

As Introduced

**130th General Assembly
Regular Session
2013-2014**

H. B. No. 613

Representative Anielski

—

A BILL

To amend sections 2329.01, 2329.17, 2329.20, 2329.26, 1
2329.27, and 2329.33 and to enact sections 2
2330.01, 2330.02, 2330.03, 2330.04, 2330.041, 3
2330.05, 2330.06, 2330.07, 2330.08, 2330.09, 4
2330.10, 2330.11, and 2330.12 of the Revised Code 5
to establish the Private Foreclosure Fast-Track 6
Law. 7

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

Section 1. That sections 2329.01, 2329.17, 2329.20, 2329.26, 8
2329.27, and 2329.33 be amended and sections 2330.01, 2330.02, 9
2330.03, 2330.04, 2330.041, 2330.05, 2330.06, 2330.07, 2330.08, 10
2330.09, 2330.10, 2330.11, and 2330.12 of the Revised Code be 11
enacted to read as follows: 12

Sec. 2329.01. ~~Lands~~ Except as provided in Chapter 2330. of 13
the Revised Code, lands and tenements, including vested legal 14
interests therein, permanent leasehold estates renewable forever, 15
and goods and chattels, not exempt by law, shall be subject to the 16
payment of debts, and liable to be taken on execution and sold as 17
provided in sections 2329.02 to 2329.61, ~~inclusive,~~ of the Revised 18
Code. 19

Sec. 2329.17. (A) ~~When~~ Except as provided in section 2330.08 20
of the Revised Code, when execution is levied upon lands and 21
tenements, the officer who makes the levy shall call an inquest of 22
three disinterested freeholders, residents of the county where the 23
lands taken in execution are situated, and administer to them an 24
oath impartially to appraise the property so levied upon, upon 25
actual view. They forthwith shall return to such officer, under 26
their hands, an estimate of the real value of the property in 27
money. 28

(B) The municipal corporation or township in which the real 29
property is situated may inspect prior to the judicial sale any 30
structures located on lands subject to a writ of execution. 31

Sec. 2329.20. ~~No~~ Except as provided in section 2330.08 of the 32
Revised Code, no tract of land shall be sold for less than 33
two-thirds of the value returned in the inquest required by 34
section 2329.17 of the Revised Code; except that in all cases 35
where a junior mortgage or other junior lien is sought to be 36
enforced against real estate by an order, judgment, or decree of 37
court, subject to a prior lien thereon, and such prior lien, and 38
the claims or obligations secured thereby, are unaffected by such 39
order, judgment, or decree, the court making such order, judgment, 40
or decree, may determine the minimum amount for which such real 41
estate may be sold, such minimum amount to be not less than 42
two-thirds of the difference between the value of the real estate 43
appraised as provided in such section, and the amount remaining 44
unpaid on the claims or obligations secured by such prior lien. 45

Sec. 2329.26. (A) ~~Lands~~ Except as provided in Chapter 2330. 46
of the Revised Code, lands and tenements taken in execution shall 47
not be sold until all of the following occur: 48

(1)(a) Except as otherwise provided in division (A)(1)(b) of 49

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 the lands and tenements gives public notice of the date, time, and place of the sale once a week for at least three consecutive weeks before the day of sale by advertisement in a newspaper of general circulation in the county. The newspaper shall meet the requirements of section 7.12 of the Revised Code. The court ordering the sale may designate in the order of sale the newspaper in which this public notice shall be published.

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

(B) A sale of lands and tenements taken in execution may be set aside in accordance with division (A) or (B) of section

2329.27 of the Revised Code. 81

Sec. 2329.27. (A) When the public notice required by division 82
(A)(2) of section 2329.26 of the Revised Code is made in a 83
newspaper published weekly, it is sufficient to insert it for 84
three consecutive weeks. If both a daily and weekly edition of the 85
paper are published and the circulation of the daily in the county 86
exceeds that of the weekly in the county, or if the lands and 87
tenements taken in execution are situated in a city, both a daily 88
and weekly edition of the paper are published, and the circulation 89
of the daily in that city exceeds the circulation of the weekly in 90
that city, it is sufficient to publish the public notice in the 91
daily once a week for three consecutive weeks before the day of 92
sale, each insertion to be on the same day of the week. The 93
expense of that publication in a daily shall not exceed the cost 94
of publishing it in a weekly. 95

(B)(1) ~~Subject~~ Except as provided in Chapter 2330. of the 96
Revised Code and subject to divisions (B)(2) and (3) of this 97
section, all sales of lands and tenements taken in execution that 98
are made without compliance with the written notice requirements 99
of division (A)(1)(a) of section 2329.26 of the Revised Code, the 100
public notice requirements of division (A)(2) of that section, the 101
purchaser information requirements of section 2329.271 of the 102
Revised Code, and division (A) of this section shall be set aside, 103
on motion by any interested party, by the court to which the 104
execution is returnable. 105

(2) Proof of service endorsed upon a copy of the written 106
notice required by division (A)(1)(a) of section 2329.26 of the 107
Revised Code shall be conclusive evidence of the service of the 108
written notice in compliance with the requirements of that 109
division, unless a party files a motion to set aside the sale of 110
the lands and tenements pursuant to division (B)(1) of this 111

section and establishes by a preponderance of the evidence that 112
the proof of service is fraudulent. 113

(3) If the court to which the execution is returnable enters 114
its order confirming the sale of the lands and tenements, the 115
order shall have both of the following effects: 116

(a) The order shall be deemed to constitute a judicial 117
finding as follows: 118

(i) That the sale of the lands and tenements complied with 119
the written notice requirements of division (A)(1)(a) of section 120
2329.26 of the Revised Code and the public notice requirements of 121
division (A)(2) of that section and division (A) of this section, 122
or that compliance of that nature did not occur but the failure to 123
give a written notice to a party entitled to notice under division 124
(A)(1)(a) of section 2329.26 of the Revised Code has not 125
prejudiced that party; 126

