



Ohio Legislative Service Commission

Bill Analysis

Carla Napolitano

Sub. H.B. 134*

131st General Assembly

(As Reported by H. Financial Institutions, Housing and Urban Development)

Reps. Grossman and Curtin, Becker, Antonio, Fedor, Lepore-Hagan, Blessing, Hambley, Sheehy, Schuring

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.

* This analysis was prepared before the report of the House Financial Institutions, Housing and Urban Development Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

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, upon motion, to return a purchaser's deposit, less the costs of a subsequent sale, 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.

Owner's physical harm to property

- 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 the court of common pleas 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.

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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." The bill also modifies the procedures that generally apply to the judicial sale of property. The bill also expands the jurisdiction of the Toledo Municipal Court over certain real property actions 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.

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 the Rules of Civil Procedure. The sale procedures and court confirmation are primarily governed by statute.

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.¹

Also, as used in this analysis:

"Mortgagor" means a person who, having all or part of title to property, by written instrument pledges that property for some particular purpose, such as security for a debt.² In other words, the property owner who has taken out a mortgage.

"Sheriff" includes any other levying officer of a county that conducts judicial sales of real property.

"Sheriff's sale" and **"judicial sale"** mean the sale of property pursuant to court order.

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

¹ R.C. 2308.01 and 2329.01.

² *Black's Law Dictionary*, fifth edition, 1979.



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 pertaining to the vacant and abandoned properties. (This application of this provision appears to be limited to the Cleveland Municipal Court Housing Division, the Franklin County Municipal Court Environmental Division, and the Toledo Municipal Court Housing Division.)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:

- No person is visibly present from an exterior inspection of the property 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 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.

³ R.C. 2308.02(B).

⁴ R.C. 1901.185(B); R.C. 1901.011, not in the bill; Ohio Supreme Court, *Ohio Trial Courts & Local Rules*, <http://www.sconet.state.oh.us/JudSystem/trialCourts/default.asp> (accessed April 10, 2015).

⁵ R.C. 2308.02(H).



- 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.
- 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 summary foreclosure 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

⁶ R.C. 2308.02(A).

⁷ R.C. 2308.02(C).

⁸ R.C. 2308.02(D).

⁹ R.C. 2308.02(E).



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

Judgment

At the hearing on the motion for summary foreclosure, the court is to determine whether the mortgage is in default and 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 (1) the property owner is in default and (2) the property is considered vacant and abandoned.

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, (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, or (3) the property owner is not in default on the residential mortgage secured by the residential property.¹¹

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.¹²

¹⁰ R.C. 2308.02(F).

¹¹ R.C. 2308.02(G).

¹² R.C. 2308.02(J).



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.¹³

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.¹⁴

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.¹⁵

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.

¹³ R.C. 2308.02(I) and (J).

¹⁴ R.C. 2308.03(A) and (B).

¹⁵ R.C. 2308.03(C).



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.¹⁶

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.¹⁷

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 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.¹⁸

Failure to pay balance due on purchased property

Under continuing law, a court may issue an order for contempt against a person who purchases real property at a judicial sale and fails to timely pay the balance due on the purchase price, which can include ordering the forfeiture of any deposit paid in connection with the sale. 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.¹⁹

¹⁶ R.C. 2329.20 and 2329.52.

¹⁷ R.C. 2329.20.

¹⁸ R.C. 2329.211.

¹⁹ R.C. 2329.30.



Purchaser responsibility for taxes and assessments

The bill makes a purchaser of real estate at a judicial sale in relation to the foreclosure of a tax lien 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.²⁰

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.

The plaintiff in the foreclosure action, 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.²¹

²⁰ R.C. 323.47.

²¹ R.C. 2329.31.



Stay of confirmation of sale

Under continuing law, 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.²²

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.²³

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 debtor pays both the judgment and advancement amounts is the court permitted to set aside the sale.²⁴

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

²² R.C. 2329.31(A).

²³ R.C. 2329.311.

²⁴ R.C. 2329.33.



allowances that the proceeds of the sale are insufficient to cover.²⁵ 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).²⁶

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).²⁷

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.²⁸

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 property, and for injunction actions to prevent or terminate violations of city ordinances and regulations.²⁹

²⁵ R.C. 2329.21.

²⁶ R.C. 2329.23 and 2329.26(A)(2).

²⁷ R.C. 2329.26(A)(1)(a)(i).

²⁸ R.C. 2308.04 and 2909.07.

²⁹ R.C. 1901.18.



Responsibilities of the clerk of the court of common pleas

The bill prohibits the clerk of the court of common pleas from restricting, prohibiting, or otherwise modifying the rights of parties to seek service on party defendants allowed by the Rules of Civil Procedure, either singularly or concurrently.³⁰

The bill also expands the duties of the clerk 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.³¹ Under continuing law, the clerk must still docket the certificate of the judgment.

HISTORY

ACTION	DATE
Introduced	03-25-15
Reported, H. Financial Institutions, Housing & Urban Development	---

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³⁰ R.C. 2303.26.

³¹ R.C. 2329.02(G).

