

Sub. H. B. No. 96  
As Passed by the Senate  
LOCCD9

\_\_\_\_\_ moved to amend as follows:

After line 32480, insert:

"**Sec. 1311.04.** (A) (1) Prior to the performance of any labor or work or the furnishing of any materials for an improvement on real property which may give rise to a mechanics' lien under sections 1311.01 to 1311.22 of the Revised Code, the owner, part owner, or lessee who contracts for the labor, work, or materials shall record in the office of the county recorder for each county in which the real property to be improved is located a notice of commencement in substantially the form specified in division (B) of this section.

(2) Only one notice of commencement is required to be filed for a single improvement and if more than one notice of commencement is filed for a single improvement, all notices filed after the original notice shall be deemed to be amendments to the original notice. If an owner, part owner, or lessee contracts with additional original contractors, lenders, or sureties not identified in the original notice of commencement filed for the improvement, the owner, part owner, or lessee shall amend the original notice of commencement to identify the



additional original contractors, lenders, and sureties. The date 20  
of the filing of the amended notice is the date of the filing of 21  
the original notice of commencement. 22

(B) The notice of commencement required under division (A) 23  
of this section shall contain, in affidavit form, all of the 24  
following information: 25

(1) The legal description of the real property on which 26  
the improvement is to be made. For purposes of this division, a 27  
description sufficient to describe the real property for the 28  
purpose of conveyance, or contained in the instrument by which 29  
the owner, part owner, or lessee took title, is a legal 30  
description. 31

(2) A brief description of the improvement to be performed 32  
on the property containing sufficient specificity to permit lien 33  
claimants to identify the improvement; 34

(3) The name, address, and capacity of the owner, part 35  
owner, or lessee of the real property contracting for the 36  
improvement; 37

(4) The name and address of the fee owner of the real 38  
property, if the person contracting for the improvement is a 39  
land contract vendee or lessee; 40

(5) The name and address of the owner's, part owner's, or 41  
lessee's designee, if any; 42

(6) The name and address of all original contractors, 43  
except that if the notice of commencement is recorded for an 44  
improvement involving a single- or double-family dwelling and if 45  
more than one original contractor is involved, instead of 46  
listing each original contractor, the owner shall state that 47

multiple original contractors are involved in the improvement; 48

(7) The date the owner, part owner, or lessee first 49  
executed a contract with an original contractor for the 50  
improvement; 51

(8) The name and address of all lending institutions which 52  
provide financing for the improvements, if any; 53

(9) The name and address of all sureties on any bond which 54  
guarantee payment of the original contractor's obligations under 55  
the contract for the improvement, if any; 56

(10) The following statement: 57

"To Lien Claimants and Subsequent Purchasers: 58

Take notice that labor or work is about to begin on or 59  
materials are about to be furnished for an improvement to the 60  
real property described in this instrument. A person having a 61  
mechanics' lien may preserve the lien by providing a notice of 62  
furnishing to the above-named designee and the above-named 63  
designee's original contractor, if any, and by timely recording 64  
an affidavit pursuant to section 1311.06 of the Revised Code. 65

A copy of this notice may be obtained upon making a 66  
written request by certified mail to the above-named owner, part 67  
owner, lessee, designee, or the person with whom you have 68  
contracted." 69

(11) The name and address of the person preparing the 70  
notice; 71

(12) The following statement: 72

"The expiration date for this notice of commencement is 73  
four years from the date of recording unless a different date is 74

specified herein."

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~~(12)~~ (13) An affidavit of the owner, part owner, or lessee  
or the agent of the owner, part owner, or lessee which verifies  
the notice.

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(C) If the notice of commencement furnished by or for an  
owner, part owner, or lessee contains incorrect information, the  
owner, part owner, or lessee is liable for any loss of lien  
rights of a lien claimant and any actual expenses incurred by  
the lien claimant in maintaining lien rights, including  
attorney's fees, if the loss and expenses incurred are a direct  
result of the lien claimant's reliance on the incorrect  
information.

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Any lien claimant who has included incorrect information  
in the claimant's affidavit for a lien under section 1311.06 of  
the Revised Code, as a result of incorrect information contained  
in the notice of commencement, may file for record an amended  
affidavit for a lien. The amended affidavit shall contain all of  
the information required by section 1311.06 of the Revised Code  
for an original affidavit. The lien claimant shall serve a copy  
of the amended affidavit on the owner, part owner, or lessee as  
provided in section 1311.07 of the Revised Code. The lien  
claimant may file the amended affidavit for record at any time  
during the time that the lien acquired by the original affidavit  
continues in effect under section 1311.13 of the Revised Code.  
In no event shall the amended affidavit extend such time period.  
The filing of an amended affidavit does not constitute a waiver  
of the rights granted by this division.

