



Ohio Legislative Service Commission

Bill Analysis

Jennifer A. Parker

Am. Sub. H.B. 223 130th General Assembly (As Passed by the House)

Reps. Grossman and Curtin, Stinziano, Becker, Roegner, Lundy, Duffey, Mallory, Fedor, Hackett, Williams, Antonio, Beck, Driehaus, R. Adams, Anielski, Barborak, Bishoff, Boyce, Brown, Buchy, Budish, Carney, Celebrezze, Clyde, Condit, Damschroder, Foley, Gerberry, R. Hagan, Heard, Letson, McClain, Milkovich, O'Brien, Patterson, Perales, Phillips, Ramos, Reece, Rogers, Sheehy, Slaby, Stebelton, Strahorn, Winburn, Batchelder

BILL SUMMARY

Vacant and abandoned properties – summary foreclosure actions

- Allows the holder of a mortgage note to bring a summary foreclosure action against vacant and abandoned residential property.
- Enables a court to deem foreclosed residential properties vacant and abandoned when the mortgagor is in default on the mortgage and certain conditions apply to the property.
- Provides judicial and sale procedures for vacant and abandoned property.
- Authorizes a holder of a mortgage note on property that has been found to be vacant and abandoned to enter and secure the property.
- Authorizes a holder of a mortgage note who has not yet filed a mortgage foreclosure action to enter and secure the property only if the mortgage contract or other documents provide for the entry.
- Extinguishes an owner's right to redemption of a mortgage on residential property found to be vacant and abandoned upon the confirmation of the sale of the property.

Unoccupied, blighted parcels – remediation pilot program

- Creates a pilot program relating to unoccupied, blighted parcels that terminates on December 31, 2019.

- Permits a municipal corporation to bring a complaint seeking an order of remediation in the housing or environmental division of a municipal court against the owner of an unoccupied, blighted parcel.
- Requires the municipal corporation to cause service of both the complaint and a notice informing the lienholders and interested persons that they may remediate the conditions constituting blight or the court will order the parcel sold.
- Requires the court, if the conditions constituting blight are not remediated within the provided time period by lienholders, interested persons, or the owner, to order the property sold free and clear of all liens and interests in the property other than federal tax liens.
- Requires the sheriff of the county where the court has issued an order for sale of the unoccupied, blighted parcel to cause notice of the sale, to verify that each bidder who intends to bid on the parcel is a qualified bidder, to conduct the sale, to provide a deed to the purchaser, to distribute sale proceeds, and to collect fees.
- Requires the municipal corporation to establish qualifications to allow a person to bid at the sale, issue proof of that qualification, compile a list of qualified bidders for each sale, and provide that list to the sheriff conducting the sale.
- Provides that no minimum bid is required as a condition of a sale.
- Allows the municipal corporation to remediate the conditions constituting blight, if the purchaser fails to remediate the conditions constituting blight in accordance with the bill's provisions, and to take a judgment against the purchaser for the costs.

Modifications to judicial sale procedures

- Establishes new procedures for sheriff's sales of residential properties subsequent to the first sale attempt.
- Requires the purchaser of a property at a judicial sale to deposit a specified amount with the sheriff at the time of the sale.
- Requires a court to subtract the costs of a subsequent sale from a purchaser's deposit when a person fails to timely pay the balance due on the purchase price of a property sold at judicial sale.
- Holds a purchaser of property at a judicial foreclosure sale responsible for the payment of any and all taxes and assessments, and any penalties and interest on those taxes and assessments, that attach the day following the sale.

- Removes the requirement that a county treasurer, upon request by a county sheriff, estimate the amount of costs that should be discharged out of the proceeds from a judicial tax foreclosure sale and the subsequent refund and certification procedures.
- Requires the sheriff to record the deed of a property sold at a judicial sale within a certain time period and provides that if the deed is not recorded within that time period, the recording of the order of confirmation of sale by the purchaser transfers the property title to the purchaser.
- Grants the judgment creditor and the first lienholder a right of redemption under certain circumstances.
- Specifies that the redemption by a judgment debtor of property sold at a judicial sale does not discharge advancements of a judgment creditor.
- Requires additional information to be included in the notice and advertisement of judicial sales.
- Provides that an owner who knowingly causes physical harm to the owner's residential property is guilty of criminal mischief if the property is the subject of a foreclosure action.

