

**As Re-Reported by the House Housing and Urban Revitalization
Committee**

**128th General Assembly
Regular Session
2009-2010**

Sub. H. B. No. 323

Representative Murray

**Cosponsors: Representatives Chandler, Letson, Okey, Phillips, Koziura,
Yuko, Domenick, Foley, Pillich, Driehaus, Luckie, Winburn, Stewart, Heard**

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A B I L L

To amend sections 323.47, 2303.20, 2323.07, 2329.01, 1
2329.02, 2329.09, 2329.191, 2329.20, 2329.26, 2
2329.31, 2329.33, 2329.36, 2329.52, 2909.05, and 3
5723.01 and to enact sections 2308.01 to 2308.09 4
of the Revised Code relative to residential 5
foreclosure actions. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 323.47, 2303.20, 2323.07, 2329.01, 7
2329.02, 2329.09, 2329.191, 2329.20, 2329.26, 2329.31, 2329.33, 8
2329.36, 2329.52, 2909.05, and 5723.01 be amended and sections 9
2308.01, 2308.02, 2308.03, 2308.04, 2308.05, 2308.06, 2308.07, 10
2308.08, and 2308.09 of the Revised Code be enacted to read as 11
follows: 12

Sec. 323.47. (A) If land held by tenants in common is sold 13
upon proceedings in partition, or taken by the election of any of 14
the parties to such proceedings, or real estate is sold by 15
administrators, executors, guardians, or trustees, the court shall 16
order that the taxes, penalties, and assessments then due and 17

payable, and interest on those taxes, penalties, and assessments, 18
that are or will be a lien on such land or real estate at the time 19
the deed is transferred following the sale, be discharged out of 20
the proceeds of such sale or election. For purposes of determining 21
such amount, the county treasurer shall estimate the amount of 22
taxes, assessments, interest, and penalties that will be payable 23
at the time the deed of the property is transferred to the 24
purchaser. If the county treasurer's estimate exceeds the amount 25
of taxes, assessments, interest, and penalties actually payable 26
when the deed is transferred to the purchaser, the officer who 27
conducted the sale shall refund to the purchaser the difference 28
between the estimate and the amount actually payable. If the 29
amount of taxes, assessments, interest, and penalties actually 30
payable when the deed is transferred to the purchaser exceeds the 31
county treasurer's estimate, the officer shall certify the amount 32
of the excess to the treasurer, who shall enter that amount on the 33
real and public utility property tax duplicate opposite the 34
property; the amount of the excess shall be payable at the next 35
succeeding date prescribed for payment of taxes in section 323.12 36
of the Revised Code. 37

(B)~~(1)~~ If real estate is sold at judicial sale, the court 38
shall order that the total of the following amounts shall be 39
discharged out of the proceeds of the sale but only to the extent 40
of such proceeds: 41

~~(a)(1) Taxes and assessments the lien for which attaches 42
before the confirmation of sale but that are not yet determined, 43
assessed, and levied for the year in which confirmation occurs, 44
apportioned pro rata to the part of that year that precedes 45
confirmation, and any penalties and interest on those taxes and 46
assessments, the amount of which shall be based on the date of the 47
sale;~~ 48

~~(b)(2) All other taxes, assessments, penalties, and interest 49~~

the lien for which attached for a prior tax year but that have not
been paid on or before the date of confirmation.

~~(2) Upon the request of the officer who conducted the sale,
the county treasurer shall estimate the amount in division
(B)(1)(a) of this section. If the county treasurer's estimate
exceeds that amount, the officer who conducted the sale shall
refund to the purchaser the difference between the estimate and
the actual amount. If the actual amount exceeds the county
treasurer's estimate, the officer shall certify the amount of the
excess to the treasurer, who shall enter that amount on the real
and public utility property tax duplicate opposite the property;
the amount of the excess shall be payable at the next succeeding
date prescribed for payment of taxes in section 323.12 of the
Revised Code.~~

Sec. 2303.20. Under the circumstances described in sections
2969.21 to 2969.27 of the Revised Code, the clerk of the court of
common pleas shall charge the fees and perform the other duties
specified in those sections. In all other cases, the clerk shall
charge the following fees and no more:

(A) Twenty-five dollars for each cause of action which shall
include the following:

- (1) Docketing in all dockets;
- (2) Filing necessary documents, noting the filing of the
documents, except subpoena, on the dockets;
- (3) Issuing certificate of deposit in foreign writs;
- (4) Indexing pending suits and living judgments;
- (5) Noting on appearance docket all papers mailed;
- (6) Certificate for attorney's fee;
- (7) Certificate for stenographer's fee;

(8) Preparing cost bill;	79
(9) Entering on indictment any plea;	80
(10) Entering costs on docket and cash book.	81
(B) Two dollars for taking each undertaking, bond, or recognizance;	82 83
(C) Two dollars for issuing each writ, order, or notice, except subpoena;	84 85
(D) Two dollars for each name for issuing subpoena, swearing witness, entering attendance, and certifying fees;	86 87
(E) Twenty-five dollars for calling a jury in each cause;	88
(F) Two dollars for each page, for entering on journal, indexing, and posting on any docket;	89 90
(G) Three dollars for each execution or transcript of judgment, including indexing;	91 92
(H) One dollar for each page, for making complete record, including indexing;	93 94
(I) Five dollars for certifying a plat recorded in the county recorder's office;	95 96
(J) Five dollars for issuing certificate to receiver or order of reference with oath;	97 98
(K) Five dollars for entering satisfaction or partial satisfaction of each lien on record in the county recorder's office, and the clerk of courts' office;	99 100 101
(L) One dollar for each certificate of fact under seal of the court, to be paid by the party demanding it;	102 103
(M) One dollar for taking each affidavit, including certificate and seal;	104 105
(N) Two dollars for acknowledging all instruments in writing;	106

