

# AN ACT

To amend sections 1311.01, 1311.04, 1311.19, and 1311.25 of the Revised Code to expand the time within which lien rights of subcontractors and materials suppliers are preserved under the Mechanic's Lien Law when a timely notice of commencement is not filed by the owner of an improvement; to establish new criteria for determining whether a notice, affidavit, or other document has been served as required under that law; and to specify that the excavation, cleanup, or removal of hazardous material from real property is an improvement for purposes of the Mechanic's Lien Law.

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

SECTION 1. That sections 1311.01, 1311.04, 1311.19, and 1311.25 of the Revised Code be amended to read as follows:

Sec. 1311.01. As used in sections 1311.01 to 1311.22 of the Revised Code:

(A) "Owner," "part owner," or "lessee" includes all the interests either legal or equitable, which such person may have in the real estate upon which the improvements are made, including the interests held by any person under contracts of purchase, whether in writing or otherwise.

(B) "Materialman" or "material supplier" includes any person by whom any materials are furnished in furtherance of an improvement.

(C) "Laborer" includes any mechanic, ~~workman~~ worker, artisan, or other individual who performs labor or work in furtherance of any improvement.

(D) "Subcontractor" includes any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any improvement under a contract with any person other than the owner, part owner, or lessee.

(E) "Original contractor," except as otherwise provided in section 1311.011 of the Revised Code, includes a construction manager and any

person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any improvement under a contract with an owner, part owner, or lessee.

(F) "Construction manager" means a person with substantial discretion and authority to manage or direct an improvement, provided that the person is in direct privity of contract with the owner, part owner, or lessee of the improvement.

(G) "Notice of commencement" means the notice specified in section 1311.04 of the Revised Code.

(H) "Notice of furnishing" means the notice specified in section 1311.05 of the Revised Code.

(I) "Materials" means all products and substances including, without limitation, any gasoline, lubricating oil, petroleum products, powder, dynamite, blasting supplies and other explosives, tools, equipment, or machinery furnished in furtherance of an improvement.

(J) "Improvement" means constructing, erecting, altering, repairing, demolishing, or removing any building or appurtenance thereto, fixture, bridge, or other structure, and any gas pipeline or well including, but not limited to, 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 shrubs, trees, plants, vines, small fruits, flowers, or nursery stock of any kind; and the grading or filling to establish a grade.

(K) "Wages" means the basic hourly rate of pay and all other contractually owed benefits.

Sec. 1311.04. (A)(1) Prior to the performance of any labor or work or the furnishing of any materials for an improvement on real property which may give rise to a mechanics' lien under sections 1311.01 to 1311.22 of the Revised Code, the owner, part owner, or lessee who contracts for the labor, work, or materials shall record in the office of the county recorder for each county in which the real property to be improved is located a notice of commencement in substantially the form specified in division (B) of this section.

(2) Only one notice of commencement is required to be filed for a single improvement and if more than one notice of commencement is filed for a single improvement, all notices filed after the original notice shall be deemed to be amendments to the original notice. If an owner, part owner, or lessee contracts with additional original contractors, lenders, or sureties not identified in the original notice of commencement filed for the

improvement, the owner, part owner, or lessee shall amend the original notice of commencement to identify the additional original contractors, lenders, and sureties. The date of the filing of the amended notice is the date of the filing of the original notice of commencement.

(B) The notice of commencement required under division (A) of this section shall contain, in affidavit form, all of the following information:

(1) The legal description of the real property on which the improvement is to be made. For purposes of this division, a description sufficient to describe the real property for the purpose of conveyance, or contained in the instrument by which the owner, part owner, or lessee took title, is a legal description.

(2) A brief description of the improvement to be performed on the property containing sufficient specificity to permit lien claimants to identify the improvement;

(3) The name, address, and capacity of the owner, part owner, or lessee of the real property contracting for the improvement;

(4) The name and address of the fee owner of the real property, if the person contracting for the improvement is a land contract vendee or lessee;

(5) The name and address of the owner's, part owner's, or lessee's designee, if any;

(6) The name and address of all original contractors, except that if the notice of commencement is recorded for an improvement involving a single- or double-family dwelling and if more than one original contractor is involved, instead of listing each original contractor, the owner shall state that multiple original contractors are involved in the improvement;

(7) The date the owner, part owner, or lessee first executed a contract with an original contractor for the improvement;

(8) The name and address of all lending institutions which provide financing for the improvements, if any;

(9) The name and address of all sureties on any bond which guarantee payment of the original contractor's obligations under the contract for the improvement, if any;

(10) The following statement:

"To Lien Claimants and Subsequent Purchasers:

Take notice that labor or work is about to begin on or materials are about to be furnished for an improvement to the real property described in this instrument. A person having a mechanics' lien may preserve the lien by providing a notice of furnishing to the above-named designee and ~~his~~ the above-named designee's original contractor, if any, and by timely recording an affidavit pursuant to section 1311.06 of the Revised Code.

