



Ohio

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Statutory Outline

TITLE XIII. COMMERCIAL TRANSACTIONS—OHIO UNIFORM COMMERCIAL CODE.

CHAPTER 1311. LIENS.

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1311.01. Lien definitions.

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) "**Material supplier**" includes any person by whom any materials are furnished in furtherance of an improvement.

(C) "**Laborer**" includes any mechanic, 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.

1311.011. Liens for home construction work.

(A) As used in this section:

(1) "**Home construction contract**" means a contract entered into between an original contractor and an owner, part owner, or lessee for the improvement of any single- or double-family dwelling or portion of the dwelling or a residential unit of any condominium property that has been submitted to the provisions of Chapter 5311. of the Revised Code; an addition to any land; or the improvement of driveways, sidewalks, swimming pools, porches, garages, carports, landscaping, fences, fallout shelters, siding, roofing, storm windows, awnings, and other improvements that are adjacent to single- or double-family dwellings or upon lands that are adjacent to single- or double-family dwellings or residential units of condominium property, if the dwelling, residential unit of condominium property, or land is used or is intended to be used as a personal residence by the owner, part owner, or lessee.

(2) "**Home purchase contract**" means a contract for the purchase of any single- or double-family dwelling or residential unit of a condominium property that has been subjected to the provisions of Chapter 5311. of the Revised Code if the purchaser uses or intends to use the dwelling, a unit of a double dwelling, or the condominium unit as the purchaser's personal residence.

(3) "**Lending institution**" means any person that enters into a contract with the owner, part owner, purchaser, or lessee to provide financing for a home construction contract or a home purchase contract, which financing is secured, in whole or in part, by a mortgage on the real estate upon which the improvements contemplated by the home construction contract are to be made or upon the property that is the subject of the home purchase contract, and that makes direct disbursements under the contract to any original contractor or the owner, part owner, purchaser, or lessee.

(4) "**Original contractor**" includes any person with whom the owner, part owner, lessee, or purchaser under a home purchase contract or a home construction contract has directly contracted.

(B) Notwithstanding sections 1311.02 to 1311.22 of the Revised Code, all liens, except mortgage 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, that is the subject of a home purchase contract are subject to the following conditions:

(1) No original contractor, subcontractor, material supplier, or laborer has a lien to secure payment for labor or work performed or materials furnished by the contractor, subcontractor, material supplier, or laborer, in connection with a home construction contract between the original contractor and the owner, part owner, or lessee or in connection with a dwelling or residential unit of condominium property, that is the subject of a home purchase contract, if the owner, part owner, or lessee paid the original contractor in full or if the purchaser has paid in full for the amount of the home construction or home purchase contract

price, and the payment was made prior to the owner's, part owner's, or lessee's receipt of a copy of an affidavit of mechanics' lien pursuant to section 1311.07 of the Revised Code. An owner, part owner, or lessee may file with the county recorder of the county in which the property that is the subject of a home construction contract or a home purchase contract is situated an affidavit that the owner, part owner, or lessee has made payment in accordance with this division. Except if the owner, part owner, or lessee is guilty of fraud, any lien perfected on the property by any subcontractor, material supplier, or laborer for labor or work performed or for materials furnished is void and the property wholly discharged from the lien, if the lien was perfected after full payment was made in accordance with this division. The recorder shall index and record the affidavit in the same manner that releases of mortgages and other liens are indexed and recorded, and shall receive the same fees for indexing and recording the affidavit that are provided for the recording of leases. Nothing in this section shall adversely affect a mechanics' lien claimed against a prior owner if the lien is perfected prior to a conveyance under a home purchase contract.

(2) If the original contractor has not been paid in full as provided in division (B)(1) of this section, no subcontractor, material supplier, or laborer has a lien to secure payment for labor or work performed or materials furnished by the subcontractor, material supplier, or laborer for an amount greater than the amount due under the home construction contract that has not been paid to the original contractor for the work, labor, or materials or for an amount greater than the amount of the home purchase contract price that has not been paid to the original contractor. The total amount of all liens for labor or work performed or for materials furnished in connection with a home construction contract that may be enforced in lien foreclosure proceedings shall not exceed the amount due under the home construction contract that has not been paid to the original contractor or the amount due under the home purchase contract that has not been paid to the original contractor.

If the amount due under the home construction contract or under the home purchase contract to the original contractor is insufficient to secure the mechanics' liens of all lien claimants that arose out of the home construction contract or that arose out of a contract in connection with a dwelling or residential unit of condominium property, that is the subject of a home purchase contract, each mechanics' lien shall be secured by a pro rata share of the amount due to the original contractor, except that mechanics' liens filed by laborers have priority. The pro rata share shall be equal to the monetary amount of the amount due to the original contractor that is subject to all valid mechanics' liens on the property that is the subject of the home purchase contract or all valid mechanics' liens under the home construction contract multiplied by a fraction in which the denominator is the total monetary amount of all valid mechanics' liens on the property that is the subject of the home purchase contract or of all valid mechanics' liens that arose out of the home construction contract, and the numerator is the amount claimed to be due by the lien claimant under a contract in connection with a dwelling or residential unit of condominium property, that is the subject of the home purchase contract or under the home construction contract.

For the purpose of this section, the amount due under a home construction contract or a home purchase contract is the unpaid balance under the home construction contract or the home purchase contract, minus the cost to complete the contract according to its terms and conditions, including any warranty or repair work.

(3) If, after receiving written notice from an owner, part owner, purchaser, or lessee that full payment has been made by the owner, part owner, purchaser, or lessee to the original contractor for the amount of the home construction or home purchase contract and that payment was made prior to the owner's, part owner's, or lessee's receipt of a copy of an

affidavit of mechanics' lien pursuant to section 1311.07 of the Revised Code, the lienholder fails within thirty days after receipt of the notice to cause the lien securing payment for the work, labor, or materials to be released of record, the lienholder is liable to the owner, part owner, or lessee for all damages arising from the lienholder's failure to cause the lien to be released. Damages shall include, but are not limited to, court costs and reasonable attorney fees incurred during any litigation between the owner and a lien claimant or lien claimants who have refused to release their liens after receiving a copy of the affidavit referred to in division (B)(1) of this section, 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 as provided in division (B)(2) of this section.

(4) No lending institution shall make any payment to any original contractor until the original contractor has given the lending institution the original contractor's affidavit stating:

(a) That the original contractor has paid in full for all labor and work performed and for all materials furnished by the original contractor and all subcontractors, material suppliers, and laborers prior to the date of the closing of the purchase or during and prior to the payment period, except such unpaid claims as the original contractor specifically sets forth and identifies both by claimant and by amount claimed;

(b) That no claims exist other than those claims set forth and identified in the affidavit required by division (B)(4) of this section.

(5) When making any payment under the home construction contract or on behalf of the owner or part owner under a home purchase contract, the lending institution may accept the affidavit of the original contractor required by division (B)(4) of this section and act in reliance upon it, unless it appears to be fraudulent on its face. The lending institution is not financially liable to the owner, part owner, purchaser, lessee, or any other person for any payments, except for gross negligence or fraud committed by the lending institution in making any payment to the original contractor.

After receipt of a written notice of a claim of a right to a mechanic's lien by a lending institution, failure of the lending institution to obtain a lien release from the subcontractor, material supplier, or laborer who serves notice of such claim is prima-facie evidence of gross negligence.

(6) Any owner, part owner, purchaser, or lessee, who requests an original contractor to supply the affidavit required by division (B)(4) of this section, may withhold any payment that is due under the home construction contract or under the home purchase contract until the original contractor provides the owner, part owner, purchaser, or lessee with the affidavit. The owner's, part owner's, purchaser's, or lessee's remedies and rights under this section shall not be prejudiced by the owner's, part owner's, purchaser's, or lessee's failure to request or to obtain the affidavit provided for in division (B)(4) of this section.

(7) An owner, part owner, purchaser, lessee, or lending institution may make payment jointly to the original contractor and to a subcontractor, material supplier, or laborer as a condition to their giving lien releases.

(8) If a subcontractor, material supplier, or laborer refuses to supply a lien release to the original contractor, owner, part owner, lessee, or lending institution because the amount of money that the original contractor owes the subcontractor, material supplier, or laborer is in dispute, the owner, part owner, lessee, and lending institution shall withhold from payment to the original contractor an amount of money equal to the amount of money claimed by the subcontractor, material supplier, or laborer. If a subcontractor, material supplier, or laborer refuses within ten days after receipt of a written request from either the original contractor or the lending institution to state the amount due and the last date that the lien claimant performed any labor or work or furnished any material in furtherance of the improvement

which gives rise to the lien claimant's lien claim, the amount and the last date shall be stated by the original contractor. The owner, part owner, lessee, and lending institution shall pay the withheld amount of money to the original contractor when any of the following occur:

(a) The subcontractor, material supplier, or laborer gives written notice to the owner, part owner, lessee, or lending institution that the amount of money claimed to be due has been paid.

