



Ohio Revised Code

Section 2923.36 Corrupt activity lien notice.

Effective: July 1, 2007

Legislation: House Bill 241 - 126th General Assembly

(A) Upon the institution of any criminal proceeding charging a violation of section 2923.32 of the Revised Code, the filing of any complaint, indictment, or information in juvenile court alleging a violation of that section as a delinquent act, or the institution of any civil proceeding under section 2923.34 or 2981.05 of the Revised Code, the state, at any time during the pendency of the proceeding, may file a corrupt activity lien notice with the county recorder of any county in which property subject to forfeiture may be located. No fee shall be required for filing the notice. The recorder immediately shall record the notice pursuant to section 317.08 of the Revised Code.

(B) A corrupt activity lien notice shall be signed by the prosecuting attorney who files the lien. The notice shall set forth all of the following information:

(1) The name of the person against whom the proceeding has been brought. The prosecuting attorney may specify in the notice any aliases, names, or fictitious names under which the person may be known. The prosecuting attorney also may specify any corporation, partnership, or other entity in which the person has an interest subject to forfeiture under Chapter 2981. of the Revised Code and shall describe in the notice the person's interest in the corporation, partnership, or other entity.

(2) If known to the prosecuting attorney, the present residence and business addresses of the person or names set forth in the notice;

(3) A statement that a criminal or delinquency proceeding for a violation of section 2923.32 of the Revised Code or a civil proceeding under section 2923.34 or 2981.05 of the Revised Code has been brought against the person named in the notice, the name of the county in which the proceeding has been brought, and the case number of the proceeding;

(4) A statement that the notice is being filed pursuant to this section;

(5) The name and address of the prosecuting attorney filing the notice;



(6) A description of the real or personal property subject to the notice and of the interest in that property of the person named in the notice, to the extent the property and the interest of the person in it reasonably is known at the time the proceeding is instituted or at the time the notice is filed.

(C) A corrupt activity lien notice shall apply only to one person and, to the extent applicable, any aliases, fictitious names, or other names, including names of corporations, partnerships, or other entities, to the extent permitted in this section. A separate corrupt activity lien notice is required to be filed for any other person.

(D) Within seven days after the filing of each corrupt activity lien notice, the prosecuting attorney who files the notice shall furnish to the person named in the notice by certified mail, return receipt requested, to the last known business or residential address of the person, a copy of the recorded notice with a notation on it of any county in which the notice has been recorded. The failure of the prosecuting attorney to furnish a copy of the notice under this section shall not invalidate or otherwise affect the corrupt activity lien notice when the prosecuting attorney did not know and could not reasonably ascertain the address of the person entitled to notice.

After receipt of a copy of the notice under this division, the person named in the notice may petition the court to authorize the person to post a surety bond in lieu of the lien or to otherwise modify the lien as the interests of justice may require. The bond shall be in an amount equal to the value of the property reasonably known to be subject to the notice and conditioned on the payment of any judgment and costs ordered in an action pursuant to Chapter 2981. of the Revised Code up to the value of the bond.

(E) From the date of filing of a corrupt activity lien notice, the notice creates a lien in favor of the state on any personal or real property or any beneficial interest in the property located in the county in which the notice is filed that then or subsequently is owned by the person named in the notice or under any of the names set forth in the notice.

The lien created in favor of the state is superior and prior to the interest of any other person in the personal or real property or beneficial interest in the property, if the interest is acquired subsequent to the filing of the notice.



(F)(1) Notwithstanding any law or rule to the contrary, in conjunction with any civil proceeding brought pursuant to section 2981.05 of the Revised Code, the prosecuting attorney may file in any county, without prior court order, a lis pendens pursuant to sections 2703.26 and 2703.27 of the Revised Code. In such a case, any person acquiring an interest in the subject property or beneficial interest in the property, if the property interest is acquired subsequent to the filing of the lis pendens, shall take the property or interest subject to the civil proceeding and any subsequent judgment.

(2) If a corrupt activity lien notice has been filed, the prosecuting attorney may name as a defendant in the lis pendens, in addition to the person named in the notice, any person acquiring an interest in the personal or real property or beneficial interest in the property subsequent to the filing of the notice. If a judgment of forfeiture is entered in the criminal or delinquency proceeding pursuant to section 2981.04 of the Revised Code in favor of the state, the interest of any person in the property that was acquired subsequent to the filing of the notice shall be subject to the notice and judgment of forfeiture.

