

# THE LEGAL SIDE OF HOUSING: THE LATEST ON IOWA'S NEW MECHANIC'S LIEN LAW

JODIE McDUGAL (HBA MEMBER, ATTORNEY-DAVIS BROWN LAW FIRM)



A (non-attorney) friend of mine recently asked me, "What's this I've been hearing about auto-mechanics being able to file liens for their unpaid bills? Seems like a huge change in the law." Clearly, my friend is not savvy when it comes to mechanic's liens, but he was correct in noting that the new law equates to major changes in Iowa's mechanic's lien law system.

The new law goes into effect on January 1, 2013, and its major components are set forth herein. This article is intended to provide an overview, but not a complete recitation of the new law or any specific legal advice. Also, at the time of my writing of this article, in mid-October, the administrative rules for the new law had not yet been finalized. The HBA will continue to provide education on the new law and the administrative rules to be enacted later in 2012, including an HBA presentation taking place on December 4, 2012 at noon.

**(1) New Online Filing System.** The law implements an entirely new online registry, termed the Mechanics' Notice and Lien Registry (or MNLR), which will be used for the filing of (1) all residential and commercial mechanic's liens, (2) all residential notices, as discussed below, and (3) other lien-related documents. The MNLR will be administered by the Secretary of State, similar to the online UCC filing system. Construction companies, lenders, buyers, and other members of the public will be able to search the MNLR, similar to how the UCC filing system can be searched, and thus, the new law results in increased notice and transparency regarding many construction projects.

**(2) Notice Requirements for Residential Construction Projects.** The law implements new notice requirements for the residential construction industry. As the new law stands as of the date of my writing of this article and prior to the implementation of the administrative rules, general contractors utilizing subcontractors and suppliers on residential projects (both new construction and remodeling/repair projects) will generally be required to post a "Notice of Commencement" to the MNLR within ten (10) days of the commencement of each project, in order to preserve the right to later file a lien. Under the new law, such general contractors must still provide an owner notice to the owner, via a construction contract or separate notice, as is required under existing law. The language of the owner notice has been slightly amended and is posted on the HBA website. As is logical, owner-builders (i.e., builders who own the real estate/house during construction) are not entitled to a mechanic's lien for work performed while in the status of an owner-builder and, thus, owner-builders may opt not to file a Notice of Commencement. In addition, under the new law all subcontractors and suppliers working on residential projects are required to post a "Preliminary Notice" to the MNLR in order to preserve their lien rights. If one fails to timely file a required commencement or preliminary notice, such person loses the right to post and enforce a future mechanic's lien for such project.

*The forthcoming administrative rules will provide greater details on some aspects of the new law. In particular, the administrative rules may include more precise and/or different language on the categories of contractors that fall within the notice requirements, so it is essential that you check the HBA website later in 2012 to obtain the most up-to-date information.*

**(3) Other Aspects of the New Law.** Increased availability of attorney's fees for subcontractors and suppliers is an added benefit under the new law. Regarding commercial projects, the only major change is that all mechanic's liens, and other lien-related documents, must be posted on the MNLR; the law does not change the existing notice requirement for sub-subcontractors to provide notice directly to the general contractor on a commercial project.

While change may not always be easy, change is simply part of life, or at least part of life if you work in Iowa's construction industry.



JODIE McDUGAL; DAVIS BROWN LAW FIRM; 515-246-7951  
JODIEMCDUGAL@DAVISBROWNLAW.COM; WWW.DAVISBROWNLAW.COM

Jodie McDougal is a litigation and construction law attorney and partner at the Davis Brown Law Firm. In the areas of construction and real estate law, Jodie has represented buyers, sellers, owners, builders, architects, and subcontractors/suppliers, and her work has included drafting contracts; mechanic's lien issues; warranty and defective work claims; purchase and lease agreement disputes; landlord/tenant matters; and a wide range of litigation and other matters.