

SS SCS HCS#2 HB 1692, 1209, 1405, 1499, 1535 & 1811 -- REAL ESTATE; ELECTRONIC DEATH REGISTRATIONS; CEMETERIES; ARCHITECTS, ENGINEERS, AND SURVEYORS; MECHANIC'S LIENS; CHILD SUPPORT; CLEAN ENERGY PROJECTS; AND APPRAISERS

This bill changes the laws regarding real estate; electronic death registrations; cemeteries; architects, engineers, land surveyors, and landscape architects; mechanic's liens; and child support and establishes the Property Assessment Clean Energy Act and the Missouri Appraisal Management Company Registration and Regulation Act.

#### REAL ESTATE

The bill:

(1) Requires the Office of the State Land Surveyor within the Department of Natural Resources to establish rules setting minimum standards for digital cadastral parcel mapping. Any map designed and used to reflect legal property descriptions or boundaries for use in a digital cadastral mapping system must comply with the rules established by the office with certain exceptions (Section 60.670, RSMo);

(2) Prohibits any school district located in the City of Chesterfield from operating a materials recovery and recycling facility within 500 feet of a residential property (Section 171.185);

(3) Specifies that the provisions of Section 262.802 regarding the abeyance of water and sewer assessments until certain farmland property is connected to the system will not apply to any drainage or levee district established under state law (Section 246.310);

(4) Specifies that the term "employment" as it relates to unemployment compensation will not include services performed by a licensed real estate salesperson or licensed real estate broker if substantially all, instead of the current at least 80%, of the remuneration, whether or not paid in cash, for the services performed, rather than to the number of hours worked, is directly related to sales or other output, including the performance of services, performed pursuant to a written contract between the individual and the person for whom the services are performed and the contract provides that the individual will not be treated as an employee with respect to the services for federal tax purposes (Section 288.034);

(5) Adds the determination of land boundaries and positions of the United States Public Land Survey System and the creation,

preparation, and modification of electronic or computerized data to the list of work or services that a professional land surveyor can perform (Section 327.272);

(6) Changes the laws regarding the regulation of a real estate broker and salesperson to include a limited partnership, limited liability company, or professional corporation and specifies that "real estate broker" will include these types of companies and "real estate salesperson" will include a limited liability company, partnership, limited partnership, association, professional corporation, or corporation. The bill creates a new category of license for a real estate broker-salesperson and prohibits a real estate broker-salesperson from also operating as a real estate broker (Sections 339.010, 339.170, and 339.710);

(7) Defines "boat slip" or "watercraft slip" for the purposes of the Real Estate Appraisers Act as a defined area of water which is a part of a boat dock serving a common interest community and is to be considered real property. The rights of a real estate owner in a slip are to be included as collateral in any deed of trust and uniform commercial code filing of a lender taking a security interest in the owner's real estate (Section 339.503);

(8) Requires the Missouri Real Estate Commission within the Department of Insurance, Financial Institutions and Professional Registration upon receiving notice from the Director of the Department of Revenue that a licensee is delinquent in paying his or her taxes to immediately send a copy of the notice to the real estate broker with whom the licensee is associated (Section 339.845);

(9) Exempts a tenant from liability for rent payments during the remainder of the term of a lease agreement when his or her residence is destroyed by an act of God or other natural or man-made disaster unless the tenant caused the disaster (Section 441.645);

(10) Requires all public advertisements and orders of publication required by law, including amendments to the Missouri Constitution, legal publications affecting sales of real estate under a power of sale in a mortgage or deed of trust, and other legal publications affecting the title to real estate, to be published in a newspaper of general circulation (Section 493.055); and

(11) Requires the court or jury to visit the property alleged to be affected by a nuisance in an action for private nuisance where the amount in controversy exceeds \$1 million whenever any party requests a visit be made (Section 537.296).

