



Ohio Revised Code

Section 1311.311 Notice to commence suit.

Effective: April 10, 1991

Legislation: House Bill 238 - 118th General Assembly

Any public authority or any principal contractor or subcontractor who receives a copy of the affidavit required by section 1311.26 of the Revised Code, as provided in section 1311.31 of the Revised Code, may notify the claimant or his agent, to commence suit. Proof that this notice was served in accordance with section 1311.19 of the Revised Code, may be made by affidavit filed with the public authority or clerk or agent thereof. If the claimant fails to commence suit within sixty days after the date of the service of the notice, the affidavit filed pursuant to section 1311.26 of the Revised Code is void and the funds are to be released to the principal contractor. This section does not preclude the collection of the claim in any manner in which any claim may otherwise be collected.

An affidavit filed pursuant to section 1311.26 of the Revised Code is void and the funds upon which it is sought to be imposed wholly discharged from the affidavit filed pursuant to section 1311.26 of the Revised Code if the principal contractor or any subcontractor or interested party acting in his name gives the notice to commence suit and files with the public authority, a bond in the amount equal to one and one-half of the claim in favor of the claimant, executed by sufficient surety, approved in writing by the public authority, and conditioned upon the payment of any judgment upon the claim, plus costs.

If the public authority fails to discharge the affidavit filed pursuant to section 1311.26 of the Revised Code and make payment, the principal contractor or subcontractor may file an action in the court of common pleas of the county in which the property is located except that if the action is against a state officer, the principal contractor or subcontractor shall file the action in the court of common pleas of Franklin county. If the court determines in the action that the public authority improperly failed to discharge the affidavit and make payment, the court may award reasonable attorney fees.

The bond is void upon the failure of the claimant to commence suit within sixty days after the date of the service of the notice or, if the claimant commences suit within the required time period, upon the satisfaction of any judgment that is entered in favor of the claimant, upon final judgment against the claimant, or upon dismissal of the suit for any reason.