

As Introduced

**129th General Assembly
Regular Session
2011-2012**

H. B. No. 618

Representative Patmon

—

A B I L L

To amend sections 2329.091, 2329.17, 2329.18, 1
2329.26, and 2329.38 and to enact section 2329.092 2
of the Revised Code to require a levying officer 3
to conduct the sale of foreclosed real property 4
within twenty-two business days after the date of 5
the judgment of foreclosure. 6

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

Section 1. That sections 2329.091, 2329.17, 2329.18, 2329.26, 7
and 2329.38 be amended and section 2329.092 of the Revised Code be 8
enacted to read as follows: 9

Sec. 2329.091. (A) ~~When (1) Except as otherwise provided in~~ 10
division (A)(2) of this section, when a judgment creditor files a 11
praecipe for a writ of execution with a clerk of a common pleas 12
court pursuant to section 2303.11 of the Revised Code, or with a 13
clerk of a municipal court pursuant to section 1901.23 of the 14
Revised Code, or with a clerk of the county court pursuant to 15
section 1907.47 of the Revised Code, the clerk shall issue a writ 16
of execution to the levying officer and cause a notice and a 17
hearing request form to be served upon the judgment debtor. The 18
court, in accordance with division (E) of this section, shall 19
appoint a levying officer who shall immediately and simultaneously 20

execute the writ of execution and serve the notice and the hearing request form upon the judgment debtor. If the levying officer is unable to obtain personal service upon the judgment debtor, the levying officer shall serve the notice and hearing request form upon the judgment debtor by both certified mail and regular mail at the judgment debtor's last known address.

(2) When a judgment of foreclosure described under section 2329.092 of the Revised Code is issued and a sale is ordered pursuant to section 2323.07 of the Revised Code, the clerk of the court that issued the judgment immediately shall issue a writ of execution to the levying officer and cause a notice and a hearing request form to be served upon the judgment debtor. The court, in accordance with division (E) of this section, immediately shall appoint a levying officer who shall immediately and simultaneously execute the writ of execution and serve the notice and the hearing request form upon the judgment debtor. If the levying officer is unable to obtain personal service upon the judgment debtor, the levying officer shall serve the notice and hearing request form upon the judgment debtor by both certified mail and regular mail at the judgment debtor's last known address.

(B)(1) The notice to the judgment debtor shall be in substantially the following form:

"(Name and Address of Court)

(Case Caption)..... Case No.

NOTICE TO THE JUDGMENT DEBTOR

You are hereby notified that this court has issued a writ of execution in the above case in favor of (name and address of judgment creditor), the judgment creditor in this proceeding, directing that some or all of your property be sold according to law and the proceeds of the sale be delivered to the clerk of this court to be used to satisfy all or part of your debt to the judgment creditor. This writ of execution was issued on the basis

of the judgment creditor's judgment against you that was obtained 53
in (name of court) in (case number) on (date). 54

The laws of Ohio and the United States provide that certain 55
property cannot be taken from you to pay a debt. The law exempts 56
from execution your interest in or right to specified property as 57
described in Ohio Revised Code section 2329.66(A). The substance 58
of this statutory provision is attached to this notice. 59

If you believe that some or all of your property is exempt 60
from execution, you may request a hearing before this court by 61
filling out the enclosed form for requesting a hearing, or a 62
substantially similar form, and delivering the request for hearing 63
to the office of the clerk of this court no later than the end of 64
the fifth business day after you receive this notice. In the space 65
provided on the form, you may state your reason for claiming that 66
some of your property is exempt from execution, but you are not 67
required to do so. If you do not state reasons on the form, the 68
court will permit you to state your reasons at the hearing. If you 69
do state reasons on the form, you may also state other reasons at 70
the hearing. 71

If you request a hearing by delivering your request for 72
hearing no later than the end of the fifth business day after you 73
receive this notice, the hearing will be conducted no later than 74
twelve days after the court receives your request, unless you 75
request an earlier hearing due to an emergency, in which case the 76
court will schedule the hearing as soon as practicable. At the 77
hearing, the court will consider the amount of your property that 78
is exempt from execution and the amount that can be used to 79
satisfy all or part of the judgment you owe to the judgment 80
creditor. The court will not hear or consider any objections to 81
the judgment itself at the hearing. 82

If you do not request a hearing by delivering your request 83
prior to the end of the fifth business day after you receive this 84

notice, you give up your right to a hearing and to assert reasons 85
why some or all of your property should not be used for payment of 86
your debt to the judgment creditor. 87

If you have any questions concerning this matter, you may 88
contact the office of the clerk of this court. If you want legal 89
representation, you should contact your lawyer immediately. If you 90
need the name of a lawyer, contact the local bar association or 91
your local legal aid or legal services office. 92

..... 93
Clerk of the Court 94
..... 95
Date" 96

(2) The notice that is served upon the judgment debtor shall, 97
securely and prominently, have attached to it a document setting 98
forth the substance of division (A) of section 2329.66 of the 99
Revised Code. 100

