



## *Construction Law and Insurance Recovery Experts*

With comprehensive construction and insurance recovery practices, Brouse McDowell is uniquely suited to help its clients navigate the complex world of construction contracting and claims.

Our attorneys provide a full complement of legal resources to help at all stages of the construction project, from project conceptualization, design, contract drafting, implementation, monitoring and scheduling, to claims resolution.

And, with five Certified Specialists in Insurance Coverage Law, Brouse McDowell's Insurance Recovery group is one of the most experienced in the nation.

Our attorneys work collaboratively to better shift risk at the contracting stage, and to devise claim and litigation approaches that minimize liability and maximize insurance recovery in the event of a loss.

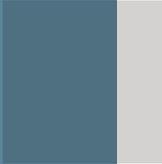
## Construction & Coverage Law Seasonal Newsletter

### Leveraging Ohio's Mechanic's Lien Statute

Mechanic's liens provide a powerful weapon to contractors, laborers and material suppliers in the fight to secure complete payment for work performed on most non-public commercial projects. But contractors must be vigilant in protecting their rights and utilizing Ohio's mechanic's lien laws to their utmost extent. Ohio law requires **strict compliance** with the mechanic's lien statute, and even minor or technical deviations from the statutory requirements can have dire consequences.

Below we cover some of the basic lien rights granted to contractors working on private commercial projects under Ohio law and how those rights must be exercised in order to provide a benefit to you.

1. **Are You a Protected Party?** Under Ohio law, lien rights are available to a variety of individuals and entities that provide labor or materials to a project. In general, if you are a contractor, subcontractor, laborer, or material supplier that works on a private project for the improvement of commercial real estate, and you otherwise comply with the mechanic's lien statute, you have a right to file a lien against the project in the event you are not paid for the work you perform or material you supply.
2. **Notice of Commencement and Notice of Furnishing.** Under Ohio law, the owner of the property you are working on is required to file a Notice of Commencement with the county recorder's office, provide it to the general contractor, and post the notice at the project site. The Notice of Commencement must provide certain information regarding the project and contact information for the owner and general contractors.



If the owner does this, then to protect their lien rights, subcontractors and material suppliers (but not laborers) that do not have a direct contract with the owner must serve a Notice of Furnishing to the project owner and general contractor through the individuals identified on the Notice of Commencement. The Notice of Furnishing requires you to provide certain information regarding your work on the project.

Your Notice of Furnishing must be served within **21 days after** you begin working on the project. Do not serve it **before** you begin working, or it may be ineffective. There is a 21 day “look back,” so if you send your Notice of Furnishing late, your work performed in the previous 21 days will still be protected, but work you did before that will not be. The notice will generally be considered to have been served on the date you send it, not the date it is received.

**3. Preparing an Affidavit for Mechanic’s Lien.** If you are not paid for work performed or materials supplied to a project, you must prepare, file and serve an affidavit for mechanic’s lien in order to preserve your rights.

**a. Filing:** The affidavit must be filed with the county recorder for the county in which the project is located. The affidavit must be both signed and notarized in order to be accepted for filing.

**b. Timing:** The affidavit must be filed with the county recorder within **75 days** after your work is completed or after your last shipment of materials. This time deadline may not be extended if you are simply performing warranty work or minor repairs. If the work is requested by the owner, however, it may extend the time period.

The affidavit must be served on the property owner within **30 days** after it is filed with the county recorder. There are other time limits applicable to residential and other projects. If you do not comply with these time limits, you will lose your lien rights.

**c. Service:** The affidavit may be served on the owner by any means that will give you evidence that it was actually received by the owner. This may include certified mail, overnight delivery, or other forms in which a signature and written receipt is required.



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Unlike the Notice of Furnishing, service of the affidavit is only complete when it is actually received by the owner, not when it is sent. If you are unable to complete service of the affidavit within this time frame, there are other options available, such as posting the notice at the project site.

4. **Expiration of Your Lien.** Mechanic's liens generally remain in place for 6 years unless some action is taken either to foreclose on the lien or to clear title to the property on which the lien is placed.
5. **Legal Proceedings to Enforce Your Lien.** Your lien rights are enforced in court usually through a foreclosure proceeding. If the owner serves you with a demand to commence your lawsuit, then your lawsuit must generally be filed within 60 days of the demand.

Please note that there are different rules if you are working on a public project, or if you are working on a residential improvement or oil and gas project. As cautioned above, strict compliance is required no matter what kind of project is involved. It is imperative that you are mindful of these deadlines from the time your bid is accepted or your contract is signed. Because it is impossible to cover all the nuances of this important weapon at your disposal in the battle for payment in a short article, it is important to consult with knowledgeable counsel in the event questions arise or a dispute is imminent.

For questions or comments regarding this article, please contact P. Wesley Lambert at [wlambert@brouse.com](mailto:wlambert@brouse.com).

**“Lunch and Learn” Opportunities.** Brouse McDowell collaborates with its clients and business partners to provide unique opportunities for in-person seminars.

Experienced attorneys from our **Construction Law and Insurance Recovery Group** will meet with individuals in your organization in an informal group setting to provide a legal overview on a variety of topics crucial to your business, including maximizing insurance coverage for your projects, project planning and contracting issues, and dispute avoidance and resolution. Prior to meeting, we will provide a “menu” of options on specific sub-issues within these broad topics for you to select. Feel free to select as many or as few as you like. We can travel to your place of business, meet in a conference room at our office, or reach you over the internet through our unique “webinar” service.

The seminar and lunch are on us! Please contact Amanda Leffler ([aleffler@brouse.com](mailto:aleffler@brouse.com)) or Jim Dixon ([jdixon@brouse.com](mailto:jdixon@brouse.com)) to get on the schedule or for more information.