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Bill Analysis

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SUMMARY

Foreclosure-sale and execution-sale appraisals

- Specifies that persons conducting appraisals for foreclosure and execution sales must be either a realtor, broker, or appraiser licensed in Ohio.
- Reduces the time in which appraisals must be provided to the court, from 21 days to 14 days.
- Specifies that the cost of appraisals cannot exceed a “reasonable and customary amount,” as determined by the sheriff.

Private selling officers

- Allows plaintiffs seeking a mortgage foreclosure or execution sale of property to demand the use of a private selling officer to sell the property if the defendant does not respond to the lawsuit.
- Caps the amount of costs for a foreclosure or execution sale, handled by a private selling officer, that may be charged to the buyer or plaintiff at 10% of the sale price.
- Establishes that a private selling officer’s submission of a report required by continuing law satisfies another continuing law requirement for return of the order of sale with a record of the sale’s proceedings included.
- Reduces the amount of time an online foreclosure or execution sale carried out by a private selling officer must run, from seven calendar days to three calendar days.
- Requires online foreclosure or execution sales carried out by a private selling officer to display all bids at all times during the auction.
- Prohibits a private selling officer from being affiliated with either a mortgagee or mortgage servicer or a subsidiary of a mortgagee or a mortgage servicer.

Online sheriff sales

- Reduces the amount of time an online foreclosure or execution sale carried out by the sheriff must run, from seven calendar days to three calendar days.
- Requires online foreclosure or execution sales carried out by the sheriff to display all bids at all times during the auction.

Advertisements

- Caps the amount that may be taxed as a cost of a foreclosure or execution sale for advertisement in a newspaper of general circulation at \$50.
- Requires only an initial advertisement of a foreclosure or execution sale to be made in a newspaper of general circulation.
- Allows a sheriff or private selling officer to make subsequent notices on the sheriff or private selling officer's website.

Definitions

- Defines "start date" and "sale date" for purposes of foreclosure and execution sales and replaces various undefined terms referencing sale timing throughout the law.

DETAILED ANALYSIS

Courts sometimes order the sale of real estate to satisfy a debt. The sales can result from debts related to the property being sold, such as unpaid mortgage debt or unpaid property taxes, or from unrelated debts. When property is sold to satisfy a debt that is not related to the property, that property is sold "on execution" or at an "execution sale," because the sale executes the court's order for the debtor to pay the debt.

When property is ordered sold to satisfy a debt related to the property, it is sold "at foreclosure" or "on order of sale." The term "foreclosure" refers to the foreclosure of the debtor's right to prevent the sale by paying the amount due, called "the equity of redemption," a longstanding tenet of mortgage law. Once the equity of redemption is foreclosed, the debtor no longer has the right to retain the property being sold by paying the amount due (in Ohio, foreclosure of the equity of redemption happens after the sale).¹

Appraiser qualifications

Under continuing law, land sold at mortgage-foreclosure or execution sale usually cannot be sold for less than two-thirds of its value. Currently, value is determined by three "disinterested freeholders" appointed by the sheriff after the clerk of courts issues an order of appraisal. The freeholders must be residents of, and property owners in, the county in which the land is located. The bill requires that each of the appraisers be a licensed real estate broker, salesperson, or

¹ R.C. 2329.33, not in the bill, and Black's Law Dictionary, 11th Edition.

appraiser. Furthermore, the bill specifies that none of the appraisers may be the sheriff or private selling officer conducting the sale or a person affiliated with the sheriff or private selling officer.²

Timing and cost of appraisal

Under current law, if the property being sold is residential property, the appraisers must deliver the appraisal to the sheriff, and, if applicable the private selling officer, within 21 calendar days after the clerk's order of appraisal (which is likely before their appointment by the sheriff). Failure to meet that deadline results in the appraisers forfeiting their right to payment. It also results in the costs of the appraisal being omitted from the costs in the case, and the appraised value according to the county auditor's records setting the appraised value for the sale, unless the court authorizes another appraisal for good cause.

The bill requires appraisals of residential property to be exterior only and specifies that the cost of the appraisals must not exceed an amount that the sheriff determines is "reasonable and customary." Furthermore, the bill reduces the time within which the appraisal must be delivered to the sheriff to 14 calendar days after the clerk's order of appraisal. If a private selling officer is responsible for the sale of the property, the bill requires the appraisers to also deliver an electronic copy of their appraisal to the private selling officer, as directed by the private selling officer, contemporaneously with the delivery of their appraisal to the sheriff.

If the appraisers do not deliver their appraisal within fourteen calendar days after the clerk of court issues the order of appraisal, then both of the following apply:

- The cost of the appraisal conducted by the individuals are not to be paid to the individuals or taxed as costs in the case.
- The appraised value of the property is instead the most recent appraised value of the property as shown on the records of the county auditor unless, for good cause shown, the court authorizes a separate appraisal of the property.

