



Five Frequent Fatal Mistakes of Ohio Mechanic's Lien Claimants

by Bonnie L. Wolf of Frost, Brown, Todd LLC.

In these challenging economic times, getting paid has become an increasing struggle central to the continued viability of many construction businesses. For Ohio contractors and materialmen, protecting the ability to secure payment through mechanic's liens is more important than ever. A mechanic's lien serves as security upon the owner's property for the value of work performed or materials furnished to improve real property. Mechanic's liens are governed by Ohio statutes, and the process to perfect your lien rights can be confusing and daunting. The following are five major mistakes lien claimants should avoid to protect their lien rights.

No. 1 – Failure to Preserve Lien Rights. Lien claimants must take the proper steps to preserve their lien rights. In Ohio, construction projects formally start when the owner records a Notice of Commencement,[1] which is a document that compiles all necessary information in one convenient document for subcontractors and materialmen to rely upon to assert their lien rights. The Notice of Commencement must contain the following information:

- ◆ Legal description of the property
- ◆ Brief description of the improvement
- ◆ Name and address of the party contracting for the improvement
- ◆ Name and address of the owner of the property
- ◆ Name and address of original contractor
- ◆ Date of the first contract with the original contractor
- ◆ Name and address of lending institutions and sureties
- ◆ Name and address of the person preparing the notice and verifying affidavit [2]

The Notice of Commencement must be recorded in the county where the construction project is located,[3] posted in a conspicuous place at the project, [4] and served upon the original contractor.[5] If such steps are not taken or incorrect information is provided in the Notice of Commencement, the property owner is liable for expenses associated with others having to obtain that information and is liable for any loss of

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Tech Tip: Save your files and photos to the Cloud. Get 25 GB free storage space using Windows Live SkyDrive.

By Julie Koehne, Systems Librarian



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You can edit photos with Windows Live Photo Gallery, make them look their best, and then upload them directly to SkyDrive. Take your photos and videos and create movies with them in Windows Live Movie Maker. When you're done, upload them to SkyDrive.

Labor and Employment Law: BNA Resources

If you practice in labor and employment law, you're probably familiar with the high quality legal information that BNA publishes. The Law Library offers an extensive array of resources from BNA through its Labor and Employment Library. License restrictions limit this to use from the Law Library and other Hamilton County offices but librarians will also be glad to email you a case or an article if you have a cite. Here are some highlights from a recent BNA training event held at the Law Library:

BNA Insights

Experts in labor and employment law offer articles on a variety of topics. We sometimes draw from these for our practice area updates. Here are a few titles from the past month: "Whistleblower Protection Under the SEC's New Dodd-Frank Regulations: A Practical Guide for Employers," "Social Security No-Match Letters Are Back! Are You Prepared?," "The Ever-Expanding World of Retaliation: The Supreme Court Continues the Trend," and "DOL's Smartphone App Is a Good Reminder to Ensure FLSA Record-keeping in Order".

Video Insights

In addition to the articles under BNA Insights, there are video insights by experts. Recent topics include, for example, "E-Discovery Issues in Wage and Hour Litigation" and "Maximizing Emotional Distress Damages in Employment Bias Cases".

Latest Cases

The main screen lists the latest cases, but one can also set up case alerts in particular areas of employment law, right down to cases involving particular BNA classification numbers.

News Reports

The Law Library subscribes to BNA's

Employment Discrimination Report and *Workplace Immigration Report*. If these are areas of interest to you, you'll want to receive alerts to the latest articles and news. Each newsletter includes links to the latest and cited cases. Look for the sign up for email alerts at the top of the screen or ask a librarian here to set up alerts for you.

Federal and State Laws and Regulations Besides BNA's editorial content, the Labor and Employment Library gives users access to federal and state agency regulations and documents.

Printing or Emailing

The content from BNA Labor and Employment Library can be output as printer-friendly or as rich text format for use in MS Word, for example.

