



# Ohio Legislative Service Commission

## Bill Analysis

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### **Sub. H.B. 463**

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(As Reported by H. Financial Institutions, Housing, and Urban Development)

**Reps.** Dever, Becker, Bocchieri, Hambley, Perales, Sprague

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## **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**

#### **Official public sheriff sale website**

- Creates the official public sheriff sale website to sell property subject to foreclosure sales.

- Permits judicial sales of residential property to be conducted through the website for the first five years the website is fully operational, after this period sales on the website are required.
- Permits judicial sales of commercial property to be conducted through the website.
- Requires the Department of Administrative Services to solicit competitive sealed proposals for the creation, operation, and maintenance of the website.
- Requires the website to meet specified minimum standards.
- Requires the website to be integrated with an auction management system.
- Establishes the standards for determining the license fee for the website.
- Establishes registration and bidding procedures for sales conducted through the website.
- Establishes the procedures for the sheriff or private selling officer to postpone, cancel, and void sales on the website.
- Permits counties to enter into shared services agreements relating to judicial sales on the website.
- Adds to the definition of "county expenses" to include online credit card payments made through the website.

### **Private selling officer**

- Authorizes a private selling officer to conduct foreclosure sales and establishes procedures relating to those sales.
- Permits a judgement creditor in a foreclosure action to file a motion with the court requesting a specified private selling officer to sell the real property.
- Permits a private selling officer to:
  - Market the real property subject to the foreclosure sale;
  - Execute a deed of conveyance of the real property sold at the foreclosure sale;
  - Record the deed conveying title to the real property sold at the foreclosure sale.



- Requires the private selling officer that conducts a sale to file a report with the court that issued the sale and to hire a title insurance agent or title insurance company to perform title, escrow, and closing services.
- Establishes a statutory form that may be used as the private selling officer's deed.

#### **Other modifications to judicial sale procedures**

- Establishes remote bidding procedures for physical location sales and website sales.
- Establishes new procedures for appraisal of property.
- Increases the penalty fee from 50¢ to \$50 for a freeholder who fails appraisal duties.
- Establishes new procedures for judicial sales of residential properties subsequent to the first sale attempt.
- Requires the purchaser of a property at a judicial sale, other than a purchaser who is the judgment creditor, to deposit a specified amount with the sheriff or private selling officer at the time of the sale.
- Permits 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.
- Authorizes, rather than requires, a county treasurer to estimate the tax-related charges to be discharged out of the proceeds of a court-ordered sale, a sale as a result of a partition action, or a sale by an executor, guardian, or trustee.
- Authorizes the plaintiff to an action resulting in such a sale to request that overestimated taxes discharged from sale proceeds be used to pay off unsatisfied liens or be paid to the court for distribution.
- Permits a plaintiff purchasing the property in such a sale to choose to have the current year's taxes, to the extent not yet determined, to be either paid from the sale proceeds or made payable at the next semiannual tax payment date.
- Requires the sheriff or private selling officer 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 transfer of title.
- Grants the judgment creditor and the first lienholder a right of redemption under certain circumstances.



- Requires additional information to be included in the notice and advertisement of judicial sales.
- Requires additional information for purchaser's identifying information and requires an entity that purchases information at a foreclosure sale to submit identifying information.
- Prohibits a judgment creditor from making a misleading statement to a mortgagor that would discourage participation in loss mitigation or foreclosure resolution.
- Permits, under certain circumstances, a county prosecutor to proceed with a foreclosure sale of residential real property.

### **Owner's physical harm to property**

- Provides that an owner who knowingly and with the purpose to diminish the value or enjoyment of the residential property moves, defaces, damages, or otherwise improperly tampers with the person's own residential property is guilty of criminal mischief if the property is the subject of a foreclosure action.

### **Attorney General reports and database**

- Requires all officers appointed or authorized by a court to conduct a foreclosure sale of certain residential properties to submit quarterly reports to the Attorney General.
- Requires the Attorney General to establish and maintain a public database containing information submitted in the reports.

### **Responsibilities of the clerk of the court of common pleas**

- Prohibits a clerk from restricting, prohibiting, or modifying the rights of parties seeking service on party defendants.

### **Enforcement of lost instrument**

- Modifies one of the three conditions that must be satisfied for a person to enforce a lost instrument under Ohio Commercial Paper Law.

### **Tax certificate foreclosure sales**

- Permits private selling officers to conduct tax certificate foreclosure sales.
- Establishes sale procedures conducted online.



- Authorizes private selling officers to carry out specified actions in order to sell the foreclosed property and execute a new deed.
- Specifies the amount that is considered reasonable for attorney, private selling officer, and title agent and title insurance company fees charged as costs against property.

## **Auctioneers**

- Requires auctioneers who are not private selling officers who conduct judicial sales to be Ohio residents.

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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 establishes the official public sheriff sale website through which foreclosure sales can be held. The bill also permits private selling officers to conduct foreclosure sales, and makes other changes that modify the procedures that generally apply to the judicial sale of property. The bill specifies in its statement of intent that the changes in the bill relating to the judicial sale of real property comprise a comprehensive regulatory framework intended to operate uniformly throughout the state to provide efficient sales procedures for foreclosed property, improve the market for such property by increasing sale prices, and reduce the number of unoccupied and abandoned properties marring the cities in Ohio. This does not preempt vacant



foreclosed property registration ordinances enacted by political subdivisions pursuant to their police powers.<sup>1</sup>

## **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 foreclosures**

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

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<sup>1</sup> Section 3(A).



