

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

Before the Senate Local Government Committee
Senator Sandra O'Brien, Chair

Chair O'Brien, Vice Chair Gavarone, Ranking Member Smith, and members of the Senate Local Government 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 Bill Fergus, and I currently serve as the chair of the Real Property Section of the OSBA. I am a legal services partner in Northwest Law, a law firm with a mission to act as "counsel for the real estate industry," providing legal services to the members of the real estate industry and their clients for both their personal and professional legal needs. I also serve as General Counsel for the Northwest Title Family of Companies.

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

All major 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 make the recording of a memorandum of trust or other qualifying instrument mandatory when title to real property is held by the trustee of a disclosed trust.

Similar problems exist when a title search reveals a conveyance from 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"). Curative actions may be difficult, as a practical matter, if the instrument in question is from a distant time period in the chain of title. The proposed amendments to R.C. §5307.01(E)(1) cure such title defects "in furtherance of the manifest intention of the parties."

The addition of subsection (F) to R.C. §5301.071 creates a four-year curative period for conveyances 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.

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 consumers and reduce the frequency of these problems.

The 135th 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.