



# Ohio Legislative Service Commission

## Bill Analysis

David M. Gold

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Rep. Anielski

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## BILL SUMMARY

### Overview

- Enacts the Private Foreclosure Fast-Track Law, which provides an alternative, expedited process for a lender to foreclose on unoccupied property.
- Authorizes a court to approve the direct transfer of property foreclosed under that Law to the lender or a land bank (a county land reutilization corporation or a subdivision that has elected to establish a land reutilization program) if the lender requests such a direct transfer.
- Orders, when a direct transfer is not requested, a judicial sale upon the decree of foreclosure, eliminating the need to file for a writ of execution.
- Specifies the types of property subject to the Private Foreclosure Fast-Track Law.
- Permits the expedited process to be initiated in courts of common pleas, municipal courts, and federal courts.

### Initiating the action

- Lists the documents the lender must include with the complaint filed under the Law, which include a "property affidavit" attesting to the status of the property as being subject to the Law and a "transfer affidavit" if the property is to be transferred to a land bank.
- Permits the land bank transfer affidavit to be filed or withdrawn later.

## **Service**

- Prescribes the form for the notice of summons for an expedited foreclosure action.
- Sets forth rules for service and service by publication.
- Waives material irregularities in notice if the party charged with notice appears in the action or makes a filing relating to the action.

## **Hearings**

- Limits the subject matter of the proceedings under the Private Foreclosure Fast-Track Law.
- Deems a party to be in "default of the proceedings" if either (1) the party fails to appear at any hearing after being served by mail or (2) a party deemed served by publication fails to appear, move, or plead within 28 days after service.
- Generally excludes parties in default of the proceedings from further service of subsequent pleadings, papers, or proceedings.
- Establishes a procedure to reverse default status.
- Limits the ability of a lender to voluntarily dismiss an action or vacate a judgment obtained under the Law once it opts to use that process.

## **Final hearing on the merits**

- Requires the court to conduct a final hearing on the merits of the complaint not sooner than 30 days after service has been perfected, if certain criteria are met.
- Requires the court to schedule the final hearing without any pretrials, status conferences, or other interim proceedings.
- Permits the lender to move for a final hearing if the court does not timely schedule the final hearing on its own initiative, and requires the court to then hold the final hearing not later than 180 days after the motion.
- Creates a rebuttable presumption that all the facts in the plaintiff's affidavit are true.
- Requires the court, for an action begun under the Private Foreclosure Fast-Track Law, to continue the action under the Execution Against Property Law if the court determines that the property in question is not, or no longer is, property subject to the Private Foreclosure Fast-Track Law.

## **Decree of foreclosure**

- Requires the court to enter a decree of foreclosure if the information in the pleadings and documents is sufficient to conclude that the borrower is in default of the mortgage and that the property that secures the mortgage is residential property under the Law.
- Requires the court, upon a finding in favor of the lender, to enter a decree of foreclosure and order either the property to be sold at judicial sale or transferred to the lender or a land bank based upon the number of active lienholders and the property's value.
- Establishes procedures for determining the property's fair market value.

## **Execution of foreclosure decree**

- Permits the court to order the designated law enforcement officer to prepare a deed to the lender or a land bank as indicated in the lender's transfer petition, if one is filed and approved.
- Makes such a deed generally free and clear of all liens, encumbrances, and obligations, other than liens relating to certain taxes and assessments.
- Requires a transfer order to direct the designated law enforcement officer to deliver the deed to the appropriate entity upon the lender's payment of all proceeding costs and, in some instances, taxes.
- Establishes procedures for judicial sales under the bill, which have shorter time and likely lower minimum bid requirements than judicial sales under the Execution Against Property Law.
- Requires a purchaser that is not a county land reutilization corporation to pay all current and delinquent taxes and assessments on the property and requires the lender to pay the costs of the proceedings.
- Requires, if no person bids at the sale, the lender to bid in sufficient amount, up to its mortgage balance, to acquire the property and the lender as purchaser to pay all current and delinquent taxes and assessments on the property and the costs of the proceedings.
- Specifies that the rights of the owner who owned the property before the sale remain unaffected by any excess or deficiency balance resulting from the difference between the mortgage balance and the sale price of the property.

- Establishes procedures for expedited preparation of the conveyance documents.
- Revises the time frames within which the owner may exercise the right of redemption, to reflect the option of direct transfer.

### **Securing the residential property**

- Grants the lender limited authority to enter and secure the property and protect it from harm, either under its own authority or pursuant to court order.

