



Ohio Legislative Service Commission

Bill Analysis

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(As Reported by H. Housing and Urban Revitalization)

Reps. Murray, Chandler, Letson, Okey, Phillips, Koziura, Yuko, Domenick, Foley, Pillich, Driehaus, Luckie, Winburn, Stewart, Heard

BILL SUMMARY

- Generally provides procedures governing residential mortgage foreclosure actions.
- Requires the plaintiff to provide specified information at the time of filing a mortgage foreclosure action and additional information subsequent to the filing if the owner answers the summons and complaint.
- Requires a preliminary judicial report or a commitment for an owner's fee policy of title insurance to be filed along with the filing of the complaint for foreclosure instead of 14 days after filing the complaint as under existing law.
- Requires the plaintiff in a foreclosure action to file a motion requesting a default judgment under specified circumstances and establishes that failure to file as required results in dismissal of the action.
- Permits a plaintiff requesting a default judgment to also request a transfer in lieu of sale and in lieu of the right to a deficiency judgment under specified circumstances.
- Prohibits the sale at a sheriff's auction of a foreclosed residential property that constitutes a public nuisance and prohibits the county recorder from recording the deed for such a property.
- Requires a probable cause hearing to determine if a foreclosed property could be a public nuisance and specifies the basis upon which a court could find probable cause.
- Permits a plaintiff or other lienholder to present information at the probable cause hearing, to pledge to abate the nuisance while the foreclosure action continues, or to

purchase the property at auction and abate the nuisance after gaining title to the property.

- Grants the court continuing jurisdiction when it grants permission to abate a nuisance.
- Permits specified interested parties to intervene in a foreclosure action to bring a nuisance abatement action against the property.
- Requires the plaintiff to file for a writ of execution of a judgment on a foreclosed residential property within 60 days after the clerk files the judgment; establishes that failure to file is grounds for the court deeming the property abandoned unless good cause is shown.
- Generally prohibits a plaintiff and other lienholders from withdrawing or seeking dismissal of a petition for a writ of execution or an order of sale unless for good cause.
- Enables a court to deem foreclosed residential properties abandoned when the plaintiff does not seek a writ of execution as required or a property fails to sell at sheriff's auction three times.
- Provides for the transfer of abandoned property to the board of county commissioners for use pursuant to rules the commissioners adopt.
- Generally exempts a board of county commissioners from liability with respect to abandoned properties that are transferred to it.
- Places additional duties on the clerk of courts with respect to notices; requires clerk to collect an additional fee of \$20 for each foreclosure filing.
- Permits a plaintiff to make a written bid on a property prior to a sheriff's sale and enables the sheriff to open the auction at that price.
- Prohibits charging fees to a purchasing lienholder in a sheriff's sale prior to the time the purchase price is due.
- Establishes a procedure for the court to confirm a sale at auction by deeming the sale final if no objections have been received.
- Enables purchaser at sheriff's sale to submit the deed for recording upon payment of balance of price along with an affidavit promising to file; establishes that failure to so file may result in contempt of court.



- Establishes new procedures for pricing residential properties at a sheriff's sale.

Public Nuisance Law

- Expands the Public Nuisance Law to include land, subsidized housing, and any type of building, not just buildings that contain residential units.
- Excludes from the Public Nuisance Law buildings with three or fewer residential units and that are owner occupied unless the building is undergoing foreclosure and is the subject of a nuisance probable cause hearing.
- Provides that properties foreclosed due to delinquent taxes that are forfeited to a political subdivision, school district, or land bank are free of taxes, assessment charges, penalties, interest, costs, and subordinate liens.

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CONTENT AND OPERATION

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 lender obtains title only if the successful bidder at auction, and non-judicial, in which a lender or a trust may obtain title after a notice of foreclosure and the lender is responsible for sale of the property, often at private auction.

Ohio has the judicial form of foreclosure. In Ohio, a lender 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 lender. Then, the lender 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 transfers after the sheriff's sale, 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 lender was the successful bidder at auction, does the lender obtain title to the property. The homeowner/borrower has until the court's confirmation of the sale to redeem the property and pay the amount owed. Ohio law also grants the lender the right to obtain a deficiency judgment against the homeowner if the proceeds of the sale did 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 Civil Rule. The sale procedures and court confirmation are primarily governed by statute. Sub. H.B. 138 of the 127th General Assembly amended the foreclosure procedures by requiring specified information be provided at the time of filing for the action, prior to filing a writ of execution, and upon the sale of the property.

Definitions

The bill adopts the following definitions for the purposes of residential foreclosures:

- "Abate," "abatement," and "neighbor" have the same meanings as in the Ohio Public Nuisance Law (see "**Changes to the Ohio Public Nuisance Law**").
- "Residential area commercial property mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon a commercial property that meets all of the following criteria:
 - The structure or structures on the property total less than 4,000 square feet.
 - The property is located within 500 feet of a residential property.
 - The property is not a brownfield, (an abandoned, idled, or under-used industrial, commercial, or institutional property where expansion or redevelopment is complicated by known or potential releases of hazardous substances or petroleum).