(O) Five dollars for making certificate of judgment;	107
(P) Ten dollars for filing, docketing, and endorsing a certificate of judgment, including the indexing and noting the return of the certificate;	108 109 110
(Q) Twenty-five dollars for each cause of action for each judgment by confession, including all docketing, indexing, and entries on the journal;	111 112 113
(R) Five dollars for recording commission of mayor or notary public;	114 115
(S) One dollar for issuing any license except the licenses issued pursuant to sections 1533.101, 1533.11, 1533.13, and 1533.32 of the Revised Code;	116 117 118
(T) Fifteen dollars for docketing and indexing each aid in execution or petition to vacate, revive, or modify judgment, including the filing and noting of all necessary documents;	119 120 121
(U) Twenty-five dollars for docketing and indexing each appeal, including the filing and noting of all necessary documents;	122 123 124
(V) A commission of two per cent on the first ten thousand dollars and one per cent on all exceeding ten thousand dollars for receiving and disbursing money, other than costs and fees, paid to or deposited with the clerk of courts in pursuance of an order of court or on judgments, including moneys invested by order of the court and interest earned on them;	125 126 127 128 129 130
(W) Five dollars for numbering, docketing, indexing, and filing each authenticated or certified copy of the record, or any portion of an authenticated or certified copy of the record, of an extra county action or proceeding;	131 132 133 134
(X) Two dollars for each certificate of divorce, annulment, or dissolution of marriage to the bureau of vital statistics;	135 136

(Y) Two dollars for each electronic transmission of a document, plus one dollar for each page of that document. These fees are to be paid by the party requesting the electronic transmission.

(Z) One dollar for each page, for copies of pleadings, process, record, or files, including certificate and seal;

(AA) An additional fee of twenty dollars for each filing for a residential mortgage foreclosure action.

Sec. 2308.01. As used in this chapter:

(A) "Residential mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon a residential property.

(B) "Residential property" means real property located within this state 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, and a manufactured or mobile home that is subject to real property taxes under section 4503.06 of the Revised Code.

Sec. 2308.02. No person shall file a complaint to initiate a residential mortgage foreclosure action unless that complaint is accompanied by the preliminary judicial report that section 2329.191 of the Revised Code requires.

Sec. 2308.03. (A) If the owner in a residential mortgage foreclosure action does not answer or otherwise respond to the clerk's summons and complaint in accordance with the Rules of Civil Procedure, within ten days after the last due date for any defendant who was served with a summons and complaint, the clerk

shall notify the plaintiff of that failure to respond and inform 166
the plaintiff that if the property is not occupied, the plaintiff 167
shall either file a motion for default judgment with the court or 168
submit a statement showing cause sufficient to the court why the 169
plaintiff is not filing such a motion. The plaintiff shall file 170
such a motion or statement within sixty days after the date of the 171
clerk's notice. 172

(B) If a plaintiff fails to comply with division (A) of this 173
section, the court shall dismiss the residential mortgage 174
foreclosure action without prejudice. 175

(C) Nothing in this section shall be construed to affect any 176
right of the plaintiff to file a motion for a default judgment on 177
an occupied property. 178

Sec. 2308.04. (A) Notwithstanding any other provision of the 179
Revised Code, a plaintiff may request, at the time the plaintiff 180
files a motion for a default judgment pursuant to section 2308.03 181
of the Revised Code, the court deem that the title of the property 182
transferred directly and immediately to the plaintiff in lieu of 183
sale and in lieu of a right to a deficiency judgment. A plaintiff 184
may make such a request, and a court may grant such a request, 185
only if all of the following apply: 186

(1) In the plaintiff's prayer and complaint to initiate the 187
residential mortgage foreclosure action, the plaintiff 188
specifically reserved the right to request the additional relief 189
of a transfer in lieu of sale and in lieu of a right to a 190
deficiency judgment in the event that the plaintiff filed a motion 191
for a default judgment in the course of the foreclosure action. 192

(2) All liens attached to the property, other than liens for 193
real property taxes, are those of the plaintiff. 194

(3) The owner did not answer or otherwise respond to the 195

clerk's summons and complaint in accordance with the Rules of 196
Civil Procedure. 197

(B)(1) Upon receiving a motion for a default judgment 198
accompanied by a request for the additional relief of a transfer 199
in lieu of sale and in lieu of a right to a deficiency judgment 200
that meets the requirements of division (A) of this section, a 201
court immediately shall provide written notice to the owner of 202
that motion and request for additional relief. In that notice, the 203
court shall order the owner to show cause why the court should not 204
enter a default judgment and transfer the property directly and 205
immediately to the plaintiff in lieu of sale and in lieu of a 206
right to a deficiency judgment. An owner shall show cause within 207
thirty days of the court's order or shall be deemed to not oppose 208
the default judgment and transfer of the property to the 209
plaintiff. 210

(2) When a court grants a request for a transfer in lieu of 211
sale and in lieu of a right to a deficiency judgment pursuant to 212
this section, the plaintiff shall provide the information section 213
2329.271 of the Revised Code requires as if the plaintiff were the 214
successful purchaser at sale, and the officer who would have made 215
the sale shall prepare the deed as section 2329.31 of the Revised 216
Code requires. The court shall confirm the transfer in lieu of 217
sale and in lieu of a right to a deficiency judgment in the same 218
manner as the court confirms sales under section 2329.31 of the 219
Revised Code. Such transfer shall be deemed a release of the 220
owner's liability on the underlying debt to the plaintiff, and the 221
value of the property shall be deemed to equal the amount of the 222
underlying debt. 223

Sec. 2308.05. (A)(1) The plaintiff and any other lienholder, 224
within sixty days after receiving the clerk's notice of the filing 225
of the judgment of foreclosure under division (G) of section 226

