

As Passed by the House

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

Sub. H. B. No. 9

Representative Stautberg

**Cosponsors: Representatives Celebrezze, Hayes, Letson, Pillich, Winburn,
Adams, J., Adams, R., Antonio, Barborak, Beck, Blair, Boose, Brown, Buchy,
Budish, Burkley, Butler, Carney, Damschroder, Derickson, Duffey, Foley,
Green, Hackett, McClain, Milkovich, O'Brien, Patterson, Pelanda, Perales,
Rogers, Romanchuk, Rosenberger, Schuring, Sears, Slaby, Slesnick, Smith,
Sprague, Szollosi Speaker Batchelder**

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A B I L L

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

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

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

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

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

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

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

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

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

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

~~(B)~~(2) In an action by a mortgagee, for the foreclosure of 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 75
partnership, or other entity with respect to which the appointment 76
of a receiver is sought. 77

(D) A receiver appointed under division (A)(4) or (7) of this 78
section may be appointed to manage all the affairs of the 79
corporation, limited liability company, partnership, limited 80
partnership, or other entity, or only with respect to particular 81
property as determined by the court. 82

Sec. 2735.02. No party, attorney for a party, or person 83
interested in an action shall be appointed receiver ~~therein~~ in the 84
action except by consent of all of the parties to the action and 85
all other persons holding a recorded ownership interest in or a 86
recorded or filed lien on the property that is subject to the 87
action. No person except a resident of this state shall be 88
appointed or act as receiver of a ~~railroad or other~~ corporation 89
within, partnership, limited liability company, or other entity 90
created under the laws of this state. In selecting a receiver, 91
priority consideration shall be afforded to any of the qualified 92
persons nominated by the party seeking the receivership. No 93
nomination of qualified persons for the receivership is binding 94
upon the court. 95

Sec. 2735.04. (A) The powers of a receiver shall be set forth 96
in the order of the court that appointed the receiver as those 97
powers may be modified by the court or as otherwise approved by 98
the court upon application of the receiver or a party to the 99
action. 100

(B) Under the control of the court ~~which~~ that appointed ~~him,~~ 101
the receiver as provided in section 2735.01 of the Revised Code, a 102
the receiver may ~~bring~~ do any of the following: 103

(1) Bring and defend actions in ~~his~~ the receiver's own name 104

as receiver, take ;	105
<u>(2) Take and keep possession of real or personal property,</u>	106
receive ;	107
<u>(3) Collect rents, collect, compound for and other</u>	108
<u>obligations, and compromise demands, make</u> ;	109
<u>(4) Enter into contracts, including, but not limited to</u>	110
<u>contracts of sale, lease, or, so long as existing lien rights will</u>	111
<u>not be impacted, contracts for construction and for the completion</u>	112
<u>of construction work</u> ;	113
<u>(5) Sell and make transfers, and generally of real or</u>	114
<u>personal property</u> ;	115
<u>(6) Execute deeds, leases, or other documents of conveyance</u>	116
<u>of real or personal property</u> ;	117
<u>(7) Open and maintain deposit accounts in the receiver's</u>	118
<u>name</u> ;	119
<u>(8) Generally do such any other acts respecting the property</u>	120
<u>as that the court authorizes.</u>	121
<u>(C) Any funds that are expended by or on behalf of the</u>	122
<u>receiver, including receivership fees, fees for professionals</u>	123
<u>assisting the receivership, and those expended in entering into or</u>	124
<u>performing contracts under division (B)(4) of this section,</u>	125
<u>including those for the completion of construction work authorized</u>	126
<u>by the court, shall be taxed as court costs or otherwise treated</u>	127
<u>as an administrative expense of the action. The court may require</u>	128
<u>an additional deposit to cover funds that would be expended by the</u>	129
<u>receiver under a contract entered into under division (B)(4) of</u>	130
<u>this section only from the parties that have requested or</u>	131
<u>expressly consented to the receiver incurring those expenses.</u>	132
<u>(D)(1)(a) Subject to the approval and supervision of the</u>	133
<u>court and the requirements of this section, a receiver may sell</u>	134

property free and clear of liens by private sale pursuant to a 135
written contract between the receiver and the prospective 136
purchaser, by private auction, by public auction, or by any other 137
method that the court determines is fair to the owner of the 138
property and all other parties with an interest in the property, 139
is reasonable under the circumstances, and will maximize the 140
return from the property to the receivership estate, taking into 141
account the potential cost of holding and operating the property. 142

