

## **ARCHITECTS' LIEN RIGHTS:**

### **Part four – It's just business**

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## **A NATIONAL CONVERSATION, A LOCAL IMPERATIVE**

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"Priority" is the basis of the politics around lien laws. When a deal goes bad and a site needs to be liquidated to pay creditors, priority is the question of who is in line first, second, etc. Being first is important, especially when equity is limited. In most states, priority is set by timing; those providing value first get to be paid first, and architects are often working on a project before a mortgage is set and the contractor begins work.

Then, what if architects (and other early-project-working professionals) didn't have lien rights or forgot to file the appropriate paperwork? Then who would be first in the priority list? Banks.

Although a "mortgage" on a property is a different legal distinction related to clouding a title and not about encumbering land value, banks utilize liens that force foreclosures as their most effective collection device. Although our fees are usually a fraction of the value of a mortgage, banks have quietly opposed lien rights for architects and their allies (engineers, contractors, surveyors, real estate brokers, lawyers, accountants, etc.) because bankers do not want anyone else to have priority in the "first lien position." If an Architect creates plans before a mortgage is assigned, then typically an Architect would be in a first priority position, unless an Architect does not have lien rights. When banks defend their lien positions and architects don't, it's just seen as "business." Contractors see their lien rights as a business issue and commonly defend their lien rights. Others are not going to defend our lien positions. Architects need to stand up and work with our allies to defend, and if possible expand, our lien rights for professional services. Attorneys then need to decide if they are bank-friendly or architect-friendly; we need to be aware that it is not in the interest of bank-friendly attorneys to remind architects of their lien rights.

Lien rights for architects are currently under attack by banks in other states. Banks are not seeing lien rights as a states-issue. Maryland architects have lost lien rights on commercial projects. Massachusetts architects lost and then re-gained their lien rights. Lien rights for architects in Michigan are currently under attack. Ohio does not currently give lien rights to architects. With the loss of legal rights, architects lose political rights and public value. We are petitioning the national AIA to actively support the advocacy within states needing to defend or regain their lien rights. We are petitioning the national AIA to actively support the advocacy to expand lien rights, as they have done in California, Massachusetts and North Carolina. We are petitioning the national AIA to review its contract language to support lien rights, including advocating for a standard notice of commencement and architects' lien waiver. And we suggest that architects work with a local attorney to proactively strengthen state-specific lien rights within their contract, where they have lien rights.

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](mailto:christopher@architects-llc.cc).

Keep your eyes out for future installment articles on lien rights.