



# Ohio Legislative Service Commission

## Bill Analysis

Lisa Sandberg

### **Sub. S.B. 13\***

128th General Assembly

(As Reported by S. Judiciary – Civil Justice)

**Sens.** D. Miller, Morano, Turner, Smith

---

## **BILL SUMMARY**

- Requires a landlord who is the owner of residential rental property subject to foreclosure to provide written notice of that foreclosure to any tenant of the property.
- Requires a landlord to file an affidavit with the clerk of the court of common pleas certifying that the landlord provided the written notice described in the previous dot point to every tenant of the property.
- Requires the officer taking the lands and tenements to, at least 35 days prior to the date of the sale, cause a written notice of the date, time, and place of sale to be served upon the judgment debtor and upon each other party to the action.
- Requires the landlord to provide each tenant at the property with written notice of the date, time, and place of the scheduled sale of the foreclosed property at least 21 days before the date of the sale at auction.
- Provides that any rental agreement for a residential rental property that is the subject of a foreclosure action must convert to a month-to-month rental agreement upon the court's approval of a sale at auction upon the repeal or expiration of the "Protecting Tenants at Foreclosure Act of 2009."
- Provides for remedies the tenant may recover if a landlord or successor in interest fails to provide the written notice or fails to honor the month-to-month rental agreement.

---

\* This analysis was prepared before the report of the Senate Judiciary – Civil Justice Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Provides for a civil penalty if the landlord fails to provide the tenants with the written notice of the foreclosure and fails to file an affidavit with the clerk of the court of common pleas certifying that the landlord provided the tenants with that written notice.
- Requires the Director of the Department of Commerce to prepare a publication for distribution to owners and tenants of residential properties that are the subject of foreclosure actions and details what information must be included in that publication.

---

## **CONTENT AND OPERATION**

### **Requirements of a landlord who is the owner of residential rental property subject to foreclosure**

The bill requires a landlord who is the owner of a residential rental property that is the subject of a foreclosure action to do all of the following (R.C. 5321.20(A)):

(1) Within 60 days after receiving a summons that contains a notice of foreclosure, provide written notice of that foreclosure to any tenant of the property and include in the written notice a statement that the tenant may contact the Ohio Foreclosure Prevention web site at [savethedream.ohio.gov](http://savethedream.ohio.gov) or at the toll-free telephone number 1-888-404-4674 to obtain a copy of the publication on foreclosure prepared by the Director of the Department of Commerce;

(2) After providing the written notice described in (1) above to any tenant of the property and within 60 days after receiving a summons that contains a notice of foreclosure, file an affidavit with the clerk of the court of common pleas certifying that the landlord provided the written notice to every tenant of the property;

(3) Include a notice of the foreclosure in any written rental agreement the landlord enters into after receiving the summons with a notice of the foreclosure action;

(4) Provide a written notice of foreclosure to a tenant at the time of any oral rental agreement the landlord enters into after the landlord has received a summons with a notice of foreclosure;

(5) Provide each tenant at the property with written notice of the date, time, and place of the scheduled sale of the foreclosed property at least 21 days before the date of the sale at auction.

(6) After providing each tenant at the property with written notice of the date, time, and place of the scheduled sale of the foreclosed property, file an affidavit with

the clerk of the court of common pleas certifying that the landlord provided each tenant at the property with that written notice;

(7) Not more than seven days after the confirmation of the sale of the property subject to the foreclosure action if the "Protecting Tenants at Foreclosure Act of 2009," Pub. L. No. 111-22 (2009) has been repealed or has expired, provides the names of the tenants at the property who were not current on their rental payments under the rental agreement as of the date of the confirmation of sale to the successor in interest.

Any written notice the landlord provides pursuant to the above-described requirements must include a statement in substantially the following form (R.C. 5321.20(B)):

"This property is undergoing foreclosure. The case number for this foreclosure action is .....(case number). For more information on this action, you should contact .....(your county) County Court of Common Pleas, .....(address), at .....(phone number) or .....(web site).

A sale at auction could occur as a result of this foreclosure. Currently, [the sale of this property has been set for .....(time, date, and place)] *or* [no date for sale of this property has been established]. Ohio law requires that I provide you with written notice of the sale at least twenty-one days before it takes place.