(ii) That all parties entitled to notice under division 127
(A)(1)(a) of section 2329.26 of the Revised Code received adequate 128
notice of the date, time, and place of the sale of the lands and 129
tenements; 130

(iii) That the purchaser has submitted the contact 131
information required by section 2329.271 of the Revised Code. 132

(b) The order bars the filing of any further motions to set 133
aside the sale of the lands and tenements. 134

Sec. 2329.33. ~~In~~ Except as provided in section 2330.10 of the 135
Revised Code, in sales of real estate on execution or order of 136
sale, at any time before the confirmation thereof, the debtor may 137
redeem it from sale by depositing in the hands of the clerk of the 138
court of common pleas to which such execution or order is 139
returnable, the amount of the judgment or decree upon which such 140
lands were sold, with all costs, including poundage, and interest 141

at the rate of eight per cent per annum on the purchase money from 142
the day of sale to the time of such deposit, except where the 143
judgment creditor is the purchaser, the interest at such rate on 144
the excess above ~~his~~ the judgment creditor's claim. The court of 145
common pleas thereupon shall make an order setting aside such 146
sale, and apply the deposit to the payment of such judgment or 147
decree and costs, and award such interest to the purchaser, who 148
shall receive from the officer making the sale the purchase money 149
paid by ~~him~~ the purchaser, and the interest from the clerk. This 150
section does not take away the power of the court to set aside 151
such sale for any reason for which it might have been set aside 152
prior to April 16, 1888. 153

Sec. 2330.01. As used in this chapter: 154

(A) "Agricultural property" means any tract, lot, or parcel 155
of land on the agricultural land tax list maintained under section 156
5713.33 of the Revised Code. 157

(B) "Clerk" means the clerk of the court of common pleas of 158
the county in which the specified residential property is located, 159
the clerk of court of the municipal court in which the specified 160
residential property is located, or the clerk of courts of the 161
federal district court in which the specified residential property 162
is located, as applicable. 163

(C) "County land reutilization corporation" means a county 164
land reutilization corporation in good standing organized under 165
section 1724.04 of the Revised Code. 166

(D) "Court" means the court of common pleas, municipal court, 167
housing or environmental division of common pleas or municipal 168
court, or federal court having jurisdiction over the specified 169
residential property. 170

(E) "Designated law enforcement officer" means the sheriff or 171

the sheriff's authorized agent or representative of the county in 172
which the specified residential property is located, the bailiff 173
or the bailiff's authorized agent or representative of the 174
municipal court in which the specified residential property is 175
located, or the marshal or the marshal's authorized agent or 176
representative of the federal district in which the specified 177
residential property is located. 178

(F) "Electing subdivision" has the same meaning as in section 179
5722.01 of the Revised Code. 180

(G) "Financial institution" means either of the following: 181

(1) A lender, bank, or other financial institution or its 182
successors or assigns that owns a residential mortgage as a 183
mortgagee and that is regularly engaged in the business of 184
underwriting and making loans secured by real property; 185

(2) A financial institution or its successors or assigns that 186
purchases mortgages from institutions described in division (G)(1) 187
of this section whether as an assignee of the financial 188
institution or a servicer or trustee for institutions described in 189
this division, including a servicer of mortgages or the 190
purchaser's successors and assigns. 191

(H) "Residential mortgage" means an obligation to pay a sum 192
of money to a financial institution as evidenced by a promissory 193
note that is secured by a first mortgage lien of a financial 194
institution upon a residential property. 195

(I) "Residential property" means unoccupied property located 196
within this state that serves as security for a residential 197
mortgage and consists of real property that is unimproved by any 198
building or structure or real property improved by a building or 199
structure comprised solely of four or fewer dwelling units that 200
are each intended for residential occupancy. 201

"Residential property" may include a residential condominium 202

unit owned by any person or entity, notwithstanding the number of 203
units in the structure of which the condominium is a part; a row 204
house, notwithstanding the number of units of which the row house 205
is a part; and a manufactured or mobile home that is subject to 206
real property taxes under section 4503.06 of the Revised Code. 207

(J) "Unoccupied property" means any of the following: 208

(1) Real property that is abandoned land as defined in 209
section 323.65 of the Revised Code; 210

(2) Real property on which no trade or business is actively 211
being conducted by the owner or another party occupying the 212
property pursuant to any lease or other legal authority; 213

(3) Real property that is uninhabited with no signs or active 214
indications that it is undergoing improvements as evidenced by an 215
unexpired building permit, an unexpired application for a building 216
permit, or other facts indicating the property is undergoing 217
ongoing improvements; 218

(4) Real property that is uninhabited and that contains one 219
or more buildings or structures that are unsecured; 220

(5) In the case of real property unimproved by any building 221
or structure, for which a visual inspection shows no exterior 222
indications that such unimproved property serves as an immediate 223
and active accessory use to an adjacent occupied property for such 224
purposes as lawful parking, ingress and egress, lawful storage, or 225
yard extension of an occupied property and that is not 226
agricultural property; 227

(6) Real property on which one or more utility connections, 228
including water, sewer, natural gas, or electric connections, are 229
no longer servicing the property or one or more of such utility 230
connections are not actively being billed by any utility provider 231
to the property; 232