(b) The subcontractor, material supplier, or laborer delivers a lien release to the original contractor, owner, part owner, lessee, or lending institution.

(c) The original contractor provides the subcontractor, material supplier, or laborer with a bond, in a form that is satisfactory to the owner, part owner, lessee, or lending institution and in an amount equal to the amount of money claimed to be due.

(d) The time for filing a lien by the subcontractor, material supplier, or laborer has expired and no affidavit of lien has been recorded pursuant to section 1311.06 of the Revised Code.

(9) Any lien release given pursuant to this section is valid and enforceable without separate consideration for the release.

1311.012. [Repealed].

1311.02. Lien of subcontractor, laborer or materialman.

Every person who performs work or labor upon or furnishes material in furtherance of any improvement undertaken by virtue of a contract, express or implied, with the owner, part owner, or lessee of any interest in real estate, or the owner's, part owner's, or lessee's authorized agent, and every person who as a subcontractor, laborer, or material supplier, performs any labor or work or furnishes any material to an original contractor or any subcontractor, in carrying forward, performing, or completing any improvement, has a lien to secure the payment therefor upon the improvement and all interests that the owner, part owner, or lessee may have or subsequently acquire in the land or leasehold to which the improvement was made or removed.

1311.021. Lien for labor or work or materials upon oil or gas well or facilities.

(A) Every person who performs any labor or work upon or furnishes material for digging, drilling, boring, operating, completing, or repairing, any well drilled or constructed for the production of oil or gas or any injection well which furthers the production of oil and gas or which disposes of waste products generated by oil and gas operations, or for altering, repairing, or constructing any oil derrick, oil tank, or leasehold production pipe line by virtue of a contract, express or implied, with the owner or part owner, or the owner's or part owner's authorized agent, of any oil and gas lease or leasehold estate or, in the event there is no lease or estate, any mineral estate, and every subcontractor, laborer, and material supplier who performs any labor or work or furnishes material to an original contractor or any subcontractor, in carrying forward, performing, or completing the contract, has a lien to secure the payment thereof upon the oil and gas lease or leasehold estate or, in the event there is no lease or estate, any mineral estate, the oil or gas produced therefrom and the proceeds thereof, and upon all material located thereon or used in connection therewith.

(B) The lien, insofar as it extends to oil or gas or the proceeds of the sale of oil or gas, is not effective against any purchaser or pipe line carrier of such oil or gas until a copy of the affidavit provided for in section 1311.06 of the Revised Code is delivered to such purchaser or pipe line carrier by certified mail.

(C) To the extent not inconsistent with this section, the lien provided by this section is governed by this chapter, and shall be perfected and enforced as other liens as provided by this chapter, except as follows:

(1) No owner, part owner, or lessee who contracts for labor or work to be performed or materials furnished for an improvement need prepare, provide, or record a notice of commencement pursuant to section 1311.04 of the Revised Code.

(2) No subcontractor or material supplier who performs work or labor upon or furnishes material in furtherance of an improvement need prepare, provide, or serve a notice of furnishing pursuant to section 1311.05 of the Revised Code.

(3) The affidavit required to be made and filed by an original contractor, subcontractor, material supplier, or laborer under section 1311.06 of the Revised Code to claim a lien under this section need not include the first date that the lien claimant performed any labor or work or furnished any material to the improvement giving rise to the claimant's lien.

(4) For the purpose of determining issues of priority, liens created under this section are effective from the date the first visible work or labor is performed or the first materials are furnished at the site of the improvement.

(5) An owner, part owner, or lessee may request from an original contractor an affidavit setting forth the name and address of, a description of labor or work performed or materials furnished by, and the total amount of the contract and the balance owed to, all unpaid laborers, subcontractors, and material suppliers providing labor or work or furnishing material for the improvement, and the serving of the affidavit after such a request shall be a condition precedent to any right by the original contractor to file a lien under this section. If an owner, part owner, or lessee has not made a request under this division, the original contractor need not serve an affidavit as provided in this division to file a lien under this section.

(6)(a) An owner, part owner, or lessee who receives an affidavit pursuant to division (C)(5) of this section or a notice pursuant to division (C)(6)(c) of this section may make payment jointly to the original contractor and any laborers, subcontractors, and material suppliers who are listed in such an affidavit or who serve such a notice for the amount shown to be unpaid by such affidavit and notices or may require the original contractor to obtain lien waivers from any such persons prior to making payment to the original contractor.

(b) No person who fails to serve the owner, part owner, or lessee with a notice pursuant to division (C)(6)(c) of this section and who is omitted from an affidavit provided to the owner, part owner, or lessee pursuant to division (C)(5) of this section shall have a right to file a lien pursuant to this section if the owner has paid the full amount due on the contract, including payment to the parties listed on the affidavit or from whom notices were received either in the full amount due to such parties or in such lesser amount as represents their pro-rata portion of the full amount of the contract with the original contractor.

(c) Any laborer, subcontractor, or material supplier may serve upon the owner, part owner, or lessee a notice in writing, which notice shall be such as will inform the owner, part owner, or lessee of the improvement, of the nature of the work performed or to be performed, the materials furnished or to be furnished, the amount due or to become due therefor, the identity of the person with whom such laborer, subcontractor, or material supplier has contracted, and the identity of the well, oil derrick, oil tank, or leasehold production pipe line, the permit number, and the county upon which such work was or is to be performed or materials were or are to be furnished.

(7) The provisions of division (B) of section 1311.15 of the Revised Code shall be applicable with respect to payments to any subcontractors, material suppliers, or laborers identified on the affidavit provided in division (C)(5) of this section.

1311.03. Lien upon street, turnpike, road, sidewalk, way, drain, ditch or sewer.

Any person who performs labor or work or furnishes material, for the construction, alteration, or repair of any street, turnpike, road, sidewalk, way, drain, ditch, or sewer by virtue of a private contract between the person and the owner, part owner, or lessee of lands upon which the same may be constructed, altered, or repaired, or of lands abutting thereon, or as subcontractor, laborer, or material supplier, performs labor or work or furnishes material to such original contractor or to any subcontractor in carrying forward or completing such contract, has a lien for the payment thereof against the lands of the owner, part owner, or lessee, upon which the street, turnpike, road, sidewalk, way, drain, or sewer is constructed or upon which any such street, turnpike, road, sidewalk, way, drain, ditch, or sewer abuts, as provided in section 1311.02 of the Revised Code.

1311.04. Recording notice of commencement.

(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 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 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, 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, material supplier, or laborer.

(E) Within ten days after the date a subcontractor, 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, material supplier, or laborer has a direct contract, the original contractor shall serve a copy of the notice of commencement to the requesting subcontractor, material supplier, or laborer.

(F) Within ten days after the date a subcontractor, 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, material supplier, or laborer has a direct contract, the subcontractor shall serve a copy of the notice of commencement upon the requesting subcontractor, 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 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 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 material supplier. The owner, part owner, or lessee who fails to serve the notice pursuant to this section is liable to any subcontractor or 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, 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, 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, material supplier, or laborer who made the request for all costs incurred by the subcontractor, 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, material supplier, or laborer with whom 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 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 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 the duty to pay the original contractor's subcontractors, material suppliers, and laborers for labor or work performed or materials furnished pursuant to a contract directly with the original contractor;

(b) Obligating an owner, part owner, or lessee to pay for work or labor performed or materials furnished by subcontractors, 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 a home construction contract as defined in section 1311.011 of the Revised Code, except that when a lending institution as defined in division (A)(3) of section 1311.011 of the Revised Code requires that a notice of commencement be recorded as part of the financing for a home construction contract, which is secured in whole or in part by a mortgage on real estate upon which the improvements are to be constructed, the owner, part owner, or lessee may file a notice of commencement pursuant to this section by recording the notice of commencement in the county recorder's office of the county where the owner, part owner, or lessee's property is located. If the property is located in more than one county, the owner, part owner, or lessee shall record the notice of commencement in the county recorders' office of each county in which the property is located.

If the owner, part owner, or lessee files a notice of commencement pursuant to this division, the attachment, continuance, and priority provisions of section 1311.13 of the Revised Code apply to that improvement, but the notice of furnishing requirements specified in section 1311.05 of the Revised Code do not apply to that improvement.

(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, 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 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 the subcontractor's or material supplier's lien rights.

(S) A notice of commencement filed as provided herein expires six years after its filing date unless the notice of commencement or amendments made to the notice of commencement specify otherwise.