"Residential mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon a 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, and a manufactured or mobile home that is subject to real property taxes under the Manufactured Mobile Home Tax Law.

"Tenant" has the same meaning as the Ohio Landlord and Tenant Law--a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others (by reference to R.C. 5321.01).¹ (R.C. 2308.01 and 2329.01.)

Information required with filing

Preliminary judicial report

Existing law requires a person filing for a foreclosure action on residential real estate consisting of one to four single-family units to provide the court with specified information within 14 days after that filing. This information, called a "preliminary judicial report," must be provided on a form approved by the Department of Insurance and prepared and issued by a licensed title insurance agent or authorized company. If more than four single-family units or commercial real estate are involved, the party seeking that judicial sale must file with the clerk within 14 days after filing the pleadings requesting relief either a preliminary judicial report or a commitment for an owner's fee policy of title insurance on the form approved by the Department of Insurance that is prepared and issued by a duly licensed title insurance agent on behalf of a licensed title insurance company. (R.C. 2329.191.)

The bill changes the time at which the preliminary judicial report must be provided in all residential foreclosure actions in which continuing law requires the report. Existing law requires the report or commitment be filed within 14 days after filing the motion to initiate the foreclosure action. The bill requires the report or commitment to be filed when the plaintiff files the complaint to initiate a foreclosure action. (R.C. 2329.191.)

The bill continues the requirement that the plaintiff file a "preliminary judicial report" by including a cross-reference to the report in its filing requirements. The bill prohibits the filing of a complaint to initiate a residential mortgage foreclosure action unless that complaint includes or is accompanied by both of the following:

(1) A writing that sets forth the name of the holder of the note, asserts that the named holder is the true party in interest with a right to file the action, and states whether the mortgage note has been securitized and if so, the identity of any mortgage-backed security that holds the loan and the name of the trustee of that mortgage-backed security;

(2) The preliminary judicial report that continuing law requires. (R.C. 2308.02 and 2329.191.)

¹ The term "tenant" is not used in the portions of the bill to which this definition applies.

Additional information if owner answers or responds

The bill requires the plaintiff to file additional information with the clerk if the owner in the residential mortgage foreclosure action answers or otherwise responds to the clerk's summons and complaint in accordance with the Rules of Civil Procedure. Within 30 days after that answer or response, the plaintiff must file both of the following:

- (1) A copy of a completed residential property status report that is substantially in a statutorily specified form (see **COMMENT**);
- (2) A writing that responds to the following questions:
 - Has the plaintiff agreed to comply with the federal "Home Affordable Modification Program"?
 - Has the owner or a representative of the owner been in contact with the plaintiff?
 - Has the owner applied for a loan modification?
 - If so, has the plaintiff responded to the request?
 - Has the request been accepted or denied, or is it pending?
 - Has the owner made further payments since the initiation of the foreclosure action? (R.C. 2308.03.)

Forms incorporating information

The bill authorizes a court to adopt by rule forms that incorporate the above required information. It also permits a court to include additional information that the court requires, at the court's discretion. (R.C. 2308.04.)

Duty to file for default judgment

The bill requires a plaintiff to file a motion for default judgment if the property is not occupied and the owner has not answered or otherwise responded to the clerk's summons and complaint. Under the bill, if the owner of the residential property does not answer or otherwise respond to the clerk's summons and complaint in accordance with the Rules of Civil Procedure, within ten days after the last due date for any defendant who was served with a summons and complaint, the clerk must notify the plaintiff of that failure to respond and inform the plaintiff that if the property is not occupied, the plaintiff must either file a motion for default judgment with the court or

submit a statement showing cause sufficient to the court why the plaintiff is not filing such a motion. The bill requires the plaintiff to file the motion or statement within 60 days after the date of the clerk's notice. If the plaintiff fails to comply with the filing requirement, the bill requires the court to dismiss the action without prejudice. (R.C. 2308.05.)

Transfer in lieu of sale and in lieu of right to deficiency judgment

Under existing law, if a plaintiff obtains a default judgment, the judgment requires the property be sold at sheriff's auction. In order to obtain possession of the property, the plaintiff must be the successful bidder at auction.

The bill enables a plaintiff who is filing a motion for default judgment under the bill's requirements (when the owner did not respond to the clerk's summons and complaint and the property is not occupied) to also request the court to deem that the title be transferred directly and immediately to the plaintiff in lieu of sale and in lieu of the plaintiff's right to a deficiency judgment. The plaintiff may make such a request for a transfer, and a court may grant such a request, only if all of the following apply:

(1) In the plaintiff's prayer and complaint to initiate the residential mortgage foreclosure action, the plaintiff specifically reserved the right to request the additional relief of a transfer in lieu of sale and in lieu of a right to a deficiency judgment in the event that the plaintiff filed a motion for a default judgment in the course of the foreclosure action.

