is a lien upon any building or other improvement, shall be paid or satisfied, the creditor, if required, shall file an acknowledgment of such satisfaction with the clerk of the circuit court.

§429.130. Penalty for refusing to satisfy

If any creditor refuse to enter satisfaction within ten days after payment and request, as aforesaid, he shall be liable to any person injured, to the amount of such injury and cost of suit.

§429.140. Duty of contractor when others file lien

In all cases where a lien shall be filed under the provisions of [sections 429.010 to 429.340](#) by any person other than a contractor, it shall be the duty of the contractor to defend any action brought thereupon, at his own expense; and, during the pendency of such action, the owner may withhold from the contractor the amount of money for which such lien shall be filed; and in case of judgment against the owner or his property upon the lien, he shall be entitled to deduct from any amount due by him to the contractor the amount of such judgment and costs, and, if he shall have settled with the contractor in full, shall be entitled to recover back from the contractor any amount so paid by the owner for which the contractor was originally the party liable.

§429.150. Who construed as owner or proprietor

Every person, including all cestui que trust, for whose immediate use, enjoyment or benefit any building, erection or improvement shall be made, shall be included by the words "owner or proprietor" thereof under [sections 429.010 to 429.340](#), not excepting such as may be minors over the age of eighteen years, or married women.

§429.160. Assignment of mechanics' liens--rights of assignee

Any two or more persons having filed in the clerk's office mechanics' liens may assign to each other or to any other person all their right, title and interest in

and to such mechanics' liens, and the assignee thereof may bring suit in his name and enforce all such assigned liens as fully as if the same had not been assigned.

§429.170. Actions commenced in six months

All actions under [sections 429.010](#) to [429.340](#) shall be commenced within six months after filing the lien, and prosecuted without unnecessary delay to final judgment; and no lien shall continue to exist by virtue of the provisions of said sections, for more than six months after the lien shall be filed, unless within that time an action shall be instituted thereon, as herein prescribed.

§429.180. Pleadings as in other civil cases

The pleadings, practice, process and other proceedings in cases arising under [sections 429.010](#) to [429.340](#) shall be the same as in ordinary civil actions and proceedings in circuit courts, except as herein otherwise provided. The petition, among other things, shall allege the facts necessary for securing a lien under said sections, and shall contain a description of the property charged therewith.

§429.190. Who may be made parties

In all suits under [sections 429.010](#) to [429.340](#) the parties to the contract shall, and all other persons interested in the matter in controversy or in the property charged with the lien may be made parties, but such as are not made parties shall not be bound by any such proceedings.

§429.200. Personal representative made party, when

In case of the death of any of the parties specified in [section 429.190](#), whether before or after suit brought, the personal representative of such deceased party shall be made plaintiff or defendant, as the case may require, and it shall not be necessary to make the heirs or devisees of such deceased persons parties to the suit; but if there is no personal representative of such deceased person, then his heirs or devisees may be made parties, and if any of the heirs or devisees are minors under the age of eighteen years, their guardians or conservators of their estates shall be made parties with them; but if such minors shall have no guardians or conservators of their estates, the court in which the suit is pending shall appoint guardians ad litem for them in the same manner and under the same rules and regulations as guardians ad litem are appointed in proceedings for partition of real estate, and the judgment and

proceedings of such court in any such suits shall be as binding on such minors as if they were over the age of eighteen years.

§429.210. The judgment

The court shall ascertain, by a fair trial in the usual way, the amount of the indebtedness for which the lien is prosecuted, and may render judgment therefor in any sum not exceeding the amount claimed in the demand filed with the lien, together with interest and costs, although the creditor may have unintentionally failed to enter in his account filed the full amount of credits to which the debtor may be entitled.

§429.220. Judgment by default

Judgment by default shall be rendered against every defendant who, after being summoned or notified according to law, shall not appear and plead within the time allowed in ordinary civil actions.