(C) The hearing request form that is served upon the judgment 101
debtor shall have attached to it a postage-paid, self-addressed 102
envelope or shall be on a postage-paid self-addressed postcard, 103
and shall be in substantially the following form: 104

"(Name and Address of Court) 105
Case Number Date 106

REQUEST FOR HEARING 107

I believe that some or all of my property may be exempt from 108
execution in the above case and request that a hearing be held no 109
later than twelve days after the delivery of this request to the 110
court. 111

OPTIONAL 112

I request that a hearing be held as soon as possible due to 113
emergency circumstances as follows: 114
..... 115

.....	116
.....	117
I believe that some or all of my property may be exempt from	118
execution for the following reasons:	119
.....	120
(Optional)	121
.....	122
.....	123
.....	124
(Name of Judgment Debtor)	125
.....	126
(Address of Judgment Debtor)	127
.....	128
(Telephone Number of Judgment Debtor)	129
.....	130
(Signature of Judgment Debtor)	131
.....	132
(Date)	133
WARNING: IF YOU DO NOT DELIVER THIS REQUEST FOR HEARING OR A	134
REQUEST IN A SUBSTANTIALLY SIMILAR FORM TO THE OFFICE OF THE CLERK	135
OF THIS COURT WITHIN FIVE (5) BUSINESS DAYS OF YOUR RECEIPT OF IT,	136
YOU WAIVE YOUR RIGHT TO A HEARING, AND SOME OR ALL OF YOUR	137
PROPERTY WILL BE USED TO SATISFY ALL OR PART OF YOUR DEBT TO	138
(JUDGMENT CREDITOR'S NAME)."	139
(D) A judgment debtor shall receive a hearing in accordance	140
with this division if he <u>the judgment debtor</u> delivers a written	141
request for a hearing to the clerk of the court within five	142
business days after receipt of the notice required under division	143
(A) of this section. The judgment debtor may set forth on the	144
request its reasons for believing that some or all of its property	145
is exempt from execution, but neither its inclusion of reasons on	146
the request nor its failure to include reasons constitutes a	147

waiver of any defense or affects its right to produce evidence at 148
any hearing. 149

If the judgment debtor makes the request within the 150
prescribed time, the court shall schedule a hearing no later than 151
twelve days after the court receives the request, unless the 152
judgment debtor advises the court that an emergency hearing is 153
necessary, in which case the court shall schedule the hearing as 154
soon as practicable after the request is made. The clerk of court 155
shall send notice of the date, time, and place of the hearing to 156
the parties in accordance with division (G) of this section. The 157
hearing shall be limited to a consideration of the amount of the 158
property of the judgment debtor that can be executed upon to 159
satisfy all or part of the debt owed to the judgment creditor. 160

If the judgment debtor does not request a hearing within the 161
prescribed time, the court may grant a hearing if, prior to the 162
sale of the property by the levying officer, the judgment debtor 163
establishes a reasonable justification for its failure to request 164
the hearing within the prescribed time. 165

(E) The court shall appoint a levying officer to immediately 166
and simultaneously execute the writ of execution and serve the 167
notice and the hearing request form required by division (A) of 168
this section upon the judgment debtor. The levying officer shall 169
be the bailiff, a deputy bailiff, or an ex officio deputy bailiff 170
of the court as specified in Chapter 1901. of the Revised Code or 171
another chapter of the Revised Code, or the sheriff of the 172
appropriate county. Notwithstanding any contrary provision of the 173
Revised Code, if the bailiff, deputy bailiff, ex officio deputy 174
bailiff, or sheriff is not able to perform the duties of the 175
levying officer in accordance with this section, the court, upon 176
application by the judgment creditor, shall appoint a 177
disinterested person to serve as the levying officer. The 178
disinterested person shall post a bond with the clerk of the court 179

in an amount set by the court to ensure the faithful performance 180
of ~~his~~ the disinterested person's duties. 181

(F) If the nature of the property executed upon precludes the 182
levying officer from taking immediate physical possession of the 183
property, the court, upon application by the judgment creditor or 184
the levying officer, shall appoint a custodian of the property 185
until the levying officer is able to take physical possession of 186
the property. If the person appointed as custodian converts the 187
property, fails to conserve it, or places it beyond the reach of 188
the levying officer, the custodian shall be subject to a citation 189
for contempt. 190

(G) The clerk of the court shall send any notice of hearing 191
to the parties by regular mail or otherwise in accordance with 192
Rule 5 of the Rules of Civil Procedure. 193

(H) If a hearing is conducted, the court shall determine what 194
portion, if any, of the property of the judgment debtor is exempt 195
under section 2329.66 of the Revised Code and shall issue an order 196
to the levying officer setting forth that determination and 197
ordering the levying officer to sell the nonexempt property 198
according to law. 199

(I) If it is necessary to ascertain the amount or value of 200
the judgment debtor's personal property that is exempt under 201
section 2329.66 of the Revised Code, it shall be estimated and 202
appraised in accordance with section 2329.68 of the Revised Code. 203

Sec. 2329.092. (A) As used in this section, "mortgagee" means 204
a financial institution that is authorized to issue a mortgage on 205
real property located in this state. "Mortgagee" does not include 206
a governmental entity. 207

