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OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 101*
136th General Assembly

Bill Analysis

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Version: As Reported by House Judiciary

Primary Sponsor: Sen. Blessing

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SUMMARY

Liens

- Requires a lien creditor to provide the last known address of a lien debtor when filing a lien relating to unpaid child support and personal property taxes.
- Requires a lien creditor to provide the name of the lien debtor and last known address when filing a lien relating to workers compensation, unemployment compensation, sales taxes, income taxes, or severance taxes.

Recording of a memorandum of trust

- Requires, rather than authorizes, the recording of a memorandum of trust or other qualifying instrument when title to real property is conveyed by the trustee of a disclosed trust.
- Provides a four-year curative period for an otherwise valid memorandum of understanding that is not recorded, so long as the instrument from a trustee or trust as grantor, conveying or encumbering any interest in the real property has been of record for more than four years.
- Provides a cure for a recorded memorandum of trust that conveys real property from a trust instead of from the trustee.

* This analysis was prepared before the report of the House Judiciary Committee appeared in the House Journal. Note that the legislative history may be incomplete.

Unfair service agreements

- Classifies a service agreement concerning residential real estate that meets both of the following as an “unfair service agreement”:
 - The service subject to the agreement is not to be performed within one year after the date the parties enter into the agreement;
 - The agreement has any of the following characteristics: (1) purports to run with the land or to be binding on future owners of interest in the residential real estate, (2) allows for the assignment of the right to provide service subject to the agreement without notice to and consent of the owner of the residential real estate, and (3) purports to create a lien, encumbrance, or other security interest in the residential real estate.
- Prohibits a service provider from entering into, amending, or renewing an unfair service agreement on and after the bill’s effective date.
- Declares an unfair service agreement that is entered into, amended, or renewed after the bill’s effective date void and unenforceable.
- Provides that a service provider that enters into an unfair service agreement in violation of the bill commits an unfair or deceptive act or practice under the Consumer Sales Practices Act.
- Specifies that certain provisions of the bill concerning unfair service agreements are not to be construed to interfere with any provision of the Lien Law concerning mechanics’ liens.
- Prohibits a person from recording or causing to be recorded, or a county recorder from accepting for recording, an unfair service agreement or a notice or memorandum of an unfair service agreement.
- Provides that an unfair service agreement or a notice or memorandum of an unfair service agreement in violation of the bill does not provide actual or constructive notice against an otherwise bona fide purchaser of residential real estate or any other individual or entity that might obtain an interest in the real estate.
- Imposes a second degree misdemeanor on a person who violates the prohibition against recording or causing to be recorded an unfair service agreement or a notice or memorandum of an unfair service agreement.
- Permits any party with an interest in residential real estate that is the subject of an unfair service agreement or notice or memorandum of an unfair service agreement that is recorded in violation of the bill to commence a civil action in a court of competent jurisdiction in the county in which the agreement, notice, or memorandum is recorded.
- Requires a court that determines that the recorded instrument is an unfair service agreement or a notice or memorandum of an unfair service agreement to issue an order

declaring the instrument to be unenforceable and award actual economic damages, court costs, and reasonable attorney's fees to any party with an interest in the real estate.

- Allows any party with an interest in residential real estate in an unfair service agreement or notice or memorandum is declared unenforceable to obtain a certified copy of the judgement declaring the agreement, notice, or memorandum to be unenforceable and present it to the county recorder's office for recording within the chain of title.
- Exempts certain contracts, agreements, and services, such as, for example, insurance contracts and option to purchase or right of refusal, from the bill's unfair service agreement provisions.

DETAILED ANALYSIS

General overview

The bill requires that certain nonjudicial liens filed with the county recorder's office without getting a court judgment include the last known address of the judgement debtor and the name of the debtor, if not currently required under law. The bill also revises the law related to recording a memorandum of trust and classifies certain service agreements concerning residential real estate as "unfair service agreements" that are subject to various requirements and prohibitions.

Liens

Child support

Under continuing law, if a court or child support enforcement agency makes a final and enforceable determination of default, the child support enforcement agency administering the order may assert a lien on any of the obligor's real or personal property that is in Ohio. With respect to the obligor's real property, the lien arises after it is filed with a county recorder. The bill requires that any lien filed include the last known address of the obligor, without further inquiry or investigation. The address included cannot be a post office box.¹

Workers' compensation

Continuing law requires most employers to obtain coverage under Ohio's Workers' Compensation Law. If an employer that is required to pay premiums to the State Insurance Fund does not make payments, the Administrator of Workers' Compensation must obtain a lien against the employer's property for the amount due. Continuing law requires the Administrator to list the amount of the premium due from the employer when the Administrator files the lien. The bill adds that the Administrator must also include the name of the employer and the employer's last known address.²

¹ R.C. 3123.67; R.C. 3123.66, not in the bill.

² R.C. 4123.78.

