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134th General Assembly

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Sub. S. B. No. 49

Senators Hottinger, Sykes

Cosponsors: Senators Thomas, Craig, Rulli, Yuko, Blessing, Manning, Schuring, Antonio, Cirino, Fedor, Gavarone, Hackett, Hoagland, Johnson, Reineke, Romanchuk, Williams, Wilson Representatives Johnson, Lepore-Hagan, Brent, Blackshear, Brown, Carruthers, Cross, Crossman, Galonski, Hicks-Hudson, Ingram, Jarrells, Lanese, Lightbody, Miller, A., Miller, J., O'Brien, Pavliga, Riedel, Roemer, Russo, Sobecki, Stein, Troy, West, Young, T.

A BILL

To enact sections 4703.20, 4703.201, 4703.202,
4703.203, 4703.204, 4703.205, 4703.206, 4703.54,
4703.541, 4703.542, 4703.543, 4703.544,
4703.545, 4703.546, 4733.30, 4733.301, 4733.302,
4733.303, 4733.304, 4733.305, and 4733.306 of
the Revised Code to establish a payment
assurance program for registered design
professionals.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4703.20, 4703.201, 4703.202,
4703.203, 4703.204, 4703.205, 4703.206, 4703.54, 4703.541,
4703.542, 4703.543, 4703.544, 4703.545, 4703.546, 4733.30,
4733.301, 4733.302, 4733.303, 4733.304, 4733.305, and 4733.306
of the Revised Code be enacted to read as follows:

Sec. 4703.20. As used in sections 4703.20 to 4703.206 of
the Revised Code:

(A) "Architect" means an individual, partnership, corporation, or association providing architect services pursuant to this chapter. "Architect" does not include a landscape architect registered under this chapter. 16
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(B) (1) (a) "Commercial real estate" means any parcel of real estate in this state other than real estate containing or intended to contain one-to-four residential units. 20
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(b) "Commercial real estate" includes any improvement made to or with regard to such a parcel. 23
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(2) "Commercial real estate" does not include either of the following: 25
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(a) Single-family residential units such as condominiums, townhouses, manufactured homes or industrialized units as defined in section 3781.06 of the Revised Code, or homes in a subdivision when sold, leased, or otherwise conveyed on a unit-by-unit basis, even though these units may be a part of a larger building or parcel of real estate containing more than four residential units; 27
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(b) Real estate owned by a public authority as defined in section 1311.25 of the Revised Code. 34
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(C) "Improvement" means all of the following: 36

(1) Designing, planning, constructing, erecting, altering, repairing, demolishing, removing, or providing other construction services with regard to any of the following: 37
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(a) Any building or appurtenance thereto; 40

(b) A fixture, bridge, or other structure; 41

(c) Any gas pipeline or well, including a well drilled or 42

constructed for the production of oil or gas. 43

(2) The furnishing of tile for the drainage of any lot or land; 44
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(3) The excavation, cleanup, or removal of hazardous material or waste from real property; 46
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(4) The enhancement or embellishment of real property by seeding, sodding, or the planting thereon of any plants; 48
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(5) The grading or filling to establish a grade. 50

(D) "Owner" means a person who has a legal or equitable interest in commercial real estate, including a contingent interest, pursuant to an agreement or contract, and who enters into a written contract with an architect for services to be provided with regard to any such interest in the commercial real estate. 51
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Sec. 4703.201. (A) (1) An architect who enters into a written contract for services to be provided with regard to any interest in commercial real estate has a lien on that interest. 57
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(2) The lien shall be effective only if the contract for services is in writing and is signed by the architect and the owner of the interest in commercial real estate. 60
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(B) (1) Only the architect named in the contract shall have a lien pursuant to this section. 63
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(2) A lien is not available to any employee, agent, or independent contractor of the architect. 65
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(C) The amount of the lien shall be limited to the amount due to the architect pursuant to the contract. 67
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(D) The lien shall be effective only against the interest 69

in commercial real estate that is the subject of the contract. 70

(E) All valid and recorded mechanic's liens arising 71
pursuant to Chapter 1311. of the Revised Code, regardless of 72
recordation date, and all previously recorded mortgages and 73
liens, including judgment liens, take priority over an 74
architect's lien. 75

