

# AN ACT

To enact sections 4703.20, 4703.201, 4703.202, 4703.203, 4703.204, 4703.205, 4703.206, 4703.54, 4703.541, 4703.542, 4703.543, 4703.544, 4703.545, 4703.546, 4733.30, 4733.301, 4733.302, 4733.303, 4733.304, 4733.305, and 4733.306 of the Revised Code to establish a payment assurance program for registered design professionals.

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

SECTION 1. That sections 4703.20, 4703.201, 4703.202, 4703.203, 4703.204, 4703.205, 4703.206, 4703.54, 4703.541, 4703.542, 4703.543, 4703.544, 4703.545, 4703.546, 4733.30, 4733.301, 4733.302, 4733.303, 4733.304, 4733.305, and 4733.306 of the Revised Code be enacted to read as follows:

Sec. 4703.20. As used in sections 4703.20 to 4703.206 of the Revised Code:

(A) "Architect" means an individual, partnership, corporation, or association providing architect services pursuant to this chapter. "Architect" does not include a landscape architect registered under this chapter.

(B)(1)(a) "Commercial real estate" means any parcel of real estate in this state other than real estate containing or intended to contain one-to-four residential units.

(b) "Commercial real estate" includes any improvement made to or with regard to such a parcel.

(2) "Commercial real estate" does not include either of the following:

(a) Single-family residential units such as condominiums, townhouses, manufactured homes or industrialized units as defined in section 3781.06 of the Revised Code, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even though these units may be a part of a larger building or parcel of real estate containing more than four residential units;

(b) Real estate owned by a public authority as defined in section 1311.25 of the Revised Code.

(C) "Improvement" means all of the following:

(1) Designing, planning, constructing, erecting, altering, repairing, demolishing, removing, or providing other construction services with regard to any of the following:

(a) Any building or appurtenance thereto;

(b) A fixture, bridge, or other structure;

(c) Any gas pipeline or well, including a well drilled or constructed for the production of oil or gas.

(2) The furnishing of tile for the drainage of any lot or land;

(3) The excavation, cleanup, or removal of hazardous material or waste from real property;

(4) The enhancement or embellishment of real property by seeding, sodding, or the planting thereon of any plants;

(5) The grading or filling to establish a grade.

(D) "Owner" means a person who has a legal or equitable interest in commercial real estate, including a contingent interest, pursuant to an agreement or contract, and who enters into a written contract with an architect for services to be provided with regard to any such interest in the commercial real estate.

Sec. 4703.201. (A)(1) An architect who enters into a written contract for services to be provided with regard to any interest in commercial real estate has a lien on that interest.

(2) The lien shall be effective only if the contract for services is in writing and is signed by the architect and the owner of the interest in commercial real estate.

(B)(1) Only the architect named in the contract shall have a lien pursuant to this section.

(2) A lien is not available to any employee, agent, or independent contractor of the architect.

(C) The amount of the lien shall be limited to the amount due to the architect pursuant to the contract.

(D) The lien shall be effective only against the interest in commercial real estate that is the subject of the contract.

(E) All valid and recorded mechanic's liens arising pursuant to Chapter 1311. of the Revised Code, regardless of recordation date, and all previously recorded mortgages and liens, including judgment liens, take priority over an architect's lien.

Sec. 4703.202. (A) To perfect a lien on commercial real estate referred to in section 4703.201 of the Revised Code, an architect shall file with the county recorder of the county in which the commercial real estate is located an affidavit as described in division (B) of this section.

(B)(1) The affidavit required under division (A) of this section shall include all of the following:

(a) The name of the architect;

(b) The name of the owner of the interest in the commercial real estate;

(c) The name of the record owner of the commercial real estate if different than the owner described in division (B)(1)(b) of this section;

(d)(i) A legal description of the commercial real estate sufficient to reference the instrument by which the record owner took title and the permanent parcel number, if any;

(ii) Division (B)(1)(d)(i) of this section shall not be construed as requiring a metes and bounds description.

(e) The parties to and date of the contract;

(f) The amount of the architect's claim under the contract;

(g) A statement that the information contained in the affidavit is true and accurate to the knowledge of the architect.

(2) The affidavit shall be signed by the architect and notarized.

