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Bill Analysis

Version: As Introduced

Primary Sponsors: Sens. Hottinger and Sykes

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SUMMARY

- Provides that an architect, landscape architect, professional engineer, or professional surveyor (collectively “professional”) who enters into a contract for services relating to commercial real estate has a lien on the property.
- Establishes the process to perfect and enforce the professional’s lien.
- Specifies the requirements to satisfy, release, or extinguish the professional’s lien.
- Allows a person with an interest in commercial real estate to substitute financial security for a perfected professional’s lien.

DETAILED ANALYSIS

Professional’s lien

Under the bill, an architect, landscape architect, professional engineer, or professional surveyor (which includes an individual, partnership, corporation, or association providing those services) (collectively “professional”) who enters into a contract for services to be provided with regard to any interest in commercial real estate has a lien on that interest. The lien is only effective if the contract is in writing and signed by both the professional and the owner of the property interest. Only the professional named in the contract may have such a lien; the lien is not available to any employee, agent, or independent contractor of the professional.

The bill limits the amount of the lien to the amount due to the professional under the contract and limits the lien’s effectiveness to the property interest that is the subject of the contract. Also, all valid and recorded mechanic’s liens and all other previously recorded liens have priority over the professional’s lien.¹

¹ R.C. 4703.201, 4703.541, and 4733.301; R.C. Chapter 1311, not in the bill.

Perfection

The bill requires the filing, recording, and serving of an affidavit in order for a professional to perfect a lien on a property interest. “Perfection” refers to the process of making a security interest publicly known. Perfection is necessary for determining which parties have which interests and what the priority of those interests are. To perfect the professional’s lien, the professional must file with the county recorder of the county in which the commercial real estate is located an affidavit that includes all of the following information:

- The professional’s name;
- The owner’s name;
- A legal description of the commercial real estate;
- The parties to and date of the contract;
- The amount of the professional’s claim under the contract; and
- A statement that the information contained in the affidavit is true and accurate to the knowledge of the professional.

The bill requires the county recorder to charge and collect the appropriate recording fees.²

Enforcement

The perfected lien has a two-year life: if the professional fails to enforce the lien within two years after the affidavit is recorded, the lien is extinguished. To enforce the lien, the professional files a complaint in the common pleas court of the county in which the commercial real estate is located. The professional must name as defendants all parties with an interest of record in the commercial real estate, including all parties named in the affidavit.

The bill also allows any person with an interest in commercial real estate subject to a perfected lien to demand in writing that the professional commence suit to enforce the lien. The demand must be served to the professional and all parties listed in the affidavit. If the professional does not commence the action within 60 days following receipt of the demand, the lien is extinguished.³

Satisfaction and release

Under the bill, a professional must record a written release of the lien when the claim underlying the lien has been satisfied (i.e., when payment has been made in full as provided in the contract). The professional must file the lien release for recording within 30 days after the claim is satisfied, and the county recorder must record the release and charge and collect the appropriate recording fees.⁴

² R.C. 4703.202, 4703.542, and 4733.302.

³ R.C. 4703.203, 4703.543, and 4733.303.

⁴ R.C. 4703.204, 4703.544, and 4733.304; R.C. 317.32, not in the bill.

The bill allows any person with an interest in the commercial real estate that was the subject of a perfected professional's lien, or named in the affidavit submitted to perfect the lien, to record an affidavit stating that the underlying claim was satisfied or that the lien was released. This authority applies to both when the underlying claim is satisfied and when the lien has been extinguished, as described above. The bill requires the county recorder to record the affidavit and charge and collect the appropriate recording fees.⁵

Substitution of financial security

A professional's lien also may be released through the substitution of financial security. The bill allows any person with an interest in commercial real estate on which a professional's lien has been perfected or named in the affidavit submitted to perfect the lien to substitute financial security for the lien. To do so, the person must apply to the common pleas court of the county in which the property is located. The substitute security must be in an amount equal to the professional's claim, and in a form determined adequate by the court. The bill requires the court, in its entry approving the substitute security, to direct the release of the lien.

The bill requires the person substituting the security to file the entry and release for recording in the office of the county recorder of the county in which the commercial real estate is located. The bill requires the county recorder to record the entry and release and charge and collect the appropriate recording fees.⁶

Definitions

"Commercial real estate" means any parcel of real estate in Ohio other than real estate containing or intended to contain between one and four residential units. "Commercial real estate" includes any improvement made to such a parcel. "Commercial real estate" does not include either of the following:

- Single-family residential units such as condominiums, townhouses, manufactured homes or industrialized units, 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; or
- Real estate owned by a public authority.⁷

"Improvement" means all of the following:

- Designing, constructing, altering, repairing, demolishing, or providing other construction services with regard to any of the following:
 - Any building or appurtenance thereto (such as a furnace);
 - A fixture, bridge, or other structure; or

⁵ R.C. 4703.205, 4703.545, and 4733.305; R.C. 317.32, not in the bill.

⁶ R.C. 4703.206, 4703.546, and 4733.306; R.C. 317.32, not in the bill.

⁷ R.C. 4703.20; R.C. 3781.06 and 1311.25, not in the bill.

- Any gas pipeline or well, including a well drilled or constructed for the production of oil or gas.
- The furnishing of tile for the drainage of any lot or land;
- The excavation, cleanup, or removal of hazardous material or waste from real property;
- The enhancement or embellishment of real property by seeding, sodding, or the planting thereon of any plants; or
- The grading or filling to establish a grade.⁸

“**Owner**” means a person who has an interest in commercial real estate, including a contingent interest, pursuant to an agreement or contract, and who enters into a written contract with a professional for services to be provided with regard to any such interest in the commercial real estate.⁹

HISTORY

Action	Date
Introduced	04-25-19

S0136-I-133/ts

⁸ R.C. 4703.20.

⁹ R.C. 4703.20, 4703.54, and 4733.30.