2329.02 of the Revised Code, shall file for a writ of execution of 227
a judgment in a residential mortgage foreclosure action or show 228
cause for not filing. A lienholder other than the primary 229
lienholder shall file for a contingent writ of execution or show 230
cause why a contingent writ is not being sought within that same 231
sixty-day period. The court shall issue an order accordingly to 232
the owner, the plaintiff, and any other lienholder who appeared in 233
the action stating that, during that same sixty-day period, the 234
owner, the plaintiff, and any other lienholder may show cause why 235
that property should not be deemed abandoned and transferred 236
pursuant to section 2308.06 of the Revised Code. A party may 237
assert any reason that the property should not be deemed 238
abandoned, including those listed under Rule 60 of the Rules of 239
Civil Procedure. 240

(2) A plaintiff or other lienholder who fails to file for a 241
writ of execution as this section requires and who does not show 242
cause for that failure or why the property should not be deemed 243
abandoned and transferred, and an owner who fails to show cause 244
for why that property should not be deemed abandoned and 245
transferred, shall be deemed to have abandoned all interest in the 246
property and to any right of redemption. Any party who is deemed 247
to have abandoned the property is barred from seeking another 248
judgment on that property or making any claim against the 249
property, and shall not receive any proceeds from a sale of the 250
property. 251

(3) The court shall vacate any order of abandonment if the 252
plaintiff or other lienholder files a motion under Rule 60 of the 253
Rules of Civil Procedure, establishing that its failure was due to 254
mistake or inadvertence, or other good cause shown. 255

(4) If the plaintiff, all other lienholders, and the owner 256
are deemed to have abandoned the property, the property shall be 257
transferred pursuant to section 2308.06 of the Revised Code sixty 258

days after the court enters the order of abandonment, unless a 259
motion to vacate the order has been filed prior to that date. If 260
the motion is denied, the property shall be transferred in 261
accordance with this division. 262

(5) When a property is deemed abandoned pursuant to this 263
section, the rights of the plaintiff and other lienholders to seek 264
to collect the debts through other means or against assets other 265
than the real property which is the subject of the foreclosure 266
action remain unaffected. Any right to collect any such debt or 267
deficiency thereon remains unenforceable after the expiration of 268
two years after the date of transfer of the property. 269

(B) Upon receiving a filing for a writ of execution from the 270
plaintiff, the clerk shall issue the writ of execution pursuant to 271
section 2329.091 of the Revised Code. 272

(C) At its discretion, the court may extend the time period 273
this section establishes for filing for a writ of execution or 274
issuing that writ if the plaintiff and the owner in the action so 275
request, for any reason that the court considers appropriate. 276

(D) Notwithstanding sections 2329.09 and 2329.091 of the 277
Revised Code, a court may for good cause stay the issuance or 278
enforcement of a writ of execution if the owner and the plaintiff, 279
along with all other lienholders, enter into a forbearance or loan 280
modification agreement that allows the owner to make payments over 281
a specified period of time and that agreement is filed with the 282
court. The stay shall be effective so long as all of the parties 283
to the agreement comply with the terms of the agreement. 284

(E) No plaintiff or other lienholder may withdraw or dismiss 285
a petition for a writ of execution or an order of sale unless the 286
plaintiff or the owner requests such a dismissal and shows good 287
cause for that dismissal. 288

Sec. 2308.06. (A) Notwithstanding any other provision of the 289
Revised Code, a property upon which a residential mortgage 290
foreclosure action has been filed shall be deemed abandoned and is 291
subject to transfer under this section if either of the following 292
occur: 293

(1) The plaintiff, all other lienholders, and the owner are 294
deemed to have abandoned rights to the property under section 295
2308.05 of the Revised Code and no party showed cause sufficient 296
to the court as to why the property should not be deemed 297
abandoned. 298

(2) The officer making the sale has advertised the sale three 299
times and held three auctions on the property as described in 300
division (B) of section 2329.52 of the Revised Code, and at those 301
auctions no person placed a bid. 302

(B) The title of a property deemed abandoned pursuant to this 303
section vests without further action in the board of county 304
commissioners in the county where the property is located. The 305
clerk shall issue a notice of that vesting to the board of county 306
commissioners. The county prosecuting attorney shall prepare a 307
deed that contains the names of the parties to the judgment and 308
the owners of the foreclosed property, a reference to the volume 309
and page of the recording of the recorded instrument by or through 310
which the board of county commissioners claims title, the date and 311
the amount of the judgment, and the date on which the owner and 312
each lienholder is deemed to have abandoned the property. The 313
board of county commissioners shall record the deed within 314
fourteen business days after the latest date on which an owner and 315
any lienholder is deemed to have abandoned the property. 316

(C) The board of county commissioners may dispose of property 317
acquired under this section pursuant to rules it adopts. The rules 318
shall specify that the board shall place the property in the 319

county's land bank if the county has a land bank. If the county 320
does not have a land bank, the board shall dispose of the property 321
at its discretion. 322

(D) No board of county commissioners shall be liable for 323
damages arising from a breach, or subject to equitable remedies 324
for a breach of common law duty, or for violation of sections 325
3737.87 to 3737.891 of the Revised Code or Chapter 3704., 3734., 326
3745., 3746., 3750., 3751., 3752., 6101., or 6111. of the Revised 327
Code or any rule adopted or order, permit, license, variance, or 328
plan approval issued under any of those chapters that is or was 329
committed by another person in connection with a property the 330
board of county commissioners acquires pursuant to this section. 331

Sec. 2308.07. (A) No plaintiff or other lienholder in a 332
residential mortgage foreclosure action may file a motion to 333
dismiss or vacate the judgment, the writ of execution, the order 334
of sale, the sale, or the confirmation of the sale, and no court 335
shall accept such a motion unless for good cause shown. 336