(7) Real property on which one or more buildings or structures on the property are boarded up or otherwise sealed in order to prevent the property from becoming unsecured, or because such boarding up or sealing was ordered by a governmental body pursuant to its applicable municipal, county, state, or federal nuisance authority; 233
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(8) Real property that is condemned or otherwise declared a nuisance for any reason by a governmental body. 239
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(K) "Unsecured" means conditions that would permit entry into a building or structure including, but not limited to, broken windows, broken doors, or other indications that the building or structure is open or vandalized. 241
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Sec. 2330.02. (A) In lieu of initiating foreclosure proceedings under Chapter 2329. or any other chapter of the Revised Code against residential property that secures a residential mortgage held by a financial institution, a financial institution may bring an expedited foreclosure action against an owner of a residential property as prescribed in this chapter. Such expedited foreclosure proceedings may be pursued in the courts of common pleas, municipal courts, and the federal district courts in which the residential property is located and consistent with their respective subject matter jurisdiction. 245
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(B) By electing to pursue an action pursuant to this chapter, the financial institution shall be required to abide by the provisions of this chapter. Except as otherwise specifically authorized in this chapter, an action commenced under this chapter shall continue and conclude under this chapter. A financial institution shall not be permitted to voluntarily dismiss or seek to vacate a judgment, order of sale, writ of execution, sale, transfer, or confirmation of the action except as provided in division (B) of section 2330.04 of the Revised Code or upon 255
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written motion in the court's sound discretion for good cause 264
shown by clear and convincing evidence. 265

Sec. 2330.03. A court may adopt local rules and case 266
management orders not inconsistent with this chapter for the 267
purpose of implementing, as necessary, the expedited foreclosure 268
of residential properties as prescribed under this chapter. If 269
during the pendency of any action brought under this chapter, the 270
court determines that the real property being foreclosed on is 271
not, or is no longer, residential property, then such action shall 272
not be dismissed, but shall be pursued in accordance with Chapter 273
2329. of the Revised Code. The court may utilize the procedures 274
provided in Chapter 2329. of the Revised Code as the court finds 275
convenient or necessary to supplement the court's proceedings, 276
provided those procedures are not inconsistent with this chapter. 277

Sec. 2330.04. (A) An action filed under this chapter shall be 278
filed with the clerk in the same manner as in other civil actions. 279
The clerk shall provide summons and notice of complaint 280
accompanied by an affidavit prescribed in division (B)(3) of this 281
section and subsequent hearings as provided in this section, 282
maintain an official case file, docket all proceedings, and tax as 283
costs all necessary expenses in connection with the action. The 284
clerk may utilize the court's existing journal, case numbering 285
system, and general procedures, or may maintain a separate 286
journal, case numbering, or docketing index called the 287
"foreclosure fast-track" docket or such similar designation to 288
identify that filings under this chapter are intended to proceed 289
on an expedited basis. 290

(B) A financial institution acting as plaintiff may initiate 291
a foreclosure action under this chapter upon a residential 292
property by filing a complaint with the clerk in form similar to 293
pleading and caption forms provided in the Ohio and federal Rules 294

of Civil Procedure, as applicable. All of the following shall 295
accompany such complaint: 296

(1) The preliminary judicial report as required by section 297
2329.191 of the Revised Code, which includes the name and address 298
of all parties having any interest of record in the property; 299

(2) A copy of the promissory note and the residential 300
mortgage secured by the residential property. If either the 301
promissory note or residential mortgage are not originals, then 302
the affiant of an affidavit described in division (B)(3) of this 303
section shall attest on personal knowledge that the promissory 304
note and residential mortgage are true and accurate copies of the 305
originals to the best of the affiant's good faith knowledge and 306
belief. 307

(3) One of the following: 308

(a) The affidavit described in division (H) of this section; 309
or 310

(b) An affidavit that adequately identifies the property and 311
in which both the plaintiff and the owners of record of the 312
property stipulate or otherwise agree that the property being 313
foreclosed upon is to be deemed residential property as defined in 314
section 2330.01 of the Revised Code. 315

(4) If the plaintiff requests that the residential property 316
be directly transferred to a county land reutilization corporation 317
or other electing subdivision upon the court's issuance of a 318
decree of foreclosure, an affidavit that is signed and notarized 319
by both the financial institution and the county land 320
reutilization corporation or other electing subdivision that 321
indicates that the financial institution and county land 322
reutilization corporation or other electing subdivision are in 323
agreement to the court's direct transfer of the residential 324
property to the county land reutilization corporation or other 325

electing subdivision. 326

The plaintiff may include other documents or information with 327
the complaint that the plaintiff asserts is relevant to the 328
proceeding. 329

If an affidavit described in division (B)(4) of this section 330
is not filed with the complaint, the plaintiff and the county land 331
reutilization corporation or electing subdivision may file the 332
affidavit not later than seven days prior to any final hearing. 333
The county land reutilization corporation or other electing 334
subdivision may unilaterally withdraw any consent to accept any 335
residential property by filing a supplemental signed and notarized 336
instrument revoking the consent. The supplemental instrument must 337
be filed not later than seven days prior to any final hearing. In 338
the event of such revocation, the plaintiff, by filing notice to 339
the court, may elect to proceed under this chapter or Chapter 340
2329. of the Revised Code or may move for a dismissal of the 341
action. 342

(C) Upon the filing of a complaint under this chapter, the 343
clerk promptly shall serve notice of the summons, complaint, and 344
affidavit filed in accordance with division (B)(3) of this section 345
to the last known address of the record owner of the residential 346
property being foreclosed upon and the last known address of each 347
lienholder or other person having an interest of record identified 348
in the preliminary judicial report consistent with Civil Rule 4. 349
The notice of summons shall be included with the complaint and 350
prepared by the clerk in substantial form as prescribed in section 351
2330.041 of the Revised Code. The notice of summons shall inform 352
the addressee of all of the following: 353

(1) That the financial institution alleges that the 354
residential mortgage on the residential property is in default and 355
that if so determined by the court all of the following may occur: 356

(a) The residential property shall be sold at public auction 357
or transferred directly to the financial institution, a county 358
land reutilization corporation, or other electing subdivision 359
without appraisal and without auction sale on a date and in a 360
manner as prescribed in this chapter or as ordered by the court. 361

(b) Any owner of record or any other lienholder or other 362
party with a recorded interest in the residential property may 363
lose all interest in the residential property, including all 364
statutory or common law equity of redemption or other interest in 365
the residential property, if the residential mortgage is not paid, 366
settled, modified, or otherwise resolved by some other accord and 367
satisfaction between the financial institution and the owner or 368
any other lienholder or interest holder in the residential 369
property. 370