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(D) Within ten days after the date a subcontractor,  
material supplier, or laborer serves a written request upon the  
owner, part owner, or lessee, or designee for a copy of the

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notice of commencement, the owner, part owner, lessee, or 105  
designee shall serve a copy of the notice of commencement to the 106  
requesting subcontractor, material supplier, or laborer. 107

(E) Within ten days after the date a subcontractor, 108  
material supplier, or laborer serves a written request for a 109  
copy of the notice of commencement upon the original contractor 110  
who has been provided with a notice of commencement from the 111  
owner, part owner, or lessee, or designee and with whom the 112  
subcontractor, material supplier, or laborer has a direct 113  
contract, the original contractor shall serve a copy of the 114  
notice of commencement to the requesting subcontractor, material 115  
supplier, or laborer. 116

(F) Within ten days after the date a subcontractor, 117  
material supplier, or laborer serves a written request for a 118  
copy of the notice of commencement upon the subcontractor who 119  
has been provided with a notice of commencement from the owner, 120  
part owner, lessee, designee, or original contractor and with 121  
whom the subcontractor, material supplier, or laborer has a 122  
direct contract, the subcontractor shall serve a copy of the 123  
notice of commencement upon the requesting subcontractor, 124  
material supplier, or laborer. 125

(G) (1) Except as provided in division (G) (2) of this 126  
section, the owner, part owner, lessee, or designee shall post 127  
and maintain posted a copy of the notice of commencement in a 128  
conspicuous place on the real property described in the notice 129  
during the course of the actual physical improvement to the real 130  
property. 131

(2) No owner, part owner, lessee, or designee, has to post 132  
a copy of the notice of commencement on the real property 133  
described in the notice for an improvement that is the subject 134

of a home purchase contract.

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(H) The owner, part owner, lessee, or designee shall serve a copy of the notice of commencement upon the original contractor. If the owner, part owner, lessee, or designee fails to serve a copy of the notice of commencement upon the original contractor, the owner, part owner, or lessee is liable to the original contractor for all actual expenses incurred by the original contractor in obtaining the information otherwise provided by the notice of commencement.

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(I) If the owner, part owner, lessee, or designee fails to record the notice of commencement in accordance with this section, the time within which a subcontractor or material supplier may serve a notice of furnishing as required by section 1311.05 of the Revised Code is extended until twenty-one days after the notice of commencement has been recorded. A subcontractor or material supplier need not serve a notice of furnishing to preserve lien rights for the period before the notice of commencement is recorded.

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(J) If the owner, part owner, lessee, or designee fails to serve, upon written request, the notice of commencement in accordance with this section, the time within which a subcontractor or material supplier may serve a notice of furnishing as required by section 1311.05 of the Revised Code is extended until twenty-one days after the notice of commencement actually has been served to the subcontractor or material supplier. The owner, part owner, or lessee who fails to serve the notice pursuant to this section is liable to any subcontractor or material supplier who becomes a lien claimant for all actual expenses incurred by the lien claimant in obtaining the information that would have been contained in the

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notice. 165

(K) If an owner, part owner, lessee, or designee fails to 166  
post or maintain a copy of the notice of commencement as 167  
required by division (G) (1) of this section, the owner, part 168  
owner, or lessee is liable to a subcontractor, material 169  
supplier, or laborer who becomes a lien claimant for all actual 170  
expenses incurred by the lien claimant in obtaining the 171  
information otherwise provided by the posting. 172

(L) If an original contractor or subcontractor who has 173  
been provided with a notice of commencement fails to serve a 174  
copy of the notice of commencement to any subcontractor, 175  
material supplier, or laborer who requests it, the original 176  
contractor or subcontractor who fails to serve the copy of the 177  
notice is liable to the subcontractor, material supplier, or 178  
laborer who made the request for all costs incurred by the 179  
subcontractor, material supplier, or laborer in obtaining the 180  
information contained in the notice of commencement, provided 181  
that an original contractor or subcontractor who fails to 182  
provide the notice upon request is not liable under this 183  
division to any subcontractor, material supplier, or laborer 184  
with whom the original contractor or subcontractor is not in 185  
direct privity of contract. 186