PROPERTY ASSESSMENT CLEAN ENERGY ACT (Sections 67.2800 - 67.2835)

The Property Assessment Clean Energy Act is established which:

(1) Authorizes one or more municipalities to form a clean energy development board to establish a property assessed clean energy program to finance energy efficiency or renewable energy improvement projects. A property owner can apply to the board to finance the costs of the project through an annual special assessment to be collected with his or her property tax for up to 20 years;

(2) Requires the board to consist of at least three members. The number of board members and their terms are to be specified in the ordinance or order establishing the board. If only one municipality is participating in the board, the chief elected officer will appoint board members with the consent of the governing body. If more than one municipality is participating, members will be appointed in a manner agreed to by all participating municipalities;

(3) Requires the board to be a political subdivision of the state and have all powers necessary to carry out the provisions of the act;

(4) Requires the board to submit an annual report by July 1 to each municipality that participated in the formation of the board and the Director of the Department of Natural Resources. The report must include a brief description of each project financed by the board, the amount of assessments due and the amount collected, the board's administrative costs, the estimated cumulative energy savings from the projects financed during the preceding year, and the estimated cumulative energy produced by all renewable energy improvements financed during the preceding year;

(5) Specifies that no lawsuit to set aside the formation or to otherwise question the proceedings related to the formation of the board may be brought after 60 days from the effective date of the ordinance or order establishing the board. No lawsuit can be brought to set aside the approval of a project, an assessment contract, or a special assessment levied by a clean energy development board after 60 days from the date that the assessment contract is executed;

(6) Specifies the contractual requirements for any assessment contract between the board and the benefitted property owner or owners;

(7) Specifies that the total special assessments levied against

a property under an assessment contract cannot exceed the total cost of the project including any required energy audits and inspections;

(8) Requires the board to provide a copy of the signed assessment contract to the local county assessor and collector, as well as ensure that a copy of the assessment contract is recorded with the county recorder of deeds;

(9) Specifies that the special assessments agreed to under the contract will be a lien on the property against which it is assessed on behalf of the board. The assessments will be collected by the county collector in the same manner as other real property taxes;

(10) Authorizes a board to issue bonds payable from special assessment revenues; and

(11) Authorizes the Director of the Department of Economic Development to allocate any portion of the state's residual share of the national qualified energy conservation bond limitation under Section 54D of the Internal Revenue Code to specified state and local entities.

#### ELECTRONIC DEATH REGISTRATION SYSTEM (Sections 193.145 and 193.265)

All data providers in the death registration process, including the State Registrar, local registrars, medical examiners, coroners, funeral directors, embalmers, sheriffs, physicians, chief medical officers of licensed health care facilities, and other institutions providing medical care, are required to use an electronic death registration system within six months of it being certified by the Director of the Department of Health and Senior Services to be operational and available to all data providers.

The State Registrar may adopt pilot programs or voluntary electronic death registration programs until the system can be certified. However, no pilot or voluntary program can prevent the filing of a death certificate with the local registrar or the ability to obtain a certified copy of a death certificate under current law until six months after the system is certified as operational.

#### ENDOWED CARE CEMETERIES (Sections 214.160 - 214.550)

The bill:

(1) Allows a county commission that serves as the trustee of a

trust fund for a cemetery to invest moneys in the fund in certificates of deposit;

(2) Repeals the requirement that any court action to grant an injunction, restraining order, or other order to bring suit against a cemetery operator upon application by the Division of Professional Registration within the Department of Insurance, Financial Institutions and Professional Registration must be commenced in the county in which the illegal action occurred or in the county in which the operator resides;

(3) Requires all contracts sold by cemetery operators for cemetery services or for graves, cemetery markers, crypts, and other burial receptacles to meet certain requirements. If these requirements are not met, all payments will be recoverable by the purchaser plus 10% interest and any reasonable collection costs including attorney fees;

(4) Requires any person, entity, association, or political subdivision that purchases, receives, or holds real estate used for the burial of human remains, excluding a family burial ground, to notify the Office of Endowed Care Cemeteries within the department of the name, location, and address of the real estate before October 1, 2010, or within 30 days of acquiring the land;

