

# AN ACT

To amend sections 1923.06, 2329.13, 2329.14, 2329.26, and 2329.27 of the Revised Code to change the procedure by which service is effected in an eviction action, to require that a specified written notice be given to certain parties to the underlying action prior to an execution sale of real or personal property, and to specify consequences of an execution sale that occurs after that notice and public notice by newspaper publication has been given.

*Be it enacted by the General Assembly of the State of Ohio:*

SECTION 1. That sections 1923.06, 2329.13, 2329.14, 2329.26, and 2329.27 of the Revised Code be amended to read as follows:

Sec. 1923.06. (A) Any summons in an action, including a claim for possession, pursuant to this chapter shall be issued, be in the form specified, and be served and returned as provided in this section. Such service shall be at least ~~ten~~ seven days before the day set for trial.

(B) Every summons issued under this section to recover residential premises shall contain the following language printed in a conspicuous manner: "A complaint to evict you has been filed with this court. No person shall be evicted unless the person's right to possession has ended and no person shall be evicted in retaliation for the exercise of the person's lawful rights. If you are depositing rent with the clerk of this court you shall continue to deposit such rent until the time of the court hearing. The failure to continue to deposit such rent may result in your eviction. You may request a trial by jury. You have the right to seek legal assistance. If you cannot afford a lawyer, you may contact your local legal aid or legal service office. If none is available, you may contact your local bar association."

(C) The clerk of the court in which a complaint to evict is filed shall mail any summons by ordinary mail, along with a copy of the complaint, document, or other process to be served, to the defendant at the address set forth in the caption of the summons and to any address set forth in any written instructions furnished to the clerk. The mailing shall be evidenced

by a certificate of mailing which the clerk shall complete and file.

In addition to this ordinary mail service, the clerk also shall cause service of that process to be completed under division (D) or (E) of this section or both, depending upon which of those two methods of service is requested by the plaintiff upon filing the complaint to evict.

(D) ~~The~~ (1) If requested, the clerk shall deliver sufficient copies of the summons, complaint, document, or other process to be served to, and service shall be made by, one of the following persons:

~~(1)~~(a) The sheriff of the county in which the premises are located when the process issues from a court of common pleas or county court;

~~(2)~~(b) The bailiff of the court for service when process issues from ~~the~~ a municipal court;

~~(3)~~(c) Any person who is eighteen years of age or older, who is not a party, and who has been designated by order of the court to make service of process when process issues from any of the courts referred to in divisions (D)(1)(a) and ~~(2)~~(b) of this section.

~~(E)~~(2) The person serving process shall effect service at the premises that are the subject of the forcible entry and detainer action by one of the following means:

~~(1)~~(a) By locating the person to be served at the premises to tender a copy of the process and accompanying documents to that person;

~~(2)~~(b) By leaving a copy of the summons, complaint, document, or ~~the~~ other process with a person of suitable age and discretion found at the premises if the person to be served cannot be found at the time the person making service attempts to serve the summons pursuant to division ~~(E)~~(1)(D)(2)(a) of this section;

~~(3)~~(c) By posting a copy in a conspicuous place on the subject premises if service cannot be made pursuant to divisions ~~(E)~~(1)(D)(2)(a) and ~~(2)~~(b) of this section.

~~(F)~~(3) Within ~~ten~~ five days after receiving the summons, complaint, document, or other process from the clerk for service, the person making service shall return the process to the clerk. The person shall indicate on the process which method described in division ~~(E)~~(D)(2) of this section was used to serve the summons. The clerk shall make the appropriate entry on the appearance docket.

~~(G)~~(E) If requested, the clerk shall mail by certified mail, return receipt requested, a copy of the summons, complaint, document, or other process to be served to the address set forth in the caption of the summons and to any address set forth in any written instructions furnished to the clerk.

(F) Service of process shall be deemed complete on the date that ~~either~~

any of the following has occurred:

(1) Service is made pursuant to division ~~(E)(1)(D)(2)(a)~~ or ~~(2)(b)~~ of this section.

(2) Both ordinary mail service under division (C) and service by posting pursuant to division ~~(E)(3)(D)(2)(c)~~ of this section have been made.

~~(H)(1)(3)~~ For service performed pursuant to division (E) of this section, on the date of mailing, if on the date of the hearing either of the following applies:

(a) The certified mail has not been returned for any reason other than refused or unclaimed.

(b) The certified mail has not been endorsed, and the ordinary mail has not been returned.

~~(G)(1)~~ The claim for restitution of the premises shall be scheduled for hearing in accordance with local court rules, but in no event sooner than the ~~tenth~~ seventh day from the date service is complete.

(2) Answer day for any other claims filed with the claim for possession shall be twenty-eight days from the date service is deemed complete under this section.