If there is a sale of this property at auction, your current rental agreement will be subject to the "Protecting Tenants at Foreclosure Act of 2009," Pub. L. No. 111-22 (2009). If the "Protecting Tenants at Foreclosure Act of 2009" has expired or been repealed on or before the date of the confirmation of sale and if you are current on your rental payments under the rental agreement on the date of the confirmation of sale, your current rental agreement will convert to a month-to-month rental agreement upon the sale of the property unless you and the successor in interest mutually agree to a different termination date for the rental agreement.

Note: With a month-to-month rental agreement, either the tenant or the landlord may terminate the agreement by providing written notice of termination to the other at least thirty days prior to a date on which the rent payment normally is due. The rental agreement then terminates on that rent payment date."

If the landlord does not file the affidavit with the clerk of the court of common pleas certifying that the landlord provided written notice of the foreclosure action to the tenants, the clerk must, within seven days after the expiration of the 60-day requirement that the landlord provide written notice of the foreclosure action to the tenants, send the written notice to the tenants of the property (R.C. 5321.20(C)).

If the landlord does not file the affidavit with the clerk of the court of common pleas certifying that the landlord provided written notice of the date, time, and place of the scheduled sale of the foreclosed property at least 21 days before the date of the sale at auction, the clerk of the court of common pleas must, no later than 14 days before the date of the sale at auction, notify the landlord of the landlord's requirement to provide each tenant at the property with written notice of the date, time, and place of the scheduled sale of the foreclosed property and to provide the clerk with an affidavit certifying that the landlord provided that written notice (R.C. 5321.20(D)).

### **Conversion of rental agreement**

Under the bill, any rental agreement for a residential rental property that is the subject of a foreclosure action is subject to the "Protecting Tenants at Foreclosure Act of 2009," Pub. L. No. 111-22 (2009). Upon the repeal or expiration of the "Protecting Tenants at Foreclosure Act of 2009," any rental agreement for a residential rental property that is the subject of a foreclosure action converts to a month-to-month rental agreement upon a court's approval of a sale at auction pursuant to R.C. 2329.31 (Ohio law regarding confirmation of sale and order of deed) if the tenant under the rental agreement is current on the tenant's rental payments under the rental agreement on the date of the confirmation of sale unless the successor in interest and the tenant mutually agree to a different termination date for the rental agreement. The initial successor in interest in the property is subject to the month-to-month rental agreement and is the landlord under the month-to-month rental agreement or the alternative rental agreement mutually agreed to by the successor in interest and the tenant. The successor in interest has the right to enter the property subject to R.C. 5321.04(A)(8) (generally gives the tenant reasonable notice of the landlord's intent to enter and enter only at a reasonable time). (R.C. 5321.21.)

### **Security deposits**

The bill provides that within seven days after the confirmation of the sale of the property subject to the foreclosure action, the owner of the property subject to the foreclosure action must forward to the successor in interest all security deposits held by the owner of the property on behalf of the tenants of the property. The successor in interest must return any deposit to a tenant when the rental agreement ends in the same manner that R.C. Chapter 5321. provides for tenancies that end pursuant to the terms of the rental agreement, except that the successor in interest is obligated to return a security deposit only to the extent that the security deposit was forwarded to the successor in interest from the owner of the property. (R.C. 5321.22.)

## Remedies available to tenant

The bill provides a tenant may recover reasonable attorney's fees as well as the greater of actual damages or one month's rent and obtain injunctive relief to enforce the rental agreement, or both, if a landlord or a successor in interest violates the provisions under "**Requirements of a landlord who is the owner of property subject to foreclosure,**" "**Conversion of rental agreement,**" or "**Security deposits,**" above, fails to provide a written notice required under "**Requirements of a landlord who is the owner of property subject to foreclosure,**" or fails to honor a rental agreement established under "**Conversion of rental agreement**" above (R.C. 5321.23(A)).

If the landlord fails to provide the tenants with the written notice required under "**Requirements of a landlord who is the owner of property subject to foreclosure**" and fails to file an affidavit with the clerk of the court of common pleas certifying that the landlord provided the tenants with that written notice, the court may impose upon the landlord a civil penalty that equals the cost that the clerk incurs for sending out the written notice plus \$100 per rental unit, not to exceed \$1,000. The clerk must pay each collected civil penalty to the county treasurer for deposit in the county treasury.