Unemployment compensation

Under Ohio's Unemployment Compensation Law, most private sector employers are required to make contributions based on employee wages. Any contribution, interest, forfeiture, or fine required to be paid can become a lien upon the real and personal property of the employer if not paid when due. Continuing law requires the Director of Job and Family Services to file notice of the lien with the county recorder in the county in which the employer owns personal or real property. The bill requires that the notice also include the employer's name and last known address.³

Personal property taxes

Under continuing law, liens for taxes against tangible personal property attach to real property of the owner of the personal property. When property taxes become delinquent, the county auditor is required to make a tax list of unpaid property taxes and deliver a duplicate to the county treasurer. The county auditor must publish the list in a newspaper of general circulation in the county and file it with the county recorder, which constitutes the notice of a lien on the real property. Continuing law requires that the list include the name of the person charged and the amount of unpaid taxes and penalties due. The bill adds that the list must also include the last known address of the person charged.⁴

Sales, income, and severance taxes

Under continuing law, when the Tax Commissioner issues an assessment for sales, income, or severance taxes against a taxpayer, the taxpayer may appeal the assessment. An assessment is a formal notice of an outstanding liability for taxes, interest, and penalty. After an assessment becomes final, if any portion of the amount owed is unpaid, the Tax Commissioner may file a copy of the final assessment with the clerk of the court of common pleas in the county where the business or person is located. If there is no address in Ohio, then the assessment can be filed in the Franklin County Court of Common Pleas. The bill requires that the filing include the party's name and last known address.⁵

Recording of a memorandum of trust

A memorandum of trust is a written, signed, and notarized instrument that contains the basic details about a trust and is used when transferring real property with a trust. Specifically, the memorandum must include (1) the name and address of the trustee of the trust, (2) the date of execution of the trust, and (3) the powers specified in the trust relative to the acquisition, sale, or encumbering of real property by the trustee or the conveyance of real property by the trustee, and any restrictions upon those powers.

Under current law, a memorandum of trust may be recorded with the county recorder where the property is located. The bill instead requires the memorandum of trust or some other

³ R.C. 4141.23.

⁴ R.C. 5719.04.

⁵ R.C. 5739.13, 5747.13, and 5749.07.

instrument that contains the same required information to be “of record” when title to real property is conveyed by the trustee of a disclosed trust. A disclosed trust is one in which some identifying information about the trust beyond the word “Trustee” or “Agent” is used to indicate that the real property is held in trust. The bill specifies that, in circumstances other than the conveyance of real property, the memorandum may be presented for recording.⁶

Cures for certain errors

Continuing law allows for a cure to specified errors found in instruments that convey real property. This statutory cure specifies that the error itself will not cause the instrument to be defective nor affect the validity of the conveyance. The bill adds to this list and provides a cure for an otherwise valid memorandum of understanding that is not recorded, so long as the instrument from a trustee or trust as grantor, conveying or encumbering any interest in the real property has been of record for more than four years.

Also, under continuing law, conveyances of real property must be done through the trustee, and not the trust itself. Continuing law allows for a statutory cure for a recorded memorandum of trust in which the conveyance of real property is made to the trust, which should be made to the trustee. The bill adds that this cure also applies to property conveyed from a trust instead of from the trustee.⁷

Unfair service agreements

Classification and unenforceability

The bill prohibits a service provider, except as described in “**Exemption**” below, from entering into, amending, or renewing a service agreement (which is a contract under which a person agrees to provide services in connection with the maintenance, purchase, or sale of residential real estate) with a consumer on and after the bill’s effective date if both of the following apply:

- The service subject to the agreement is not to be performed within one year after the date the parties entered into the agreement;
- The agreement has any of the following characteristics:
 - The service agreement purports to run with the land or to be binding on future owners of interests in the residential real estate;
 - The service agreement allows for assignment of the right to provide the service subject to the agreement without notice to and consent of the owner of the residential real estate;
 - The agreement purports to create lien, encumbrance, or other security interest in the residential real estate.

⁶ R.C. 5301.255; R.C. 5301.03, not in the bill.

⁷ R.C. 5301.071(E)(1) and (F).

A service agreement that meets the conditions described above is classified as an “unfair service agreement.” An unfair service agreement that is entered into, amended, or renewed after the bill’s effective date is declared void and unenforceable.

The following terms also are defined by the bill:

- “Consumer” means an individual that receives services from a service provider.
- “Residential real estate” means real property located in Ohio that is used primarily for personal, family, or household purposes and is improved by one to four dwelling units.
- “Service provider” means a person that provides services to another person.⁸

Unfair or deceptive act or practice

A service provider that enters into an unfair service agreement in violation of the bill is considered to have committed an unfair or deceptive act or practice under the Consumer Sales Practices Act, and the Attorney General is given all available powers and remedies under that act to enforce the bill’s unfair service agreement provision.