### **Miscellaneous**

- States that the expedited foreclosure proceedings under the Private Foreclosure Fast-Track Law constitute special statutory proceedings pursuant to the Ohio Civil Rules, generally exempting those procedures from Civil Rule requirements.
- Permits courts to use Civil Rule procedures to facilitate the practical or efficient conduct and purposes of proceedings under the bill.
- Permits courts to adopt compatible local rules, forms, and practices and permits clerks and designated law enforcement officers to adopt compatible forms and procedures.
- Permits a court to maintain a separate "Foreclosure Fast-Track" docket to identify that filings under the bill are intended to proceed on an expedited basis.

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## CONTENT AND OPERATION

### Private Foreclosure Fast-Track Law - overview

#### Overview

The bill enacts the Private Foreclosure Fast-Track Law, which is intended to provide an alternative basis for filing foreclosures by lenders (see the definition of "financial institution" under "**Definitions**," below) against unoccupied residential property secured by a residential mortgage. This alternative statutory procedure is intended to expedite the foreclosure of unoccupied, often blighted, residential property by providing a more expedited procedure than that afforded by other available foreclosure actions.<sup>1</sup> For foreclosure decrees in which direct transfer is not requested, the court immediately orders the judicial sale, eliminating the need to file a writ of execution; the Law does not permit the lender to delay filing the writ following the decree of foreclosure.

The bill also authorizes a court to approve the direct transfer of the foreclosed property to either the lender that brought the action or a land bank (a county land

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<sup>1</sup> Section 3.



reutilization corporation or a subdivision that has elected to establish a land reutilization program) if the lender requests that transfer.<sup>2</sup>

Under current law, when a homeowner defaults on the homeowner's mortgage, the entity holding the note (usually a lender) sues the homeowner for the nonpayment and obtains a judgment. The note holder then may execute the judgment, foreclosing on the house that is the security for the loan. The note holder then has five years within which to file for a writ of execution.<sup>3</sup> The foreclosed property is then sold at a judicial sale (sometimes called a "sheriff's sale"), with the proceeds being used to pay the debt. Current law establishes procedures and timelines within which the foreclosure process must act. The bill establishes an alternate, expedited process for certain residential foreclosures.

### **Types of property subject to the Private Foreclosure Fast-Track Law**

In the Private Foreclosure Fast-Track Law, "residential property" has a specific meaning; it does not apply to all property in which people reside. As used in the Law, "residential property" means *unoccupied* property located within Ohio that serves as security for a residential mortgage and consists of real property that is either:

(1) Unimproved;

(2) Improved by a building comprised solely of four or fewer dwelling units that are each intended for residential occupancy.

"Residential property" may include an individual residential condominium unit, an individual row house, and a manufactured or mobile home that is subject to real property taxes.

"Unoccupied property" means any of the following types of real property:

(1) Real property on which no trade or business is actively being conducted by the owner or another party legally occupying the property;

(2) Uninhabited real property with no signs that it is undergoing improvements as evidenced by an unexpired building permit, an unexpired application for a building permit, or other facts indicating the property is undergoing ongoing improvements;

(3) Uninhabited real property that contains one or more unsecured buildings;

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<sup>2</sup> R.C. 2330.07 and 2330.08.

<sup>3</sup> R.C. 2329.07(A), not in the bill.

(4) For property unimproved by any building, real property for which a visual inspection shows no exterior indications that the property serves as an active accessory use to an adjacent occupied property for purposes such as lawful parking, entry, lawful storage, or yard extension of an occupied property and that is not agricultural property;

(5) Real property on which at least one utility connection is no longer servicing, or actively being billed to, the property;

(6) Real property on which a building is sealed to prevent the property from becoming unsecured, or because the sealing was ordered by a governmental body as a nuisance;

(7) Real property that a governmental body condemns or declares to be a nuisance.

(8) Abandoned land, which is delinquent land or delinquent vacant land that is unoccupied and that first appeared on the county abandoned land list, the delinquent tax list, or delinquent vacant land tax list, at the following times:

- For nonagricultural lands, at any time after the county auditor makes the certification of the delinquent land list;
- For agricultural lands, at any time after two years after the county auditor makes that certification.

"Abandoned land" includes any improvements on the land.

"Delinquent lands" means lands upon which delinquent taxes remain unpaid at the time a settlement for taxes and settlements is made between the county treasurer and county auditor. "Delinquent vacant lands" means lands that have been delinquent lands for at least one year and that are unimproved by any dwelling.<sup>4</sup>

## **Initiating the action**

In lieu of initiating foreclosure proceedings under continuing law, a lender may initiate an expedited foreclosure action under the Private Foreclosure Fast-Track Law by filing a complaint with the clerk in a form similar to pleading and caption forms provided in the applicable Ohio and federal Rules of Civil Procedure.