(C) Not later than thirty days after recordation, the architect shall serve the recorded affidavit upon all parties listed in the affidavit by such delivery method as provides proof of receipt. Failure to serve shall not invalidate the lien, but a court may consider equitable remedies for such failure.

(D) A county recorder receiving an affidavit filed pursuant to division (A) of this section shall

record the affidavit and charge and collect from the person filing the affidavit the fees prescribed in section 317.32 of the Revised Code for the recorder's services.

Sec. 4703.203. (A)(1) An architect holding a lien on commercial real estate that has been perfected pursuant to section 4703.202 of the Revised Code may commence proceedings to enforce the lien by filing a complaint in the common pleas court of the county in which the commercial real estate is located.

(2) The complaint need not initiate foreclosure proceedings on the lien prior to a court determining the validity of the underlying claim.

(B) The architect shall name as defendants in the complaint all parties who have an interest of record in the commercial real estate that is the subject of the lien, including all parties named in the affidavit required under section 4703.202 of the Revised Code.

(C)(1) The architect shall file the complaint within two years of the date of recordation of the affidavit required under section 4703.202 of the Revised Code.

(2) Failure to file a complaint within the time specified shall extinguish the lien.

(D)(1)(a) Any person with an interest in the commercial real estate subject to a lien perfected pursuant to section 4703.202 of the Revised Code may demand, in writing, that the architect commence suit to enforce the lien.

(b) Such a demand shall be commenced by serving the architect and all parties listed in the affidavit required under section 4703.202 of the Revised Code the written demand. Such a delivery may be made by any means that provides proof of receipt.

(2) If the architect does not commence the action within sixty days after receipt of the demand, the lien is extinguished.

Sec. 4703.204. (A) When a claim underlying a lien perfected pursuant to section 4703.202 of the Revised Code is satisfied, the architect holding the lien shall record a written release of the architect's lien in the county recorder's office of the county in which the lien was recorded.

(B) The architect shall file the lien release for recording within thirty days after the underlying claim is satisfied.

(C) The county recorder shall record the release and charge and collect from the architect the fees set forth in section 317.32 of the Revised Code for the recorder's services.

Sec. 4703.205. (A) When a claim underlying a lien established pursuant to section 4703.201 of the Revised Code is satisfied, regardless of whether or not the architect holding the lien records a written release pursuant to section 4703.204 of the Revised Code, or when such a lien is extinguished pursuant to section 4703.203 of the Revised Code, any person with an interest in the commercial real estate that was the subject of the lien, or named in the affidavit recorded pursuant to section 4703.202 of the Revised Code, may record an affidavit stating that the underlying claim was satisfied or that the lien was released by operation of law in the county recorder's office of the county in which the commercial real estate is located.

(B) The county recorder shall record the affidavit and charge and collect from the person filing the affidavit the fees set forth in section 317.32 of the Revised Code for the recorder's services.

(C) The fact that a claim underlying a lien is satisfied or that a lien is extinguished by operation of law does not affect any other right or appropriate action, such as for breach of contract.

Sec. 4703.206. (A) Any person with an interest in commercial real estate on which a lien has

been perfected pursuant to section 4703.202 of the Revised Code, or named in the affidavit required under that section, may apply to the common pleas court of the county in which the commercial real estate is located to substitute financial security for the lien.

(B) The substitute security shall be in the amount equal to the architect's claim, and in a form such as an escrow account or surety bond held by the clerk of courts or other party as determined adequate by the court.

(C) The court, in its entry approving the substitute security, shall direct the release of the lien.

(D)(1) The person substituting the security shall file the entry and release for recording in the office of the county recorder of the county in which the commercial real estate is located.

(2) The county recorder shall record the entry and release and charge and collect from the person filing the entry and release for recording the fees set forth in section 317.32 of the Revised Code for the recorder's services.

Sec. 4703.54. As used in sections 4703.54 to 4703.546 of the Revised Code:

(A) "Commercial real estate" and "improvement" have the same meanings as in section 4703.20 of the Revised Code.

(B) "Landscape architect" means an individual, partnership, corporation, or association providing landscape architect services pursuant to this chapter. "Landscape architect" does not include an architect licensed under this chapter.

(C) "Owner" means a person who has a legal or equitable interest in commercial real estate, including a contingent interest, pursuant to an agreement or contract, and who enters into a written contract with a landscape architect for services to be provided with regard to any such interest in the commercial real estate.