(G) Upon a final judgment of forfeiture in favor of the state pursuant to Chapter 2981. of the Revised Code, title of the state to the forfeited property shall do either of the following:

(1) In the case of real property, or a beneficial interest in it, relate back to the date of filing of the corrupt activity lien notice in the county where the property or interest is located. If no corrupt activity lien notice was filed, title of the state relates back to the date of the filing of any lis pendens under division (F) of this section in the records of the county recorder of the county in which the real property or beneficial interest is located. If no corrupt activity lien notice or lis pendens was filed, title of the state relates back to the date of the recording of the final judgment of forfeiture in the records of the county recorder of the county in which the real property or beneficial interest is located.

(2) In the case of personal property or a beneficial interest in it, relate back to the date on which the property or interest was seized by the state, or the date of filing of a corrupt activity lien notice in the county in which the property or beneficial interest is located. If the property was not seized and no corrupt activity lien notice was filed, title of the state relates back to the date of the recording of the final judgment of forfeiture in the county in which the personal property or beneficial interest is



located.

(H) If personal or real property, or a beneficial interest in it, that is subject to forfeiture pursuant to section 2923.32 of the Revised Code is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of either a corrupt activity lien notice, or a criminal or delinquency proceeding for a violation of section 2923.32 or a civil proceeding under section 2981.05 of the Revised Code, whichever is earlier, the state may bring an action in any court of common pleas against the person named in the corrupt activity lien notice or the defendant in the criminal, delinquency, or civil proceeding to recover the value of the property or interest. The court shall enter final judgment against the person named in the notice or the defendant for an amount equal to the value of the property or interest together with investigative costs and attorney's fees incurred by the state in the action. If a civil proceeding is pending, an action pursuant to this section shall be filed in the court in which the proceeding is pending.

(I) If personal or real property, or a beneficial interest in it, that is subject to forfeiture pursuant to Chapter 2981. of the Revised Code is alienated or otherwise transferred or disposed of after either the filing of a corrupt activity lien notice, or the filing of a criminal or delinquency proceeding for a violation of section 2923.32 or a civil proceeding under section 2981.05 of the Revised Code, whichever is earlier, the transfer or disposal is fraudulent as to the state and the state shall have all the rights granted a creditor under Chapter 1336. of the Revised Code.

(J) No trustee, who acquires actual knowledge that a corrupt activity lien notice, a criminal or delinquency proceeding for a violation of section 2923.32 or a civil proceeding under section 2981.05 of the Revised Code has been filed against any person for whom the trustee holds legal or record title to personal or real property, shall recklessly fail to furnish promptly to the prosecuting attorney all of the following:

(1) The name and address of the person, as known to the trustee;

(2) The name and address, as known to the trustee, of all other persons for whose benefit the trustee holds title to the property;

(3) If requested by the prosecuting attorney, a copy of the trust agreement or other instrument under



which the trustee holds title to the property.

Any trustee who fails to comply with this division is guilty of failure to provide corrupt activity lien information, a misdemeanor of the first degree.

(K) If a trustee transfers title to personal or real property after a corrupt activity lien notice is filed against the property, the lien is filed in the county in which the property is located, and the lien names a person who holds a beneficial interest in the property, the trustee, if the trustee has actual notice of the notice, shall be liable to the state for the greater of the following:

- (1) The proceeds received directly by the person named in the notice as a result of the transfer;
- (2) The proceeds received by the trustee as a result of the transfer and distributed to the person named in the notice;
- (3) The fair market value of the interest of the person named in the notice in the property transferred.

However, if the trustee transfers property for at least its fair market value and holds the proceeds that otherwise would be paid or distributed to the beneficiary, or at the direction of the beneficiary or the beneficiary's designee, the liability of the trustee shall not exceed the amount of the proceeds held by the trustee.

(L) The filing of a corrupt activity lien notice does not constitute a lien on the record title to personal or real property owned by the trustee, except to the extent the trustee is named in the notice.

The prosecuting attorney for the county may bring a civil action in any court of common pleas to recover from the trustee the amounts set forth in division (H) of this section. The county may recover investigative costs and attorney's fees incurred by the prosecuting attorney.

(M)(1) This section does not apply to any transfer by a trustee under a court order, unless the order is entered in an action between the trustee and the beneficiary.