The lender may pursue expedited foreclosure proceedings in the courts of common pleas, municipal courts, and the federal district courts in which the residential

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<sup>4</sup> R.C. 2330.01(I) and (J) and R.C. 323.65 and 5721.01, not in the bill.



property is located and consistent with their respective subject matter jurisdiction. By electing to pursue an action pursuant to the Private Foreclosure Fast-Track Law, the lender is bound by the provisions of that Law.<sup>5</sup>

### **Mandatory accompanying documents**

All of the following must accompany the complaint:

(1) The preliminary judicial report required for the judicial sale of real estate under the current Execution Against Property Law, which must include the name and address of all parties having any interest of record in the property;

(2) A copy of the promissory note and the residential mortgage secured by the residential property. If either document is not an original, then the affiant of the residential property affidavit (see next paragraph) must attest on personal knowledge that the documents are true and accurate copies of the originals to the best of the affiant's good faith knowledge and belief.

(3) A "residential property affidavit" that is either of the following:

- A plaintiff's affidavit (see "**Plaintiff's affidavit**," below) attesting that property being foreclosed upon is "residential property" for the purposes of the Private Foreclosure Fast-Track Law;
- An affidavit that adequately identifies the property and in which both the lender and the property owners stipulate that the property being foreclosed upon is "residential property."

(4) A "land bank transfer affidavit" if the lender requests that the residential property be directly transferred to a land bank upon the court's issuance of a foreclosure decree. The land bank transfer affidavit must be signed and notarized by both the lender and the land bank and indicate that both agree to the court's direct transfer of the residential property to the land bank. (But see, "**Land bank transfer affidavit may be filed later; withdrawal**," below.)<sup>6</sup>

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<sup>5</sup> R.C. 2329.01, 2330.02, and 2330.04(B).

<sup>6</sup> R.C. 2330.04(B)(1) to (4).



## **Permissive accompanying documents**

The lender may include other documents or information with the complaint that the lender asserts are relevant to the proceeding.<sup>7</sup>

## **Land bank transfer affidavit may be filed later, withdrawal**

If a land bank transfer affidavit is not filed with the complaint, the lender and the land bank may file the affidavit not later than seven days prior to any final hearing. The land bank may unilaterally withdraw any consent to accept any residential property by filing, not later than seven days before any final hearing, a supplemental signed, notarized document that revokes the consent. If the land bank revokes its consent, the lender may elect to proceed under the Private Foreclosure Fast-Track Law or move to dismiss the action.<sup>8</sup>

## **Plaintiff's affidavit**

A "plaintiff's affidavit" must be signed and attested to by either the attorney filing the foreclosure action on behalf of the lender's or by the lender's representative that is based on information and belief. In the affidavit, the affiant must attest to the following information:

- (1) That the declarant has authority from the lender to execute the affidavit;
- (2) That the declarant has knowledge based on reasonable information and belief of the facts contained in the affidavit;
- (3) That the property being foreclosed upon is "residential property" for the purposes of the Private Foreclosure Fast-Track Law;
- (4) The permanent parcel numbers and, if available, the common address of the property;
- (5) An original signature by the attesting declarant;
- (6) An original notarization on the affidavit by an authorized notary in Ohio or the state and county of the declarant's residence;

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<sup>7</sup> R.C. 2330.04(B).

<sup>8</sup> R.C. 2330.04(B).



(7) The name, address, and telephone number of the individual upon whose information the declarant's information and belief is based.<sup>9</sup>

## Service

### Service of summons and complaint

Upon the filing of the Fast-Track Foreclosure complaint, the clerk promptly must serve notice of the summons, complaint, and residential property affidavit to the last known address of the record owner of the residential property being foreclosed upon and the last known address of each lienholder or other person having an interest of record identified in the preliminary judicial report. This service must be consistent with Civil Rule 4 (Process: summons). The notice of summons must substantially comply with the following model:<sup>10</sup>

