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S.B. 334
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Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Blessing

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SUMMARY

- Allows certain persons to bid on residential property containing one to four single-family units after a foreclosure sale has already taken place if the apparent winner of the auction does not intend to occupy the property as their primary residence.
- Requires the levying officer to make publicly available certain information about the auction when the successful bidder was not a person intending to occupy the property as their primary residence.
- Prohibits the levying officer from returning the writ of execution following a public auction in which the successful bidder was not a prospective owner-occupant until certain dates depending on whether post-sale bids or notices of intent to bid are received from certain persons.
- Requires the levying officer to include information regarding the process of submitting post-sale bids in the public notice the officer must make prior to a foreclosure sale and to post the notice on the property.

DETAILED ANALYSIS

Overview

Under Ohio law, when a court orders the sale of real property for failure to pay a debt (a writ of execution), the property must be sold at a public auction.¹ In the case of a sale of residential property containing one to four single-family units, if the apparent winner of the auction is not a “prospective owner-occupant,” the bill allows an “eligible bidder” or “eligible tenant-buyer” (all of which are defined below) to submit a bid within 45 days following the

¹ R.C. Chapter 2329.

auction. An eligible tenant-buyer may win by placing a bid equal to the apparent winner's, while an eligible bidder may win by placing a bid that exceeds the apparent winner's.

Prospective owner-occupants

Qualifying as a prospective owner-occupant

Under the bill, a prospective owner-occupant is a natural person who submits an affidavit to the levying officer (the officer who makes the public sale of the residential property, including a private selling officer) swearing or affirming all of the following:

- That the person will occupy the property as their primary residence within 60 days of recording of a deed to the residential property or issuance of an order to transfer the property's title to the person;
- That the person will maintain their occupancy for at least one year;
- That the person is not the mortgagor, or the child, spouse, or parent of the mortgagor; and
- That the person is not acting as the agent of any other person or entity in purchasing the real property.

An eligible tenant-buyer (see "**Eligible tenant-buyers**" below) may qualify as a prospective owner-occupant if the person submits the affidavit.²

When successful bidder is not a prospective owner-occupant

Disclosure of auction results

Under the bill, if the successful bidder at a public sale is not a prospective owner-occupant, then not later than two calendar days after the date of the sale, the levying officer or an authorized agent must make available via the website and phone number set forth on the notice of sale (see "**Notice of sale**" below) the following information for a period of not less than 45 days after the date of the sale:

- The date on which the sale took place;
- The amount of the successful bid; and
- An address at which the levying officer can receive documents sent by U.S. mail and by a method of delivery providing for overnight delivery.

A disruption of the methods of providing this information to allow for reasonable maintenance or due to a service outage is not to be considered a violation of the bill.³

² R.C. 2329.313(A)(3), (A)(4), and (B) and 2329.261(C).

³ R.C. 2329.313(F).

Return of writ of execution

In addition to the above, when the successful bidder is not a prospective owner-occupant, the bill prohibits the levying officer from returning the writ of execution (following completion of the officer's duties described in the writ issued by the court, the officer must sign and return that writ to the court certifying compliance with the writ) until the earliest of the following dates:

- Sixteen days after the sale, unless at least one eligible tenant-buyer or eligible bidder submits, and the levying officer receives, a bid or a nonbinding written notice of intent to place a bid. To be effective, a written notice of intent to place a bid must be sent to the levying officer by certified mail, overnight delivery, or other method that allows for confirmation of the delivery date and must be received by the levying officer not more than 15 days after the sale.
- The date upon which all eligible tenant-buyers or an eligible bidder is deemed the successful bidder pursuant to **“Eligible tenant-buyers”** and **“Eligible bidders”** below;
- Forty-six days after the sale.⁴

If prospective owner-occupant cannot occupy property

The bill provides that a prospective owner-occupant does not commit perjury by submitting an affidavit if they cannot occupy the property as their primary residence within 60 days of the deed being recorded because an eviction or a writ of possession from the court that entered the order of sale is needed to obtain possession of the property.⁵

Eligible tenant-buyers

The bill defines an eligible tenant-buyer as a natural person who, at the time of the public sale, is all of the following:

- Occupying the property as their primary residence;
- Occupying the property under a rental agreement entered into as the result of an arm's length transaction with the mortgagor on a date prior to a default on the note secured by the mortgage that led to the action for judicial sale and foreclosure; and
- Not the mortgagor, or the child, spouse, or parent of the mortgagor.⁶

Under the bill, eligible tenant-buyers, if any, are deemed to have submitted the winning bid if both of the following are true:

- The successful bidder at the sale was not a prospective owner-occupant;

⁴ R.C. 2329.313(C).

⁵ R.C. 2329.313(G).

⁶ R.C. 2329.313(A)(2).