(B) Except as otherwise provided in division (C) of this 208
section, with respect to any land or tenement for which a judgment 209

of foreclosure has been issued pursuant to section 2323.07 of the 210
Revised Code and in which the plaintiff in that action is a 211
mortgagee, the levying officer appointed under section 2329.091 of 212
the Revised Code shall conduct the sale of the land or tenement 213
identified in the writ of execution in accordance with sections 214
2329.01 to 2329.61 of the Revised Code twenty-two business days 215
after the date the judgment of foreclosure is issued. A judgment 216
creditor shall issue the notices required under division (A)(1) of 217
section 2329.26 of the Revised Code in a manner that allows the 218
sale to occur within that twenty-two-day period. 219

(C) If a judgment debtor requests a hearing under section 220
2329.091 of the Revised Code concerning property that may be 221
exempt from execution, the levying officer shall conduct the sale 222
required under division (B) of this section twenty-two business 223
days after the date the court issues an order stating the amount 224
of property subject to execution. A judgment creditor shall issue 225
the notices required under division (A)(1) of section 2329.26 of 226
the Revised Code in a manner that allows the sale to occur within 227
that twenty-two-day period. 228

(D) The officer who makes a levy, or holds an order of sale 229
pursuant to this section, may demand of the mortgagee or the 230
mortgagee's agent or attorney the fees of the printer for 231
publishing the notice required under section 2329.26 of the 232
Revised Code. The officer shall not withhold publication due to 233
failure to pay the fees. 234

Sec. 2329.17. (A) When execution is levied upon lands and 235
tenements, the officer who makes the levy shall call an inquest of 236
three disinterested freeholders, residents of the county where the 237
lands taken in execution are situated, and administer to them an 238
oath impartially to appraise the property so levied upon, upon 239
actual view. They forthwith shall return to such officer, under 240

their hands, an estimate of the real value of the property in 241
money. With respect to the appraisal of any property identified in 242
section 2329.092 of the Revised Code, they shall return the 243
estimate to the officer prior to the date by which the officer is 244
required to conduct the sale under that section. 245

(B) The municipal corporation or township in which the real 246
property is situated may inspect prior to the judicial sale any 247
structures located on lands subject to a writ of execution. 248

Sec. 2329.18. When an officer receives the return provided 249
for in division (A) of section 2329.17 of the Revised Code, the 250
officer forthwith shall deposit a copy of it with the clerk of the 251
court from which the writ issued, and, except with respect to real 252
estate described in section 2329.092 of the Revised Code, 253
immediately advertise and sell such real estate in conformity with 254
sections 2329.01 to 2329.61 of the Revised Code. 255

Sec. 2329.26. (A) ~~Lands~~ Except as otherwise provided in 256
section 2329.092 of the Revised Code, lands and tenements taken in 257
execution shall not be sold until all of the following occur: 258

(1)(a) Except as otherwise provided in division (A)(1)(b) of 259
this section, the judgment creditor who seeks the sale of the 260
lands and tenements or the judgment creditor's attorney does both 261
of the following: 262

(i) Causes a written notice of the date, time, and place of 263
the sale to be served in accordance with divisions (A) and (B) of 264
Civil Rule 5 upon the judgment debtor and upon each other party to 265
the action in which the judgment giving rise to the execution was 266
rendered; 267

(ii) At least seven calendar days prior to the date of the 268
sale, files with the clerk of the court that rendered the judgment 269
giving rise to the execution a copy of the written notice 270

described in division (A)(1)(a)(i) of this section with proof of 271
service endorsed on the copy in the form described in division (D) 272
of Civil Rule 5. 273

(b) Service of the written notice described in division 274
(A)(1)(a)(i) of this section is not required to be made upon any 275
party who is in default for failure to appear in the action in 276
which the judgment giving rise to the execution was rendered. 277

(2) The officer taking the lands and tenements gives public 278
notice of the date, time, and place of the sale once a week for at 279
least three consecutive weeks before the day of sale by 280
advertisement in a newspaper of general circulation in the county. 281
The newspaper shall meet the requirements of section 7.12 of the 282
Revised Code. The court ordering the sale may designate in the 283
order of sale the newspaper in which this public notice shall be 284
published. 285

(3) The officer taking the lands and tenements shall collect 286
the purchaser's information required by section 2329.271 of the 287
Revised Code. 288

(B) A sale of lands and tenements taken in execution may be 289
set aside in accordance with division (A) or (B) of section 290
2329.27 of the Revised Code. 291

Sec. 2329.38. The Except as otherwise provided in section 292
2329.092 of the Revised Code, the officer who makes a levy, or 293
holds an order of sale, before giving notice of the sale, may 294
demand of the plaintiff, his the plaintiff's agent or attorney, 295
the fees of the printer for publishing such notice. The officer 296
need not make such publication until the fees are paid. 297

Section 2. That existing section 2329.091, 2329.17, 2329.18, 298
2329.26, and 2329.38 of the Revised Code are hereby repealed. 299