<p>NOTICE OF SUMMONS</p> <p>This is a foreclosure lawsuit being prosecuted in the (name of court). You have been named as a defendant in this suit as someone who has an interest in the following parcel of land:</p> <p>(description as shown in complaint)</p> <p>This parcel has been included in an action instituted by (name of financial institution), being case no. (case number) filed in the (name of court), (location), Ohio, on (date of filing) seeking the expedited foreclosure and sale or direct transfer of the parcel as a result of the alleged default of a residential mortgage held by the above named financial institution against the parcel. The attorney representing the financial institution in this matter is: (name of attorney for financial institution), with offices at (attorney's business address), and a business phone number of (attorney's business phone number).</p> <p>Any person owning or claiming any right, title, or interest in, or lien upon, this parcel must appear at any hearing scheduled by the court in order to set forth the nature and amount of the person's interest and any defense or objection to the foreclosure. All subsequent pleadings, motions, and papers shall be filed in the office of the undersigned clerk of the court, and a copy of any such pleadings, motions, and papers shall be delivered to the attorney for the financial institution on or before the date of any final hearing.</p> <p>If you do not appear at any hearing scheduled by the court, a judgment of foreclosure may likely be taken against you by default and the parcel shall be ordered sold at public auction or transferred directly to the financial institution, a county land reutilization corporation, or other electing subdivision as defined in Chapters 1724. and 5722. of the Revised Code without appraisal and without auction sale on a date and in a manner pursuant to section 2330.08 of the Revised Code or as otherwise ordered by the court.</p> <p>The owner or lienholder of, or other person with a recorded interest in, a parcel may lose all its interest in the residential property, if the residential mortgage is not paid, settled, modified, or otherwise resolved by some other accord and satisfaction with the financial institution and the owner or a lienholder or party with a recorded interest in the parcel.</p> <p>In order to redeem the parcel, the owner of the residential property must pay, settle, have modified, or reach an accord and satisfaction at any time prior to a journalized entry of an order for direct transfer pursuant to section 2330.07 of the Revised Code, or a journalized entry of a confirmation of sale.</p>
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<sup>9</sup> R.C. 2330.04(B)(3) and (H).

<sup>10</sup> R.C. 2330.04(A) and (C) and 2330.041.



Upon the filing of any entry ordering the direct transfer of, or confirming the sale of, the parcel, there shall be no further equity of redemption. After the filing of any such entry, any person claiming any right, title, or interest in, or lien upon, the parcel shall be forever barred and foreclosed of any such right, title, or interest in, lien upon, and any equity of redemption in, the parcel.

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Clerk of the court  
..... Court  
....., Ohio

**Service by publication**

If service by publication is required, the service by publication generally must be made in accordance with the Civil Rule regarding service by publication. But, it must be made once a week for three consecutive weeks, and it will be considered complete at the expiration of three weeks after the date of the first publication. (Civil Rule 4.4 requires publication at least once a week for six successive weeks.) If the lender determines that service upon a defendant may be obtained ultimately only by publication, the lender may cause service to be made simultaneously by certified mail, return receipt requested, ordinary mail, and publication.<sup>11</sup>

**Service of subsequent documents**

After service, a party filing subsequent pleadings, motions, and papers with the clerk also must serve those documents upon all parties of record who are not in default of the proceedings.<sup>12</sup>

**Inadvertent noncompliance**

Under the Private Foreclosure Fast-Track Law, any noncompliance with the Law will not defeat the case if both of the following apply: (1) the noncompliance was inadvertent and does not materially affect notice and opportunity to appear at a final hearing, and (2) the notice or service of the summons and complaint, if challenged, can be proven by a preponderance of the evidence or are acknowledged by the party charged with notice or service. If a party charged with notice appears in the action or makes a filing relating to the action, that party waives any irregularity that materially affects notice and opportunity to appear.<sup>13</sup>

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<sup>11</sup> R.C. 2330.04(D)(2).

<sup>12</sup> R.C. 2330.04(A) and (D)(1).

<sup>13</sup> R.C. 2330.04(E).



## Hearings under the Private Foreclosure Fast-Track Law

### Subject matter

The Private Foreclosure Fast-Track Law limits the subject matter of the expedited proceedings to:

- (1) Substantial conformity of the complaint, affidavit, and preliminary judicial report to the Law;
- (2) Sufficiency of process and service of process;
- (3) Whether a party is in "default of the proceedings;"
- (4) The validity or amount of any obligations under the residential mortgage;
- (5) Whether the property being foreclosed upon is "residential property;"
- (6) Whether the mortgagor (borrower) or lender is in default pursuant to the residential mortgage;
- (7) The priority, validity, and amount of any obligations of other lienholders to the residential mortgage.<sup>14</sup>

### Counterclaims and cross-claims

Counterclaims and cross-claims, whether normally considered compulsory or permissive under the applicable Civil Rule, may not be asserted in any action taken under the Private Foreclosure Fast-Track Law except as to whether the lender is in breach of the residential mortgage or the priority and validity of lienholders listed in the preliminary judicial report. Any party may pursue a counterclaim or cross-claim, other than those provided for in the Law, in a separate action unless the court determines by clear and convincing evidence that substantial justice requires inclusion of those claims.<sup>15</sup>

### Default of the proceedings

#### Getting default status and its effect

The Private Foreclosure Fast-Track Law deems a party to be in default of the proceedings if either of the following occurs:

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<sup>14</sup> R.C. 2330.06(C).

