



Ohio Revised Code

Section 1311.011 Liens for home construction work.

Effective: March 30, 2007

Legislation: House Bill 487 - 126th General Assembly

(A) As used in this section:

(1) "Home construction contract" means a contract entered into between an original contractor and an owner, part owner, or lessee for the improvement of any single- or double-family dwelling or portion of the dwelling or a residential unit of any condominium property that has been submitted to the provisions of Chapter 5311. of the Revised Code; an addition to any land; or the improvement of driveways, sidewalks, swimming pools, porches, garages, carports, landscaping, fences, fallout shelters, siding, roofing, storm windows, awnings, and other improvements that are adjacent to single- or double-family dwellings or upon lands that are adjacent to single- or double-family dwellings or residential units of condominium property, if the dwelling, residential unit of condominium property, or land is used or is intended to be used as a personal residence by the owner, part owner, or lessee.

(2) "Home purchase contract" means a contract for the purchase of any single- or double-family dwelling or residential unit of a condominium property that has been subjected to the provisions of Chapter 5311. of the Revised Code if the purchaser uses or intends to use the dwelling, a unit of a double dwelling, or the condominium unit as the purchaser's personal residence.

(3) "Lending institution" means any person that enters into a contract with the owner, part owner, purchaser, or lessee to provide financing for a home construction contract or a home purchase contract, which financing is secured, in whole or in part, by a mortgage on the real estate upon which the improvements contemplated by the home construction contract are to be made or upon the property that is the subject of the home purchase contract, and that makes direct disbursements under the contract to any original contractor or the owner, part owner, purchaser, or lessee.

(4) "Original contractor" includes any person with whom the owner, part owner, lessee, or purchaser under a home purchase contract or a home construction contract has directly contracted.



(B) Notwithstanding sections 1311.02 to 1311.22 of the Revised Code, all liens, except mortgage liens, that secure payment for labor or work performed or materials furnished in connection with a home construction contract or in connection with a dwelling or residential unit of condominium property, that is the subject of a home purchase contract are subject to the following conditions:

(1) No original contractor, subcontractor, material supplier, or laborer has a lien to secure payment for labor or work performed or materials furnished by the contractor, subcontractor, material supplier, or laborer, in connection with a home construction contract between the original contractor and the owner, part owner, or lessee or in connection with a dwelling or residential unit of condominium property, that is the subject of a home purchase contract, if the owner, part owner, or lessee paid the original contractor in full or if the purchaser has paid in full for the amount of the home construction or home purchase contract price, and the payment was made prior to the owner's, part owner's, or lessee's receipt of a copy of an affidavit of mechanics' lien pursuant to section 1311.07 of the Revised Code.

An owner, part owner, or lessee may file with the county recorder of the county in which the property that is the subject of a home construction contract or a home purchase contract is situated an affidavit that the owner, part owner, or lessee has made payment in accordance with this division. Except if the owner, part owner, or lessee is guilty of fraud, any lien perfected on the property by any subcontractor, material supplier, or laborer for labor or work performed or for materials furnished is void and the property wholly discharged from the lien, if the lien was perfected after full payment was made in accordance with this division. The recorder shall index and record the affidavit in the same manner that releases of mortgages and other liens are indexed and recorded, and shall receive the same fees for indexing and recording the affidavit that are provided for the recording of leases.

Nothing in this section shall adversely affect a mechanics' lien claimed against a prior owner if the lien is perfected prior to a conveyance under a home purchase contract.

(2) If the original contractor has not been paid in full as provided in division (B)(1) of this section, no subcontractor, material supplier, or laborer has a lien to secure payment for labor or work performed or materials furnished by the subcontractor, material supplier, or laborer for an amount greater than the amount due under the home construction contract that has not been paid to the



original contractor for the work, labor, or materials or for an amount greater than the amount of the home purchase contract price that has not been paid to the original contractor. The total amount of all liens for labor or work performed or for materials furnished in connection with a home construction contract that may be enforced in lien foreclosure proceedings shall not exceed the amount due under the home construction contract that has not been paid to the original contractor or the amount due under the home purchase contract that has not been paid to the original contractor.

If the amount due under the home construction contract or under the home purchase contract to the original contractor is insufficient to secure the mechanics' liens of all lien claimants that arose out of the home construction contract or that arose out of a contract in connection with a dwelling or residential unit of condominium property, that is the subject of a home purchase contract, each mechanics' lien shall be secured by a pro rata share of the amount due to the original contractor, except that mechanics' liens filed by laborers have priority. The pro rata share shall be equal to the monetary amount of the amount due to the original contractor that is subject to all valid mechanics' liens on the property that is the subject of the home purchase contract or all valid mechanics' liens under the home construction contract multiplied by a fraction in which the denominator is the total monetary amount of all valid mechanics' liens on the property that is the subject of the home purchase contract or of all valid mechanics' liens that arose out of the home construction contract, and the numerator is the amount claimed to be due by the lien claimant under a contract in connection with a dwelling or residential unit of condominium property, that is the subject of the home purchase contract or under the home construction contract.

