



Ohio Revised Code

Section 1311.05 Subcontractor or materialman to serve notice of furnishing.

Effective: March 30, 2007

Legislation: House Bill 487 - 126th General Assembly

(A) Except as provided in section 1311.04 of the Revised Code and this section, a subcontractor or material supplier who performs labor or work upon or furnishes material in furtherance of an improvement to real property and who wishes to preserve the subcontractor's or material supplier's lien rights shall serve a notice of furnishing, if any person has recorded a notice of commencement in accordance with section 1311.04 of the Revised Code, upon the owner's, part owner's, or lessee's designee named in the notice of commencement or amended notice and the original contractor under the original contract pursuant to which the subcontractor or material supplier is performing labor or work or furnishing materials, as named in the notice of commencement or amended notice and at the address listed in the notice or amended notice at any time after the recording of the notice of commencement or amended notice but within twenty-one days after performing the first labor or work or furnishing the first materials or within the extended time period provided for in division (I) or (J) of section 1311.04 of the Revised Code. If an owner, part owner, or lessee has not named a designee in the notice of commencement or amended notice or if the designee has died or otherwise has ceased to exist, the subcontractor or material supplier shall serve the notice of furnishing upon the owner, part owner, or lessee named in the notice of commencement. If no designee is named or if the designee has died or otherwise has ceased to exist, and if more than one owner is named in the notice of commencement, service of the notice of furnishing to the first owner, part owner, or lessee named in the notice of commencement is sufficient. No original contractor has to serve a notice of furnishing to preserve lien rights arising from a contract with an owner, part owner, or lessee. No material supplier who is in direct privity of contract with an owner, part owner, or lessee has to serve a notice of furnishing upon the owner, part owner, or lessee or designee in order to preserve the material supplier's lien rights. No subcontractor or material supplier who is in direct privity of contract with the original contractor has to serve a notice of furnishing upon the original contractor in order to preserve the subcontractor's or material supplier's lien rights.

If any person has recorded a notice of commencement in accordance with section 1311.04 of the Revised Code for an improvement involving a single- or double-family dwelling and if that notice states that multiple original contractors are involved in the improvement, a subcontractor or material



supplier does not have to serve a notice of furnishing upon any original contractor in order to preserve the subcontractor's or material supplier's lien rights.

A subcontractor or material supplier who serves a notice of furnishing in conformity with this section does not have to serve an amended notice of furnishing on any party if the subcontractor or material supplier receives an amended notice of commencement subsequent to service of the subcontractor's or material supplier's notice of furnishing. If a subcontractor or material supplier serves a notice of furnishing based upon information contained in any notice of commencement or amended notice of commencement relative to the improvement for which the subcontractor or material supplier performs labor or work or furnishes material, the notice of furnishing is deemed effective even if the notice of commencement already has been amended or is amended in the future.

If a lender is named in the notice of commencement or amended notice, a subcontractor or material supplier may serve a copy of the notice of furnishing upon the lender at the address listed in the notice or amended notice, provided that no subcontractor or material supplier is required to serve a copy of the notice of furnishing upon the lender to preserve the subcontractor's or material supplier's lien rights. The receipt of a notice of furnishing by a lender imposes no duty upon the lender by implication or otherwise with respect to the disbursement of any loan proceeds or the payment to any subcontractor, material supplier, or any other person.

(B) The notice of furnishing shall be in substantially the following form:

"Notice of Furnishing

(For use in connection with improvements

to property other than public improvements)

To: _____

(Name of owner, part owner, or lessee or designee

from the notice of commencement)



(Address from the notice of commencement)

To: _____

(Name of original contractor from notice of commencement)

(Address of original contractor from notice of commencement)

Please take notice that the undersigned is performing certain labor or work or furnishing certain materials to _____ (name and address of other contracting party) _____ in connection with the improvement to the real property located at _____. The labor, work, or materials were performed or furnished first or will be performed or furnished first on _____ (date).

WARNING TO OWNER: THIS NOTICE IS REQUIRED BY THE OHIO MECHANICS' LIEN LAW. IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS AND DUTIES UNDER THESE STATUTES YOU SHOULD SEEK LEGAL ASSISTANCE TO PROTECT YOU FROM THE POSSIBILITY OF PAYING TWICE FOR THE IMPROVEMENTS TO YOUR PROPERTY.

(Name and address of lien claimant)

By _____

(Name and capacity of party signing

for lien claimant)



(Address of party signing)

Date:"

(C) The description of the location of the property required in the notice of furnishing is sufficient if it reasonably identifies the real property upon which the labor or work is performed or for which the material is furnished.

(D)(1) Except as provided in division (D)(2) of this section, a notice of furnishing served more than twenty-one days after a subcontractor or material supplier who is required by this section to serve a notice of furnishing, first performed labor or work or furnished material at the site of the improvement preserves the subcontractor's or material supplier's lien rights for amounts owing for labor and work performed and materials furnished within the twenty-one-day period immediately preceding service of the notice of furnishing and thereafter, but does not revive any prior lien rights for labor or work performed or materials furnished prior to the twenty-one days immediately preceding service of the notice of furnishing.

(2) A notice of furnishing served within the applicable period provided for in section 1311.04 of the Revised Code preserves the subcontractor's or material supplier's lien rights for amounts owing for labor and work performed and materials furnished from the date the labor or work was first performed or materials were first furnished through the date of service of the notice of furnishing and thereafter. A notice of furnishing served after the applicable period provided for in section 1311.04 of the Revised Code does not revive any prior lien rights for labor or work performed or materials furnished prior to the twenty-one days immediately preceding service of the notice of furnishing.

(E) This section does not apply to any improvement made pursuant to a home construction contract as defined in section 1311.011 of the Revised Code.

(F) A notice of furnishing, even if served upon a mortgagee of real property to be improved, does not constitute a written notice of a lien or encumbrance under section 5301.232 or a written notice of a claim of a right to a mechanics' lien under division (B)(5) of section 1311.011 of the Revised Code.



(G) No laborer must serve a notice of furnishing in accordance with this section to preserve lien rights.

(H) No subcontractor or material supplier who performs labor or work upon or furnishes material in furtherance of an improvement has to serve a notice of furnishing in accordance with this section in order to preserve the subcontractor's or material supplier's lien rights if the owner, part owner, or lessee who contracted for the labor, work, or materials fails to record a notice of commencement in accordance with section 1311.04 of the Revised Code.

(I) If a notice of commencement is filed as provided in division (O) of section 1311.04 of the Revised Code, the subcontractors and material suppliers working on or providing materials to the improvement shall not be required to serve notices of furnishing as provided in division (A) of section 1311.05 of the Revised Code hereinabove in order to preserve lien rights.