



# Ohio Legislative Service Commission

## Final Analysis

Aida S. Montano

### Sub. H.B. 9

130th General Assembly  
(As Passed by the General Assembly)

**Reps.** Stautberg, Celebrezze, Hayes, Letson, Pillich, Winburn, J. Adams, R. Adams, Antonio, Barborak, Beck, Blair, Boose, Brown, Buchy, Budish, Burkley, Butler, Carney, Damschroder, Derickson, Duffey, Foley, Green, Hackett, McClain, Milkovich, O'Brien, Patterson, Pelanda, Perales, Rogers, Romanchuk, Rosenberger, Schuring, Sears, Slaby, Slesnick, Smith, Sprague, Szollosi, Batchelder

**Sen.** Coley

**Effective date:** March 23, 2015

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## ACT SUMMARY

### Appointment of receiver

- Expands former law that prohibited any party, attorney, or person interested in an action from being appointed receiver except by consent of the parties by providing that the consent also be of all other persons holding a recorded ownership interest in or a recorded or filed lien on the property that is subject to the action.
- Modifies one of the conditions for appointing a receiver in foreclosure actions by providing that either the property is probably insufficient to discharge the mortgage debt (continuing law) or the mortgagor has consented in writing to the appointment of a receiver.
- Provides that a receiver may be appointed to enforce a contractual assignment of rents and leases.
- Requires that a receiver appointed in specified types of actions be appointed only with respect to the particular property that is the subject of the action.

### Powers of receiver

- Requires the powers of a receiver to be specified in the order of the court that appointed the receiver as those powers may be modified by the court or otherwise approved by the court upon application of the receiver or a party to the action.

- Expands the powers of receivers to include the execution of deeds, leases, or other documents of conveyance of real or personal property and to open and maintain deposit accounts in the receiver's name.
- Specifically authorizes a receiver to enter into contracts, including sale, lease, or, so long as existing lien rights will not be impacted, contracts for construction and for the completion of construction work.
- Requires that funds expended in entering or performing the above contracts be taxed as court costs or otherwise treated as an administrative expense of the proceeding.
- Modifies the laws pertaining to attachment proceedings and the examination of a judgment debtor in proceedings in aid of execution to provide that a receiver appointed in those proceedings, under the control of the appointing judge, may exercise the same powers specified in the act and in continuing law.

### **Power to sell property; manner of sale**

- Specifies that a receiver may sell and make transfers of real or personal property.
- Specifies that, subject to the court's approval and supervision, a receiver may sell property free and clear of liens by private sale, private or public auction, or any other method determined by the court to be fair to the owners and parties with an interest in the property, reasonable, and will maximize the return to the receivership.

### **Procedures for sale of real property**

- Prescribes the requirements for a sale of real property, including an application by the receiver or the first mortgage holder for authority to sell the property and notice and an opportunity to be heard given to the property owners, parties to the action, and all other persons with a recorded or filed lien encumbering the property.
- Authorizes a court to order that real property be sold free and clear of all liens, other than a lien for real estate taxes and assessments, if so requested in the receiver's application for authority to sell and upon a finding by the court after notice and an opportunity to be heard that such sale is in the best interest of the receivership.
- Requires that the court order approving the application for authority to sell real property set a reasonable time, not less than three days, after the date of the order approving the sale for the owner and all parties with an equity of redemption in the property to exercise that equity or have it forever barred.



- Until the date the court sets for the termination of the time for redemption, permits a fee owner to redeem the property from the sale by paying the receiver the greater of the sale price or an amount equal to the total liens that were to be canceled by the sale, including principal, interest, costs, and other amounts secured by the liens.
- Requires a receiver to execute and deliver a receiver's deed to the purchaser of the real property if the sale is conducted in accordance with the terms of the court order.
- If the receiver received a specific offer for sale, requires the receiver to file with the court and serve upon all the parties and persons receiving the notice of the application for authority to sell a certificate and report of sale.

### **Leases pertaining to natural gas and petroleum**

- Specifies that all leases, licenses, and their assignments, or any interest in them, given or made concerning lands or tenements in Ohio, by which any right is granted to operate or to sink or drill wells for natural gas or petroleum, create an interest in real estate.
- Specifies that the record of leases, memoranda of leases, and their supplements, modifications, and amendments that a county recorder must keep includes a lease by which any right is granted to operate or to sink or drill wells for natural gas and petroleum or either.
- Creates a Study Committee on Receivership Laws to study matters related to receiverships and payment of public utility services and consisting of six members, three from the House of Representatives and three from the Senate.

