



Ohio Legislative Service Commission

Bill Analysis

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(As Reported by H. Judiciary)

Reps. Grossman and Curtin, Becker, Antonio, Fedor, Lepore-Hagan, Blessing, Hambley, Sheehy, Schuring, Dever, McColley

BILL SUMMARY

Vacant and abandoned properties – expedited foreclosure actions

- Allows a mortgagee to bring an expedited foreclosure action against vacant and abandoned residential property.
- Enables a court to deem foreclosed residential properties vacant and abandoned when the mortgagor is in monetary default on the mortgage and certain conditions apply.
- Provides judicial and sale procedures for vacant and abandoned property.
- Authorizes a mortgagee of a residential property that has been found to be vacant and abandoned to enter and secure the property.
- Authorizes a mortgagee who has not yet filed a mortgage foreclosure action to enter and secure the residential property only if the mortgage contract or other documents provide for the entry.
- Extinguishes an owner's right to redemption of a mortgage on residential property found to be vacant and abandoned upon the confirmation of the sale of the property.

Modifications to judicial sale procedures

- Establishes new procedures for sheriff's sales of residential properties subsequent to the first sale attempt.
- Requires the purchaser of a property at a judicial sale to deposit a specified amount with the sheriff at the time of the sale.

- Requires a court, upon motion, to return a purchaser's deposit, less the costs of a subsequent sale, when a person fails to timely pay the balance due on the purchase price of a property sold at judicial sale.
- Holds a purchaser of property at a judicial foreclosure sale responsible for the payment of any and all taxes and assessments, and any penalties and interest on those taxes and assessments, that attach the day following the sale.
- Removes the requirement that a county treasurer, upon request by a county sheriff, estimate the amount of costs that should be discharged out of the proceeds from a judicial tax foreclosure sale and the subsequent refund and certification procedures.
- Requires the sheriff to record the deed of a property sold at a judicial sale within a certain time period and provides that if the deed is not recorded within that time period, the purchaser may file a motion with the court to proceed with the recording of the order of confirmation of sale.
- Grants the judgment creditor and the first lienholder a right of redemption under certain circumstances.
- Specifies that the redemption by a judgment debtor of property sold at a judicial sale does not discharge advancements of a judgment creditor.
- Requires additional information to be included in the notice and advertisement of judicial sales.

Owner's physical harm to property

- Provides, except when attempting to make an improvement, that an owner who knowingly causes physical harm to the owner's residential property is guilty of criminal mischief if the property is the subject of a foreclosure action.

Jurisdiction of the Toledo Municipal Court

- Expressly grants the Toledo Municipal Court jurisdiction within its territory in certain real property foreclosure actions, actions to recover real property, and for injunction actions to prevent or terminate city violations.

Responsibilities of the clerk of the court of common pleas

- Places additional duties on the clerk of the court of common pleas with respect to notices of judgments of foreclosure and prohibits a clerk from restricting, prohibiting, or modifying the rights of parties seeking service on party defendants.



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CONTENT AND OPERATION

Overview

The bill makes changes relative to judicial foreclosure actions. First, it permits the mortgagee to bring an expedited foreclosure action against residential property that is "vacant and abandoned." The bill also modifies the procedures that generally apply to the judicial sale of property. The bill also expands the jurisdiction of the Toledo Municipal Court over certain real property actions and expands the responsibilities of the clerk of the court of common pleas related to the filing of a judgment of foreclosure.

Ohio foreclosure procedures – background

There are two primary types of foreclosure in the U.S. – judicial foreclosure, in which a court conducts and oversees the process and the plaintiff obtains title only if the plaintiff is the successful bidder at auction, and nonjudicial, in which a lender or a trust may obtain title after a notice of foreclosure and then may sell the property, often at private auction.