§429.230. Judgment on constructive notice

When the debtor has not been served with summons according to law, and has not appeared, but has been lawfully notified by publication, the judgment, if for the plaintiff, shall be that he recover the amount of the indebtedness found to be due, and costs of suit, to be levied of the property charged with the lien therefor, which said property shall be correctly described in said judgment.

§429.240. Judgment on personal service

When the debtor has been served with summons according to law, or appears to the action without service, the judgment, if for the plaintiff, shall be against such debtor as in ordinary cases, with the addition that if no sufficient property of the debtor can be found to satisfy such judgment and costs of suit, then the residue thereof be levied as provided in [section 429.230](#).

§429.250. The execution

The execution to be issued shall be a special fieri facias, and shall be in conformity with the judgment, and such writ shall be returnable as ordinary executions; and the advertisement, sale and conveyance of real or personal estate under the same shall be made as under ordinary executions.

§429.260. Proceeds divided pro rata, when

The liens for work and labor done or things furnished, as specified in [sections 429.010 to 429.340](#), shall be upon an equal footing, without reference to the date of filing the account or lien; and in all cases where a sale shall be ordered and the property sold, which may be described in any account or lien, the proceeds arising from such sale, when not sufficient to discharge in full all the liens against the same without reference to the date of filing the account or lien, shall be paid pro rata on the respective liens; provided, such account or liens shall have been filed and suit brought as provided by said sections.

§429.270. Enforcement and adjudication of rights of several lienors in equitable action--procedure

Any and all liens in [sections 429.010 to 429.340](#) provided for may be adjudicated and determined and the rights of all parties interested in the same and in the property and of any of the property against which the same is claimed may be adjudicated, determined and enforced in one action which may be brought by any such lien claimant after the statement for such lien is filed in the office of the clerk of court, as herein provided, or such action may be brought by any owner or lessee of the property or any of it to be affected, or mortgagee or holder of any other encumbrance thereon. Such action shall be an equitable action for the purpose of determining the various rights, interest and liens of the various mechanics' lien claimants and claimants of other liens and owner of any interest in or leasehold upon said property and for enforcing the rights of any and all such persons in, to or against the property, being the lands and buildings and either of the same and for sale of such property, land and buildings or either of the same and for marshalling and distribution of the proceeds thereof among the parties according to their respective legal and equitable rights therein. Such action shall be an equitable action for the purpose of determining, establishing and enforcing the various and respective rights of the parties thereto and for the purpose of marshaling, applying and distributing the proceeds of the sale of such property that may be ordered and decreed in said action.

§429.280. Parties to equitable action

1. All persons claiming any lien or encumbrance upon, and all persons having any rights in or against and all owners and lessees of said property to be affected and any of it, all as may be disclosed by the proper public records, shall be made parties to said action and parties whose interests are divers may join as plaintiffs therein, but if they do not join as plaintiffs, then they shall be made defendants.

2. Any person, lien claimant or other having any rights in, to, against or upon said property and any of it whose rights are not disclosed at the time of bringing said action by the proper record, shall be bound by the proceedings, orders and judgments in said actions, but any such person shall be entitled upon application to the court to be made a party to said action at any time before final disposition by the final judgment of the court therein of the proceeds of said property and shall be entitled according to their respective rights to participate in the proceeds of the sale of such property and any of it, as the same may be thereafter received or then remain under the jurisdiction of the court.

3. If at the commencement of said action any person whose rights are disclosed by the record is omitted as a party, he may thereafter be made party to said action either upon his own application or upon the application of any other party to said action or by the court of its own motion.

4. If any party to said action shall die or cease to exist during the pendency of said action before the judgment or order of sale therein of said property, then the proper representatives, either administrator or other proper successor in right, shall be substituted by order of the court upon motion and notice of motion without formal revivor of said action.

§429.290. Equitable action exclusive of other remedies

After any such equitable action is commenced, the same shall be exclusive of other remedies for the enforcement of mechanics' liens, but until such action is brought, the other remedies provided for in [sections 429.010](#) to [429.340](#) shall remain and exist. And the procedure in any such equitable action, except as herein otherwise provided, shall be governed by the law and rules of procedure in civil actions generally.

