

**STATEMENT OF THE OHIO STATE BAR ASSOCIATION
IN SUPPORT OF SENATE BILL 94**

Chairman Edwards, Vice-Chair LaRe, Ranking Member Sweeney, and members of the Ohio House Finance Committee: On behalf of the Ohio State Bar Association (“OSBA”), thank you for the opportunity to submit testimony in support of Senate Bill 94.

Senate Bill 94 would modernize Ohio’s system of recording instruments, and it will improve and streamline the ability to complete real estate transactions. The ability to file and access recorded instruments remotely would provide a practical benefit to Ohio real estate attorneys and the parties to real estate transactions, including sellers, buyers, lenders, and borrowers. Senate Bill 94 is a step in the right direction for Ohio’s future, and we are thankful to the sponsor of this bill and the County Recorder’s Association of Ohio for their leadership on this legislation.

We would also like to take this opportunity to offer proponent testimony on two provisions that stemmed from proposals made by the Ohio State Bar Association.

1. Amendment of R.C. 2329.02 for purposes of addressing a widespread problem in Ohio involving identifying judgment debtors with common names to minimize misidentification and delays in real estate transactions.

Ohio’s judgment lien statute, R.C. 2329.02, currently requires that a certificate of judgment state the following: (1) the court in which a judgment was rendered; (2) the title and number of the action; (3) the names of the judgment creditors; and (4) the names of the judgment debtors. That final requirement, relating to the names of judgment debtors, combined with Ohio’s general lien indexing system, leads to what is commonly referred to as the “same-name” identification problem in Ohio real estate transactions, in which individuals are sometimes mistakenly identified as having a lien encumbering their property. That misidentification causes the person affected unnecessary stress and economic hardship, through no fault of their own. Moreover, Ohio real estate lawyers sometimes must spend time sorting out identity issues, at a point in time which there is a great deal of time pressure to resolve the issue due to a pending transaction of some sort. To address this issue, the OSBA has proposed a revision to the Statute that requires additional identifying information concerning individual judgment debtors, which is contained in Senate Bill 94.

Senate Bill 94 would require relatively minimal additional work for the judgment creditor (or its counsel) to specify the last known address of a judgment debtor – without going so far as to require further inquiry or investigation. The attorney for the judgement creditor typically has that information in the attorney’s file. The long-term benefits of this the proposed amendment in Senate Bill 94 would far outweigh the relatively minimal additional work for a judgment creditor or its counsel. Most importantly, it would help protect innocent individuals and reduce the frequency of these “same-name” problems in the future.

Secondarily, Senate Bill 94 would recognize the updated indexing systems that exist in certain counties by providing for indexing following an instrument number indexing system, rather than solely by book and page.

2. Clarify Lien Priority Legal Standard When There Are Multiple Liens Exceeding Value and Priority of Record Was Misaligned

Ohio law is in a state of flux when it comes to what lien should have priority when there is a foreclosure with multiple liens that exceed the value of the property, and the priority was somehow misaligned. Different judges have issued rulings setting forth varying legal standards addressing what lienholder should have priority. Ohio real estate law needs more predictability and reliability on this very important subject, so that lawyers can advise their clients better and so that businesses can assess their rights and risks before engaging in transactions.

The adoption of Restatement (Third) of Property would address this subject, so that we have a clear legal standard in Ohio that is applied uniformly. The first in time, first in right rule generally applies, but in the limited circumstance when a lender satisfies a prior lien that had priority, that lender should be permitted to prove that it should occupy the position of the prior lienholder that it satisfied, so long as the junior lienholder is in no worse position. That standard avoids the junior lienholder receiving an unearned windfall in the event of fraud or a mistake that misaligns the priority of liens encumbering the property. Senate Bill 94 accomplishes this objective and that refined, consistent standard following the Restatement would be beneficial for real property transactions in Ohio.

Thank you for the opportunity to submit testimony and for your consideration of the passage of Senate Bill 94.

Respectfully,



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