1311.05. Subcontractor or materialman to serve notice of furnishing.

(A) Except as provided in section 1311.04 of the Revised Code and this section, a subcontractor or material supplier who performs labor or work upon or furnishes material in furtherance of an improvement to real property and who wishes to preserve the subcontractor's or material supplier's lien rights shall serve a notice of furnishing, if any person has recorded a notice of commencement in accordance with section 1311.04 of the Revised Code, upon the owner's, part owner's, or lessee's designee named in the notice of commencement or amended notice and the original contractor under the original contract pursuant to which the subcontractor or material supplier is performing labor or work or furnishing materials, as named in the notice of

commencement or amended notice and at the address listed in the notice or amended notice at any time after the recording of the notice of commencement or amended notice but within twenty-one days after performing the first labor or work or furnishing the first materials or within the extended time period provided for in division (I) or (J) of section 1311.04 of the Revised Code. If an owner, part owner, or lessee has not named a designee in the notice of commencement or amended notice or if the designee has died or otherwise has ceased to exist, the subcontractor or material supplier shall serve the notice of furnishing upon the owner, part owner, or lessee named in the notice of commencement. If no designee is named or if the designee has died or otherwise has ceased to exist, and if more than one owner is named in the notice of commencement, service of the notice of furnishing to the first owner, part owner, or lessee named in the notice of commencement is sufficient. No original contractor has to serve a notice of furnishing to preserve lien rights arising from a contract with an owner, part owner, or lessee. No material supplier who is in direct privity of contract with an owner, part owner, or lessee has to serve a notice of furnishing upon the owner, part owner, or lessee or designee in order to preserve the material supplier's lien rights. No subcontractor or material supplier who is in direct privity of contract with the original contractor has to serve a notice of furnishing upon the original contractor in order to preserve the subcontractor's or material supplier's lien rights.

If any person has recorded a notice of commencement in accordance with section 1311.04 of the Revised Code for an improvement involving a single- or double-family dwelling and if that notice states that multiple original contractors are involved in the improvement, a subcontractor or material supplier does not have to serve a notice of furnishing upon any original contractor in order to preserve the subcontractor's or material supplier's lien rights. A subcontractor or material supplier who serves a notice of furnishing in conformity with this section does not have to serve an amended notice of furnishing on any party if the subcontractor or material supplier receives an amended notice of commencement subsequent to service of the subcontractor's or material supplier's notice of furnishing. If a subcontractor or material supplier serves a notice of furnishing based upon information contained in any notice of commencement or amended notice of commencement relative to the improvement for which the subcontractor or material supplier performs labor or work or furnishes material, the notice of furnishing is deemed effective even if the notice of commencement already has been amended or is amended in the future.

If a lender is named in the notice of commencement or amended notice, a subcontractor or material supplier may serve a copy of the notice of furnishing upon the lender at the address listed in the notice or amended notice, provided that no subcontractor or material supplier is required to serve a copy of the notice of furnishing upon the lender to preserve the subcontractor's or material supplier's lien rights. The receipt of a notice of furnishing by a lender imposes no duty upon the lender by implication or otherwise with respect to the disbursement of any loan proceeds or the payment to any subcontractor, material supplier, or any other person.

(B) The notice of furnishing shall be in substantially the following form:

"Notice of Furnishing

(For use in connection with improvements to property other than public improvements)

To:

(Name of owner, part owner, or lessee or designee from the notice of commencement)

.....

(Address from the notice of commencement)

To:

(Name of original contractor from notice of commencement)

(Address of original contractor from notice of commencement)

Please take notice that the undersigned is performing certain labor or work or furnishing certain materials to(name and address of other contracting party)..... in connection with the improvement to the real property located at The labor, work, or materials were performed or furnished first or will be performed or furnished first on (date).

WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE OHIO MECHANICS' LIEN LAW. IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS AND DUTIES UNDER THESE STATUTES YOU SHOULD SEEK LEGAL ASSISTANCE TO PROTECT YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE IMPROVEMENTS TO YOUR PROPERTY.

.....
(Name and address of lien claimant)

By
(Name and capacity of party signing for lien claimant)

.....
(Address of party signing)

Date:"

(C) The description of the location of the property required in the notice of furnishing is sufficient if it reasonably identifies the real property upon which the labor or work is performed or for which the material is furnished.

(D)(1) Except as provided in division (D)(2) of this section, a notice of furnishing served more than twenty-one days after a subcontractor or material supplier who is required by this section to serve a notice of furnishing, first performed labor or work or furnished material at the site of the improvement preserves the subcontractor's or material supplier's lien rights for amounts owing for labor and work performed and materials furnished within the twenty-one-day period immediately preceding service of the notice of furnishing and thereafter, but does not revive any prior lien rights for labor or work performed or materials furnished prior to the twenty-one days immediately preceding service of the notice of furnishing.

(2) A notice of furnishing served within the applicable period provided for in section 1311.04 of the Revised Code preserves the subcontractor's or material supplier's lien rights for amounts owing for labor and work performed and materials furnished from the date the labor or work was first performed or materials were first furnished through the date of service of the notice of furnishing and thereafter. A notice of furnishing served after the applicable period provided for in section 1311.04 of the Revised Code does not revive any prior lien rights for labor or work performed or materials furnished prior to the twenty-one days immediately preceding service of the notice of furnishing.

(E) 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.

(F) A notice of furnishing, even if served upon a mortgagee of real property to be improved, does not constitute a written notice of a lien or encumbrance under section 5301.232 or a written notice of a claim of a right to a mechanics' lien under division (B)(5) of section 1311.011 of the Revised Code.

(G) No laborer must serve a notice of furnishing in accordance with this section to preserve lien rights.

(H) No subcontractor or material supplier who performs labor or work upon or furnishes material in furtherance of an improvement has to serve a notice of furnishing in accordance with this section in order to preserve the subcontractor's or material supplier's lien rights if the owner, part owner, or lessee who contracted for the labor, work, or materials fails to record a notice of commencement in accordance with section 1311.04 of the Revised Code.

(I) If a notice of commencement is filed as provided in division (O) of section 1311.04 of the Revised Code, the subcontractors and material suppliers working on or providing materials to the improvement shall not be required to serve notices of furnishing as provided in division (A) of section 1311.05 of the Revised Code hereinabove in order to preserve lien rights.

1311.06. Affidavit—time period for filing—contents.

(A) Any person, or the person's agent, who wishes to avail self of sections 1311.01 to 1311.22 of the Revised Code, shall make and file for record in the office of the county recorder in the counties in which the improved property is located, an affidavit showing the amount due over and above all legal setoffs, a description of the property to be charged with the lien, the name and address of the person to or for whom the labor or work was performed or material was furnished, the name of the owner, part owner, or lessee, if known, the name and address of the lien claimant, and the first and last dates that the lien claimant performed any labor or work or furnished any material to the improvement giving rise to the claimant's lien. If the affidavit is recorded, the omission or inaccuracy of any address in the affidavit does not affect its validity. The affidavit may be verified before any person authorized to administer oaths, whether agent for the owner, part owner, lessee, lien claimant, or an interested or other party.

(B) The affidavit shall be filed within one of the following periods:

(1) If the lien arises in connection with a one- or two-family dwelling or in connection with a residential unit of condominium property as defined in Chapter 5311. of the Revised Code, within sixty days from the date on which the last labor or work was performed or material was furnished by the person claiming the lien;

(2) If the lien arises under section 1311.021 of the Revised Code, within one hundred twenty days from the date on which the last labor or work was performed or material was furnished by the person claiming the lien;

(3) If the lien is one not described in division (B)(1) or (2) of this section, within seventy-five days from the date on which the last of the labor or work was performed or material was furnished by the person claiming the lien.

(C) The affidavit may be in the following form:

"AFFIDAVIT FOR MECHANICS' LIEN.

State of Ohio,

County of, ss:

....., whose address is, being first duly sworn, says that, the lien claimant, furnished certain material or performed certain labor or work in the furtherance of improvements located on or removed to the land hereinafter described, in pursuance of a certain contract, with, the owner, part owner, lessee, original contractor, subcontractor, or other person, as the case may be, whose address is The first of the labor or work was performed or material was furnished on the day of, (year). The last of the labor or work was performed or material was furnished on the day of,(year), and there is justly and truly due, the lien claimant, therefor from, the owner, part owner, lessee, original contractor, subcontractor, or other person, as the case may be, over and above all legal setoffs, the sum of dollars, for

which amount, the lien claimant, claims a lien on the land, building, or leasehold, of which is or was the owner, part owner, or lessee, as the case may be, which property is described as follows:

.....
.....
.....
.....

Sworn to before me and subscribed in my presence this day of, (year).

(D) For purposes of this section, the description of the property is sufficient if made in accordance with division (B)(1) of section 1311.04 of the Revised Code.

(E) The county recorder shall indorse upon every affidavit the date and hour of its filing, and record it in the official records. No exemptions apply against any lien under this chapter.

