

As Reported by the House Judiciary and Ethics Committee

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Sub. H. B. No. 610

Representative Stautberg

Cosponsor: Representative Bubp

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A B I L L

To amend sections 2333.22, 2715.21, 2735.01, 2735.02, 1
and 2735.04 of the Revised Code to add to and 2
clarify the powers of a receiver and to provide a 3
procedure for a receiver's sale of real property. 4

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

Section 1. That sections 2333.22, 2715.21, 2735.01, 2735.02, 5
and 2735.04 of the Revised Code be amended to read as follows: 6

Sec. 2333.22. (A) In proceedings under sections 2333.09 to 7
2333.27, ~~inclusive,~~ of the Revised Code, the judge by order may 8
appoint the sheriff of the proper county, or other suitable 9
person, a receiver of the property of the judgment debtor. ~~Such~~ 10

(B) The judge also who appointed the receiver under division 11
(A) of this section, by order, may forbid a transfer, or other 12
disposition of or interference with, the property of the judgment 13
debtor not exempt by law. 14

(C) Under the control of the judge who appointed a receiver 15
under division (A) of this section and except as ordered by the 16
judge under division (B) of this section, the receiver may do any 17
of the acts specified in section 2735.04 of the Revised Code. 18

Sec. 2715.21. (A) The receiver appointed under section 19
2715.20 of the Revised Code shall take possession of all notes, 20
due bills, books of account, accounts, and other evidences of 21
debt, that have been taken by the levying officer as the property 22
of the defendant in attachment, and proceed to settle and collect 23
them. For that purpose, the receiver may commence and maintain 24
actions in ~~his~~ the receiver's own name, as receiver, but no right 25
of defense ~~therein~~ in the action shall be impaired or affected. 26

(B) Under the control of the court that appointed the 27
receiver under section 2715.20 of the Revised Code, the receiver 28
may do any of the acts specified in section 2735.04 of the Revised 29
Code. 30

Sec. 2735.01. (A) A receiver may be appointed by the supreme 31
court or a judge thereof, the court of appeals or a judge thereof 32
in ~~his~~ the judge's district, the court of common pleas or a judge 33
thereof in ~~his~~ the judge's county, or the probate court, in causes 34
pending in such courts respectively, in the following cases: 35

~~(A)~~(1) In an action by a vendor to vacate a fraudulent 36
purchase of property, or by a creditor to subject property or a 37
fund to ~~his~~ the creditor's claim, or between partners or others 38
jointly owning or interested in any property or fund, on the 39
application of the plaintiff, or of a party whose right to or 40
interest in the property or fund, or the proceeds ~~thereof~~ of the 41
property or fund, is probable, and when it is shown that the 42
property or fund is in danger of being lost, removed, or 43
materially injured; 44

~~(B)~~(2) In an action by a mortgagee, for the foreclosure of 45
~~his~~ the mortgagee's mortgage and sale of the mortgage property, 46
when it appears that the mortgaged property is in danger of being 47
lost, removed, ~~or~~ materially injured, diminished in value, or 48

squandered, or that the condition of the mortgage has not been 49
performed, and the either of the following applies: 50

(a) The property is probably insufficient to discharge the 51
mortgage debt. 52

(b) The mortgagor has consented in writing to the appointment 53
of a receiver. 54

(3) To enforce a contractual assignment of rents and leases; 55

~~(C)~~(4) After judgment, to carry the judgment into effect; 56

~~(D)~~(5) After judgment, to dispose of the property according 57
to the judgment, or to preserve it during the pendency of an 58
appeal, or when an execution has been returned unsatisfied and the 59
judgment debtor refuses to apply the property in satisfaction of 60
the judgment; 61

~~(E)~~(6) When a corporation, limited liability company, 62
partnership, limited partnership, or other entity has been 63
dissolved, or is insolvent, or is in imminent danger of 64
insolvency, or has forfeited its corporate, limited liability 65
company, partnership, limited partnership, or other entity rights; 66

~~(F)~~(7) In all other cases in which receivers have been 67
appointed by the usages of equity. 68

(B) A receiver appointed under division (A)(1), (2), (3), or 69
(5) of this section shall be appointed only with respect to the 70
particular property that is the subject of the action in which the 71
appointment of a receiver is sought. 72

(C) A receiver appointed under division (A)(6) of this 73
section may be appointed as a general receiver to manage the 74
affairs of the corporation, limited liability company, 75
partnership, limited partnership, or other entity with respect to 76
which the appointment of a receiver is sought. 77

(D) A receiver appointed under division (A)(4) or (7) of this 78

section may be appointed as a general receiver or as a receiver 79
with respect to particular property as determined by the court. 80

Sec. 2735.02. No party, attorney, or person interested in an 81
action shall be appointed receiver ~~therein~~ in the action except by 82
consent of all of the parties to the case and all other persons 83
holding a recorded ownership interest in or financial lien on the 84
property that is subject to the proceeding. No person except a 85
resident of this state shall be appointed or act as receiver of a 86
~~railroad or other~~ corporation within, partnership, limited 87
liability company, or other entity created under the laws of this 88
state. In selecting a receiver, priority consideration shall be 89
afforded to any of the qualified persons nominated by the party 90
seeking the receivership. No nomination of qualified persons for 91
the receivership is binding upon the court. 92

