



Ohio Revised Code

Section 1311.11 Notifying lienholder to commence suit.

Effective: April 10, 1991

Legislation: House Bill 238 - 118th General Assembly

(A)(1) The owner, part owner, lessee, mortgagee, or any other person with an interest in real property upon which a lien has been taken, or any original contractor or subcontractor who has provided a bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security in accordance with division (C) of this section, may notify the lienholder to commence suit on the lien, by written notice delivered to the lienholder in one of the following manners:

(a) At the address of the lienholder as shown in the affidavit of lien;

(b) Through his agent indicated on the affidavit of lien;

(c) At any later address of the lienholder that has been delivered in writing to the owner, part owner, lessee, mortgagee, other person with an interest in the real property, original contractor, or subcontractor.

Except as otherwise provided in this section, the notice to commence suit shall be served by the sheriff of the county in which the land upon which the lien has been taken is situated, upon payment of the same mileage and fees as provided by law with respect to the service of summons. Except as otherwise provided in this section, if the address of the person to be served, as shown on the affidavit of lien or other writing presented by the person seeking service of the notice to commence suit, is outside the county in which the land is located, but within the state, the sheriff shall forward the notice to commence suit to the sheriff of the county in which the address of the person to be served is located, for service by such sheriff.

(2) At the request of the person seeking service of the notice to commence suit, the sheriff may send the notice by certified mail, return receipt requested, to the address of the lienholder or the lienholder's agent, whether that address is within the county in which the land is located or elsewhere. If the address of the person to be served is outside the state, the sheriff shall send the



notice by certified mail, return receipt requested.

If the notice is sent by certified mail, return receipt requested, service of the notice is deemed completed when a return receipt has been received indicating the delivery of the notice. If a return receipt shows a failure or refusal of delivery, service is deemed completed after the sheriff mails a second copy of the notice by ordinary mail, provided that the ordinary mail envelope is not returned by the postal authorities within fourteen days of the date of mailing with an endorsement showing failure of delivery.

(3) If service cannot be made at the address shown on the affidavit of lien or other writing presented by the person seeking service of the notice to commence suit, and if the lienholder or his agent cannot be located by diligent search, the notice to commence suit may be served by publication once each week for six consecutive weeks in a newspaper of general circulation in the county in which the land is located. Upon completion of service in all cases, a copy of the notice shall be furnished to the owner, part owner, lessee, mortgagee, or other person requesting service, which copy shall have the return of the sheriff endorsed on it, and in addition, in cases of service by certified mail or by publication, the copy shall have attached to it the return receipt or an affidavit that service by publication has been completed.

(B) Within thirty days after service is completed, the person who sought service shall do all of the following:

- (1) Execute an affidavit setting forth the manner in which service was accomplished;
- (2) Attach to the affidavit a copy of the notice to commence suit, with the sheriff's return endorsed on the notice or with a certified mail return receipt indicating the service or attempted service;
- (3) File the items with the recorder of the county in which the property is located.

The recorder shall index and record the notice in the same manner and receive the same fees as for releases of mortgages and other liens.

If the lienholder fails to commence suit upon the lien within sixty days after completion of service



upon him of the notice to commence suit, or if the action is commenced but dismissed with prejudice before adjudication, the lien is void and the property wholly discharged from the lien. When a lien is void by reason of failure to commence suit within sixty days after service of the notice to commence suit, the claim upon which the lien was founded is not prejudiced by the failure, except for the loss of the lien as security for the claim.

(C)(1) Before or after suit has been commenced upon a lien, and whether or not a notice to commence suit has been served, a bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or, subject to this division, other reasonable security may be provided in double the amount of the claim secured by the lien or, if the claim secured by the lien exceeds five thousand dollars, in the amount of one and one-half times the amount of the claim, conditioned upon payment of any judgment and costs. A bond shall be drawn in favor of the lienholder and executed by sufficient sureties, if required. Other reasonable security may be provided only with the consent of the lienholder.

An application shall be made to the court of common pleas for approval of a bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security. The bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security shall be filed with the application, and notice of a hearing on the application shall be given to the lienholder or his agent. If the application is filed before suit is commenced on the lien, the notice of hearing shall be served on the lienholder or his agent in the same manner as provided in division (A) of this section for service of the notice to commence suit. If the application is filed after suit is commenced, the notice of hearing shall be given in the same manner as a notice of hearing on motions or other applications before the court.

(2) At the hearing on the application, the only issues to be determined are the sufficiency of the bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security, and, if the security is not a bond, cash deposit, general obligation of any state government or of the United States government, or obligation insured by an agency of the United States government, whether the



lienholder has consented to the security and the security is reasonable. If the court finds the bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security sufficient and, if the security is not a bond, cash deposit, general obligation of any state government or of the United States government, or obligation insured by an agency of the United States government, that the lienholder has consented to the security and that the security is reasonable, it shall make an entry of approval. If a bond is approved, the court shall order that the bond be retained in the file. If a cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security is approved, the court shall enter an order that it considers appropriate relative to the manner in which the cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security shall be secured. During the pendency of a suit upon the lien, the court may enter an order that the amount of other reasonable security is to be increased or decreased or an order that action is to be taken with respect to the security that the court deems appropriate.

(3) As of the date of the entry of approval, the security of the bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security shall be substituted for the security of the lien, and the lien is void and the property wholly discharged from the lien. If an action on the lien has been or is commenced and a bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security has been or is provided in accordance with this section, the action on the lien is terminated automatically, the land is freed from the lien, and the action on the lien may proceed as an action on the bond, cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security, through, if appropriate, a supplemental pleading bringing in as additional parties sureties on the bond.

A bond is discharged and the sureties released, or a cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security provided is released, upon failure of the lienholder to commence suit within the time allowed pursuant to division (B) of this section, or if a suit on the



security is dismissed with prejudice to the plaintiff or judgment is entered against the plaintiff, or if judgment is entered in favor of the plaintiff upon payment of the judgment with costs. The court may direct that costs and a judgment in favor of the plaintiff in a suit be paid from a cash deposit, general obligation of any state government or of the United States government, obligation insured by an agency of the United States government, or other reasonable security, and may direct, if necessary, that other reasonable security be sold and the proceeds of the sale be applied to the judgment and costs.