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S.B. 331
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Blessing

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SUMMARY

- Requires that a lien creditor provide the last known address of a lien debtor when filing a lien relating to unpaid child support and personal property taxes, and the name of the lien debtor and last known address when filing a lien relating to workers compensation, unemployment compensation, sales taxes, income taxes, or severance taxes.
- Requires, rather than authorizes, the recording of a memorandum of trust or other qualifying instrument when title to real property is held by the trustee of a disclosed trust.
- Provides a four-year curative period for an otherwise valid memorandum of trust that is not recorded, so long as the instrument from a trustee or trust as grantor, conveying or encumbering any interest in the real property has been of record for more than four years.
- Provides a cure for a recorded memorandum of trust that conveys real property from a trust instead of from the trustee.

DETAILED ANALYSIS

General overview

The bill requires that certain nonjudicial liens filed with the county recorder's office without getting a court judgment include the last known address of the judgement debtor and the name of the debtor, if not currently required under law. The bill also revises the law related to recording a memorandum of trust.

Liens

Child support

Under continuing law, if a court or child support enforcement agency makes a final and enforceable determination of default, the child support enforcement agency administering the

order may assert a lien on any of the obligor's real or personal property that is in Ohio. With respect to the obligor's real property, the lien arises after it is filed with a county recorder. The bill requires that any lien filed include the last known address of the obligor, without further inquiry or investigation. The address included cannot be a post office box.¹

Workers' compensation

Continuing law requires most employers to obtain coverage under Ohio's Workers' Compensation Law. If an employer that is required to pay premiums to the State Insurance Fund does not make payments, the Administrator of Workers' Compensation must obtain a lien against the employer's property for the amount due. Continuing law requires the Administrator to list the amount of the premium due from the employer when the Administrator files the lien. The bill adds that the Administrator must also include the name of the employer and the employer's last known address.²

Unemployment compensation

Under Ohio's Unemployment Compensation Law, most private sector employers are required to make contributions based on employee wages. Any contribution, interest, forfeiture, or fine required to be paid can become a lien upon the real and personal property of the employer if not paid when due. Continuing law requires the Director of Job and Family Services to file notice of the lien with the county recorder in the county in which the employer owns personal or real property. The bill requires that the notice also include the employer's name and last known address.³

Personal property taxes

Under continuing law, liens for taxes against tangible personal property attach to real property of the owner of the personal property. When property taxes become delinquent, the county auditor is required to make a tax list of unpaid property taxes and deliver a duplicate to the county treasurer. The county auditor must publish the list in a newspaper of general circulation in the county and file it with the county recorder, which constitutes the notice of a lien on the real property. Continuing law requires that the list include the name of the person charged and the amount of unpaid taxes and penalties due. The bill adds that the list must also include the last known address of the person charged.⁴

Sales, income, and severance taxes

Under continuing law, when the Tax Commissioner issues an assessment for sales, income, or severance taxes against a taxpayer, the taxpayer may appeal the assessment. An assessment is a formal notice of an outstanding liability for taxes, interest, and penalty. After an assessment becomes final, if any portion of the amount owed is unpaid, the Tax Commissioner

¹ R.C. 3123.67; R.C. 3123.66, not in the bill.

² R.C. 4123.78.

³ R.C. 4141.23.

⁴ R.C. 5719.04.

may file a copy of the final assessment with the clerk of the court of common pleas in the county where the business or person is located. If there is no address in Ohio, then the assessment can be filed in the Franklin County Court of Common Pleas. The bill requires that the filing include the party's name and last known address.⁵

Recording of a memorandum of trust

A memorandum of trust is a written, signed, and notarized instrument that contains the basic details about a trust and is used when transferring real property with a trust. Specifically, the memorandum must include (1) the name and address of the trustee of the trust, (2) the date of execution of the trust, and (3) the powers specified in the trust relative to the acquisition, sale, or encumbering of real property by the trustee or the conveyance of real property by the trustee, and any restrictions upon those powers.

Under current law, a memorandum of trust may be recorded with the county recorder where the property is located. The bill instead requires the recording of the memorandum of trust or some other instrument that contains the same required information when title to real property is held by the trustee of a disclosed trust. A disclosed trust is one in which some identifying information about the trust beyond the word "Trustee" or "Agent" is used to indicate that the real property is held in trust. The bill specifies that, in circumstances other than the conveyance of real property, the memorandum may be presented for recording.⁶

Cures for certain errors

Continuing law allows for a cure to specified errors found in instruments that convey real property. This statutory cure specifies that the error itself will not cause the instrument to be defective nor affect the validity of the conveyance. The bill adds to this list and provides a cure for an otherwise valid memorandum of trust that is not recorded, so long as the instrument from a trustee or trust as grantor, conveying or encumbering any interest in the real property has been of record for more than four years.

Also, under continuing law, conveyances of real property must be done through the trustee, and not the trust itself. Continuing law allows for a statutory cure for a recorded memorandum of trust in which the conveyance of real property is made to the trust, which should be made to the trustee. The bill adds that this cure also applies to property conveyed from a trust instead of from the trustee.⁷

⁵ R.C. 5739.13, 5747.13, and 5749.07.

⁶ R.C. 5301.255 and 5301.03, not in the bill.

⁷ R.C. 5301.071(E)(1) and (F).

HISTORY

Action	Date
Introduced	11-13-24