(2) Unless the trustee has actual knowledge that a person owning a beneficial interest in the trust is named in a corrupt activity lien notice or otherwise is a defendant in a civil proceeding brought pursuant to section 2923.34 or 2981.05 of the Revised Code, this section does not apply to either of the following:

(a) Any transfer by a trustee required under the terms of any trust agreement, if the agreement is a matter of public record before the filing of any corrupt activity lien notice;

(b) Any transfer by a trustee to all of the persons who own a beneficial interest in the trust.

(N) The filing of a corrupt activity lien notice does not affect the use to which personal or real property, or a beneficial interest in it, that is owned by the person named in the notice may be put or the right of the person to receive any proceeds resulting from the use and ownership, but not the sale, of the property, until a judgment of forfeiture is entered.

(O) The term of a corrupt activity lien notice is five years from the date the notice is filed, unless a renewal notice has been filed by the prosecuting attorney of the county in which the property or interest is located. The term of any renewal of a corrupt activity lien notice granted by the court is five years from the date of its filing. A corrupt activity lien notice may be renewed any number of times while a criminal or civil proceeding under section 2923.34, 2981.04, or 2981.05 of the Revised Code, or an appeal from either type of proceeding, is pending.

(P) The prosecuting attorney who files the corrupt activity lien notice may terminate, in whole or part, any corrupt activity lien notice or release any personal or real property or beneficial interest in the property upon any terms that the prosecuting attorney determines are appropriate. Any termination or release shall be filed by the prosecuting attorney with each county recorder with whom the notice was filed. No fee shall be imposed for the filing.

(Q)(1) If no civil proceeding has been brought by the prosecuting attorney pursuant to section 2923.34 of the Revised Code against the person named in the corrupt activity lien notice, the acquittal in a criminal or delinquency proceeding for a violation of section 2923.32 of the Revised Code of the person named in the notice or the dismissal of a criminal or delinquency proceeding for such a violation against the person named in the notice terminates the notice. In such a case, the



filing of the notice has no effect.

(2) If a civil proceeding has been brought pursuant to section 2923.34 or 2981.05 of the Revised Code with respect to any property that is the subject of a corrupt activity lien notice and if the criminal or delinquency proceeding brought against the person named in the notice for a violation of section 2923.32 of the Revised Code has been dismissed or the person named in the notice has been acquitted in the criminal or delinquency proceeding for such a violation, the notice shall continue for the duration of the civil proceeding and any appeals from the civil proceeding, except that it shall not continue any longer than the term of the notice as determined pursuant to division (O) of this section.

(3) If no civil proceeding brought pursuant to section 2981.05 of the Revised Code then is pending against the person named in a corrupt activity lien notice, any person so named may bring an action against the prosecuting attorney who filed the notice, in the county where it was filed, seeking a release of the property subject to the notice or termination of the notice. In such a case, the court of common pleas promptly shall set a date for hearing, which shall be not less than five nor more than ten days after the action is filed. The order and a copy of the complaint shall be served on the prosecuting attorney within three days after the action is filed. At the hearing, the court shall take evidence as to whether any personal or real property, or beneficial interest in it, that is owned by the person bringing the action is covered by the notice or otherwise is subject to forfeiture. If the person bringing the action shows by a preponderance of the evidence that the notice does not apply to the person or that any personal or real property, or beneficial interest in it, that is owned by the person is not subject to forfeiture, the court shall enter a judgment terminating the notice or releasing the personal or real property or beneficial interest from the notice.

At a hearing, the court may release from the notice any property or beneficial interest upon the posting of security, by the person against whom the notice was filed, in an amount equal to the value of the property or beneficial interest owned by the person.

(4) The court promptly shall enter an order terminating a corrupt activity lien notice or releasing any personal or real property or beneficial interest in the property, if a sale of the property or beneficial interest is pending and the filing of the notice prevents the sale. However, the proceeds of the sale shall be deposited with the clerk of the court, subject to the further order of the court.



(R) Notwithstanding any provision of this section, any person who has perfected a security interest in personal or real property or a beneficial interest in the property for the payment of an enforceable debt or other similar obligation prior to the filing of a corrupt activity lien notice or a lis pendens in reference to the property or interest may foreclose on the property or interest as otherwise provided by law. The foreclosure, insofar as practical, shall be made so that it otherwise will not interfere with a forfeiture under Chapter 2981. of the Revised Code.