Sec. 4703.541. (A)(1) A landscape architect who enters into a written contract for services to be provided with regard to any interest in commercial real estate has a lien on that interest.

(2) The lien shall be effective only if the contract for services is in writing and is signed by the landscape architect and the owner of the interest in commercial real estate.

(B)(1) Only the landscape architect named in the contract shall have a lien pursuant to this section.

(2) A lien is not available to any employee, agent, or independent contractor of the landscape architect.

(C) The amount of the lien shall be limited to the amount due to the landscape architect pursuant to the contract.

(D) The lien shall be effective only against the interest in commercial real estate that is the subject of the contract.

(E) All valid and recorded mechanic's liens arising pursuant to Chapter 1311. of the Revised Code, regardless of recordation date, and all previously recorded mortgages and liens, including judgment liens, take priority over a landscape architect's lien.

Sec. 4703.542. (A) To perfect a lien on commercial real estate referred to in section 4703.541 of the Revised Code, a landscape architect shall file with the county recorder of the county in which the commercial real estate is located an affidavit as described in division (B) of this section.

(B)(1) The affidavit required under division (A) of this section shall include all of the following:

- (a) The name of the landscape architect;
- (b) The name of the owner of the interest in the commercial real estate;
- (c) The name of the record owner of the commercial real estate if different than the owner described in division (B)(1)(b) of this section;
- (d)(i) A legal description of the commercial real estate sufficient to reference the instrument by which the record owner took title and the permanent parcel number, if any;
  - (ii) Division (B)(1)(d)(i) of this section shall not be construed as requiring a metes and bounds description.
- (e) The parties to and date of the contract;
- (f) The amount of the landscape architect's claim under the contract;
- (g) A statement that the information contained in the affidavit is true and accurate to the knowledge of the landscape architect.
- (2) The affidavit shall be signed by the landscape architect and notarized.
- (C) Not later than thirty days after recordation, the landscape architect shall serve the recorded affidavit upon all parties listed in the affidavit by such delivery method as provides proof of receipt. Failure to serve shall not invalidate the lien, but a court may consider equitable remedies for such failure.
- (D) A county recorder receiving an affidavit filed pursuant to division (A) of this section shall record the affidavit and charge and collect from the person filing the affidavit the fees prescribed in section 317.32 of the Revised Code for the recorder's services.
- Sec. 4703.543. (A)(1) A landscape architect holding a lien that has been perfected pursuant to section 4703.542 of the Revised Code may commence proceedings to enforce a lien by filing a complaint in the common pleas court of the county in which the commercial real estate is located.
  - (2) The complaint need not initiate foreclosure proceedings on the lien prior to a court determining the validity of the underlying claim.
  - (B) The landscape architect shall name as defendants in the complaint all parties who have an interest of record in the commercial real estate that is the subject of the lien, including all parties named in the affidavit required under section 4703.542 of the Revised Code.
  - (C)(1) The landscape architect shall file the complaint within two years of the date of recordation of the affidavit required under section 4703.542 of the Revised Code.
    - (2) Failure to file a complaint within the time specified shall extinguish the lien.
  - (D)(1)(a) Any person with an interest in the commercial real estate subject to a lien perfected pursuant to section 4703.542 of the Revised Code may demand, in writing, that the landscape architect commence suit to enforce the lien.
    - (b) Such a demand shall be commenced by serving the landscape architect and all parties listed in the affidavit required under section 4703.542 of the Revised Code the written demand. Such a delivery may be made by any means that provides proof of receipt.
      - (2) If the landscape architect does not commence the action within sixty days after receipt of the demand, the lien is extinguished.
- Sec. 4703.544. (A) When a claim underlying a lien perfected pursuant to section 4703.542 of the Revised Code is satisfied, the landscape architect holding the lien shall record a written release of the landscape architect's lien in the county recorder's office of the county in which the lien was

recorded.

(B) The landscape architect shall file the lien release for recording within thirty days after the underlying claim is satisfied.

(C) The county recorder shall record the release and charge and collect from the landscape architect the fees set forth in section 317.32 of the Revised Code for the recorder's services.