"**Business day**" means a calendar day that is not a Saturday or Sunday or a legal holiday.<sup>2</sup>

"**Commercial property**" means any property that is not residential property.<sup>3</sup>

"**Manufactured home**" means a building unit or assembly of closed construction that is fabricated in an off-site facility and constructed in conformance with the federal construction and safety standards established by the U.S. Secretary of Housing and Urban Development pursuant to federal law, and that has a permanent label or tag affixed to it, certifying compliance with all applicable federal construction and safety standards.<sup>4</sup>

"**Mobile home**" means a building unit or assembly of closed construction that is fabricated in an off-site facility, is more than 35 body feet in length or, when erected on site, is 320 or more square feet, is built on a permanent chassis, is transportable in one or more sections, and does not qualify as a manufactured home or as an industrialized unit.<sup>5</sup>

"**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.<sup>6</sup>

"**Private selling officer**" means an Ohio resident licensed as both an auctioneer and as a real estate broker or real estate salesperson under Ohio law.<sup>7</sup>

"**Remote bid**" means a bid submitted in writing via fax, email, or overnight delivery or courier.<sup>8</sup>

"**Residential condominium unit**" means a "residential unit," in which the designated part of the condominium property is devoted in whole or in part to use as a residential dwelling consisting of one or more rooms on one or more floors of a

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<sup>2</sup> R.C. 2329.152(B)(1)(a) and R.C. 1.14, not in the bill.

<sup>3</sup> R.C. 2329.01(B)(1).

<sup>4</sup> R.C. 2308.01(A) and R.C. 3781.06, not in the bill.

<sup>5</sup> R.C. 2308.01(B) and R.C. 4501.01, not in the bill.

<sup>6</sup> R.C. 2308.02(A).

<sup>7</sup> R.C. 2327.01, 2329.01(B)(2), and 5721.372.

<sup>8</sup> R.C. 2329.152(B)(1)(b).



building. A "residential unit" may include exterior portions of the building, spaces in a carport, and parking spaces as described and designated in the declaration and drawings.<sup>9</sup>

**"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.<sup>10</sup>

**"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.<sup>11</sup>

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.<sup>12</sup> In other words, the property owner who has taken out a mortgage.

**"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

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<sup>9</sup> R.C. 2308.01(C) and R.C. 5311.01, not in the bill.

<sup>10</sup> R.C. 2308.01(D) and 2329.01(B)(3).

<sup>11</sup> R.C. 2308.01(E) and 2329.01(B)(3).

<sup>12</sup> *Black's Law Dictionary*, fifth edition, 1979.



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.<sup>13</sup>

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.<sup>14</sup> In addition, the bill specifies that in expedited foreclosure actions, a mortgagor is not subject to the Ohio Supreme Court case of *Bank of America v. Kuchta* regarding the filing of motion for relief from judgment or order relating to a mistake for inadvertence, surprise, or excusable neglect. Under existing common law, the case would apply, which may prohibit a mortgagor to file such a motion.<sup>15</sup>

### **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 all of the following apply:

(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 of the following factors are true:

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<sup>13</sup> R.C. 2308.02(A).

<sup>14</sup> R.C. 2308.02(F).

<sup>15</sup> Section 3(C); *Bank of America v. Kuchta*, 2014-Ohio-2475; and Ohio Rules of Civil Procedure, Title VII, Rule 60(B)(1).



- 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 official of a county, municipal corporation, or township in which the property is located, 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 of a county, municipal corporation, or township in which the property is located 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.
- The appropriate official of a county, municipal corporation, or township in which the property is located provides a written statement or 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 exist.<sup>16</sup>

## 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

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<sup>16</sup> R.C. 2308.02(C).



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.<sup>17</sup>

### **Preliminary finding**

The bill requires that if a government official has not verified the real property is vacant and abandoned (see "**Vacant and abandoned property criteria**," above) but the court makes a preliminary finding that the residential real property is vacant and abandoned pursuant to the criteria above, then within seven days of the preliminary finding, the court must order the appropriate official of a county, municipal corporation, or township in which the property is located to verify the property is vacant and abandoned. Any court costs assessed in connection with this government inspection ordered by the court must not be more than \$50.<sup>18</sup>

### **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).<sup>19</sup>

### **Sale of property**

If the court enters a judgment and orders a sale of the property, the officer conducting the sale 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, including possible postponement procedures under the bill (see "**Postponement of sale**," below).<sup>20</sup>

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<sup>17</sup> R.C. 2308.02(B).

<sup>18</sup> R.C. 2308.02(C)(6).

<sup>19</sup> R.C. 2308.02(D).

<sup>20</sup> 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.<sup>21</sup>

## **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.<sup>22</sup>

## **Modifications to judicial sale procedures**

### **The official public sheriff sale website**

The bill requires the creation of the official public sheriff sale website. Within one year after the effective date of the bill, in all cases in which the sheriff is ordered to conduct a judicial sale of residential real property, the sale may be conducted on the official public sheriff sale website for a five-year period beginning when the website is fully operational. After this five-year period, the judicial sale of residential property must be conducted on the website. Judicial sales of commercial property may be conducted on the website during and after this five-year period. In addition, a sheriff is permitted to conduct a dual real property foreclosure sale on the official public sheriff sale website and at a physical location considered appropriate by the sheriff. All sales conducted on the website must be open for bidding for at least seven days.<sup>23</sup>

### **Creation of website**

The bill requires that within 30 days of the effective date of the bill, the Department of Administrative Services solicit competitive sealed proposals for the creation, operation, and maintenance of the official public sheriff sale website and an integrated auction management system. The website and the integrated auction management system must be a single statewide system that will be used by all county sheriffs in accordance with the requirements under the bill. The winning bidder must work with sheriffs and other groups to address issues regarding the website, including

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<sup>21</sup> R.C. 2308.03(A) and (B).

<sup>22</sup> R.C. 2308.03(C), with a conforming change in R.C. 2329.33.