(2) That any owner of the residential property, in order to 371
redeem the property, must pay, settle, have modified, or reach an 372
accord and satisfaction at any time before the expiration of the 373
equity of redemption as provided in section 2330.10 of the Revised 374
Code. 375

(3) That the action is being prosecuted by a financial 376
institution and the name, address, and telephone number of the 377
attorney for the financial institution; 378

(4) The case number assigned by the clerk; 379

(5) That all subsequent pleadings, motions, and papers 380
associated with the case and filed by any interested party must be 381
filed with the clerk and will become part of the case file unless 382
a party is deemed to be in default of the proceedings as described 383
in section 2330.05 of the Revised Code. 384

(D)(1) Subsequent pleadings, motions, and papers following 385
notice of the summons, complaint, and affidavit shall be filed 386
with the clerk and shall be served by the filing party upon all 387

parties of record, except in the case of parties deemed to be in 388
default of the proceedings as described in section 2330.05 of the 389
Revised Code. 390

(2) Notwithstanding division (F) of this section, service by 391
publication in any case requiring such service shall be advertised 392
in the manner prescribed by Civil Rule 4.4 except that, if service 393
by publication is necessary, such publication shall be made once a 394
week for three consecutive weeks, and the service shall be 395
complete at the expiration of three weeks after the date of the 396
first publication. In any action brought under this chapter, if 397
the plaintiff determines that service upon a defendant may be 398
obtained ultimately only by publication, the plaintiff may cause 399
service to be made simultaneously by certified mail, return 400
receipt requested, ordinary mail, and publication. Parties served 401
by certified or ordinary mail are not required to file an answer 402
to the complaint. A party served by publication must appear, move, 403
or plead to the complaint within twenty-eight days after service 404
is completed, or such party shall be deemed in default of 405
proceedings. 406

(E) Any inadvertent noncompliance with the rules in this 407
chapter not materially affecting notice and opportunity to appear 408
at a final hearing as described in section 2330.06 of the Revised 409
Code shall not serve to defeat or terminate the case or subject 410
the case to dismissal if notice or service of the summons and 411
complaint, if challenged, can be proven by a preponderance of the 412
evidence or are acknowledged by the party charged with notice or 413
service. Any irregularity that materially affects notice and 414
opportunity to appear shall be deemed waived if the party charged 415
with notice makes an appearance in the action or makes a filing in 416
relation to the action. 417

(F) Expedited foreclosure proceedings under this chapter 418
constitute special statutory proceedings pursuant to Civil Rule 1, 419

and as such, except for the service of process as prescribed in 420
this chapter and in Civil Rule 4, are exempted from the Civil 421
Rules. However, the court may utilize the procedures contained in 422
the applicable Rules of Civil Procedure to the extent that such 423
use facilitates the practical or efficient conduct and purposes of 424
proceedings undertaken pursuant to this chapter, such as vacating 425
orders, correcting clerical mistakes, and providing notice to the 426
parties. 427

(G) For purposes of efficiently and promptly implementing the 428
provisions of this chapter, the court, clerk, and designated law 429
enforcement officer may adopt, not inconsistent with this chapter, 430
such practice forms, forms of notice of hearings and notice to 431
parties, forms of orders, adjudications, fees, publication forms, 432
deed forms, and other procedures customarily within their official 433
purview or duties. 434

(H) "Affidavit," as required by division (B)(3)(a) of this 435
section, means an affidavit required to be signed and attested to 436
either by the attorney filing the foreclosure action on behalf of 437
the financial institution or a representative of the financial 438
institution that based on information and belief attests to and 439
contains the following information: 440

(1) That the declarant has authority from the financial 441
institution to execute the affidavit; 442

(2) That the declarant has knowledge based on reasonable 443
information and belief of the facts contained in the affidavit; 444

(3) That the property being foreclosed upon is residential 445
property as defined in section 2330.01 of the Revised Code. 446

(4) The permanent parcel numbers and, if available, the 447
common address of the property; 448

(5) An original signature by the attesting declarant; 449

(6) An original notarization on the affidavit by an 450
authorized notary in this state or the state and county of such 451
declarant's residence; 452

(7) The name, address, and telephone number of the individual 453
upon whose information the declarant's information and belief is 454
based. 455

Sec. 2330.041. The notice of summons prepared by the court 456
pursuant to division (C) of section 2330.04 of the Revised Code 457
shall be in substantially the following form: 458

THIS IS A FORECLOSURE LAWSUIT BEING PROSECUTED IN THE (NAME 459
OF COURT). YOU HAVE BEEN NAMED AS A DEFENDANT IN THIS SUIT AS 460
SOMEONE WHO HAS AN INTEREST IN THE FOLLOWING PARCEL OF LAND: 461

(DESCRIPTION AS SHOWN IN COMPLAINT) 462

THIS PARCEL HAS BEEN INCLUDED IN AN ACTION INSTITUTED BY 463
(NAME OF FINANCIAL INSTITUTION), BEING CASE NO. (CASE NUMBER) 464
FILED IN THE (NAME OF COURT), (LOCATION), OHIO, ON (DATE OF 465
FILING) SEEKING THE EXPEDITED FORECLOSURE AND SALE OR DIRECT 466
TRANSFER OF THE PARCEL AS A RESULT OF THE ALLEGED DEFAULT OF A 467
RESIDENTIAL MORTGAGE HELD BY THE ABOVE NAMED FINANCIAL INSTITUTION 468
AGAINST THE PARCEL. THE ATTORNEY REPRESENTING THE FINANCIAL 469
INSTITUTION IN THIS MATTER IS: (NAME OF ATTORNEY FOR FINANCIAL 470
INSTITUTION), WITH OFFICES AT (ATTORNEY'S BUSINESS ADDRESS), AND A 471
BUSINESS PHONE NUMBER OF (ATTORNEY'S BUSINESS PHONE NUMBER). 472