Mortgage foreclosure

Ohio has the judicial form of foreclosure. In Ohio, the holder of the mortgage note (usually the mortgagee) must file a complaint in a court of common pleas to initiate the foreclosure action. After a hearing in which the homeowner has an opportunity to be represented and heard, a court can issue a judgment in favor of the plaintiff holder. Then, the holder must file for a writ of execution of that judgment, which directs the sheriff to sell the property at auction. Upon receiving that order of sale, a sheriff has the property appraised and sells it at auction.

Before the title of the property may transfer to the purchaser, the court must confirm the sale, indicating that the entire foreclosure procedure was conducted pursuant to the laws governing foreclosure. Only after the court's confirmation of the sale, and only if the plaintiff holder was the successful bidder at auction, does the holder obtain title to the property. The homeowner has until the court's confirmation of the sale to redeem the property and pay the amount owed. Ohio law also grants the holder the right to obtain a deficiency judgment against the homeowner if the proceeds of the sale do not cover the amount the homeowner owed on the mortgage.

Not all of the described steps in a foreclosure action are contained in the Revised Code. Mortgage foreclosure procedures in Ohio are governed by the Ohio Rules of Civil Procedure, common law, statute, and local court rules. The early stages of foreclosure, including the filing for a foreclosure action and the notice provided to parties, are governed primarily by the Rules of Civil Procedure. The sale procedures and court confirmation are primarily governed by statute.

Definitions for residential foreclosures

The bill adopts the following definitions for purposes of residential foreclosure actions:

"Mortgagee" means a person entitled to enforce the instrument secured by the mortgage under the Ohio Commercial Paper Law or a person with the right to enforce the obligation secured by the mortgage pursuant to law outside of the Ohio Commercial Paper Law.

"Residential mortgage loan" means a loan or agreement to extend credit, including the renewal, refinancing, or modification of such a loan or agreement, that is made to a person and that is primarily secured by a mortgage, deed of trust, or other lien upon any interest in residential property or any certification of stock or other evidence of ownership in, and a proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of residential property.

"**Residential property**" means real property located within Ohio consisting of land and a structure on that land containing four or fewer dwelling units, each of which is intended for occupancy by a separate household. "Residential property" includes a residential condominium unit owned by an individual, notwithstanding the number of units in the structure, but includes a manufactured or mobile home only if it is taxed as real property.¹

Also, as used in this analysis:

"**Mortgagor**" means a person who, having all or part of title to property, by written instrument pledges that property for some particular purpose, such as security for a debt.² In other words, the property owner who has taken out a mortgage.

"**Sheriff**" includes any other levying officer of a county that conducts judicial sales of real property.

"**Sheriff's sale**" and "**judicial sale**" mean the sale of property pursuant to court order.

Vacant and abandoned property: expedited foreclosure actions by mortgagees

The bill permits a mortgagee who files a foreclosure action on a residential property to file a motion with the court to proceed in an expedited manner on the basis the property is vacant and abandoned. In order to proceed in an expedited manner, upon commencement of the foreclosure action, the mortgagee is required to be a person entitled to enforce the instrument secured by the mortgage under the Ohio Commercial Paper Law or a person with the right to enforce the obligation secured by the mortgage pursuant to law outside of the Ohio Commercial Paper Law.³

The bill specifies that none of the bill's procedures regarding expedited actions supersede or limit other procedures adopted by the court to resolve residential mortgage loan foreclosure actions, including foreclosure mediation.⁴

¹ R.C. 2308.01, 2308.02(A), and 2329.01.

² *Black's Law Dictionary*, fifth edition, 1979.

³ R.C. 2308.02(A).

⁴ R.C. 2308.02(F).