(M) (1) If after the first work, labor, or material has 187  
been performed on or furnished to the improvement, the owner, 188  
part owner, lessee, or designee fails to serve, record, or post 189  
a notice of commencement as required by this section, the 190  
original contractor may, in writing, request the owner, part 191  
owner, lessee, or designee to serve, record, or post the notice. 192  
If an owner, part owner, lessee, or the designee of an owner, 193  
part owner, or lessee fails or refuses to serve, record, or post 194

a notice of commencement within ten days of receipt of a 195  
request, the owner, part owner, or lessee is liable for the 196  
owner's, part owner's, or lessee's failure or refusal and for 197  
the designee's failure or refusal, without recourse to the 198  
original contractor for all damages, costs, and expenses which 199  
result from the filing of a valid mechanics' lien to the extent 200  
that the lien, damages, costs, and expenses could have been 201  
avoided through proper payment. 202

(2) Nothing in this division shall be interpreted as to 203  
either of the following: 204

(a) Relieving an original contractor from the duty to pay 205  
the original contractor's subcontractors, material suppliers, 206  
and laborers for labor or work performed or materials furnished 207  
pursuant to a contract directly with the original contractor; 208

(b) Obligating an owner, part owner, or lessee to pay for 209  
work or labor performed or materials furnished by 210  
subcontractors, material suppliers, or laborers pursuant to 211  
direct contracts with the original contractor. 212

(N) (1) If the owner, part owner, or lessee fails to record 213  
a notice of commencement or an amended notice, any person 214  
holding a mortgage on the real property to be improved may 215  
record a notice of commencement or an amended notice on behalf 216  
of the owner, part owner, or lessee. If the owner, part owner, 217  
or lessee fails to record a notice of commencement or an amended 218  
notice within the later of ten days after the performance of any 219  
labor or work or the furnishing of any material for an 220  
improvement on real property which gives rise to a mechanics' 221  
lien under sections 1311.01 to 1311.22 of the Revised Code or 222  
three days after service of a demand to record the notice or 223  
amended notice by the original contractor, the original 224

contractor may record a notice of commencement or an amended 225  
notice on behalf of the owner, part owner, or lessee. 226

(2) If the original contractor or a mortgage holder has 227  
recorded a notice of commencement or an amended notice on behalf 228  
of the owner, part owner, or lessee, the owner, part owner, or 229  
lessee is liable to the original contractor or mortgage holder 230  
for all costs and expenses incurred in obtaining the information 231  
contained in the notice of commencement or an amended notice and 232  
all costs incurred in the preparation and recording of the 233  
notice of commencement or an amended notice. 234

(3) Unless required to file the notice of commencement or 235  
an amended notice on behalf of the owner, part owner, or lessee, 236  
the party filing a written notice of commencement or amended 237  
notice on behalf of the owner, part owner, or lessee is not 238  
liable to the owner, part owner, or lessee for any errors 239  
contained in the notice of commencement or amended notice. 240

(4) If a mortgage holder or an original contractor records 241  
a notice of commencement or amended notice on behalf of an 242  
owner, part owner, or lessee, such fact must be included on the 243  
notice or amended notice. 244

(O) This section does not apply to a home construction 245  
contract as defined in section 1311.011 of the Revised Code, 246  
except that when a lending institution as defined in division 247  
(A) (3) of section 1311.011 of the Revised Code requires that a 248  
notice of commencement be recorded as part of the financing for 249  
a home construction contract, which is secured in whole or in 250  
part by a mortgage on real estate upon which the improvements 251  
are to be constructed, the owner, part owner, or lessee may file 252  
a notice of commencement pursuant to this section by recording 253  
the notice of commencement in the county recorder's office of 254

the county where the owner, part owner, or lessee's property is 255  
located. If the property is located in more than one county, the 256  
owner, part owner, or lessee shall record the notice of 257  
commencement in the county recorders' office of each county in 258  
which the property is located. 259

If the owner, part owner, or lessee files a notice of 260  
commencement pursuant to this division, the attachment, 261  
continuance, and priority provisions of section 1311.13 of the 262  
Revised Code apply to that improvement, but the notice of 263  
furnishing requirements specified in section 1311.05 of the 264  
Revised Code do not apply to that improvement. 265

(P) The county recorder of the county where a notice of 266  
commencement is filed for record shall endorse the date and hour 267  
of its filing and cause it to be recorded as mechanics' liens 268  
are recorded, and collect the same fees for recording the notice 269  
of commencement as are provided in section 317.32 of the Revised 270  
Code. The recorder shall index the real property described in 271  
the notice of commencement and shall index the names of all 272  
owners, part owners, lessees, and land contract vendees in the 273  
direct index and the names of all original contractors in the 274  
reverse index as provided for in section 317.18 of the Revised 275  
Code. 276