Sec. 4703.202. (A) To perfect a lien on commercial real 76
estate referred to in section 4703.201 of the Revised Code, an 77
architect shall file with the county recorder of the county in 78
which the commercial real estate is located an affidavit as 79
described in division (B) of this section. 80

(B) (1) The affidavit required under division (A) of this 81
section shall include all of the following: 82

(a) The name of the architect; 83

(b) The name of the owner of the interest in the 84
commercial real estate; 85

(c) The name of the record owner of the commercial real 86
estate if different than the owner described in division (B) (1) 87
(b) of this section; 88

(d) (i) A legal description of the commercial real estate 89
sufficient to reference the instrument by which the record owner 90
took title and the permanent parcel number, if any; 91

(ii) Division (B) (1) (d) (i) of this section shall not be 92
construed as requiring a metes and bounds description. 93

(e) The parties to and date of the contract; 94

(f) The amount of the architect's claim under the 95
contract; 96

(g) A statement that the information contained in the affidavit is true and accurate to the knowledge of the architect. 97
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(2) The affidavit shall be signed by the architect and notarized. 100
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(C) Not later than thirty days after recordation, the architect shall serve the recorded affidavit upon all parties listed in the affidavit by such delivery method as provides proof of receipt. Failure to serve shall not invalidate the lien, but a court may consider equitable remedies for such failure. 102
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(D) A county recorder receiving an affidavit filed pursuant to division (A) of this section shall record the affidavit and charge and collect from the person filing the affidavit the fees prescribed in section 317.32 of the Revised Code for the recorder's services. 108
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Sec. 4703.203. (A) (1) An architect holding a lien on commercial real estate that has been perfected pursuant to section 4703.202 of the Revised Code may commence proceedings to enforce the lien by filing a complaint in the common pleas court of the county in which the commercial real estate is located. 113
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(2) The complaint need not initiate foreclosure proceedings on the lien prior to a court determining the validity of the underlying claim. 118
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(B) The architect shall name as defendants in the complaint all parties who have an interest of record in the commercial real estate that is the subject of the lien, including all parties named in the affidavit required under section 4703.202 of the Revised Code. 121
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(C) (1) The architect shall file the complaint within two 126
years of the date of recordation of the affidavit required under 127
section 4703.202 of the Revised Code. 128

(2) Failure to file a complaint within the time specified 129
shall extinguish the lien. 130

(D) (1) (a) Any person with an interest in the commercial 131
real estate subject to a lien perfected pursuant to section 132
4703.202 of the Revised Code may demand, in writing, that the 133
architect commence suit to enforce the lien. 134

(b) Such a demand shall be commenced by serving the 135
architect and all parties listed in the affidavit required under 136
section 4703.202 of the Revised Code the written demand. Such a 137
delivery may be made by any means that provides proof of 138
receipt. 139

(2) If the architect does not commence the action within 140
sixty days after receipt of the demand, the lien is 141
extinguished. 142

Sec. 4703.204. (A) When a claim underlying a lien 143
perfected pursuant to section 4703.202 of the Revised Code is 144
satisfied, the architect holding the lien shall record a written 145
release of the architect's lien in the county recorder's office 146
of the county in which the lien was recorded. 147

(B) The architect shall file the lien release for 148
recording within thirty days after the underlying claim is 149
satisfied. 150

(C) The county recorder shall record the release and 151
charge and collect from the architect the fees set forth in 152
section 317.32 of the Revised Code for the recorder's services. 153

Sec. 4703.205. (A) When a claim underlying a lien 154
established pursuant to section 4703.201 of the Revised Code is 155
satisfied, regardless of whether or not the architect holding 156
the lien records a written release pursuant to section 4703.204 157
of the Revised Code, or when such a lien is extinguished 158
pursuant to section 4703.203 of the Revised Code, any person 159
with an interest in the commercial real estate that was the 160
subject of the lien, or named in the affidavit recorded pursuant 161
to section 4703.202 of the Revised Code, may record an affidavit 162
stating that the underlying claim was satisfied or that the lien 163
was released by operation of law in the county recorder's office 164
of the county in which the commercial real estate is located. 165

