



# Ohio Legislative Service Commission

## Bill Analysis

Niyah Walters

### Sub. H.B. 303

131st General Assembly  
(As Reported by S. Financial Institutions)

**Reps.** Dever and McColley, Antani, Barnes, Burkley, Butler, Conditt, Cupp, Hambley, Koehler, Perales, Sprague, Sweeney, K. Smith, Terhar, Kuhns, Brown, Amstutz, Anielski, Arndt, Baker, Blessing, Boccieri, Boyd, Buchy, Craig, Driehaus, Duffey, Fedor, Ginter, Green, Hackett, Henne, Leland, Lepore-Hagan, Manning, M. O'Brien, S. O'Brien, Patterson, Phillips, Reece, Reineke, Retherford, Rogers, Ruhl, Ryan, Schuring, Sheehy, Stinziano, Thompson, Rosenberger

**Sens.** Eklund, Bacon

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## BILL SUMMARY

- Creates the D.O.L.L.A.R. Deed Program to be established, in part, by the Ohio Housing Finance Agency (OHFA).
- Requires a borrower and lender participating in the D.O.L.L.A.R. Deed Program to execute (1) a deed in lieu of foreclosure and (2) a lease with option to purchase agreement relating to the real property that is the subject of the mortgage.
- Requires certain terms be included in the above documents.
- Specifies that the lender's mortgage is not extinguished and does not merge with the borrower's interest conveyed because of the execution of the above documents.
- Specifies that the lease with option to purchase agreement is governed by Ohio's Landlord-Tenant Law and the borrower-lessee is subject to certain duties under that Law normally imposed upon a landlord as well as all duties imposed upon a tenant.
- Terminates the borrower's right to purchase if the borrower fails to meet the terms of the lease with option to purchase agreement and extinguishes borrower's right of possession and occupancy.
- Requires a person seeking to participate in the D.O.L.L.A.R. Deed Program to submit an application including specified forms to the lender and to meet certain

requirements, and requires the lender to respond in writing within 30 days of receipt of the application.

- Requires OHFA to adopt rules to assist in the establishment of the Program, including developing model forms.

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## **CONTENT AND OPERATION**

### **D.O.L.L.A.R. Deed Program**

The bill creates the D.O.L.L.A.R. Deed Program that is established, in part, by the Ohio Housing Finance Agency (OHFA). The Program provides a foreclosure alternative for a borrower who is in default on a mortgage encumbering real property.<sup>1</sup>

Under the Program, a borrower and lender enter into an agreement where the borrower transfers all of the borrower's interest in the real property to the lender in a deed in lieu of foreclosure. The lender then leases the property back to the borrower for a specified time pursuant to a lease with the option to purchase agreement. During the duration of the lease, the borrower retains the right to purchase the property.

The bill requires a borrower and lender participating in the Program to execute (1) a deed in lieu of foreclosure and (2) a lease with the option to purchase agreement. The documents must be provided to the borrower at least 10 business days before the documents are signed by both parties.<sup>2</sup>

#### **Deed in lieu of foreclosure**

A "D.O.L.L.A.R deed in lieu of foreclosure" (deed in lieu of foreclosure) is a transaction in which a borrower, after default on a loan secured by a mortgage on real property, conveys to the lender, by a quit-claim deed, title to the real property pledged as security for the related note of indebtedness.<sup>3</sup> It is an absolute conveyance and, upon delivery of the executed deed to the lender, the borrower conveys all of its right, title, and interest in the real property and associated rights including any right of redemption.

The deed also must include a notarized estoppel affidavit that affirms all of the following:

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<sup>1</sup> R.C. 5315.01(B) and 5315.02.

<sup>2</sup> R.C. 5315.04(A) and (B).

<sup>3</sup> R.C. 5315.01(A)(1).



- (1) That the mortgage and title to the property are not merged;
- (2) That the lender retains its position and right to foreclose on any junior lienholders after the transfer;
- (3) That the transfer by deed is an absolute conveyance of title to the real property, free and clear of any rights or claims of redemption;
- (4) That the transfer is the free act and will of the borrower;
- (5) That the transfer is not made under duress or coercion;
- (6) That the transfer is made for valuable consideration in the form of the lease with option to purchase contract granted by the lender to purchase the real property.<sup>4</sup>

### **Lease with option to purchase agreement**

The bill also requires a borrower and a lender participating in the Program to execute a lease with option to purchase agreement, which acts as consideration for the deed in lieu of foreclosure. Under this agreement, the former lender leases the property that is the subject of the defaulted mortgage to the former borrower and the former borrower may purchase the property at a specified price until the termination of the lease. The lease with option to purchase agreement term must be for the shorter of the time necessary to secure financing or other mortgage assistance from the Federal Housing Administration or two years from the date of the lease with option to purchase agreement. If the borrower does not exercise the option to purchase the property within the time permitted, the option terminates. The right may be renewed in writing and takes effect upon being recorded.<sup>5</sup>

### **Document recording**

The bill expressly requires that all deeds in lieu of foreclosure, all leases with option to purchase agreements, and all renewals and termination of such leases relating to the D.O.L.L.A.R. Deed Program, be recorded in the real property records office of the county recorder where the real property is located.<sup>6</sup>

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<sup>4</sup> R.C. 5315.04(A)(1) and (2).

<sup>5</sup> R.C. 5315.04(A)(3) and (C).

<sup>6</sup> R.C. 5315.04(E).

