

AN ACT

To amend section 317.08 and to enact sections 1311.85 to 1311.93 of the Revised Code to create lien rights for real estate brokers on certain commercial property, to provide for the perfection, enforcement, release or satisfaction, and extinguishment of liens, to establish lien priority, and to permit the awarding of attorney's fees and costs to prevailing parties.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 317.08 be amended and sections 1311.85, 1311.86, 1311.87, 1311.88, 1311.89, 1311.90, 1311.91, 1311.92, and 1311.93 of the Revised Code be enacted to read as follows:

Sec. 317.08. Except as provided in division (F) of this section, the county recorder shall keep six separate sets of records as follows:

(A) A record of deeds, in which shall be recorded all deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements, and hereditaments; all notices as provided for in sections 5301.47 to 5301.56 of the Revised Code; all judgments or decrees in actions brought under section 5303.01 of the Revised Code; all declarations and bylaws as provided for in Chapter 5311. of the Revised Code; affidavits as provided for in section 5301.252 of the Revised Code; all certificates as provided for in section 5311.17 of the Revised Code; all articles dedicating archaeological preserves accepted by the director of the Ohio historical society under section 149.52 of the Revised Code; all articles dedicating nature preserves accepted by the director of natural resources under section 1517.05 of the Revised Code; all agreements for the registration of lands as archaeological or historic landmarks under section 149.51 or 149.55 of the Revised Code; all conveyances of conservation easements under section 5301.68 of the Revised Code; all instruments or orders described in division (B)(1)(c)(ii) of section 5301.56 of the Revised Code; all no further action letters issued under section 3746.11 of the Revised Code; all covenants not to sue issued under section 3746.12 of the

Revised Code; any restrictions on the use of property identified pursuant to division (C)(3) of section 3746.10 of the Revised Code; and all memoranda of trust, as described in division (A) of section 5301.255 of the Revised Code, that describe specific real property;

(B) A record of mortgages, in which shall be recorded all of the following:

(1) All mortgages, including amendments, supplements, modifications, and extensions of mortgages, or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered;

(2) All executory installment contracts for the sale of land executed after September 29, 1961, that by their terms are not required to be fully performed by one or more of the parties to them within one year of the date of the contracts;

(3) All options to purchase real estate, including supplements, modifications, and amendments of the options, but no option of that nature shall be recorded if it does not state a specific day and year of expiration of its validity.

(C) A record of powers of attorney, including all memoranda of trust, as described in division (A) of section 5301.255 of the Revised Code, that do not describe specific real property;

(D) A record of plats, in which shall be recorded all plats and maps of town lots, of the subdivision of town lots, and of other divisions or surveys of lands, any center line survey of a highway located within the county, the plat of which shall be furnished by the director of transportation or county engineer, and all drawings as provided for in Chapter 5311. of the Revised Code;

(E) A record of leases, in which shall be recorded all leases, memoranda of leases, and supplements, modifications, and amendments of leases and memoranda of leases;

(F) A record of declarations executed pursuant to section 2133.02 of the Revised Code and durable powers of attorney for health care executed pursuant to section 1337.12 of the Revised Code.

All instruments or memoranda of instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record. The recorder may index, keep, and record in one volume unemployment compensation liens, internal revenue tax liens and other liens in favor of the United States as described in division (A) of section 317.09 of the Revised Code, personal tax liens, mechanic's liens, agricultural product liens, notices of liens, certificates of satisfaction or partial release of

estate tax liens, discharges of recognizances, excise and franchise tax liens on corporations, broker's liens, and liens provided for in sections 1513.33, 1513.37, 3752.13, 5111.021, and 5311.18 of the Revised Code.

The recording of an option to purchase real estate, including any supplement, modification, and amendment of the option, under this section shall serve as notice to any purchaser of an interest in the real estate covered by the option only during the period of the validity of the option as stated in the option.

(G) In lieu of keeping the six separate sets of records required in divisions (A) to (F) of this section and the records required in division (H) of this section, a county recorder may record all the instruments required to be recorded by this section in two separate sets of record books. One set shall be called the "official records" and shall contain the instruments listed in divisions (A), (B), (C), (E), (F), and (H) of this section. The second set of records shall contain the instruments listed in division (D) of this section.