(B) The county recorder shall record the affidavit and 166
charge and collect from the person filing the affidavit the fees 167
set forth in section 317.32 of the Revised Code for the 168
recorder's services. 169

(C) The fact that a claim underlying a lien is satisfied 170
or that a lien is extinguished by operation of law does not 171
affect any other right or appropriate action, such as for breach 172
of contract. 173

Sec. 4703.206. (A) Any person with an interest in 174
commercial real estate on which a lien has been perfected 175
pursuant to section 4703.202 of the Revised Code, or named in 176
the affidavit required under that section, may apply to the 177
common pleas court of the county in which the commercial real 178
estate is located to substitute financial security for the lien. 179

(B) The substitute security shall be in the amount equal 180
to the architect's claim, and in a form such as an escrow 181
account or surety bond held by the clerk of courts or other 182
party as determined adequate by the court. 183

(C) The court, in its entry approving the substitute 184
security, shall direct the release of the lien. 185

(D)(1) The person substituting the security shall file the 186
entry and release for recording in the office of the county 187
recorder of the county in which the commercial real estate is 188
located. 189

(2) The county recorder shall record the entry and release 190
and charge and collect from the person filing the entry and 191
release for recording the fees set forth in section 317.32 of 192
the Revised Code for the recorder's services. 193

Sec. 4703.54. As used in sections 4703.54 to 4703.546 of 194
the Revised Code: 195

(A) "Commercial real estate" and "improvement" have the 196
same meanings as in section 4703.20 of the Revised Code. 197

(B) "Landscape architect" means an individual, 198
partnership, corporation, or association providing landscape 199
architect services pursuant to this chapter. "Landscape 200
architect" does not include an architect licensed under this 201
chapter. 202

(C) "Owner" means a person who has a legal or equitable 203
interest in commercial real estate, including a contingent 204
interest, pursuant to an agreement or contract, and who enters 205
into a written contract with a landscape architect for services 206
to be provided with regard to any such interest in the 207
commercial real estate. 208

Sec. 4703.541. (A)(1) A landscape architect who enters 209
into a written contract for services to be provided with regard 210
to any interest in commercial real estate has a lien on that 211
interest. 212

(2) The lien shall be effective only if the contract for services is in writing and is signed by the landscape architect and the owner of the interest in commercial real estate. 213
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(B)(1) Only the landscape architect named in the contract shall have a lien pursuant to this section. 216
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(2) A lien is not available to any employee, agent, or independent contractor of the landscape architect. 218
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(C) The amount of the lien shall be limited to the amount due to the landscape architect pursuant to the contract. 220
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(D) The lien shall be effective only against the interest in commercial real estate that is the subject of the contract. 222
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(E) All valid and recorded mechanic's liens arising pursuant to Chapter 1311. of the Revised Code, regardless of recordation date, and all previously recorded mortgages and liens, including judgment liens, take priority over a landscape architect's lien. 224
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Sec. 4703.542. (A) To perfect a lien on commercial real estate referred to in section 4703.541 of the Revised Code, a landscape architect shall file with the county recorder of the county in which the commercial real estate is located an affidavit as described in division (B) of this section. 229
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(B)(1) The affidavit required under division (A) of this section shall include all of the following: 234
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(a) The name of the landscape architect; 236

(b) The name of the owner of the interest in the commercial real estate; 237
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(c) The name of the record owner of the commercial real 239