(5) Exempts cemetery operators from the provisions of Chapter 436 regarding prearranged funeral contracts for the sale of cemetery services or for graves, cemetery markers, crypts, and other burial receptacles but prohibits them from adjusting or establishing the price of items with the intent of evading the trust or escrow provisions of the chapter. Provisions related to deposits into endowed care trust funds based on the sales price of certain products are revised;

(6) Removes the provisions requiring a financial institution serving as the trustee of an endowed care trust to be located in Missouri but requires all activities of the trust to be controlled by Missouri law and all funds held in trust to remain in Missouri;

(7) Requires a cemetery operator to notify the division in writing at least 30 days prior to selling a majority of the business assets of a cemetery or a majority of its stock. If the division does not disapprove, the operator may complete the transaction;

(8) Allows, for agreements entered into after August 28, 2010, a cemetery prearranged merchandise products contract to be canceled within 30 days of receipt of the executed contract and requires

all payments to be fully refunded with certain exceptions;

(9) Allows the division to direct a trustee, financial institution, or escrow agent to suspend the distribution of money from an endowed care trust fund or escrow account if the cemetery operator is not licensed, has failed to file an annual report, or has failed to file a corrective action plan after an audit has revealed a deficiency. The cemetery operator may appeal the suspension; and

(10) Exempts, if a cemetery was owned by a city, any subsequent cemetery owner from liability for any deficiency existing prior to the city's ownership. Currently, this applies only to a cemetery in St. Louis City.

ARCHITECTS, ENGINEERS, LAND SURVEYORS, AND LANDSCAPE ARCHITECTS  
(Sections 327.031 - 327.411)

The bill:

(1) Increases the membership of the Missouri Board for Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects within the Department of Insurance, Financial Institutions and Professional Registration from 14 to 15 by adding one more professional engineer;

(2) Allows a landscape architect to serve as the chairperson of the board;

(3) Gives all rights, powers, and duties available to the members of the architectural and professional engineering divisions of the board to the members of the professional land surveying and landscape architectural divisions of the board;

(4) Allows certain faculty members of an accredited school of landscape architecture to serve on the board;

(5) Repeals the requirement that the board cannot summon or subpoena a witness or documents on a matter under a hearing or investigation without the advice of the Attorney General;

(6) Establishes a sequential rotation for the appointment of a chairperson to the board;

(7) Limits a chairperson to one, four-year term;

(8) Authorizes the President of the Missouri Association of Landscape Architects to fill a board vacancy for a landscape architect as other state associations are allowed to do for their professions;

(9) Allows a person holding an inactive license as a professional land surveyor to use that title or the initials "PLS" after his or her name; and

(10) Requires a licensee to prepare or personally supervise the preparation of all documents containing his or her personal seal and to perform services only when he or she is qualified by education, training, and experience in the specific technical areas involved.

#### MISSOURI APPRAISAL MANAGEMENT COMPANY REGISTRATION AND REGULATION ACT (Sections 339.1100 - 339.1240)

The Missouri Appraisal Management Company Registration and Regulation Act is established to regulate real estate appraisal management companies. The bill:

(1) Prohibits any person from directly or indirectly engaging or attempting to engage in the business of real estate appraisal management or from advertising or holding himself or herself out as engaging in or conducting business as an appraisal management company without being registered with the Missouri Real Estate Appraisers Commission within the Department of Insurance, Financial Institutions and Professional Registration. The registration will be valid for two years from its issuance;

(2) Allows the commission to adopt the necessary rules to implement, administer, and enforce the provisions of the bill;

(3) Requires an entity applying for a registration as an appraisal management company to complete an irrevocable Uniform Consent to Service of Process, pay the fee as established by the commission, post and maintain a \$20,000 surety bond, and certify certain ownership information. No more than 10% of any company applying for a registration may be owned by a person or entity who has had a license or certificate refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation in any state. Anyone with more than 10% ownership in an appraisal management company must be of good moral character and submit to a background investigation;