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## CONTENT AND OPERATION

### Appointment of receiver

The act modifies the Receivership Law by providing that a receiver may be appointed by the Supreme Court or a justice of that Court, the court of appeals or a judge of that court in the district, the court of common pleas or a judge of that court in the county, or the probate court, in causes pending in those courts respectively, in the following types of cases (modified language is italicized):<sup>1</sup>

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject property or a fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of a party whose right to or interest in the property or fund, or their proceeds, is probable, and when the property or fund is in danger of being lost, removed, or materially injured;

(2) In an action by a mortgagee, for the foreclosure of the mortgagee's mortgage and sale of the *mortgaged* property, when it appears that the mortgaged property is in danger of being lost, removed, materially injured, *diminished in value, or squandered*, or that the condition of the mortgage has not been performed, and *either of the following applies*: (a) the property is probably insufficient to discharge the mortgage debt, or (b) *the mortgagor has consented in writing to the appointment of a receiver*.

(3) *To enforce a contractual assignment of rents and leases;*

(4) After judgment, to carry the judgment into effect;

(5) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the property in satisfaction of the judgment;

(6) When a corporation, *limited liability company, partnership, limited partnership, or other entity* has been dissolved, is insolvent, is in imminent danger of insolvency, or has forfeited its corporate, *limited liability company, partnership, limited partnership, or other entity* rights;

(7) In all other cases in which receivers have been appointed by the usages of equity.

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<sup>1</sup> R.C. 2735.01(A).

The act requires that a receiver appointed under paragraph (1), (2), (3), or (5) above be appointed only with respect to the particular property that is the subject of the action in which the appointment of a receiver is sought. A receiver appointed under paragraph (6) may be appointed to manage all the affairs of the corporation, limited liability company, partnership, limited partnership, or other entity with respect to which the appointment of a receiver is sought. A receiver appointed under paragraph (4) or (7) above may be appointed to manage all the affairs of the corporation, limited liability company, partnership, limited partnership, or other entity, or only with respect to particular property as determined by the court.<sup>2</sup>

Former law prohibited the appointment of certain persons as a receiver. The act modifies former law as described in this paragraph (modified language is italicized). It prohibits any party, attorney *for a party*, or person interested in an action from being appointed receiver *in the action* except by consent of *all of the parties to the action and all other persons holding a recorded ownership interest in or a recorded or filed lien on the property that is subject to the action*. No person except a resident of Ohio can be appointed or act as receiver of a (the act deletes "railroad or other") corporation, *partnership, limited liability company, or other entity created under the laws of this state*. *In selecting a receiver, priority consideration must be afforded to any of the qualified persons nominated by the party seeking the receivership. No nomination of qualified persons for the receivership is binding upon the court.*<sup>3</sup>

## **Powers of receiver**

The Receivership Law also specifies the powers of receivers. The act requires the powers of a receiver to be set forth in the order of the court that appointed the receiver as those powers may be modified by the court or as otherwise approved by the court upon application of the receiver or a party to the action.<sup>4</sup> The act modifies the powers by providing that, under the control of the court that appointed the receiver, the receiver may do any of the following (modified language is italicized):<sup>5</sup>

(1) Bring and defend actions in the receiver's own name as receiver;

(2) Take and keep possession of *real or personal* property;

(3) *Collect* (instead of "receive") rents and *other obligations* (the act removes "compound for") and compromise demands;

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<sup>2</sup> R.C. 2735.01(B), (C), and (D).

<sup>3</sup> R.C. 2735.02.

<sup>4</sup> R.C. 2735.04(A).

<sup>5</sup> R.C. 2735.04(B).



(4) *Enter into contracts, including, but not limited to, contracts of sale, lease, or, so long as existing lien rights will not be impacted, contracts for construction and for the completion of construction work;*

(5) *Sell and make transfers of real or personal property;*

(6) *Execute deeds, leases, or other documents of conveyance of real or personal property;*

(7) *Open and maintain deposit accounts in the receiver's name;*

(8) Generally do any other acts (the act deletes "respecting the property") that the court authorizes.

### **Power to enter into contracts**

The act requires that any funds that are expended by or on behalf of the receiver, including receivership fees, fees for professionals assisting the receivership, and those expended in entering into or performing contracts under paragraph (4), above, including those for the completion of construction work authorized by the court, be taxed as court costs or otherwise treated as an administrative expense of the action. The court may require an additional deposit to cover funds that would be expended by the receiver under a contract entered into under paragraph (4), above, only from the parties that have requested or expressly consented to the receiver incurring those expenses.<sup>6</sup>

### **Power to sell property; manner of sale; valuation of property**

The act provides that subject to the approval and supervision of the court and the act's requirements, a receiver may sell property free and clear of liens by private sale pursuant to a written contract between the receiver and the prospective purchaser, by private or public auction, or by any other method that the court determines is fair to the property owner and other parties with an interest in the property, is reasonable under the circumstances, and will maximize the return from the property to the receivership estate, taking into account the potential cost of holding and operating the property. Before entering an order authorizing the sale of the property by the receiver, the court may require that the receiver provide appropriate evidence of the value of the property. In a public or private auction, the court may establish a minimum bid.<sup>7</sup>

If the receiver requests authority to sell the property pursuant to a prospective purchase contract and if warranted by the circumstances, the court may require that the receiver solicit and consider additional offers. If the receiver ultimately sells the

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<sup>6</sup> R.C. 2735.04(C).