A copy of this notice may be obtained upon making a written request by certified mail to the above-named owner, part owner, lessee, designee, or the person with whom you have contracted."

(11) The name and address of the person preparing the notice;

(12) An affidavit of the owner, part owner, or lessee or the agent of the owner, part owner, or lessee which verifies the notice.

(C) If the notice of commencement furnished by or for an owner, part owner, or lessee contains incorrect information, the owner, part owner, or lessee is liable for any loss of lien rights of a lien claimant and any actual expenses incurred by the lien claimant in maintaining lien rights, including attorney's fees, if the loss and expenses incurred are a direct result of the lien claimant's reliance on the incorrect information.

Any lien claimant who has included incorrect information in ~~his~~ the claimant's affidavit for a lien under section 1311.06 of the Revised Code, as a result of incorrect information contained in the notice of commencement, may file for record an amended affidavit for a lien. The amended affidavit shall contain all of the information required by section 1311.06 of the Revised Code for an original affidavit. The lien claimant shall serve a copy of the amended affidavit on the owner, part owner, or lessee as provided in section 1311.07 of the Revised Code. The lien claimant may file the amended affidavit for record at any time during the time that the lien acquired by the original affidavit continues in effect under section 1311.13 of the Revised Code. In no event shall the amended affidavit extend such time period. The filing of an amended affidavit does not constitute a waiver of the rights granted by this division.

(D) Within ten days after the date a subcontractor, ~~materialman~~ material supplier, or laborer serves a written request upon the owner, part owner, or lessee, or designee for a copy of the notice of commencement, the owner, part owner, lessee, or designee shall serve a copy of the notice of commencement to the requesting subcontractor, ~~materialman~~ material supplier, or laborer.

(E) Within ten days after the date a subcontractor, ~~materialman~~ material supplier, or laborer serves a written request for a copy of the notice of commencement upon the original contractor who has been provided with a notice of commencement from the owner, part owner, or lessee, or designee and with whom the subcontractor, ~~materialman~~ material supplier, or laborer has a direct contract, the original contractor shall serve a copy of the notice of commencement to the requesting subcontractor, ~~materialman~~ material supplier, or laborer.

(F) Within ten days after the date a subcontractor, ~~materialman~~ material

supplier, or laborer serves a written request for a copy of the notice of commencement upon the subcontractor who has been provided with a notice of commencement from the owner, part owner, lessee, designee, or original contractor and with whom the subcontractor, ~~materialman~~ material supplier, or laborer has a direct contract, the subcontractor shall serve a copy of the notice of commencement upon the requesting subcontractor, ~~materialman~~ material supplier, or laborer.

(G)(1) Except as provided in division (G)(2) of this section, the owner, part owner, lessee, or designee shall post and maintain posted a copy of the notice of commencement in a conspicuous place on the real property described in the notice during the course of the actual physical improvement to the real property.

(2) No owner, part owner, lessee, or designee, has to post a copy of the notice of commencement on the real property described in the notice for an improvement that is the subject of a home purchase contract.

(H) The owner, part owner, lessee, or designee shall serve a copy of the notice of commencement upon the original contractor. If the owner, part owner, lessee, or designee fails to serve a copy of the notice of commencement upon the original contractor, the owner, part owner, or lessee is liable to the original contractor for all actual expenses incurred by the original contractor in obtaining the information otherwise provided by the notice of commencement.

(I) If the owner, part owner, lessee, or designee fails to record the notice of commencement in accordance with this section, the time within which a subcontractor or ~~materialman~~ material supplier may serve a notice of furnishing as required by section 1311.05 of the Revised Code is extended until twenty-one days after the notice of commencement has been recorded. A subcontractor or material supplier need not serve a notice of furnishing to preserve lien rights for the period before the notice of commencement is recorded.

(J) If the owner, part owner, lessee, or designee fails to serve, upon written request, the notice of commencement in accordance with this section, the time within which a subcontractor or ~~materialman~~ material supplier may serve a notice of furnishing as required by section 1311.05 of the Revised Code is extended until twenty-one days after the notice of commencement actually has been served to the subcontractor or ~~materialman~~ material supplier. The owner, part owner, or lessee who fails to serve the notice pursuant to this section is liable to any subcontractor or ~~materialman~~ material supplier who becomes a lien claimant for all actual expenses incurred by the lien claimant in obtaining the information that

would have been contained in the notice.

(K) If an owner, part owner, lessee, or designee fails to post or maintain a copy of the notice of commencement as required by division (G)(1) of this section, the owner, part owner, or lessee is liable to a subcontractor, ~~materialman~~ material supplier, or laborer who becomes a lien claimant for all actual expenses incurred by the lien claimant in obtaining the information otherwise provided by the posting.