<u>estate if different than the owner described in division (B) (1)</u>	240
<u>(b) of this section;</u>	241
<u>(d) (i) A legal description of the commercial real estate</u>	242
<u>sufficient to reference the instrument by which the record owner</u>	243
<u>took title and the permanent parcel number, if any;</u>	244
<u>(ii) Division (B) (1) (d) (i) of this section shall not be</u>	245
<u>construed as requiring a metes and bounds description.</u>	246
<u>(e) The parties to and date of the contract;</u>	247
<u>(f) The amount of the landscape architect's claim under</u>	248
<u>the contract;</u>	249
<u>(g) A statement that the information contained in the</u>	250
<u>affidavit is true and accurate to the knowledge of the landscape</u>	251
<u>architect.</u>	252
<u>(2) The affidavit shall be signed by the landscape</u>	253
<u>architect and notarized.</u>	254
<u>(C) Not later than thirty days after recordation, the</u>	255
<u>landscape architect shall serve the recorded affidavit upon all</u>	256
<u>parties listed in the affidavit by such delivery method as</u>	257
<u>provides proof of receipt. Failure to serve shall not invalidate</u>	258
<u>the lien, but a court may consider equitable remedies for such</u>	259
<u>failure.</u>	260
<u>(D) A county recorder receiving an affidavit filed</u>	261
<u>pursuant to division (A) of this section shall record the</u>	262
<u>affidavit and charge and collect from the person filing the</u>	263
<u>affidavit the fees prescribed in section 317.32 of the Revised</u>	264
<u>Code for the recorder's services.</u>	265
<u>Sec. 4703.543. (A) (1) A landscape architect holding a lien</u>	266
<u>that has been perfected pursuant to section 4703.542 of the</u>	267

Revised Code may commence proceedings to enforce a lien by 268
filing a complaint in the common pleas court of the county in 269
which the commercial real estate is located. 270

(2) The complaint need not initiate foreclosure 271
proceedings on the lien prior to a court determining the 272
validity of the underlying claim. 273

(B) The landscape architect shall name as defendants in 274
the complaint all parties who have an interest of record in the 275
commercial real estate that is the subject of the lien, 276
including all parties named in the affidavit required under 277
section 4703.542 of the Revised Code. 278

(C) (1) The landscape architect shall file the complaint 279
within two years of the date of recordation of the affidavit 280
required under section 4703.542 of the Revised Code. 281

(2) Failure to file a complaint within the time specified 282
shall extinguish the lien. 283

(D) (1) (a) Any person with an interest in the commercial 284
real estate subject to a lien perfected pursuant to section 285
4703.542 of the Revised Code may demand, in writing, that the 286
landscape architect commence suit to enforce the lien. 287

(b) Such a demand shall be commenced by serving the 288
landscape architect and all parties listed in the affidavit 289
required under section 4703.542 of the Revised Code the written 290
demand. Such a delivery may be made by any means that provides 291
proof of receipt. 292

(2) If the landscape architect does not commence the 293
action within sixty days after receipt of the demand, the lien 294
is extinguished. 295

Sec. 4703.544. (A) When a claim underlying a lien 296
perfected pursuant to section 4703.542 of the Revised Code is 297
satisfied, the landscape architect holding the lien shall record 298
a written release of the landscape architect's lien in the 299
county recorder's office of the county in which the lien was 300
recorded. 301

(B) The landscape architect shall file the lien release 302
for recording within thirty days after the underlying claim is 303
satisfied. 304

(C) The county recorder shall record the release and 305
charge and collect from the landscape architect the fees set 306
forth in section 317.32 of the Revised Code for the recorder's 307
services. 308

Sec. 4703.545. (A) When a claim underlying a lien 309
established pursuant to section 4703.541 of the Revised Code is 310
satisfied, regardless of whether or not the landscape architect 311
holding the lien records a written release pursuant to section 312
4703.544 of the Revised Code, or when such a lien is 313
extinguished pursuant to section 4703.543 of the Revised Code, 314
any person with an interest in the commercial real estate that 315
was the subject of the lien, or named in the affidavit recorded 316
pursuant to section 4703.542 of the Revised Code, may record an 317
affidavit stating that the underlying claim was satisfied or 318
that the lien was released by operation of law in the county 319
recorder's office of the county in which the commercial real 320
estate is located. 321

(B) The county recorder shall record the affidavit and 322
charge and collect from the person filing the affidavit the fees 323
set forth in section 317.32 of the Revised Code for the 324
recorder's services. 325

(C) The fact that a claim underlying a lien is satisfied 326
or that a lien is extinguished by operation of law does not 327
affect any other right or appropriate action, such as for breach 328
of contract. 329

Sec. 4703.546. (A) Any person with an interest in 330
commercial real estate on which a lien has been perfected 331
pursuant to section 4703.542 of the Revised Code, or named in 332
the affidavit required under that section, may apply to the 333
common pleas court of the county in which the commercial real 334
estate is located to substitute financial security for the lien. 335