(F) One or more laborers may authorize an agent to prepare, execute, file, and serve the affidavit required by this section. The affidavit may set forth the claims of one or more laborers, provided that the affidavit separately itemizes the claim of each laborer and may set forth claims for wages that are contractually due but are unpaid.

Amended by 130th General Assembly File No. 41, HB 72, §1, eff. 1/30/2014.

1311.07. Copy of affidavit to be served on owner or lessee.

Any person filing an affidavit pursuant to section 1311.06 of the Revised Code shall serve a copy of the affidavit on the owner, part owner, or lessee of the improved property or his designee, within thirty days after filing the affidavit. If the affidavit cannot be served in accordance with section 1311.19 of the Revised Code, then the person shall serve the copy by posting it in some conspicuous place on the premises of the improved property within ten days after the expiration of the thirty days.

1311.08. Lien when improvement situated on same or contiguous or adjacent lots.

Where an improvement consists of two or more buildings united together, situated on the same lot or upon contiguous or adjacent lots, or of separate buildings upon contiguous or adjacent lots, or where work or labor has been performed or material has been furnished for improvements which are located on separate tracts or parcels of land but operated as an entire plant or concern, and erected under one general contract, the lien for the labor or work performed or material furnished attaches to all such improvements, together with the land upon, around, or in front of which such labor or work is performed or material is furnished, the same as provided in sections 1311.02 and 1311.03 of the Revised Code in case of a single improvement, and it is not necessary to file a separate lien for each improvement.

Provided that where a lien attaches pursuant to this chapter to contiguous or adjacent lots, on which lots separate dwelling units designed to be separately sold have been or are being constructed, except with respect to any person who performs labor or work or furnishes material for the construction, alteration, or repair of any street, turnpike, road, sidewalk, way, drain, ditch, or sewer by virtue of a private contract between him and the owner, part owner, or lessee of lands upon which the same may be constructed, altered, or repaired, or of lands abutting thereon, the lien rights on any lot on which all construction has been completed and which has been conveyed to a purchaser for value shall terminate either sixty days from the date on which the last labor or work was performed or material furnished in connection with the construction on any of such lots, or sixty days after the instrument of conveyance to the purchaser separating the lot from the contiguous or adjacent lots is filed for record, whichever

date is earlier, unless and except for lien rights which are evidenced by an affidavit or affidavits filed for record in accordance with section 1311.06 of the Revised Code before the expiration of the sixty-day period.

1311.09. Lien when contracting person has no title to land improved.

Any person performing labor or work or furnishing material for the erection of a new building or structure upon land to which the person contracting for the erection has no legal title or to which the title is defective, has a lien therefor upon the building or structure, and the forfeiture or surrender of any title, claim of title, or equitable interest by the contracting person to the land does not defeat the lien upon the building or structures of the person performing labor or work or furnishing material. In case the property covered by a lien is held by the vendee in a land contract or by a lessee, and he surrenders or forfeits his rights thereunder, the person holding the liens may be subrogated to the rights of the vendee or lessee, as his rights existed immediately before the surrender or forfeiture, by performing the covenants contained in the contract or lease within thirty days after the lien claimant has actual notice of the forfeiture. Any lien claimant may pay off any prior recorded lien, encumbrance, or mortgage and then is subrogated to all the rights of the prior holder of the lien, encumbrance, or mortgage.

1311.10. Presumptions.

(A) Any person who contracts for an improvement to real property which gives rise to lien rights under sections 1311.01 to 1311.22 of the Revised Code is presumed to be the authorized agent of all part owners of the real property, except when the relationship between the person contracting for the improvement and the other part owners is that of lessee and lessor or sublessee and sublessor.

(B) Any person who contracts for improvements provided in a home construction contract, as defined in section 1311.011 of the Revised Code, is presumed to be the agent for his spouse.

(C) The presumptions established by this section may be overcome only by clear and convincing evidence.

1311.11. Notifying lienholder to commence suit.

(A)(1) The owner, part owner, lessee, mortgagee, or any other person with an interest in real property upon which a lien has been taken, or any original contractor or subcontractor who has provided a bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security in accordance with division (C) of this section, may notify the lienholder to commence suit on the lien, by written notice delivered to the lienholder in one of the following manners:

- (a) At the address of the lienholder as shown in the affidavit of lien;
- (b) Through his agent indicated on the affidavit of lien;
- (c) At any later address of the lienholder that has been delivered in writing to the owner, part owner, lessee, mortgagee, other person with an interest in the real property, original contractor, or subcontractor.

Except as otherwise provided in this section, the notice to commence suit shall be served by the sheriff of the county in which the land upon which the lien has been taken is situated, upon payment of the same mileage and fees as provided by law with respect to the service of summons. Except as otherwise provided in this section, if the address of the person to be served, as shown on the affidavit of lien or other writing presented by the person seeking service of the notice to commence suit, is outside the county in which the land is located, but

within the state, the sheriff shall forward the notice to commence suit to the sheriff of the county in which the address of the person to be served is located, for service by such sheriff.

(2) At the request of the person seeking service of the notice to commence suit, the sheriff may send the notice by certified mail, return receipt requested, to the address of the lienholder or the lienholder's agent, whether that address is within the county in which the land is located or elsewhere. If the address of the person to be served is outside the state, the sheriff shall send the notice by certified mail, return receipt requested.

If the notice is sent by certified mail, return receipt requested, service of the notice is deemed completed when a return receipt has been received indicating the delivery of the notice. If a return receipt shows a failure or refusal of delivery, service is deemed completed after the sheriff mails a second copy of the notice by ordinary mail, provided that the ordinary mail envelope is not returned by the postal authorities within fourteen days of the date of mailing with an endorsement showing failure of delivery.

(3) If service cannot be made at the address shown on the affidavit of lien or other writing presented by the person seeking service of the notice to commence suit, and if the lienholder or his agent cannot be located by diligent search, the notice to commence suit may be served by publication once each week for six consecutive weeks in a newspaper of general circulation in the county in which the land is located. Upon completion of service in all cases, a copy of the notice shall be furnished to the owner, part owner, lessee, mortgagee, or other person requesting service, which copy shall have the return of the sheriff endorsed on it, and in addition, in cases of service by certified mail or by publication, the copy shall have attached to it the return receipt or an affidavit that service by publication has been completed.

(B) Within thirty days after service is completed, the person who sought service shall do all of the following:

(1) Execute an affidavit setting forth the manner in which service was accomplished;

(2) Attach to the affidavit a copy of the notice to commence suit, with the sheriff's return endorsed on the notice or with a certified mail return receipt indicating the service or attempted service;

(3) File the items with the recorder of the county in which the property is located.

The recorder shall index and record the notice in the same manner and receive the same fees as for releases of mortgages and other liens.

If the lienholder fails to commence suit upon the lien within sixty days after completion of service upon him of the notice to commence suit, or if the action is commenced but dismissed with prejudice before adjudication, the lien is void and the property wholly discharged from the lien. When a lien is void by reason of failure to commence suit within sixty days after service of the notice to commence suit, the claim upon which the lien was founded is not prejudiced by the failure, except for the loss of the lien as security for the claim.

(C)(1) Before or after suit has been commenced upon a lien, and whether or not a notice to commence suit has been served, a bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or, subject to this division, other reasonable security may be provided in double the amount of the claim secured by the lien or, if the claim secured by the lien exceeds five thousand dollars, in the amount of one and one-half times the amount of the claim, conditioned upon payment of any judgment and costs. A bond shall be drawn in favor of the lienholder and executed by sufficient sureties, if required. Other reasonable security may be provided only with the consent of the lienholder.

An application shall be made to the court of common pleas for approval of a bond, cash deposit, general obligation of any state government or of the United States government, obligation

insured by an agency of the United States government, or other reasonable security. The bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security shall be filed with the application, and notice of a hearing on the application shall be given to the lienholder or his agent. If the application is filed before suit is commenced on the lien, the notice of hearing shall be served on the lienholder or his agent in the same manner as provided in division (A) of this section for service of the notice to commence suit. If the application is filed after suit is commenced, the notice of hearing shall be given in the same manner as a notice of hearing on motions or other applications before the court.

(2) At the hearing on the application, the only issues to be determined are the sufficiency of the bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security, and, if the security is not a bond, cash deposit, general obligation of any state government or of the United States government, or obligation insured by an agency of the United States government, whether the lienholder has consented to the security and the security is reasonable. If the court finds the bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security sufficient and, if the security is not a bond, cash deposit, general obligation of any state government or of the United States government, or obligation insured by an agency of the United States government, that the lienholder has consented to the security and that the security is reasonable, it shall make an entry of approval. If a bond is approved, the court shall order that the bond be retained in the file. If a cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security is approved, the court shall enter an order that it considers appropriate relative to the manner in which the cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security shall be secured. During the pendency of a suit upon the lien, the court may enter an order that the amount of other reasonable security is to be increased or decreased or an order that action is to be taken with respect to the security that the court deems appropriate.