(4) Requires the company to notify the commission within 30 days of a change in its controlling principal, agent of record, or ownership composition;

(5) Requires each appraisal management company to designate one compliance manager who will be the main contact for all communications between the commission and the company;

(6) Prohibits an appraisal management company from employing or

contracting with a person who has had an appraiser license or certificate in Missouri or in any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation;

(7) Requires an appraisal management company, prior to placing an assignment for real estate appraisal services, to have a system in place to verify that the appraiser holds a credential in good standing with the State of Missouri. The letters of engagement must include instructions to the appraiser to decline the assignment in the event the appraiser is not geographically competent or the assignment falls outside his or her scope of practice restrictions. Each registered company must certify biannually that it has a system and process in place to verify that an individual being added to the appraiser panel of the company holds a license in good standing in Missouri and that an individual to whom the company is making an appraisal assignment has not had an appraiser license or certification refused, denied, canceled, revoked, or surrendered in lieu of a pending revocation on a regular basis; that it has a system in place to perform an appraisal review on a periodic basis to validate that the appraisals are being conducted in accordance with Uniform Standards of Professional Appraisal Practice (USPAP); and that it maintains a detailed record of each service request and the report of each appraiser who performs an appraisal for the company;

(8) Requires an appraisal management company to separately state to the client all fees paid to an appraiser and the fees charged by the company for services associated with the management of the appraisal process. Fees must be paid to the appraiser within 30 days of the date the appraisal is completed with certain exceptions;

(9) Prohibits an employee, director, officer, or agent of an appraisal management company from influencing or attempting to influence the development, reporting, or review of an appraisal through coercion, extortion, collusion, compensation, instruction, inducement, intimidation, bribery, or any other manner;

(10) Requires the commission to issue a unique registration number to each appraisal management company and to publish a list of all companies that have registered and have been issued a number;

(11) Allows the commission to censure an appraisal management company, conditionally or unconditionally suspend or revoke any registration issued under Sections 339.1100 - 339.1240, or impose civil penalties of up to \$1,000 for each offense, with a maximum



penalty of \$10,000. In determining the amount of the penalty to be imposed, the commission may consider if a company is:

- (a) Knowingly committing any act in violation of Sections 339.1100 - 339.1240;
- (b) Violating any rule adopted by the commission; or
- (c) Procuring a license by fraud, misrepresentation, or deceit; and

(12) Requires the commission before censuring any registrant or suspending or revoking any registration to notify the registrant in writing of any charges made at least 20 days before the hearing and to afford the registrant an opportunity to be heard in person or by counsel. Written notice will be satisfied by personal service on the controlling person of the registrant or the registrant's agent for service of process in this state or by sending the notice by certified mail, return receipt requested, to the address on file with the commission of the controlling person of the registrant.

#### MECHANIC'S LIENS AGAINST RESIDENTIAL REAL PROPERTY (Section 429.016)

Procedures are established for asserting a mechanic's lien against residential real property other than a mechanic's lien for the repair, remodeling, or addition to owner-occupied residential property of four units or less. In its main provisions, the bill:

- (1) Requires a claimant seeking to retain the right to assert a mechanic's lien against residential real property to record a notice of rights with the recorder of deeds in the county in which the property is located not less than five days prior to the intended date of closing stated in a notice of intended sale as contemplated in these provisions. A claimant who is correctly identified in a previously recorded notice of rights recorded as to the property is relieved of his or her duty to record a notice of rights. Any claimant failing to record a notice of rights will be deemed to waive and forfeit any right to assert a mechanic's lien against the property but will retain the rights and remedies allowed by law to collect payment for any work, labor, and materials;
- (2) Requires a notice of rights to comply with the provisions of Section 59.310 and to be in a form as specified in the bill;
- (3) Requires the title owner of residential real property who has contracted with a claimant for the performance or provision