(2) All liens attached to the property, other than liens for real property taxes, are those of the plaintiff.

(3) The owner did not answer or otherwise respond to the clerk's summons and complaint in accordance with the Rules of Civil Procedure. (R.C. 2308.051(A).)

Notice to owner of default judgment and transfer

The bill directs the court, upon receiving a motion for default judgment that is accompanied by a request for a transfer in lieu of sale and in lieu of a default judgment, to immediately provide the owner with written notice that the motion for default judgment has been filed and that the additional relief has been sought. The court must order the owner to show cause within 30 days why the court should not enter a default judgment and transfer the property directly and immediately to the plaintiff. If the owner does not timely show cause, the owner is deemed to not oppose the default judgment and transfer of the property to the plaintiff. (R.C. 2308.051(B)(1).)

Transfer treated as if sale

When a transfer is made in lieu of sale and in lieu of a deficiency judgment, that transfer is treated as if a sale at auction had been made. The bill directs the plaintiff to provide the information that continuing law requires when a person is the successful purchaser at sale, directs the officer who would have made the sale to prepare the deed as is required under continuing law, and directs the court to confirm the transfer in the same manner as the court confirms sales under continuing law. Further, the transfer is deemed a release of the owner's liability on the underlying debt to the plaintiff, and the value of the property is deemed to equal the amount of the underlying debt. (R.C. 2308.051(B)(2).)

Treatment of foreclosed nuisance property

The bill prohibits a court from issuing a judgment ordering the sale of a property that is the subject of a residential mortgage foreclosure action or residential area commercial property mortgage foreclosure action, and prohibits a county recorder from accepting for recording any deed based on that sale when the court has found probable cause that the property constitutes a public nuisance² and the finding of probable cause of a nuisance was not effectively rebutted, reversed, or the nuisance abated³ (R.C. 2308.06(A)).

The bill enables a court to stay a foreclosure action and hold a probable cause hearing on its own accord or upon a request made by specified interested parties pursuant to procedures the bill establishes (see "**Interested party intervention to abate nuisance**," below). At any such hearing, the court is to consider whether there is probable cause of a public nuisance on the basis of any of the following:

- Information the plaintiff provides, including information contained in the property status report;
- Information in a public record that indicates the existence of a building with air pollution, sanitation, health, fire, zoning, or safety code violations or other conditions that constitute a public nuisance;
- A court ordered inspection of the property, or a voluntary authorization of inspection of the property under any right of the plaintiff to enter the property. (R.C. 2308.06(B).)

² The determination is a rebuttable presumption (R.C. 2308.06(C)).

³ See "**Changes to the Ohio Public Nuisance Law**," below.

Notice of nuisance to public agency

The bill requires the plaintiff to file notice of any finding of probable cause of a public nuisance with the agency that is responsible for enforcement of housing codes within the municipal corporation or county in which the property is located, if there is such an agency. An agency inspecting the property as a result of receiving such a notice may charge the owner a reasonable fee to cover the costs of the inspection. (R.C. 2308.06(D).)

Procedures for appearing at nuisance probable cause hearing

The bill permits a plaintiff, other lienholder, or owner to request an appearance at a probable cause hearing by submitting a written request for an appearance to the court within ten days after receiving the court's notice of the hearing. The court must provide the owner, plaintiff, and any lienholder who has appeared in the foreclosure action with notice of the time, date, place, and purpose of the hearing. The notice must inform the parties of an opportunity to appear at the hearing and set forth the procedures for requesting an appearance. (R.C. 2308.07(A) and (C).) The parties may appear at the probable cause hearing for any of the following purposes:

- To present information that the property is not a public nuisance;
- To request permission to abate the nuisance pursuant to procedures set forth in the bill, while the foreclosure action continues;
- To pledge to enter a bid on the property at the sheriff's sale and to abate the nuisance subsequent to gaining title to the property pursuant to procedures set forth in the bill. (R.C. 2308.07(B).)

Requests to abate the nuisance

Abate nuisance while foreclosure continues

At a probable cause hearing, a plaintiff or other lienholder may request the court lift the stay on the foreclosure proceedings and permit the plaintiff or other lienholder to abate the alleged nuisance while the foreclosure action continues. The court may grant the request and require the party to make an initial report to the court within 30 days on the progress in abating the alleged nuisance. The court may request subsequent reports at its discretion. (R.C. 2308.08(A).)

If the court grants the request to abate the nuisance, the bill directs the court to continue with the foreclosure proceedings upon receiving any initial or subsequent report of progress, if the court determines the party is making reasonable progress in abating the alleged nuisance. At any time the court determines the party is not making

reasonable progress or does not report as required, the bill directs the court to immediately stay the foreclosure proceedings and resume the probable cause hearings. The court also may at such a time approve any request to abate a nuisance by an interested party as provided in the bill (see "**Interested party intervention to abate nuisance**," below). (R.C. 2308.08(B).)