(B) In any residential mortgage foreclosure action in which a 337
plaintiff and an owner enter into a workout agreement or loan 338
modification, the court shall stay the foreclosure action at any 339
time prior to the sale upon the filing of a motion and affidavit 340
indicating that the plaintiff and owner have entered into a 341
workout agreement or loan modification. If at any time the 342
plaintiff notifies the court that the owner did not make payments 343
as agreed, the court shall notify the owner that it will resume 344
the foreclosure action. 345

Sec. 2308.08. (A) A lender who holds a mortgage on a 346
residential property may document a good faith belief that the 347
owner has abandoned the property. Documentation may include, but 348
is not limited to, a record of any of the following: 349

(1) Contacting or attempting to contact the owner by telephone at any number available to the lender, including landline and any means of wireless communication, to determine whether the owner has abandoned the property; 350
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(2) Contacting or attempting to contact the owner by regular or electronic mail to determine whether the owner has abandoned the property; 354
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(3) Photographing the property from its exterior to demonstrate signs of neglect or abandonment. 357
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(B) Unless otherwise prohibited by the mortgage contract or a specific provision of law, a lender who has documented a good faith belief that a property on which the lender holds a mortgage is abandoned may enter that property to secure and protect it from damage any time after the lender has filed a residential mortgage foreclosure action on that property. 359
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(C) A lender who has not filed a residential mortgage foreclosure action on a property for which the lender holds a mortgage may enter and secure that property only if the mortgage contract or other documents provide for such an entry. 365
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(D) During the five-year period following the effective date of this section, a plaintiff in a residential mortgage foreclosure action who has a good faith belief that the property is abandoned may provide the court with documentation of a good faith belief that the owner has abandoned the property and request the court to deny the owner the equitable and statutory rights to redemption of the mortgage on that property. 369
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Sec. 2308.09. 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 foreclosure action relating to that 376
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property is guilty of vandalism in violation of section 2909.05 of 380
the Revised Code. 381

Sec. 2323.07. (A)(1) When a mortgage is foreclosed or a 382
specific lien enforced, a sale of the property, or a transfer of 383
property pursuant to sections 323.28, 323.65 to 323.78, and 384
5721.19 of the Revised Code, shall be ordered by the court having 385
jurisdiction or the county board of revision with jurisdiction 386
pursuant to section 323.66 of the Revised Code. 387

(2) No specific lien may be enforced or suit brought on a 388
note on a residential property unless that action initially is 389
brought in a judicial foreclosure proceeding. 390

(B) When the real property to be sold is in one or more 391
tracts, the court may order the officer who makes the sale to 392
subdivide, appraise, and sell them in parcels, or sell any one of 393
the tracts as a whole. 394

(C) When the mortgaged property is situated in more than one 395
county, the court may order the sheriff or master of each county 396
to make sale of the property in the sheriff's or master's county, 397
or may direct one officer to sell the whole. When it consists of a 398
single tract, the court may direct that it be sold as one tract or 399
in separate parcels, and shall direct whether appraisers shall be 400
selected for each county or one set for all; and whether 401
publication of the sale shall be made in all the counties, or in 402
one county only. 403

Sec. 2329.01. (A) Lands and tenements, including vested legal 404
interests therein, permanent leasehold estates renewable forever, 405
and goods and chattels, not exempt by law, shall be subject to the 406
payment of debts, and liable to be taken on execution and sold as 407
provided in sections 2329.02 to 2329.61, inclusive, of the Revised 408
Code. 409

(B) As used in sections 2329.02 to 2329.61 of the Revised Code, "residential mortgage" and "residential property" have the same meanings as in section 2308.01 of the Revised Code.

Sec. 2329.02. (A) Any judgment or decree rendered by any court of general jurisdiction, including district courts of the United States, within this state shall be a lien upon lands and tenements of each judgment debtor within any county of this state from the time there is filed in the office of the clerk of the court of common pleas of such county a certificate of such judgment, setting forth the court in which the same was rendered, the title and number of the action, the names of the judgment creditors and judgment debtors, the amount of the judgment and costs, the rate of interest, if the judgment provides for interest, and the date from which such interest accrues, the date of rendition of the judgment, and the volume and page of the journal entry thereof.

(B) No such judgment or decree shall be a lien upon any lands, whether or not situated within the county in which such judgment is rendered, registered under sections 5309.02 to 5309.98, inclusive, and 5310.01 to 5310.21, inclusive, of the Revised Code, until a certificate under the hand and official seal of the clerk of the court in which the same is entered or of record, stating the date and purport of the judgment, giving the number of the case, the full names of the parties, plaintiff and defendant, and the volume and page of the journal or record in which it is entered, or a certified copy of such judgment, stating such facts, is filed and noted in the office of the county recorder of the county in which the land is situated, and a memorial of the same is entered upon the register of the last certificate of title to the land to be affected.

Such certificate shall be made by the clerk of the court in

which the judgment was rendered, under the seal of said court, 441
upon the order of any person in whose favor such judgment was 442
rendered or upon the order of any person claiming under ~~him~~ a 443
person in whose favor such judgment was rendered, and shall be 444
delivered to the party so ordering the same; and the fee therefor 445
shall be taxed in the costs of the action. 446

(C) When any such certificate is delivered to the clerk of 447
the court of common pleas of any county in this state, the same 448
shall be filed by such clerk, and ~~he~~ the clerk shall docket and 449
index it under the names of the judgment creditors and the 450
judgment debtors in a judgment docket, which shall show as to each 451
judgment all of the matters set forth in such certificate as 452
required by this section. The fee for such filing, docketing, and 453
indexing shall be taxed as increased costs of such judgment upon 454
such judgment docket and shall be included in the lien of the 455
judgment. 456

