

“Missouri Mechanic’s Lien Law Basics”

a topic included in the seminar: “Everything You Need to Know about Mechanic’s Liens,” sponsored by the Bar Association of Metropolitan St. Louis (BAMSL) on April 27, 2005

by

James R. Keller

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 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 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.

#