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SUMMARY OF THE MISSOURI MECHANICS LIEN LAW

Too often, clients attempt to apply this very complicated law without professional assistance. The result can be not only an ineffective lien, but a counter-suit by the owner of the property for clouding title, or defamation of title, with damages exceeding the amount owed the contractor. A general discussion of the Missouri Mechanics' Lien Law follows:

1. If you are the general contractor (you deal directly with the owner), you must give the owner the statutory notice in ten point bold type. If you don't serve this notice before you receive any payment, your later attempted lien will be invalid.

The safest way to give this notice is to include this language with your basic contract. If you use only a short form, then you should have this language properly printed on the back side, and on the front you should have printed at the bottom in bold face capitals: "SUBJECT TO OTHER TERMS ON REVERSE SIDE." If all you have is an invoice or shipping document, then this language should be printed on the front of that invoice or shipping document. An original contractor who fails to provide the written notice with the intent to defraud is guilty of a misdemeanor. Further, any contractor who knowingly issues a fraudulent lien waiver is guilty of a felony.

The law does provide that as to new residences the notice provision may not apply if the buyer is furnished lien protection through a title insurance company. However, you cannot rely upon that provision, and you should always insure that the proper notice is provided.

2. Time limit: Whether you are dealing with a general contractor, another subcontractor or directly with the owner, you have six months to file the lien dated from the last date materials were supplied or work performed under the agreement (not including minor repair or follow-up work).

3. If you do not deal directly with the owner, you cannot file a mechanic's lien without first serving the owner with at least ten days notice of intent to file that lien. Thus, a subcontractor and supplier have two deadlines - one is no later than six months after the last work or delivery, and the second is at least ten days before the six months expires. Since at least another two to three weeks is also often needed to get a title company's letter report identifying the true owner and other lien claimants, a possible lien claim should be sent to us no later than four to five months after the last work is done. The "last work" does not include minor last changes or corrections to defective work.

4. If you are usually merely a subcontractor or a supplier, and not the general contractor dealing directly with the owner, be especially careful about improvement, repair or remodeling of OWNER-OCCUPIED RESIDENTIAL PROPERTY OF FOUR UNITS OR LESS. You will have a lien only if the owner agrees in a written contract to be liable for such costs in the event you are not paid. The consent must be printed in ten point bold type and signed separately from the notice of lien rights mentioned above. The signature of only one of the owners is sufficient to bind all the owners, and a copy of the signed Consent Form must be attached to the lien for recording purposes.

As a warning, if you are not dealing directly with the owner (you are a subcontractor or materials' supplier) you will be at a distinct disadvantage since you won't have the opportunity to get the owner to sign the "consent." The statute does require the original contractor (who contracts directly with the owner) to give you a copy of the owner's signed "consent," but only if you request it.

Therefore, for your own protection, when you are not dealing directly with the owner, ask your contractor to give you a copy of the owner's signed lien consent form. Then, to be safe, we suggest you add the Form of Notice to all your contracts and/or to the back of your short forms (invoices, shipping forms, delivery forms) with a signature line to be signed by the owner, and require a signed copy before you deliver merchandise. Again, all this is needed only for residential property of four units or less, owner-occupied.

Any person falsifying the signature of an owner on the Consent Form with the intent to defraud and any original contractor who knowingly issues a fraudulent consent of ownership will be guilty of a felony.

The law also provides that in the absence of the consent form described above, full payment by the owner of the amount due under a contract with the contractor will be a complete defense to all liens filed by any subcontractor, materialman or supplier. Partial payment to the contractor itself acts as an offset to the extent of such payment.

5. The law also defines the crime of Lien Fraud:

"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, for which the original contractor or subcontractor has been paid, with the intent to defraud, commits the crime of lien fraud." Furthermore, "a property owner or leasee who pays a subcontractor, materialman, supplier, or laborer for the services or goods claimed pursuant to a lien, for which the original contractor or subcontractor has been paid, will have a claim against the original contractor, subcontractor or supplier who fails or refuses to pay the subcontractor, materialman, supplier or laborer."

"Lien fraud" is a felony if the amount of the lien filed or the aggregate amount of all liens filed on the subject property is over \$500.00; otherwise lien fraud is a misdemeanor.

Strict compliance with the Mechanics' Lien Law is required in order to obtain an effective lien. Don't perform your own brain surgery.

Recent Cases: No lien for machinery rental

Just reported in 2002, the Missouri Court of Appeals, western District has ruled in a case of first impression, and raising the issue on its own even though not raised in counsels' briefs, that "a lien for the cost of rental machinery is simply inappropriate" under the Missouri mechanic's lien law.

While the court said it was mindful of the stated public policy that favors construing mechanics' lien statutes in favor of the one seeking the lien, "this court cannot interpret a mechanic's lien broadly where there is no lien to be found." The court has urged the state legislature to consider whether a lien for lessors of machinery is desirable. In the meantime, lessors of machinery in Missouri have only the non-lien remedy of filing suit against their contractor only and can not rely upon the owner of the property. For the full opinion, see *Bush Construction Mach. v. Kansas City Factory, Mo. App. W.D., No. 60217* decided April 23, 2002.

Recent Cases: Time to file lien or suit extended by Bankruptcy of general contractor

You need to file your lien within six months and the suit to enforce it within six months thereafter, but your general contractor files a bankruptcy sometime in the interim. The Bankruptcy Code imposes an "automatic stay" or injunction against any creditor attempting to collect any debt against that party. Do you file against the property anyway and not the General? You can wait according to the Missouri Court of Appeals.

A general contractor is a necessary party to a mechanics' lien action in Missouri, and in the event of the general contractor's bankruptcy the bankruptcy stay tolls the time for filing an action to enforce the lien to a period after the stay is lifted. See Sachs Electric, et al. v H.S.Construction Co., et al., No 79996 (Mo.App.E.D. September 24, 2002).

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