The Consumer Sales Practices Act, which is unchanged by the bill, authorizes both the Attorney General and consumers to sue alleged persons who engaged in a deceptive act or practice in connection with a consumer transaction. Penalties from the Attorney General for such a violation might include, for example, a civil penalty up to \$5,000 for each day’s violation of a temporary restraining order or preliminary or permanent injunction. Recovery in a suit brought by a consumer could consist of, for example, the consumer’s actual economic damages plus up to \$5,000 in noneconomic damages.⁹

No interference with mechanics’ liens

The bill provides that nothing described in the “**Classification and unenforceability**” or “**Unfair or deceptive act or practice**” provisions above, nor the “**Exemption**” provision below, are to be construed to interfere with any provision of the Lien Law concerning mechanics’ liens.¹⁰

Recording unfair service agreements prohibition

A person is prohibited by the bill from recording or causing to be recorded an unfair service agreement, or a notice or memorandum of an unfair service agreement, in Ohio. A county recorder is also prohibited from accepting an unfair service agreement or a notice or memorandum of an unfair service agreement for recording. If an unfair service agreement or a notice or memorandum of an unfair service agreement is recorded in violation of the bill, it does not provide actual or constructive notice against an otherwise bona fide purchaser of the

⁸ R.C. 5301.75(A), (C) to (F), and 5301.76(A) and (B).

⁹ R.C. 5301.76(D); R.C. 1345.02, 1345.07, and 1345.09, not in the bill.

¹⁰ R.C. 5301.76(E); R.C. Chapter 1311, not in the bill.

residential real estate or any other individual or entity that might obtain an interest in the residential real estate.

A person who violates the prohibition against recording or causing to be recorded an unfair service agreement, or a notice or memorandum of an unfair service agreement, is guilty of a second degree misdemeanor. Under continuing law, a second degree misdemeanor may be punished by not more than 90 days in jail, a fine of not more than \$750, or both.¹¹

Civil action for recording unfair service agreements

The bill permits any party with an interest in residential real estate that is the subject of an unfair service agreement or notice or memorandum of an unfair service agreement that is recorded in violation of the **“Recording unfair service agreements prohibition”** provision described above to commence a civil action in a court of competent jurisdiction in the county in which the agreement, notice, or memorandum is recorded. If the court determines that the recorded instrument is an unfair service agreement or a notice or memorandum of an unfair service agreement, the court must do both of the following:

- Issue a judgment declaring the service agreement, notice, or memorandum to be unenforceable;
- Award to any party with an interest in the residential real estate that is the subject of that agreement all of the following: (1) actual economic damages, (2) court costs and fees, and (3) reasonable attorney’s fees.

When an unfair service agreement or notice or memorandum is declared unenforceable, any party with an interest in the residential real estate is permitted to obtain a certified copy of the judgement declaring the service agreement, notice, or memorandum to be unenforceable and present the certified copy of the judgement to the county recorder’s office for recording within the chain of title.

The county recorder is required to record the judgments or decrees in unfair service agreement civil actions in the official records upon payments of the fees prescribed by law.¹²

Exemption

The bill exempts the following from all of the **“Unfair service agreements”** provisions described above:

- A home warranty or similar product that covers the cost of maintenance of a major home system (which includes plumbing, heating, ventilation, air conditioning, and electrical wiring) for a fixed period;
- An insurance contract;
- An option to purchase or right of refusal;

¹¹ R.C. 5301.77 and 5301.99; R.C. 2929.22, 2929.24, and 2929.28, not in the bill.

¹² R.C. 317.08(A)(30) and 5301.78.

- A declaration created in the formation of a planned community or a condominium development, or any amendment to such a declaration;
- A maintenance or repair agreement entered by an owners association or a unit owners association;
- A mortgage loan or a commitment to make or receive a mortgage loan;
- A security agreement made pursuant to the Uniform Commercial Code relating to the sale or rental of personal property or fixtures;
- Water, sewer, electrical, telephone, cable, or other regulated utility service providers.

Continuing law defines “condominium development” as a condominium property in which two or more individual residential or water slip units, together with their undivided interests in the common elements of the property, are offered for sale pursuant to a common promotional plan. “Unit owners association” is defined as the organization that administers the condominium property and that consists of all the owners of units in a condominium property. “Planned community” means a community comprised of individual lots for which a deed, common plan, or declaration makes certain requirements. “Owners association” is defined as an organization that is comprised of owners of lots in a planned community and that is responsible for the administrative governance, maintenance, and upkeep of the planned community.¹³

HISTORY

Action	Date
Introduced	02-10-25
Reported, S. Local Government	03-18-25
Passed Senate (31-0)	03-26-25
Reported, H. Judiciary	---

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¹³ R.C. 5301.75(B) and 5301.76(C); R.C. 5311.01 and 5312.01, and Chapters 1309 and 1310, not in the bill.