

AN ACT

To amend sections 317.08, 2333.22, 2715.21, 2735.01, 2735.02, 2735.04, and 5301.09 of the Revised Code to add to and clarify the powers of a receiver, to provide a procedure for a receiver's sale of property, to specify that a lease of natural gas and petroleum is an interest in real estate, and to establish a Study Committee on Receivership Laws to study matters related to receiverships and payment of public utility services.

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

SECTION 1. That sections 317.08, 2333.22, 2715.21, 2735.01, 2735.02, 2735.04, and 5301.09 of the Revised Code be amended to read as follows:

Sec. 317.08. (A) Except as provided in divisions (C), (D), and (E) of this section, the county recorder shall keep six separate sets of records as follows:

(1) A record of deeds, in which shall be recorded all deeds and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements, and hereditaments; all notices as provided in sections 5301.47 to 5301.56 of the Revised Code; all judgments or decrees in actions brought under section 5303.01 of the Revised Code; all declarations and bylaws, and all amendments to declarations and bylaws, as provided in Chapter 5311. of the Revised Code; affidavits as provided in sections 5301.252 and 5301.56 of the Revised Code; all certificates as provided in section 5311.17 of the Revised Code; all articles dedicating archaeological preserves accepted by the director of the Ohio historical society under section 149.52 of the Revised Code; all articles dedicating nature preserves accepted by the director of natural resources under section 1517.05 of the Revised Code; all conveyances of conservation easements and agricultural easements under section 5301.68 of the Revised Code; all instruments extinguishing agricultural easements under section 901.21 or 5301.691 of the Revised Code or pursuant to terms of such an easement granted to a charitable organization under section 5301.68 of the Revised Code; all

instruments or orders described in division (B)(2)(b) of section 5301.56 of the Revised Code; all no further action letters issued under section 122.654 or 3746.11 of the Revised Code; all covenants not to sue issued under section 3746.12 of the Revised Code, including all covenants not to sue issued pursuant to section 122.654 of the Revised Code; any restrictions on the use of property contained in a no further action letter issued under section 122.654 of the Revised Code, any restrictions on the use of property identified pursuant to division (C)(3)(a) of section 3746.10 of the Revised Code, and any restrictions on the use of property contained in a deed or other instrument as provided in division (E) or (F) of section 3737.882 of the Revised Code; any easement executed or granted under section 3734.22, 3734.24, 3734.25, or 3734.26 of the Revised Code; any environmental covenant entered into in accordance with sections 5301.80 to 5301.92 of the Revised Code; all memoranda of trust, as described in division (A) of section 5301.255 of the Revised Code, that describe specific real property; and all agreements entered into under division (A) of section 1506.44 of the Revised Code;

(2) A record of mortgages, in which shall be recorded all of the following:

(a) All mortgages, including amendments, supplements, modifications, and extensions of mortgages, or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered;

(b) All executory installment contracts for the sale of land executed after September 29, 1961, that by their terms are not required to be fully performed by one or more of the parties to them within one year of the date of the contracts;

(c) All options to purchase real estate, including supplements, modifications, and amendments of the options, but no option of that nature shall be recorded if it does not state a specific day and year of expiration of its validity;

(d) Any tax certificate sold under section 5721.33 of the Revised Code, or memorandum of it, that is presented for filing of record.

(3) A record of powers of attorney, including all memoranda of trust, as described in division (A) of section 5301.255 of the Revised Code, that do not describe specific real property;

(4) A record of plats, in which shall be recorded all plats and maps of town lots, of the subdivision of town lots, and of other divisions or surveys of lands, any center line survey of a highway located within the county, the plat of which shall be furnished by the director of transportation or county

engineer, and all drawings and amendments to drawings, as provided in Chapter 5311. of the Revised Code;

(5) A record of leases, including a lease described in section 5301.09 of the Revised Code, in which shall be recorded all leases, memoranda of leases, and supplements, modifications, and amendments of leases and memoranda of leases;

(6) A record of declarations executed pursuant to section 2133.02 of the Revised Code and durable powers of attorney for health care executed pursuant to section 1337.12 of the Revised Code.