Jurisdiction of the Toledo Municipal Court

- Expressly grants the Toledo Municipal Court jurisdiction within its territory in certain real property foreclosure actions, actions to recover real property, and for injunction actions to prevent or terminate city violations.

Responsibilities of the clerk of the court of common pleas

- Places additional duties on the clerk of courts with respect to notices of judgments of foreclosure and prohibits a clerk from restricting, prohibiting, or modifying the rights of parties seeking service on party defendants.

TABLE OF CONTENTS

Overview.....	4
Ohio foreclosure procedures – background.....	5
Mortgage foreclosure	5
Blighted property foreclosure.....	5
Definitions for residential foreclosures.....	6
Vacant and abandoned property: summary foreclosure actions by note holders.....	6
Vacant and abandoned property criteria.....	7
Hearings	8
Service of process and notice	8



Judgment	9
Property that becomes vacant and abandoned after entry of foreclosure decree	9
Sale of property	9
Right to enter the property	10
Right of redemption	10
Unoccupied, blighted parcels: remediation pilot program	10
Definitions	10
Municipal corporation may seek order for remediation	11
Certification for remediation of blight	12
Order for remediation or dismissal of municipal corporation's action	13
Order of sale	14
Sheriff's sale	14
Qualified bidders	15
No appraisal or minimum bid	15
Conditions of sale	16
Proceeds of sale	16
Entry of sale and deed record	16
Unsold properties	16
Remediation after the sheriff's sale	16
Modifications to judicial sale procedures	17
Price and conditions for sheriff's sales subsequent to the first sale	17
Price at sale and market value of other properties	17
Purchaser deposit	17
Failure to pay balance due on purchased property	18
Purchaser responsibility for taxes and assessments	18
Deed and transfer of property title	18
Stay of confirmation of sale	19
Right of redemption by judgment creditor or first lienholder	19
Right of redemption by judgment debtor	19
Advertisement requirements	20
Notice requirements	20
Owner's physical harm to property	20
Jurisdiction of the Toledo Municipal Court	20
Responsibilities of the clerk of the court of common pleas	21

CONTENT AND OPERATION

Overview

The bill makes changes relative to judicial foreclosure actions. First, it permits the holder of a mortgage note to bring a summary foreclosure action against residential property that appears to be "vacant and abandoned." With respect to "unoccupied, blighted" parcels, it creates a pilot program under which a municipal corporation may seek an order for remediation against the owner of the property. The bill also modifies the procedures that generally apply to the judicial sale of property; grants the Toledo Municipal Court jurisdiction within its territory over certain real property sale and foreclosure actions and injunction actions to prevent or terminate violations of city

ordinances; and expands the responsibilities of the clerk of the court of common pleas related to the filing of a judgment of foreclosure.

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 plaintiff obtains title only if the plaintiff is the successful bidder at auction, and nonjudicial, in which a lender or a trust may obtain title after a notice of foreclosure and then may sell the property, often at private auction. "Sheriff" as used in this analysis means the levying officer of a county that conducts judicial sales of real property.

Mortgage foreclosure

Ohio has the judicial form of foreclosure. In Ohio, the holder of the mortgage note 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 holder. Then, the holder 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 of the property may transfer to the purchaser, 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 holder was the successful bidder at auction, does the holder obtain title to the property. The homeowner has until the court's confirmation of the sale to redeem the property and pay the amount owed. Ohio law also grants the holder the right to obtain a deficiency judgment against the homeowner if the proceeds of the sale do 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.

Blighted property foreclosure

Existing law also authorizes a municipal corporation to foreclose a property if it is a blighted parcel. The law grants a municipal corporation, in addition to any other remedy authorized by law, a cause of action in the environmental division of the



municipal court to foreclose any existing liens upon a blighted parcel located in the municipal corporation provided that no other foreclosure action affecting the blighted parcel is being actively prosecuted in any court of record.¹ The bill provides a separate procedure for abating unoccupied, blighted parcels, which permits a municipal corporation to bring its own cause of action for orders of remediation of blight.