(3) As of the date of the entry of approval, the security of the bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security shall be substituted for the security of the lien, and the lien is void and the property wholly discharged from the lien. If an action on the lien has been or is commenced and a bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security has been or is provided in accordance with this section, the action on the lien is terminated automatically, the land is freed from the lien, and the action on the lien may proceed as an action on the bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security, through, if appropriate, a supplemental pleading bringing in as additional parties sureties on the bond.

A bond is discharged and the sureties released, or a cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security provided is released, upon failure of the lienholder to commence suit within the time allowed pursuant to division (B) of this section, or if

a suit on the security is dismissed with prejudice to the plaintiff or judgment is entered against the plaintiff, or if judgment is entered in favor of the plaintiff upon payment of the judgment with costs. The court may direct that costs and a judgment in favor of the plaintiff in a suit be paid from a cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security, and may direct, if necessary, that other reasonable security be sold and the proceeds of the sale be applied to the judgment and costs.

1311.12. When lien for furnishing materials arises.

(A) A mechanic's lien for furnishing materials arises under sections 1311.01 to 1311.22 of the Revised Code only if the materials are:

(1) Furnished with the intent, as evidenced by the contract of sale, the delivery order, delivery to the site by the claimant or at the claimant's direction, or by other evidence, that the materials be used in the course of the improvement with which the lien arises;

(2) Incorporated in the improvement or consumed as normal wastage in the course of the improvement;

(3) Specifically fabricated for incorporation in the improvements and not readily resalable in the ordinary course of the fabricator's business even if not actually incorporated in the improvement;

(4) Used for the improvement or for the operation of machinery or equipment used in the course of the improvement and not remaining in the improvement, subject to diminution by the salvage value of those materials; or

(5) Tools or machinery used on the particular improvement, subject to division (C) of this section.

(B) The delivery of materials to the site of the improvement, whether or not by the claimant, creates a conclusive presumption that the materials were used in the course of the improvement or were incorporated into the improvement.

(C) A mechanics' lien for furnishing tools or machinery which arises under division (A)(5) of this section is limited to either of the following:

(1) If the tools or machinery are rented, the lien is for the reasonable rental value for the period of actual use and any reasonable period of nonuse taken into account in the rental contract.

(2) If the tools or machinery are purchased, the lien is for the price, but the lien only arises if the tools or machinery were purchased for use in the course of the particular improvement and have no substantial value to the purchaser after the completion of the improvement on which they were used.

(D) All of the deliveries or the sales, or both, by a material supplier of materials, including tools and machinery to or for an improvement, as ordered or purchased by an owner, original contractor, or subcontractor, shall give rise to one mechanics' lien for the unpaid portion of the sales to that owner, original contractor, or subcontractor. Nothing in this division shall prohibit the filing of more than one lien if a material supplier sold materials to more than one owner, original contractor, or subcontractor for the same improvement.

1311.13 Attaching of liens—continuance and priority.

(A)(1) All liens under sections 1311.01 to 1311.22 of the Revised Code for labor or work performed or materials furnished to the same improvement prior to the recording of the notice of commencement pursuant to section 1311.04 of the Revised Code are effective from the date the first visible work or labor is performed or the first materials are furnished by the first original

contractor, subcontractor, material supplier, or laborer to work, labor on, or provide materials to the improvement.

(2) Except as provided in division (A)(3) of this section, liens under sections 1311.01 to 1311.22 of the Revised Code for labor or work performed or materials furnished after the recording of a notice of commencement pursuant to section 1311.04 of the Revised Code are effective from the date of the recording of the notice of commencement.

(3) Notwithstanding division (A)(2) of this section, if there is a valid and recorded lien with an effective date described in division (A)(1) of this section which has not been released at the time a lien is filed by a laborer after the recording of the notice of commencement or if a valid lien against the improvement pursuant to division (A)(1) of this section is filed subsequent to the filing of a laborer's lien, the lien of the laborer is effective from the date the first visible labor or work was performed or materials were furnished by the original contractor, subcontractor, material supplier, or laborer at the site of the improvement.

(B)(1) Except for the liens of laborers as provided in division (B)(2) of this section, a lien securing the claim of a claimant who has performed labor or work or furnished materials both prior to and after the recording of the notice of commencement pursuant to section 1311.04 of the Revised Code has two effective dates. That portion of the lien which arises from labor or work performed or materials furnished prior to the filing of the notice of commencement has the effective date described in division (A)(1) of this section and that portion of the lien which arises from labor or work performed or materials furnished on or after the filing of the notice of commencement has the effective date described in division (A)(2) of this section. Any payment received by the lien claimant both before and after the filing of a lien shall be applied first to the labor or work performed or materials furnished prior to the filing of the notice of commencement, and then to labor or work performed or materials furnished on and after the filing of the notice of commencement.

(2) A lien filed by a laborer for labor or work performed both prior to and after the recording of the notice of commencement pursuant to section 1311.04 of the Revised Code has one effective date as described in division (A)(1) of this section.

(C) Liens under sections 1311.01 to 1311.22 of the Revised Code continue in force for six years after an affidavit is filed in the office of the county recorder under section 1311.06 of the Revised Code. If an action is brought to enforce the lien within that time, the lien continues in force until final adjudication thereof.

(D) If several liens are obtained by several persons upon the same improvement they have no priority among themselves, except as follows:

(1) Liens which have an effective date described in division (A)(1) of this section have priority over all other liens, except for liens described in divisions (A)(3), (B)(2), or (D)(2) of this section, to the extent of the value of the work and labor performed and materials furnished prior to the recording of the notice of commencement pursuant to section 1311.04 of the Revised Code.

(2) Liens filed by laborers have priority over all other liens whether the labor or work was performed before or after the recording of the notice of commencement pursuant to section 1311.04 of the Revised Code.

(E)(1) Except as provided in division (E)(2) of this section, liens which have an effective date described in division (A)(1) of this section shall be preferred to the extent of the value of the labor or work performed or materials furnished prior to the recording of the notice of commencement, to all other titles, liens, or encumbrances which may attach to or upon the improvement or to or upon the land upon which it is situated, which either shall be given or recorded subsequent to the effective date of the liens described in division (A)(1) of this section.

(2) Liens recorded by laborers which have an effective date described in division (A)(1) or (3) of this section shall be preferred to all other titles, liens, or encumbrances which may attach to or upon the improvement or to or upon the land upon which it is situated which are given or recorded subsequent to the effective date of such laborers' liens.

(F) Liens which have an effective date described in division (A)(2) of this section shall be preferred to all other titles, liens, or encumbrances which may attach to or upon such improvement or to or upon the land upon which it is situated, which either are given or recorded subsequent to the recording of the notice of commencement.

(G) Unless otherwise stipulated in a mortgage securing financing for the construction of an improvement, if a mortgage securing financing for the construction of an improvement and notice of commencement for said improvement are recorded on the same day, the mortgage shall be considered recorded before the notice of commencement for purposes of priority described in this section.

(H) The recorder may destroy the record of all mechanics' liens which have been recorded for a period of ten years or longer.

1311.14. Priority of mortgage lien.

(A) Except as provided in this section, the lien of a mortgage given in whole or in part to improve real estate, or to pay off prior encumbrances thereon, or both, the proceeds of which are actually used in the improvement in the manner contemplated in sections 1311.02 and 1311.03 of the Revised Code, or to pay off prior encumbrances, or both, and which mortgage contains therein the correct name and address of the mortgagee, together with a covenant between the mortgagor and mortgagee authorizing the mortgagee to do all things provided to be done by the mortgagee under this section, shall be prior to all mechanic's, material supplier's, and similar liens and all liens provided for in this chapter that are filed for record after the improvement mortgage is filed for record, to the extent that the proceeds thereof are used and applied for the purposes of and pursuant to this section. Such mortgage is a lien on the premises therein described from the time it is filed for record for the full amount that is ultimately and actually paid out under the mortgage, regardless of the time when the money secured thereby is advanced.

Any laborer or material supplier who claims or at any time can claim a right of lien on the premises for any labor or work performed or to be performed or for material furnished or to be furnished for the improvement, may serve a written notice on the mortgagee, which notice shall show the kind and nature of the labor or work performed or to be performed, or both, and of the material furnished or to be furnished, or both, and the amount claimed or to be claimed therefor, and a description of the premises upon which the labor or work has been or is to be performed or to which the material has been or is to be furnished, and the amount claimed therefor.

(B) The mortgagee need not pay out any of the mortgage fund for fifteen days after filing the mortgage. At the end of such period, the mortgagee may refuse to go forward with the loan or to pay out the fund, in which case, if no funds have been advanced, the mortgagee shall make, execute, and deliver to the mortgagor, or to the county recorder to be recorded, a proper release of the mortgage, but if the mortgagee elects to complete the loan, the mortgagee shall, in order to obtain the priority set forth in this section, distribute the mortgage fund in the following order:

(1) The mortgagee may at any time pay off the prior encumbrance, or withhold the amount thereof for that purpose.