(B) All instruments or memoranda of instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record. The recorder may index, keep, and record in one volume unemployment compensation liens, internal revenue tax liens and other liens in favor of the United States as described in division (A) of section 317.09 of the Revised Code, personal tax liens, mechanic's liens, agricultural product liens, notices of liens, certificates of satisfaction or partial release of estate tax liens, discharges of recognizances, excise and franchise tax liens on corporations, broker's liens, and liens provided for in sections 1513.33, 1513.37, 3752.13, 5164.56, and 5311.18 of the Revised Code.

The recording of an option to purchase real estate, including any supplement, modification, and amendment of the option, under this section shall serve as notice to any purchaser of an interest in the real estate covered by the option only during the period of the validity of the option as stated in the option.

(C) In lieu of keeping the six separate sets of records required in divisions (A)(1) to (6) of this section and the records required in divisions (D) and (E) of this section, a county recorder may record all the instruments required to be recorded by this section in two separate sets of record books. One set shall be called the "official records" and shall contain the instruments listed in divisions (A)(1), (2), (3), (5), and (6) and (D) and (E) of this section. The second set of records shall contain the instruments listed in division (A)(4) of this section.

(D) Except as provided in division (C) of this section, the county recorder shall keep a separate set of records containing all corrupt activity lien notices filed with the recorder pursuant to section 2923.36 of the Revised Code and a separate set of records containing all medicaid fraud lien notices filed with the recorder pursuant to section 2933.75 of the Revised Code.

(E)(1) The county recorder shall keep a separate set of records containing all transfers, conveyances, or assignments of any type of tangible

or intangible personal property or any rights or interests in that property if and to the extent that any person wishes to record that personal property transaction and if the applicable instrument is acknowledged before a notary public. If the transferor is a natural person, the notice of personal property transfer shall be recorded in the county in this state in which the transferor maintains the transferor's principal residence. If the transferor is not a natural person, the notice of personal property transfer shall be recorded in the county in this state in which the transferor maintains its principal place of business. If the transferor does not maintain a principal residence or a principal place of business in this state and the transfer is to a trustee of a legacy trust formed pursuant to Chapter 5816. of the Revised Code, the notice of personal property transfer shall be recorded in the county in this state where that trustee maintains a principal residence or principal place of business. In all other instances, the notice of personal property transfer shall be recorded in the county in this state where the property described in the notice is located.

(2) The records described in division (E)(1) of this section shall be maintained in or as part of the "official records" under division (C) of this section.

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

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

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

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

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

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

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

~~(B)~~(2) In an action by a mortgagee, for the foreclosure of ~~his~~ the mortgagee's mortgage and sale of the ~~mortgage mortgaged~~ property, when it appears that the mortgaged property is in danger of being lost, removed, ~~or~~ materially injured, diminished in value, or squandered, or that the condition of the mortgage has not been performed, and ~~the~~ either of the following applies:

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

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

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

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

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

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

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

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

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

(D) A receiver appointed under division (A)(4) or (7) of this section may be appointed to manage all the affairs of the corporation, limited liability company, partnership, limited partnership, or other entity, or only with respect to particular property as determined by the court.

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

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

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

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

(2) Take and keep possession of real or personal property; receive;

(3) Collect rents, ~~collect, compound for~~ and other obligations, and compromise demands; make;

(4) Enter into contracts, including, but not limited to contracts of sale, lease, or, so long as existing lien rights will not be impacted, contracts for construction and for the completion of construction work;

(5) Sell and make transfers, ~~and generally~~ of real or personal property;

(6) Execute deeds, leases, or other documents of conveyance of real or personal property;

(7) Open and maintain deposit accounts in the receiver's name;

(8) Generally do such any other acts respecting the property as that the court authorizes.

(C) Any funds that are expended by or on behalf of the receiver, including receivership fees, fees for professionals assisting the receivership, and those expended in entering into or performing contracts under division (B)(4) of this section, including those for the completion of construction

work authorized by the court, shall be taxed as court costs or otherwise treated as an administrative expense of the action. The court may require an additional deposit to cover funds that would be expended by the receiver under a contract entered into under division (B)(4) of this section only from the parties that have requested or expressly consented to the receiver incurring those expenses.

