

ARCHITECTS' LIEN RIGHTS: A NATIONAL CONVERSATION, A LOCAL IMPERATIVE

Part three: How we lost our rights

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In 1791, Washington DC was slowly being constructed. Its contractors and artisans (including architects) were worried about being paid. In order to alleviate these concerns and to expedite construction, the first mechanic's lien statute in the United States was enacted by the General Assembly of Maryland, by the recommendation James Madison and Thomas Jefferson. This statute gave builders and artisans a degree of security to insure payment for the work performed and to dispel anxieties about the landowners' credit, and thus supported the development of our nation's early economy.

The City of Cincinnati enacted lien rights in 1823, and that State of Ohio followed in 1843, allowing those who perform labor or furnish materials under contract to the landowner to lien upon real property to secure payment of said work and services. In 1894, these rights were expanded in Ohio to laborers and subcontractors – those who worked for those in contract with landowners or their agents. A dispute regarding priority had the courts find the law unconstitutional, until “public pressure and judicial inconsistency” led to an amendment of the Ohio Constitution in 1912 giving the legislature power to establish mechanic's lien laws. In 1913 and 1915, these laws were passed, to include contractor, architects and subcontractors.

In 1929 or 1930, at the start of the great depression, a Cleveland architectural firm of Robert V. Clapp Company was hired by George Fox of the Cleveland law firm of Fox, Duthie and Foose to furnish plans and specifications on ten in-fill single-family houses and ten garages, and then to build them in Shaker Heights. The contract design fee was 4% of a proposed construction cost of \$118,875. With six houses substantially complete, another almost complete and three yet to be begun, the architects finally sued their client for non-payment, utilizing their lien rights. They had only been paid \$414.52 and a lien was filed for \$4,340.54. (Three of the ten houses in question are shown in the images above.) The architects lost the court case regarding this lien. The defendants, a high-powered legal firm, argued that architects do no work at the site and thus bring no value to the site: that the building arm of the company could file a lien but the architectural arm of the company could not. The state legislature, based upon the outcome of this case, changed the lien rights in Ohio to remove architects in 1931. Based upon a poorly defended Cleveland court case in 1931, all Ohio architects and their consultants have since been refused lien rights in Ohio. Based upon a poorly defended Cleveland court case in 1931, all Ohio architects and their consultants have since been seen as “not bringing value to the site.” Since we do bring value to the site, it is time we created a legislative campaign to re-gain these rights; the same rights that architects across the country enjoy. We are looking for those of you who have compelling stories, about the hardship of not having lien rights or the successes that lien rights from other states have brought to your firm. Send these stories to christopher@architects-llc.cc.

Contrary to Ohio's “no value” position keeping Ohio architects from having lien rights, there are a number of states, in recognition of the value architects bring to the site, grant lien rights to architects when they start work, and not when construction begins. Thus, architects leading rezoning and/or planning and/or creating drawings have lien rights, as this work is occurring. These progressive states that have “Design Professional Lien Rights” include California, Massachusetts and North Carolina.

Most architects across the country do not know that they have lien rights. Why then do most architects not know that they have lien rights? Who has benefited most by architects in Ohio not having lien rights and by architects elsewhere not asserting their lien rights? For more on this, see part four in this series on lien rights.