(Q) Notwithstanding this section, if the owner, part 277  
owner, or lessee is a telephone company, an electric light 278  
company, a gas company, a water works company, all as defined in 279  
section 4905.03 of the Revised Code, or a subsidiary or 280  
affiliate thereof, the owner, part owner, or lessee may, but is 281  
not required to, record a notice of commencement pursuant to 282  
division (A) of this section, and is not required to serve, 283  
post, and provide copies of a notice of commencement pursuant to 284

divisions (D), (G), and (H) of this section unless such owner, 285  
part owner, or lessee elects to record the notice of 286  
commencement. If the owner, part owner, or lessee elects to 287  
record the notice of commencement and the improvement extends 288  
beyond one parcel of real property or one county, the owner, 289  
part owner, or lessee may, in lieu of using the legal 290  
description required in division (B)(1) of this section, use a 291  
description which reasonably describes the real property on 292  
which the improvement is to be made. Any description used other 293  
than the description specified in division (B)(1) of this 294  
section shall refer to the township and county in which the 295  
improvement is located, the name and route number of any local, 296  
state, or federal highway near the improvement, if any, the post 297  
office address of the real property, if any, and the name by 298  
which the owner, part owner, or lessee refers to the 299  
improvement. 300

If an owner, part owner, or lessee elects not to record, 301  
serve, post, or provide copies of a notice of commencement 302  
pursuant to divisions (A), (D), (G)(1), and (H) of this section, 303  
the owner, part owner, or lessee is subject to all applicable 304  
liabilities pursuant to divisions (C), (H), (J), (K), (M), and 305  
(N) of this section. 306

(R) If an owner, part owner, lessee, or designee fails to 307  
record a notice of commencement in accordance with this section, 308  
no subcontractor or material supplier who performs labor or work 309  
upon or furnishes material in furtherance of that improvement 310  
has to serve a notice of furnishing in accordance with section 311  
1311.05 of the Revised Code in order to preserve the 312  
subcontractor's or material supplier's lien rights. 313

(S) A notice of commencement filed as provided herein 314

expires ~~six~~four years after its filing date unless the notice 315  
of commencement or amendments made to the notice of commencement 316  
specify otherwise. 317

(T) (1) An owner, part owner, or lessee of real property 318  
who contracts for an improvement, or that person's agent may, 319  
upon completion of the improvement, submit an affidavit to the 320  
office of the county recorder for each county in which the real 321  
property that was improved is located stating all of the 322  
following: 323

(a) The name, address, and capacity of the owner, part 324  
owner, or lessee, or the agent of the owner, part owner, or 325  
lessee of the real property; 326

(b) The recording reference for the previously filed 327  
notice of commencement; 328

(c) That the improvement is complete. 329

(2) Upon receipt of an affidavit described in division (T) 330  
(1) of this section, the county recorder of the county where the 331  
affidavit is submitted shall indicate in the official records 332  
that the notice of commencement has expired. 333

(3) The owner, part owner, or lessee of the real property 334  
who contracted for the improvement shall serve a copy of the 335  
recorded affidavit submitted pursuant to division (T) (1) of this 336  
section, by regular mail, upon the original contractor as well 337  
as any subcontractor or lower tier project participant that 338  
served a notice of furnishing pursuant to section 1311.05 of the 339  
Revised Code. 340

(4) Service, lack of service, or a deficiency in service 341  
of the recorded affidavit under division (T) (3) of this section 342

<u>does not:</u>	343
<u>(a) Affect the expiration of the notice of commencement;</u>	344
<u>(b) Extend the rights of any party seeking to file an</u> <u>affidavit of mechanic's lien;</u>	345 346
<u>(c) Affect any time periods or other rights, requirements,</u> <u>or limitations that are set forth in this chapter.</u>	347 348
<u>(U) The expiration of a notice of commencement pursuant to</u> <u>division (S) or (T) (2) of this section does not affect the</u> <u>attachment, continuance, or priority of any lien under sections</u> <u>1311.13, 1311.14, and 1311.15 of the Revised Code."</u>	349 350 351 352
Update the title, amend, enact, or repeal clauses accordingly	353

The motion was \_\_\_\_\_ agreed to.

## **SYNOPSIS** 354

### **Mechanic's liens** 355

#### **R.C. 1311.04** 356

Restores provisions added by the House and removed by the	357
Senate that change the default expiration date of a notice of	358
commencement from six years to four years and otherwise amend	359
the law related to mechanic's liens.	360