Definitions for residential foreclosures

The bill adopts the following definitions for purposes of residential foreclosure actions:

"Residential mortgage loan" means a loan or agreement to extend credit, including the renewal, refinancing, or modification of such a loan or agreement, that is made to a person and that is primarily secured by a mortgage, deed of trust, or other lien upon any interest in residential property or any certification of stock or other evidence of ownership in, and a proprietary lease from, a corporation or partnership formed for the purpose of cooperative ownership of 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, but not a manufactured or mobile home that is not taxed as real property.²

Vacant and abandoned property: summary foreclosure actions by note holders

The bill permits the holder of a mortgage note of a defaulted residential mortgage loan secured by a residential property that appears to be vacant and abandoned to bring a summary action in a court of competent jurisdiction to foreclose the loan. The holder of the mortgage note, at the time of filing a foreclosure action or any time after a filing, may file with the court a motion to proceed in a summary manner if the residential property that is the subject of the foreclosure action is believed to be vacant and abandoned.³ The bill provides that the housing and environmental division, where established, of the municipal court has jurisdiction to exercise exclusive original jurisdiction to hear these summary actions and to make findings and orders

¹ R.C. 3767.50, not in the bill.

² R.C. 2308.01 and 2329.01.

³ R.C. 2308.02(B).

pertaining to the vacant and abandoned properties.⁴ The bill specifies that none of the bill's procedures regarding summary actions supersede or limit other procedures adopted by the court to resolve residential mortgage loan foreclosure actions, including foreclosure mediation.⁵

Vacant and abandoned property criteria

The bill provides that a residential property is considered vacant and abandoned if (1) the owner of the residential property is in default on the residential mortgage loan secured by that property and (2) two or more of the following circumstances apply:

- At the time of the inspection of the land by the appropriate official of a county, municipal corporation, or township in which the land is located, or by the holder of the mortgage note or the holder's representative, no person is visibly present from an exterior inspection of the property.
- No utility connections, including water, sewer, natural gas, or electric connections, service the property, or no such utility connections are actively being billed by any utility provider regarding the property.
- The property is sealed because, immediately prior to being sealed, it was considered by the appropriate official to be open, vacant, or vandalized.
- Junk, litter, trash, debris, or hazardous, noxious, or unhealthy substances or materials have accumulated on the property.
- Furnishings, window treatments, and personal items are absent from the structure on the land.
- Neighbors, delivery persons, or government employees provide statements indicating that the structure on the land is vacant and abandoned.
- A risk to the health and safety or welfare of the public, or any adjoining or adjacent property owners, exists due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property.
- A mortgagor issues a written statement expressing clear intent of all mortgagors to abandon the property.

⁴ R.C. 1901.185(B).

⁵ R.C. 2308.02(H).



- Any other reasonable indicia of abandonment exists.⁶

Hearings

If, at the time the holder of the mortgage note brings an action to foreclose on a residential mortgage loan, the holder files a motion for summary foreclosure under the bill's provisions, the court must hear the motion not earlier than before the period to answer the foreclosure complaint has expired and not later than 15 days after that period has expired. If the holder of the mortgage note files the motion for summary foreclosure after the period to answer the foreclosure complaint has expired, the court must hear the motion not later than 15 days after the motion is filed.⁷ The court must give priority to that hearing, and the hearing must be scheduled to be heard within the applicable time period described above.⁸

Service of process and notice

In addition to the service of process required by the Rules of Civil Procedure, to obtain an entry of judgment in a summary residential mortgage loan foreclosure action, the holder of the mortgage note must establish that a process server or sheriff has made two unsuccessful attempts to serve the mortgagor or occupant at the residential property. To satisfy this requirement, the holder must demonstrate that the attempts were at least 48 hours apart and during different times of the day.⁹

In addition to any notices required to be served by law or the Rules of Civil Procedure, the holder of the mortgage note must serve a notice that the holder is seeking, on the date fixed by the court, to proceed summarily for entry of judgment in a residential mortgage loan foreclosure action because the property is believed to be vacant and abandoned. This notice must be sent at least seven days before the hearing on the motion for summary foreclosure, and must be served by ordinary mail to the mortgagor's last known address. The holder must obtain a certificate of mailing. Service is complete when the certificate of mailing is obtained, unless the notice is returned showing failure of delivery.¹⁰

⁶ R.C. 2308.02(A).

⁷ R.C. 2308.02(C).

⁸ R.C. 2308.02(D).

⁹ R.C. 2308.02(E).

¹⁰ R.C. 2308.02(F).



