

**STATEMENT OF THE  
OHIO STATE BAR ASSOCIATION  
IN SUPPORT OF SENATE BILL 101**

Before the House Judiciary Committee  
Representative Jim Thomas, Chair

Chair Thomas, Vice Chair Swearingen, Ranking Member Synenberg, and members of the House Judiciary Committee: thank you for the opportunity to present proponent testimony on Senate Bill 101 on behalf of the Ohio State Bar Association (“OSBA”).

My name is Mike Sikora, and I currently serve as the chair of the Legislative Drafting Committee of the Real Property Section of the OSBA. I am the managing partner of Sikora Law, which represents real estate companies in transactions and litigation throughout Ohio. I also serve as President of Omni Title LLC, which handles title work, escrow, and closings, primarily for commercial transactions throughout Ohio.

Senate Bill 101 contains several proposals that were developed by the Real Property Section of the OSBA in response to two separate issues that affect chains of title, complicate real estate transactions, and cause unnecessary hardship for Ohioans – same name debtors for non-judgment liens and recordation of memoranda of trusts.

**Memorandum of Trust Recording**

Title insurance underwriters require as a condition for issuing a policy of title insurance that a memorandum of trust or other instrument complying with R.C. §5301.255 be placed of record when real property is conveyed from the trustee of a disclosed trust to a third party. Under current Ohio law, the recording of such instrument is discretionary. This presents practical problems for real property lawyers when a title search reveals that title was vested in the trustee of a trust in the chain of title, and there is no memorandum of trust or other qualifying instrument of record, particularly when the conveyance in question is from a distant time-period in the chain of title.

The proposed amendments to R.C. §5301.255 allow the recording of a memorandum of trust or other qualifying instrument mandatory when title to real property is conveyed by or to the trustee of a disclosed trust.

When a title search reveals a conveyance to a trust (i.e., “the John Doe Trust”) rather than the trustee of a trust (i.e., “Mary Doe, Trustee of the John Doe Trust”), a fairly recent amendment to Ohio law deems the conveyance effective. Senate Bill 101 would enable that curative statute to apply to conveyances to or from a trust.

The addition of subsection (F) to R.C. §5301.071 creates a four-year curative period for conveyances to or from a trust or a trustee of a trust when a memorandum of trust or other qualifying instrument has not been recorded. The Real Property Section unanimously agreed that the four-year period is enough time to deem title cured under those circumstances, absent other facts and circumstances.

The OSBA also supports the amendment of Senate Bill 101 to provide for the recording of an affidavit to enable a memorandum of trust or other similar instrument to be recorded after a transaction and placed in the chain of title. The power of attorney statute was amended to include similar language thanks to Senate Bill 94 that passed in the 13th General Assembly. That way title could be covered by affidavit within four years or automatically after four years.

### **Same-Name Debtor Problem**

Statutory liens only require the name(s) of the lien debtor(s), the amount of the lien and information regarding the authority filing the lien. This has caused what is commonly referred to as the “same-name” identification problem in Ohio real estate transactions, in which individuals are 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.

To address this issue, the OSBA has proposed a minor additional requirement on the lien creditor when identifying a lien debtor. That additional requirement would be for a lien creditor to provide the last known address of the lien debtor – without going so far as to require further inquiry or investigation. The benefits of this proposed amendment far outweigh the minor burden that it would impose. Most importantly, it would help protect innocent property owners and reduce the frequency of these problems.

The 135<sup>th</sup> General Assembly enacted this requirement for judicial liens in Senate Bill 94. Senate Bill 101 adds this requirement to provide the last known address of a lien debtor when filing a lien relating to unpaid child support, workers' compensation, unemployment compensation, personal property taxes, sales taxes, income taxes, or severance taxes, with minimal additional work for the lien creditors.

Thank you for the opportunity to submit testimony in support of Senate Bill 101 and for your consideration of this legislation. I am happy to answer any question you may have.