ANY PERSON OWNING OR CLAIMING ANY RIGHT, TITLE, OR INTEREST 473
IN, OR LIEN UPON, THIS PARCEL MUST APPEAR AT ANY HEARING SCHEDULED 474
BY THE COURT IN ORDER TO SET FORTH THE NATURE AND AMOUNT OF THE 475
PERSON'S INTEREST AND ANY DEFENSE OR OBJECTION TO THE FORECLOSURE. 476
ALL SUBSEQUENT PLEADINGS, MOTIONS, AND PAPERS SHALL BE FILED IN 477
THE OFFICE OF THE UNDERSIGNED CLERK OF THE COURT, AND A COPY OF 478
ANY SUCH PLEADINGS, MOTIONS, AND PAPERS SHALL BE DELIVERED TO THE 479

ATTORNEY FOR THE FINANCIAL INSTITUTION ON OR BEFORE THE DATE OF 480
ANY FINAL HEARING. 481

IF YOU DO NOT APPEAR AT ANY HEARING SCHEDULED BY THE COURT, A 482
JUDGMENT OF FORECLOSURE MAY LIKELY BE TAKEN AGAINST YOU BY DEFAULT 483
AND THE PARCEL SHALL BE ORDERED SOLD AT PUBLIC AUCTION OR 484
TRANSFERRED DIRECTLY TO THE FINANCIAL INSTITUTION, A COUNTY LAND 485
REUTILIZATION CORPORATION, OR OTHER ELECTING SUBDIVISION AS 486
DEFINED IN CHAPTERS 1724. AND 5722. OF THE REVISED CODE WITHOUT 487
APPRAISAL AND WITHOUT AUCTION SALE ON A DATE AND IN A MANNER 488
PURSUANT TO SECTION 2330.08 OF THE REVISED CODE OR AS OTHERWISE 489
ORDERED BY THE COURT. 490

THE OWNER OR LIENHOLDER OF, OR OTHER PERSON WITH A RECORDED 491
INTEREST IN, A PARCEL MAY LOSE ALL ITS INTEREST IN THE RESIDENTIAL 492
PROPERTY, IF THE RESIDENTIAL MORTGAGE IS NOT PAID, SETTLED, 493
MODIFIED, OR OTHERWISE RESOLVED BY SOME OTHER ACCORD AND 494
SATISFACTION WITH THE FINANCIAL INSTITUTION AND THE OWNER OR A 495
LIENHOLDER OR PARTY WITH A RECORDED INTEREST IN THE PARCEL. 496

IN ORDER TO REDEEM THE PARCEL, THE OWNER OF THE RESIDENTIAL 497
PROPERTY MUST PAY, SETTLE, HAVE MODIFIED, OR REACH AN ACCORD AND 498
SATISFACTION AT ANY TIME PRIOR TO A JOURNALIZED ENTRY OF AN ORDER 499
FOR DIRECT TRANSFER PURSUANT TO SECTION 2330.07 OF THE REVISED 500
CODE, OR A JOURNALIZED ENTRY OF A CONFIRMATION OF SALE. 501

UPON THE FILING OF ANY ENTRY ORDERING THE DIRECT TRANSFER OF, 502
OR CONFIRMING THE SALE OF, THE PARCEL, THERE SHALL BE NO FURTHER 503
EQUITY OF REDEMPTION. AFTER THE FILING OF ANY SUCH ENTRY, ANY 504
PERSON CLAIMING ANY RIGHT, TITLE, OR INTEREST IN, OR LIEN UPON, 505
THE PARCEL SHALL BE FOREVER BARRED AND FORECLOSED OF ANY SUCH 506
RIGHT, TITLE, OR INTEREST IN, LIEN UPON, AND ANY EQUITY OF 507
REDEMPTION IN, THE PARCEL. 508

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CLERK OF THE COURT 510

..... COURT 511

....., OHIO" 512

Sec. 2330.05. (A) A party shall be deemed to be in default of 513
the proceedings in an action brought under this chapter if either 514
of the following occurs: 515

(1) The party fails to appear at any hearing after being 516
served with notice of the summons and complaint by certified or 517
ordinary mail. 518

(2) For a party upon whom notice of summons and complaint is 519
required by publication and has been deemed served, the party 520
fails to appear, move, or plead to the complaint within 521
twenty-eight days after service by publication is completed. 522

(B) If a party is deemed in default pursuant to division (A) 523
of this section, no further service of any subsequent pleadings, 524
papers, or proceedings is required on the party by the court or 525
any other party. Any valuation hearings held in accordance with 526
section 2330.11 of the Revised Code and any other interim or 527
ancillary hearings prior to any final hearing, and any orders, 528
notices, or continuances shall only be required to be sent to 529
those parties not in default. The court shall neither require nor 530
order such further notice to one or more of such parties unless 531
the failure to do so shall result in manifest and substantial 532
injustice. 533

(C) If a party is deemed in default pursuant to division (A) 534
of this section, the subsequent appearance, motion, or pleading of 535
that party shall not automatically alter the status of that party 536
as being in default. The party shall remain in defaulted status 537
and shall not be entitled to service of subsequent pleadings, 538
papers, and orders unless the defaulted party shows one of the 539
following: 540

(1) That the failure to change the defaulted status results in, and the court so finds, a manifest and substantial injustice to one or more parties; 541
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(2) Excusable neglect based on facts asserted with particularity; 544
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(3) That the property in question is not residential property based on a preponderance of the evidence. 546
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Conclusory assertions shall be insufficient to challenge a party's defaulted status under this division. 548
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(D) With respect to any issue over a party's defaulted status, the court may conduct evidentiary hearings on the sufficiency of process, service of process, or sufficiency of service of process, in any proceeding arising from a complaint under this chapter. 550
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Sec. 2330.06. (A) The court shall order and conduct a final hearing on the merits of a complaint to initiate an expedited foreclosure on a residential property, including the validity or amount of any obligations under the residential mortgage, not sooner than thirty days after service of notice of summons, complaint, and affidavit has been perfected in accordance with section 2330.04 of the Revised Code, if the court determines that all of the following apply: 555
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(1) All parties to the complaint have been served. 563