<sup>23</sup> R.C. 2329.153(E)(1) and 2329.39 and Section 4(B).



potential cost and recoupment, details of the implementation of the online system, and other unresolved concerns.<sup>24</sup>

### **Website requirements**

The website must meet the following minimum standards:

(1) The website's domain name must be relevant to the judicial sale of real property;

(2) The website itself must be limited to the judicial sale of real property in Ohio;

(3) The website cannot charge a fee for members of the public to view properties for sale;

(4) The website must allow each county sheriff to add text, images, or graphics to the website for the purpose of identifying the county or sheriff conducting the sale;

(5) The website must include industry-standard features and functionality, including user guides, online credit card payments, anti-snipe functionality,<sup>25</sup> watch lists, email notifications, maximum bid limits, automatic incremental bidding, and search and map features that allow users to search by county, zip code, address, parcel number, appraised value, party name, case number, and other variables relevant to the judicial sale of real property;

(6) The website must include features that allow for the cancellation of sales as required by law or court order and the postponement of sales;

(7) The website must provide a secure payment processing system that accepts online payment for property sold on the website and, in an efficient and cost effective manner, transfer those payments to the appropriate county official or account;

(8) The website must include the ability for an attorney or law firm to enter a bid in a representative capacity;

(9) The website must be integrated with the auction management system as described in the bill (see "**Auction management system**," below).<sup>26</sup>

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<sup>24</sup> R.C. 2329.153(A) and Section 4(A).

<sup>25</sup> Sniping is the placing of a bid in the closing minutes of an online auction. eBay, *eBay Glossary*, <http://pages.ebay.com/help/account/glossary.html#S> (accessed April 4, 2016).

<sup>26</sup> R.C. 2329.153(B).



## **Auction management system**

The website must be integrated with the auction management system, which is required to have a role-based workflow engine to assist in conducting sales on the website, capturing data, complying with all relevant laws, and managing administrative processes related to the judicial sale of real property in a timely, secure, and accurate manner. The auction management system must also be able to record the data necessary to meet the reporting requirement under the bill (see "**Attorney General reports and database**," below), and record fees, costs, deposits, and other money items with the objective of ensuring an accurate accounting of moneys received and disbursed in each judicial sale of real property.<sup>27</sup>

## **License fee**

The license fee for the creation, operation, and maintenance of the official public sheriff sale website and integrated auction management system must be determined using a per-transaction license fee model or a per-use license fee model. The addition of a property to the website or the auction management system is considered *a transaction* for purposes of determining the license fee. The license fee applicable to each judicial sale of real property must be taxed as costs in the case, but no other license fees should be assessed to the county sheriff.<sup>28</sup>

## **Registration and bidding procedures**

If the property is sold online, the sheriff or private selling officer must require persons seeking to bid to register online with the website before being authorized to bid. The registration form must include information that will enable the sheriff or private selling officer to identify the bidder, contact the bidder, and complete the sale of the property. In the case of an attorney or a law firm that represents a party to the foreclosure action and bids on a property in a representative capacity, the attorney or law firm must register as the representative of the party, as either an individual or entity. The registration form must include the following information:

(1) Individuals must provide the individual's name, mailing address (which cannot be a post office box address), email address, telephone number, and, if applicable, credit card information.

(2) Entities must provide the entity's legal name, trade name (if different from its legal name), state and date of formation, active status with the Office of the Secretary of

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<sup>27</sup> R.C. 2329.153(C).

<sup>28</sup> R.C. 2329.153(D).



State, mailing address, telephone number, credit card information if applicable, the name of an individual contact person for the entity, and the contact person's title, mailing address, which must not be a post office box address, email address, and telephone number.

The registration form on the website must require all persons registering to bid to state to the best of the person's knowledge and belief, that the information provided by the person is true, correct, and complete under penalties of perjury. The email address, telephone number, and credit card information required above are confidential and not public records.<sup>29</sup>

### **Sheriff postponement and cancellation of sale on website**

If the sale of the real property will be conducted on the official public sheriff sale website, the judgment creditor may instruct the sheriff to postpone the sale of the property one time for up to 180 days after the initial sale date. After receiving this instruction, the sheriff must postpone the sale of the property by announcing on the website that the sale is postponed and giving notice of the rescheduled sale date. This announcement is deemed to meet the notice requirement under the bill (see "**Notice requirement**," below).<sup>30</sup> If the judgment creditor does not postpone the sale, the judgment creditor may instruct the sheriff to cancel the sale. Upon receiving this instruction, the sheriff must cancel the sale of the property by announcing on the website that the sale is cancelled. This announcement must remain posted on the website until at least the end of the required seven-day bidding period. If the sale of the real property is postponed or canceled as described above, all bids made on the real property prior to the postponement or cancellation of the sale are void.<sup>31</sup>

### **Shared service agreements and county expenses**

The bill permits counties, pursuant to continuing law authority, to enter into a shared services agreement relating to the judicial sale of real property on the official public sheriff sale website. The shared services agreement between the counties may seek to improve efficiency and reduce costs in the judicial sale of real property by consolidating administrative functions and processes.<sup>32</sup> In addition, the bill adds to the definition of "county expenses" to include online credit card payments made through

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<sup>29</sup> R.C. 2329.154 and R.C. 149.43, not in the bill.

<sup>30</sup> R.C. 2329.153(E)(2) and 2329.26.

<sup>31</sup> R.C. 2329.153(E)(2) to (4).

<sup>32</sup> R.C. 2329.153(F).



the website. Under continuing law, "county expenses" may be paid to a county office by use of a financial transaction device.<sup>33</sup>

### **Private selling officer**

The bill establishes procedures that permit private selling officers to conduct foreclosure sales. In every foreclosure action demanding the judicial or execution sale of real property, the county sheriff must sell the property at a public auction, unless the judgement creditor files a motion with the court requesting a private selling officer to sell the property at a public auction. If the court authorizes a private selling officer to sell the property, the judgment creditor can either seek to have the property sold by the private selling officer authorized by the court or by the county sheriff. If the judgment creditor chooses to have the property sold by the private selling officer, the judgment creditor must file with clerk of court a writ requesting the issuance of an order of appraisal to the sheriff and an order of sale to the private selling officer authorized by the court. After the filing of that writ, the clerk of the court must immediately issue both of the following:

(1) An order of appraisal to the sheriff, who must obtain an appraisal of the property.