Vacant and abandoned property criteria

The bill provides that in deciding the motion to proceed in an expedited manner, the court is required to deem the residential property vacant and abandoned if:

(1) The court finds by a preponderance of the evidence that the residential mortgage loan is in monetary default;

(2) The court finds by a preponderance of the evidence that the mortgagee is a person entitled to enforce the instrument secured by the mortgage under the Ohio Commercial Paper Law or a person with the right to enforce the obligation secured by the mortgage pursuant to law outside of the Ohio Commercial Paper Law;

(3) No mortgagor or other defendant has filed an answer or objection setting forth a defense or objection that, if proven, would preclude the entry of a final judgment and decree of foreclosure;

(4) No mortgagor or other defendant has filed a written statement with the court indicating that the property is not vacant and abandoned; and

(5) The court finds by clear and convincing evidence that at least three or more of the following factors are true:

- Neither an owner nor a tenant appears to be residing in the property at the time of an inspection of the property by the appropriate local official, or by the mortgagee.
- Gas, electric, sewer, or water utility services to the property have been disconnected.
- Windows or entrances to the property are boarded up or closed off, or multiple window panes are broken and unrepaired.
- Doors on the property are smashed through, broken off, unhinged, or continuously unlocked.
- The property is sealed because, immediately prior to being sealed, it was considered by the appropriate official to be open, vacant, or vandalized.
- Junk, litter, trash, debris, or hazardous, noxious, or unhealthy substances or materials have accumulated on the property.
- Furnishings, window treatments, and personal items are absent from the structure on the land.



- Government employees provide written statements indicating that the structure on the land is vacant and abandoned.
- The property is the object of vandalism, loitering, criminal conduct, or there has been physical destruction or deterioration of the property.
- A mortgagor issues a written statement expressing the intent of all mortgagors to abandon the property.
- Other reasonable indicia of abandonment exists.⁵

Hearings

If, at the time the mortgagee brings an action to foreclose on a residential mortgage loan, the mortgagee files a motion for expedited foreclosure under the bill's expedited foreclosure provisions, the court must decide the motion not later than 21 days after the last period to answer the foreclosure complaint has expired, or within the time consistent with the local rules. If the mortgagee files the motion for expedited foreclosure after the last period to answer the foreclosure complaint has expired, the court must decide the motion not later than 21 days after the motion is filed, or within the time consistent with the local rules.⁶

Judgment

Under the bill, if the court decides that the property is vacant and abandoned (see "**Vacant and abandoned property criteria**," above) and that the mortgagee who filed the motion to proceed in an expedited manner is entitled to judgment, the court must enter a final judgment and decree of foreclosure and order the property to be sold according to procedures under the bill (see "**Sale of property**," below).⁷

Sale of property

If the court enters a judgment and orders a sale of the property, the sheriff must offer the property for sale within 75 days after the issuance of the order of sale. The sale must be conducted in accordance with existing execution of property procedures.⁸

⁵ R.C. 2308.02(C).

⁶ R.C. 2308.02(B).

⁷ R.C. 2308.02(D).

⁸ R.C. 2308.02(E).

Right to enter the property

The bill enables a mortgagee of a residential property that is found to be vacant and abandoned under the bill's provisions to enter that property to secure it and prevent damage. If the mortgagee has not yet filed a mortgage foreclosure action, the mortgagee may enter the property only if the mortgage contract or other documents allow such an entry.⁹

Right of redemption

The equitable and statutory rights to redemption of a mortgage on a property found to be vacant and abandoned under the bill's expedited foreclosure provisions expire upon the confirmation of the sale of the property.¹⁰

Modifications to judicial sale procedures

Price and conditions for sheriff's sales subsequent to the first sale

The bill changes the procedures for sheriff's sales of residential property subsequent to the first attempt. The procedure for the first sheriff's sale remains the same as under existing law: the property must be appraised and the sale price may not be less than $\frac{2}{3}$ of that appraised value. The bill requires that if a residential property remains unsold after the first auction with a minimum bid of $\frac{2}{3}$ of the appraised value, a second auction is required with no set minimum bid and the property is to be sold to the highest bidder. This second auction must be held not earlier than seven days and not later than 30 days after the first auction. As a condition of the second auction, the purchaser must pay, in addition to the amount bid, a deposit to the sheriff to be used to pay the costs and allowances of the sale. The deposit must be not less than \$5,000 but no more than \$10,000, as determined by the sheriff. The bill requires the sheriff to return the deposit, less the amount used for costs and allowances, to the purchaser within 14 days after the transfer of sale.

