



CONSTRUCTION LAWLETTER

For Industry Professionals, Managers, Trades & Suppliers

J. NORMAN STARK, ATTORNEY and REGISTERED ARCHITECT

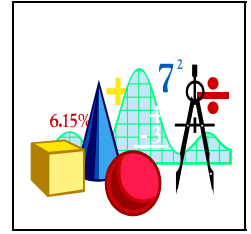
JURIS DOCTOR, B. ARCHITECTURE, B.F.A.

The Stark Building • 1310 East 49th Street • Cleveland, Ohio 44114-3803

Tel.: (216) 426-8400 • Fax: (216) 426-8411 • E-Mail: www.Normstark@aol.com

In Florida • 6500 Midnight Pass Rd. #105 • Sarasota, FL 34242 • (941) 349-2061•

Homepage: www.Jnormanstark.com



Vol. 2003-2

February 2003

MECHANIC'S LIENS –TOP TEN ERRORS

Under the provisions of Ohio's Mechanic's Lien laws, an affidavit to obtain a mechanic's lien must be filed within 75 days after the contractor or materialman (materialperson) last furnished or provided services or materials. Other important changes now require the filing (recording) of **Notice of Commencement** ("NOC") by the Owner, and a **Notice of Furnishing** ("NOF") by each contractor, subcontractor or materialman (materialperson) first performs work or supplied materials. **Service of this Notice of Furnishing is a mandatory prerequisite to obtaining a valid mechanic's lien!**

The following is a list of the ten (10) most frequent errors noted which may result in contested or invalid liens:

1. **Notice of Furnishing** ("NOF") must be served, by Certified Mail within 21 days after beginning work or providing materials. See statutory form, Sect. 1311.05(B). NOF served late relates back only for work and materials provided within 21 days prior to service of NOF. Serve NOF upon owner where contract is with original contractor. Serve NOF upon Owner and original contractor where contract was with a subcontractor. Where NOF not recorded, NOF not required until NOTICE OF COMMENCEMENT ("NOC") is recorded.
2. **Failure to serve** NOF on Owner, General Contractor and Subcontractor within 21 days of claimant's first work or delivery of materials.
3. **Failure to Serve NOF Properly**, i.e. by Certified Mail or other means, with signed receipts to support proof of timely, proper service by: (a) Sheriff, or Special Deputy, with formal return required, (b) Certified Mail, Return Receipt Requested, (c) Registered Mail, Return Receipt Requested, (d) Overnight Mail, with U.S. Postal Service Receipt, (e) Messenger, with receipt, (f) FAX, with receipt, (g) FED-X, UPS, etc., with receipt.
4. **Willful Misstatement** of Amount Due may warrant dismissal of lien, or other sanctions by

Court, and expose claimant to potential liability for damages for slander of title by Owner.

5. **Failure of Affidavit** for Lien, where lien Claimant not sworn, or Affidavit is not properly notarized and sealed, and legal description of property is not included, especially involving condo. Property.
6. **Failure of Affidavit** which must include date of first labor work performed, or materials furnished; also state last date of work or materials furnished.
7. **Untimely recording** of Affidavit for Lien; must be filed within 75 days after the contractor or materialman (materialperson) last furnished or provided services or materials.
8. **Failure to Serve Affidavit** on Owner, Part-Owner, Occupant and all other concerned parties may adversely affect lien validity.
9. **Failure to Obtain Service with Receipts**.
10. **Failure to Commence Suit** within 60 days after receipt of Notice to Commence Suit, will result in dismissal of lien. * * *

NOTICE OF AMENDMENTS TO OHIO MECHANIC'S LIEN LAW

Sections of Ohio Mechanic's Lien laws have been amended by the Ohio Legislature, effective March 14, 2003, expanding the time within which subcontractors' and material suppliers' lien rights are preserved when a timely Notice of Commencement is not filed by the owner of an improvement, and to establish new criteria for determining whether a notice, affidavit or other document has been served as required under that law. (More details later.)

* * *

Author: **J. NORMAN STARK** is an Attorney-at-Law, a Registered Architect, (AIA, NCARB) Registered Landscape Architect, Interior Designer, Planner and Senior Appraiser (ASA). He is admitted to practice law before the Bar of Ohio, the US District Courts, Ohio and Illinois (Central Dist.), the US Court of Appeals, and the U.S. Supreme Court. A former Member of the Ohio Board of Building Standards, he has professional experience in Business, Construction, Real Property, Mechanics' Liens, Litigation, Collections, and Construction-Legal Project Risk Management.