<sup>15</sup> R.C. 2330.06(C).



(1) The party fails to appear at any hearing after being served with notice of the summons and complaint by certified or ordinary mail (note: parties served by certified or ordinary mail are not required to file an answer to the complaint).

(2) For a party upon whom notice of summons and complaint is required by publication and has been deemed served, the party fails to appear, move, or plead to the complaint within 28 days after service by publication is completed.<sup>16</sup>

If a party is deemed in default of the proceedings, no further service of any subsequent court documents is required on the party. The court will neither require nor order further notice to that party unless the failure to do so would result in manifest and substantial injustice.<sup>17</sup>

### **Reversing default status**

If a party is deemed in default of the proceedings, the subsequent appearance, motion, or pleading of that party will not automatically alter the status of that party as being in default. The party remains in default and is not entitled to subsequent service unless the defaulted party shows one of the following:

(1) That the failure to change the defaulted status results in, and the court so finds, a manifest and substantial injustice to one or more parties;

(2) Excusable neglect based on facts asserted with particularity;

(3) That the property in question is not residential property based on a preponderance of the evidence.

Conclusory assertions are insufficient to challenge a party's defaulted status.<sup>18</sup>

### **Hearings regarding status**

With respect to any issue over a party's defaulted status, the court may conduct evidentiary hearings on the sufficiency of process, service of process, or sufficiency of service of process.<sup>19</sup>

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<sup>16</sup> R.C. 2330.04(D)(2) and 2330.05(A).

<sup>17</sup> R.C. 2330.05(B).

<sup>18</sup> R.C. 2330.05(C).

<sup>19</sup> R.C. 2330.05(D).



## **Voluntary dismissals and vacating orders and decrees**

Except as otherwise specifically authorized, an action commenced under the Private Foreclosure Fast-Track Law must continue and conclude under it. A lender that brings the action may not voluntarily dismiss or seek to vacate a judgment, order of sale, writ of execution, sale, transfer, or confirmation of the action except as otherwise provided in that Law or upon written motion in the court's sound discretion for good cause shown by clear and convincing evidence.<sup>20</sup>

## **Time frames, alternate time frames if contested issues exist**

If a defendant is not in default of the proceedings and a permissible matter is contested, the court may try the case either (1) under the Private Foreclosure Fast-Track Law, or, (2) in its sound discretion, according to the court's normal case management schedule and local rules.

If all defendants are in default of the proceedings, the court must try the case under the Private Foreclosure Fast-Track Law's time requirements, unless the court finds, by clear and convincing evidence, that doing so will result in manifest and substantial injustice to one or more parties.<sup>21</sup>

## **Transfer to lender or a land bank only upon petition**

Under the bill, if the lender wishes to obtain direct transfer of the residential property to either itself or a land bank, the lender must petition the court for the transfer. It must also file a land bank transfer affidavit, if the lender desires to transfer the property to a land bank. The court may order a direct transfer to the lender or a land bank only if the lender petitions the court for a direct transfer. But, the court is not required to approve the petition. If the lender did not file a direct transfer petition, or if the court denies the petition, the residential property must be sold at judicial sale.<sup>22</sup>

## **Final hearing on the merits**

The court must conduct a final hearing on the merits of the complaint not sooner than 30 days after service has been perfected, if the court determines that all of the following apply:

- (1) All parties to the complaint have been served.

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<sup>20</sup> R.C. 2329.01 and 2330.02.

<sup>21</sup> R.C. 2330.07(F).

<sup>22</sup> R.C. 2330.07(E) .

(2) No individual named in the complaint is on active military duty and thereby not available.

(3) The complaint, preliminary judicial report, and affidavit are before the court for the court's review.

Upon this determination, the court must schedule a final hearing on the merits without any pretrials, status conferences, or other interim proceedings. If within 14 days after the court's determination, a court does not on its own initiative order and schedule within 180 days a final hearing on the merits of the complaint, then the lender may move the court to conduct the final hearing. The court then must conduct a final hearing not sooner than 30 days after service and not later than 180 days after the motion's filing date.<sup>23</sup>

### **Findings of fact, conclusions of law, and orders**

The court may make such findings of fact, conclusions of law, and orders as it determines necessary as a result of the final hearing. Before or subsequent to any decree of foreclosure, the court may order the lender and any other lienholders who have appeared and are not in default of the proceedings to stipulate to their respective order of priority, or, failing the ability to stipulate, conduct hearings and make findings to determine the order of priority.

The court may deem a property to be a residential property if, along with a complaint to initiate foreclosure, the record owner of the residential property stipulates or otherwise affirms that the property is residential property.

All of the facts contained in a plaintiff's affidavit are rebuttably presumed to be true. These facts may be rebutted at any time prior to the final hearing.

