

**NEW MISSOURI MECHANIC'S LIEN STATUTE ON NEW RESIDENTIAL PROPERTY**

The Missouri Legislature enacted a new statute in 2010 which adds additional requirements prior to the filing of a mechanic's lien on a new residential construction project. Specifically, R.S.Mo. 420.016 applies to all new residential real estate conveyances closing on or after November 1, 2010.

This new statute provides that the owner of a new residential construction project must record a Notice of Intended Sale in the office of the recorder of deeds in the county in which the property is located, not less than forty-five days prior to the earliest date that the sale may close. The Notice of Intended Sale must also be posted on the property, or at an entrance to the property, or at any jobsite office at or near the property.

The contractor, subcontractor or supplier must then file a Notice of Rights in the office of the recorder of deeds in the county in which the property is located, not less than five calendar days prior to the intended date of closing stated in the Notice of Intended Sale. If the contractor, subcontractor or supplier fails to do so, it will lose all right to file a mechanic's lien. The recording of the Notice of Rights does not extend the time deadlines for filing a mechanic's lien under R.S.Mo. 429.080. However, when the Notice of Rights is required, a subcontractor or supplier will be excused from having to provide the usual ten day pre-lien notice required by R.S.Mo. 429.100.

This statute applies to any residential dwelling of four units or less, whether or not a unit is occupied by an owner, and any structures consisting solely of residential condominiums, townhouses or cooperatives, regardless of the number of units. This statute also applies to mixed use developments under certain circumstances.

R.S.Mo. 420.016 also now provides a detailed list of which documents must be attached to a mechanic's lien for new residential construction only, to satisfy the "just and true account" requirement of R.S.Mo. 429.080. It will be interesting to see if the courts or Legislature adopt this "just and true" account requirement for mechanic's lien that are filed on property other than new residential construction.

For the first time in Missouri, this statute allows an owner to release a mechanic's lien filed against new residential construction only, by filing a lien release bond with the Circuit Clerk (often called "bonding around the lien"), or filing other security as described in the statute.

R.S.Mo. 420.016 also addresses unconditional final lien waivers, and warns that a contractor, subcontractor or supplier will waive all of its mechanic's lien rights by signing a specified form of lien waiver, which is set out in the statute.

This new statute, R.S.Mo. 429.016, should be viewed with caution by all anyone supplying labor, materials or services to new residential construction projects. The evident intent of the statute is to aid owners, developers and financial institutions in their efforts to invalidate mechanic's liens. Every provision of this statute creates an additional burden or trap for the contractor, subcontractor or supplier, and a full understanding of all of the detailed provisions of this statute is necessary to avoid its intended negative impact.

On the other hand, owners, developers and financial institutions will find useful tools in this statute for creating greater certainty in the construction process, by eliminating many mechanic's liens which might otherwise be valid.

*For more information, please call:*

**Brown & Ruprecht, PC**

911 Main Street, Suite 2300

Kansas City, Missouri 64105

Phone: (816) 292-7000

Fax: (816) 292-7050

www.brlawkc.com

January, 2011