



**STATEMENT OF THE OHIO STATE BAR ASSOCIATION  
IN SUPPORT OF HOUSE BILL 237**

Before the Ohio House Finance Committee  
Representative Scott Oelslager, Chair  
March 15, 2022

Chairman Oelslager, Vice-Chair Plummer, Ranking Member Rose Sweeney, and members of the Ohio House Finance Committee: On behalf of the Ohio State Bar Association (“OSBA”), thank you for the opportunity to present testimony in support of House Bill 237.

I am Rick Craven, Managing Director 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.

House Bill 237 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. House Bill 237 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 address three issues that we would like to see addressed in House Bill 237.

**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 proposes an amendment to the Statute that requires additional identifying information concerning individual judgment debtors.

The proposed amendment 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 proposed

amendment 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, the proposed amendment to the Statute 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. Clarify Lien Priority Legal Standard When There Are Multiple Liens Exceeding Value and 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 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 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.

**3. Modify Provisions in the Bill Relating to the Use of a Power of Attorney to Execute Real Property Instruments**

Upon review of the provisions relating to using a power of attorney (“POA:”) used for the execution of real property instruments in House Bill 237, the OSBA believes the language should be clarified to ensure that the amendments do not have any unintended consequences. Specifically, the OSBA’s proposed changes would:

- Clarify that a late filing of a POA is curative only if it was executed and acknowledged before the real property instrument was executed;
- The recorder would index the curative affidavit under the name of the current record owner, so that it may be located in the chain of title to the property;
- Protects the rights of a bona fide purchaser who did not have actual knowledge or constructive notice of the POA, the curative POA, or the real property instrument executed by virtue of the POA;
- Specifies that the limited cure rights afforded through the Bill would not disturb well-settled Ohio law concerning constructive notice or chain of title analysis.

Thank you for the opportunity to testify and for your consideration of our proposed additions to House Bill 237. I would be happy to answer any questions the committee may have.