(D) When the clerk of any court, other than that rendering 457
the judgment, in whose office any such certificate is filed, has 458
docketed and indexed the same, ~~he~~ the clerk shall indorse upon 459
such certificate the fact of such filing with the date thereof and 460
the volume and page of the docket entry of such certificate and 461
shall return the same so indorsed to the clerk of the court in 462
which the judgment was rendered, who shall note upon the original 463
docket the fact of the filing of said certificate, showing the 464
county in which the same was filed and the date of such filing. 465
When such certificate is filed, docketed, and indexed in the 466
office of the clerk of the court which rendered the judgment, such 467
clerk shall likewise indorse the certificate and make like 468
notation upon the original docket. 469

Each such judgment shall be deemed to have been rendered in 470
the county in which is kept the journal of the court rendering the 471
same, in which journal such judgment is entered. 472

(E) Certificates or certified copies of judgments or decrees 473
of any courts of general jurisdiction, including district courts 474
of the United States, within this state, may be filed, registered, 475
noted, and memorials thereof entered, in the office of the 476
recorder of any county in which is situated land registered under 477
sections 5309.02 to 5309.98, inclusive, and 5310.01 to 5310.21, 478
inclusive, of the Revised Code, for the purpose of making such 479
judgments liens upon such registered land. 480

(F) Notwithstanding any other provision of the Revised Code, 481
any judgment issued in a court of record may be transferred to any 482
other court of record. Any proceedings for collection may be had 483
on such judgment the same as if it had been issued by the 484
transferee court. 485

(G) When a clerk files a judgment of foreclosure in a 486
residential mortgage foreclosure action, the clerk shall provide 487
notice of that filing to the judgment debtor, the judgment 488
creditor, and any lienholder who has appeared in the action. The 489
notice shall include information with respect to the requirements 490
of section 2308.05 of the Revised Code and the consequences of a 491
failure to comply with that section. 492

Sec. 2329.09. (A) The writ of execution against the property 493
of a judgment debtor issuing from a court of record shall command 494
the officer to whom it is directed to levy on the goods and 495
chattels of the debtor. If no goods or chattels can be found, the 496
officer shall levy on the lands and tenements of the debtor. If 497
the court rendering the judgment or decree so orders, real estate 498
may be sold under execution as follows: one third cash on the day 499
of sale, one third in one year, one third in two years thereafter, 500
with interest on deferred payments, to be secured by mortgage on 501
the premises so sold. An execution on a judgment rendered against 502
a partnership firm by its firm name shall operate only on the 503

partnership property. The exact amount of the debt, damages, and 504
costs, for which the judgment is entered, shall be indorsed on the 505
execution. 506

(B) On any order of sale that the clerk delivers to the 507
officer making the sale in a residential mortgage foreclosure 508
action, the clerk shall include a notation that sets forth all of 509
the clerk's costs with respect to that foreclosure action and 510
sale. The clerk shall deliver a copy of the order of sale to the 511
attorney for the lienholder who filed for the writ of execution. 512

(C) Within fourteen days after receiving an order of sale 513
from the clerk, the officer making that sale shall set the date of 514
the sale. 515

Sec. 2329.191. (A) As used in this section, "title insurance 516
company" has the same meaning as in section 3953.01 of the Revised 517
Code. 518

(B) In every action demanding the judicial sale of 519
residential real estate consisting of one to four single-family 520
units, the party seeking that judicial sale shall file with the 521
clerk of the court of common pleas ~~within fourteen days after~~ 522
~~filing the pleadings requesting relief, together with the~~ 523
complaint a preliminary judicial report on a form that is approved 524
by the department of insurance that is prepared and issued by a 525
duly licensed title insurance agent on behalf of a licensed title 526
insurance company or by a title insurance company that is 527
authorized by the department of insurance to transact business in 528
this state. The preliminary judicial report shall be effective 529
within thirty days prior to the filing of the complaint or other 530
pleading requesting a judicial sale and shall include at least all 531
of the following: 532

(1) A legal description of each parcel of real estate to be 533
sold at the judicial sale; 534

(2) The street address of the real estate or, if there is no street address, the name of the street or road upon which the real estate fronts together with the names of the streets or roads immediately to the north and south or east and west of the real estate;

(3) The county treasurer's permanent parcel number or other tax identification number of the real estate;

(4) The name of the owners of record of the real estate to be sold;

(5) A reference to the volume and page or instrument number of the recording by which the owners acquired title to the real estate;

(6) A description of the record title to the real estate; however, easements, restrictions, setback lines, declarations, conditions, covenants, reservations, and rights-of-way that were filed for record prior to the lien being foreclosed are not required to be included;

(7) The name and address of each lienholder and the name and address of each lienholder's attorney, if any, as shown on the recorded lien of the lienholder.

Prior to submitting any order or judgment entry to a court that would order the sale of the residential real estate, the party submitting the order or judgment entry shall file with the clerk of the court of common pleas a final judicial report that updates the state of the record title to that real estate from the effective date of the preliminary judicial report through the date of lis pendens and includes a copy of the court's docket for the case. The cost of the title examination necessary for the preparation of both the preliminary judicial report and the final judicial report together with the premiums for those reports computed as required by the department of insurance, based on the

fair market value of the real estate, or in the case of a 566
foreclosure, the principal balance of the mortgage or other lien 567
being foreclosed on or any other additional amount as may be 568
ordered by the court shall be taxed as costs in the case. 569