§429.300. Other actions stayed when equitable actions brought

The equitable action above provided for shall be brought in the proper court of record regardless of the amount claimed by the plaintiff or plaintiffs in such action, and all other suits that may have been brought on any mechanic's lien claim or demand shall be stayed and no further prosecuted, and the parties in any such other suit shall be made parties to such equitable action as in the foregoing sections provided, and any costs rightfully accrued in behalf of any lien claimant in any such other action shall be and become a part of the lien claim of such party. After the institution of such equitable action no separate suit shall be brought upon any mechanic's lien or claim against said property,

or any of it, but the rights of all persons shall be adjusted, adjudicated and enforced in such equitable suit.

§429.310. Time suits deemed commenced

Any answer, or other pleading, or motion, or entry of appearance followed by pleading in due course, filed or made in any such equitable action by any mechanic's lien claimant, within six months after the preliminary statement for the lien of such claimant has been filed in the proper office therefor, as required by law, or, when filed, or made, at the time required by law on a summons in such equitable action, issued before or within such six-months' period within which suits on mechanics' liens including this equitable action are required to be commenced, provided such equitable action is still pending, shall be deemed a commencement of an action by such mechanic's lien claimant.

§429.320. Appointment of referee by court, when--jury trials

At the instance of any party to said action the court may appoint a referee to hear and report the evidence and to make conclusions and findings of fact and law therein and to report the same to the court for its further action thereon, and the court may confirm and approve said report in full or in parts and may modify the same and make other findings from the evidence reported as may be just and proper and render judgment accordingly. The court shall not appoint in any such equitable action any referee of its own motion. And in any such action the court may, if it deem the parties entitled thereto, or in its discretion submit any issue upon any separate claim or demand to a jury, and any two or more of such issues may in the discretion of the court be submitted to one jury or the court may submit separately such issues to a jury and shall be bound by the findings of the jury thereon in the further proceedings in said cause, subject to the power of the court to grant new trial of such issues.

§429.330. No equitable action in case of one lien

This equitable action shall not apply to instances in which there is only one mechanic's lien claimed against the property and any of it, but in any suit thereon the court shall determine the respective priorities as between such mechanic's lien and any other lien or encumbrance and enforce the same accordingly.

§429.340. Enforcement of decree ordering sale of property

Upon sale and execution of deed for the property sold in such equitable action, either by special commissioner appointed to make said sale or by the sheriff or successor of such commissioner or sheriff, the court may order delivery of possession of the premises sold to the purchaser at such sale and enforce such order by writ of assistance or other proper process against all persons to said action and all persons bound thereby, including those whose interests did not appear of record at the commencement of said action and all persons becoming interested in said property or obtaining possession thereof after the commencement of said action, which shall be the filing of the petition therein. And the court shall have full power and jurisdiction to speed said action and require service of process to be obtained speedily upon all parties therein at the instance of any party either plaintiff or defendant in said action or of its own motion.

§429.350. Enforcement of mechanics' liens by associate circuit judge

Associate circuit judges may exercise jurisdiction without special assignment in all actions brought to enforce mechanics' liens when the amount or balance claimed to be due does not exceed the monetary jurisdiction which associate circuit judges may exercise in ordinary civil actions without special assignment.

§429.360. Suits for foreclosure, process, procedure--same as other civil suits

The process, practice and procedure, including applications for trial de novo, in suits to enforce mechanics' liens which are heard by an associate circuit judge without special assignment shall be as nearly as practicable the same as provided in other civil suits heard by associate circuit judges. When a case is specially assigned to an associate circuit judge to hear upon a record, the process, practice and procedure, including appeals, shall be the same as if the case was being heard by a circuit judge.

