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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Hackett

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SUMMARY

Foreclosure-sale and execution-sale appraisals

- Eliminates the requirement that property sold at mortgage foreclosure sale or execution sale be appraised and directs the county auditor's fair market value be used to calculate the minimum sale price.
- Eliminates the option for the county auditor to request that property sold at tax foreclosure be independently appraised but maintains the use of the amount owed or fair market value established for taxing purposes for use in determining the minimum sale price.

Private selling officers

- Allows plaintiffs seeking a mortgage foreclosure or execution sale of property to demand the use of a private selling officer to sell the property if the defendant does not respond to the lawsuit.
- Caps the amount of costs for a foreclosure or execution sale, handled by a private selling officer, that may be charged to the buyer or plaintiff at 10% of the sale price.
- Establishes that a private selling officer's submission of a report required by continuing law satisfies another continuing law requirement for return of the order of sale with a record of the sale's proceedings included.
- Reduces the amount of time an online foreclosure or execution sale carried out by a private selling officer must run from seven calendar days to three calendar days.
- Requires online foreclosure or execution sales carried out by a private selling officer to display the winning bid at all times during the auction.

Online sheriff sales

- Reduces the amount of time an online foreclosure or execution sale carried out by the sheriff must run from seven calendar days to three calendar days.
- Requires online foreclosure or execution sales carried out by the sheriff to display the winning bid at all times during the auction.

Definitions

- Defines “start date” and “sale date” for purposes of foreclosure and execution sales and replaces various undefined terms referencing sale timing throughout the law.

DETAILED ANALYSIS

Courts sometimes order the sale of real estate to satisfy a debt. The sales can result from debts related to the property being sold, such as unpaid mortgage debt or unpaid property taxes, or from unrelated debts. When property is sold to satisfy a debt that is not related to the property, that property is sold “on execution” or at an “execution sale,” because the sale executes the court’s order for the debtor to pay the debt.

When property is ordered sold to satisfy a debt related to the property, it is sold “at foreclosure” or “on order of sale.” The term “foreclosure” refers to the foreclosure of the debtor’s right to prevent the sale by paying the amount due, called “the equity of redemption,” a longstanding tenet of mortgage law. Once the equity of redemption is foreclosed, the debtor no longer has the right to retain the property being sold by paying the amount due (in Ohio, foreclosure of the equity of redemption happens after the sale).¹

The bill makes changes to the procedures for both execution and foreclosure sales. Those changes sometimes affect execution and foreclosure sales in the same way, and sometimes they do not.

Appraisals and minimum bids

The bill amends the way in which the minimum price for property sold at foreclosure and execution sales is determined.

Mortgage foreclosure sales and execution sales

Under continuing law, land sold at mortgage-foreclosure or execution sale usually cannot be sold for less than two-thirds of its value. Currently, value is determined by three appraisers appointed by the sheriff after the clerk of courts issues an order of appraisal.

If the property being sold is residential property, the appraisers must deliver the appraisal to the sheriff, and, if applicable the private selling officer, within 21 calendar days of the clerk’s order of appraisal (rather than their appointment by the sheriff). Failure to meet that

¹ R.C. 2329.33, not in the bill, and Black’s Law Dictionary, 11th Edition.

deadline results in the appraisers forfeiting their right to payment. It also results in the costs of the appraisal being omitted from the costs in the case, and the appraised value according to the county auditor's records setting the appraised value for the sale, unless the court authorizes another appraisal for good cause. Regardless of timely delivery, the law requires the advertisement and sale of the property to proceed in accordance with the order of advertisement and sale. If the property is commercial property, the appraisal is to be completed according to the timing or other requirements, if any, established for the particular sale.

The bill eliminates the appraisal requirements for both residential and commercial property. In its place it requires use of the most recent appraised value of the property as reflected in the county auditor's records in all cases.² (See **COMMENT 1**.)

Tax-foreclosure sales

In tax foreclosure cases, the court makes a finding for the amount of taxes, assessments, interest, penalties, charges, and costs that will be payable when the property is sold. Under current law, the minimum price is the higher of either: (1) the total amount of the finding, or (2) the fair market value of the premises, as determined by the county auditor, plus the costs of the proceeding. Alternatively, the county treasurer may apply for an appraisal. In those cases, the property is appraised as in mortgage foreclosure and execution sales, and the minimum sale price is two-thirds of the appraised value.