Sec. 2329.13. ~~The~~ (A) Goods and chattels levied upon by virtue of an execution of a court of record shall not be sold until both of the following occur:

(1)(a) Except as otherwise provided in division (A)(1)(b) of this section, the judgment creditor who seeks the sale of the goods and chattels or the judgment creditor's attorney does both of the following:

(i) Causes a written notice of the date, time, and place of the sale to be served in accordance with divisions (A) and (B) of Civil Rule 5 upon the judgment debtor and upon each other party to the action in which the judgment giving rise to the execution was rendered;

(ii) At least three calendar days prior to the date of the sale, files with the clerk of the court that rendered the judgment giving rise to the execution a copy of the written notice described in division (A)(1)(a)(i) of this section with proof of service endorsed on the copy in the form described in division (D) of Civil Rule 5.

(b) Service of the written notice described in division (A)(1)(a)(i) of this section is not required to be made upon any party who is in default for failure to appear in the action in which the judgment giving rise to the execution was rendered.

~~(2)(a) subject to division (a)(2)(b) of this section, the officer who levies upon the goods and chattels by virtue of an execution by a court of record, before he proceeds to sell them shall give~~ gives public notice of the date,

time, and place of the sale; for at least ten days before the day of sale. ~~Such notice shall be given~~ by advertisement ~~published~~ in a newspaper published in and of general circulation in the county. The court ordering ~~such~~ the sale may; designate in the order of sale; ~~designate~~ the newspaper in which ~~such~~ this public notice shall be published.

~~Where~~ (b) If the goods to be sold are merchandise or inventory used in connection with a trade or business; and ~~such~~ if the sale is to satisfy a judgment in favor of the state; or one of its political subdivisions; for delinquent taxes, public notice of the sale shall be given by ~~published~~ advertisement in a newspaper published in and of general circulation in the county once a week for three weeks preceding the date of the sale. In the case of a sale of goods used in connection with a trade or business, notice of the location, date, and nature of ~~such~~ that sale also shall be conspicuously posted on the premises where the trade or business is carried on; and on the premises where the goods to be sold are kept if ~~such goods~~ they are located elsewhere.

(B)(1) A sale of goods and chattels levied upon by virtue of an execution of a court of record may be set aside in accordance with division (B)(2) of this section.

(2) subject to divisions (B)(3) and (4) of this section, all sales of goods and chattels levied upon by virtue of an execution of a court of record that are made without compliance with the written notice requirements of division (A)(1)(a) of this section and the public notice requirements of division (A)(2) of this section shall be set aside, on motion, by the court to which the execution is returnable.

(3) Proof of service endorsed upon a copy of the written notice required by division (A)(1)(a) of this section shall be conclusive evidence of the service of the written notice in compliance with the requirements of that division, unless, prior to the confirmation of the sale of the goods and chattels as described in division (B)(4) of this section, a party files a motion to set aside the sale pursuant to division (B)(1) of this section and establishes by a preponderance of the evidence that the proof of service is fraudulent.

(4) If the court to which the execution is returnable enters its order confirming the sale of the goods and chattels, the order has both of the following effects:

(a) The order shall be deemed to constitute a judicial finding as follows:

(i) That the sale of the goods and chattels complied with the written notice requirements of division (A)(1)(a) of this section and the public notice requirements of division (A)(2) of this section, or that compliance of

that nature did not occur but the failure to give a written notice to a party entitled to notice under division (A)(1)(a) of this section has not prejudiced that party;

(ii) That all parties entitled to notice under division (A)(1)(a) of this section received adequate notice of the date, time, and place of the sale of the goods and chattels.

(b) the order bars the filing of any further motions to set aside the sale of the goods and chattels.

Sec. 2329.14. When goods and chattels levied upon by execution cannot be sold for want of bidders; or for want of time, the officer who makes the return shall annex to the execution a true inventory of the goods and chattels remaining unsold. The plaintiff in ~~such that~~ execution ~~thereupon~~ may have another execution issued directing the sale of the ~~property~~ goods and chattels levied upon; ~~but it.~~ The goods and chattels shall not be so sold unless the ~~time and place of sale is advertised as directed in~~ written notice requirements of division (A)(1)(a) of section 2329.13 of the Revised Code and the public notice requirements of division (A)(2) of that section 2329.13 of the Revised Code first have been satisfied Division (B) of that section also applies to any sale of goods and chattels levied upon by virtue of a subsequent execution of a court of record under this section.

Sec. 2329.26. (A) Lands and tenements taken in execution shall not be sold until ~~the~~ both of the following occur:

(1)(a) except as otherwise provided in division (a)(1)(b) of this section, the judgment creditor who seeks the sale of the lands and tenements or the judgment creditor's attorney does both of the following:

(i) Causes a written notice of the date, time, and place of the sale to be served in accordance with divisions (a) and (b) of civil rule 5 upon the judgment debtor and upon each other party to the action in which the judgment giving rise to the execution was rendered;

(ii) at least seven calendar days prior to the date of the sale, files with the clerk of the court that rendered the judgment giving rise to the execution a copy of the written notice described in division (a)(1)(a)(i) of this section with proof of service endorsed on the copy in the form described in division (d) of civil rule 5.

