



H.B. 487

126th General Assembly

(As Reported by H. Financial Institutions, Real Estate & Securities)

Reps. Widener, Martin, R. McGregor, Wagoner, Seitz, Hartnett, Allen, Koziura, Hagan, Gibbs, C. Evans

BILL SUMMARY

- Requires in connection with the establishment of a mechanics lien, on home construction (improvement) contracts, that a "notice of commencement" be filed by the homeowner with the office of the county recorder when a lending institution requires it as part of the financing for a home improvement project.
- Establishes that a notice of commencement for all liens available under the Mechanics' Lien Law expires six years after it is recorded, unless the notice itself specifies otherwise.
- Exempts subcontractors or material suppliers, under certain circumstances, from a requirement to serve a "notice of furnishing" in order to preserve lien rights.
- Permits court costs and reasonable attorney fees to be included in damages an owner may recover from a lien holder who refuses to release the lien after the owner makes full payment.
- Stipulates that a mortgage is considered filed first if a mortgage and notice of commencement are filed on the same day.
- Permits multiple liens when a material supplier sold materials to more than one owner, original contractor, or subcontractor.
- Replaces the term "materialman" with the term "material supplier" throughout the Revised Code.

CONTENT AND OPERATION

Background

A mechanic's lien is a lien that gives a person who performs labor or supplies material that improves real property a right to impose a lien on that property to secure payment for the material supplied or the work performed. Chapter 1311. of the Revised Code generally governs the process in Ohio that a contractor or material supplier must follow in order to preserve its lien rights. This process involves two key documents: the "notice of commencement" and the "notice of furnishing." A third document, the "affidavit for mechanic's lien," must be filed with the county recorder if the contractor or material supplier wish to actually place a lien on the real property (R.C. 1311.06).

Prior to any labor or materials being furnished for an improvement of real property, the owner or lessee who contracts for the labor or materials must record in the office of the county recorder a notice of commencement, and must serve a copy of the notice on the original contractor. The notice of commencement is an affidavit that provides specific information on the property, including the owner, the contractor, and any lending institution involved in financing the improvement (R.C. 1311.04).

Certain subcontractors or material suppliers, who are not under direct contract with the owner or lessee, but rather are working under an agreement with the original contractor, must serve a notice of furnishing, within a specified time frame, in order to preserve the subcontractor's or material supplier's lien rights. The notice of furnishing is served to the owner or lessee of the real property and must include a statement explaining that the notice is required by the Ohio Mechanics' Lien Law (R.C. 1311.05).

Notice of commencement

Under current law, an owner, part owner, or lessee of real property, who contracts for labor, work, or materials, must record a notice of commencement in the office of the country recorder prior to any work being performed or materials being furnished, if the improvement may give rise to a mechanics' lien (R.C. 1311.04(A)). Home construction contracts are currently exempt from this requirement.

The bill requires that a notice of commencement be filed on home construction (home improvement) contracts if a lending institution requires it as part of the financing for a home improvement contract "which is secured in whole or in part by a mortgage on real estate upon which the improvements are to be constructed" (R.C. 1311.04(O)).

Notice of commencement expiration date

Current law does not specify an expiration date on notices of commencement. The bill establishes that a notice of commencement for all types of projects (not just home construction projects) filed will expire six years after its filing date unless the specific notice of commencement specifies otherwise (R.C. 1311.04(S)).

Notice of furnishing

Under current law, a subcontractor or material supplier who performs labor or furnishes material to an original contractor for the improvement of real property on a project for which a notice of commencement has been recorded, must serve a notice of furnishing if the subcontractor or material supplier wishes to preserve its lien rights. The bill creates an exception to this requirement. When a lending institution, as part of the financing for a home improvement project, has required that the notice of commencement be filed, a subcontractor or material supplier need not serve a notice of furnishing in order to preserve lien rights (R.C. 1311.05(I)).

Court costs and attorney's fees

Under current law, certain liens that secure payment for labor or work performed or materials furnished in connection with a home construction contract or in connection with a dwelling or residential unit of condominium property are subject to certain conditions, such as, no contractor or laborer has a lien if the original contractor has been paid in full. If the lien holder fails to release the lien after the original contractor has been paid in full, the lien holder is liable to the owner or lessee for all damages arising from the lien holder's failure to do so. The bill requires that these damages are to include court costs and reasonable attorney fees incurred during any litigation between the owner and a lien claimant who has refused to release the lien after receiving a copy of the affidavit of mechanics' lien or "evidence that the cost of completing a home construction contract exceeded, or is reasonably expected to exceed, the balance due the original contractor under the home construction contract" (R.C. 1311.011(B)(3)).

Mortgage

The bill provides that, unless otherwise stipulated in a mortgage securing financing for the construction of an improvement, if a mortgage and a notice of commencement for said improvement are recorded on the same day, the mortgage is to be considered recorded before the notice of commencement for purposes of priority of payment (R.C. 1311.13).

Multiple liens

Under current law, all of the deliveries or sales by a material supplier for an improvement give rise to one mechanic's lien for the unpaid portion of the sale (R.C. 1311.12(D)). The bill permits a material supplier to file liens against multiple owners when the material supplier sold materials, for the same improvement, to more than one owner.

Materialman

In current law the terms "materialman" or "material supplier" are defined together as "any person by whom any materials are furnished in furtherance of an improvement" (R.C. 1311.01). The bill strikes out the word "materialman," and its plural "materialmen" throughout the Revised Code and replaces each reference with either "material supplier" or "material suppliers."

HISTORY

ACTION	DATE
Introduced	01-25-06
Reported, H. Financial Institutions, Real Estate & Securities	11-30-06

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