(D)(1)(a) Subject to the approval and supervision of the court and the requirements of this section, a receiver may sell property free and clear of liens by private sale pursuant to a written contract between the receiver and the prospective purchaser, by private auction, by public auction, or by any other method that the court determines is fair to the owner of the property and all other parties with an interest in the property, is reasonable under the circumstances, and will maximize the return from the property to the receivership estate, taking into account the potential cost of holding and operating the property.

(b) Before entering an order authorizing the sale of the property by the receiver, the court may require that the receiver provide evidence of the value of the property. That valuation may be provided by any evidence that the court determines is appropriate. In a public or private auction, the court may establish a minimum bid.

(c) If the receiver requests authority to sell the property pursuant to a prospective purchase contract and if warranted by the circumstances, the court may require that the receiver solicit and consider additional offers. If the receiver ultimately sells the property to a party other than the original proposed purchaser, if approved by the court, the receiver may pay to the unsuccessful original proposed purchaser a reasonable amount of costs and expenses from the sale proceeds in an amount determined by the court to compensate that proposed purchaser for participation in the sale process to the extent that participation brought value to the receivership.

(2) Any sale of real property under division (B)(5) of this section shall be made only after all of the following occur:

(a) An application is made by the receiver or the first mortgage holder that requests that the receiver be granted the authority to sell the specific real property and sets forth either of the following:

(i) If the receiver has not received a specific offer for sale that the receiver desires to accept, the proposed procedures for the conduct of the sale:

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

(b) At least ten days' prior written notice is given in accordance with the Rules of Civil Procedure to all of the owners of the real property, all parties to the action, and all other persons with a recorded or filed lien encumbering the real property to be sold as those persons are identified in a preliminary judicial report or a commitment for an owner's policy of title insurance previously filed with the court pursuant to section 2329.191 of the Revised Code or, if not previously filed, in a preliminary judicial report or a commitment for an owner's policy of title insurance filed with the application of the receiver for authority to sell the real property that otherwise complies with the requirements of section 2329.191 of the Revised Code, unless the lien or interest is barred by lis pendens pursuant to section 2703.26 of the Revised Code.

(c) An opportunity is given for a hearing at which all of the parties and persons to whom the notice is given under division (D)(2)(b) of this section may be heard, provided that if no such party or person objects to the proposed sale or requests a hearing within the period provided pursuant to that division, the court may proceed without a hearing.

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

(3)(a) If requested in the receiver's application for authority to sell the real property under division (D)(2)(a) of this section, upon a finding by the court after notice and an opportunity for a hearing as provided in divisions (D)(2)(b) and (c) of this section that it is in the best interest of the receivership estate that the real property be sold free and clear of liens, the court may order that the real property be sold free and clear of all liens other than the lien of the treasurer of the county in which the real 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 from the receiver to the purchaser, those liens shall be canceled as to the real 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 real property sold.

(4) The sale of real property under division (D)(2) of this section is in lieu of a sale pursuant to Chapter 2329. of the Revised Code, and except as provided in division (D)(2)(b) of this section with respect to the applicability of section 2329.191 of the Revised Code and as provided in division (D)(9) of this section with respect to the applicability of section 2329.37 of the Revised Code, the provisions of Chapter 2329. of the Revised Code do not apply to a sale of real property under division (D)(2) of this section.

(5) If the contemplated sale of real property is under division (D)(2)(a)(ii) of this section, the court may finally approve the sale, and no separate confirmation order is required.

(6) If the contemplated sale of real property is under division (D)(2)(a)(i) of this section, following the sale or auction process described in the application, the receiver or first mortgage holder shall seek an order confirming the sale process and approving the proposed sale.

(7) The court's order approving the application by a receiver or first mortgage holder for authority to sell real property under division (D)(2)(a) of this section shall establish a reasonable time, but not less than three days, after the date of the order approving the specific sale or the sale process for the owner and all other parties possessing an equity of redemption in the real property to exercise their equity of redemption in the real property or to have that equity of redemption forever barred. Section 2329.33 of the Revised Code does not apply to a sale by a receiver under this section.

(8)(a) Until the date the court sets for the termination of the fee owner's time to redeem the real property, any fee owner of the real property proposed to be sold may redeem the real property from the sale by paying to the receiver by cashier's check or other form of immediately available funds an amount equal to the greater of the following:

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

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

(b) The amount determined under division (D)(8)(a)(i) or (ii) of this section may include interest on the amount of the sale price at a rate that may be fixed by the court, from the date of the sale to the date of the payment of the full amount to the receiver.