(B) The substitute security shall be in the amount equal 336
to the landscape architect's claim, and in a form such as an 337
escrow account or surety bond held by the clerk of courts or 338
other party as determined adequate by the court. 339

(C) The court, in its entry approving the substitute 340
security, shall direct the release of the lien. 341

(D) (1) The person substituting the security shall file the 342
entry and release for recording in the office of the county 343
recorder of the county in which the commercial real estate is 344
located. 345

(2) The county recorder shall record the entry and release 346
and charge and collect from the person filing the entry and 347
release for recording the fees set forth in section 317.32 of 348
the Revised Code for the recorder's services. 349

Sec. 4733.30. As used in sections 4733.30 to 4733.306 of 350
the Revised Code: 351

(A) "Commercial real estate" and "improvement" have the 352
same meanings as in section 4703.20 of the Revised Code. 353

(B) "Owner" means a person who has a legal or equitable interest in commercial real estate, including a contingent interest, pursuant to an agreement or contract, and who enters into a written contract with a professional engineer or professional surveyor for services to be provided with regard to any such interest in the commercial real estate. 354
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(C) "Professional engineer" means an individual, partnership, corporation, or association providing engineering services pursuant to this chapter. 360
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(D) "Professional surveyor" means an individual, partnership, corporation, or association providing engineering services pursuant to this chapter. 363
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Sec. 4733.301. (A) (1) A professional engineer or professional surveyor who enters into a written contract for services to be provided with regard to any interest in commercial real estate has a lien on that interest. 366
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(2) The lien shall be effective only if the contract for services is in writing and is signed by the professional engineer or professional surveyor and the owner of the interest in commercial real estate. 370
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(B) (1) Only the professional engineer or professional surveyor named in the contract shall have a lien pursuant to this section. 374
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(2) A lien is not available to any employee, agent, or independent contractor of the professional engineer or professional surveyor. 377
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(C) The amount of the lien shall be limited to the amount due to the professional engineer or professional surveyor pursuant to the contract. 380
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(D) The lien shall be effective only against the interest 383
in commercial real estate that is the subject of the contract. 384

(E) All valid and recorded mechanic's liens arising 385
pursuant to Chapter 1311. of the Revised Code, regardless of 386
recordation date, and all previously recorded mortgages and 387
liens, including judgment liens, take priority over a 388
professional engineer or professional surveyor's lien. 389

Sec. 4733.302. (A) To perfect a lien on commercial real 390
estate referred to in section 4733.301 of the Revised Code, a 391
professional engineer or professional surveyor shall file with 392
the county recorder of the county in which the commercial real 393
estate is located an affidavit as described in division (B) of 394
this section. 395

(B)(1) The affidavit required under division (A) of this 396
section shall include all of the following: 397

(a) The name of the professional engineer or professional 398
surveyor; 399

(b) The name of the owner of the interest in the 400
commercial real estate; 401

(c) The name of the record owner of the commercial real 402
estate if different than the owner described in division (B)(1) 403
(b) of this section; 404

(d)(i) A legal description of the commercial real estate 405
sufficient to reference the instrument by which the record owner 406
took title and the permanent parcel number, if any; 407

(ii) Division (B)(1)(d)(i) of this section shall not be 408
construed as requiring a metes and bounds description. 409

(e) The parties to and date of the contract; 410

(f) The amount of the professional engineer or 411
professional surveyor's claim under the contract; 412

(g) A statement that the information contained in the 413
affidavit is true and accurate to the knowledge of the 414
professional engineer or professional surveyor. 415

(2) The affidavit shall be signed by the professional 416
engineer or professional surveyor and notarized. 417

(C) Not later than thirty days after recordation, the 418
professional engineer or professional surveyor shall serve the 419
recorded affidavit upon all parties listed in the affidavit by 420
such delivery method as provides proof of receipt. Failure to 421
serve shall not invalidate the lien, but a court may consider 422
equitable remedies for such failure. 423

(D) A county recorder receiving an affidavit filed 424
pursuant to division (A) of this section shall record the 425
affidavit and charge and collect from the person filing the 426
affidavit the fees prescribed in section 317.32 of the Revised 427
Code for the recorder's services. 428