(C) In every action demanding the judicial sale of 570
residential real estate consisting of more than four single-family 571
units or of commercial real estate, the party seeking that 572
judicial sale shall file with the clerk of the court of common 573
pleas ~~within fourteen days after filing the pleadings requesting~~ 574
~~relief~~ together with the complaint either a preliminary judicial 575
report or a commitment for an owner's fee policy of title 576
insurance on the form approved by the department of insurance that 577
is prepared and issued by a duly licensed title insurance agent on 578
behalf of a licensed title insurance company. Division (B) of this 579
section applies if the party seeking the judicial sale files a 580
preliminary judicial report. If the party seeking the judicial 581
sale files a commitment for an owner's fee policy of title 582
insurance, the commitment shall have an effective date within 583
fourteen days prior to the filing of the complaint or other 584
pleading requesting a judicial sale and shall contain at least all 585
of the information required in divisions (B)(1) to (7) of this 586
section. The commitment shall cover each parcel of real estate to 587
be sold, shall include the amount of the successful bid at the 588
judicial sale, shall show the purchaser at the judicial sale as 589
the proposed insured, and shall not expire until thirty days after 590
the recordation of the deed by the officer who makes the sale to 591
that purchaser. After the officer's return of the order of sale 592
and prior to the confirmation of the sale, the party requesting 593
the order of sale shall cause an invoice for the cost of the title 594
insurance policy, commitment cost related expenses, and 595
cancellation fees, if any, to be filed with the clerk of the court 596
of common pleas. The amount of the invoice shall be taxed as costs 597
in the case. The purchaser at the judicial sale may, by paying the 598

premium for the title insurance policy, obtain the issuance of 599
title insurance in accordance with the commitment. 600

Sec. 2329.20. ~~No~~ Except as otherwise provided in this section 601
or sections 2329.51 and 2329.52 of the Revised Code, no tract of 602
land shall be sold for less than two thirds of the value returned 603
in the inquest required by section 2329.17 of the Revised Code~~+~~ 604
~~except that in.~~ In all cases where in which a junior mortgage or 605
other junior lien is sought to be enforced against real estate by 606
an order, judgment, or decree of court, subject to a prior lien 607
thereon, and such prior lien, and the claims or obligations 608
secured thereby, are unaffected by such order, judgment, or 609
decree, the court making such order, judgment, or decree, may 610
determine the minimum amount for which such real estate may be 611
sold, such minimum amount to be not less than two thirds of the 612
difference between the value of the real estate appraised as 613
provided in such section, and the amount remaining unpaid on the 614
claims or obligations secured by such prior lien. The price at 615
which a foreclosed residential property sells at a sheriff's 616
auction shall not be used as a basis for establishing the market 617
value of any other property. 618

Sec. 2329.26. (A) Lands and tenements taken in execution 619
shall not be sold until all of the following occur: 620

(1)(a) Except as otherwise provided in division (A)(1)(b) of 621
this section, the judgment creditor who seeks the sale of the 622
lands and tenements or the judgment creditor's attorney does both 623
of the following: 624

(i) Causes a written notice of the date, time, and place of 625
the sale to be served in accordance with divisions (A) and (B) of 626
Civil Rule 5 upon the judgment debtor and upon each other party to 627
the action in which the judgment giving rise to the execution was 628

rendered; 629

(ii) At least seven calendar days prior to the date of the 630
sale, files with the clerk of the court that rendered the judgment 631
giving rise to the execution a copy of the written notice 632
described in division (A)(1)(a)(i) of this section with proof of 633
service endorsed on the copy in the form described in division (D) 634
of Civil Rule 5. 635

(b) Service of the written notice described in division 636
(A)(1)(a)(i) of this section is not required to be made upon any 637
party who is in default for failure to appear in the action in 638
which the judgment giving rise to the execution was rendered. 639

(2) The officer taking the lands and tenements gives public 640
notice of the date, time, and place of the sale. Notice for the 641
first attempt to sell the lands and tenements shall be given for 642
at least three weeks before the day of sale by advertisement in a 643
newspaper published in and of general circulation in the county. 644
The court ordering the sale may designate in the order of sale the 645
newspaper in which this public notice shall be published, and this 646
public notice is subject to division (A) of section 2329.27 of the 647
Revised Code. Notices of subsequent sales of the lands and 648
tenements may be made electronically on a web site the officer 649
maintains. The officer shall set the date for any subsequent sale 650
to be not later than thirty days following the immediate prior 651
attempt to sell. 652

(3) The officer taking the lands and tenements ~~shall collect~~ 653
collects the purchaser's information required by section 2329.271 654
of the Revised Code. 655

(B) The officer making the sale may accept a written bid from 656
a lienholder at any time prior to that sale. The public notice of 657
the sale may include notice of this opportunity to make a written 658
bid prior to the sale. The officer may, at the officer's 659

discretion, open the bidding at the amount of any written bid. 660

(C) If the purchaser at a sale is a lienholder, the officer 661
making the sale shall not charge the purchaser any deposit or 662
other fees prior to the time at which the purchase price is due 663
pursuant to division (B) of section 2329.31 of the Revised Code. 664

(D) If the purchaser at sale plans to assign the right to 665
purchase that property to another party, and that party will pay 666
the balance of the purchase price to the officer making the sale, 667
the assignment of the purchaser's bid may be made at any time 668
prior to the preparation of the deed, and notice of that 669
assignment may be filed with the officer at any time prior to the 670
preparation of the deed. 671

(E) A sale of lands and tenements taken in execution may be 672
set aside in accordance with division (B) of section 2329.27 of 673
the Revised Code. 674

Sec. 2329.31. (A) Upon (1) Except as otherwise provided in 675
division (A)(2) of this section, upon the return of any writ of 676
execution for the satisfaction of which lands and tenements have 677
been sold, on careful examination of the proceedings of the 678
officer making the sale, if the court of common pleas finds that 679
the sale was made, in all respects, in conformity with sections 680
2329.01 to 2329.61 of the Revised Code, it shall, within thirty 681
days of the return of the writ, direct the clerk of the court of 682
common pleas to make an entry on the journal that the court is 683
satisfied of the legality of such sale and that the attorney who 684
filed the writ of execution make to the purchaser a deed for the 685
lands and tenements. ~~Nothing~~ 686