(2) An order of sale to the private selling officer, who, after the return of the appraisal, must advertise and sell the property in conformity with applicable law.<sup>34</sup>

### **Private selling officer authority**

The private selling officer who conducts a sale may do any of the following:

- Market the real property and conduct the public auction of the property online or at any physical location in the county in which the property is situated. If the auction occurs online, the auction must be open for bidding for at least seven days.
- Hire a title insurance agent licensed under Ohio law or title insurance company authorized to do business under Ohio law to assist the private selling officer in performing administrative services;
- Execute to the purchaser, or to the purchaser's legal representative, a deed of conveyance of the property sold;

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<sup>33</sup> R.C. 301.28.

<sup>34</sup> R.C. 2329.151 and 2329.152(A).



- Record on behalf of the purchaser the deed conveying title to the property sold, even if the deed may not actually have been delivered to the purchaser prior to its recording.<sup>35</sup>

### **Private selling officer postponement and cancellation of sale**

Under the bill, a judgment creditor that obtains a court order authorizing a specified private selling officer to sell the real property at a public auction may instruct the private selling officer to postpone the sale of the property one or more times, however all rescheduled sale dates must be within 180 days of the initial sale date. If the private selling officer receives an instruction to postpone, the officer must postpone the sale of the property by announcing that the sale is postponed in the following manner:

(1) If the sale is at a physical location, the announcement must be made at the sale and must include the date, time, and place of the rescheduled sale of the property.

(2) If the sale is online, the announcement must be made on the auction website and must include the date of the rescheduled sale of the property.

Each announcement must meet notice requirements under the bill (see "**Notice requirements**," below).

If the judgment creditor does not postpone the sale of the property, the judgment creditor may instruct the private selling officer to cancel the sale. If the officer receives this instruction, the officer must cancel the sale by announcing that the sale is canceled in the following manner:

(1) If the sale is at a physical location, this announcement must be made at the sale.

(2) If the sale is online, this announcement must be made on the auction website and must remain posted there until at least the end of the required seven-day bidding period.

If the sale of the property is postponed or canceled, as described above, all bids made on the property prior to the postponement or cancellation of the sale are void.<sup>36</sup>

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<sup>35</sup> R.C. 2329.152(E)(1).

<sup>36</sup> R.C. 2329.152(C).



## **Costs**

If the judgment creditor obtains a court order to have the real property sold by a private selling officer, then all of the following must be taxed as costs in the case:

- (1) The cost of the appraisal;
- (2) The cost of the advertisement;

(3) The fee charged by the private selling officer and all costs incurred by the private selling officer, with the condition that the fees and costs (excluding the appraisal and advertisement costs described above) must be taxed only up to 1.5% of the sale price of the real property. Any amount exceeding 1.5% of the sale price cannot be included in the amount necessary to redeem the property by the judgment debtor or in the calculation of any deficiency judgment, but rather must be paid by the judgment creditor or from the judgment creditor's portion of the proceeds of the sale.<sup>37</sup>

## **Private selling officer report**

The bill requires that a private selling officer that conducts a sale to file with the court that issued the order of sale an itemized report of all appraisal, publication, marketing, and other expenses of the sale and all fees charged by the private selling officer for marketing or conducting the sale, including the fee charged by the title agent or title insurance company for administration services, if applicable, and title, escrow, and closing services.<sup>38</sup>

## **Delivery of deed**

The bill establishes that by placing a bid at a sale, a purchaser appoints the private selling officer who conducts the sale as agent of purchaser for the sole purpose of accepting delivery of the deed.<sup>39</sup>

## **Title insurance**

The bill requires the private selling officer who conducts the sale to hire a title insurance agent licensed under Ohio law or title insurance company authorized to do business under Ohio law to perform title, escrow, and closing services related to the sale of the real property. The fee charged by the title insurance agent or title insurance company for services provided under the bill must be taxed as costs in the case,

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<sup>37</sup> R.C. 2329.152(D)(1).

<sup>38</sup> R.C. 2329.152(D)(2).

<sup>39</sup> R.C. 2329.152(E)(2).



provided they are reasonable. Fees up to \$500 are presumed to be reasonable. Fees exceeding \$500 may only be paid if authorized by a court order.<sup>40</sup>

### **Remote bidding for physical location sales**

The bill establishes a remote bidding procedure for physical location sales. If the sale of the real property is conducted at a physical location, then each judgement creditor and lienholder who was party to the foreclosure action may submit a remote bid to the sheriff or the private selling officer. In order to receive remote bids, each sheriff and private selling officer must establish and maintain a fax number or an email address. Each remote bid must meet both of the following qualifications:

(1) Be of a fixed maximum amount;

(2) Be delivered to the sheriff or private selling officer on or before 4:30 p.m. on the business day immediately preceding the date of the sale.

Before the sale, the sheriff or the private selling officer are required to confirm receipt of the remote bid by sending a fax or email to the judgment creditor or lienholder who submitted the remote bid, and during the sale the sheriff or the officer must place the remote bid on behalf of the bidder. After the sale, the sheriff or the officer must provide notice of the results of the sale not later than the close of business on the day of the sale to all the bidders that submitted a remote bid. The notice must be sent by fax or email to the judgment creditor or lienholder or by posting the results of the sale on a public website.<sup>41</sup>

If a sheriff or officer fails to place a remote bid on behalf of a judgment creditor or lienholder to the prejudice of the judgment creditor or lienholder, then, upon the filing of a motion to vacate the sale within ten business days after the sale date, the sale must be vacated.<sup>42</sup>

### **Appraisal of real property**

#### **Generally**

The bill revises the real property appraisal provisions to clarify that the officer making the levy in an execution sale is the sheriff (as opposed to a private selling officer) and to require that the freeholders selected to appraise the property own real

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<sup>40</sup> R.C. 2329.152(E)(3) and (F).