Purchase then abate

The bill permits a plaintiff or other lienholder, at any time prior to or during a probable cause hearing, to submit a written pledge to purchase the property at the sale and to abate the alleged nuisance subsequent to taking title to the property. In the writing, the plaintiff or other lienholder must pledge to bid at least the principal balance owed on its lien on the property and, if the successful bidder at the sale, to abate the nuisance. A plaintiff or other lienholder may present the written pledge at the hearing if the party has made a request to appear at the probable cause hearing. (R.C. 2308.09(A).)

The bill directs the court to stay the probable cause hearing on an alleged nuisance condition and continue with the foreclosure proceedings upon receiving a written pledge to purchase then abate. The court must require that the plaintiff or other lienholder provide a written report of progress within 30 days after taking title to the property. The court will maintain continuing jurisdiction over the property and may require any subsequent reports at the court's discretion. (R.C. 2308.09(B).)

If the court has approved a request to purchase then abate and subsequently receives information from the officer making the sale that the plaintiff failed to bid as pledged at the auction, or if the plaintiff or other lienholder who pledged to abate the nuisance failed to provide the court with a written report of progress as the bill requires, the court must resume the probable cause hearing. At that time the court also may approve a request by an interested party to bring a nuisance abatement action (see "**Interested party intervention to abate nuisance**," below). (R.C. 2308.09(C).)

Continuing jurisdiction over nuisance property

The bill provides that in any foreclosure action in which the court approves the abatement of an alleged nuisance condition, either while the foreclosure action continues or after the purchase of the property, the court maintains continuing jurisdiction until the nuisance condition is abated. The court may resume a probable cause hearing at the court's discretion or upon a complaint by any person the bill designates (see "**Interested party intervention to abate nuisance**," below). (R.C. 2308.10.)

Interested party intervention to abate nuisance

In the foreclosure proceeding of a residential property, the bill permits designated interested parties to intervene as an interested party at any time prior to the issuance of a judgment to request the court stay the foreclosure action so the party may file with the court a motion to abate a public nuisance under the Ohio Public Nuisance Law. Any municipal corporation in which a property is located or any nonprofit corporation that is duly organized and has as one of its primary goals the improvement of housing conditions in the county or municipal corporation in which the property is located may intervene to seek such an abatement action. Upon a request that is supported by sufficient evidence, a court may hold a probable cause hearing. If the court finds probable cause to believe that the property is a public nuisance, and if neither the plaintiff nor any other lienholder has agreed to abate the alleged nuisance, the court may stay the foreclosure action to hold hearings pursuant to the Ohio Public Nuisance Law. (R.C. 2308.11(A) and (B).)

Progress report and continuing jurisdiction

An interested party whom the court authorizes to abate the nuisance is required to apprise the court of its progress in writing not later than 30 days after the court grants that permission. If the court does not receive this progress report within the specified time, it may resume the foreclosure proceedings. (R.C. 2308.11(C).)

The court may establish any guidelines it considers appropriate as a condition of staying the foreclosure proceedings to enable the interested party to bring an abatement action. Any guidelines would be in addition to the requirement that the court find probable cause that the property is a public nuisance before staying the foreclosure action and proceeding with an action under the Ohio Public Nuisance Law. (R.C. 2308.11(D).)

The bill specifies that the provision enabling specified parties to bring an action under the Ohio Public Nuisance Law may not be construed as preventing a court from staying a hearing when a plaintiff makes a request under the bill to abate a nuisance during foreclosure or after purchase of the foreclosed property (R.C. 2308.11(E)).

Duty to file for writ of execution

Under existing law, a judgment becomes dormant after five years (R.C. 2329.07, not in the bill). Otherwise, there is no time limit for a plaintiff to file for a writ of execution after a plaintiff receives a judgment of foreclosure.

Time limit for filing writ

The bill establishes a time limit for the filing for a writ of execution in a residential mortgage foreclosure action. Under the bill, the plaintiff and any other lienholder must file for a writ of execution of a judgment, or show cause why that filing is not being made, within 60 days after receiving the clerk's notice of the filing of the judgment of foreclosure. A lienholder other than the primary lienholder is directed to file for a contingent writ within that same time period, or show cause why that is not being sought. The bill directs the court to issue an order to the owner, the plaintiff, and any other lienholder who appeared in the action giving notice of the 60-day filing requirement and the need to show cause why the property should not be deemed abandoned and transferred pursuant to the bill's procedures. A party may assert any reason that the property should not be deemed abandoned, including those listed under Rule 60 of the Rules of Civil Procedure.⁴ (R.C. 2308.12(A)(1).)