Sec. 4733.303. (A) (1) A professional engineer or 429
professional surveyor holding a lien that has been perfected 430
pursuant to section 4733.302 of the Revised Code may commence 431
proceedings to enforce the lien by filing a complaint in the 432
common pleas court of the county in which the commercial real 433
estate is located. 434

(2) The complaint need not initiate foreclosure 435
proceedings on the lien prior to a court determining the 436
validity of the underlying claim. 437

(B) The professional engineer or professional surveyor 438
shall name as defendants in the complaint all parties who have 439

an interest of record in the commercial real estate that is the 440
subject of the lien, including all parties named in the 441
affidavit required under section 4733.302 of the Revised Code. 442

(C) (1) The professional engineer or professional surveyor 443
shall file the complaint within two years of the date of 444
recordation of the affidavit required under section 4733.302 of 445
the Revised Code. 446

(2) Failure to file a complaint within the time specified 447
shall extinguish the lien. 448

(D) (1) (a) Any person with an interest in the commercial 449
real estate subject to a lien perfected pursuant to section 450
4733.302 of the Revised Code may demand, in writing, that the 451
professional engineer or professional surveyor commence suit to 452
enforce the lien. 453

(b) Such a demand shall be commenced by serving the 454
professional engineer or professional surveyor and all parties 455
listed in the affidavit required under section 4733.302 of the 456
Revised Code the written demand. Such a delivery may be made by 457
any means that provides proof of receipt. 458

(2) If the professional engineer or professional surveyor 459
does not commence the action within sixty days after receipt of 460
the demand, the lien is extinguished. 461

Sec. 4733.304. (A) When a claim underlying a lien 462
perfected pursuant to section 4733.302 of the Revised Code is 463
satisfied, the professional engineer or professional surveyor 464
holding the lien shall record a written release of the 465
professional engineer or professional surveyor's lien in the 466
county recorder's office of the county in which the lien was 467
recorded. 468

(B) The professional engineer or professional surveyor shall file the lien release for recording within thirty days after the underlying claim is satisfied. 469
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(C) The county recorder shall record the release and charge and collect from the professional engineer or professional surveyor the fees set forth in section 317.32 of the Revised Code for the recorder's services. 472
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Sec. 4733.305. (A) When a claim underlying a lien established pursuant to section 4733.301 of the Revised Code is satisfied, regardless of whether or not the professional engineer or professional surveyor holding the lien recorded a written release pursuant to section 4733.304 of the Revised Code, or when such a lien is extinguished pursuant to section 4733.303 of the Revised Code, any person with an interest in the commercial real estate that was the subject of the lien, or named in the affidavit recorded pursuant to section 4733.302 of the Revised Code, may record an affidavit stating that the underlying claim was satisfied or that the lien was released by operation of law in the county recorder's office of the county in which the commercial real estate is located. 476
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(B) The county recorder shall record the affidavit and charge and collect from the person filing the affidavit the fees set forth in section 317.32 of the Revised Code for the recorder's services. 489
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(C) The fact that a claim underlying a lien is satisfied or that a lien is extinguished by operation of law does not affect any other right or appropriate action, such as for breach of contract. 493
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Sec. 4733.306. (A) Any person with an interest in 497

commercial real estate on which a lien has been perfected 498
pursuant to section 4733.302 of the Revised Code, or named in 499
the affidavit required under that section, may apply to the 500
common pleas court of the county in which the commercial real 501
estate is located to substitute financial security for the lien. 502

(B) The substitute security shall be in the amount equal 503
to the professional engineer or professional surveyor's claim, 504
and in a form such as an escrow account or surety bond held by 505
the clerk of courts or other party as determined adequate by the 506
court. 507

(C) The court, in its entry approving the substitute 508
security, shall direct the release of the lien. 509

(D) (1) The person substituting the security shall file the 510
entry and release for recording in the office of the county 511
recorder of the county in which the commercial real estate is 512
located. 513

(2) The county recorder shall record the entry and release 514
and charge and collect from the person filing the entry and 515
release for recording the fees set forth in section 317.32 of 516
the Revised Code for the recorder's services. 517