



POTENTIAL CHANGES ON THE HORIZON TO OHIO LIEN LAW

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The Ohio General Assembly is considering a revision to Ohio private lien law to make it clearer when projects start and end and enable title to be clear on lien rights. Under 1311.04, a Notice of Commencement (NOC) is to be recorded before a project commences and remains in place for six years (1311.04(S)). That long time period made it more difficult for buyers and lenders, who purchased or refinanced property less than six years following the recording of an NOC, from knowing the impact of the NOC.

Proposed revisions to 1311.04 will:

- Add to the NOC a “default” statement that it remains pending for three years (and not six)
- Permit the NOC time statement to be modified, shorter or longer depending on the anticipated length of the project
- Permit the owner to record an affidavit at the conclusion of the project, noting the project is over and notice of commencement is terminated

These potential changes will permit a title company to record a project-ending affidavit and require that the chain of title shows the Notice of Commencement is terminated. It will provide certainty where before there was a lingering issue, solved in different ways by different buyers, lenders, and title companies, and sometimes rejected by local recorders.

There is, however, the potential for abuse if an Owner records the termination affidavit before all lien time frames have run, for example before 75 days from last work. In that instance, if the notice of commencement was terminated, under the existing statute lien claimants work would relate back to first visible work rather than the Notice of Commencement recording. Contractors would also need to consider filing amended NOCs to keep the project protected in the event the work remains active past the time frame stated in the original NOC.

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