(2) Out of the residue of the fund, the mortgagee may at any time retain sufficient funds to complete the improvement, according to the original plans, specifications, and contracts, and within the original contract price.

(3) The mortgagee may from time to time pay out on the owner's order, directly to the original contractor or subcontractor, or directly to the owner if the owner is the owner's own contractor, such sums as the owner certifies to be necessary to meet and pay labor payrolls for the improvement.

(4) The mortgagee shall pay on the order of the owner, the accounts of the material suppliers and laborers who have filed with the mortgagee a written notice as provided in this section, the amounts due for labor or work then performed and material then furnished for the improvement; and shall retain out of the mortgage fund such money to become due as is shown by the notice served and shall hold such money, and shall pay on the order of the owner, the amounts due to such persons who have served such notices, if the mortgagee has sufficient money in the mortgagee's hands to do so and also to complete the improvement; but if the mortgagee has funds in the mortgagee's hands insufficient to pay all such laborers and material suppliers in full and to complete the improvement, the mortgagee shall retain sufficient money to complete the improvement and to distribute the balance pro rata among the material suppliers and laborers who have filed such notices.

(5) If the owner refuses to issue an order to pay the amount of the notice filed, the mortgagee shall retain the whole amount claimed until the proper amount has been agreed upon or judicially determined, provided that the mortgagee may withhold sufficient funds to complete the improvement.

(6) The mortgagee shall pay out on the owners' order, directly to material suppliers or laborers who have performed labor or work or furnished material for the improvement.

(7) The mortgagee shall pay the balance of the mortgage fund after the improvement is completed to the owner, or to whomsoever the owner directs.

In case the mortgagee pays out the fund otherwise than as provided in this section, then the lien of the mortgage to the extent that the funds had been otherwise paid, is subsequent to liens of original contractors, subcontractors, material suppliers, and laborers; but in no case is such a mortgagee obligated to pay or liable at law for more than the principal of the mortgage.

All payments and distributions made by the mortgagee as provided in this section shall be considered the same as if paid to the owner, part owner, lessee, or mortgagor under the mortgage, and as if paid to the original contractor, and when paid pursuant to this section there is no further liability on the part of the mortgagee. This chapter does not require the mortgagee to ascertain by affidavit or otherwise the respective claims of original contractors, subcontractors, laborers, or material suppliers, or to determine priorities among lien claimants. The mortgagee is not responsible for a mistake of the owner in determining priorities, or for any failure of the payee properly to distribute funds paid on the written order of the owner.

(C) Any original contractor, subcontractor, material supplier, or laborer may at any time serve on any mortgagee a written request demanding to know the exact balance of the mortgage fund in the mortgagee's possession and the aggregate amount included in the notices filed with the mortgagee at the time of the receipt of such notice. The mortgagee shall correctly inform the person serving the notice of the exact balance and the aggregate amount included in the notices filed. If the mortgagee fails to inform the original contractor, subcontractor, material supplier, or laborer serving the written demand of the exact balance of the mortgage fund in the mortgagee's possession at the time of the receipt of the notice, the mortgagee is liable to the original contractor, subcontractor, material supplier, and laborer making such demand, each time the mortgagee fails to comply with such demand, in the sum of one hundred dollars.

This section, as to mortgages contemplated by this section, controls over all other sections of the Revised Code relating to mechanic's, material supplier's, contractor's, subcontractor's, laborer's, and all liens that can be had under this chapter, and shall be liberally construed in favor of such mortgagees, a substantial compliance by such mortgagees being sufficient.

1311.15. Superiority of liens—assignment—direct payment of claim of subcontractor, materialman or laborer.

(A) The lien of a subcontractor is superior to any already taken or to be taken by the original contractor in respect of the same labor, work, or material, and the liens of laborers, material suppliers, and subcontractors to an original contractor or subcontractor, are superior to any lien already taken or to be taken by such original contractor or subcontractor indebted to them in respect of such labor, work, or material. An assignment or transfer by the original contractor or subcontractor, of the contract with the owner or original contractor, as well as all proceedings in attachment, or otherwise, against the original contractor or subcontractor, to subject or encumber the original contractor's or subcontractor's interest in such contract, is subject to the claims of every laborer, subcontractor, or material supplier who performs any labor or work or furnishes any material in furtherance of any improvement in accordance with this chapter.

(B)(1) An owner, part owner, lessee, or public authority may pay directly the claim of any subcontractor or material supplier who serves a notice of furnishing pursuant to section 1311.05 or 1311.261 of the Revised Code, or the claim of any laborer. If the owner, part owner, lessee, or public authority pays such claim, the owner, part owner, lessee, or public authority has a right to a setoff or credit, in an amount equal to the amount paid, against the original contractor or principal contractor who employed the subcontractor, material supplier, or laborer paid by the owner, part owner, lessee, or public authority under division (B)(1) of this section.

(2) A principal contractor, an original contractor, or a subcontractor may pay directly the claim of any subcontractor or material supplier who serves a notice of furnishing pursuant to section 1311.05 or 1311.261 of the Revised Code, or the claim of any laborer. A principal contractor, original contractor, or subcontractor who pays such a claim has a right to a setoff or credit, in an amount equal to the amount paid, against the subcontractor who employed the subcontractor, material supplier, or laborer paid by the principal contractor, original contractor, or subcontractor under division (B)(2) of this section.

(C) The failure of an original or principal contractor, subcontractor, material supplier, or laborer to properly exercise the rights provided by this chapter does not limit the right to pursue any other legal or equitable remedy.

1311.16. Proceeding by person holding mechanic's lien.

Any person holding a mechanic's lien, in addition to the remedies provided for in sections 1311.01 to 1311.22 of the Revised Code, may proceed by petition, as in other cases of liens, against the owner and all other persons interested, either as lienholders or otherwise, in any improvement, or street, turnpike, road, sidewalk, way, drain, ditch, or sewer, as mentioned in section 1311.03 of the Revised Code, and the lot or land on which it stands or to which it may be removed, and obtain such judgment therein for the rent or sale thereof as justice and equity require. When judgment is rendered in the proceeding in favor of the parties succeeding therein, the court may allow reasonable attorney fees to be paid out of the fund realized for lien claimants.

1311.17. Adjustment of claim when owner fails to perform.

When the owner, part owner, or lessee fails to perform his part of the contract, and by reason thereof the other party without his default, is prevented from completely performing his part, he is entitled to a reasonable compensation for as much thereof as he has performed in proportion to the price stipulated for the whole, and the court shall adjust his claim accordingly.

1311.18. Sale of part of premises.

Under section 1311.16 of the Revised Code, if any part of the premises can be separated from the residue and sold without damage to the whole, and if the value thereof is sufficient to satisfy all the claims proved in the case, the court may order a sale of that part, if it is for the best interest of all parties concerned.

1311.19. Service.

(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 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.

1311.20. Damages for neglect or refusal to release lien.

If, after the amount of his lien has been satisfied or adjudged against him in an action thereon, a lienholder fails within thirty days thereafter to cause the lien to be released, such lienholder is liable to the owner, part owner, or lessee for all damages arising therefrom, not exceeding the amount of the lien and costs.

In a county in which the county recorder has determined to use the microfilm process as provided by section 9.01 of the Revised Code, the recorder may require that release of the lien be by separate instrument with acknowledgment as required for the original affidavit. The original instrument bearing the proper endorsement thereon may be used as the separate instrument. The separate instrument release shall be recorded in the book required by section 1311.06 of the Revised Code. The fee for recording shall be that provided by section 317.32 of the Revised Code for satisfaction of a mortgage.

1311.21. Liens are assignable—lien not defeated by taking note or security—notice of claim not yet due—lis pendens.

(A) All liens or claims for liens which may arise or accrue under sections 1311.01 to 1311.22 of the Revised Code are assignable. No such lien shall be defeated or waived by the taking by the lien claimant from any person of any promissory note or of any security for such debt other than upon the real estate itself, in the absence of a written agreement that the taking of such note or such security is a waiver of the lien.

(B) Parties entitled to liens under sections 1311.01 to 1311.22 of the Revised Code, whose claims are not due and payable, may give notice of their intention to claim a lien and may become parties to any suit to enforce a lien, or to institute such suit or proceedings themselves. Their claims shall be allowed, subject to a reduction of interest, if such claims are not due at the time of the rendition of the judgment, but no process shall issue or proceedings be had to enforce a judgment for such claim until the same matures.

(C) The rule of lis pendens does not apply to a mechanics' lien claimant whose lien rights arose or accrued before an action involving the real property which is the subject of that lien became pending pursuant to section 2703.26 of the Revised Code and whose lien is filed within the statutory period but subsequent to the date the action becomes pending pursuant to section 2703.26 of the Revised Code.

