



Chairman Edwards, Vice Chair LaRe, Ranking Member Sweeney, and members of the House Finance Committee, thank you for the opportunity to present interested party testimony on behalf of NAIOP of Ohio on House Bill 181, sponsored by Representatives Hillyer and Williams.

NAIOP of Ohio is a statewide association of over 500 members representing the real estate development industry across Ohio with the primary pursuit of assisting the progression of commercial real estate economic development activity. According to NAIOP's Research Foundation, Ohio is ranked 3<sup>rd</sup> in state commercial real estate contribution with \$64 billion to the state's economy, \$23.9 billion in wages/salaries, and 423,833 in jobs created and supported. As the state's leading commercial real estate association, NAIOP generally supports the overall purpose and intent of the Bill with the goal of modernizing Ohio's system of recording instruments and improving and streamlining the ability to complete real estate transactions.

The ability to record and access recorded instruments is essential to the process of completing real estate transactions. Having the ability to record and access real property instruments electronically would provide a practical benefit to the parties to real estate transactions, including sellers, buyers, lenders, borrowers, and their attorneys. The inability to access and record real property instruments during the pandemic emphasized how important it is to be able to access and record instruments to complete transactions and that doing so electronically is the most efficient and reliable approach. Ohio needs to provide the ability to record and access real property records, electronically, to bring our entire state into modern times. Otherwise, we will fall behind other states, when it comes to a subject that is not difficult to address, utilizing current technology.

House Bill 181 would also make improvements to Ohio judgment lien law, lien priority law, and power of attorney law. However, NAIOP of Ohio believes that the House Bill 181 should mirror the language contained Senate Bill 94 (Brenner, Landis). That critical language in Senate Bill 94 expressly recognizes that a later recorded affidavit attaching an earlier executed power of attorney has no effect on the rights of a bona fide purchaser who did not have actual knowledge or constructive notice of the power of attorney, or the real property instrument executed by virtue of the power of attorney. If this protective language is not added, then owners of real property and their lenders will unjustifiably risk losing title to their property, despite a buyer otherwise being considered a bona fide purchaser and a lender otherwise being considered a bona fide mortgagee. Owners and lenders would be at risk of losing title to their real property because bona fide purchasers could be charged with constructive notice of a prior unrecorded instrument, making them subject to claims from parties with respect to which they had no actual knowledge or constructive notice.

Additionally, if that protective language is not added to House Bill 181 before it passes, then parties and their lawyers litigating against legitimate buyers and their lenders will be able to use the absence of that language and the rule of statutory construction, *expressio unius est exclusio alterius*, to undermine Ohio's

constructive notice law that is currently among the best in the country at protecting buyers and their lenders that had no reasonable way of knowing about a real property instrument that was not properly recorded in their chain of title. Parties to litigation could further argue that the consistent use of that protective language in Ohio common law and in Senate Bill 94, and the absence of such language in House Bill 181 suggests that the legislature did not intend to maintain those protections. *At a minimum*, buyers and their lenders will incur additional litigation expenses if the constructive notice language is not amended into House Bill 181.

House Bill 181 contains multiple beneficial improvements to Ohio real property law. If Senate Bill 94's protections for bona fide purchasers and constructive notice are amended into House Bill 181, then it would streamline the ability to complete real estate transactions without sacrificing the rights of parties. Those improvements will also allow certain real estate cases to be completed more swiftly, so that distressed real estate assets can be put back to productive use faster, in order to benefit our economy at a more rapid pace.

Thank you again for the opportunity to submit testimony, and we encourage favorable passage of this legislation with the noted amendments to safeguard the rights of bona fide purchasers and constructive notice law.