<sup>7</sup> R.C. 2735.04(D)(1)(a) and (b).



property to a party other than the original proposed purchaser, if approved by the court, the receiver may pay to the unsuccessful proposed purchaser a reasonable amount of costs and expenses from the sale proceeds as determined by the court to compensate that proposed purchaser for participation in the sale process to the extent that participation brought value to the receivership.<sup>8</sup>

#### **Application for authority to sell real property**

The act requires that any sale of real property as described in paragraph (5), above, be made only after all of the following occur:<sup>9</sup>

(1) An application is made by the receiver or the first mortgage holder requesting that the receiver be granted the authority to sell the specific property and setting forth either of the following: (a) if the receiver has not received a specific offer for sale that the receiver desires to accept, the proposed procedures for the conduct of the sale, or (b) if the receiver has received a specific offer for sale that the receiver desires to accept, the buyer's identity and the proposed terms of the sale.

(2) At least ten days' prior written notice is given in accordance with the Rules of Civil Procedure to all of the owners of the property, all parties to the action, and all other persons with a recorded or filed lien encumbering the real property to be sold as those persons are identified in a preliminary judicial report or a commitment for an owner's policy of title insurance previously filed with the court or, if not previously filed, in a preliminary judicial report or a commitment for an owner's policy of title insurance filed with the receiver's application for authority to sell the real property that otherwise complies with the requirements of law, unless the lien or interest is barred by *lis pendens*.

(3) An opportunity is given for a hearing at which the parties and persons to whom the notice is given as described above may be heard, but if no such party or person objects to the proposed sale or requests a hearing within that ten-day period, the court may proceed without a hearing.

(4) The court issues an order of sale of the property with the required procedure for or the terms of the sale. The order of sale is the final appealable order with respect to the matters in the order.

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<sup>8</sup> R.C. 2735.04(D)(1)(c).

<sup>9</sup> R.C. 2735.04(D)(2).



### **Sale of real property free and clear of liens**

If requested in the receiver's application for authority to sell the real property, upon a finding by the court after notice and an opportunity for a hearing as described above that it is in the best interest of the receivership estate that the property be sold free and clear of liens, the court may order that the property be sold free and clear of all liens other than the lien of the treasurer of the county in which the property is located for real estate taxes and assessments. Upon a sale free and clear of liens and upon the recording of the deed from the receiver to the purchaser, those liens must be canceled as to the property and be transferred to the sale proceeds in the hands of the receiver with the same priority as the liens previously attached to the real property sold.<sup>10</sup>

### **Nonapplicability of R.C. Chapter 2329. (Execution Against Property Law)**

The act provides that the sale of real property under its provisions is in lieu of a sale pursuant to the Execution Against Property Law, and except as described above ("**Application for authority to sell real property**") with respect to the applicability of the preliminary judicial report provisions and as described below ("**Delivery of deed; receiver's certificate and report of sale**") with respect to the applicability of the provisions on the deed's effects, the provisions of that Law do not apply to a sale of real property under the act's provisions.<sup>11</sup>

### **Approval of sale**

If the contemplated sale of real property is as described above in (b) in paragraph (1) under "**Application for authority to sell real property**," the court may finally approve the sale, and no separate confirmation order is required. If the contemplated sale is as described above in (a) in paragraph (1) under "**Application for authority to sell real property**," following the sale or auction process described in the application, the receiver or first mortgage holder must seek an order confirming the sale process and approving the proposed sale.<sup>12</sup>

### **Redemption rights**

The act requires the court's order approving the receiver's or first mortgage holder's application for authority to sell real property to establish a reasonable time, but not less than three days, after the date of the order approving the specific sale or the sale process for the owner and all other parties possessing an equity of redemption in the

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<sup>10</sup> R.C. 2735.04(D)(3).

<sup>11</sup> R.C. 2735.04(D)(4).