Judgment

At the hearing on the motion for summary foreclosure, the court is to determine whether a property is considered vacant and abandoned under the criteria set forth by the bill. The owner of the property may make an appearance at the hearing and submit evidence that the property is *not* vacant and abandoned. Not earlier than the expiration of the period of time to answer a foreclosure complaint or the period of time to respond to a motion for judgment under the Rules of Civil Procedure, whichever period expires later, the court must enter final judgment of foreclosure and order the sheriff to sell the property if the court finds by clear and convincing evidence that the property is considered vacant and abandoned under the criteria set forth by the bill and that the evidence is not outweighed by evidence submitted by the property owner.¹¹

The bill prohibits the court from entering a final judgment in a residential mortgage loan foreclosure action if the court finds that (1) the residential property is not vacant or abandoned according to the bill's criteria or because the evidence submitted by the property owner outweighed the circumstances established or (2) the mortgagor or any other defendant has filed an answer, appearance, or other written objection that is not withdrawn and the defenses or objection asserted provide cause to preclude the entry of a final judgment.¹²

Property that becomes vacant and abandoned after entry of foreclosure decree

If a residential property becomes vacant and abandoned after a decree of foreclosure has been entered, upon good cause shown, the bill permits a plaintiff to file a motion that the court determine the property to be vacant and abandoned and order the sheriff to sell it.¹³

Sale of property

If the court enters a judgment and orders a sale of the property, the sheriff must sell the property within 75 days after the sheriff's receipt of any writ of execution issued by the court in accordance with existing execution of property procedures.¹⁴

¹¹ R.C. 2308.02(G)(1).

¹² R.C. 2308.02(G)(2).

¹³ R.C. 2308.02(J).

¹⁴ R.C. 2308.02(I) and (J).

Right to enter the property

The bill enables a holder of a mortgage note on a property that is found to be vacant and abandoned under the bill's provisions to enter that property to secure it and prevent damage. If the holder of the mortgage note has not yet filed a mortgage foreclosure action, the holder may enter the property only if the mortgage contract or other documents allow such an entry.¹⁵

Right of redemption

The equitable and statutory rights to redemption of a mortgage on a property found to be vacant and abandoned under the bill's provisions expire upon the confirmation of the sale of the property.¹⁶

Unoccupied, blighted parcels: remediation pilot program

The bill creates a pilot program for the foreclosure of unoccupied, blighted parcels. The provisions of this program (as described below) terminate on December 31, 2019.¹⁷

Definitions

The bill adopts the following definitions for purposes of unoccupied, blighted property foreclosure:

"Unoccupied" means any of the following:

- (1) Property that is not physically inhabited or used as a dwelling;
- (2) Property on which no trade or business is actively being conducted by the owner or another party occupying the parcel pursuant to a lease or other legal authority;
- (3) Property that is uninhabited with no signs or active indications that it is undergoing improvements.

"Blighted parcel" means either of the following, except it does not include a manufactured or mobile home that is subject to real property taxes under Ohio law:

¹⁵ R.C. 2308.03(A) and (B).

¹⁶ R.C. 2308.03(C).

¹⁷ Section 3.



(1) A parcel that has one or more of the following conditions:

- A structure that is dilapidated, unsanitary, unsafe, or vermin infested and that, because of its condition, has been designated by an agency that is responsible for the enforcement of housing, building, or fire codes as unfit for human habitation or use;
- The property poses a direct threat to public health or safety in its present condition by reason of environmentally hazardous conditions, solid waste pollution, or contamination;
- Tax or special assessment delinquencies exceeding the fair value of the land that remain unpaid 35 days after notice to pay have been mailed.

(2) A parcel that has two or more of 16 specified conditions that, collectively considered, adversely affect surrounding or community property values or entail land use relationships that cannot reasonably be corrected through existing zoning codes or other land use regulations. The 16 specified conditions of the property are dilapidation and deterioration; age and obsolescence; inadequate provision for ventilation, light, air, sanitation, or open spaces; unsafe and unsanitary conditions; hazards that endanger lives or properties by fire or other causes; noncompliance with building, housing, or other codes; nonworking or disconnected utilities; property that is vacant or contains an abandoned structure; excessive dwelling unit density; property that is located in an area of defective or inadequate street layout; overcrowding of buildings on the land; faulty lot layout in relation to size, adequacy, accessibility, or usefulness; vermin infestation; extensive damage or destruction caused by a major disaster when the damage has not been remediated within a reasonable time; identified hazards to health and safety that are conducive to ill health, transmission of disease, juvenile delinquency, or crime; ownership or multiple ownership of a single parcel when the owner, or a majority of the owners of a parcel in the case of multiple ownership, cannot be located.¹⁸