- Not more than 45 days after the date of the sale, the levying officer receives both of the following from a representative of all eligible tenant-buyers, by certified mail, overnight delivery, or other method that allows for confirmation of the delivery date:
 - A bid in an amount *equal to the full amount of the successful bid* at the sale, in the form of cash or a cashier's check drawn on a state or national bank, a state or federal credit union, a state or federal savings and loan association, a savings association, or a savings bank specified and authorized to do business in Ohio;
 - An affidavit stating that the persons represented are eligible tenant-buyers (see **COMMENT**) and the facts supporting that statement. The levying officer may reasonably rely on this affidavit.

The bill requires the levying officer to return all unsuccessful bids from eligible tenant-buyers to the bidders that submitted them not later than the date the levying officer returns the writ of execution.⁷

Eligible bidders

The bill defines an eligible bidder as any of the following:

- A prospective owner-occupant;
- An unincorporated nonprofit, a nonprofit corporation, or a cooperative in which an eligible tenant-buyer or a prospective owner-occupant is a voting member or director (see **COMMENT**);
- An Ohio nonprofit corporation whose primary activity is the development and preservation of affordable rental housing;
- An Ohio limited partnership in which a general partner is an Ohio nonprofit corporation, the primary activity of which is the development and preservation of affordable housing;
- An Ohio limited liability company in which the manager is an Ohio nonprofit corporation, the primary activity of which is the development and preservation of affordable rental housing;
- A community improvement corporation or community urban redevelopment corporation;
- A public office (any state agency, state institution of higher education, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of Ohio for the exercise of any function of government).⁸

⁷ R.C. 2329.313(D).

⁸ R.C. 2329.313(A).

Under the bill, an eligible bidder is deemed to have submitted the successful bid at the public sale if, not more than 45 days after the date of the sale, all of the following are true:

- The successful bidder was not a prospective owner-occupant;
- No eligible tenant-buyers are deemed to have submitted the successful bid;
- The levying officer receives both of the following from the eligible bidder, by certified mail, overnight delivery, or other method that allows for confirmation of the delivery date:
 - A bid in an amount that *exceeds the successful bid* at the sale and all other bids submitted by other eligible bidders, in the form of cash or a cashier's check drawn on a state or national bank, a state or federal credit union, a state or federal savings and loan association, a savings association, or a savings bank and authorized to do business in Ohio;
 - An affidavit stating that the bidder is an eligible bidder and the facts supporting that statement. The levying officer may reasonably rely on this affidavit.

The levying officer is required to return all unsuccessful bids from eligible bidders to the bidders that submitted them not later than the date the levying officer returns the writ of execution.⁹

Notice of sale

When residential property containing one to four single-family units is sold at public auction, the bill requires the levying officer to do all of the following:

- Include the following statement, in substantially the following form, in the notice that continuing law requires the officer to make prior to a foreclosure sale:

NOTICE TO TENANTS AND OTHER ELIGIBLE BIDDERS: You may have a right to purchase this property after the sale pursuant to R.C. 2329.313. If you are an "eligible-tenant buyer," you can purchase the property if you match the successful bid placed at the sale. If you are an "eligible bidder," you may be able to purchase the property if you exceed the successful bid placed at the sale. There are three steps to exercising this right of purchase. First, two calendar days after the date of the sale, you can call [telephone number for information regarding the sale], or visit this web site [web site address for information regarding the sale], using the file number assigned to this case [case file number] to find the date on which the sale was held, the amount

⁹ R.C. 2329.313(E).

of the successful bid, and the address of the person who conducted the sale.

Second, you must send a written notice of intent to place a bid so that the person who conducted the sale receives it not more than fifteen days after the date of the sale.

Third, you must submit a bid so that the person who conducted the sale receives it not more than forty-five days after the date of the sale.

If you think you may qualify as an “eligible tenant-buyer” or “eligible bidder,” you should consider contacting an attorney or appropriate real estate professional immediately for advice regarding this potential right to purchase.

- Post a copy of the notice in a conspicuous place on property to be sold at least three weeks before the sale, where possible and where not restricted for any reason. The posting must be on a door of each dwelling unit on the property, but, if that is not possible or access is restricted, then the notice must be posted in a conspicuous place on the property. If access is denied because a common entrance to the property is restricted by a guard gate or similar impediment, the notice may be posted at that guard gate or impediment.
- Maintain a website and phone number to provide information on applicable properties. A levying officer must provide this information, and, for completed sales, information regarding the sale date, amount of the successful bid, and the levying officer’s address, to be accessible using the file number assigned to the case and listed on the notice. This information must be made available free of charge and 24 hours a day, seven days a week.

The bill allows a levying officer to use any website maintained to satisfy any other provision of the foreclosure sale law, including the official public sheriff sale website established under that law, to satisfy the bill’s requirements.¹⁰

COMMENT

As the result of a drafting error, the provision requiring an affidavit uses the term “eligible bidders.” The bill should instead require an affidavit stating that the persons represented are “eligible tenant-buyers.”

Regarding the definition of “eligible bidder,” the intent appears to be that the unincorporated nonprofit, nonprofit corporation, or cooperative be primarily engaged in the development and preservation of affordable rental housing. The absence of language to that effect appears to be the result of a drafting error.

¹⁰ R.C. 2329.261.

HISTORY

Action	Date
Introduced	05-10-22