Sec. 2735.04. (A) The powers of a receiver shall be set forth 93
in the order of the court that appointed the receiver as those 94
powers may be modified by the court or as otherwise approved by 95
the court upon application of the receiver or a party to the 96
action. 97

(B) Under the control of the court ~~which that~~ appointed him, 98
the receiver as provided in section 2735.01 of the Revised Code, a 99
the receiver may ~~bring~~ do any of the following: 100

(1) Bring and defend actions in ~~his~~ the receiver's own name 101
as receiver, ~~take;~~ 102

(2) Take and keep possession of real or personal property, 103
~~receive;~~ 104

(3) Receive rents, and collect, ~~compound for, and compromise~~ 105
demands, ~~make;~~ 106

(4) Subject to division (C) of this section, enter into 107
contracts, including, but not limited to contracts of sale, lease, 108

<u>or construction and contracts for the completion of construction</u>	109
<u>work;</u>	110
<u>(5) Make transfers, and generally of real or personal</u>	111
<u>property;</u>	112
<u>(6) Execute deeds, leases, or other documents of conveyance</u>	113
<u>of real or personal property;</u>	114
<u>(7) Open and maintain deposit accounts in the receiver's</u>	115
<u>name;</u>	116
<u>(8) Generally do such any other acts respecting the property</u>	117
<u>as that the court authorizes.</u>	118
<u>(C) Any funds that are expended by or on behalf of the</u>	119
<u>receiver, including receivership fees, fees for professionals</u>	120
<u>assisting the receivership, and those expended in entering into or</u>	121
<u>performing contracts under division (B)(4) of this section,</u>	122
<u>including those for the completion of construction work authorized</u>	123
<u>by the court, shall be taxed as court costs or otherwise treated</u>	124
<u>as a priority administrative expense of the proceeding. The court</u>	125
<u>may from time to time require an additional deposit to cover that</u>	126
<u>administrative expense by the party that sought the receivership</u>	127
<u>or by all parties likely to be directly benefited by the</u>	128
<u>construction work.</u>	129
<u>(D)(1) Any sale of real or personal property under division</u>	130
<u>(B)(5) of this section shall be made only after all of the</u>	131
<u>following occur:</u>	132
<u>(a) An application is made by the receiver or the first</u>	133
<u>mortgage holder that requests that the receiver be granted the</u>	134
<u>authority to sell the specific property and sets forth either of</u>	135
<u>the following:</u>	136
<u>(i) If a specific offer for sale that the receiver desires to</u>	137
<u>accept has not been received, the proposed procedures for the</u>	138

conduct of the sale; 139

(ii) If a specific offer for sale that the receiver desires 140
to accept has been received, the identity of the buyer and the 141
proposed terms of the sale. 142

(b) At least ten days' prior notice is given to all of the 143
owners of the property, all parties to the action, and all parties 144
with an interest in the property to be sold as those parties are 145
identified in a preliminary judicial report or a commitment for an 146
owner's fee policy of title insurance previously filed with the 147
court pursuant to section 2329.191 of the Revised Code or, if not 148
previously filed, in a preliminary judicial report or a commitment 149
for an owner's fee policy of title insurance filed with the 150
application of the receiver for authority to sell the property 151
that otherwise complies with the requirements of section 2329.191 152
of the Revised Code, unless the lien or interest of that party is 153
barred by lis pendens pursuant to section 2703.26 of the Revised 154
Code. 155

(c) An opportunity is given for a hearing at which all of the 156
parties to whom the notice is given under division (D)(1)(b) of 157
this section may be heard, provided that if no party objects to 158
the proposed sale or requests a hearing within the ten-day period 159
specified in that division, the court may proceed without a 160
hearing. 161

(d) The court issues an order of sale of the property that 162
sets forth the required procedure for or the terms of the sale. 163
The order of sale is the final appealable order with respect to 164
the matters contained in the order. 165

(2)(a) If requested in the receiver's application for 166
authority to sell the property under division (D)(1)(a) of this 167
section, upon a finding by the court after notice and an 168
opportunity for a hearing as provided in divisions (D)(1)(b) and 169

(c) of this section that it is in the best interest of all of the parties that the property be sold free and clear of liens, the court may order that the property be sold free and clear of all liens other than the lien of the treasurer of the county in which the property is located for real estate taxes and assessments.

(b) In the event of a sale free and clear of liens, upon the recording of the deed by the receiver to the purchaser, those liens shall be canceled as to the property and shall be transferred to the proceeds of the sale in the hands of the receiver with the same priority as those liens previously attached to the property sold.

(3) The sale of property under division (D)(1) of this section is in lieu of a sale pursuant to Chapter 2329. of the Revised Code, and except as provided in that division with respect to the applicability of sections 2329.191 and 2329.37 of the Revised Code, the provisions of Chapter 2329. of the Revised Code do not apply to that sale.