Cataloger Librarian Accepts Academic Position

After more than ten years of service to the Law Library as an Assistant Law Librarian & Cataloger, Akram Sadeghi Pari is leaving July 8 to accept a position at the Robert S. Marx Law Library at the University of Cincinnati where she has worked on a part-time basis for some time. We are most grateful for Akram's service to the Hamilton County Law Library and its patrons. As a cataloger, Akram has overseen technical services processes to ensure efficient and accurate bibliographic access to the Library's resources. She has added records for electronic materials to the library catalog, implemented and maintained our acquisitions database, spent countless hours with vendors to consolidate accounts and manage records for subscriptions. Akram is consistently gracious with colleagues and patron. We will miss seeing her daily but we wish her all the best. A report on the search for a new librarian will appear in the next issue of the newsletter.

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lien rights as a result of incorrect information.

Subcontractors and materialmen should always request a copy of the Notice of Commencement from the project owner. The Owner has ten days to provide the Notice of Commencement.[6] If a Notice of Commencement is filed, then the subcontractor or materialman should file a Notice of Furnishing on the entity designated in the Notice of Commencement.[7] If an Owner fails to timely respond to a request for a Notice of Commencement, the time for serving a Notice of Furnishing is extended until twenty-one days after the Notice of Commencement is ultimately provided.[8]

As a general rule, a Notice of Furnishing must be served within 21 days of the first day labor or materials are furnished to the project.[9] Since the Notice of Furnishing relates back only 21 days from the date of service of the Notice of Furnishing, the Notice of Furnishing will only protect labor or supplies provided 21 days before the service of the Notice of Furnishing. So, the Notice of Furnishing, if filed untimely, will not protect labor or supplies provided more than 21 days before the service of the Notice of Furnishing. As a result, failure to timely serve the Notice of Furnishing may result in forfeiture of lien rights.

However, if a Notice of Commencement is not filed, subcontractors and materialmen have no obligation to file a Notice of Furnishing to preserve their lien rights. Owners and General Contractors should develop a habit of always filing a Notice of Commencement. On the other hand, subcontractors and materialmen are well-advised to always promptly file a Notice of Furnishing, regardless of whether a Notice of Commencement has been filed.

No. 2 – Failure to Timely File an Affidavit for Mechanic’s Lien. Timing is crucial for protecting lien rights. A lien claimant must be aware of two crucial factors to perfect a mechanic’s lien claim: (1) the deadline for

filing an Affidavit for Mechanic’s Lien; and (2) calculating when the clock begins to run for the filing of an Affidavit for Mechanic’s Lien. These deadlines vary depending upon the type of project involved.

On commercial projects, a claimant has 75 days from the last day materials or labor was provided to file the Affidavit for mechanic’s lien.[10] For a residential project, a claimant has 60 days from the last day materials or labor was provided.[11] As to gas and/or oil wells, a 120 day period applies.[12]

Determining the “last day of work”, for the purposes of determining when lien rights expire, is a fact-specific determination that can vary from project to project. As a general rule, the “last day of work” occurs when the lien claimant completes the work that was required of the claimant under its contract. Thus, a contractor’s last day of work occurs when its job is complete and the contractor is no longer providing labor or material. Completion of punch list work may qualify as the “last day of work”, but warranty work will not. A materialman’s last day of work is when the materials were delivered to the project.

Lien rights are invalidated if a claimant does not timely file an Affidavit for Mechanic’s Lien.

No. 3 – Failure to Provide All Necessary Information. The Affidavit for Mechanic’s Lien must include the following information: (a) the amount owed; (b) a description of the property subject to the lien; (c) the name and address of the person for whom the work was performed or the material provided; (d) the name and address of the owner; (e) the name and address of the lien claimant; and (f) the first and last dates that work was performed or supplies were furnished.[13] The Affidavit must be filed with the local county recorder’s office. An Affidavit for Mechanic’s Lien will not be effective unless all the required information is included.