## Rent calculation

The rental amount under the lease with option to purchase agreement must be calculated on a monthly basis and is to be at least  $\frac{1}{12}$  of the sum of the following annualized items with respect to the property:

- Real property taxes;
- Homeowner's insurance premiums for homeowner's insurance in the amount that reflects the market rate for homeowner's insurance based on the market value of the real property;
- Any homeowner's association or condominium dues.<sup>7</sup>

## Laws governing the lease agreement

Under the bill, the borrower and the lender who are parties to the lease with option to purchase agreement are governed by Ohio's Landlord-Tenant Law. The borrower-lessee is responsible for all of the duties of a tenant under Ohio's Landlord-Tenant Law, as well as the following duties of a landlord:

- Complying with applicable building, housing, health, and safety codes that materially affect health and safety;
- Keeping the premises in fit and habitable condition;
- Keeping all common areas of the premises in a safe and sanitary condition;
- Maintaining in good and safe working order all electrical, plumbing, sanitary, heating, ventilating, and air conditioning fixtures and appliances and elevators;
- If the property has more than four dwelling units in the same structure, providing and maintaining appropriate receptacles for the removal of garbage and other waste and arrange for waste removal;
- Supplying running water, reasonable amounts of hot water, and reasonable heat, unless certain conditions are met.<sup>8</sup>

The bill specifies that these duties do not apply to the lender-lessor under the Program.

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<sup>7</sup> R.C. 5315.04(A)(3)(b).

<sup>8</sup> R.C. 5321.04(A)(1) to (6), not in the bill.



A borrower-lessee who fails to meet the terms of the lease with option to purchase agreement under the Program forfeits the borrower's option to purchase the property and is subject to action under Ohio's Eviction Law. Additionally, defaulting extinguishes the borrower-lessee's right of possession and occupancy.<sup>9</sup>

### **Title does not merge with mortgage**

The bill specifies that the lender's mortgage is not extinguished and does not merge with the borrower's interest conveyed because of the execution of the documents under the Program.<sup>10</sup>

### **Application**

The bill requires a person seeking to participate in the Program to submit an application to the loss mitigation department of the lender of the default mortgage. The application must consist of (1) an application form consistent with the model adopted by OHFA (see "**OHFA duties**" below) and (2) a Request for Modification and Affidavit form developed under the Home Affordable Modification Program.<sup>11</sup> To qualify for the Program under the bill, an applicant's front-end and back-end debt-to-income ratios must fall below the current ratios set for the Home Affordable Modification Program at the time the application is submitted to the lender. The applicant is not required to be eligible for another mortgage loss mitigation alternative or program. The applicant must also occupy the residence to be eligible for the Program.<sup>12</sup>

The lender must respond to the applicant in writing within 30 days after the date the lender receives the application. But, the lender is not required to participate in the Program.<sup>13</sup>

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<sup>9</sup> R.C. 5315.05.

<sup>10</sup> R.C. 5315.04(D).

<sup>11</sup> R.C. 5315.03(A); See Making Home Affordable, *Making Home Affordable Program Request for Modification and Affidavit (RMA)*, [https://www.missionfed.com/files/RMA\\_form.pdf](https://www.missionfed.com/files/RMA_form.pdf) (accessed October 16, 2015).

<sup>12</sup> R.C. 5315.03(B). At the time the Making Home Affordable Program was enacted in 2009, the front-end debt-to-income ratio was required to be as close as possible, but not less than, 31% and the back-end debt-to-income ratio could not exceed 55%. U.S. Department of Housing and Urban Development, *Making Home Affordable Program Mortgage Letter 2009-23* <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CDEQFjAAahUKEwiYvcSgzcfIAhXJjg0KHXQ3D5s&url=http%3A%2F%2Fportal.hud.gov%2Fhudportal%2Fdocuments%2Fhuddoc%3Fid%3D09-23ml.doc&usg=AFQjCNGFPkQelo0OVK9osrYsfbJjnwsb6A&sig2=BJZg7MObA07tj2HAF8eKjQ> (accessed October 16, 2015).

<sup>13</sup> R.C. 5315.03(C) and (D).

## OHFA duties

The bill imposes certain duties on OHFA in assisting in the establishment of the Program. OHFA is required to adopt by rule all of the following:

- A model application form;
- A model for the deed in lieu of foreclosure;
- A model for the lease with option to purchase agreement;
- Any other rules necessary to implement the Program.<sup>14</sup>

## Definitions

The bill defines the following terms:

- "Borrower" means the person who receives a loan from a lender secured by a mortgage on real property to which the borrower holds legal title and who is an applicant of the D.O.L.L.A.R. Deed Program. "Borrower" includes the original borrower's successor in interest.
- "Home Affordable Modification Program" means the Home Affordable Modification Program established by the U.S. Departments of the Treasury and Housing and Urban Development.
- "Lender" means the mortgagee and holder of the note secured by the mortgage or an agent on behalf of the holder of the note, regardless of whether the holder of the note is the original mortgagee. Additionally it includes a person entitled to enforce the instrument secured by the mortgage under the Commercial Paper Law and a mortgagee having the right to enforce the obligation secured by the mortgage under another law.
- "Mortgage" means the instrument securing an obligation to pay a sum of money evidenced by a note of indebtedness and secured by a lien on the borrower's real property.
- "Note" or "note of indebtedness" means an obligation to pay a sum of money secured by a mortgage on the borrower's real property.<sup>15</sup>

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<sup>14</sup> R.C. 5315.02.

<sup>15</sup> R.C. 5315.01(A).



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## HISTORY

ACTION	DATE
Introduced	08-25-15
Reported, H. Financial Institutions, Housing, & Urban Development	11-19-15
Passed House (92-0)	12-08-15
Reported, S. Financial Institutions	05-10-16

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