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Final Analysis

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SUMMARY

- Allows an architect, landscape architect, professional engineer, or professional surveyor (collectively “professional”) who enters into a contract for services relating to commercial real estate to obtain a lien on the property.
- Establishes the process to perfect, enforce, and release the professional’s lien.
- Prescribes the circumstances under which a lien is extinguished.
- Allows a person with an interest in commercial real estate to substitute financial security for a professional’s perfected lien.

DETAILED ANALYSIS

Professional’s lien on commercial real estate

Under the act, an architect, landscape architect, professional engineer, or professional surveyor (which includes an individual, partnership, corporation, or association providing those services) (collectively “professional”) who enters into a contract for services to be provided with regard to any interest in commercial real estate has a lien on that interest. The lien is effective only if the contract is in writing and signed by both the professional and the owner of the property interest. Only the professional named in the contract may have such a lien; the lien is not available to the professional’s employee, agent, or independent contractor.

The act limits the lien amount to the amount due to the professional under the contract and limits the lien’s effectiveness to the property interest that is the subject of the contract.

Also, all valid and recorded mechanic's liens and all other previously recorded liens have priority over the professional's lien.¹

Perfection

The act requires the filing, recording, and serving of an affidavit for a professional to perfect a lien on a property interest. "Perfection" refers to the process of making a security interest publicly known. Perfection is necessary for determining which parties have which interests and the priority of those interests.

To perfect the professional's lien, the professional must file with the county recorder of the county where the commercial real estate is located an affidavit that is signed by the professional and notarized and that includes all of the following information:

1. The professional's name;
2. The owner's name;
3. A legal description of the commercial real estate (which is not required to be a metes and bounds description) and the permanent parcel number, if one has been assigned;
4. The parties to and date of the contract;
5. The amount of the professional's claim under the contract;
6. A statement that the information in the affidavit is true and accurate to the professional's knowledge.

The county recorder must record it and charge and collect the appropriate recording fees.

Not later than 30 days after the affidavit is recorded, the professional must serve the recorded affidavit on all parties listed in the affidavit by a delivery method that provides proof of receipt. Failure to serve does not invalidate the lien; however, a court may consider equitable remedies for that failure.²

Enforcement

A perfected lien has a two-year life: if a professional fails to enforce the lien within two years after the affidavit is recorded, the lien is extinguished. To enforce the lien, the professional must file a complaint in the common pleas court of the county where the commercial real estate is located. The professional must name as defendants all parties with an interest of record in the commercial real estate, including all parties named in the affidavit. The professional does not need to initiate a foreclosure proceeding on the lien before the court can determine whether the underlying claim is valid.

¹ R.C. 4703.20, 4703.201, 4703.54, 4703.541, 4733.30, and 4733.301.

² R.C. 4703.202, 4703.542, and 4733.302, by reference to R.C. 317.32, not in the act.

Any person with an interest in commercial real estate subject to a perfected lien may demand, in writing, that the professional sue to enforce the lien. The demand must be served on the professional and all parties listed in the affidavit in a manner that provides proof of receipt. If the professional does not sue within 60 days following receipt of the demand, the lien is extinguished.³

Satisfaction and release

Under the act, a professional must record a written release of the lien when the claim underlying the lien is satisfied (i.e., when payment has been made in full under the contract). The professional must file the lien release for recording within 30 days after the claim is satisfied, and the county recorder must record the release and charge and collect the appropriate recording fees.⁴

Any person with an interest in the commercial real estate that was the subject of a professional's perfected lien, or named in the affidavit recorded to perfect the lien, may record an affidavit stating that the underlying claim was satisfied or that the lien was released. A person may do so when the underlying claim is satisfied, regardless of whether the professional records a release, or when the lien is extinguished as described above. The county recorder must record the affidavit and charge and collect the appropriate recording fees.

The fact that a claim underlying a lien is satisfied or extinguished does not affect any other right or appropriate action, such as for breach of contract.⁵

Substitution of financial security

A professional's lien also may be released through the substitution of financial security. Any person with an interest in commercial real estate on which a professional's lien has been perfected, or named in the affidavit recorded to perfect the lien, may apply to substitute financial security for the lien. To do so, the person must apply to the common pleas court of the county where the property is located. The substitute security must be in an amount equal to the professional's claim and in a form determined adequate by the court. The court, in its entry approving the substitute security, must direct the release of the lien.

The person substituting the security must file the court's entry and release for recording with the county recorder of the county where the commercial real estate is located. The county recorder must record the entry and release and charge and collect the appropriate recording fees.⁶

³ R.C. 4703.203, 4703.543, and 4733.303.

⁴ R.C. 4703.204, 4703.544, and 4733.304, by reference to R.C. 317.32, not in the act.

⁵ R.C. 4703.205, 4703.545, and 4733.305, by reference to R.C. 317.32, not in the act.

⁶ R.C. 4703.206, 4703.546, and 4733.306, by reference to R.C. 317.32, not in the act.

HISTORY

Action	Date
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