The bill directs the clerk to issue a writ of execution pursuant to procedures in continuing law. At its discretion, the court may extend the time period for filing for the writ or issuing the writ if the plaintiff and the owner in the action so request, for any reason the court considers appropriate. (R.C. 2308.12(B) and (C).)

Property deemed abandoned for failure to file for writ

A plaintiff or other lienholder who fails to file for a writ of execution and who does not show cause for that failure or show why the property should not be deemed abandoned and transferred, and an owner who fails to show why that property should not be deemed abandoned and transferred, is deemed to have abandoned all interest in the property and to any right of redemption. Any party who is deemed to have abandoned the property is barred from seeking another judgment on that property or making any claim against the property, and may not receive any proceeds from a sale of the property. (R.C. 2308.12(A)(2).)

Transfer of property deemed abandoned

If the plaintiff, other lienholders, and the owner are deemed to have abandoned the property for a failure to file for a writ of execution or to show cause why the property should not be deemed abandoned, the property is transferred pursuant to the bill's procedures 60 days after the court enters the order of abandonment unless a motion to vacate the order is filed prior to that date. If any motion to vacate is denied, the property is transferred to the board of county commissioners in accordance with the

⁴ Rule 60 allows a court to grant a party relief, upon a motion, from a final judgment, order, or proceeding for reasons of clerical mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, that the judgment has been satisfied, and similar reasons.

bill (see "**Abandoned property transfers to county**," below). (R.C. 2308.12(A)(3) and (4).)

Other rights to collect on debt not affected

When a property is deemed abandoned pursuant to the bill, the rights of the plaintiff and other lienholders to collect the debts through other means or against assets other than the real property that is the subject of the foreclosure action remain unaffected (R.C. 2308.12(A)(5)).

Court's discretion to vacate or stay

The bill directs the court to vacate any order of abandonment if the plaintiff or other lienholder files a motion under Rule 60 of the Rules of Civil Procedure, establishing that the party's failure was due to mistake or inadvertence, or other good cause (R.C. 2308.12(A)(3)).

The bill enables the court to, for good cause, stay the issuance or enforcement of a writ of execution if the owner and the plaintiff, along with all other lienholders, enter into forbearance or loan modification agreement that allows the owner to make payments over a specified period of time and that agreement is filed with the court. The stay is effective so long as all of the parties to the agreement comply with the terms of the agreement. (R.C. 2308.12(D).)

Withdraw of writ or order of sale generally prohibited

The bill prohibits the plaintiff and other lienholders from withdrawing or dismissing a petition for a writ of execution or an order of sale unless the plaintiff or the owner requests such a dismissal and shows good cause for that dismissal (R.C. 2308.12(E)).

Abandoned property transfers to county

The bill provides procedures for the transfer of property that is deemed abandoned under the bill to the board of county commissioners of the county in which it is located. A property in a residential mortgage foreclosure action is subject to transfer if either of the following occur:

(1) The plaintiff, all other lienholders, and the owner are deemed to have abandoned their rights due to a failure of the plaintiff and other lienholders to file for a writ of execution as the bill requires and no party showed cause sufficient to the court as to why the property should not be deemed abandoned.

(2) The officer making the sale advertised the sale three times pursuant to the bill's procedures and held three auctions on the property, and at those auctions no person placed a bid (see "**Establishing the price for sheriff's sale**," below). (R.C. 2308.13(A).)

Vesting of title in the county

When a property is deemed abandoned by one of the two methods above, the title vests without further action in the board of county commissioners in the county where the property is located. The clerk issues a notice of that vesting to the board of county commissioners. The county prosecuting attorney prepares a deed that contains the names of the parties to the judgment and the owners of the foreclosed property, a reference to the volume and page of the recording of the recorded instrument by or through which the board claims title, the date and the amount of the judgment, and the date on which the owner and each lienholder is deemed to have abandoned the property. The bill requires the board of county commissioners to record the deed within 14 business days after the latest date on which an owner and any lienholder is deemed to have abandoned the property. (R.C. 2308.13(B).)

The board of county commissioners may dispose of abandoned property it acquires under the bill pursuant to rules it adopts. The rules must specify that the property be placed in the county's land bank if the county has a land bank. If the county does not have a land bank, the board is to dispose of the property at its discretion. (R.C. 2308.13(C).)

County liability

The bill immunizes the board of county commissioners from specified types of liability for the abandoned property transferred to it pursuant to the bill. The board is not liable for damages caused by leaking underground storage tanks, air pollution, sewage waste, and hazardous wastes and chemicals, arising from a breach, or subject to equitable remedies for a breach of common law duty, or for other violations the bill specifies that was committed in connection with the abandoned property.⁵ (R.C. 2308.13(D).)