<sup>12</sup> R.C. 2735.04(D)(5) and (6).



property to exercise their equity of redemption or to have that equity of redemption forever barred. The law on redemption by a judgment debtor in execution proceedings against property does not apply to a sale by a receiver under the act.<sup>13</sup>

Until the date the court sets for the termination of the fee owner's time to redeem the real property, any fee owner of the property proposed to be sold may redeem the property from the sale by paying to the receiver by cashier's check or other form of immediately available funds an amount equal to the greater of: (a) the sale price at which the property was sold, or (b) an amount equal to the total of all liens upon the property that were to be canceled as such liens by virtue of the sale, including all principal, interest, costs, and other amounts secured by those liens through the date of payment to the receiver. The amount determined above may include interest on the sale price at a rate that may be fixed by the court, from the date of the sale to the date of the payment of the full amount to the receiver. Upon receipt of this amount, the receiver must advise the court and all of the parties to whom notice was given as described above of the receipt of that amount and must set aside the sale. The fee title to the real property must remain in the name of the owner of the property, and the liens upon the property, except as described above in "**Sale of real property free and clear of liens,**" must be transferred in the same order of priority to the proceeds received by the receiver from the owner of the property.<sup>14</sup>

#### **Delivery of deed; receiver's certificate and report of sale**

If the sale of the real property by the receiver as described above is conducted in accordance with the terms of the court's order authorizing the sale, upon closing of the sale the receiver must execute and deliver a receiver's deed for the real property sold to the purchaser. The receiver's deed is prima facie evidence of the legality and regularity of the sale as in continuing law.<sup>15</sup>

If the contemplated sale of the real property is as described in (b) in paragraph (1) under "**Application for authority to sell real property,**" above, as soon as is reasonably possible following the delivery of the deed to the purchaser, the receiver must file with the court and serve upon all of the parties and persons to whom the notice of the application for the authority to sell the property was given a certificate and report of sale in which the receiver certifies all of the following: (a) that the sale was conducted in accordance with the order authorizing the sale, (b) the date of the sale, (c) the name of the purchaser, (d) the purchase price, (e) the amount of the net proceeds of

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<sup>13</sup> R.C. 2735.04(D)(7).

<sup>14</sup> R.C. 2735.04(D)(8).

<sup>15</sup> R.C. 2735.04(D)(9).



the sale after payment of all expenses associated with the sale, (f) a copy of the closing statement if a closing statement was prepared, and (g) any other information that the court may require.<sup>16</sup>

### **Proceedings in aid of execution; attachment proceedings**

The act modifies the laws on the appointment of a receiver, in examination of a judgment debtor proceedings in aid of execution and in attachment proceedings by specifying that, under the control of the judge who appointed a receiver and except as ordered by the judge as described in the law on proceedings in aid of execution, the receiver may do any of the acts described above under "**Powers of receiver.**"<sup>17</sup>

### **Lease of natural gas or petroleum**

The act specifies that all leases, licenses, and their assignments, or of any interest in them, given or made concerning lands or tenements in Ohio, by which any right is granted to operate or to sink or drill wells for or pertaining to natural gas and petroleum or either, and which under continuing law must be filed for record and recorded in such lease record without delay, and cannot be removed until recorded, create an interest in real estate.<sup>18</sup>

The act specifies that a county recorder's record of leases, memoranda of leases, and their supplements, modifications, and amendments includes a lease by which any right is granted to operate or to sink or drill wells for natural gas and petroleum or either as described above.<sup>19</sup>

### **Study Committee on Receivership Laws**

The act creates a Study Committee on Receivership Laws to study matters related to receiverships and payment of public utility services. The Study Committee must study and consider, but not limited to: (1) the jurisdiction of the Public Utilities Commission and the courts with respect to receiverships, and (2) the definitions and provisions of the federal Bankruptcy Code that may be used in the Ohio Revised Code.

The Study Committee consists of six members. The Speaker of the House of Representatives appoints three members of the House, not more than two of whom

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<sup>16</sup> R.C. 2735.04(D)(10).

<sup>17</sup> R.C. 2333.22(C) and 2715.21(B).

<sup>18</sup> R.C. 5301.09.

<sup>19</sup> R.C. 317.08(A)(5).



must be members of the same political party. The President of the Senate appoints three members of the Senate, not more than two of whom must be members of same political party. The initial appointments must be made not later than March 1, 2015. The President of the Senate must appoint the chairperson of the Committee. Vacancies are to be filled in the manner provided for the original appointments. The Study Committee expires at the end of the 131st General Assembly.<sup>20</sup>

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## HISTORY

ACTION	DATE
Introduced	01-30-13
Reported, H. Judiciary	03-14-13
Passed House (98-0)	04-10-13
Reported, S. Civil Justice	12-04-13
Passed Senate (21-12)	12-04-13
House refused to concur in Senate amendments (0-94)	12-11-13
Senate requested conference committee	01-14-14
House acceded to request for conference committee	06-03-14
House agreed to conference committee report (92-0)	12-09-14
Senate agreed to conference committee report (32-0)	12-10-14

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<sup>20</sup> Section 3.