§429.370 to 429.430. Repealed by L.1978, H.B. No. 1634, p. 696, SA, eff. Jan. 2, 1979

§429.440. Lien on railroad property for work, labor, materials

All persons who shall do any work or labor in constructing or improving the roadbed, rolling stock, station houses, depots, bridges or culverts of any railroad company, incorporated under the laws of this state, or owning or operating a railroad within this state, and all persons who shall furnish ties,

fuel, bridges or material to such railroad company, shall have for the work done and labor performed, and for the materials furnished, a lien upon the roadbed, station houses, depots, bridges, rolling stock, real estate and improvements of such railroad, upon complying with the provisions herein mentioned; provided, such work and labor is performed, and such materials are furnished, under and in pursuance of a contract with such railroad company, its agents, contractors, subcontractors, lessees, trustees, or construction company, organized for the uses and purposes of such railroad company, or having in charge the building, construction or improvement of such railroad, or any part thereof.

§429.450. Such lien to have precedence over other encumbrances

The lien aforesaid shall attach to the buildings, erections, improvements, roadbed and property mentioned from the date of the commencement of such work and labor, or from the time such materials were furnished or delivered, and shall be prior to all mortgages or encumbrances placed upon the property affected by this lien subsequent to the passage of this law.

**§429.460. Account and claim of lien filed with circuit clerk, when--
copy served**

It shall be the duty of all persons claiming the benefit of such lien, within ninety days next after the completion of the work, or after the materials are furnished, to file in the office of the circuit clerk of any county through which said railroad is located a just and true account of the amount due after all just credits have been given, which account shall state the amount claimed as due, the general nature of the work, amount of labor performed or of materials furnished, the dates when the work was done and when materials were furnished, and the place or places at which said labor and work was performed or said materials were furnished, the name or names of the parties with whom the contract for said work or furnishing said materials was made, and also the name of the railroad against which said lien is intended to apply; and it shall be the duty of all persons claiming said lien, within said ninety days, to serve a copy of the above account on the person or corporation owning or operating or having charge of said road or of the property to which said lien attaches, which said copy of account may be served in the same manner as now provided by law for the service of summons on corporations.

§429.470. Lien abstract book

It shall be the duty of the circuit clerk to endorse upon every account the date of its filing, and maintain an abstract thereof, containing the date of its filing,

the name of the person seeking to enforce the lien, the amount claimed, and the name of the railroad against which the lien is filed; and it shall be the duty of circuit clerks in whose office such accounts and liens may be filed, within five days thereafter, to forward to the secretary of state a true copy of said accounts and liens and judgments rendered thereon by the circuit courts in which the case has been tried.

§429.480. Secretary of state to file lien in his office

It shall be the duty of the secretary of state to file in his office such accounts and liens when received, and to prepare and keep in his office a book in which shall be entered an abstract of all accounts and liens filed as aforesaid, which abstract shall be so arranged and indexed as to show, in a convenient form, the names of all parties claiming liens, the amount claimed by each, the railroad to which the same applies, the date of filing, and if discharged, when the same was done.

§429.490. Satisfaction entered, when and how

Whenever any debt, which is a lien upon any building or other improvement, shall be paid and satisfied, the creditor, if required, shall file an acknowledgment of such satisfaction with the clerk of the circuit court, which satisfaction shall be certified by the clerk to the secretary of state within ten days after the same has been entered upon the records in his office; and the clerks of the circuit courts and the secretary of state shall receive as full compensation for services performed by them as is provided for under this chapter for mechanics' liens.

§429.500. Refusal of parties to satisfy--penalty

If any creditor refuse to enter satisfaction within ten days after payment and request as aforesaid, he shall be liable to any person injured to the amount of such injury and costs of suit.

§429.510. Limitations of subcontractor's lien by his contract

In all cases arising under the provisions of [sections 429.440](#) to [429.540](#), where notice of lien shall be filed by a subcontractor for work and labor performed, or materials furnished, such subcontractor, in case of suit brought to enforce said lien, shall not be entitled to recover, as against the corporation or individual owning the property to which the lien applies, at any greater rate for the work and labor performed, or materials furnished, than was agreed upon between

said corporation or individual and the original contractor for doing said work or furnishing the materials.