(2) No individual named in the complaint is on active military duty and thereby not available. 564
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(3) The complaint, preliminary judicial report, and affidavit are before the court for the court's review. 566
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(B) Upon the occurrence of the conditions listed in divisions (A)(1) to (3) of this section, the court shall schedule a final hearing on the merits without the necessity of any pretrials, 568
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status conferences, or other interim proceedings. If within 571
fourteen days after the occurrence of the conditions listed in 572
divisions (A)(1) to (3) of this section, a court does not on its 573
own initiative order and schedule within one hundred eighty days 574
of such scheduling a final hearing on the merits of a complaint to 575
initiate a foreclosure as described in division (A) of this 576
section, then the plaintiff may thereafter file a motion 577
requesting that the court order and conduct a final hearing on the 578
merits of the complaint, including the validity or amount of any 579
obligations under the residential mortgage. Upon such motion, the 580
court shall so order and conduct the final hearing not sooner than 581
thirty days after notice of service of summons, complaint, and 582
affidavit and not later than one hundred eighty days after the 583
filing date of the plaintiff's request for the final hearing. 584

(C) Proceedings under this chapter shall be limited in 585
subject matter to: 586

(1) Substantial conformity of the complaint, affidavit, and 587
preliminary judicial report to the proceedings authorized in this 588
chapter; 589

(2) Sufficiency of process and sufficiency of service of 590
process; 591

(3) Whether a party is in default of any proceedings as 592
provided in section 2330.05 of the Revised Code; 593

(4) The validity or amount of any obligations under the 594
residential mortgage; 595

(5) Whether the property being foreclosed upon is 596
"residential property" as defined in this chapter; 597

(6) Whether the mortgagor or plaintiff financial institution 598
is in default pursuant to the residential mortgage; 599

(7) The priority, validity, and amount of any obligations of 600

other lienholders to the residential mortgage. Counterclaims and 601
cross-claims, whether normally deemed compulsory or permissive 602
under the applicable Rules of Civil Procedure, may not be asserted 603
in any action taken under this chapter except as to whether the 604
financial institution is in breach of the residential mortgage or 605
the priority and validity of lienholders listed in the preliminary 606
judicial report. Counterclaims or cross-claims other than those 607
provided for in this chapter may be pursued by any party in a 608
separate action unless the court determines in its sound 609
discretion by clear and convincing evidence that substantial 610
justice requires inclusion of such claims. 611

(D) The court may make such findings of fact, conclusions of 612
law, and orders as it determines necessary as a result of the 613
final hearing. Before or subsequent to any decree of foreclosure, 614
the court may order the financial institution and any other 615
lienholders who have appeared and are not in default to stipulate 616
to their respective order of priority, or, failing the ability to 617
stipulate, conduct hearings and make findings to determine the 618
order of priority. 619

(E)(1) A court may deem a property to be a residential 620
property if, along with a complaint to initiate foreclosure, the 621
record owner of the residential property stipulates or otherwise 622
affirms in the affidavit described in division (B)(3)(b) of 623
section 2330.04 of the Revised Code that the property is to be 624
deemed residential property. 625

(2) All of the facts contained in the affidavit shall 626
constitute prima facie evidence and shall be rebuttably presumed 627
to be true, but may be rebutted to the court at any time prior to 628
the final hearing if, at the time a financial institution files an 629
action of foreclosure under this chapter, the complaint includes 630
an affidavit as described in division (H) of section 2330.04 of 631
the Revised Code that affirmatively asserts the property is 632

residential property. 633

(3) In the case of property unimproved by any building or structure, if a party asserts an accessory use, the party making the assertion must show the existence of the accessory use by a preponderance of the evidence. Failure to assert any such accessory use by any party at least seven days prior to any final hearing as described in this section shall be deemed a waiver of any such assertion and the property shall be deemed residential property. 634
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(F) After a final hearing, the court shall enter a decree of foreclosure under this chapter if the court determines that the information in the complaint, preliminary judicial report, copy of the promissory note and residential mortgage that secures the residential property, and affidavit as described in section 2330.04 of the Revised Code is sufficient to conclude that the mortgagor is in default of the residential mortgage and the property that secures the residential mortgage is residential property. 642
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Sec. 2330.07. (A) In an action for which the preliminary judicial report as described in section 2329.191 of the Revised Code states, and the court so finds, that the residential mortgage is the first and only mortgage on the residential property and the owner of the residential property is in default of the proceedings by not having appeared, moved, or pled as described in section 2330.05 of the Revised Code, the court shall enter a decree of foreclosure against the residential property and order the property either sold pursuant to division (B) of section 2330.08 of the Revised Code, or upon petition of the financial institution that filed the complaint under this chapter, transferred pursuant to division (A) of section 2330.08 of the Revised Code. 651
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(B) In an action for which the preliminary judicial report as 663

described in section 2329.191 of the Revised Code states, and the 664
court so finds, that the residential mortgage is the first and 665
only lien on the residential property and the owner of the 666
residential property is not in default of the proceedings, then 667
upon any finding in favor of the financial institution, whether by 668
acknowledgment by the owner at a hearing, stipulation of the 669
financial institution and the owner of the residential property, 670
or upon the court's finding after a final hearing, the court shall 671
enter a decree of foreclosure against the residential property and 672
order the property either sold pursuant to division (B) of section 673
2330.08 of the Revised Code, or upon petition of the financial 674
institution that filed the complaint under this chapter, 675
transferred pursuant to division (A) of section 2330.08 of the 676
Revised Code. 677