(L) If an original contractor or subcontractor who has been provided with a notice of commencement fails to serve a copy of the notice of commencement to any subcontractor, ~~materialman~~ material supplier, or laborer who requests it, the original contractor or subcontractor who fails to serve the copy of the notice is liable to the subcontractor, ~~materialman~~ material supplier, or laborer who made the request for all costs incurred by the subcontractor, ~~materialman~~ material supplier, or laborer in obtaining the information contained in the notice of commencement, provided that an original contractor or subcontractor who fails to provide the notice upon request is not liable under this division to any subcontractor, ~~materialman~~ material supplier, or laborer with whom ~~he~~ the original contractor or subcontractor is not in direct privity of contract.

(M)(1) If after the first work, labor, or material has been performed on or furnished to the improvement, the owner, part owner, lessee, or designee fails to serve, record, or post a notice of commencement as required by this section, the original contractor may, in writing, request the owner, part owner, lessee, or designee to serve, record, or post the notice. If an owner, part owner, lessee, or ~~his~~ the designee of an owner, part owner, or lessee fails or refuses to serve, record, or post a notice of commencement within ten days of receipt of a request, the owner, part owner, or lessee is liable for ~~his~~ the owner's, part owner's, or lessee's failure or refusal and for the designee's failure or refusal, without recourse to the original contractor for all damages, costs, and expenses which result from the filing of a valid mechanics' lien to the extent that the lien, damages, costs, and expenses could have been avoided through proper payment.

(2) Nothing in this division shall be interpreted as to either of the following:

(a) Relieving an original contractor from ~~his~~ the duty to pay ~~his~~ the original contractor's subcontractors, ~~materialmen~~ material suppliers, and laborers for labor or work performed or materials furnished pursuant to a contract directly with the original contractor;

(b) Obliging an owner, part owner, or lessee to pay for work or labor performed or materials furnished by subcontractors, ~~materialmen~~ material

suppliers, or laborers pursuant to direct contracts with the original contractor.

(N)(1) If the owner, part owner, or lessee fails to record a notice of commencement or an amended notice, any person holding a mortgage on the real property to be improved may record a notice of commencement or an amended notice on behalf of the owner, part owner, or lessee. If the owner, part owner, or lessee fails to record a notice of commencement or an amended notice within the later of ten days after the performance of any labor or work or the furnishing of any material for an improvement on real property which gives rise to a mechanics' lien under sections 1311.01 to 1311.22 of the Revised Code or three days after service of a demand to record the notice or amended notice by the original contractor, the original contractor may record a notice of commencement or an amended notice on behalf of the owner, part owner, or lessee.

(2) If the original contractor or a mortgage holder has recorded a notice of commencement or an amended notice on behalf of the owner, part owner, or lessee, the owner, part owner, or lessee is liable to the original contractor or mortgage holder for all costs and expenses incurred in obtaining the information contained in the notice of commencement or an amended notice and all costs incurred in the preparation and recording of the notice of commencement or an amended notice.

(3) Unless required to file the notice of commencement or an amended notice on behalf of the owner, part owner, or lessee, the party filing a written notice of commencement or amended notice on behalf of the owner, part owner, or lessee is not liable to the owner, part owner, or lessee for any errors contained in the notice of commencement or amended notice.

(4) If a mortgage holder or an original contractor records a notice of commencement or amended notice on behalf of an owner, part owner, or lessee, such fact must be included on the notice or amended notice.

(O) This section does not apply to any improvement made pursuant to a home construction contract as defined in section 1311.011 of the Revised Code.

(P) The county recorder of the county where a notice of commencement is filed for record shall endorse the date and hour of its filing and cause it to be recorded as mechanics' liens are recorded, and collect the same fees for recording the notice of commencement as are provided in section 317.32 of the Revised Code. The recorder shall index the real property described in the notice of commencement and shall index the names of all owners, part owners, lessees, and land contract vendees in the direct index and the names of all original contractors in the reverse index as provided for in section

317.18 of the Revised Code.

(Q) Notwithstanding this section, if the owner, part owner, or lessee is a telephone company, an electric light company, a gas company, a water works company, all as defined in section 4905.03 of the Revised Code, or a subsidiary or affiliate thereof, the owner, part owner, or lessee may, but is not required to, record a notice of commencement pursuant to division (A) of this section, and is not required to serve, post, and provide copies of a notice of commencement pursuant to divisions (D), (G), and (H) of this section unless such owner, part owner, or lessee elects to record the notice of commencement. If the owner, part owner, or lessee elects to record the notice of commencement and the improvement extends beyond one parcel of real property or one county, the owner, part owner, or lessee may, in lieu of using the legal description required in division (B)(1) of this section, use a description which reasonably describes the real property on which the improvement is to be made. Any description used other than the description specified in division (B)(1) of this section shall refer to the township and county in which the improvement is located, the name and route number of any local, state, or federal highway near the improvement, if any, the post office address of the real property, if any, and the name by which the owner, part owner, or lessee refers to the improvement.