§429.520. Actions to enforce lien, how conducted--nature of judgment

Except as otherwise provided in [sections 429.440](#) to [429.540](#), all actions to enforce any lien under [section 429.440](#), shall be governed in all respects by [sections 429.170](#) to [429.250](#) which relate to actions for the enforcement of mechanics' liens; but no personal judgment shall be rendered for the amount of the indebtedness for which the lien is prosecuted in any such action except as against such defendants as might be sued thereon in an ordinary action at law.

§429.530. Who shall be parties to suit

Any person or corporation owning or operating the railroad to which said liens may apply shall, in each instance, be made a party defendant in all suits for enforcing said liens; but it shall not be necessary to make the party with whom the contract was made for doing the work and labor, or for furnishing of material, a party defendant in such suit; but such party or parties may, at the option of the plaintiff, be made parties defendant, in which case process may be awarded and served as other writs of summons in any county in this state.

§429.540. Proceeds, when distributed pro rata

In all cases where judgments have been rendered and a sale has been ordered, and the property sold to which said liens attach, the proceeds arising from such sale, if not sufficient to discharge all the liens on which judgments have been rendered before such sale shall be made, shall be distributed pro rata upon such judgments as if the filing of the said liens had been all the same date; and when such judgments have been by such sales or otherwise wholly or partially paid, and satisfied, the clerks shall enter upon the records the amount or amounts so paid, with a correct description of the real property sold, and within the time and in like manner certify the same to the secretary of state, as heretofore provided.

§429.550. Railroad liable to subcontractors, laborers, when

Whenever any contractor for the construction of any part of a railroad which is in process of construction, or any contractor for the repairing of any part of a railroad, shall be indebted to any subcontractor or laborer, or other person,

who shall do or perform any work or labor upon or furnish any materials for said road, such subcontractor or laborer, or other person, may give notice of such indebtedness to said company in the manner herein provided; and said company shall thereupon become liable to pay such subcontractor or laborer, or other person, the amount so due, and action may be maintained against said railroad therefor; such notice shall be given by said subcontractor, laborer or other person, within twenty days after the performance of the labor or work, or the delivery of the materials, for which the claim is made; such notice shall be in writing, and shall state the amount and number of days' labor or work, and the amount, description and quantity of materials furnished and the time when the said labor or work was performed, and the time when the said materials were furnished, for which the claim is made, and the name of the contractor from whom due, and shall be signed by such subcontractor, laborer or other person, or their attorney, and shall be served on an engineer, agent or other person employed by said company having charge of the section of the road on which said labor or work was performed, or such material furnished, personally, or by leaving said notice in the office or usual place of business of such engineer, agent or person having charge, with some person over fifteen years of age; but no action shall be maintained against any company under the provisions of this section unless the same be commenced within ninety days after notice is given to the company by such subcontractor or laborer, as above provided.

§429.560. Repealed by L.1990, S.B. Nos. 808 & 672, §C

§429.600. Citation of law

Sections 429.600 to [429.630](#) may be known and be cited as the "Commercial Real Estate Brokers' and State Certified Real Estate Appraisers' Lien Act".

§429.603. Definitions

As used in [sections 429.600](#) to [429.630](#), the following terms mean:

(1) "Commercial real estate", any real estate other than real estate containing one to four residential units or real estate classified as agricultural and horticultural property for assessment purposes as provided by [section 137.016, RSMo](#). Commercial real estate shall include any unimproved real estate of any zoning classification, other than agricultural or horticultural real estate, being purchased for development or subdivision. Commercial real estate does not include single-family residential units including condominiums, townhouses or homes in a subdivision when such real estate is sold, leased or otherwise conveyed on a unit by unit basis even though the units may be part of a larger building or parcel of real estate containing more than four residential units;

(2) "Owner", the owner of record of commercial real estate;

(3) "Real estate broker" and "real estate salesperson", as such terms are defined in [section 339.010, RSMo](#);

(4) "State-certified real estate appraiser", an appraiser as defined in [section 339.503, RSMo](#).