(2) In any sale pursuant to a residential mortgage 687
foreclosure action, if the clerk of court receives no written 688
objection to that sale within seven days after the return to the 689
clerk of the writ of execution, on careful examination of the 690

proceedings of the officer making the sale, the court shall deem 691
that the sale is final and shall confirm that sale. The clerk 692
shall make an entry on the journal that the sale is deemed legal. 693

(3) Nothing in this section prevents the court of common 694
pleas from staying the confirmation of the sale to permit a 695
property owner time to redeem the property or for any other reason 696
that it determines is appropriate. In those instances, the sale 697
shall be confirmed within thirty days after the termination of any 698
stay of confirmation. 699

(B) The officer making the sale shall require the purchaser, 700
including a lienholder, to pay within thirty days ~~of~~ after the 701
confirmation of the sale the ~~balance amount~~ due on the purchase 702
price of the lands and tenements unless the court grants the 703
purchaser an extension for good cause. 704

Sec. 2329.33. In sales of real estate on execution or order 705
of sale, at any time before the confirmation thereof or, if a 706
residential foreclosure action, not later than sixty days 707
following the clerk's notice of the filing of the judgment, the 708
debtor may redeem it from sale by depositing in the hands of the 709
clerk of the court of common pleas to which such execution or 710
order is returnable, the amount of the judgment or decree upon 711
which such lands were sold, with all costs, including poundage, 712
and interest at the rate of eight per cent per annum on the 713
purchase money from the day of sale to the time of such deposit, 714
except where the judgment creditor is the purchaser, the interest 715
at such rate on the excess above ~~his~~ the judgment creditor's 716
claim. The court of common pleas thereupon shall make an order 717
setting aside such sale, and apply the deposit to the payment of 718
such judgment or decree and costs, and award such interest to the 719
purchaser, who shall receive from the officer making the sale the 720
purchase money paid by ~~him~~ the purchaser, and the interest from 721

the clerk. This section does not take away the power of the court 722
to set aside such sale for any reason for which it might have been 723
set aside prior to April 16, 1888. 724

Sec. 2329.36. (A) The attorney who files the writ of 725
execution shall, not later than seven days after the ~~filing of~~ 726
clerk files the order of confirmation of sale pursuant to section 727
2329.31 of the Revised Code, make to the purchaser a deed, 728
containing the names of the parties to the judgment, the names of 729
the owners of the property sold, a reference to the volume and 730
page of the recording of the next preceding recorded instrument by 731
or through which the owners claim title, the date and amount of 732
the judgment, the substance of the execution or order on which the 733
property was sold, the substance of the officer's return thereon, 734
and the order of confirmation and deliver the deed to the officer 735
who sold the real property. The deed shall be executed, 736
acknowledged, and recorded as other deeds. The officer or the 737
officer's legal representative may review and approve or reject 738
the deed for form and substance. 739

(B) By placing a bid at a sale conducted pursuant to this 740
chapter, the purchaser appoints the officer who makes the sale as 741
agent of the purchaser for the sole purpose of accepting delivery 742
of the deed described in division (A) of this section. 743

(C)(1) The officer who sells the real property, or the 744
officer's designee, shall record the deed, or for registered land 745
file the documents required by section 5309.64 of the Revised 746
Code, with the county recorder within fourteen ~~business~~ days ~~of~~ 747
after the later of the date the purchaser pays the balance due on 748
the purchase price of the lands and tenements or the date the 749
court confirms the sale. The officer shall charge the purchaser a 750
fee to cover the actual costs of preparing and recording the deed 751
or filing the documents. 752

(2) Notwithstanding division (C)(1) of this section, a purchaser may deliver any remaining balance of the purchase price to the officer making the sale, together with an affidavit stating the purchaser will submit the deed for recording within seven days after receipt of the deed. Upon receiving the remaining balance and affidavit, the officer making the sale shall release the unrecorded deed to the purchaser who shall submit that deed for recording within the seven-day period and deliver evidence of the same to the sheriff or face penalties for contempt of court. If the purchaser fails to deliver evidence to the sheriff that the deed has been submitted for recording with the seven-day period, the sheriff shall notify the court and the court shall schedule proceedings against the purchaser for contempt of court.

Sec. 2329.52. When (A) Except as otherwise provided in division (B) of this section, when premises are ordered to be sold, if said premises, or a part thereof, remain unsold for want of bidders after having been once appraised, advertised, and offered for sale, the court from which the order of sale issued may, on motion of the plaintiff or defendant and from time to time until said premises are disposed of, order a new appraisal and sale or direct the amount for which said premises, or a part thereof, may be sold.

The court may order that the premises be sold as follows: One third cash in hand, one third in nine months from the day of sale, and the remaining one third in eighteen months from the day of sale, the deferred payments to draw interest at six per cent and be secured by a mortgage on the premises.

(B) When a residential property is ordered to be sold pursuant to a residential mortgage foreclosure action, if the property remains unsold after the first auction with a minimum bid of two-thirds of the appraised value as established pursuant to

section 2329.17 of the Revised Code, a second auction shall be 784
held with minimum bid set at two-thirds of the minimum bid 785
established for the first sale. If the property remains unsold 786
after the second auction, a third auction shall be held with a 787
minimum bid in an amount the court establishes at its discretion. 788
A property that remains unsold after three auctions shall be 789
deemed abandoned pursuant to section 2308.06 of the Revised Code 790
and is subject to transfer as provided in that section. 791

Sec. 2909.05. (A) No person shall knowingly cause serious 792
physical harm to an occupied structure or any of its contents. 793

(B)(1) No person shall knowingly cause physical harm to 794
property that is owned or possessed by another, when either of the 795
following applies: 796