of work, labor, or materials for the improvement of the property in order to facilitate the sale of the property to record with the recorder of deeds for the county in which the property is located a notice of intended sale not less than 45 days prior to the earliest date the owner intends to close on the sale of the property. The notice must state the date on which the owner intends to close. Recording the notice is a condition precedent to a claimant's obligation to record a notice of rights as to the subject property in order to retain a claimant's mechanic's lien rights as to the property. The owner or designated agent must provide a copy of the notice to any claimant within five days after receiving a written request from the claimant and must post a copy of the notice on the subject property, at an entrance to the subject property, or at any jobsite office located at or near the subject property. If the owner or agent fails to comply with these provisions, the claimant will be entitled to receive his or her actual and reasonable costs, excluding attorney fees, to obtain the necessary legal description for the claimant to record his or her notice of rights. The owner or agent's failure to post, mail, or transmit the required information will not relieve the claimant from his or her obligation to record a notice of rights in order to retain his or her mechanic's lien rights as to the property. The owner or agent will not be liable to any claimant or other person for an error, omission, or inaccuracy in the content of the information provided and disclosed by the owner or agent with certain specified exceptions;

(4) Specifies that a claimant satisfies the just and true account requirement in Section 429.080 by providing the following information and documentation as part of the mechanic's lien claim filed with the clerk of the circuit court:

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

(b) The name and address of the person the claimant contracted with to perform the work;

(c) A copy of any contract, purchase order, or proposal and any agreed change order or modification to the agreement;

(d) A general description of the scope of work agreed to be performed in the absence of any written agreement;

(e) All invoices submitted by a claimant for work on the property;

(f) An accurate statement of account showing all payments or credits against the amount due for work performed and the

calculation or basis for the amount claimed; and

(g) The last date that work or labor was performed or any materials or equipment provided;

(5) Allows any person having interest in a residential real property against which a mechanic's lien has been filed to release the property from lien by depositing in the office of the circuit clerk a sum of money in cash or certified check; an irrevocable letter of credit issued by a federally or state-chartered bank, savings and loan association, or savings bank authorized to and doing business in Missouri; or a surety bond of at least 150% of the amount of the mechanic's lien being released and by recording with the recorder of deeds and filing with the circuit clerk the amount of the deposit including the claimant's name and the amount being released on the property;

(6) Specifies that a deposit of substitute collateral and release of a claimant's mechanic's lien claim will not modify any aspect of the priority of the claimant's interest or obligations regarding enforcement of a mechanic's lien claim nor will it relieve any claimant of potential liability for slander of title or otherwise due to the filing of a claimant's mechanic's lien;

(7) Allows a claimant to waive his or her right to assert a mechanic's lien by executing a partial or full waiver of mechanic's lien rights, but this waiver will not be deemed to waive or release a mechanic's lien rights in exchange for a lesser payment unless the mechanic's lien waiver is an unconditional, final mechanic's lien waiver in compliance with these provisions;

(8) Specifies that an unconditional, final mechanic's lien waiver will only be valid if it is on a form as specified in the bill; and

(9) Requires any claimant who has recorded a notice of rights and who has been paid in full for the work performed to timely execute an unconditional, final mechanic's lien waiver; to not unreasonably withhold the waiver when circumstances require prompt execution; and to in no event fail to provide a waiver any later than five days after the claimant's receipt of a written request to do so by any person or entity. A claimant who fails or refuses to timely execute an unconditional, final lien waiver when he or she has been paid in full will be presumed liable for slander of title and for any damages sustained as a result, together with a statutory penalty of \$500.

These provisions will apply to any residential real property conveyance closing on or after November 1, 2010.

