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Client Bulletin

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Ohio's New Lien Law for Architects, Landscape Architects, Engineers and Surveyors

Real estate professionals have been known to talk about “soft” or “pursuit costs” in a deal as opposed to “hard costs.” For more than 100 years, the Ohio Constitution, at Art. II, Sect. 33, has recognized the blue-collar lien rights of tradesmen and material providers for the hard cost of bricks and mortar value in getting a site ready for vertical construction, from site preparation, excavation, foundation, framing, weather-proofing and mechanical, plumbing and electrical work, all the way through to a turn-key facility certified for occupancy. Among other things, they were adding tangible, quantifiable value to the tax base. Mechanics liens may not often be foreclosed against, but such a lien can often provide a way to get paid directly by an owner, if not from contract retainage, then at the closing of permanent financing or a sale.

Until recently though, the white-collar professionals didn't have such lien rights for what they represented in the way of soft costs, such as zoning, preliminary and final development plans and design. First were commercial real estate brokers in 2013 with the Broker's Lien Law (Ohio Revised Code §§ 1311.85, et seq.), for the value they can create in simply putting a deal together. Now, in the last year, architects, landscape architects, engineers and surveyors have lien rights under Ohio Senate Bill 49:

- §§ 4703.20 through 4703.206 for architects;
- §§ 4703.54 through 4703.546 for landscape architects; and
- §§ 4733.30 through 4733.306 for professional engineers and professional surveyors.

The lien rights are limited to commercial real estate, which does not include either of the following:

- (a) Single-family residential units such as condominiums, townhouses, manufactured homes or industrialized units as defined in section 3781.06 of the Revised Code, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even though these units may be a part of a larger building or parcel of real estate containing more than four residential units;
- (b) Real estate owned by a public authority as defined in section 1311.25 of the Revised Code.

O.R.C. § 4703.20(B)(2)

What makes the statute expansive is this next definition:

“Owner” means a person who has a legal *or equitable interest in commercial real estate, including a contingent interest, pursuant to an agreement or contract*, and who enters into a written contract with an architect for services to be provided with regard to any such interest in the commercial real estate. (emphasis added)

To have a lien right, the design professional needs to have a written contract.

To perfect the lien, the design professional needs to record and serve an affidavit.

A perfected lien has a two-year life after recording or it is extinguished as a matter of law (e.g., O.R.C. § 4703.203).

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This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates whom you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.

In writing leases and purchase and sale agreements, it is a good practice for landowners to have the other side agree to keep title clear of all liens and indemnify and hold harmless the landowner from any and all liens, not just for mechanics liens but also any services for real estate brokerage and/or design services.

Design professionals at a minimum should have letters of engagement, signed by both sides, as a threshold to exercising any rights under these new statutes.

Andrew P. Wecker

MMP Attorneys Recognized in Columbus CEO Best Lawyers

Congratulations to Steve Martin, Dennis Pergram and Andy Wecker on being included in Columbus CEO's Best Lawyers, based on an on-line peer review survey sent to all lawyers and members of the judiciary in the Columbus region. Steve has been recognized in the areas of Land Use & Zoning and Real Estate Law; Denny has been recognized in the area of Appellate Law; and Andy has been recognized in the area of Real Estate Law.

Delaware County Historical Society's June Program

As you may recall from previous Client Bulletins, we are providing updates on the Delaware County Historical Society's programs. The Historical Society is kicking off the summer with a walking tour of Blue Limestone Park. Blue Limestone Park was originally built around an old quarry and holds a great deal of history and stories, or shall we say rumors, the most common of which is paranormal activity, but that little tidbit will be saved for the Society's Ghost Walk in October. The date for the Blue Limestone walk is June 21 at 7 p.m.. The park is located at 6 King Avenue in Delaware. This program will be presented by Steve Schmitt, a society volunteer. Additional information for this and other events can be found on the Society's website several weeks prior to the event. Please visit www.delawareohiohistory.org for event and ticket information.

PSA for The Strand Theatre - Job Opportunities, etc.

Manos, Martin & Pergram is pleased to provide the following announcement for The Strand Theatre:

Job Opportunities - The Strand Theatre is Hiring

The Strand Theatre is looking for team members, ages 16 and older, to work at the historical, century-old icon. Requirements include a winning personality, strong customer service skills, ability to be quick on your feet and previous cash handling experience. A love of movies is a plus. Benefits include free movies, movie posters and a concessions discount.

The Strand will be increasing its operating hours beginning in June as it will offer the Free Summer Kids Series after a two-year hiatus, beginning Tuesday, June 7. There will be two shows daily at 10:00 a.m. and 2:30 p.m. Instead of a formal admission, all guests are asked to bring a donation for the charity of the day. It is a way to build charitable giving at an early age and then lead the way for giving -- from one generation to the next.

Also in June, beginning on Wednesday, June 8, The Strand will be open from Wednesdays through Sundays all summer long. There will be two shows daily Wednesday through Friday and on Sunday. On Saturday, there will be three shows. "The film slate looks strong and robust through the summer; and we are ready to serve" said Tracey Peyton, managing director of The Strand Theatre.