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No. 4 – Failure to Provide Proper Notice. Lien claimants have the duty to serve the recorded lien. The Affidavit must also be served on the owner of the property within 30 days after filing with the local county recorder's office.[14] If the owner cannot be found, a copy of the lien must be posted conspicuously on the project site within 10 days of failure of service. Failure to properly serve the lien can invalidate it.

No. 5 – Allowing the Lien to Expire. Mechanic's liens are valid for 6 years, unless a Notice to Commence Suite is served on the lien claimant.[15] A Notice to Commence Suit can be issued by the Owner or by the General Contractor, on behalf of the Owner. It must be served upon the person who executed the Affidavit for Mechanic's Lien either personally by the Sheriff or by certified mail. Once served, the Notice to Commence Suit must be filed with the local county recorder's office. After service, the lien claimant has 60 days to commence a lien foreclosure suit.[16] Lien claimants must be mindful that a Notice to Commence Suit shortens the time otherwise available to file a lawsuit to foreclose a lien. Mechanic's lien rights will expire 60 days after service of a Notice to Commence Suit if a lawsuit has not been filed.

While not an exhaustive list of mistakes that can occur when trying to protect lien rights, contractors and materialmen should be vigilant in working to avoid these all too common, and potentially fatal, mistakes. Doing so will certainly go a long way to preserving contractors' mechanic's lien rights.

[1] Ohio Revised Code (O.R.C.) § 1311.04

[2] O.R.C. § 1311.04(B)

[3] O.R.C. §1311.04(A)

[4] O.R.C. § 1311.04(G)(1)

[5] O.R.C. §1311.04(H)

[6] O.R.C. §1311.04(D)

[7] O.R.C. §1311.05

[8] O.R.C. §1311.05(H)

[9] O.R.C. §1311.05(A)

[10]O.R.C. §1311.06(B)(3)

[11]O.R.C. §1311.06(B)(1)

[12]O.R.C. §1311.06(B)(2)

[13]O.R.C. §1311.06

[14]O.R.C. §1311.07

[15]O.R.C. §1311.13(C)

[16]O.R.C. §1311.11(A)&(B)

Personal Belongings Left in Library

Just a reminder that library staff cannot be held responsible for personal items left unattended in the Library. Although we have not experienced theft of materials, we need to be aware of that possibility, as well as the more remote chance of explosives or other dangerous content. Unattended personal items may be subject to removal, search and/or confiscation by security personnel. A limited number of lockers are available to subscribers. We advise laptop users to use a lock.

Ohio Materials in the Blue Room

Our summer intern is in the process of shifting books in the Ohio Room (the blue room). The reason for this shift is very practical: Books have had some damage from the sun and crumbling plaster on the wall with the windows so we are taking those shelving units out of commission for the time being. The books will remain in call number order but frequent users will see that the Ohio practice materials have moved back further in the room. If you would like any assistance finding frequently used materials, just ask.

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to 6 weeks at a time

Access to extensive electronic databases from the Law Library, including LexisNexis, Shepard's, CCH Omnitax, CCH Human Resources Group, and CCH Business Group resources, Hein Online Law Journals and Federal Register, and over 70 Aspen / LOISLaw treatises in 16 substantive areas

Wireless network throughout the Law Library

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Inexpensive CLE seminars throughout the year, on legal research and substantive topics

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/ LOISLaw treatises and CCH Newsletters.

You and the Legal System: When to Use Mediation

Sherry L. Davis, Cincinnati area attorney and mediator, will speak about mediation on Friday, July 22, 2011 at 12:00 noon at the Law Library. This is the next event in our *You and the Legal System* series. The program is free to the public. To register, call 513.946.5300.