Municipal corporation may seek order for remediation

The bill permits a municipal corporation to commence a cause of action by filing a complaint in the housing or environmental division of a municipal court against the owner of a property that is an unoccupied, blighted parcel located in that municipal corporation. The complaint is to seek an order from the court that the owner remediate the conditions of the property constituting blight.¹⁹ The bill grants exclusive original

¹⁸ R.C. 3767.51.

¹⁹ R.C. 3767.52(A).

jurisdiction to housing and environmental divisions of municipal courts to hear actions and make findings and orders pertaining to unoccupied, blighted parcels.²⁰

Upon commencing an action seeking the order for remediation, the municipal corporation must (1) cause service of the complaint, in addition to service required under the Rules of Civil Procedure, to all entities that hold a lien or other interest in the property, as indicated in the public record, and (2) cause service of a notice to all entities that hold a lien or other interest in the property, as indicated in the public record. The notice must state both of the following:

- The lienholder or interested person may remediate the conditions of the property constituting blight within a period of time determined by the municipal corporation.
- If the blight is not remediated, the housing or environmental division of the municipal court in which the complaint was filed is required to order the blighted parcel to be sold free and clear of all liens and interests in the property other than federal tax liens.²¹

Certification for remediation of blight

A person who receives a complaint and notice as described above has 60 days after the service to certify to the court that the person will remediate the conditions of the property constituting blight. If the person wishes to certify remediation, the person must propose to the court a period of time within which the person will complete the remediation. The court may approve or disapprove a certification of remediation.

More than one lienholder or interested person may make a certification for remediation. In the case of multiple certifications, the bill directs the court to approve the certification of the lienholder or person who proposes to remediate the conditions constituting blight within the shortest period of time.

If the court approves the certification, the court must stay the action until the period of time for remediation has elapsed. If the court disapproves the certification due to a proposal of an unreasonable period of time for remediation, the court is to establish a reasonable period of time within which the person must remediate the conditions constituting blight. If the person accepts the court's proposed period of time, the person must certify that the person will remediate the conditions constituting blight, and the

²⁰ R.C. 1901.185(C) and 3767.53(C).

²¹ R.C. 3767.52(B).



court must approve that certification. If the person rejects the court's proposal, the court is to proceed as if no certification were made.²²

If a lienholder or interested person certifies that it will remediate the conditions constituting blight but fails to do so within the approved time period, or if no person makes a certification within the time period provided by the notice, the lien or other interest of the person in the property is extinguished but may be paid by the proceeds of a subsequent sale of the property. The bill permits a lienholder to still pursue payment of the debt represented by the lien, and an interested person to still seek recourse for the loss of other interest against the owner of the property if otherwise permitted by law.²³

If the court accepts a lienholder's or other interested person's certification of remediation, and the person remediates the blight, the bill directs the court to grant the lienholder or other interested person a lien in the amount expended to remediate the conditions constituting blight.²⁴

Order for remediation or dismissal of municipal corporation's action

The bill directs the court to order the owner to remediate the conditions constituting blight within a specified period of time if all of the following occur:

- The court finds that the property was unoccupied at the time the municipal corporation filed the complaint.
- The court finds that the property is a blighted parcel.
- No lienholder or other interested person has certified that it will remediate the conditions constituting blight, or such a person certifies that it will remediate the blight but fails to timely do so.

If the blight is not remediated within the specified period of time, the bill directs the court to order the property sold pursuant to the bill's provisions. If the blight is remediated, the court must dismiss the action.²⁵

²² R.C. 3767.52(C)(1).

²³ R.C. 3767.52(C)(2).

²⁴ R.C. 3767.52(C)(3).

²⁵ R.C. 3767.52(D).