If an owner, part owner, or lessee elects not to record, serve, post, or provide copies of a notice of commencement pursuant to divisions (A), (D), (G)(1), and (H) of this section, ~~he~~ the owner, part owner, or lessee is subject to all applicable liabilities pursuant to divisions (C), (H), (J), (K), (M), and (N) of this section.

(R) If an owner, part owner, lessee, or designee fails to record a notice of commencement in accordance with this section, no subcontractor or ~~materialman~~ material supplier who performs labor or work upon or furnishes material in furtherance of that improvement has to serve a notice of furnishing in accordance with section 1311.05 of the Revised Code in order to preserve ~~his~~ the subcontractor's or material supplier's lien rights.

Sec. 1311.19. (A) Except as otherwise provided in section 1311.11 of the Revised Code and division (C) of this section, any notice, affidavit, or other document required to be served under this chapter shall be served by one of the following means:

(1) The sheriff of the county in which the person to be served resides or maintains ~~his~~ the person's principal place of business, in one or more of the methods provided in the Ohio Rules of Civil Procedure. The sheriff may charge reasonable fees for such service.

(2) Certified or registered mail, overnight delivery service, hand

delivery, or any other method which includes a written evidence of receipt;

(3) The means provided in division (H) of section 1701.07 of the Revised Code, if the person is a corporation.

(B) For purposes of this chapter, service is complete upon receipt by the party being served except as provided in division (H) of section 1701.07 of the Revised Code and except, for the purposes of sections 1311.05 and 1311.261 of the Revised Code, if service of a notice of furnishing is made by certified mail, service is complete on the date of the mailing. If the service is attempted upon an owner, part owner, or lessee, or designee, at the address contained in the notice of commencement required by section 1311.04 of the Revised Code, and if the notice, affidavit, or other document is returned unclaimed or refused, service is complete when first attempted.

(C) A notice, affidavit, or other document required to be served under this chapter is considered served, whether or not the notice, affidavit, or other document was served by the means described in divisions (A)(1) to (3) of this section, and service is complete on the date the notice, affidavit, or other document is received, if either of the following is true regarding the notice, affidavit, or other document:

(1) The person served acknowledges receipt of the notice, affidavit, or other document.

(2) It can be proved by a preponderance of evidence that the person being served actually received the notice, affidavit, or other document.

A notice, affidavit, or other document to which this division applies is presumed to have been received three days after the date of the mailing of the notice, affidavit, or other document, unless a written acknowledgement, receipt, or other evidence provides proof to the contrary.

Sec. 1311.25. As used in sections 1311.25 to 1311.32 of the Revised Code:

(A) "Public improvement" means any construction, reconstruction, improvement, enlargement, alteration, demolition, or repair of a building, highway, drainage system, water system, road, street, alley, sewer, ditch, sewage disposal plant, water works, and any other structure or work of any nature by a public authority.

(B) "Public authority" includes the state, and a county, township, municipal corporation, school district, or other political subdivision of the state, and any public agency, authority, board, commission, instrumentality, or special district of or in the state or a county, township, municipal corporation, school district, or other political subdivision of the state, and any officer or agent thereof.

(C) "Materialman" or "material supplier" includes any person by whom

any materials are furnished in furtherance of a public improvement.

(D) "Laborer" includes any mechanic, ~~workman~~ worker, artisan, or other individual who performs labor or work in furtherance of any public improvement.

(E) "Subcontractor" includes any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any public improvement under a contract with any person other than the public authority.

(F) "Principal contractor" includes any person who undertakes to construct, alter, erect, improve, repair, demolish, remove, dig, or drill any part of any public improvement under a contract with a public authority.

(G) "Materials" means all products and substances including, without limitation, any gasoline, lubricating oil, petroleum products, powder, dynamite, blasting supplies and other explosives, tools, equipment, or machinery furnished in furtherance of a public improvement.

(H) "Wages" has the same meaning as "prevailing wage" in division (E) of section 4115.03 of the Revised Code.

(I) "Notice of commencement" means the notice specified in section 1311.252 of the Revised Code.

(J) "Notice of furnishing" means the notice specified in section 1311.261 of the Revised Code.

SECTION 2. That existing sections 1311.01, 1311.04, 1311.19, and 1311.25 of the Revised Code are hereby repealed.

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*Speaker* \_\_\_\_\_ *of the House of Representatives.*

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*President* \_\_\_\_\_ *of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

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

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the  
\_\_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_