For the purpose of this section, the amount due under a home construction contract or a home purchase contract is the unpaid balance under the home construction contract or the home purchase contract, minus the cost to complete the contract according to its terms and conditions, including any warranty or repair work.

(3) If, after receiving written notice from an owner, part owner, purchaser, or lessee that full payment has been made by the owner, part owner, purchaser, or lessee to the original contractor for the amount of the home construction or home purchase contract and that payment was made prior to the owner's, part owner's, or lessee's receipt of a copy of an affidavit of mechanics' lien pursuant to section 1311.07 of the Revised Code, the lienholder fails within thirty days after receipt of the notice to cause the lien securing payment for the work, labor, or materials to be released of record, the



lienholder is liable to the owner, part owner, or lessee for all damages arising from the lienholder's failure to cause the lien to be released. Damages shall include, but are not limited to, court costs and reasonable attorney fees incurred during any litigation between the owner and a lien claimant or lien claimants who have refused to release their liens after receiving a copy of the affidavit referred to in division (B)(1) of this section, or evidence that the cost of completing a home construction contract exceeded, or is reasonably expected to exceed, the balance due the original contractor under the home construction contract as provided in division (B)(2) of this section.

(4) No lending institution shall make any payment to any original contractor until the original contractor has given the lending institution the original contractor's affidavit stating:

(a) That the original contractor has paid in full for all labor and work performed and for all materials furnished by the original contractor and all subcontractors, material suppliers, and laborers prior to the date of the closing of the purchase or during and prior to the payment period, except such unpaid claims as the original contractor specifically sets forth and identifies both by claimant and by amount claimed;

(b) That no claims exist other than those claims set forth and identified in the affidavit required by division (B)(4) of this section.

(5) When making any payment under the home construction contract or on behalf of the owner or part owner under a home purchase contract, the lending institution may accept the affidavit of the original contractor required by division (B)(4) of this section and act in reliance upon it, unless it appears to be fraudulent on its face. The lending institution is not financially liable to the owner, part owner, purchaser, lessee, or any other person for any payments, except for gross negligence or fraud committed by the lending institution in making any payment to the original contractor.

After receipt of a written notice of a claim of a right to a mechanic's lien by a lending institution, failure of the lending institution to obtain a lien release from the subcontractor, material supplier, or laborer who serves notice of such claim is prima-facie evidence of gross negligence.

(6) Any owner, part owner, purchaser, or lessee, who requests an original contractor to supply the affidavit required by division (B)(4) of this section, may withhold any payment that is due under the



home construction contract or under the home purchase contract until the original contractor provides the owner, part owner, purchaser, or lessee with the affidavit. The owner's, part owner's, purchaser's, or lessee's remedies and rights under this section shall not be prejudiced by the owner's, part owner's, purchaser's, or lessee's failure to request or to obtain the affidavit provided for in division (B)(4) of this section.

(7) An owner, part owner, purchaser, lessee, or lending institution may make payment jointly to the original contractor and to a subcontractor, material supplier, or laborer as a condition to their giving lien releases.

(8) If a subcontractor, material supplier, or laborer refuses to supply a lien release to the original contractor, owner, part owner, lessee, or lending institution because the amount of money that the original contractor owes the subcontractor, material supplier, or laborer is in dispute, the owner, part owner, lessee, and lending institution shall withhold from payment to the original contractor an amount of money equal to the amount of money claimed by the subcontractor, material supplier, or laborer. If a subcontractor, material supplier, or laborer refuses within ten days after receipt of a written request from either the original contractor or the lending institution to state the amount due and the last date that the lien claimant performed any labor or work or furnished any material in furtherance of the improvement which gives rise to the lien claimant's lien claim, the amount and the last date shall be stated by the original contractor. The owner, part owner, lessee, and lending institution shall pay the withheld amount of money to the original contractor when any of the following occur:

(a) The subcontractor, material supplier, or laborer gives written notice to the owner, part owner, lessee, or lending institution that the amount of money claimed to be due has been paid.

(b) The subcontractor, material supplier, or laborer delivers a lien release to the original contractor, owner, part owner, lessee, or lending institution.

(c) The original contractor provides the subcontractor, material supplier, or laborer with a bond, in a form that is satisfactory to the owner, part owner, lessee, or lending institution and in an amount equal to the amount of money claimed to be due.



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(d) The time for filing a lien by the subcontractor, material supplier, or laborer has expired and no affidavit of lien has been recorded pursuant to section 1311.06 of the Revised Code.

(9) Any lien release given pursuant to this section is valid and enforceable without separate consideration for the release.