This provision appears to apply when all three appraisers fail to deliver appraisals in a timely manner, leaving it unclear what would happen if only one or two of the appraisers failed to deliver their appraisals in a timely manner.

The bill's timing and cost provisions apply only to residential property. Appraisals of commercial properties are subject to a more generic requirement, under continuing law, that they be conducted "in accordance with the timing and other requirements, if any, that may be established for the sale."³

Second sales

When property offered at foreclosure or execution sale goes unsold for lack of bids, current law establishes the next steps based on whether the property was offered for sale on

² R.C. 2329.17(A)(2).

³ R.C. 2329.17, with conforming changes in R.C. 2329.152(A) and (D), 2329.18, 2329.19, 2329.20, and 2329.312(A).

execution or on an order of sale in a mortgage foreclosure action. The bill maintains those distinctions, but reduces the options available when property goes unsold.

Execution sales

For property taken on execution and unsold due to lack of bids, current law requires the court to either (1) order a new appraisal, or (2) set aside the levy and appraisal (i.e., the execution on the unsold property and related appraisal) and issue a new execution on different property. If the former option is chosen and the real estate taken on execution is appraised and offered for sale a second time without drawing sufficient bids, the court may direct the amount for which it is to be sold.

The bill eliminates the options for the court to either (1) order a new appraisal or (2) set aside the initial levy and appraisal in favor of execution on different property. It instead requires the court to set a new minimum price at which the property is to be sold after failing to be sold a single time.⁴

Foreclosure sales

Property that does not sell at a foreclosure sale is treated differently depending on whether the property is commercial or residential property.

For commercial property offered for sale in a mortgage foreclosure action but unsold for want of sufficient bids, current law allows the court, in response to a motion from either plaintiff or defendant, to order a new appraisal and sale or direct the amount for which the property may be sold. The bill does not change these provisions,.

When residential property is ordered sold in a residential mortgage loan foreclosure action, but goes unsold, then either:

- A subsequent auction must be held and the property sold to the highest bidder without regard to the law's minimum bid requirements (though still subject to requirements regarding costs, allowances, and taxes);
- The property must be disposed of in any other manner pursuant to the Revised Code.

The bill changes the earliest date for a subsequent auction to three days after the previous auction's start date, a reduction from current law's seven-day minimum.⁵

Foreclosure- and execution-sale advertisements

The bill amends the advertising requirements for foreclosure and execution sales. Under current law, sales must be advertised for three consecutive weeks in a newspaper of general circulation in the county where the property being sold is located. The bill requires that the last date of publication be four or more calendar days before the sale date. It also adds a requirement, for residential foreclosure sales only, that information regarding the location of any subsequent

⁴ R.C. 2329.51.

⁵ R.C. 2329.52(B).

sales be included with the advertisement of the initial sale. Finally, as opposed to requiring that all notifications be made in a newspaper of general circulation, the bill requires that only the first notice be made in a newspaper and allows all subsequent notices to be made on the sheriff or private selling officer's website, as applicable. Such notices are not required to include a description of the property in metes and bounds.

The amount of costs that may be recovered for newspaper advertisements is capped at \$50. If the court ordering the sale designates the newspaper in which the public notice is to be published, and the sheriff or private selling officer is unable to publish notice in that newspaper for \$50 or less, then the sheriff or private selling officer is allowed to publish notice in another newspaper of general circulation in the county.

If the sheriff or private selling officer, despite reasonable efforts, is unable to find a newspaper of general circulation in the county that will publish notice of the sale for \$50 or less, the sheriff or private selling officer may instead publish notice of the sale on the sheriff or private selling officer's website, or a website maintained by the sheriff or private selling officer for those purposes. Expenses for advertisements on a sheriff or private selling officer's website are not allowed to be taxed as costs in a sale.⁶

Private selling officers

Appointment

Under continuing law, property sold at foreclosure or execution is sold by the county sheriff unless the creditor who brought the lawsuit, files a motion with the court to authorize a private selling officer to sell the property. A "private selling officer" must be an Ohio resident who is licensed both as (1) an auctioneer and (2) either a real estate broker or real estate salesperson.