<sup>41</sup> R.C. 2329.152(B)(2) and (3).

<sup>42</sup> R.C. 2329.152(B)(4).



property in the county. Under existing law, when execution is levied upon real property, the officer who makes the levy must ask three disinterested freeholders, who are residents of the county where the property is located to impartially appraise the property, upon actual view.<sup>43</sup> The bill also refers to the "return of the estimate of the real property" as an "appraisal" or "appraised value."<sup>44</sup>

### **Residential property appraisal**

The bill adds that during the appraisal process of residential property subject to the foreclosure sale, the freeholders selected by the sheriff must return to the sheriff an estimate of the value of the property in money within 21 calendar days of the issuance of the order of appraisal by the clerk of the court. If the court has ordered or the clerk of the court has issued an order for a private selling officer to advertise and sell the appraised property, the freeholders selected by the sheriff must also deliver a copy of their appraisal to the private selling officer contemporaneously with their delivery of their appraisal to the sheriff.

If the freeholders selected by the sheriff do not deliver their appraisal within 21 days, as described above, then all of the following must occur:

(1) The cost of the appraisal by the freeholders must not be payable to the freeholders or taxed as costs in the case.

(2) The appraised value of the property must be the fair market value of the property as shown on the records of the county auditor, unless, for good cause shown, the court authorizes a separate appraisal of the property.

(3) The advertisement and sale of the property must proceed immediately in accordance with the order of advertisement and sale issued by the clerk of the court.

If a separate appraisal of the property is obtained, the cost of the appraisal must be included as an expense of the sale as described in the bill (see "**Costs**," above).<sup>45</sup>

### **Commercial property appraisal**

If the property to be appraised is commercial property, the freeholders selected by the sheriff must return to the sheriff an estimate of the value of the property in

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<sup>43</sup> R.C. 2329.17(A).

<sup>44</sup> R.C. 2329.17, 2329.18, and 2329.19.

<sup>45</sup> R.C. 2329.17(B) and (C).



money in accordance with the timing or other requirements, if any, that may be established for the sale.<sup>46</sup>

### **Penalty for neglecting to serve as an appraiser**

The bill increases the penalty fee from 50¢ to \$50 for a freeholder who is summoned as an appraiser and pursuant to continuing law fails to appear at the time and place appointed by the officers ordering the freeholder's appearance. Unless the freeholder has a reasonable excuse, the freeholder must pay the fee for each neglect.<sup>47</sup>

### **Post appraisal procedures**

The bill requires that if a court has ordered or the clerk of court has issued an order for the sheriff to advertise and sell the real property for which the appraised value has been determined, the sheriff must deposit a copy of the appraisal with the clerk of the court from which the writ was issued. In addition, if the court has ordered or the clerk of the court has issued an order for a private selling officer to advertise and sell the property for which the appraised value has been determined, the private selling officer must immediately advertise and sell the property in conformity with the bill's provisions and continuing law procedures.<sup>48</sup>

### **Price and conditions for judicial sales subsequent to the first sale**

The bill changes the procedures for judicial sales of residential property subsequent to the first attempt. The procedure for the first 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 sale of the residential property will be held at a physical location and not online and 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. However, the purchaser at the second sale is still subject to the costs, allowances, and real property taxes (see "**Purchaser's costs**," below). This second auction must be held not earlier than seven days and not later than 30 days after the first auction. If the property remains unsold after two auctions, the bill allows the sheriff or officer to subsequently offer the property for sale 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 order a new appraisal and sale or

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<sup>46</sup> R.C. 2329.17(D).

<sup>47</sup> R.C. 2329.56.

<sup>48</sup> R.C. 2329.18.



direct the amount for which the property may be sold if the property remains unsold after the first sale.<sup>49</sup>

### **Purchaser deposit**

The bill requires that in every action demanding the judicial or execution sale of residential property, if the judgement creditor is the purchaser at the sale, the judgment creditor is not required to make a sale deposit. All other purchasers, however, must make a sale deposit as follows:

- If the property's appraised value is less than or equal to \$10,000, the deposit must be \$2,000.
- If the property's appraised value is greater than \$10,000 but less than or equal to \$200,000, the deposit must be \$5,000.
- If the property's appraised value is greater than \$200,000, the deposit must be \$10,000.

The timing of the deposit and other payment requirements must be established by the court or the person conducting the sale and included in the advertisement of the sale. If the purchaser fails to meet the timing or other requirements of the deposit, the sale is invalid.

In judicial or execution sales of commercial property, the purchaser at the sale must make a deposit pursuant to the requirement, if any, established by the sale.<sup>50</sup>

### **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 permits 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 voids the confirmation of sale and transfer.<sup>51</sup>

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<sup>49</sup> R.C. 2329.20, 2329.21, and 2329.52.

<sup>50</sup> R.C. 2329.211.

<sup>51</sup> R.C. 2329.30.



## Property taxes paid from certain property sale proceeds

The bill modifies how property taxes are determined and paid when real property is sold through a partition action, sold by administrators, executors, guardians, or trustees, or sold at a court-ordered sale.

Under current law, a court is required to discharge from the proceeds of such a sale property tax, assessments, penalties, and interest (hereafter "property charges") that are a lien on the property as of the day the deed is transferred.<sup>52</sup> The county treasurer is required to estimate the amount that will be payable as of that day in order for the court to determine how much of the proceeds to pay toward the property charges. If the treasurer's estimate ultimately exceeds the property charges "actually payable" as of that date, the excess is refunded to the property's purchaser. (In the case of a court-ordered sale, the amount payable is the current year's taxes prorated to the date of the confirmation plus any unpaid taxes from prior years.) Under continuing law, if the estimate is less than the actual amount payable, that shortfall becomes due and payable at the next semiannual property tax payment date.