Order of sale

The bill directs a housing or environmental division of a municipal court to order the sale of an unoccupied, blighted parcel by the sheriff of the county where the property is located, if all of the following apply:

- The municipal corporation commenced a cause of action by filing a complaint for the owner of the blighted parcel in accordance with the bill's provisions.
- The municipal corporation caused service of the complaint and notice as provided in the bill.
- One of the following applies:
 - No lienholder or other interested person certified that it would remediate the conditions constituting blight.
 - A lienholder or other interested person certified that it would remediate the conditions constituting blight, but does not do so within the accepted period of time.
- The court has entered a finding that the property was unoccupied at the time the complaint was filed and is a blighted parcel.
- The court ordered the owner of the property to remediate the conditions constituting blight and the owner failed to do so.²⁶

Sheriff's sale

If the housing or environmental division of a municipal court orders an unoccupied, blighted parcel to be sold pursuant to the bill's provisions, the sheriff of the county where the property is located is required to do all of the following:

- Cause notice of the sale and notice that only qualified bidders are eligible to purchase the property to be sent to the owner of the property and the public in the same manner as provided under continuing law, except the date, time, and place of the sale need only be published once at least one week before the day of sale by advertisement in a newspaper of general circulation;

²⁶ R.C. 3767.53(A).

- Verify that each bidder who intends to bid at the sale is included in the list of qualified bidders that the municipal corporation provides to the sheriff and is in possession of proof that the bidder is a qualified bidder;
- Conduct the sale of the property;
- Provide a deed to the purchaser;
- Distribute the proceeds of the sale in accordance with the bill's provisions;
- Collect fees that the sheriff is required to collect by continuing law.²⁷

Qualified bidders

The bill limits potential purchasers at a sale conducted pursuant to the bill's provisions to qualified bidders. "Qualified bidder" means either a lienholder of the property or a person who (1) has been prequalified by a municipal corporation, (2) has the capacity to remediate the conditions that constitute blight of the blighted parcel, and (3) has agreed, as a condition of the sale, to remediate the conditions constituting blight within the time period the bidder owns the property or within 12 months after the date of the sale, whichever period of time is less, to the satisfaction of the municipal corporation that commenced the cause of action.²⁸

The bill requires the municipal corporation to (1) establish qualifications to allow a person to bid at the sheriff's sale, (2) issue proof of qualification to a qualified bidder in a form determined by the municipal corporation, (3) compile a list of qualified bidders for each sale, and (4) provide the list of qualified bidders to the sheriff conducting the sale at least one day prior to the sale. The qualifications in (1) above must include a requirement that the person be a lienholder or be able and willing to remediate the conditions that constitute blight of the unoccupied, blighted parcel within 12 months after the date of the sale.²⁹

No appraisal or minimum bid

No appraisal of the property or minimum bid for the property is required as a condition of a sale conducted pursuant to the bill's provisions.³⁰

²⁷ R.C. 3767.54(A).

²⁸ R.C. 3767.54(F).

²⁹ R.C. 3767.55.

³⁰ R.C. 3767.54(C).

Conditions of sale

The property is to be sold free and clear of all liens, including all taxes and assessments other than federal taxes, to the highest qualified bidder.³¹

Proceeds of sale

The bill directs the proceeds of the sale to first be paid to satisfy the costs of the municipal corporation for bringing the action and then be distributed according to continuing law priorities, including to lienholders whose liens are extinguished by the sale.³²

Entry of sale and deed record

After a sale, the housing or environmental division of the municipal court is required to make an entry on the journal that the court is satisfied of the legality of the sale. The municipal corporation that filed the complaint must then file and record the deed of the property in accordance with continuing law.³³

Unsold properties

If a property that is ordered sold under the bill remains unsold for want of qualified bidders, after having been advertised and offered for sale in accordance with the bill's provisions, the court may, on motion of the municipal corporation and from time-to-time until the property is sold, order a new sale.³⁴

Remediation after the sheriff's sale

If the successful qualified bidder of the property fails to remediate the conditions constituting blight within 12 months after the sheriff's sale, the municipal corporation that commenced the cause of action may remediate the conditions constituting blight and may take a judgment against the qualified bidder for the costs of remediation.³⁵

³¹ R.C. 3767.54(B).

³² R.C. 3767.54(D).

³³ R.C. 3767.54(E).

³⁴ R.C. 3767.53(B).

³⁵ R.C. 3767.56.