Under current law, whether or not to approve use of a private selling officer is up to the court. The bill removes that discretion in cases where the defendant does not respond to the lawsuit as required by the Rules of Civil Procedure. In those cases, the bill allows the creditor who brought suit to have the property sold by a private selling officer by filing a praecipe (typically a written motion or request but in this case a demand) with the clerk of courts directing the clerk to issue an order of sale to the private selling officer. The praecipe may specify multiple private selling officers, and, if done, any of those officers may conduct the sale.⁷

However, within ten days after the issuance of an order of sale to a private selling officer, any lienholder who is a party to the suit may file a motion with the court objecting to the use of the private selling officer. If the motion is timely filed and the court determines that there is good and reasonable cause, the court may order that the sale be reset, republished, and conducted by the county sheriff. "Good and reasonable cause" is defined as being a situation where the

⁶ R.C. 2329.26(A)(2) and (B) and 2329.52(B), with conforming changes in R.C. 2329.211, 2329.26(A)(1), and 2329.27(A).

⁷ R.C. 2329.01 and 2329.152(A), and Black's Law Dictionary, 11th Edition.

lienholder is more likely to have its lien satisfied, in whole or in part, if the sale is conducted by the county sheriff.⁸

Independence of private selling officers

The bill prohibits private selling officers from being affiliated with or employed by either of the following:

- A mortgagee or a mortgage servicer;
- A subsidiary of a mortgagee or mortgage servicer.

The bill defines “affiliation” as being a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, the specified mortgagee or mortgage servicer. The prohibition is not to be construed as prohibiting a mortgagee or mortgage servicer from engaging in a regular course of business with an independent private selling officer.⁹

Costs

Under current law, when a private selling officer sells property at foreclosure or execution sale, various costs are taxed as costs in the case. Those are:

- The cost of the appraisal;
- The cost of required advertisements for the sale;
- The fee charged by the private selling officer and all costs incurred by the private selling officer aside, excluding the cost of appraisal and advertising and capped at 1.5% of the property’s ultimate sale price.

When the private selling officer’s fee and other costs, aside from appraisal and advertising costs, exceed 1.5% then the amount over that threshold is not taxed as costs. Rather, it is paid by the buyer, the judgement creditor, or from the judgment creditor’s portion of the sale proceeds.

The bill places certain limits on amounts that may be taxed as costs on the sale. Newspaper advertisement costs are capped at \$50. And the amount of costs the buyer or judgment creditor may be responsible for can be no more than 10% of the property’s sale price.¹⁰

Sale records

Continuing law requires the levying officer in a foreclosure or execution sale (i.e., the sheriff or private selling officer) to record the officer’s proceedings on the “writ of execution” and, after the sale is completed or canceled, to return the writ to the clerk of courts. The law only refers to a writ of execution, which, as discussed above, is different from an order of sale in a

⁸ R.C. 2329.152(A)(2).

⁹ R.C. 2329.151(C).

¹⁰ R.C. 2329.152(D)(1).

foreclosure proceeding. Yet, courts maintain this requirement in foreclosure sales as well as execution sales.

In addition to the return of the writ, continuing law also requires that a private selling officer file a report with the court that issued the order of sale that itemizes all sale expenses and the private selling officer's fees. The bill amends the law to deem the filing of the private selling officer's report as meeting the requirement for return of the writ of execution to the clerk.¹¹

Online sales

Continuing law allows a private selling officer to auction property either online or at a physical location. For online sales, current law requires the auction to be open for at least seven calendar days, excluding the first day the auction is open for bidding and counting all subsequent calendar days. The bill reduces the minimum to three days. It also adds a requirement that the auction display all bids publicly upon entry during bidding.¹²

Online sheriff sales

Continuing law allows sheriffs to sell residential property through judicial sale on a statewide auction website; the law will eventually require use of that website. Current law requires the auction to be open for at least seven days, though the manner of calculating days is not included as it is for online sales by private selling officers. The bill reduces the minimum to three days. It also requires that all auctions on the site publicly display all bids upon entry during bidding.¹³

Sale definitions

The bill makes changes to how dates are treated for notice and advertising requirements. Current law uses various terms to discuss the timing requirements. Those include "the date of the sale," the "start date," the "day of sale," and "sale date." Some of these references account for the fact that at least some sales are now conducted on the internet over several days, but others do not, and none of the terms are defined.

The bill defines the terms "start date" and "sale date" and inserts them in lieu of the various existing terms. Under the bill:

- "Sale date" means the day on which an auction for real estate concludes.
- "Start date" means the first day an auction for real estate is open for bidding to the public.¹⁴

¹¹ R.C. 2329.152(D)(2); R.C. 2329.28, not in the bill, and *Satanik v. LaGorga*, 1980 Ohio App. LEXIS 14076, *5.

¹² R.C. 2329.152(E)(1)(a), with conforming change in R.C. 2329.152(C)(2).

¹³ R.C. 2329.153(C)(6) and (E).

¹⁴ R.C. 2329.01, with conforming changes throughout.

HISTORY

Action	Date
Introduced	06-24-24