The bill removes the authority for the county treasurer to apply for appraisal in tax foreclosure cases. It replaces it with authority to move to sell the property using the most recent appraised value as shown on the county auditor's record and applies the same two-thirds minimum price in those instances (see **COMMENT 2**).³

Second sales

When property offered at foreclosure or execution sale goes unsold for lack of bids, current law establishes the next steps based on whether the property was offered for sale on execution or on an order of sale in a mortgage foreclosure action. The bill maintains those distinctions, but reduces the options available when property goes unsold.

Execution sales

For property taken on execution and unsold due to lack of bids, current law requires the court to either (1) order a new appraisal, or (2) set aside the levy and appraisal (i.e., the execution on the unsold property and related appraisal) and issue a new execution on different property. If the former option is chosen and the real estate taken on execution is appraised and offered for sale a second time without drawing sufficient bids, the court may direct the amount for which it is to be sold.

² R.C. 2329.17, with conforming changes in R.C. 2329.152(A) and (D), 2329.18, 2329.19, and 2329.20.

³ R.C. 323.28.

The bill eliminates the options for the court to either (1) order a new appraisal or (2) set aside the initial levy and appraisal in favor of execution on different property. It maintains the option for the court to set the price (see **COMMENT 3**).⁴

Foreclosure sales

Property that does not sell at a foreclosure sale is treated differently depending on whether the property is commercial or residential property.

For commercial property offered for sale in a mortgage foreclosure action but unsold for want of sufficient bids, current law allows the court, in response to a motion from either plaintiff or defendant, to order a new appraisal and sale or direct the amount for which the property may be sold. The bill does not change these provisions, aside from addressing the fact that the bill eliminates appraisals.

When residential property is ordered sold in a residential mortgage loan foreclosure action, but goes unsold, then either:

- A subsequent auction must be held and the property sold to the highest bidder without regard to the law's minimum bid requirements (though still subject to requirements regarding costs, allowances, and taxes);
- The property must be disposed of in any other manner pursuant to the Revised Code.

The bill changes the earliest date for a subsequent auction to three days after the previous auction's start date, a reduction from current law's seven-day minimum.⁵

Foreclosure- and execution-sale advertisements

The bill amends the advertising requirements for foreclosure and execution sales. Under current law, sales must be advertised for three consecutive weeks in a newspaper of general circulation in the county where the property being sold is located. The bill requires that the last date of publication be four or more calendar days before the sale date. It also adds a requirement, for residential foreclosure sales only, that information regarding the location of any subsequent sales be included with the advertisement of the initial sale. Finally, subsequent foreclosure sales may be advertised in any method that the officer finds suitable, including online-only advertisement.⁶

Private selling officers

Appointment

Under continuing law, property sold at foreclosure or execution is sold by the county sheriff unless the creditor who brought the lawsuit, files a motion with the court to authorize a

⁴ R.C. 2329.51.

⁵ R.C. 2329.52(B).

⁶ R.C. 2329.26(A)(2) and 2329.52(B), with conforming changes in R.C. 2329.211 and 2329.26(A)(1).

private selling officer to sell the property. A “private selling officer” must be an Ohio resident who is licensed both as (1) an auctioneer and (2) either a real estate broker or real estate salesperson.

Under current law, whether or not to approve use of a private selling officer is up to the court. The bill removes that discretion in cases where the defendant does not respond to the lawsuit as required by the Rules of Civil Procedure. In those cases, the bill allows the creditor who brought suit to have the property sold by a private selling officer by filing a praecipe (typically a written motion or request but in this case a demand) with the clerk of courts directing the clerk to issue an order of sale to the private selling officer. The praecipe may specify multiple private selling officers, and, if done, any of those officers may conduct the sale.⁷

Costs

Under current law, when a private selling officer sells property at foreclosure or execution sale, various costs are taxed as costs in the case. Those are:

- The cost of the appraisal;
- The cost of required advertisements for the sale;
- The fee charged by the private selling officer and all costs incurred by the private selling officer aside, excluding the cost of appraisal and advertising and capped at 1.5% of the property’s ultimate sale price.

When the private selling officer’s fee and other costs, aside from appraisal and advertising costs, exceed 1.5% then the amount over that threshold is not taxed as costs. Rather, it is paid by the buyer, the judgement creditor, or from the judgment creditor’s portion of the sale proceeds.