If the property remains unsold after two auctions, the bill allows the sheriff to subsequently offer the property for sale from time to time with no set minimum bid or the property may be disposed of in any other manner provided by law. This differs from existing law, which allows the court, on motion of the plaintiff or defendant, to

⁹ R.C. 2308.03(A) and (B).

¹⁰ R.C. 2308.03(C).



order a new appraisal and sale or direct the amount for which the property may be sold if the property remains unsold after the first sale.¹¹

Price at sale and market value of other properties

The bill specifies that the price at which a foreclosed residential property is sold at a sheriff's auction may not be used to establish the market value of any other property.¹²

Purchaser deposit

The bill requires a successful purchaser of a property at a judicial sale to make a deposit in the amount of 5% of the appraised value of the property, but not less than \$5,000 or more than \$10,000, to the officer conducting the sale. This deposit is due at the time of the sale, unless the purchaser is the plaintiff in the foreclosure action or the judgment creditor. In that case, the plaintiff or judgment creditor must tender the deposit to the sheriff by the close of business the day of the sale. If the purchaser fails to timely make the deposit, the sale is invalidated.¹³

Failure to pay balance due on purchased property

Under continuing law, a court may issue an order for contempt against a person who purchases real property at a judicial sale and fails to timely pay the balance due on the purchase price, which can include ordering the forfeiture of any deposit paid in connection with the sale. The bill requires the court, upon motion, to order the return of any remaining portion of the purchaser's deposit, less the costs of a subsequent sale and any other remedy the court considers appropriate. The bill states that the effect of an order for contempt for failure of the purchaser to pay is to be considered an order to void the confirmation of sale and transfer.¹⁴

Purchaser responsibility for taxes and assessments

The bill makes a purchaser of real estate at a judicial sale in relation to the foreclosure of a tax lien responsible for payment of any and all taxes and assessments, and any penalties and interest on those taxes and assessments, that attach as of the day following the date of the sale. This includes taxes and assessments levied for the year in

¹¹ R.C. 2329.20 and 2329.52.

¹² R.C. 2329.20.

¹³ R.C. 2329.211.

¹⁴ R.C. 2329.30.



which the sale occurred, apportioned pro rata after the date of the sale, and any penalties and interest on those taxes and assessments.

The bill removes the requirement that a county treasurer, upon request of a county sheriff, estimate the amount of such taxes and assessments. It also removes the requirement that the sheriff refund to the purchaser the difference between the estimate and actual amount or certify any amount in excess of the treasurer's estimate to the treasurer for placement on the tax duplicate.¹⁵

Deed and transfer of property title

The bill requires the sheriff who conducts the judicial sale to record the deed to the property within 14 days after the confirmation of sale and payment of the balance due.¹⁶ If the deed is not prepared or recorded within this 14-day period, the purchaser may file a motion with the court to proceed with the recording of the order of confirmation of sale. If the court finds that payment was made of the balance due, it must enter an order ordering the plaintiff to present a certified copy of the order of confirmation of sale to the county recorder for recording, and ordering the county recorder to record the order of confirmation of sale in the record of deeds.¹⁷

After receiving the court order, the plaintiff in the foreclosure action, or the plaintiff's attorney, must cause a certified copy of the order of confirmation to be recorded in the office of the county recorder. The order of confirmation of sale, when filed with the county recorder, has the same effect as a deed prepared and recorded by an officer who sells the residential property at a judicial sale under existing law.¹⁸

The clerk must issue a copy of the court order to the county auditor to transfer record ownership of the property for the purpose of real estate taxes. Real estate taxes coming due after the date of sale do not prohibit the auditor from transferring ownership of the property on its records or cause the recorder to deny the recording. The real estate taxes become the responsibility of the new title holder of the property beginning on the date of the confirmation of sale. The sheriff cannot require the confirmation of sale to be amended for taxes not due and payable as of the date of the sale.¹⁹

¹⁵ R.C. 323.47.