§429.605. Broker's lien for compensation--written agreement with buyer

1. Any real estate broker who is not acting as a real estate salesperson for another real estate broker shall have a lien on commercial real estate or an interest in such commercial real estate in the amount of the compensation as agreed upon by the real estate broker and the real estate broker's client or customer, if:

(1) Such real estate is listed with the real estate broker under terms of a written agreement for the purpose of selling, leasing or otherwise conveying any interest in the commercial real estate and evidenced by a written agreement signed by the owner or the owner's agent; and

(2) The real estate broker and the real estate salespersons retained by the real estate broker have provided licensed services that resulted in the procuring of a person or entity ready, willing and able to purchase, lease or otherwise accept a conveyance of the commercial real estate or any interest in the commercial real estate as provided for in the terms of the written agreement signed by the owner or owner's agent or other terms which were otherwise acceptable to the owner or owner's agent as evidenced by a written agreement signed by the owner or the owner's agent.

2. A real estate broker shall, also, have a lien on such commercial real estate or an interest in such commercial real estate if the real estate broker has a written agreement with a prospective buyer to represent the buyer to the purchase or other conveyance to the buyer of commercial real estate when the real estate broker becomes entitled to compensation pursuant to the written agreement.

§429.607. Lien notice, content

A lien notice, for purposes of [sections 429.600](#) to [429.627](#), shall state the name of the claimant, the name of the owner, a description of the property upon which the lien is being claimed, the amount for which the lien is claimed, and the real estate license number of the real estate broker. The notice of lien shall be signed by the real estate broker and the broker shall attest that the information contained in the notice is true and accurate as to his knowledge and belief.

§429.609. Authorized broker's lien attaches to commercial real estate, when-- notice

A real estate broker's lien authorized by [sections 429.600](#) to [429.627](#) attaches to the commercial real estate, or an interest in the commercial real estate, when:

(1) The real estate broker procures a person or entity ready, willing and able to purchase, lease or otherwise accept a conveyance of such property upon the terms set forth in the written agreement with the owner or terms otherwise acceptable to the owner or owner's agent, or the real estate broker is entitled to a fee or commission pursuant to a written agreement signed by the owner or the owner's agent; and

(2) The real estate broker records a notice of the lien in the office of the recorder of deeds of the county in which the real property, or any interest in the real property, is located, if such lien is filed prior to the actual conveyance or transfer of the commercial real estate subject to such real estate broker's lien, except that:

(a) If payment to a real estate broker is due in installments and a portion of the payment is due after the conveyance or transfer of the commercial real estate, any claim for a lien for installment payments due after the transfer or conveyance of such real estate may be recorded any time after the transfer or conveyance of the commercial real estate but must be recorded before the date on which the payment is due. Such lien shall only be effective as a lien against the commercial real estate to the extent moneys are still owed to the transferor by the transferee. A single claim for a lien recorded before the transfer or conveyance of the commercial real estate, claiming all moneys due under an installment payment agreement, is not valid or enforceable to the extent of the payments due after the transfer or conveyance. The lien attaches for purposes of this paragraph when the claim for lien is recorded;

(b) In the case of a lease, the claim for lien must be recorded within ninety days after the tenant takes possession of the leased property, unless written notice

of the intention to sign the lease is personally served on the real estate broker entitled to claim a lien at least ten days before the date of the intended signing of the lease, then the claim for lien must be recorded before the date indicated for the signing of the lease. The lien attaches for purposes of this paragraph when the claim for lien is recorded; or

(c) If the real estate broker has a written agreement with a prospective buyer as provided in subsection 2 of [section 429.605](#), then the lien attaches when the prospective buyer purchases or otherwise accepts a conveyance or transfer of the commercial real estate and records a notice of the lien within ninety days after the purchase or other conveyance or transfer to the buyer in the office of the recorder of deeds in the county in which the commercial real estate, or any interest in the commercial real estate, is located.