In the case of property unimproved by any building, if a party asserts an accessory use, the party making the assertion must show the existence of the accessory use by a preponderance of the evidence. Failure to assert the accessory use by any party at least seven days prior to any final hearing is deemed a waiver of the assertion and the property is deemed to be residential property.<sup>24</sup>

If, during the pendency of such an expedited action under the Private Foreclosure Fast-Track Law, the court determines that the real property being

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<sup>23</sup> R.C. 2330.06(A) and (B).

<sup>24</sup> R.C. 2330.06(D) and (E).



foreclosed on is not, or is no longer, residential property, then the action must be pursued under the Execution Against Property Law, not dismissed.<sup>25</sup>

### **Decree of foreclosure**

After a final hearing, the court must enter a decree of foreclosure if the court determines that the information in the pleadings and documents is sufficient to conclude that the borrower is in default of the residential mortgage and the property that secures the residential mortgage is residential property.<sup>26</sup>

#### **No other active interests**

Upon entering the decree of foreclosure, the court must also order the property either sold at judicial sale, or upon the lender's petition, transferred to the lender or a land bank if the court finds that either of the following apply:

(1) The residential property owner and all other lienholders or interested parties are in default of the proceedings.

(2) The residential mortgage is the first and only mortgage on the residential property and the owner is not in default of the proceedings.<sup>27</sup>

#### **Other active interests**

If the court finds that the residential mortgage is the first lien but there are other liens, and the owner or other lienholder or interested party is not in default of the proceedings, then upon entering the decree of foreclosure, the court must order one of the following:

(1) That the property be sold at judicial sale if the residential mortgage balance is less than the fair market value of the residential property.

(2) That the property be sold at judicial sale or transferred to the lender or a land bank, upon the lender's petition, if the residential mortgage balance is greater than the fair market value of the residential property.<sup>28</sup>

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<sup>25</sup> R.C. 2330.03.

<sup>26</sup> R.C. 2330.06(F).

<sup>27</sup> R.C. 2330.07(A) to (C).

<sup>28</sup> R.C. 2330.07(D).

## **Determining fair market value**

The county auditor's most recent valuation of the residential property is rebuttably presumed to be the fair market value. To rebut the presumption, any party may file with the court a good faith appraisal of the residential property from a licensed professional appraiser and request a hearing to determine fair market value. The party may file that appraisal at any time after the filing of the complaint, or upon the court's own motion, but not later than 14 days prior to the final hearing. Any party may file additional appraisals to refute or confirm any other party's appraisal. An appraisal may not be submitted for any other purpose.

If proceedings on valuation require additional time beyond that prescribed in the Private Foreclosure Fast-Track Law, the court may proceed with the case on its standard case docket, except that the court must otherwise dispose of the case in accordance with the Law.<sup>29</sup>

## **Execution of foreclosure decree**

### **Direct transfer**

If the lender petitions for transfer and if the court approves the petition, the court will order the designated law enforcement officer to prepare a deed to the lender or a land bank as indicated in the petition. An order of direct transfer may be included in the decree of foreclosure or in a separate order. The deed is generally free and clear of all liens, encumbrances, and obligations, other than unpaid taxes and assessments that may be delinquent, and the taxes and assessments that are a lien on the residential property but not yet due and payable. The order must direct the designated law enforcement officer to do the following:

(1) If the deed is prepared for the lender, deliver the deed directly to the lender upon the lender's payment of all taxes and assessments and the costs of the proceedings;

(2) If the deed is prepared for a land bank, deliver the deed to the land bank upon the lender's payment of the costs of the proceedings. The direct transfer to a land bank extinguishes the lien on the title for all taxes, assessments, penalties, interest, and charges delinquent at the time of the conveyance, the same as if the transfer were made to a land bank in lieu of taxes under the Land Reutilization Program Law.

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<sup>29</sup> R.C. 2330.07(D) and 2330.11.



This transfer occurs without appraisal or sale.<sup>30</sup>

### **Judicial sale**

The Private Foreclosure Fast-Track Law differs from the Execution Against Property Law in regards to judicial sales in that the judicial sale, if ordered, occurs without the need for a writ of execution. Under the Execution Against Property Law, a foreclosure judgment is not self-executing: the lender needs to file for and obtain a writ of execution to obtain a judicial sale. Notice that the writ is being sought must be given and a hearing on the writ may be requested. The date of the issuance of the writ sets the deadlines by which the judicial sale must be held and the writ returned to the court. Under the Execution Against Property Law the lender has five years within which to execute the judgment or else the judgment becomes dormant.<sup>31</sup>