(C) In an action for which the preliminary judicial report as 678
described in section 2329.191 of the Revised Code states, and the 679
court so finds, that the residential mortgage is the first lien on 680
the residential property but there are other liens, or interested 681
parties of record, and the owner of the residential property and 682
all other lienholders and interested parties are in default of the 683
proceedings by not having appeared, moved, or pled as described in 684
section 2330.05 of the Revised Code, the court shall enter a 685
decree of foreclosure against the residential property and order 686
the property either sold pursuant to division (B) of section 687
2330.08 of the Revised Code, or upon petition of the financial 688
institution that filed the complaint under this chapter, 689
transferred pursuant to division (A) of section 2330.08 of the 690
Revised Code. 691

(D) In an action for which the preliminary judicial report as 692
described in section 2329.191 of the Revised Code states, and the 693
court so finds, that the residential mortgage is the first lien on 694
the residential property but there are other liens, and the owner 695

of the residential property or any other lienholder or interested party is not in default of the proceedings, then upon any finding in favor of the financial institution on the residential mortgage, whether by acknowledgement at a hearing, stipulation of the financial institution and the owner of the residential property, or upon the court's finding after a final hearing, the court shall enter a decree of foreclosure and order the residential property disposed of in accordance with one of the following: 696
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(1) If the residential mortgage balance as determined by the court is greater than the fair market value of the residential property, the court shall order the property either sold pursuant to division (B) of section 2330.08 of the Revised Code, or upon petition of the financial institution that filed the complaint under this chapter, transferred pursuant to division (A) of section 2330.08 of the Revised Code. 704
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(2) If the residential mortgage balance as determined by the court is less than the fair market value of the residential property, the court shall order the property sold pursuant to division (B) of section 2330.08 of the Revised Code. 711
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To determine the fair market value of the residential property for purposes of this section, the county auditor's most recent valuation of the residential property shall be rebuttably presumed to be the fair market value of the property. The auditor's valuation is prima facie evidence of the actual fair market value, which may be rebutted to the court by any party to the action in accordance with section 2330.11 of the Revised Code. 715
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(E) In any action described in divisions (A) to (D) of this section, if the financial institution does not petition the court for a direct transfer pursuant to division (A) of section 2330.08 of the Revised Code, regardless of the number of liens on the residential property, or if the court denies a petition for a direct transfer, the court, upon entering a decree of foreclosure, 722
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shall order the residential property sold pursuant to division (B) 728
of section 2330.08 of the Revised Code. 729

(F)(1) In an action when one or more parties named as 730
defendants in the complaint are not in default of the proceedings 731
as described in section 2330.05 of the Revised Code and any matter 732
justiciable under division (C) of section 2330.06 of the Revised 733
Code is contested by one or more parties, the court may hear and 734
adjudicate the case under this chapter, or, in its sound 735
discretion, may hear and adjudicate the case according to the 736
court's normal case management schedule and local rules 737
notwithstanding the time requirements provided in divisions (A) 738
and (B) of section 2330.06 of the Revised Code. 739

(2) In an action in which all of the parties named as 740
defendants in the complaint are in default of the proceedings as 741
described in section 2330.05 of the Revised Code, the court shall 742
hear and adjudicate the case under the time requirements provided 743
in divisions (A) and (B) of section 2330.06 of the Revised Code, 744
unless the court finds specifically by clear and convincing 745
evidence that doing so will result in manifest and substantial 746
injustice to one or more parties. 747

Sec. 2330.08. (A) Upon the issuance of a decree of 748
foreclosure under this chapter on a residential property that the 749
financial institution has petitioned the court to order directly 750
transferred, and the court so orders the property directly 751
transferred, the court shall order the designated law enforcement 752
officer to prepare a deed without appraisal or exposure to sale to 753
the financial institution that brought the action, a county land 754
reutilization corporation, or other electing subdivision as 755
indicated in the financial institution's petition. Subject to 756
division (A)(2) of this section, the deed shall be free and clear 757
of all liens, encumbrances, and obligations, other than unpaid 758

taxes and assessments that may be delinquent, and such taxes and 759
assessments that are a lien on the residential property but not 760
yet due and payable. The order shall do the following: 761

(1) If the deed is prepared for the financial institution, 762
provide that upon the financial institution's payment of all taxes 763
and assessments and the costs of the proceedings, the designated 764
law enforcement officer shall deliver the deed directly to the 765
financial institution without appraisal and without sale; 766

(2) If the deed is prepared for a county land reutilization 767
corporation or other electing subdivision, provide that upon the 768
financial institution's payment of the costs of the proceedings, 769
the designated law enforcement officer shall deliver the deed to 770
the county land reutilization corporation or other electing 771
subdivision without appraisal and without sale. The direct 772
transfer of the residential property to a county land 773
reutilization corporation or other electing subdivision shall 774
extinguish the lien on the title for all taxes, assessments, 775
penalties, interest, and charges delinquent at the time of the 776
conveyance of the residential property to the county land 777
reutilization corporation or other electing subdivision, the same 778
as if such transfer were made to a county land reutilization 779
corporation or other electing subdivision in lieu of taxes 780
pursuant to section 5722.10 of the Revised Code. The financial 781
institution shall pay for the costs of the proceedings under this 782
division. 783

(B) Upon the issuance of a decree of foreclosure under this 784
chapter on a residential property for which the court does not 785
order the residential property directly transferred as provided in 786
section 2330.07 of the Revised Code, the court shall order the 787
sale of the residential property in the manner commonly performed 788
by the designated law enforcement officer of the county in which 789

the residential property is located except that the designated law 790
enforcement officer need only expose such property to sale one 791
time. Notwithstanding sections 2329.17 and 2329.20 of the Revised 792
Code, the minimum bid at sale shall be three hundred dollars, and 793
the residential property shall not be required to be appraised. 794
Chapter 2329. of the Revised Code and other applicable execution 795
statutes may be used for the disposition of the residential 796
property, not inconsistent with this chapter. 797