(H) Except as provided in division (G) of this section, the county recorder shall keep a separate set of records containing all corrupt activity lien notices filed with the recorder pursuant to section 2923.36 of the Revised Code and a separate set of records containing all medicaid fraud lien notices filed with the recorder pursuant to section 2933.75 of the Revised Code.

Sec. 1311.85. As used in sections 1311.85 to 1311.93 Of the Revised Code:

(A) "Broker" means an individual, partnership, corporation, or association licensed as a real estate broker pursuant to Chapter 4735. Of the Revised Code.

(B) "Commercial real estate" means any parcel of real estate in this state other than real estate containing one to four residential units. "Commercial real estate" does not include single-family residential units such as condominiums, townhouses, manufactured housing, 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. "Commercial real estate" also does not include real estate owned by a public authority as defined in section 1311.25 of the Revised Code.

(C) "Lien property" means any interest in commercial real estate against which a broker has a lien pursuant to sections 1311.85 to 1311.93 Of the Revised Code.

(D) "Owner" means a person who has a legal or equitable interest in lien property and who enters into a written contract with a broker for services

related to selling, leasing, or conveying any interest in the lien property.

Sec. 1311.86. (A) Any broker that enters into a written contract for services related to selling, leasing, or conveying any interest in commercial real estate has a lien on that commercial real estate. The lien is effective only if the contract for services is in writing and is signed by the broker or the broker's agent and the owner of the lien property or the owner's agent.

(B)(1) Only the broker named in the contract has a lien pursuant to this section and a lien is not available to any employee or independent contractor of the broker.

(2) The amount of the lien is limited to the amount due to the broker pursuant to the contract. If the amount due to the broker is payable in installments, a portion of which is due after conveyance, the amount of the lien is limited to the amount due to the broker prior to or upon conveyance.

(3) The lien is effective only against the interest in real estate that is the subject of the contract.

Sec. 1311.87. (A)(1) A lien established pursuant to section 1311.86 Of the Revised Code is perfected when both of the following have occurred:

(a) The broker is entitled to a fee or commission under the contract.

(b) The broker has met the requirements of division (B) of this section.

(2) The lien is perfected as of the date the requirements of division (A)(1) of this section are met and does not relate back to an earlier date.

(B) To perfect a lien pursuant to division (A)(1) of this section, a broker shall comply with all of the following:

(1) The broker shall record a lien affidavit in the county recorder's office of the county in which the real estate is located. The recorder shall record on the affidavit the date and precise time the affidavit was presented for record, and shall record the affidavit. The recorder shall charge and collect the fees set forth in section 317.32 of the Revised Code for the recorder's services.

(2)(a) The lien affidavit shall include the name of the broker who has the lien, the name of the owner of the lien property, a legal description of the lien property, the amount for which the lien is claimed, the date and a summary of the written contract on which the lien is based, and the real estate license number of the broker. The lien affidavit shall state that the information contained in the affidavit is true and accurate to the knowledge of the signator, be signed by the broker or the broker's agent, and be verified.

(b) For purposes of division (B)(2)(a) of this section, a description that is sufficient to describe the lien property for the purpose of conveyance, or is contained in the instrument by which the owner took title, is a legal description.

(3) A lien affidavit based on the conveyance of lien property shall be recorded prior to the conveyance of the property.

(4)(a) A lien affidavit based on a lease of lien property shall be recorded within thirty days after the first rental payment is due unless the owner of the lien property has provided notice pursuant to division (B)(4)(b) of this section.

(b) If the owner has provided the broker with written notice of the intended date for signing the lease, which is served on the broker no later than ten days prior to the intended date of signing the lease either by personal delivery or by certified mail, return receipt requested, the broker shall record the lien affidavit before that date.

(5) On the day the lien affidavit is recorded, the broker shall provide a copy of the lien affidavit to the owner of the lien property and, where a contract for the sale or other conveyance of the lien property has been entered into, to the prospective transferee, where known, either by personal delivery or by certified mail, return receipt requested.

Sec. 1311.88. (A) To commence proceedings to enforce a lien, a broker shall comply with all of the following:

(1) The broker shall file a complaint in the common pleas court in the county where the lien property is located.

(2)(a) The complaint shall be filed within one year following the recording of the lien affidavit as provided in division (B) of section 1311.87 Of the Revised Code.

(b) Failure to file a complaint within the time specified in this division extinguishes the lien, in which case no subsequent lien affidavit may be recorded for the same claim and the claim may not be asserted in any proceeding under this section.