(c) Upon receipt of the amount determined under divisions (D)(8)(a) and (b) of this section, the receiver shall advise the court and all of the parties and persons to whom notice was given pursuant to division (D)(2)(b) of this section of the receipt of that amount and shall set aside the sale. The fee title to the real property shall remain in the name of the owner of the real property, and the liens upon the real property, except as provided in division (D)(3) of this section, shall be transferred in the same order of priority to the proceeds received by the receiver from the owner of the real property.

(9) If the sale of the real property by the receiver under division (D)(2) of this section is conducted in accordance with the terms of the order of the court authorizing the sale, upon closing of the sale the receiver shall execute

and deliver a receiver's deed for the real property sold to the purchaser. The receiver's deed has the effect provided for in section 2329.37 of the Revised Code.

(10) If the contemplated sale of the real property is under division (D)(2)(a)(ii) of this section, as soon as is reasonably possible following the delivery of the deed to the purchaser under division (D)(9) of this section, the receiver shall file with the court and serve upon all of the parties and persons to whom the notice of the application for the authority to sell the real property was given under division (D)(2)(b) of this section a certificate and report of sale in which the receiver certifies all of the following:

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

(b) The date of the sale;

(c) The name of the purchaser;

(d) The purchase price;

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

(f) A copy of the closing statement, if a closing statement was prepared;

(g) Any other information that the court may require.

Sec. 5301.09. ~~All~~ In recognition that such leases and licenses create an interest in real estate, all leases, licenses, and assignments thereof, or of any interest therein, given or made concerning lands or tenements in this state, by which any right is granted to operate or to sink or drill wells thereon for natural gas and petroleum or either, or pertaining thereto, shall be filed for record and recorded in such lease record without delay, and shall not be removed until recorded. No such lease or assignment thereof shall be accepted for record after September 24, 1963, unless it contains the mailing address of both the lessor and lessee or assignee. If the county in which the land subject to any such lease is located maintains permanent parcel numbers or sectional indexes pursuant to section 317.20 of the Revised Code, no such lease shall be accepted for record after December 31, 1984, unless it contains the applicable permanent parcel number and the information required by section 317.20 of the Revised Code to index such lease in the sectional indexes; and, in the event any such lease recorded after December 31, 1984, is subsequently assigned in whole or in part, and the county in which the land subject thereto is located maintains records by microfilm or other microphotographic process, the assignment shall contain the same descriptive information required to be included in the original lease by this sentence, but the omission of the information required by this section does not affect the validity of any lease. Whenever any such lease is

forfeited for failure of the lessee, ~~his~~ the lessee's successors or assigns to abide by specifically described covenants provided for in the lease, or because the term of the lease has expired, the lessee, ~~his~~ the lessee's successors or assigns, shall have such lease released of record in the county where such land is situated without cost to the owner thereof.

No such lease or license is valid until it is filed for record, except as between the parties thereto, unless the person claiming thereunder is in actual and open possession.

SECTION 2. That existing sections 317.08, 2333.22, 2715.21, 2735.01, 2735.02, 2735.04, and 5301.09 of the Revised Code are hereby repealed.

SECTION 3. (A) There is hereby created a Study Committee on Receivership Laws to study matters related to receiverships and payment of public utility services. The Study Committee shall consist of six members to be appointed in the following manner. The Speaker of the House of Representatives shall appoint three members of the House of Representatives, not more than two of whom shall be members of the same political party. The President of the Senate shall appoint three members of the Senate, not more than two of whom shall be members of same political party. The initial appointments shall be made not later than March 1, 2015. The President of the Senate shall appoint the chairperson of the Committee. Vacancies shall be filled in the manner provided for the original appointments.

(B) The Study Committee appointed under division (A) of this section shall study and consider, but not limited to, both of the following:

(1) The jurisdiction of the Public Utilities Commission and the courts with respect to receiverships;

(2) The definitions and provisions of the federal Bankruptcy Code that may be used in the Ohio Revised Code.

(C) The Study Committee shall expire at the end of the 131st General Assembly.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 9

130th G.A.

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

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____