1311.22. Liberal construction.

Sections 1311.01 to 1311.22 of the Revised Code are to be construed liberally to secure the beneficial results, intents, and purposes thereof; and a substantial compliance with those sections is sufficient for the validity of the liens under those sections, provided for and to give jurisdiction to the court to enforce the same.

1311.23. Lien upon mines for labor.

A person who performs labor or work in mining coal or removing it from the mines, or other labor or work connected therewith, for a coal or mining company or corporation owning, operating, or leasing coal mines within this state, by virtue of a contract with the company or corporation or its authorized agent, has a lien to secure payment therefor upon the mine thereof, on all its rights as the owner or lessee of the mines, and on all its personal property used in conducting the business of mining coal, whether located at or near the mines or elsewhere.

1311.24. Amended and Renumbered RC 1311.22.

1311.25. Public improvement definitions.

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) "**Material supplier**" includes any person by whom any materials are furnished in furtherance of a public improvement.

(D) "**Laborer**" includes any mechanic, 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.

1311.251. Claim for furnishing materials.

(A) A claim for furnishing materials arises under sections 1311.25 to 1311.32 of the Revised Code only if the materials are:

(1) Furnished with the intent, as evidenced by the contract of sale, the delivery order, delivery to the site by the claimant or at the claimant's direction, or by other evidence, that the materials be used in the course of the public improvement with which the claim arises;

(2) Incorporated in the public improvement or consumed as normal wastage in the public improvement operations;

(3) Specifically fabricated for incorporation in the public improvement and not readily resalable in the ordinary course of the fabricator's business even if not actually incorporated in the public improvement;

(4) Used for the public improvement or for the operation of machinery or equipment used in the course of the public improvement and not remaining in the public improvement, subject to diminution by the salvage of those materials; or

(5) Tools or machinery used on the particular public improvement, subject to division (C) of this section.

(B) The delivery of materials to the site of the public improvement, whether or not by the claimant, creates a conclusive presumption that the materials were used in the course of the public improvement or were incorporated into the public improvement.

(C) A claim for furnishing tools or machinery which arises under division (A)(5) of this section is limited to either of the following:

(1) If the tools or machinery are rented, the claim is for the reasonable rental value for the period of actual use and any reasonable period of nonuse taken into account in the rental contract.

(2) If the tools or machinery are purchased, the claim is for the price, but the claim only arises if the tools or machinery were purchased for use in the course of the particular public improvement and have no substantial value to the purchaser after the completion of the public improvement on which they were used.

(D) All of the deliveries or the sales, or both, by a claimant of materials, including tools and machinery to or for an improvement, give rise to one claim for the unpaid portion of the sales.

1311.252. Notice of commencement—affidavit.

(A) Prior to the performance of any labor or work or the furnishing of any materials in furtherance of a public improvement, the public authority shall prepare a notice of commencement in substantially the form specified in division (B) of this section which shall be made readily available to the public upon request.

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

(1) The name, location, and a number, if any, used by the public authority to identify the public improvement sufficient to permit the public improvement to be identified;

(2) The name and address of the public authority;

(3) The name, address, and trade of all principal contractors;

(4) The date the public authority first executed a contract with a principal contractor for the public improvement;

(5) The name and address of the sureties for all principal contractors;

(6) The name and address of the representative of the public authority upon whom service shall be made for the purposes of serving an affidavit pursuant to section 1311.26 of the Revised Code.

(C) If the notice of commencement is not made available to the public prior to the commencement of work on the public improvement or if the notice of commencement furnished by the public authority contains incorrect information which the claimant relies upon to his detriment, the unavailability of the notice or the incorrect notice shall not adversely affect the rights of any claimant under sections 1311.25 to 1311.32 of the Revised Code.

1311.26. Subcontractor, materialman or laborer may serve affidavit on public authority.

Any subcontractor, material supplier, or laborer who is performing or has performed labor or work or is furnishing or has furnished material for any public improvement provided for in a contract between the public authority and a principal contractor, and under a contract between the subcontractor, material supplier, or laborer and a principal contractor or subcontractor, at any time, not to exceed one hundred twenty days from the performance of the last labor or work or furnishing of the last material, may serve the public authority an affidavit stating the amount due and unpaid for the labor and work performed and material furnished, when the last of the labor or work was performed and when the last of the material was furnished with all credits and setoffs thereon, and the post-office address of the claimant. If a claimant serves an affidavit under this section, the claimant shall serve the affidavit to the representative of the public authority named in the notice of commencement.

One or more laborers may authorize an agent to prepare, execute, file, and serve the affidavit required by this section. The affidavit may set forth the claims of one or more laborers, provided

that the affidavit separately itemizes the claim of each laborer and may set forth claims for wages that are contractually due but are unpaid.

1311.261. Notice of furnishing.

(A)(1) Every subcontractor and material supplier who wishes to exercise the subcontractor's or material supplier's rights under sections 1311.25 to 1311.32 of the Revised Code regarding claims for labor or work performed or materials furnished in furtherance of a public improvement shall serve a notice of furnishing, in accordance with division (B) of this section, on the principal contractor whose contract with the public authority is the contract under which the subcontractor or material supplier is performing labor or work or furnishing materials within twenty-one days after the date that the subcontractor or material supplier first performed labor or work or furnished materials on the site of the public improvement, except that no subcontractor or material supplier who is in direct privity of contract with the principal contractor need provide the notice.

(2) A subcontractor or material supplier may serve the principal contractor with a notice of furnishing pursuant to this section more than twenty-one days after the subcontractor or material supplier first performed labor or work or furnished materials on the site of the public improvement. If a subcontractor or material supplier serves the notice, the subcontractor or material supplier shall have the rights of sections 1311.25 to 1311.32 of the Revised Code with regard to only amounts owed for labor and work performed and materials furnished during and after the twenty-one days immediately preceding service of the notice of furnishing.

(B) The notice of furnishing shall be in substantially the following form:

"Notice of Furnishing

(For use in connection with public improvements)

To:

(Name of principal contractor)

.....

Address of principal contractor)

The undersigned notifies you that the undersigned has furnished or performed or will furnish or perform (describe labor, work, or materials) for the improvement of real property identified as (property description or address) under order given by (name of subcontractor or material supplier). The labor, work, or materials were first furnished or performed or will be furnished or performed on (date).

.....

(Signature of subcontractor or material supplier)

.....

(Address of subcontractor or material supplier)

.....

(Date)."

(C) Each principal contractor and each subcontractor, on the date of entering into any agreement with a subcontractor or material supplier, shall provide, in writing, to the subcontractor or material supplier, the name and address of the public authority.

(D) Each principal contractor and each subcontractor, on the date of entering into any agreement with a subcontractor or material supplier, shall provide, in writing, to the subcontractor or material supplier, the name and address of the principal contractor.

(E) If the principal contractor or subcontractor fails to provide the name and address of the public authority or the principal contractor to those in direct privity of contract and that failure results in the loss of rights under this section, the affected person may bring an action in any court of common pleas which would otherwise have jurisdiction over the action against the person who failed to furnish the information for any damages resulting from the loss of rights under this section.

(F) No laborer must serve a notice in accordance with this section to preserve lien rights under sections 1311.25 to 1311.32 of the Revised Code.

1311.27. [Repealed].

1311.28. Public authority to detain funds upon receipt of affidavit—escrow account.

Upon receiving the affidavit required by section 1311.26 of the Revised Code, the public authority shall detain from the principal contractor or from the balance of the funds remaining in the contract with the principal contractor, an amount, up to the balance remaining in the contract, that does not in the aggregate exceed the claim or claims.

The public authority shall not detain any amount requested by a claimant who is required by section 1311.261 of the Revised Code to serve a notice of furnishing, unless the claimant has provided to the public authority a copy of the notice of furnishing and a sworn statement as to the date the notice of furnishing was served to the principal contractor, or by a claimant who is a laborer, unless the laborer serves an affidavit upon the public authority pursuant to section 1311.26 of the Revised Code.

The public authority shall place any detained funds in an escrow account as provided for under section 153.63 of the Revised Code, to be released at the times, in the amounts, and to the persons ordered by a court of competent jurisdiction or by agreement of the principal contractor and the subcontractor, material supplier, or laborer who filed the affidavit provided for in section 1311.26 of the Revised Code or upon a failure to commence suit as provided in section 1311.311 of the Revised Code.

1311.29. Copy of affidavit to be filed with county recorder to notify other subcontractors, materialmen, and laborers—priority of claims.

