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# OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research  
and Drafting

Legislative Budget  
Office

H.B. 390  
135<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. Brown and Swearingen

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### SUMMARY

- Requires that for all property foreclosure sales, including tax sales, the officer that makes the sale must deliver the excess funds to the clerk of court not later than 45 days after the confirmation of sale.
- Authorizes the clerk in certain circumstances to send notification by posting the notice to the judgement debtor on the clerk's website, sending a text message to the judgement debtor, or posting the notice in a conspicuous place in the court where the foreclosure action commenced.
- Increases the timeline in tax foreclosure sales of when the clerk must give the excess funds to the county treasurer to hold for the owner from 60 days to 90 days from the day the final notice is provided.
- Requires the clerk of court in tax foreclosure sales to follow the same notice requirements relating to excess funds as required under other foreclosure sales.

### DETAILED ANALYSIS

#### General overview

The bill changes the procedures to be followed by the clerk of court and the officer that conducts the sale when the court receives excess funds in a foreclosure sale. Excess funds are moneys received from the foreclosure sale in addition to the amount necessary to satisfy the writ of execution, plus interest and costs. Under continuing law, the judgement debtor (i.e., the former owner) is entitled to receive the excess funds. The bill requires excess funds to be delivered to the clerk of court within 45 days after the confirmation of sale and changes how the clerk must notify the judgement debtor about the excess funds. The bill also specifies that

the judgement debtor includes any individual, corporation, business trust, estate, trust, partnership, or association.<sup>1</sup>

## **Delivery of excess funds**

Under current law, unchanged by the bill, when the officer that conducts the sale receives excess funds, the officer must deliver any excess funds to the clerk of the court that issued the writ of execution. Current law does not specify a timeline for this requirement. The bill specifies that the delivery of the excess funds occur not later than 45 days after the confirmation of sale.<sup>2</sup>

## **Notice requirement for excess funds \$500 or more**

Under current law, the clerk must notify the judgement debtor by mail if the balance of the excess funds is \$100 or more. The bill increases this threshold to \$500 or more.

Current law requires the clerk to send the notice by certified mail within 90 days after a sheriff's sale. If the first notice is returned, then a second notice must be sent by ordinary mail. If the second notice is returned, a third notice must be published in a newspaper. The bill, instead, allows the third notice to be published in a newspaper, posted on the clerk's website, sent via text message to the judgement debtor, or posted in a conspicuous place in the court where the foreclosure action commenced.<sup>3</sup>

The bill makes an exception to the notice requirements described above, if the clerk does not have the address or the name of the judgement debtor. If the address of the judgment debtor is not known, the clerk is not required to send a notice by certified mail, but must notify the judgement debtor in accordance with the third notice procedure described above. If the name of the judgment debtor is not known, the clerk may send notice in accordance with any of the three procedures described above, but is not required to complete more than one of those procedures.<sup>4</sup>

## **Notice requirement for excess funds less than \$500**

Under current law, changed in part by the bill, if the balance of the excess funds is less than \$100, the clerk must send the notice of the excess funds to the judgment debtor by certified mail. If the mailed notice is returned, the clerk is not required to continue attempts to notify the judgement debtor. The bill changes this threshold to less than \$500. The bill also specifies that if the address of the judgement debtor is not known, the clerk must notify the judgment debtor in accordance with the third notice procedure described above (newspaper, website, text, or courthouse posting). If the name of the judgment debtor is not known, the

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<sup>1</sup> R.C. 2329.01(B)(4).

<sup>2</sup> R.C. 2329.44(A).

<sup>3</sup> R.C. 2329.44(A)(1)(a).

<sup>4</sup> R.C. 2329.44(A)(1)(b) and (c).

clerk must notify the judgment debtor in accordance with either the first (certified mail) or third procedure described above.<sup>5</sup>

### Unclaimed excess funds

Under current law, if the excess funds remain unclaimed for 90 days following the “first date of publication,” the clerk is required to dispose the balance in the same manner as other unclaimed funds the court holds. The bill clarifies the timing, by specifying that the 90 days begins after the last mailing, posting, or text message required under the bill.<sup>6</sup>

### Tax foreclosure excess funds

Generally, under current law, in a tax foreclosure sale, any excess money from the sale of the property remaining and unclaimed by the owner after 60 days must be held by the county treasurer in the name of the owner. The bill changes this to 90 days from the day the final notice is provided.

The bill also requires the clerk of court in tax foreclosure sales to follow the same procedures as required for other foreclosure sales, as described above. Under the bill, the officer who conducts the sale must send any excess funds to the clerk of court that issued the writ of execution not later than 45 days after the confirmation of sale. The clerk must notify the owner following the same requirements as described above (see “**Notice requirement for excess funds \$500 or more**” and “**Notice requirement for excess funds less than \$500**”).<sup>7</sup>

## HISTORY

Action	Date
Introduced	02-01-24

ANHB0390IN-135/ar

<sup>5</sup> R.C. 2329.44(A)(2)

<sup>6</sup> R.C. 2329.44(A)(1)(d) and (A)(2)(b).

<sup>7</sup> R.C. 5721.20.