(3) A complaint shall identify the contract upon which the lien is based and the date of the contract, describe the services performed by the broker pursuant to the contract, specify the unpaid amounts due to the broker pursuant to the contract, specify the address of the lien property, and have a copy of the contract attached.

(4) The broker shall name as defendants in the complaint all parties that have a legal or equitable interest in the lien property of whom the broker has knowledge.

(B)(1) The owner may demand that the broker commence a suit to enforce a broker's lien by serving a written notice of demand on the broker by personal delivery or by certified mail, return receipt requested.

(2) If the broker does not commence the suit or file the answer demanded within twenty-eight days after receipt of the notice of demand,

the lien is extinguished.

(C) In an action based on a broker's lien, a court may assess the nonprevailing parties with costs and reasonable attorney's fees incurred by the prevailing parties. The court shall equitably apportion the assessed costs and attorney's fees among all responsible nonprevailing parties.

Sec. 1311.89. (A) All liens claimed under sections 1311.85 to 1311.93 Of the Revised Code shall be subject to section 2323.07 Of the Revised Code unless the parties agree to proceed pursuant to division (B) of this section.

(B) If the broker and owner agree to alternative dispute resolution (ADR), the claim shall be heard and resolved in the agreed upon ADR forum. The court shall retain jurisdiction to enter and enforce the award or other result of ADR on all interested parties to the foreclosure.

Sec. 1311.90. (A) A broker shall record a written release or satisfaction of the broker's lien in the county recorder's office of the county in which the lien was recorded within ten days after any of the following:

(1) Moneys in an amount sufficient to release the broker's lien established pursuant to section 1311.86 Of the Revised Code have been deposited in an escrow account established pursuant to section 1311.92 Of the Revised Code.

(2) The owner satisfies the claim upon which the broker's lien is based.

(3) The broker fails to file a claim to enforce a lien within the time specified in section 1311.88 Of the Revised Code.

(4) The claim upon which the broker's lien is based has been resolved by a written agreement of the broker and owner, by a court, or by any process agreed to by the broker and owner.

(B) On the day the release or satisfaction is recorded, the broker shall provide the owner with a copy of the release or satisfaction by personal delivery or by certified mail, return receipt requested.

Sec. 1311.91. All valid mechanic's liens, arising pursuant to and perfected in accordance with Chapter 1311. Of the Revised Code, and all prior recorded liens and mortgages have priority over a broker's lien perfected pursuant to section 1311.87 Of the Revised Code.

Sec. 1311.92. (A) Except as provided in division (D) of this section, to enable a transfer of lien property to close when a broker's perfected lien may otherwise prevent the closing, a separate escrow account shall be established by the owner into which moneys from the proceeds of the closing shall be deposited in an amount sufficient to release the broker's lien. The moneys shall be held in escrow and shall only be released as ordered by a court of competent jurisdiction, OR as DIRECTED by agreement of the broker and

owner or by any process agreed to by the broker and owner.

(B) An owner may not refuse to close a transfer of lien property because of the requirement to establish an escrow account under division (A) of this section. A prospective transferee of lien property shall not refuse to close the transfer of the lien property solely because the broker recorded a lien affidavit under this section, if all of the following have occurred:

(1) The owner has established the escrow account required by division (A) of this section;

(2) The prospective transferee has received from the escrow agent for the escrow account required by division (A) of this section a verified statement that the escrow account has been established.

(C) When funds have been placed in escrow pursuant to division (A) of this section, the broker claiming a broker's lien under this section has an equitable lien on the escrowed funds, and the lien recorded on the lien property shall be extinguished as a matter of law.

(D) The broker and owner are not required to follow the escrow procedures described in this section if either of the following applies:

(1) An alternative procedure is available that would allow the transfer of lien property to close and that procedure is acceptable to the broker and prospective transferee.

(2) The proceeds from the transfer of lien property would be insufficient to release all liens, including the broker's lien, that are claimed against the lien property.

Sec. 1311.93. Any broker that asserts or records a spurious or materially inaccurate broker's lien under this section or fails to release or acknowledge release or satisfaction of a broker's lien in compliance with this section, is liable for damages incurred by any person who has a legal or equitable interest in the lien property.

SECTION 2. That existing section 317.08 of the Revised Code is hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____