⁵ The immunity specifically refers to violations of the Underground Storage Tank Law, the Air Pollution Control Law, the Solid and Hazardous Waste Law, the Environmental Protection Agency Law, the Voluntary Action Program Law, the Emergency Planning Law, the Hazardous Substances Law, the Cessation of Regulated Operations Law, the Conservancy District Law, and the Water Pollution Control Law and any rule adopted or order, permit, license, variance, or plan approval issued under any of those laws (R.C. 2308.13(D)).

Establishing the price for sheriff's sale

Under existing law, property sold at a sheriff's auction must be appraised and the sale price may not be less than 2/3 of that appraised value. After one failed attempt to sell, the property is reappraised and the next sale is based on 2/3 of that appraised value. On the third attempt to sell, the property may be sold for the amount the court directs. (R.C. 2329.20 and 2329.51, not in the bill.)

Under the bill, in a sale relating to a residential mortgage foreclosure action the first of the three auctions requires a minimum bid of 2/3 of the appraised value, the second sale requires a fixed price established without reappraisal set at 2/3 of that appraised value, and the third sale is made with the minimum bid as the court sets at its discretion (R.C. 2308.13(A)(2)).

Identity of purchaser at sheriff's sale

The bill directs the officer making a sale pursuant to a residential mortgage foreclosure action to provide specified information to the court identifying the person who purchased the foreclosed property at the sheriff's auction. Upon the sale of the lands and tenements in satisfaction of the judgment, the officer who makes the sale must prepare and submit to the court an order confirming that sale and providing the name of the person making the purchase of the property. The report is to be in sufficient detail so that a court may determine if the purchaser is a plaintiff who pledged to purchase the property and then abate a nuisance pursuant to the bill. (R.C. 2308.14.)

Delays and stays in a foreclosure action

The bill prohibits a plaintiff or other lienholder in a residential mortgage foreclosure action from filing a motion to dismiss or vacate the judgment, the writ of execution, the order of sale, the sale, or the confirmation of the sale, and prohibits a court from accepting such a motion unless for good cause shown. However, the bill provides for a stay of the foreclosure action when a plaintiff and an owner enter into a workout agreement or loan modification. The bill directs the court to stay the foreclosure action at any time prior to the sale upon the filing of a motion and affidavit indicating that the plaintiff and owner have entered into a workout agreement or loan modification. Following that stay, the bill provides that at any time the plaintiff notifies the court that the owner did not make payments as agreed, the court must notify the owner that it will resume the foreclosure action. (R.C. 2308.15.)

Enforcement of lien by other means

Continuing law specifies that when a mortgage is foreclosed or a specific lien enforced, the court must order a sale of the property or, under specified conditions that do not apply to a mortgage foreclosure action, order a transfer of the property.

The bill places additional requirements with respect to the enforcement of a debt or lien on a residential property by a means other than foreclosure. Under the bill, no specific lien may be enforced or suit brought on a note on a residential property unless that action initially is brought in a judicial foreclosure proceeding. (R.C. 2323.07.)

Clerk's duties in foreclosure action

Notice to parties upon filing judgment of foreclosure

When a court issues any judgment or decree, the clerk of court files and docket the certificate of the judgment. The bill places additional duties on the clerk of courts related to the filing of the judgment of foreclosure. In a residential mortgage foreclosure action, upon filing the certificate of judgment, the clerk must provide notice of the time limit for the filing of a writ of execution to the judgment debtor, the judgment creditor, and any other lienholder who has appeared in the action. The notice is to include information with respect to the bill's requirement that the plaintiff and any other lienholder file for a writ of execution or a contingent writ, and the consequences of a failure to comply with that requirement. (R.C. 2329.02(G).)

Notation of clerk's costs

Under continuing law, upon issuing a writ of execution of the judgment in a foreclosure action, the clerk delivers the order of sale to the officer making the sale. The bill directs the clerk to include a notation that sets forth all of the clerk's costs with respect to that foreclosure action and sale on any order of sale that the clerk delivers in a residential mortgage foreclosure action. The bill instructs the clerk to also deliver a copy of the order of sale to the attorney for the lienholder who filed for the writ of execution. (R.C. 2329.09(B).)

Fees

Under continuing law, the clerk of courts collects fees for various services the clerk performs. The bill directs the clerk to collect an additional fee of \$20 for each filing for a residential mortgage foreclosure action (R.C. 2303.20(AA)).

Modifications to judicial sale procedures

Accepting written bids

Continuing law requires the judicial sale of foreclosed property at public auction (R.C. 2329.151, not in the bill). The law is silent with respect to a lower limit on an opening bid although generally the sales price at auction can be no less than 2/3 of the appraised value (R.C. 2329.20, not in the bill).

The bill enables the officer making the sale to accept a written bid from a lienholder at any time prior to the auction. The bill permits the public notice of the sale to include notice of the opportunity for a lienholder to make a written bid and permits the officer making the sale, at the officer's discretion, to open the bidding at the amount of a written bid. (R.C. 2329.26(B).)