Sec. 4703.545. (A) When a claim underlying a lien established pursuant to section 4703.541 of the Revised Code is satisfied, regardless of whether or not the landscape architect holding the lien records a written release pursuant to section 4703.544 of the Revised Code, or when such a lien is extinguished pursuant to section 4703.543 of the Revised Code, any person with an interest in the commercial real estate that was the subject of the lien, or named in the affidavit recorded pursuant to section 4703.542 of the Revised Code, may record an affidavit stating that the underlying claim was satisfied or that the lien was released by operation of law in the county recorder's office of the county in which the commercial real estate is located.

(B) The county recorder shall record the affidavit and charge and collect from the person filing the affidavit the fees set forth in section 317.32 of the Revised Code for the recorder's services.

(C) The fact that a claim underlying a lien is satisfied or that a lien is extinguished by operation of law does not affect any other right or appropriate action, such as for breach of contract.

Sec. 4703.546. (A) Any person with an interest in commercial real estate on which a lien has been perfected pursuant to section 4703.542 of the Revised Code, or named in the affidavit required under that section, may apply to the common pleas court of the county in which the commercial real estate is located to substitute financial security for the lien.

(B) The substitute security shall be in the amount equal to the landscape architect's claim, and in a form such as an escrow account or surety bond held by the clerk of courts or other party as determined adequate by the court.

(C) The court, in its entry approving the substitute security, shall direct the release of the lien.

(D)(1) The person substituting the security shall file the entry and release for recording in the office of the county recorder of the county in which the commercial real estate is located.

(2) The county recorder shall record the entry and release and charge and collect from the person filing the entry and release for recording the fees set forth in section 317.32 of the Revised Code for the recorder's services.

Sec. 4733.30. As used in sections 4733.30 to 4733.306 of the Revised Code:

(A) "Commercial real estate" and "improvement" have the same meanings as in section 4703.20 of the Revised Code.

(B) "Owner" means a person who has a legal or equitable interest in commercial real estate, including a contingent interest, pursuant to an agreement or contract, and who enters into a written contract with a professional engineer or professional surveyor for services to be provided with regard to any such interest in the commercial real estate.

(C) "Professional engineer" means an individual, partnership, corporation, or association providing engineering services pursuant to this chapter.

(D) "Professional surveyor" means an individual, partnership, corporation, or association providing engineering services pursuant to this chapter.

Sec. 4733.301. (A)(1) A professional engineer or professional surveyor who enters into a

written contract for services to be provided with regard to any interest in commercial real estate has a lien on that interest.

(2) The lien shall be effective only if the contract for services is in writing and is signed by the professional engineer or professional surveyor and the owner of the interest in commercial real estate.

(B)(1) Only the professional engineer or professional surveyor named in the contract shall have a lien pursuant to this section.

(2) A lien is not available to any employee, agent, or independent contractor of the professional engineer or professional surveyor.

(C) The amount of the lien shall be limited to the amount due to the professional engineer or professional surveyor pursuant to the contract.

(D) The lien shall be effective only against the interest in commercial real estate that is the subject of the contract.

(E) All valid and recorded mechanic's liens arising pursuant to Chapter 1311. of the Revised Code, regardless of recordation date, and all previously recorded mortgages and liens, including judgment liens, take priority over a professional engineer or professional surveyor's lien.

Sec. 4733.302. (A) To perfect a lien on commercial real estate referred to in section 4733.301 of the Revised Code, a professional engineer or professional surveyor shall file with the county recorder of the county in which the commercial real estate is located an affidavit as described in division (B) of this section.

(B)(1) The affidavit required under division (A) of this section shall include all of the following:

(a) The name of the professional engineer or professional surveyor;

(b) The name of the owner of the interest in the commercial real estate;

(c) The name of the record owner of the commercial real estate if different than the owner described in division (B)(1)(b) of this section;

(d)(i) A legal description of the commercial real estate sufficient to reference the instrument by which the record owner took title and the permanent parcel number, if any;

(ii) Division (B)(1)(d)(i) of this section shall not be construed as requiring a metes and bounds description.

(e) The parties to and date of the contract;

(f) The amount of the professional engineer or professional surveyor's claim under the contract;

(g) A statement that the information contained in the affidavit is true and accurate to the knowledge of the professional engineer or professional surveyor.

(2) The affidavit shall be signed by the professional engineer or professional surveyor and notarized.