The bill removes the cost of appraisal from the list. It also caps the amount of costs the buyer or judgment creditor may be responsible for at 10% of the property’s sale price.⁸

Sale records

Continuing law requires the levying officer in a foreclosure or execution sale (i.e., the sheriff or private selling officer) to record the officer’s proceedings on the “writ of execution” and, after the sale is completed or canceled, to return the writ to the clerk of courts. The law only refers to a writ of execution, which, as discussed above, is different from an order of sale in a foreclosure proceeding. Yet, courts maintain this requirement in foreclosure sales as well as execution sales.

In addition to the return of the writ, continuing law also requires that a private selling officer file a report with the court that issued the order of sale that itemizes all sale expenses

⁷ R.C. 2329.01 and 2329.152(A), and Black’s Law Dictionary, 11th Edition.

⁸ R.C. 2329.152(D)(1).

and the private selling officer's fees. The bill amends the law to deem the filing of the private selling officer's report as meeting the requirement for return of the writ of execution to the clerk.⁹

Online sales

Continuing law allows a private selling officer to auction property either online or at a physical location. For online sales, current law requires the auction to be open for at least seven calendar days, excluding the first day the auction is open for bidding and counting all subsequent calendar days. The bill reduces the minimum to three days. It also adds a requirement that the auction display the high bid publicly during bidding.¹⁰

Online sheriff sales

Continuing law allows sheriffs to sell residential property through judicial sale on a statewide auction website; the law will eventually require use of that website. Current law requires the auction to be open for at least seven days, though the manner of calculating days is not included as it is for online sales by private selling officers. The bill reduces the minimum to three days. It also requires that all auctions on the site publicly display the high bid during bidding.¹¹

Sale definitions

The bill makes changes to how dates are treated for notice and advertising requirements. Current law uses various terms to discuss the timing requirements. Those include "the date of the sale," the "start date," the "day of sale," and "sale date." Some of these references account for the fact that at least some sales are now conducted on the internet over several days, but others do not, and none of the terms are defined.

The bill defines the terms "start date" and "sale date" and inserts them in lieu of the various existing terms. Under the bill:

- "Sale date" means the day on which an auction for real estate concludes.
- "Start date" means the first day an auction for real estate is open for bidding to the public.¹²

COMMENT

1. When discussing appraisals, current law states that they are required "when execution is levied up lands and tenements." The bill changes the reference to "lands and

⁹ R.C. 2329.152(D)(2); R.C. 2329.28, not in the bill, and *Satanik v. LaGorga*, 1980 Ohio App. LEXIS 14076, *5.

¹⁰ R.C. 2329.152(E)(1)(a), with conforming change in R.C. 2329.152(C)(2).

¹¹ R.C. 2329.153(C)(6) and (E).

¹² R.C. 2329.01, with conforming changes throughout.

tenements” to instead refer to “real estate.” It does not, however, change numerous other references to “lands and tenements” to “real estate” in the same chapter of law.

2. Current law uses the fair market value of real property, as determined by the county auditor, to help determine the minimum sale price of property in a tax foreclosure sale. It alternatively allows the county treasurer to apply for a determination of the fair market value by three independent appraisers. The bill removes the ability to apply for independent appraisal and it replaces it with the option to use the county auditor’s determination of fair market value and set the minimum price at two-thirds of that value. The bill leaves in place, however, the existing use of the auditor’s determination of fair market value as a floor on the price itself. As a result, the bill seems to allow a sale at both two-thirds of fair market value as determined by the auditor, and the full amount of fair market value as determined by the auditor.

Additionally, there is an ambiguity in continuing law regarding the minimum sales price when the purchaser at a tax foreclosure is the owner of the property being sold or connected to the owner in certain ways. That ambiguity stems from the law setting the minimum price as “not less than either” of two options. When the purchaser is the owner or connected to the owner, continuing law says that “notwithstanding the minimum sales price provisions” the price cannot be less than the amount of the finding for taxes and related charges. That amount is one of the two prices in the minimum sales price provisions, however, and those provisions say the price cannot be below “either.” The law’s discussion of the finding of taxes and related charges due as the minimum price for an owner who purchases that owner’s property at foreclosure sale, particularly use of “notwithstanding,” implies that the minimum price provisions are satisfied so long as the price sold is higher than one of the two possible floor prices, whereas use of “either” to describe the minimum price implies that the price cannot fall below either of those items.

3. The bill eliminates two of three existing statutory options for executions on real estate that goes unsold for want of bidders but continues to refer to the remaining option with the permissive “may.” It is unclear, as a result, whether the bill will result in the remaining option being the only option, or if the bill will be read to allow some unspecified other course of action for courts.

HISTORY

Action	Date
Introduced	07-27-21