The bill continues to require a court to pay property charges, but only those charges that are a lien as of the date of the sale, rather than the date the deed is transferred. Additionally, the bill no longer requires the treasurer to estimate the amount payable on that date. But if the treasurer does complete an estimate, and the estimate exceeds the amount of charges actually payable on the date of sale, the bill no longer requires the excess to be refunded to the purchaser. Instead, the treasurer will hold that excess until the plaintiff to the action that resulted in the sale requests that the treasurer refund that amount to private lienholders or, if all such liens are satisfied, to the court that authorized the sale for appropriate distribution. For court-ordered sales, the bill requires the treasurer to complete this estimate before the sale is confirmed.

If the plaintiff purchases the property, the bill prohibits the selling officer from deducting from the sale proceeds property charges that attach as a lien before the sale date but have not yet been determined, unless the plaintiff approves that deduction. If no approval is received, the officer certifies those property charges to the treasurer, which are added to the tax list for the current year.

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<sup>52</sup> The lien for annual property tax attaches January 1, even though the taxes are not due until the ensuing December 31 or, typically, the ensuing January when extensions are added. The actual amount due for a year may not be finally determined until late in the calendar year.



Finally, the bill states that any property charges not paid on the date of sale, or charges that become payable after the sale date, continue as a lien on the property.<sup>53</sup>

### **Deed and transfer of property title**

The bill requires the officer 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. 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 transfer of title. If the court finds that a proper sale was made, it must enter an order transferring the title to the purchaser, ordering the plaintiff to present a certified copy of the order to the county recorder for recording, and ordering the county recorder to record the order in the record of deeds.

After receiving the court order, the plaintiff in the foreclosure action, or the plaintiff's attorney, must cause a certified copy of the order recorded in the office of the county recorder. The order, 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.

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 property taxes. Property 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 property taxes become the responsibility of the new title holder of the property. The sheriff cannot require the confirmation of sale to be amended for taxes not due and payable as of the date of the sale.

Additionally, the bill repeals a redundant provision requiring the attorney who filed the writ of execution to prepare a deed to the property purchased.<sup>54</sup>

### **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 bill gives the judgment creditor and the first lienholder of a property 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

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<sup>53</sup> R.C. 323.47.

<sup>54</sup> R.C. 2329.31 and R.C. 2329.36(A), not in the bill.



directs the court to proceed as if the redeeming party were the successful purchaser at sale.<sup>55</sup>

### **Purchaser's costs**

In addition to costs and allowances required to be paid by the purchaser of real property at a judicial sale under continuing law, the bill adds that the purchaser is also responsible for all taxes that the proceeds of the sale are insufficient to cover.<sup>56</sup>

### **Advertisement requirements**

The bill adds to the information required to be in the advertisement for property being sold at a judicial sale. Any advertisement, in addition to information required by continuing law, must state that a purchaser of the real property is responsible for costs, allowances, and taxes that the proceeds of the sale are insufficient to cover.<sup>57</sup>

### **Notice requirements**

The bill requires that the written notice of the date, time, and place of a judicial sale of real property provided by a judgment creditor to all parties of action (as required by continuing law) include the date, time, and place of the sale if the sale is to be held at a physical location or the start date and website address of the sale if the sale is to be held online. The notice must include the provisional second sale of the property (see "**Price and conditions for sheriff's sales subsequent to the first sale**," above).

In addition, the bill modifies the public notice requirement under continuing law, in which the officer conducting the sale is required to give public notice of the date, time, and place of the sale once a week for at least three consecutive weeks before the day of the sale. The bill requires this information to be included in the public notice for physical location sales and if the sale will be conducted online then the public notice must include the start date, the minimum duration, and website address of the sale.

Under continuing law, the public notice must be published in a newspaper of general circulation in the county. In addition, the public notice must include the following information:

- Deposit requirement (see "**Purchaser deposit**," above);

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<sup>55</sup> R.C. 2329.311.

<sup>56</sup> R.C. 2329.21.

<sup>57</sup> R.C. 2329.21.



- That the purchaser must be responsible for the costs, allowances, and taxes that the proceeds of the sale are insufficient to cover;
- The provisional second sale date, if applicable.

However, the bill provides that a sale will not be invalid, and that a court should not vacate a sale, if the notice required by the judgment creditor or the public notice fails to include the provisional date for a second sale of the property and the property is sold on the initial sale date.

The bill also requires that if a private selling officer has been ordered to sell the property, the private selling officer must give the public notice in the newspaper designated by the court. If the court has not designated a newspaper, the private selling officer must give the public notice in the newspaper customarily used or designated by the county sheriff, however, no sale that otherwise complies with the notice requirement is invalid.<sup>58</sup>

### **Purchaser's identifying information**

Under continuing law the purchaser of the real property at a foreclosure sale must submit identifying information, such as the purchaser's name, mailing address, and telephone number. The bill adds the above information is required if the purchaser is an individual, and in addition requires the individual to provide their email address and credit card information.

The bill also requires a purchaser that is an entity to submit the entity's (1) legal name, (2) trade name if different from its legal name, (3) state and date of formation, (4) whether it is in active status with the Office of the Secretary of State, (5) mailing address, (6) telephone number, (7) credit card information, (8) the name of an individual contact person for the entity, (9) the contact person's title, (10) the contact person's mailing address, which must not be a post office box, (11) the contact person's email address, and (12) the contact person's telephone number.