Ms. Davis will address these questions:

- Mediation: What is it?
- When can you mediate?
- Why mediate?
- Do you need a lawyer to mediate?
- Is mediation expensive?
- How do we find a lawyer who is "mediation-friendly"?
- Can we settle a case using only one lawyer?

Please note that this is not a CLE event; it is intended for the general public. However, attorneys are welcome to attend and may also want to pass along the program announcement to clients, staff, and community organizations.

You and the Legal System is brought to you as a public service by the Hamilton County Law Library, in conjunction with the Cincinnati Bar Association's Lawyer Referral Service.

And a "save the date" for the next event in the *You and the Legal System* series: Moshe Toron will present Qualifying for Nursing Home Medicaid on August 19; details forthcoming.



Mediation and Collaborative Law

If you're interested in the topics of mediation and collaborative law, here is a list of books in the Law Library's collection that may be of use to you. We can hold a book for you at the circulation desk. Just call (513.946.5300) or email us at reference@cms.hamilton-co.org.

Advanced collaborative law. [Ohio]
KFO94 .C64 2010

Advanced skills for conflict resolution
KFO539 .A929 2010

The Alternative dispute resolution practice guide
KF9084.A6 A4

The anatomy of mediation : what makes it work.
HD5504.A3 K28

The client's guide to mediation and arbitration : the strategy for winning
KF9084 .S55 2008

The complete guide to mediation : the cutting-edge approach to family law
KF505 .M67

Creative problem solver's handbook for negotiators and mediators
KF9084 .C586 2005

Divorce without court : a guide to mediation & collaborative divorce
KF535.Z9 S76 2009

Mediation : law, policy, practice.
KF9084 .R64

The middle voice : mediating conflict successfully
KF9084 .S773 2009

Ohio State journal on dispute resolution.
K15 .H57

What Do I Have Checked Out?

Do you need a list of the items you have borrowed from the library recently? To see what you have checked out right now, go to the Law Library's catalog at <http://www.hamilton-co.org/cinlawlib/catalog/> and click on My Account at the top of the screen. From the pull-down list, select My Check-outs. You will be prompted for your borrower number and password. Your borrower number is the same one you use to log into library databases and the computer lab. (Call or email us if you need that.) Your password is the same as your borrower number unless you have changed it. You may renew books yourself unless someone else is waiting for them. Need more information? Call Mary Ann at 513.946.5300 or ask any staff member.

Lexis for Solo Attorneys

The Law Library continues to offer a Lexis package for attorneys in solo practice. This arrangement with Lexis gives off-site access to Ohio, Kentucky, and Indiana primary law, and to some federal legal materials. Rates for July 2011-June 2012 are \$540 for the year or \$135 on a quarterly basis. For more information, see http://www.hamilton-co.org/cinlawlib/lexis_solos.html. A current subscription to the Law Library is a prerequisite.

Library Board Meeting

The next regularly scheduled meeting of the Hamilton County Law Library Resources Board will be held at 1:00 p.m. on Thursday, July 7, 2011 in the Robert E. Kraft Board Room. Meetings of the board are open to the public. Minutes of past meetings are available at

<http://www.hamilton-co.org/cinlawlib/about/trustees.html>.

Upcoming Events

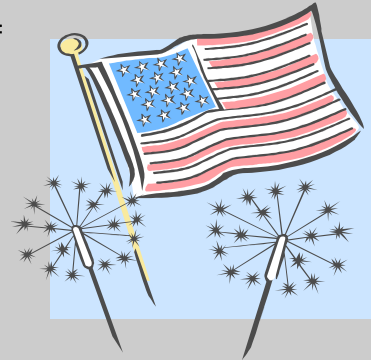
July 7: Law Library Resources Board Meeting

July 22: You and the Legal System: When to Use Mediation

August 19: You and the Legal System: Qualifying for Nursing Home Medicaid

July Holidays

The Law Library will be closed on Monday, July 4th in observance of Independence Day.



July 2011 Law Library Newsletter

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