## Publication of residential properties that are the subject of foreclosure actions

The bill requires the Director of the Department of Commerce to prepare a publication for distribution to owners and tenants of residential rental properties that are the subject of foreclosure actions. The publication must include a list of available resources to assist owners of residential rental properties to retain their property and to assist tenants in obtaining assistance if relocation is necessary. The Director must make the publication available to clerks of courts of common pleas in Ohio for distribution to owners and tenants of residential properties that are undergoing foreclosure. (R.C. 121.086.)

## Requirements of the clerk of court

Under the bill, when a holder of a mortgage files a complaint to initiate a foreclosure action on a residential rental property, along with the summons that is served on the owner of the property, the clerk of the court of common pleas must do all of the following (R.C. 2703.10(A)):

(1) Include a statement that if the property that is the subject of the foreclosure action is residential rental property, the owner of the property must comply with the provisions under "**Requirements of a landlord who is the owner of property subject to foreclosure,**" above;

(2) Include a description of the penalties for failing to comply with the provisions under "**Requirements of a landlord who is the owner of property subject to foreclosure,**" above;

(3) Include a notice that if the property that is the subject of the foreclosure action is residential rental property the owner of the property must indicate that fact in the owner's answer to the complaint;

(4) Include a statement that the owner of the residential rental property must include the names and addresses of the tenants of the residential rental property in the owner's answer to the complaint.

When the owner of residential rental property files an answer with the clerk of the court of common pleas to a complaint to initiate a foreclosure action on the owner's residential rental property, the owner must indicate in the answer that the property that is the subject of the foreclosure action is residential rental property and must provide the names and addresses of the tenants of the residential rental property (R.C. 2703.10(B)).

### **Notice of time, date, and place of sale**

Under existing law, lands and tenements taken in execution cannot be sold until, among other things, the following occur (R.C. 2329.26(A)(1)):

(1) Except as otherwise provided in (2) below, the judgment creditor who seeks the sale of the lands and tenements does both of the following:

(a) Causes a written notice of the date, time, and place of the sale to be served in accordance with Civil Rule 5(A) and (B) upon the judgment debtor and upon each other party to the action in which the judgment giving rise to the execution was rendered;

(b) At least seven calendar days prior to the date of the sale, files with the clerk of the court that rendered the judgment giving rise to the execution a copy of the written notice with proof of service endorsed on the copy in the form described in Civil Rule 5(D).

(2) Service of the written notice is not required to be made upon any party who is in default for failure to appear in the action in which the judgment giving rise to the execution was rendered.

The bill modifies this provision by instead requiring the officer taking the lands and tenements, at least 35 days prior to the date of the sale, whether or not there is a default judgment, to cause a written notice of the date, time, and place of the sale to be

served in accordance with the procedure in Civil Rule 5(A) and (B) upon the judgment debtor and upon each other party to the action in which the judgment giving rise to the execution was rendered and include with the written notice a statement that if the property is residential rental property the judgment debtor who is the owner of the property must comply with R.C. 5321.20(A)(5) and (6) (described in "**Requirements of a landlord who is the owner of property subject to foreclosure**," above). The bill also requires the officer taking the lands and tenements to file with the clerk of the court that rendered the judgment giving rise to the execution a copy of the included statement, and provides that service of the included statement is not required to be made upon any party who is in default for failure to appear in the action in which the judgment giving rise to the execution was rendered. (R.C. 2329.26(A)(1).)

### **Rights and remedies**

The bill provides that the rights and remedies provided for under the bill are in addition to and do not preempt any other rights that a tenant may be entitled to under any other provision of Ohio law. Upon the repeal or expiration of the "Protecting Tenants at Foreclosure Act of 2009," Pub. L. No. 111-22 (2009), nothing in this provision prevents a successor in interest from providing a 30-day notice to terminate a month-to-month rental agreement on the first day that a rental payment is due following the confirmation of sale. (R.C. 5321.24.)

---

## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	02-10-09
Reported, S. Judiciary – Civil Justice	---

S0013-RS-corrected-128.docx/jc