§429.611. Lien claim--release or satisfaction--recordation

If a claim for a lien has been filed with the county recorder of deeds and a condition occurs that would preclude the broker from receiving compensation under the terms of the real estate broker's written agreement, the real estate broker shall record and provide the owner of record a written release or satisfaction of the lien.

§429.614. Broker to mail copy of notice of lien to owner--recordation of lien

Any real estate broker who attaches a lien on commercial property pursuant to the provisions of [sections 429.600](#) to [429.627](#) shall mail a copy of the notice of the lien to the owner of the commercial real estate by certified mail. The real estate broker's lien is void if the broker does not record the lien as provided in [sections 429.600](#) to [429.627](#).

§429.616. Enforcement of lien--broker may bring suit--failure to bring timely action--extinguished liens not to be asserted

A real estate broker may bring suit to enforce a lien which attaches pursuant to the provisions of [sections 429.600](#) to [429.627](#) in the circuit court in the county where the property is located by filing a verified petition that the lien has been recorded. Unless the claim is based upon an option to purchase the commercial real estate, the broker claiming such lien must commence proceedings within six months after recording the lien and failure to commence proceedings within the six months shall extinguish the lien. A claim for the same lien, extinguished pursuant to this section and [section 429.618](#), may not be asserted in any subsequent proceeding.

§429.618. Petition, content--parties--priority of valid prior liens

1. A petition filed pursuant to the provisions of this section and [section 429.616](#) shall contain a statement of the terms of the contract or agreement on which the lien is based, the date when the contract or agreement was made, a description of the services performed, the amount due and unpaid, a description of the property that is subject to the lien and any other facts necessary for a full understanding of the rights of the parties. The plaintiff shall file the action against all known parties who have an interest in such real estate. A foreclosure action for a lien claimed pursuant to [sections 429.600 to 429.630](#) shall be brought pursuant to the provisions of [sections 443.190 to 443.280, RSMo.](#)

2. Valid prior recorded liens or mortgages shall have priority over a real estate broker's lien.

§429.620. Broker fails to file suit or answer within thirty days after demand--service by certified mail

If a broker claiming a lien pursuant to [sections 429.600 to 429.627](#) fails to file a suit to enforce the lien or fails to file an answer in a pending suit to enforce a lien within thirty days after a properly served written demand of the owner, lienee or other authorized agent, the lien shall be extinguished. Service of such demand shall be by registered or certified mail, return receipt requested or by personal service. The provisions of this section shall not extend any other deadline provided by law for the filing of any pleadings or for the foreclosure of any lien governed by [sections 429.600 to 429.627](#).

§429.623. Satisfaction or release of lien--written demand of owner

If a claim for lien has been filed pursuant to the provisions of [sections 429.600 to 429.627](#) with the county recorder of deeds and such claim has been paid in full or if the lienor fails to institute a suit to enforce the lien within the time as provided by law, the real estate broker shall acknowledge satisfaction or release of such lien in writing upon written demand of the owner within thirty days after such demand.

**§429.625. Cost of proceeding to be paid by nonprevailing party--
apportionment of costs between multiple parties**

The costs of any proceeding brought to enforce a lien filed pursuant to [sections 429.600](#) to [429.627](#), including reasonable attorney's fees and prejudgment interest due to the prevailing party, shall be paid by the nonprevailing party or parties. If more than one party is responsible for costs, fees and prejudgment interest, such costs, fees and prejudgment interest shall be equitably apportioned by the court among the responsible parties.