(a) The property is used by its owner or possessor in the 797
owner's or possessor's profession, business, trade, or occupation, 798
and the value of the property or the amount of physical harm 799
involved is five hundred dollars or more; 800

(b) Regardless of the value of the property or the amount of 801
damage done, the property or its equivalent is necessary in order 802
for its owner or possessor to engage in the owner's or possessor's 803
profession, business, trade, or occupation. 804

(2) No person shall knowingly cause serious physical harm to 805
property that is owned, leased, or controlled by a governmental 806
entity. A governmental entity includes, but is not limited to, the 807
state or a political subdivision of the state, a school district, 808
the board of trustees of a public library or public university, or 809
any other body corporate and politic responsible for governmental 810
activities only in geographical areas smaller than that of the 811
state. 812

(C) No person, without privilege to do so, shall knowingly 813

cause serious physical harm to any tomb, monument, gravestone, or 814
other similar structure that is used as a memorial for the dead; 815
to any fence, railing, curb, or other property that is used to 816
protect, enclose, or ornament any cemetery; or to a cemetery. 817

(D) No person, without privilege to do so, shall knowingly 818
cause physical harm to a place of burial by breaking and entering 819
into a tomb, crypt, casket, or other structure that is used as a 820
memorial for the dead or as an enclosure for the dead. 821

(E) No person who is an owner of a residential property shall 822
knowingly cause physical harm to that property after the person 823
has been personally served with a summons and complaint in a 824
residential mortgage foreclosure action relating to that property. 825

(F) Whoever violates this section is guilty of vandalism. 826
Except as otherwise provided in this division, vandalism is a 827
felony of the fifth degree that is punishable by a fine of up to 828
two thousand five hundred dollars in addition to the penalties 829
specified for a felony of the fifth degree in sections 2929.11 to 830
2929.18 of the Revised Code. If the value of the property or the 831
amount of physical harm involved is five thousand dollars or more 832
but less than one hundred thousand dollars, vandalism is a felony 833
of the fourth degree. If the value of the property or the amount 834
of physical harm involved is one hundred thousand dollars or more, 835
vandalism is a felony of the third degree. 836

~~(F)~~(G) For purposes of this section: 837

(1) "Cemetery" means any place of burial and includes burial 838
sites that contain American Indian burial objects placed with or 839
containing American Indian human remains. 840

(2) "Residential property" has the same meaning as in section 841
2308.01 of the Revised Code. 842

(3) "Serious physical harm" means physical harm to property 843
that results in loss to the value of the property of five hundred 844

dollars or more. 845

Sec. 5723.01. (A)(1) Every tract of land and town lot, which, 846
pursuant to foreclosure proceedings under section 323.25, sections 847
323.65 to 323.79, or section 5721.18 of the Revised Code, has been 848
advertised and offered for sale on two separate occasions, not 849
less than two weeks apart, and not sold for want of bidders, shall 850
be forfeited to the state or to a political subdivision, school 851
district, or county land reutilization corporation pursuant to 852
division (A)(3) of this section. 853

(2) The county prosecuting attorney shall certify to the 854
court that such tract of land or town lot has been twice offered 855
for sale and not sold for want of a bidder. Such forfeiture of 856
lands and town lots shall be effective when the court by entry 857
orders such lands and town lots forfeited to the state or to a 858
political subdivision, school district, or county land 859
reutilization corporation pursuant to division (A)(3) of this 860
section. A copy of such entry shall be certified to the county 861
auditor and, after the date of the certification, all the right, 862
title, claim, and interest of the former owner is transferred to 863
and vested in the state to be disposed of in compliance with this 864
chapter. 865

(3) After having been notified pursuant to division (A)(2) of 866
this section that the tract of land or town lot has been twice 867
offered for sale and not sold for want of bidders, the court shall 868
notify the political subdivision and school district in which the 869
property is located, and any county land reutilization corporation 870
in the county, and offer to forfeit the property to the political 871
subdivision, school district, or corporation, or to an electing 872
subdivision as defined in section 5722.01 of the Revised Code, 873
upon a petition from the political subdivision, school district, 874
or corporation. If no such petition is filed with the court within 875

ten days after notification by the court, the court shall forfeit 876
the property to the state. If a political subdivision, school 877
district, or corporation requests through a petition to receive 878
the property through forfeiture, the forfeiture of land and town 879
lots is effective when, by entry, the court orders such lands and 880
town lots forfeited to the political subdivision, school district, 881
or corporation. The court shall certify a copy of the entry to the 882
county auditor and, after the date of certification, ~~all the~~ 883
~~right, title, claim, and interest of the former owner is~~ 884
~~transferred to and vested in the political subdivision, school~~ 885
~~district, or corporation~~ the county auditor shall promptly 886
transfer to such political subdivision, school district, or 887
corporation, by auditor's deed, the fee simple title to the 888
property free and clear of all taxes, assessments, charges, 889
penalties, interest, and costs. Any subordinate liens shall be 890
deemed fully and forever satisfied and discharged and the property 891
shall be deemed sold by the state for no consideration. The 892
political subdivision, school district, or corporation shall file 893
the deed for recording. 894

(B) Every parcel against which a judgment of foreclosure and 895
forfeiture is made in accordance with section 5721.16 of the 896
Revised Code is forfeited to the state on the date the court 897
enters a finding under that section. After that date, all the 898
right, title, claim, and interest of the former owner is 899
transferred to the state to be disposed of in compliance with the 900
relevant provisions of this chapter. 901

Section 2. That existing sections 323.47, 2303.20, 2323.07, 902
2329.01, 2329.02, 2329.09, 2329.191, 2329.20, 2329.26, 2329.31, 903
2329.33, 2329.36, 2329.52, 2909.05, and 5723.01 of the Revised 904
Code are hereby repealed. 905