(4) If the contemplated sale of property under division (D)(1) of this section is a private sale to an identified purchaser and upon the terms described in the application for authority to sell the property under division (D)(1)(a) of this section, the court may approve and confirm the sale in the same order.

(5) If the contemplated sale of property is other than as described in division (D)(4) of this section or if the court does not confirm the sale in its order approving the sale, the redemption rights described in division (D)(7) of this section shall be extinguished upon the court entering an order confirming the sale.

(6) The court's order approving the application by a receiver for authority to sell property shall establish a reasonable time

after the date of the order, but not less than three days, for the 201
owner and all other parties possessing an equity of redemption in 202
the property to exercise their equity of redemption in the 203
property or to have that equity of redemption forever barred. 204
Section 2329.33 of the Revised Code does not apply to a sale by a 205
receiver under this section. 206

(7)(a) Until the court has confirmed a sale of property under 207
division (D) of this section, unless the court orders the 208
termination of the fee owner's time to redeem the property, any 209
fee owner of the property proposed to be sold may redeem the 210
property from the sale by paying to the receiver by cashier's 211
check or other form of immediately available funds an amount equal 212
to the greater of the following: 213

(i) The sale price at which the property was sold; 214

(ii) An amount equal to the total of all liens upon the 215
property that were to be canceled as liens upon the property by 216
virtue of the sale, including all principal, interest, costs, and 217
other amounts secured by those liens through the date of payment 218
to the receiver. 219

(b) The amount determined under division (D)(7)(a)(i) or (ii) 220
of this section shall include interest on the amount of the sale 221
price at the rate of eight per cent per annum from the date of the 222
sale to the date of the payment of the full amount to the 223
receiver. 224

(c) Upon receipt of the amount determined under divisions 225
(D)(7)(a) and (b) of this section, the receiver shall advise the 226
court and all of the parties to whom notice was given pursuant to 227
division (D)(1)(b) of this section of the receipt of that amount 228
and shall set aside the sale. The fee title to the property shall 229
remain in the name of the owner of the property, and the liens 230
upon the property, except as provided in division (D)(2) of this 231

section, shall be transferred in the same order of priority to the 232
proceeds received by the receiver from the owner of the property. 233

(8) If the sale of the property by the receiver is conducted 234
in accordance with the terms of the order of the court authorizing 235
the sale, upon closing of the sale the receiver shall execute and 236
deliver a receiver's deed for the property sold to the purchaser. 237
The receiver's deed has the effect provided for in section 2329.37 238
of the Revised Code. 239

(9) Within ten days following the delivery of the deed to the 240
purchaser or as soon thereafter as is reasonably possible, the 241
receiver shall file with the court and serve upon all of the 242
parties to whom the notice of the application for the authority to 243
sell the property was given under division (D)(1)(b) of this 244
section a certificate and report of sale in which the receiver 245
certifies all of the following: 246

(a) That the sale was conducted in accordance with the order 247
authorizing the sale; 248

(b) The date of the sale; 249

(c) The name of the purchaser; 250

(d) The purchase price; 251

(e) The amount of the net proceeds of the sale after payment 252
of all expenses associated with the sale; 253

(f) Any other information that the court may require. 254

(10) Unless the sale was previously confirmed, within ten 255
days following service of the receiver's certificate and report of 256
sale under division (D)(9) of this section, any party in the 257
action may file with the court an objection alleging that the 258
receiver did not conduct the sale in accordance with the order 259
authorizing the sale. Unless the court finds that the purchaser 260
did not purchase the property in good faith, that objection shall 261

not be grounds to set aside the sale. The objecting party's sole 262
remedy is a claim against the receivership estate and the 263
receiver's bond. 264

(11)(a) Subject to the approval and supervision of the court, 265
a receiver also may sell property by private sale pursuant to a 266
written contract between the receiver and the prospective 267
purchaser, by private auction, by public auction, or by any other 268
method that the court determines is fair to the owner of the 269
property and all other parties with an interest in the property, 270
is reasonable under the circumstances, and will maximize the 271
return from the property to the receivership estate, taking into 272
account the potential cost of holding and operating the property. 273

(b) Before entering an order authorizing the sale of the 274
property by the receiver, the court may require that the receiver 275
provide evidence of the fair market value of the property. That 276
valuation may be provided by expert appraisal testimony or any 277
other evidence that the court determines is appropriate. In a 278
public or private auction, the court may establish a minimum bid. 279

(c) If the receiver requests authority to sell the property 280
pursuant to a prospective purchase contract, the court may require 281
that the receiver solicit additional offers. If the receiver 282
ultimately sells the property to a party other than the original 283
proposed purchaser, the receiver shall pay to the unsuccessful 284
original proposed purchaser a fee from the sale proceeds in an 285
amount determined by the court to compensate that proposed 286
purchaser for participation in the sale process. 287

Section 2. That existing sections 2333.22, 2715.21, 2735.01, 288
2735.02, and 2735.04 of the Revised Code are hereby repealed. 289