

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

Before the Ohio Senate Financial Institutions and Technology Committee
Senator Steve Wilson, Chair
May 23, 2023

Chairman Wilson, Vice-Chair Hackett, Ranking Member Smith, and members of the Ohio Senate Financial Institutions and Technology Committee: On behalf of the Ohio State Bar Association (“OSBA”), thank you for the opportunity to present testimony in support of Senate Bill 94.

I am Mike Sikora, Managing Partner of Sikora Law LLC. Our firm focuses on legal matters for real estate companies throughout Ohio, and we have offices in Columbus and Cleveland. Today, I am appearing on behalf of the OSBA.

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 our practitioners and the parties to real estate transactions, including sellers, buyers, lenders, and borrowers. Senate Bill 94 would require all Ohio counties to permit electronic recording of real property instruments and electronic availability of those records dating back to at least 1980. It is time for all Ohio counties to meet these standards. During the COVID-19 pandemic, certain recorder’s offices could not be accessed, and others could only be accessed during limited times. Those restrictions impaired the ability to complete real estate transactions. Overall, Ohio has positive economic development momentum that should be fostered by government offices utilizing current technology to facilitate the completion of transactions.

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 Recorders Association of Ohio for their leadership on this legislation.

We would also like to take this opportunity to offer testimony on two provisions which stem from proposals from the Ohio State Bar Association.

1. Amend 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 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 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 exists in certain counties by providing for indexing following an instrument number indexing system, rather than solely by book and page.

2. Ohio’s lien priority legal standard should be clarified to address situations in which there are multiple liens and the priority of record was misaligned.

Currently, 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 in different counties, and even within the same county, have issued rulings setting forth varying legal standards addressing what lienholder should have priority under those circumstances. 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 Restatement (Third) of Property should be adopted to 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 by applying the Restatement’s recognized legal standard, and it would bring consistency and reliability to this area of law, and expedite cases involving these situations moving forward.

Thank you for the opportunity to testify and for your consideration of our proposed additions to Senate Bill 94. I would be happy to answer any questions the Committee may have.