**§429.627. Lien preventing closing, establishment of escrow agent--
funds to be held until determination of rights--release of claim**

Unless an alternative procedure is available and is acceptable to the transferee in a real estate transaction, if a claim for a real estate broker's lien has been filed with the county recorder of deeds and such lien would prevent the closing of a transaction or conveyance, an escrow account shall be established with the clerk of the circuit court in the county in which the commercial real estate is located from the proceeds of the transaction or conveyance in an amount sufficient to release the claim for the lien. The requirement to establish an escrow account, as provided in this section, shall not be cause for any party to refuse to close a transaction. The proceeds held in such escrow account shall be held by the circuit clerk until the parties' rights to the escrowed funds have been determined by written agreement of the parties, by a final judgment of the circuit court or by other process as may be agreed to by the parties. If funds sufficient to satisfy the amount claimed in the lien have been deposited in the escrow account, the real estate broker shall release the claim for the lien on such real estate.

**§429.629. Appraisers and title examination service--lien for
completed services**

Upon complying with the provisions of Chapter 429 [\[FN1\]](#), any state certified real estate appraiser who performs any appraisal or appraisal service or title examination services for the owner, proprietor, or the agent, trustee, contractor or subcontractor of the owner or proprietor, on any commercial real estate and any person who performs title examination services upon commercial real estate pursuant to a written contract, shall have a lien upon such land and any improvements thereon owned by such owner or proprietor, in an amount sufficient to secure the payment for such appraisal or appraisal service or title examination services which have been completed.

[\[FN1\]](#) "Chapter 429" was substituted for "Chapter 329", an apparent typographical error in the Missouri Revised Statutes.

§429.630. Brokers, appraisers, and title examination service prohibited from asserting liens unless written notice given at closing

Any real estate broker who proposes to assert a lien pursuant to [sections 429.600](#) to [429.627](#) or any certified real estate appraiser or any person performing title examination services who proposes to assert a lien pursuant to [section 429.629](#) shall be prohibited from asserting such lien unless, at the time of the closing for such transaction, such broker or appraiser has given written notice to the purchaser of the commercial real estate that payment of the broker's or appraiser's fee or title examination fee is due and that he or she is entitled to a lien on the premises.

End of Statute

Subcontractor Cannot Recover in Quantum Meruit

What happens if a mechanic's lien is not filed? It is well established law in Missouri that an owner who has paid the general contractor in full is not subject to an unjust enrichment or quantum meruit lawsuit by the subcontractor.¹ In County Asphalt Paving Co., Inc. v. Mosley Construction, Inc., 239 S.W.3d 704 (Mo. Ct. App. 2007), the owner, Christian Assembly Church, had not paid the general contractor, Mosley Construction, in full for work performed. Accordingly, Mosley's subcontractor, CAPC, filed a lawsuit against the owner for quantum meruit.

The subcontractor did not file and thus could not pursue enforcement of a mechanic's lien. Had it done so, it might have been able to recover and it certainly would have had a significantly enhanced opportunity for a judgment against the owner.

The owner had obtained a construction loan and the funds went into an escrow account with a title company to act as the disbursing agent. The general contractor had recommended payment of the balance due to its subcontractor. The title company issued a check from the escrow account, but the check was returned for insufficient funds.

The title company's principles were indicted for federal mail and wire fraud for allegedly misappropriating escrow funds, including the church's account. Thus, neither Mosley nor CAPC received any of the remaining funds otherwise due to the subcontractor.

CAPC also had filed a breach of contract action against the general contractor. Its lawsuit against the owner, however, given no mechanic's lien, was limited to a claim for quantum meruit.

The subcontractor's legal position was simple. The subcontractor had provided \$18,838.70 in value for which it did not receive payment, and thus the church had been unjustly enriched by this amount. The church, however, had paid the money to the title company. This forced the Eastern District Court of Appeals to balance the interest between an innocent owner who had paid once and an innocent subcontractor who had not been paid.

The court decided that since the owner had paid someone—in this case, the escrow agent—it should not be required to pay again. By reaching this result, the court focused on what the owner had paid rather than on what the general contractor or subcontractor had received.

With this decision, the appellate court reaffirmed the need for each party in the construction link to consider what it must do to protect itself. The owner needs lien waivers and control over the payment process. The general contractor needs similar control over owner payments when they are made through an escrow agent. The subcontractor should always consider filing mechanic's liens whenever possible.

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