A subcontractor, material supplier, laborer, or person who serves the affidavit pursuant to section 1311.26 of the Revised Code, in order to notify other subcontractors, material suppliers, and laborers, within thirty days thereafter, shall file for record a copy of the affidavit with the county recorder of the county where the public improvement is situated or with the county recorder of each of the counties where the public improvement is situated if the public improvement is situated in more than one county. The filing for record of the affidavit with the county recorders gives such subcontractor, material supplier, laborer, or person filing the affidavit as provided in section 1311.26 of the Revised Code, a preference, as to payments subsequently due from the public authority, over such of the other subcontractors, material suppliers, and laborers who have failed, prior to the date any such payment is due, to file the affidavit provided for in section 1311.26 of the Revised Code, and to file for record the copy thereof with the county recorders as provided in this section. On detained funds, such claimants have no priority among themselves, but payment thereon shall be made to them in amounts prorated according to the amount of the then-existing valid claim of each. The failure of any claimant to file for record a copy of the affidavit with the county recorders does not affect the validity of the claimant's amount claimed with respect to persons other than such of the claimant's other subcontractors, material suppliers, and laborers who have filed for record

copies of their affidavits with the county recorders, and, against detained funds, such claimants who have failed to make such filing for record with the county recorders have no priority among themselves, but, after all claims having preference over theirs have been paid, payment shall be made to them in amounts prorated according to the amount of the then-existing valid claim of each.

The recorder shall endorse upon every affidavit the date and hour of its filing, and record every affidavit filed for record. For recording or making a copy of the affidavit or certificate of the date of such filing for record, the recorder is entitled to the same fees as are provided for in section 317.32 of the Revised Code.

1311.30. [Repealed].

1311.31. Action by claimant to enforce payment.

The public authority, upon the receipt of the affidavit referred to in section 1311.26 of the Revised Code shall, or the claimant or his agent, in the name of the public authority, may serve the principal contractor with a copy thereof, within five days after the public authority receives it, together with a notice that the principal contractor must give notice of his intention to dispute the claim within twenty days. If the claimant is not in privity of contract with the principal contractor, the notice of intention to dispute may state that the claimant failed to serve a notice of furnishing as required by division (A)(1) of section 1311.261 of the Revised Code. If the claimant performed the labor or work or furnished the material to a subcontractor of the principal contractor, the claimant shall, within twenty days after serving the affidavit to the public authority, furnish a copy of it to the subcontractor. If the claimant fails to furnish the copy to the subcontractor, the claimant forfeits his rights to a claim under sections 1311.25 to 1311.32 of the Revised Code. If the principal contractor fails within twenty days after receipt of the affidavit to serve to the public authority written notice of his intention to dispute the claim, he has assented to its correctness, provided that within twenty days after receipt by any subcontractor of a copy of the affidavit, the subcontractor may serve the notice of intention to dispute on behalf of the principal contractor. Thereupon, provided all affidavits filed on the same public improvement have been assented to, the amount detained from the principal contractor shall be applied by and payment made by the public authority, in the order of preference provided in section 1311.29 of the Revised Code, pro rata, upon the claims on which affidavits have been filed. Where more than one affidavit has been filed with respect to the same public improvement, and one or more of the affidavits has not been assented to, then the amount detained shall be applied pro rata among all the claimants in the order of preference prescribed in section 1311.29 of the Revised Code, payment being made in the amount of their pro rata shares to all claimants whose affidavits have been assented to, and the pro rata shares of claimants whose affidavits have not been assented to shall be detained by the public authority until the dispute with respect to any affidavit has been resolved in any manner provided by law, whereupon payment in whole or in part shall be made to claimants in whose favor the dispute is resolved and any remaining part of the pro rata shares shall be applied pro rata among and payment made to all claimants as provided in this section. Each subsequent payment falling due shall be applied among and payment made to the claimants as provided in this section.

1311.311. Notice to commence suit.

Any public authority or any principal contractor or subcontractor who receives a copy of the affidavit required by section 1311.26 of the Revised Code, as provided in section 1311.31 of the

Revised Code, may notify the claimant or his agent, to commence suit. Proof that this notice was served in accordance with section 1311.19 of the Revised Code, may be made by affidavit filed with the public authority or clerk or agent thereof. If the claimant fails to commence suit within sixty days after the date of the service of the notice, the affidavit filed pursuant to section 1311.26 of the Revised Code is void and the funds are to be released to the principal contractor. This section does not preclude the collection of the claim in any manner in which any claim may otherwise be collected.

An affidavit filed pursuant to section 1311.26 of the Revised Code is void and the funds upon which it is sought to be imposed wholly discharged from the affidavit filed pursuant to section 1311.26 of the Revised Code if the principal contractor or any subcontractor or interested party acting in his name gives the notice to commence suit and files with the public authority, a bond in the amount equal to one and one-half of the claim in favor of the claimant, executed by sufficient surety, approved in writing by the public authority, and conditioned upon the payment of any judgment upon the claim, plus costs.

If the public authority fails to discharge the affidavit filed pursuant to section 1311.26 of the Revised Code and make payment, the principal contractor or subcontractor may file an action in the court of common pleas of the county in which the property is located except that if the action is against a state officer, the principal contractor or subcontractor shall file the action in the court of common pleas of Franklin county. If the court determines in the action that the public authority improperly failed to discharge the affidavit and make payment, the court may award reasonable attorney fees.

The bond is void upon the failure of the claimant to commence suit within sixty days after the date of the service of the notice or, if the claimant commences suit within the required time period, upon the satisfaction of any judgment that is entered in favor of the claimant, upon final judgment against the claimant, or upon dismissal of the suit for any reason.

1311.32. Enforcement by civil action.

The duty to pay to claimants the amounts and in the order of preference, as provided in sections 1311.29 and 1311.31 of the Revised Code, may be enforced by an action in the court of common pleas or the subcontractor, material supplier, or laborer may, when the amounts are due, recover through the public authority in the court of common pleas the whole or a pro rata amount of the subcontractor's, material supplier's, or laborer's claim or estimate, not exceeding in any case the balance due to the principal contractor. Either of these actions shall be brought in the county in which the public property involved is situated, except that actions against state officers shall be brought only in Franklin county. The court shall resolve all disputes concerning whether the affidavit filed pursuant to section 1311.26 of the Revised Code has been perfected and concerning priorities, that may arise from enforcement of the affidavit or the bond that secures the affidavit, pursuant to section 1311.311 of the Revised Code.

1311.33. [Repealed].

1311.34. Laborers shall have lien upon real property of employer.

Employees of any person, association of persons, or corporation, whether such employment is at agriculture, mining, manufacture, or other manual labor, have a lien upon the real property of their employers for their wages. The lien is superior to the following liens taken or attaching during the existence of the unpaid labor claim:

- (A) Liens of attachment;
- (B) Liens of mortgage, that are:

- (1) Given or taken at a time of actual insolvency of the debtor;
- (2) Given with a view of preferring creditors;
- (3) Given to secure a pre-existing debt.

Liens upon real property of employers for wages are superior to all exemptions.

If an employer is placed in the hands of an assignee, receiver, or trustee, claims due for labor performed within the period of three months prior to the time the assignee, receiver, or trustee is appointed, shall first be paid out of the trust fund, in preference to all other claims against the employer, except claims for taxes and the costs of administering the trust.

1311.35. Waiver of lien.

The liens in section 1311.34 of the Revised Code are waived by the employee, as to any portion of such labor, unless within thirty days from the expiration of three months from the performance thereof, the employee files with the county recorder of the county where the labor was performed an itemized statement, verified by affidavit, of the amount, kind, and value of the labor performed within such period, with all credits and offsets and the amount then due the employee therefor. The statement, when filed, shall be recorded in the official records, and becomes a lien upon the real property of the employer without any specific description thereof, for the period of one year from the filing of the statement.

1311.36 Enforcement and priority of liens.

If an action is brought to enforce the lien within the time provided in section 1311.35 of the Revised Code, it continues in force until finally adjudicated. The proceedings to enforce it are the same as in other cases of lien, against the owner of the property and all other persons interested. If several persons have or obtain liens under sections 1311.34 and 1311.35 of the Revised Code, against the property of the same employer, they have no priority among themselves, but all must be paid pro rata. Such persons do not have priority over those obtaining other liens under this chapter but the persons obtaining liens under this chapter have priority as provided in this chapter.

1311.37. When general employer assumes payment.

Sections 1311.34 to 1311.36, inclusive, of the Revised Code apply to and include any laborer who indirectly performs labor for a general employer, or the results of whose labor is immediately enjoyed by a general employer, when such general employer assumes payment of his wages by passing a credit therefor upon his books of account or otherwise. All proceedings under this section shall be the same as provided by such sections.

1311.38. Definition of owner.

As used in sections 1311.39 to 1311.47, inclusive, of the Revised Code, "owner" includes any lessee, receiver, corporation, company, or persons owning, operating, or managing any railroad with whom or in whose behalf contracts provided in such sections are made.

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