The bill permits the attorney or a law firm that represents a purchaser to submit the information required above in a representative capacity as either an individual or an entity. While this information continues to always be part of the record of the court of common pleas, under the bill it is part of the sheriff's record of proceedings only if the court ordered the sheriff to advertise and sell the real property. The bill specifies that

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<sup>58</sup> R.C. 2329.26.



the email address and credit card information submitted are confidential and not public records.<sup>59</sup>

### **Reversal of judgment**

The bill requires that when there has been a reversal of judgment on appeal and the court orders a judgment creditor to pay restitution, pursuant to continuing law, the court must take into consideration all persons who lost an interest in the property by reason of the judgment and sale and the order of the priority of those interests.<sup>60</sup>

### **Property sold by master commissioner**

The bill permits a court to authorize a master commissioner to sell real property only in response to a motion by a judgment creditor. The court can only grant the motion, as established under continuing law, if a special reason exists as to why the sale should not be made by the sheriff of the county where the decree or order was made or, as the bill adds, by the private selling officer.<sup>61</sup>

### **Judgment creditor conduct**

The bill prohibits a judgment creditor, in connection with a residential real property foreclosure action, to make a misleading statement orally or in writing to a mortgagor that would discourage a reasonable person from participating in loss mitigation or foreclosure resolution. In addition, the bill requires a judgment creditor, in connection with a real property foreclosure action, to proceed in a commercially reasonable manner in complying with the bill.<sup>62</sup>

### **Local government authority to continue foreclosure sale**

If there has been a decree of foreclosure entered with respect to a residential property and it has not been sold or a sale of the property is not underway, then the bill permits, beginning 12 months after the entry of the decree of foreclosure, a local political subdivision to request (by motion, resolution, or by other means) that a county prosecuting attorney file a motion with the court for the sale of the residential property. Once the prosecuting attorney receives the request or by the prosecuting attorney's own motion, the prosecuting attorney of the county in which the foreclosure action was filed may file a motion with the court to sell the property in the same manner as if the

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<sup>59</sup> R.C. 2329.271(B)(2) and R.C. 149.43, not in the bill.

<sup>60</sup> R.C. 2329.45.

<sup>61</sup> R.C. 2329.34.

<sup>62</sup> R.C. 2329.028 and Section 3(B)(2).



prosecuting attorney were the attorney for the party in whose favor the decree of foreclosure and order of sale was entered. The prosecuting attorney is required to serve a copy of the motion to all parties who entered an appearance in the foreclosure action in accordance with the Ohio Rules of Civil Procedure.

The court is required to decide the motion not sooner than 30 days after the date of the filing of the motion, and unless the court finds good cause as to why the property should not be sold, the court must grant the motion and order the prosecuting attorney to issue a praecipe for order of sale and sell the property at the next available public auction with no set minimum bid and in accordance with the terms of the order of sale and applicable provisions under Ohio law. In addition, the judgment creditor and mortgagor in the foreclosure action each have 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 was rendered or the order of sale was made. Upon timely payment, the court must proceed with the recording of the deed and transfer of title (see "**Deed and transfer of property title**," above) with the redeeming party considered the successful purchaser at sale.<sup>63</sup>

### **Owner's physical harm to property**

Under the bill, a person is guilty of criminal mischief if all of the following apply:

(1) The person knowingly and with the purpose to diminish the value or enjoyment of the residential property moves, defaces, damages, destroys, or otherwise improperly tampers with the person's own residential property.

(2) The residential real property is subject to a mortgage.

(3) The person has been served with a summons and complaint in a pending residential mortgage loan foreclosure action related to the property. This includes the time between judgment entry and confirmation of sale.<sup>64</sup>

### **Attorney General reports and database**

The bill requires all officers appointed or authorized by a court to conduct a judicial sale or execution sale of residential property consisting of one to four single-family units to submit quarterly reports, consisting of data of each sale conducted, to the Attorney General for the purposes of assessing the extent to which the bill's deadline requirements are met.

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<sup>63</sup> R.C. 2329.071.

<sup>64</sup> R.C. 2308.04 and 2909.07.



The Attorney General is required to (1) establish and maintain a database comprised of the information submitted by the officer, (2) make the information included in the database publicly available, and (3) adopt rules for the creation and administration of the database.<sup>65</sup>

### **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.<sup>66</sup>

### **Enforcement of lost instrument**

The bill modifies one of the three conditions that must be satisfied for a person to enforce a lost instrument under Ohio Commercial Paper Law. Under current law a person not in possession of an instrument is entitled to enforce it if, in part, he or she was in possession of the instrument and entitled to enforce it when loss of possession occurred. The bill modifies this condition to additionally permit it to be satisfied if the person "had directly or indirectly acquired ownership" of the instrument from a person entitled to enforce it when loss of possession occurred.<sup>67</sup>

### **Tax certificate foreclosure sales**

#### **Authority for private selling officer to sell property**

The bill permits a certificate holder of a tax lien to file a motion with the court for an order authorizing a specified private selling officer to sell the real property at a public auction. If the court authorizes a private selling officer to sell the property, then after the filing of a writ for the order of sale with the clerk of the court, the clerk of the court must immediately issue an order of sale to the private selling officer authorized by the court. The officer can then conduct the public auction of the property at a physical location in the county in which the property is located or online. Similar to other foreclosure sales, if the public auction occurs online, the auction must be open for bidding for seven days, and if the property is not sold within the seven-day period, a second online auction must be held not earlier than three days or later than 30 days after the end of the first auction. The second auction must also be open for bidding for seven days.

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<sup>65</sup> R.C. 2329.312.

<sup>66</sup> R.C. 2303.26.

<sup>67</sup> R.C. 1303.38(A)(1).