If the court orders the sale of the foreclosed property, under the Private Fast-Track Foreclosure Law the sale is to be in the same manner commonly performed by the designated law enforcement officer of the county in which the property is located. Unlike normal judicial sales, the designated law enforcement officer need only expose the property to sale one time (other than the time limit within which the writ must be returned, the Execution Against Property Law has no limit for real property that remains unsold for lack of bidders). Notwithstanding the standard judicial sale procedures, the minimum bid at sale is \$300 (as opposed to 2/3 of appraised value), and the residential property is not required to be appraised. But, the Execution Against Property Law and other applicable execution statutes may be used for the disposition of the property, to the extent those statutes are not inconsistent with the Private Foreclosure Fast-Track Law. At the sale, the purchaser must pay all current and delinquent taxes and assessments on the property, except when the purchaser is a county land reutilization corporation (note: this exception does not apply to other electing subdivisions). The lender must pay the costs of the proceedings.

If no person bids at the sale, the lender must bid in sufficient amount, up to its residential mortgage balance, to acquire the residential property. The lender as purchaser, or its successor or assigns at any sale, must then pay all current and delinquent taxes and assessments on the residential property and the costs of the proceedings.

The rights of the owner who owned the residential property before the sale remain unaffected by any excess or deficiency balance resulting from the difference

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<sup>30</sup> R.C. 2330.07 and 2330.08(A).

<sup>31</sup> R.C. 2329.27 and R.C. 2329.07, 2329.09, 2329.091, 2329.26, and 2329.53, not in the bill.

between the residential mortgage balance and the sale price of the residential property pursuant to any residential mortgage.<sup>32</sup>

### **Preparation of conveyance documents; vesting of title**

The court must prescribe deed forms and issue orders of sale or orders of transfer as authorized in other foreclosure actions. The court must issue these orders, and order preparation of the deed, so that at the time of deed delivery to the new owner, the designated law enforcement officer need only sign the deed and deliver the deed upon the payment of all moneys due. The Private Foreclosure Fast-Track Law specifies that, by filing an action under the Law, the lender authorizes the designated law enforcement officer to file the deed. The filing of the deed constitutes deed delivery.<sup>33</sup>

Upon the expiration of the applicable time period to exercise the right of redemption, the transfer vests fee simple title to the transferee free of all liens, encumbrances, or charges in equity or law, except easements and restrictions of record running with the land.<sup>34</sup>

### **Right (equity) of redemption**

A party entitled to redeem a residential property after a decree of foreclosure is issued under the Private Foreclosure Fast-Track Law must do so within the following time periods:

(1) In the case of a direct transfer, prior to the journalized entry of the order to transfer. At this point, any equity of redemption in any owner is extinguished.

(2) In the case of a judicial sale, on or before confirmation of sale. At this point any equity of redemption in any owner is extinguished.

These procedures differ from the Execution Against Property Law, in which the owner may redeem the property at any time before the court confirms the judicial sale; there is no direct transfer under the Execution Against Property Law.<sup>35</sup>

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<sup>32</sup> R.C. 2330.08(B) to (D), 2329.17, 2329.20, 2329.26, and 2329.27 and R.C. 2329.25 and 2329.51, not in the bill.

<sup>33</sup> R.C. 2330.09.

<sup>34</sup> R.C. 2330.10.

<sup>35</sup> R.C. 2330.10 and 2329.33.

## Securing the residential property

### General authority

Unless otherwise specifically prohibited by the residential mortgage or by law, if a residential property is unsecured, a lender may enter the residential property to secure and protect it from harm.

The lender is exempt from criminal and civil liability for trespass, unauthorized entry, invasion of privacy, building or housing code violations, or other responsibility for the condition of the residential property due to the entry. The lender still must use ordinary care, however.

But a lender's entry on residential property to secure it and protect it from harm does not make the financial institution a mortgagor-in-possession of the property. (See **COMMENT.**) The securing of the residential property is not to be considered as exercising any dominion, control, or the right of either over the property so long as at the time of the entry, an action under the Private Foreclosure Fast-Track Law was filed and pending.<sup>36</sup>

### Entry pursuant to court order

If the residential mortgage documents or related contractual documents prohibit such an entry, then, in the interest of public safety, the court may by order authorize an entry to secure the residential property and protect it from harm, either upon petition or upon the court's own motion.<sup>37</sup>

## Miscellaneous

### Interaction with Civil Rules and adoption of local rules

The bill states that the expedited foreclosure proceedings under the Private Foreclosure Fast-Track Law constitute special statutory proceedings pursuant to the Civil Rules. As such, except for the service of process prescribed in the Law and in the Civil Rules, the proceedings are exempt from the Civil Rules.