Modifications to judicial sale procedures

Price and conditions for sheriff's sales subsequent to the first sale

The bill changes the procedures for sheriff's sales of residential property subsequent to the first attempt. The procedure for the first sheriff's sale remains the same as under existing law: the property must be appraised and the sale price may not be less than $\frac{2}{3}$ of that appraised value. The bill requires that if a residential property remains unsold after the first auction with a minimum bid of $\frac{2}{3}$ of the appraised value, a second auction is required with no set minimum bid and the property is to be sold to the highest bidder. This second auction must be held not earlier than seven days and not later than 30 days after the first auction. As a condition of the second auction, the purchaser must pay, in addition to the amount bid, a deposit to the sheriff to be used to pay the costs and allowances of the sale. The deposit must be not less than \$5,000 but no more than \$10,000, as determined by the sheriff. The bill requires the sheriff to return the deposit, less the amount used for costs and allowances, to the purchaser within 14 days after the transfer of sale.

If the property remains unsold after two auctions, the bill allows the sheriff to subsequently offer the property for sale from time to time with no set minimum bid or the property may be disposed of in any other manner provided by law. This differs from existing law, which allows the court, on motion of the plaintiff or defendant, to order a new appraisal and sale or direct the amount for which the property may be sold if the property remains unsold after the first sale.³⁶

Price at sale and market value of other properties

The bill specifies that the price at which a foreclosed residential property is sold at a sheriff's auction may not be used to establish the market value of any other property.³⁷

Purchaser deposit

The bill requires a successful purchaser of a property at a judicial sale to make a deposit in the amount of 5% of the appraised value of the property, but not less than \$5,000 or more than \$10,000, to the officer conducting the sale. This deposit is due at the time of the sale, unless the purchaser is the plaintiff in the foreclosure action or the judgment creditor. In that case, the plaintiff or judgment creditor must tender the

³⁶ R.C. 2329.20 and 2329.52.

³⁷ R.C. 2329.20.



deposit to the sheriff by the close of business the day of the sale. If the purchaser fails to timely make the deposit, the sale is invalidated.³⁸

Failure to pay balance due on purchased property

In addition to the actions a court may take under continuing law against a person who purchases real property at a judicial sale and fails to timely pay the balance due on the purchase price, the bill requires the court, upon motion, to order the return of any remaining portion of the purchaser's deposit, less the costs of a subsequent sale and any other remedy the court considers appropriate. The bill states that the effect of an order for contempt for failure of the purchaser to pay is to be considered an order to void the confirmation of sale and transfer.³⁹

Purchaser responsibility for taxes and assessments

The bill makes a purchaser of real estate at a judicial sale responsible for payment of any and all taxes and assessments, and any penalties and interest on those taxes and assessments, that attach as of the day following the date of the sale. This includes taxes and assessments levied for the year in which the sale occurred, apportioned pro rata after the date of the sale, and any penalties and interest on those taxes and assessments.

The bill removes the requirement that a county treasurer, upon request of a county sheriff, estimate the amount of such taxes and assessments. It also removes the requirement that the sheriff refund to the purchaser the difference between the estimate and actual amount or certify any amount in excess of the treasurer's estimate to the treasurer for placement on the tax duplicate.⁴⁰

Deed and transfer of property title

The bill requires the sheriff who conducts the judicial sale to record the deed to the property within 14 days after confirmation of sale or payment of the balance due, whichever is later. If the deed is not prepared or recorded within this 14-day period, the recording of the order of confirmation of sale by the purchaser serves to transfer the title of the property to the purchaser, unless this action is stayed by the court pending timely appeal along with the posting of an adequate bond. The bill requires that the confirmation of sale include a statement that it serves to transfer title if the deed is not transferred within 14 days after the confirmation of sale or payment of the balance due.

³⁸ R.C. 2329.211.

³⁹ R.C. 2329.30.

⁴⁰ R.C. 323.47.