A private selling officer who conducts a tax certificate foreclosure sale of real property at a public auction may do all of the following:

- Market the property for sale and hire a title insurance agent licensed under Ohio law or title insurance company authorized to do business under Ohio law to assist the officer in performing administrative services;
- Execute to the purchaser, or to the purchaser's legal representatives, a deed of conveyance of the property sold in conformity with the form set forth in the bill (see "**Private selling officer deed form**," below);
- Record on behalf of the purchaser the deed conveying title to the property sold, even if the deed has not actually been delivered to the purchaser prior to its recording.

By placing a bid at a sale, a purchaser appoints the private selling officer who conducts the sale as agent of the purchaser for the sole purpose of accepting delivery of the deed.

The private selling officer who conducts the sale must hire a title insurance agent licensed under Ohio law or title insurance company authorized to do business under Ohio law to perform title, escrow, and closing services related to the sale of the property.<sup>68</sup>

Under continuing law when an officer who offers the property for sale in which there are no bids that meet the minimum bid requirement as determined by the court or board of revision, the officer must suspend the sale of the parcel to the second date that was specified in the advertisement of the sale. The bill specifies that this requirement applies whenever the officer charged to conduct the sale offers a certificate property for sale at a physical location and not online.<sup>69</sup>

### **Priority of fees**

Under continuing law fees and costs incurred in the proceeding filed against the property pursuant to a tax certificate foreclosure must be paid first, including attorney's fees of the certificate holder's attorney or the county prosecutor's costs. The bill adds to

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<sup>68</sup> R.C. 5721.39(C).

<sup>69</sup> R.C. 5721.39(C)(6).



this list private selling officer's fees and marketing costs and title insurance agent and title company fees.<sup>70</sup>

### **Attorney fees**

The bill adds to continuing law limitations on attorney's fees that may be charged as costs against property if the tax certificate foreclosure action is filed by a private attorney. Under continuing law, the limit is \$2,500, unless otherwise authorized by the court. The bill specifies that fees less than or equal to \$2,500 are presumed to be reasonable. In addition, if the private attorney's fees payable are fixed and not determined on an hourly basis, the court cannot consider or require evidence of hours expended or hourly rates.<sup>71</sup>

### **Private selling officer fee**

The bill establishes limitations of the private selling officer's fees with respect to a tax certificate foreclosure action. The bill requires that these fees must be reasonable and specifies that fees less than or equal to \$750 are presumed to be reasonable. Under the bill, fees more than 5% of the sale of the property, if the fee amount is greater than \$750, can only be paid if authorized by a court order. In addition, the terms of sale negotiated under continuing law may include the amount to be paid in private selling officer's fees, subject to the bill's fee limitation described above.<sup>72</sup>

### **Title agent and title insurance company fee**

The bill establishes limitations on title insurance agents and title insurance company fees payable with respect to a tax certificate foreclosure action. The bill requires that the fees be reasonable and that fees up to \$500 are presumed to be reasonable. Fees more than \$500 can only be paid if authorized by a court order. In addition, the terms of sale negotiated under continuing law may include the amount to be paid in title agent's or title company's fees, subject to the fee limitations above.<sup>73</sup>

### **Licensed auctioneers and judicial sales**

The bill limits the authority of auctioneers to conduct judicial sales. Under current law, public auctions of goods, chattels, and lands levied upon by execution must be conducted personally an officer of the court or by an auctioneer licensed under

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<sup>70</sup> R.C. 5721.39(D)(1).

<sup>71</sup> R.C. 5721.371.

<sup>72</sup> R.C. 5721.372.

<sup>73</sup> R.C. 5721.373.



Ohio Law. Under the bill, auctioneers who are not private selling officers can only auction goods and chattels. In addition, the auctioneer must be an Ohio resident licensed as an auctioneer under Ohio Law, limiting the ability of nonresident auctioneers acting under a reciprocal licensing arrangement.<sup>74</sup>

## **Conduct throughout the foreclosure process**

The bill requires a person whose conduct is governed by the bill to comply in good faith with the requirements of the bill and must act in good faith throughout the foreclosure process. "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.<sup>75</sup>

## **Conforming changes**

### **Execution judgments**

The bill makes conforming changes to how execution judgments are defined and carried out, permitting private selling officers to execute judgments. Continuing law states that an execution is a process of a court, issued by its clerk, the court itself, or the county board of revision with jurisdiction, and directed to the sheriff of the county, and that executions can be issued to the sheriffs of different counties at the same time. Under the bill, an execution includes a process of a court, issued by its clerk or the court itself, and directed to a private selling officer authorized under the bill's provisions, and executions may be issued to different private selling officers at the same time.<sup>76</sup>

### **Private selling officer's deed form**

The bill establishes a statutory form that may be used as the private selling officer's deed. The deed, when properly executed, according to continuing law relating to real property conveyances, has the force and effect of a deed in fee simple to the grantee, the grantee's heirs, assigns, and successors, for their own use, with covenants that at the time of the delivery of the deed, the grantor was properly appointed, qualified, and acting in the fiduciary capacity described in that deed, and was authorized to make the sale and conveyance of the premises. In addition, the deed establishes that in all of the grantor's proceedings in the sale of the premises the grantor has complied with all requirements under law.<sup>77</sup>

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<sup>74</sup> R.C. 2329.151 and R.C. 4707.07, not in the bill.

<sup>75</sup> Section 3(B)(1).

<sup>76</sup> R.C. 2327.01, 2327.02, 2327.04, 2329.151, 2329.17, and 2329.28.

<sup>77</sup> R.C. 5302.01 and 5302.31 and R.C. Chapter 5301., not in the bill.



## Technical change

The bill makes a technical change regarding which Ohio Civil Rule the judgment creditor must follow when providing the court proof of service.<sup>78</sup>

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### HISTORY

ACTION	DATE
Introduced	02-16-16
Reported, H. Financial Institutions, Housing & Urban Development	04-27-16

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<sup>78</sup> R.C. 2329.26(A)(1)(a)(ii).