However, a court may use the procedures contained in the applicable Civil Rules if the use facilitates the practical or efficient conduct and purposes of proceedings. The court also may use the procedures contained in the Execution Against Property Law as the court finds convenient or necessary to supplement the court's proceedings,

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<sup>36</sup> R.C. 2330.12(A), (C), and (D).

<sup>37</sup> R.C. 2330.12(B).



provided those procedures are not inconsistent with the Private Foreclosure Fast-Track Law. In addition, a court may adopt local rules and case management orders not inconsistent with the Private Foreclosure Fast-Track Law for the purpose of implementing, as necessary, the expedited foreclosure of residential properties under the Law.<sup>38</sup>

### **Forms, fees, and procedures**

For purposes of efficiently and promptly implementing the Private Foreclosure Fast-Track Law, the court, clerk, and designated law enforcement officer may adopt forms and procedures consistent with that Law, such as practice forms, forms of notice of hearings and notice to parties, forms of orders, adjudications, fees, publication forms, deed forms, and other procedures customarily within their official purview or duties.<sup>39</sup>

### **Court docket and other clerk duties**

The clerk is required to maintain an official case file, docket all proceedings, and tax as costs all necessary expenses in connection with the action. While the clerk may use the court's existing journal, case numbering system, and general procedures, the clerk also may maintain a separate journal, case numbering, or docketing index called the "Foreclosure Fast-Track" docket or a similar designation to identify that filings under the Private Foreclosure Fast-Track Law are intended to proceed on an expedited basis.<sup>40</sup>

## **Background – land banks**

Under continuing Ohio law, a county, municipal corporation, or township may adopt a land reutilization program in order to facilitate the reutilization of nonproductive land located within its boundaries. Land reutilization programs are commonly referred to as "land bank" programs. Under such a program, the subdivision may acquire properties that have been foreclosed for tax delinquency, sell those properties to get them back on the tax rolls, or dedicate the properties to public use.

In lieu of establishing its own land bank program, a county with a population of more than 60,000 may create a county land reutilization corporation. A county land reutilization corporation is a nonprofit organization that has the same powers as a subdivision with its own land bank program, but has a different funding mechanism,

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<sup>38</sup> R.C. 2330.03 and 2330.04(F).

<sup>39</sup> R.C. 2330.03 and 2330.04(G).

<sup>40</sup> R.C. 2330.04(A).



greater authority to acquire foreclosed and forfeited land, and the power to regionally address vacant housing problems.<sup>41</sup>

## Definitions

As used in the Private Foreclosure Fast-Track Law:

**Agricultural property** means any tract, lot, or parcel of land on the agricultural land tax list.

**Clerk** means the clerk of the court of common pleas of the county in which the specified residential property is located, the clerk of court of the municipal court in which the specified residential property is located, or the clerk of courts of the federal district court in which the specified residential property is located, as applicable.

**Designated law enforcement officer** means the sheriff or the sheriff's authorized agent or representative of the county in which the specified residential property is located, the bailiff or the bailiff's authorized agent or representative of the municipal court in which the specified residential property is located, or the marshal or the marshal's authorized agent or representative of the federal district in which the specified residential property is located.

**Electing subdivision** means a municipal corporation that has enacted an ordinance or a township or county that has adopted a resolution for purposes of adopting and implementing the procedures set forth in the Land Reutilization Program Law. A county land reutilization corporation organized by a county and designated to act on behalf of the county pursuant to that Law is deemed to be the electing subdivision for most purposes of that Law.<sup>42</sup>

**Financial institution** (referred to as a "lender" in this analysis) means either of the following:

(1) A lender, bank, or other financial institution or its successors or assigns that owns a residential mortgage as a mortgagee and that is regularly engaged in the business of underwriting and making loans secured by real property;

(2) A financial institution or its successors or assigns that purchases mortgages from institutions described in the preceding paragraph whether as an assignee of the

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<sup>41</sup> R.C. Chapters 1724. and 5722.

<sup>42</sup> R.C. 5722.01.



financial institution or a servicer or trustee for those institutions, including a servicer of mortgages or the purchaser's successors and assigns.

**Residential mortgage** means an obligation to pay a sum of money to a lender as evidenced by a promissory note that is secured by a first mortgage lien of a lender upon a residential property.

**Unsecured** means conditions that would permit entry into a building, including broken windows, broken doors, or other indications that the building is open or vandalized.<sup>43</sup>

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## COMMENT

R.C. 2330.12(D) refers to a "mortgagor-in-possession." The reference probably should be to a "mortgagee in possession."

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## HISTORY

ACTION	DATE
Introduced	08-20-14

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<sup>43</sup> R.C. 2330.01.