CHILD SUPPORT (Sections 452.340, 454.475, 454.517, 454.557, and 454.1003)

The bill:

(1) Requires the hearing officer, when making a determination of the amount of a parent's financial responsibility, to consider the factors in Section 452.340. Currently, the officer must use the scale and formula for minimum support obligations established by the Department of Social Services under Section 454.480;

(2) Requires a notice issued by an agency entitled to receive and disburse child support payments in Missouri to advise the obligor of the procedures available to contest a lien on the obligor's workers' compensation benefits on the grounds that the lien is improper due to a mistake of fact by requesting a hearing within 30 days of the mailing date of the notice. The certified copy of the court order and the sworn or certified statement of arrearages will constitute prima facie evidence that the order of the Director of the Family Support Division within the department is valid and enforceable. If a prima facie case is established, the obligor can only assert mistake of fact as a defense. The obligor will have the burden of proof on these issues; and

(3) Specifies that a current support obligation must not be recorded in the automated child support system when the obligation of a parent to make child support payments is deemed terminated under Section 452.340.

#### MISCELLANEOUS PROVISIONS

The bill:

(1) Specifies that in determining eligibility and the amount of benefits to be granted under federally aided state public assistance programs, the value of any life insurance policy where a seller or provider is made the beneficiary or the policy is assigned to a seller or provider, either being in consideration for an irrevocable prearranged funeral contract under Chapter 436, will not be taken into account or considered an asset of the beneficiary named in the irrevocable prearranged funeral contract (Section 208.010);

(2) Requires, beginning January 1, 2011, the certificate of title for a new outboard motor to designate the year the motor was manufactured and the year the dealer received the motor from the manufacturer (Section 306.532);

(3) Requires any pleading, other than the interlocutory or final judgment or any modification thereof, in a dissolution of

marriage, legal separation, or modification proceeding filed before August 28, 2009, to be subject to inspection only by the parties, an attorney of record, the Family Support Division within the Department of Social Services when services are being provided under Section 454.400, the Attorney General or his or her designee, a person or his or her designee licensed and acting under Chapter 381 who must keep any information obtained confidential except as necessary to the performance of functions required under the chapter, or upon order of the court for good cause shown. Persons authorized to inspect these documents are allowed to receive or make copies of the documents without requiring the clerk to redact the Social Security number unless specifically ordered to do so by the court. Upon a request, the clerk must redact the Social Security number from any copy of a judgment or satisfaction of judgment before releasing the information to the public. A pleading or filing that is more than 72 years old may be made available to any person (Section 452.430);

(4) Allows any county to use certain court fees collected pursuant to Section 488.426 for courtroom renovation and technology enhancement or for debt service on county bonds for the renovation or enhancement projects. Currently, the counties of Clay, Greene, Jackson, Platte, and St. Louis and the City of St. Louis are not allowed to use the fees for these purposes (Section 488.429);

(5) Specifies that an individual who owns or leases private property may use deadly force against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter the property. The owner or lessor of the private property does not have a duty to retreat from the property (Sections 563.011 and 563.031);

(6) Specifies that a person commits the crime of unlawful use of weapons if he or she knowingly has a firearm or projectile weapon readily capable of lethal use on his or her person, while he or she is intoxicated, and handles or otherwise uses the firearm or projectile weapon in a negligent or unlawful manner or discharges the firearm or projectile weapon unless acting in self-defense. All prosecuting attorneys, assistant prosecuting attorneys, circuit attorneys, and assistant circuit attorneys who have completed the firearms safety training course required under Section 571.111 are exempt from the general prohibition on carrying concealed firearms and from certain other restrictions in Section 571.030 (Section 571.030);

(7) Exempts the possession of an antique firearm from the provision that specifies a person commits the crime of unlawful possession of a firearm if he or she is a convicted felon

possessing a firearm (Section 571.070); and

(8) Allows the sheriff of the new jurisdiction of a person who has been issued a concealed carry endorsement to charge a processing fee of up to \$10 for a change of address on the endorsement and a sheriff to charge a processing fee of up to \$10 to change the name on an endorsement (Sections 571.104 and 571.107).