¹⁶ R.C. 2329.31(C)(1).

¹⁷ R.C. 2329.31(C)(2)(a).

¹⁸ R.C. 2329.31(C)(2)(a) and (b).

¹⁹ R.C. 2329.31(C)(2)(c).

Right of redemption by judgment creditor or first lienholder

In sales of residential properties taken in execution or order of sale that are sold at an auction with no set minimum bid, the judgment creditor and the first lienholder of a property are provided the right to redeem the property within 14 days after the sale by paying the purchase price. The redeeming party must pay the purchase price to the clerk of the court in which the judgment of foreclosure was rendered or the order of sale was made. Upon timely payment by the judgment creditor or first lienholder, the bill directs the court to proceed as if the redeeming party were the successful purchaser at sale.²⁰

Right of redemption by judgment debtor

The bill specifies that if a judgment debtor (i.e., the property owner) redeems a property before the confirmation of the judicial sale, the redemption is a satisfaction of the judgment against the debtor only. It does not serve to discharge the debtor of the judgment creditor's advancements for real estate taxes, insurance premiums, and property protection if such a requirement was included in the judgment. Upon successful redemption, the debtor may petition the court to require the creditor to provide an itemization of the advances within a reasonable amount of time for payment by the debtor. Only after the debtor pays both the judgment and advancement amounts is the court permitted to set aside the sale.²¹

Advertisement requirements

The bill adds to the information required to be in the advertisement for property being sold at sheriff's sale. Any advertisement, in addition to information required by continuing law, must state that a purchaser of the real estate is responsible for costs and allowances that the proceeds of the sale are insufficient to cover.²² In addition, the sheriff must include in all notices and advertisements for the sale of residential property located in a municipal corporation that is occurring pursuant to a mortgage loan foreclosure action, the provisional date, time, and place for the second sale of the property, in the case that the property does not sell at the initial sale (see "**Price and conditions for sheriff's sales subsequent to the first sale,**" above).²³

²⁰ R.C. 2329.311.

²¹ R.C. 2329.33.

²² R.C. 2329.21.

²³ R.C. 2329.23 and 2329.26(A)(2).

Notice requirements

Similar to the advertisement requirements, the bill requires that the written notice of the date, time, and place of a judicial sale of residential property provided by a judgment creditor to all parties of action (as required by continuing law) include the date, time, and place of the provisional second sale of the property (see "**Price and conditions for sheriff's sales subsequent to the first sale**," above).²⁴

Owner's physical harm to property

Under the bill, a person who is an owner of residential property who knowingly causes physical harm to that property after the person has been personally served with a summons and complaint in a residential mortgage loan foreclosure action related to the property is guilty of criminal mischief. However, a property owner who is making a good faith effort to improve or maintain the value of the owner's property is not subject to this provision.²⁵

Jurisdiction of the Toledo Municipal Court

The bill expressly grants the Toledo Municipal Court jurisdiction within its territory over certain real property sale and foreclosure actions, actions to recover real property, and for injunction actions to prevent or terminate violations of city ordinances and regulations.²⁶

Responsibilities of the clerk of the court of common pleas

The bill prohibits the clerk of the court of common pleas from restricting, prohibiting, or otherwise modifying the rights of parties to seek service on party defendants allowed by the Rules of Civil Procedure, either singularly or concurrently.²⁷

The bill also expands the duties of the clerk related to the filing of a judgment of foreclosure. In a residential mortgage loan foreclosure action, upon filing the certificate of judgment, the clerk must provide notice of the filing to the judgment debtor, the judgment creditor, and any other lienholder who has appeared in the action.²⁸ Under continuing law, the clerk must still docket the certificate of the judgment.

²⁴ R.C. 2329.26(A)(1)(a)(i).

²⁵ R.C. 2308.04 and 2909.07.

²⁶ R.C. 1901.18.

²⁷ R.C. 2303.26.

²⁸ R.C. 2329.02(G).

HISTORY

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