The purchaser of the residential property at any sale 798
pursuant to this division shall pay all current and delinquent 799
taxes and assessments on the residential property, except when the 800
purchaser is a county land reutilization corporation. The 801
financial institution shall pay the costs of the proceedings under 802
this division. 803

(C) The rights of the owner who owned the residential 804
property before a sale conducted pursuant to this chapter shall 805
remain unaffected by any excess or deficiency balance resulting 806
from the difference between the residential mortgage balance and 807
the sale price of the residential property pursuant to any 808
residential mortgage. 809

(D) If no person bids at a sale held pursuant to this 810
section, the financial institution invoking the provisions of this 811
chapter shall bid in sufficient amount, up to its residential 812
mortgage balance, to acquire the residential property. In that 813
event, the financial institution as purchaser, or its successor or 814
assigns at any sale, shall pay all current and delinquent taxes 815
and assessments on the residential property and the costs of the 816
proceedings under this chapter. 817

Sec. 2330.09. (A) The court shall prescribe deed forms and 818
issue orders of sale or orders of transfer as authorized in 819
division (C) of section 2327.02 of the Revised Code. The order of 820

sale, order of transfer, and deed forms and the description of the 821
residential property shall be ordered by the court so that at the 822
time of deed delivery to any party that obtains residential 823
property through direct transfer or sale as described in section 824
2330.07 of the Revised Code, the designated law enforcement 825
officer need only sign the deed and deliver the deed upon the 826
payment of all applicable purchase proceeds, costs, taxes, and 827
assessments, as applicable. 828

(B) By filing an action under this chapter, the plaintiff 829
authorizes and consents to the designated law enforcement officer 830
filing the deed, which shall constitute deed delivery. 831

Sec. 2330.10. (A) Notwithstanding section 2329.33 of the 832
Revised Code, a party entitled to redeem a residential property 833
after a decree of foreclosure is issued under this chapter shall 834
do so within the following time periods: 835

(1) In the case of a direct transfer made pursuant to section 836
2330.07 of the Revised Code, prior to the journalized entry of the 837
order to transfer, which may be included in the decree of 838
foreclosure or in a separate order to so transfer pursuant to a 839
decree. In the case of such a direct transfer, no further action 840
of the court shall be required after entry of the order, at which 841
point any statutory or common law equity of redemption in any 842
owner shall be deemed forever and entirely extinguished. 843

(2) In all other actions brought under this chapter, on or 844
before confirmation of sale, after which any statutory or common 845
law equity of redemption in any owner shall be deemed forever and 846
entirely extinguished. 847

(B) Upon the expiration of the time periods prescribed in 848
this section, a transfer to any transferee shall vest free and 849
clear fee simple title to the transferee free of all liens, 850

encumbrances, or charges in equity or law, except easements and 851
restrictions of record running with the land. 852

Sec. 2330.11. (A) For purposes of rebutting the presumption 853
of fair market value when value is rebuttably presumed pursuant to 854
division (D)(2) of section 2330.07 of the Revised Code, at any 855
time after the filing of the complaint, or upon the court's own 856
motion, but in no event later than fourteen days prior to any 857
final hearing, any party may file with the court a good faith 858
appraisal of the residential property from a licensed professional 859
appraiser and request a hearing to determine the fair market value 860
of the residential property. Any party may file additional 861
appraisals to refute or confirm any appraisal submitted by another 862
party. An appraisal shall not be submitted for any purpose other 863
than to rebut the presumption of value determined pursuant to 864
division (D)(2) of section 2330.07 of the Revised Code and any 865
appraisals in response to that determination. 866

(B) If proceedings on valuation require additional time 867
beyond that prescribed in this chapter, the court may proceed with 868
the case on its standard case docket as prescribed in division (F) 869
of section 2330.07 of the Revised Code, except that the court 870
shall dispose of the case as authorized in divisions (A) to (D) of 871
section 2330.07 and section 2330.09 of the Revised Code as 872
applicable, depending on the determination of fair market value 873
and to the extent such determination impacts the applicability of 874
those divisions and that section. 875

Sec. 2330.12. (A) Unless otherwise specifically prohibited by 876
the residential mortgage or a specific statutory provision of law, 877
a financial institution that has filed an action under this 878
chapter may enter into a residential property to secure and 879
protect it from harm if the property is unsecured. 880

(B) If entry as described in division (A) of this section is 881
prohibited by the residential mortgage documents or related 882
contractual documents, then, in the interest of public safety, the 883
court may authorize entry for such purposes by order either upon 884
petition or upon the court's own motion. 885

(C) A financial institution shall not be subjected to 886
criminal or civil liability for trespass, unauthorized entry, 887
invasion of privacy, building or housing code violations, or other 888
responsibility for the condition of the residential property due 889
to an entry authorized pursuant to division (A) of this section. 890
This section does not affect a financial institution's duties to 891
use ordinary care that existed prior to the effective date of this 892
section under the common law. 893

(D) In the event of an entry described in division (A) of 894
this section, the financial institution shall not be deemed to be 895
a mortgagor-in-possession of a residential property under any 896
statute or common law. The securing of the residential property 897
including the changing of locks and restricting access shall not 898
be considered as exercising any dominion, control, or the right of 899
either over the property so long as at the time of the entry, an 900
action under this chapter was filed and pending. 901

Section 2. That existing sections 2329.01, 2329.17, 2329.20, 902
2329.26, 2329.27, and 2329.33 of the Revised Code are hereby 903
repealed. 904

Section 3. Chapter 2330. of the Revised Code is intended to 905
provide an alternative basis for filing foreclosures by financial 906
institutions against residential property secured by a residential 907
mortgage. Because this alternative statutory procedure is intended 908
to expedite the foreclosure of unoccupied, often blighted, 909
residential property by providing a more expedited procedure than 910
that afforded by other available foreclosure actions, Chapter 911

2330. of the Revised Code shall be known as the Private 912
Foreclosure Fast-Track Law. 913