(b) service of the written notice described in division (a)(1)(a)(i) of this section is not required to be made upon any party who is in default for failure to appear in the action in which the judgment giving rise to the execution was rendered.

(2) The officer taking ~~them~~ the lands and tenements gives public notice of the date, time, and place of the sale; for at least thirty days before the day

of sale; by advertisement in a newspaper published in and of general circulation in the county. The court ordering the sale may, designate in the order of sale, ~~designate~~ the newspaper in which ~~such~~ this public notice shall be published, and this public notice is subject to division (A) of section 2329.27 of the Revised Code.

(B) A sale of lands and tenements taken in execution may be set aside in accordance with division (B) of section 2329.27 of the Revised Code.

Sec. 2329.27. (A) When the advertisement provided for in public notice required by division (A)(2) of section 2329.26 of the Revised Code; is made in a newspaper published weekly, it is sufficient to insert it for three consecutive weeks. If ~~there are~~ both a daily and weekly edition of the paper ~~selected, are published~~ and the circulation of the daily in the county exceeds that of the weekly in the county, or if the lands and tenements taken in execution are situated in a city, ~~and there are published~~ both a daily and weekly edition of the paper ~~selected are published~~, and the circulation of the daily in ~~such that~~ city exceeds ~~that the circulation~~ of the weekly in that city, it is sufficient to publish the ~~advertisement~~ public notice in the daily once a week for three consecutive weeks before the day of sale, each insertion to be on the same day of the week. The expense of ~~such that~~ publication in a daily shall not exceed the cost of publishing it in a weekly. ~~All~~

(B)(1) Subject to divisions (B)(2) and (3) of this section, all sales of lands and tenements taken in execution that are made without ~~such advertisement~~ compliance with the written notice requirements of division (A)(1)(a) of section 2329.26 of the Revised Code and the public notice requirements of division (A)(2) of that section and division (A) of this section shall be set aside, on motion, by the court to which the execution is returnable.

(2) Proof of service endorsed upon a copy of the written notice required by division (A)(1)(a) of section 2329.26 of the Revised Code shall be conclusive evidence of the service of the written notice in compliance with the requirements of that division, unless a party files a motion to set aside the sale of the lands and tenements pursuant to division (B)(1) of this section and establishes by a preponderance of the evidence that the proof of service is fraudulent.

(3) If the court to which the execution is returnable enters its order confirming the sale of the lands and tenements, the order shall have both of the following effects:

(a) The order shall be deemed to constitute a judicial finding as follows:

(i) That the sale of the lands and tenements complied with the written notice requirements of division (A)(1)(a) of section 2329.26 of the Revised

Code and the public notice requirements of division (A)(2) of that section and division (A) of this section, or that compliance of that nature did not occur but the failure to give a written notice to a party entitled to notice under division (a)(1)(a) of section 2329.26 of the Revised Code has not prejudiced that party;

(ii) That all parties entitled to notice under division (A)(1)(a) of section 2329.26 of the Revised Code received adequate notice of the date, time, and place of the sale of the lands and tenements.

(b) The order bars the filing of any further motions to set aside the sale of the lands and tenements.

SECTION 2. That existing sections 1923.06, 2329.13, 2329.14, 2329.26, and 2329.27 of the Revised Code are hereby repealed.

SECTION 3. In amending sections 2329.13, 2329.14, 2329.26, and 2329.27 of the Revised Code in this act to require that a written notice of the date, time, and place of an execution sale of real or personal property be given to certain parties to the underlying action, it is the intent of the General Assembly to respond to the holdings of the Ohio Supreme Court in CentralTrustCo..N.A.v

Jensen

SECTION (1993), 67 Ohio St. 3d 140, the Court of Appeals of Clark County in

InreForeclosureofLiens forDelinquentTaxes

SECTION (1992), 79 Ohio App. 3d 766, the Court of Appeals of Columbiana County in

PerpetualSavingsBankv

Samuelson

(1992), 1992 WL 380301, and the Court of Appeals of Hamilton County in

CentralTrustCo..N.A.v

Spencer

SECTION (1987), 41 Ohio App. 3d 237, that publication notice of an execution sale of property may not afford interested parties with actual notice that is reasonably calculated, under all the circumstances, to apprise them of the pendency of the sale and to afford them an opportunity to take appropriate action to protect their interests and that satisfies the due process of law requirements of the Fourteenth Amendment to the United States Constitution and of Section 16 of Article I of the Ohio Constitution.

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*Speaker \_\_\_\_\_ of the House of Representatives.*

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*President \_\_\_\_\_ of the Senate.*

Passed \_\_\_\_\_, 20\_\_\_\_

Approved \_\_\_\_\_, 20\_\_\_\_

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*Governor.*

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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*Director, Legislative Service Commission.*

Filed in the office of the Secretary of State at Columbus, Ohio, on the \_\_\_ day of \_\_\_\_\_, A. D. 20\_\_\_\_.

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*Secretary of State.*

File No. \_\_\_\_\_ Effective Date \_\_\_\_\_