

Senate Bill 49 Establishes Lien Rights for Registered Design Professionals

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On July 1, 2021, Governor DeWine signed Senate Bill 49 giving lien rights to Ohio architects, landscape architects, professional engineers, and professional surveyors (design professionals) beginning September 30, 2021. The lien rights are limited to:

- Commercial real estate projects,
- With a written contract signed by the design professional and project owner,
- Only to the extent of the project owner's interest in the property, and
- Only in the amount due the design professional under the contract.

In addition, only the design professional named in the contract – whether an individual, partnership, corporation, or association – has lien rights. Lien rights are not available to an employee or agent of the design professional and, unlike mechanics' liens, lien rights are not available to lower tier design professionals not in privity with the project owner.

The design professional's lien is junior in priority to any other valid liens (regardless of recordation date) and all previously recorded mortgages and liens. Any person with an interest in the commercial real estate may substitute financial security (e.g., a bond or escrow account) for the lien, in the amount of the lien.

To perfect the lien, the design professional must file a notarized affidavit with the county recorder. The design professional must then serve the lien affidavit on the project owner and the property owner (if different) within 30 days. Failure to properly serve the lien affidavit may result in a court considering equitable remedies for the failure. Following perfection, the design professional must commence proceedings to enforce the lien within two years, or within 60 days of receiving a Demand to Commence Suit. Otherwise, the lien is extinguished by operation of law.

Once the lien is satisfied (i.e., paid in full) the design professional must record a written release within 30 days. When a claim is satisfied or extinguished, any person with an interest in the property may record an affidavit stating that the claim was satisfied or that the lien was released by operation of law. This is true regardless of whether the design professional records a release. However, the fact that the lien is satisfied or extinguished does not affect any other right or action by the design professional. For example, the design professional may still bring a claim for breach of contract.