The plaintiff, or the plaintiff's attorney, must cause a certified copy of the order of confirmation to be recorded in the office of the county recorder. The clerk must issue a copy of the order to the county auditor to transfer record ownership of the property for the purpose of real estate taxes. Real estate taxes coming due after the date of the confirmation of sale do not prohibit the auditor from transferring ownership of the property on its records or cause the recorder to deny the recording. The real estate taxes become the responsibility of the new title holder of the property. The sheriff cannot require the confirmation of sale to be amended for taxes not due and payable as of the date of the sale.⁴¹

Stay of confirmation of sale

Currently, if the court finds that a judicial sale is made in conformity with the law, the clerk of the court must make an entry in the journal confirming the legality of the sale. That bill removes a provision stating that this action does not prevent the court from staying the confirmation of the sale to permit a property owner time to redeem the property or for any other reason the court determines is appropriate.⁴²

Right of redemption by judgment creditor or first lienholder

In sales of residential properties taken in execution or order of sale that are sold at an auction with no set minimum bid, the judgment creditor and the first lienholder of a property are provided the right to redeem the property within 14 days after the sale by paying the purchase price. The redeeming party must pay the purchase price to the clerk of the court in which the judgment of foreclosure was rendered or the order of sale was made. Upon timely payment by the judgment creditor or first lienholder, the bill directs the court to proceed as if the redeeming party were the successful purchaser at sale.⁴³

Right of redemption by judgment debtor

The bill specifies that if a judgment debtor redeems a property before the confirmation of the judicial sale, the redemption is a satisfaction of the judgment against the debtor only and does not serve to discharge the debtor of the judgment creditor's advancements for real estate taxes, insurance premiums, and property protection if such a requirement was included in the judgment. Upon successful redemption, the debtor may petition the court to require the creditor to provide an itemization of the advances within a reasonable amount of time for payment by the debtor. Only after the

⁴¹ R.C. 2329.31.

⁴² R.C. 2329.31(A).

⁴³ R.C. 2329.311.



debtor pays both the judgment and advancement amounts is the court permitted to set aside the sale.⁴⁴

Advertisement requirements

The bill adds to the information required to be in the advertisement for property being sold at sheriff's sale. Any advertisement, in addition to information required by continuing law, must state that a purchaser of the real estate is responsible for costs and allowances that the proceeds of the sale are insufficient to cover.⁴⁵ In addition, the sheriff must include in all notices and advertisements for the sale of residential property located in a municipal corporation that is occurring pursuant to a mortgage loan foreclosure action, the provisional date, time, and place for the second sale of the property, in the case that the property does not sell at the initial sale (see "**Price and conditions for sheriff's sales subsequent to the first sale**," above).⁴⁶

Notice requirements

Similar to the advertisement requirements, the bill requires that the written notice of the date, time, and place of a judicial sale of residential property provided by a judgment creditor to all parties of action (as required by continuing law) include the date, time, and place of the provisional second sale of the property (see "**Price and conditions for sheriff's sales subsequent to the first sale**," above).⁴⁷

Owner's physical harm to property

Under the bill, a person who is an owner of residential property who knowingly causes physical harm to that property after the person has been personally served with a summons and complaint in a residential mortgage loan foreclosure action related to the property is guilty of criminal mischief.⁴⁸

Jurisdiction of the Toledo Municipal Court

The bill expressly grants the Toledo Municipal Court jurisdiction within its territory over certain real property sale and foreclosure actions, actions to recover real

⁴⁴ R.C. 2329.33.

⁴⁵ R.C. 2329.21.

⁴⁶ R.C. 2329.23 and 2329.26(A)(2).

⁴⁷ R.C. 2329.26(A)(1)(a)(i).

⁴⁸ R.C. 2308.04 and 2909.07.



property, and for injunction actions to prevent or terminate violations of city ordinances and regulations.⁴⁹

Responsibilities of the clerk of the court of common pleas

The bill prohibits the clerk from restricting, prohibiting, or otherwise modifying the rights of parties to seek service on party defendants allowed by the Civil Rules, either singularly or concurrently.⁵⁰

The bill also expands the duties of the clerk of courts related to the filing of a judgment of foreclosure. In a residential mortgage loan foreclosure action, upon filing the certificate of judgment, the clerk must provide notice of the filing to the judgment debtor, the judgment creditor, and any other lienholder who has appeared in the action.⁵¹ Under continuing law, the clerk must still docket the certificate of the judgment.

HISTORY

ACTION	DATE
Introduced	06-25-13
Reported, H. Financial Institutions, Housing & Urban Development	02-26-14
Passed House (91-0)	04-02-14

H0223-PH-130.docx/ks

⁴⁹ R.C. 1901.18.

⁵⁰ R.C. 2303.26.

⁵¹ R.C. 2329.02(G).