Deposit and fees; assignment

Currently, the practices vary among counties with respect to collecting a deposit from a lienholder who has purchased a property at auction; the bill directs the officer making the sale to not charge such a purchaser any deposit or other fees prior to the time at which the purchase price is due. Further, under the bill, if a purchaser at auction plans to assign the right to purchase that property to another party, and that other party will be paying the balance of the purchase price to the officer making the sale, the assignment of the purchaser's bid may be made at any time prior to the preparation of the deed and notice of that assignment may be filed with the officer at any time prior to the preparation of the deed. (R.C. 2329.26(C) and (D).)

Assessment of taxes on judicial sale property

Existing law provides a method of assessing taxes on property sold at judicial sale that approximate the method of computing taxes owed in private sales of real estate (the proceeds of the sale are used to discharge taxes and assessments the lien for which attaches before the confirmation of the sale). The bill instead specifies that the amount of taxes and assessments for real estate sold at judicial sale will be paid from the proceeds of that sale in an amount that is owed based on the date of the sale. (R.C. 323.47(B).)

Confirmation of the sale

Under existing law, the sheriff returns the writ of execution to the clerk after a sale at sheriff's auction, indicating the property has been sold. The court then examines the proceedings of the officer making the sale within 30 days after the return of the writ. If the sale was conducted in conformity with the law, the court directs the clerk to make

an entry that the court is satisfied with the legality of the sale. The attorney who filed the writ of execution is directed to make to the purchaser a deed for the property.

Under the bill, if the clerk of court receives no written objection to the sale within seven days after the return of the writ of execution to the clerk, on careful examination of the proceedings of the officer making the sale, the court must deem that the sale is final and confirm the sale. The clerk must then make an entry on the journal that the sale is deemed legal. (R.C. 2329.31(A).)

Extension of time to pay

Under existing law, the officer making the sale at auction must require the purchaser of a property at auction to pay the amount due within 30 days after the confirmation of the sale. The bill enables the court to grant the purchaser an extension for good cause. (R.C. 2329.31(B).)

Limit on time for debtor to redeem

Under existing law, a debtor may redeem a foreclosed property from sale by depositing the amount due along with costs with the court at any time before the confirmation of the sale. Under the bill, for a residential foreclosure action, the debtor must make this redemption and deposit the required amount with the clerk not later than 60 days following the clerk's notice of the filing of the judgment of foreclosure (R.C. 2329.33).

Recording the deed

Existing law directs the sheriff to record the deed with the county recorder within 14 *business days* after the date the purchaser pays the balance due on a property sold at sheriff's auction. The bill changes the time to 14 *days* after the date the purchaser pays the balance due. Existing law also requires the sheriff to charge the purchaser a fee to cover the actual costs of recording the deed. The bill additionally permits the sheriff to charge the purchaser a fee to cover the actual cost of preparing the deed.

The bill also permits a purchaser to deliver any remaining balance of the purchase price to the sheriff together with an affidavit stating the purchaser will submit the deed for recording within seven days after receipt of the deed. Upon receiving the remaining balance and affidavit, the bill directs the sheriff to release the unrecorded deed to the purchaser, who is to submit that deed for recording within seven days and deliver evidence of that recording to the sheriff or face penalties for contempt of court. If the purchaser fails to deliver evidence to the sheriff that the deed has been submitted for recording within that seven-day period, the sheriff must notify the court and the

court must schedule proceedings against the purchaser for contempt of court. (R.C. 2329.36(C).)

Treatment of tax delinquent properties

Prohibition of recording transfer of tax delinquent properties

Under continuing law, the county recorder has the general duty to record deeds presented to the recorder. The bill prohibits the county recorder from recording a deed for the sale or transfer of any residential property if the county auditor's delinquent tax records show that the real property taxes for that property are delinquent for one year or more unless the board of county commissioners exempts the property from that requirement when, at its discretion, it concludes that the transfer would be beneficial with respect to nuisance abatement and redevelopment efforts. (R.C. 317.13(D).)

Liens on forfeited tax foreclosed properties

Continuing law provides for the forfeiture of properties that are foreclosed due to tax delinquencies and that have failed to sell on two separate occasions for want of bidders. Any political subdivision, school district, or county land reutilization corporation may petition the court to request forfeiture of the property to it. The court certifies to the county auditor a copy of its entry ordering the transfer of the property and thereupon, the property vests in the political subdivision, school district, or corporation. If no such entity has requested forfeiture of the property to it, the property is forfeited to the state. (R.C. 5723.01.)

Under continuing law, when the forfeiture is to a county land reutilization corporation (county land bank), the transfer of the property is free of "taxes, assessment, charges, penalties, interest, and costs" and subordinate liens (R.C. 5723.04, not in the bill). However, the law is silent with respect to the treatment of liens when the transfer is made to a political subdivision or a school district.