(C) Not later than thirty days after recordation, the professional engineer or professional surveyor shall serve the recorded affidavit upon all parties listed in the affidavit by such delivery method as provides proof of receipt. Failure to serve shall not invalidate the lien, but a court may consider equitable remedies for such failure.

(D) A county recorder receiving an affidavit filed pursuant to division (A) of this section shall

record the affidavit and charge and collect from the person filing the affidavit the fees prescribed in section 317.32 of the Revised Code for the recorder's services.

Sec. 4733.303. (A)(1) A professional engineer or professional surveyor holding a lien that has been perfected pursuant to section 4733.302 of the Revised Code may commence proceedings to enforce the lien by filing a complaint in the common pleas court of the county in which the commercial real estate is located.

(2) The complaint need not initiate foreclosure proceedings on the lien prior to a court determining the validity of the underlying claim.

(B) The professional engineer or professional surveyor shall name as defendants in the complaint all parties who have an interest of record in the commercial real estate that is the subject of the lien, including all parties named in the affidavit required under section 4733.302 of the Revised Code.

(C)(1) The professional engineer or professional surveyor shall file the complaint within two years of the date of recordation of the affidavit required under section 4733.302 of the Revised Code.

(2) Failure to file a complaint within the time specified shall extinguish the lien.

(D)(1)(a) Any person with an interest in the commercial real estate subject to a lien perfected pursuant to section 4733.302 of the Revised Code may demand, in writing, that the professional engineer or professional surveyor commence suit to enforce the lien.

(b) Such a demand shall be commenced by serving the professional engineer or professional surveyor and all parties listed in the affidavit required under section 4733.302 of the Revised Code the written demand. Such a delivery may be made by any means that provides proof of receipt.

(2) If the professional engineer or professional surveyor does not commence the action within sixty days after receipt of the demand, the lien is extinguished.

Sec. 4733.304. (A) When a claim underlying a lien perfected pursuant to section 4733.302 of the Revised Code is satisfied, the professional engineer or professional surveyor holding the lien shall record a written release of the professional engineer or professional surveyor's lien in the county recorder's office of the county in which the lien was recorded.

(B) The professional engineer or professional surveyor shall file the lien release for recording within thirty days after the underlying claim is satisfied.

(C) The county recorder shall record the release and charge and collect from the professional engineer or professional surveyor the fees set forth in section 317.32 of the Revised Code for the recorder's services.

Sec. 4733.305. (A) When a claim underlying a lien established pursuant to section 4733.301 of the Revised Code is satisfied, regardless of whether or not the professional engineer or professional surveyor holding the lien recorded a written release pursuant to section 4733.304 of the Revised Code, or when such a lien is extinguished pursuant to section 4733.303 of the Revised Code, any person with an interest in the commercial real estate that was the subject of the lien, or named in the affidavit recorded pursuant to section 4733.302 of the Revised Code, may record an affidavit stating that the underlying claim was satisfied or that the lien was released by operation of law in the county recorder's office of the county in which the commercial real estate is located.

(B) The county recorder shall record the affidavit and charge and collect from the person filing the affidavit the fees set forth in section 317.32 of the Revised Code for the recorder's services.

(C) The fact that a claim underlying a lien is satisfied or that a lien is extinguished by operation of law does not affect any other right or appropriate action, such as for breach of contract.

Sec. 4733.306. (A) Any person with an interest in commercial real estate on which a lien has been perfected pursuant to section 4733.302 of the Revised Code, or named in the affidavit required under that section, may apply to the common pleas court of the county in which the commercial real estate is located to substitute financial security for the lien.

(B) The substitute security shall be in the amount equal to the professional engineer or professional surveyor's claim, and in a form such as an escrow account or surety bond held by the clerk of courts or other party as determined adequate by the court.

(C) The court, in its entry approving the substitute security, shall direct the release of the lien.

(D)(1) The person substituting the security shall file the entry and release for recording in the office of the county recorder of the county in which the commercial real estate is located.

(2) The county recorder shall record the entry and release and charge and collect from the person filing the entry and release for recording the fees set forth in section 317.32 of the Revised Code for the recorder's services.

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

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

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

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

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*Governor.*

Sub. S. B. No. 49

134th G.A.

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

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*Director, Legislative Service Commission.*

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

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*Secretary of State.*

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