The bill extends the general exemption of liens to all properties foreclosed due to tax delinquency that are forfeited after failure to sell. Under the bill, when a property is forfeited, the county auditor is directed to promptly transfer to the political subdivision, school district, or corporation, by auditor's deed, the fee simple title to the property free and clear of all taxes, assessments, charges, penalties, interest, and costs. Any subordinate liens are deemed fully and forever satisfied and discharged. The property is deemed sold by the state for no consideration. The bill directs the political subdivision, school district, or corporation to file the deed for recording. (R.C. 5723.01(A).)

Changes to the Ohio Public Nuisance Law

Expansion of the law

The bill expands the types of buildings to which the Ohio Public Nuisance Law applies to include buildings that do not have residential units. It also limits the types of residential buildings to which the law applies. Generally, the bill extends the existing Ohio Public Nuisance Law to cover: (1) buildings that do not include residential units, (2) land, and (3) subsidized housing. In addition, under the bill, buildings with three or fewer residential units and that are owner occupied are no longer subject to the Ohio Public Nuisance Law, unless the building is undergoing a mortgage foreclosure action and the issue of a public nuisance is being addressed in a probable cause hearing pursuant to that action.

Under existing law, a "building" for purposes of the Ohio Public Nuisance Law is any building or structure used or intended for residential purposes. The law covers buildings used for other purposes if there is at least one floor of the building intended for residential purposes. But, "building" does not include building or structure that is occupied by its owner and that contains three or fewer residential units.

The bill defines a building as type of any building or structure, but does not include a building or structure that contains three or fewer residential units when one of the units is occupied by the owner of the building or structure *unless* that building or structure is a residential property as defined by the bill (see "**Ohio foreclosure procedures, Definitions**," above) and the nuisance action is initiated in the course of a foreclosure proceeding. (R.C. 3767.41(A)(1).)

In addition to the expansion of the law to cover broader classes of buildings, as discussed above, the bill generally expands the existing law provisions to include a public nuisance when that nuisance involves *land or subsidized housing* (R.C. 3767.41). The bill also expands the duties of the judge in a nuisance action by allowing the judge to conduct a summary hearing to consider and issue any temporary orders that are necessary to protect the public health, welfare, and safety pending further proceedings (R.C. 3767.41(B)(2)(b)).

The bill contains the following definitions that apply to Ohio Public Nuisance Law, with additions, or changes from existing law indicted in italics.

- "Abate" or "abatement" means the removal or correction of any conditions that constitute a public nuisance and *in connection with any building includes* the making of any other improvements that are needed to effect a rehabilitation of the building that is consistent with maintaining safe and habitable conditions over its remaining useful life. The closing or boarding

up of any building that is found to be a public nuisance, *by itself, does not serve as an abatement of the public nuisance.*

- *"Land" means any parcel of land that is not the site of a building or other structure.*
- *"Public nuisance" as it applies to a building means a building that is a menace to the public health, welfare, or safety; that is structurally unsafe, unsanitary, or not provided with adequate safe egress; that constitutes a fire hazard or is otherwise dangerous to human life; that is no longer fit and habitable if the building is used or designed to be used for residential purposes; or that, in relation to its existing use, constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.*
- *"Public nuisance" as it applies to land means land that constitutes a hazard to the public health, welfare, or safety by reason of unsafe or unsanitary conditions.*
- *"Neighbor" means any owner of real property, including, but not limited to, any person who is purchasing real property by land installment contract or under a duly executed purchase contract, that is located within 500 feet of any real property that becomes subject to the jurisdiction of a court pursuant to the public nuisance abatement law, and any occupant of a building that is so located.*

COMMENT

The bill requires the residential property status report to be in substantially the following form:

Case Number:

COURT OF COMMON PLEAS

.....COUNTY, OHIO

Judge

Residential Property Status Report

To be completed to the best of the plaintiff's knowledge. If any information is not known please write "Don't Know" in the space provided.

Address:

Titled Owner(s):

Number of Units: Occupied: YES NO

If YES, by whom:

If NO, when vacated:

The approximate value of the property (This may be your good faith estimate based on information available to you, considering the property's current condition, or the county auditor's most recent valuation or a formal appraisal conducted by a real estate professional or a licensed appraiser.)

Current city code violations: YES NO

If YES, attach copy of violation notice(s)

Abandoned/Unlicensed Vehicles: YES NO

Is this property the subject of litigation in any other court? YES NO

Is owner a defendant in other foreclosure cases in this court? YES NO

If YES, list case number(s):

How long has current owner owned the property?

If less than 5 years, list previous owners for last five years:

(Please affix a color photograph of the premises not older than 30 days here)

I certify that the information contained herein is accurate and true, to the best of my knowledge.

.....

Signature

Date

(R.C. 2308.03(A).)



HISTORY

ACTION

DATE

Introduced
Reported, H. Housing & Urban Revitalization

10-21-09
02-08-10

h0323-rh-128.docx/kl:jc