(b) Before entering an order authorizing the sale of the 143
property by the receiver, the court may require that the receiver 144
provide evidence of the value of the property. That valuation may 145
be provided by any evidence that the court determines is 146
appropriate. In a public or private auction, the court may 147
establish a minimum bid. 148

(c) If the receiver requests authority to sell the property 149
pursuant to a prospective purchase contract and if warranted by 150
the circumstances, the court may require that the receiver solicit 151
and consider additional offers. If the receiver ultimately sells 152
the property to a party other than the original proposed 153
purchaser, if approved by the court, the receiver may pay to the 154
unsuccessful original proposed purchaser a reasonable amount of 155
costs and expenses from the sale proceeds in an amount determined 156
by the court to compensate that proposed purchaser for 157
participation in the sale process to the extent that participation 158
brought value to the receivership. 159

(2) Any sale of real property under division (B)(5) of this 160
section shall be made only after all of the following occur: 161

(a) An application is made by the receiver or the first 162
mortgage holder that requests that the receiver be granted the 163
authority to sell the specific real property and sets forth either 164
of the following: 165

(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; 166
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(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. 169
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(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. 172
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(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. 186
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(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. 192
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(3)(a) If requested in the receiver's application for 196

authority to sell the real property under division (D)(2)(a) of 197
this section, upon a finding by the court after notice and an 198
opportunity for a hearing as provided in divisions (D)(2)(b) and 199
(c) of this section that it is in the best interest of the 200
receivership estate that the real property be sold free and clear 201
of liens, the court may order that the real property be sold free 202
and clear of all liens other than the lien of the treasurer of the 203
county in which the real property is located for real estate taxes 204
and assessments. 205

(b) In the event of a sale free and clear of liens, upon the 206
recording of the deed from the receiver to the purchaser, those 207
liens shall be canceled as to the real property and shall be 208
transferred to the proceeds of the sale in the hands of the 209
receiver with the same priority as those liens previously attached 210
to the real property sold. 211

(4) The sale of real property under division (D)(2) of this 212
section is in lieu of a sale pursuant to Chapter 2329. of the 213
Revised Code, and except as provided in division (D)(2)(b) of this 214
section with respect to the applicability of section 2329.191 of 215
the Revised Code and as provided in division (D)(9) of this 216
section with respect to the applicability of section 2329.37 of 217
the Revised Code, the provisions of Chapter 2329. of the Revised 218
Code do not apply to a sale of real property under division (D)(2) 219
of this section. 220

(5) If the contemplated sale of real property is under 221
division (D)(2)(a)(ii) of this section, the court may finally 222
approve the sale, and no separate confirmation order is required. 223

(6) If the contemplated sale of real property is under 224
division (D)(2)(a)(i) of this section, following the sale or 225
auction process described in the application, the receiver or 226
first mortgage holder shall seek an order confirming the sale 227
process and approving the proposed sale. 228

(7) The court's order approving the application by a receiver 229
or first mortgage holder for authority to sell real property under 230
division (D)(2)(a) of this section shall establish a reasonable 231
time, but not less than three days, after the date of the order 232
approving the specific sale or the sale process for the owner and 233
all other parties possessing an equity of redemption in the real 234
property to exercise their equity of redemption in the real 235
property or to have that equity of redemption forever barred. 236
Section 2329.33 of the Revised Code does not apply to a sale by a 237
receiver under this section. 238

(8)(a) Until the date the court sets for the termination of 239
the fee owner's time to redeem the real property, any fee owner of 240
the real property proposed to be sold may redeem the real property 241
from the sale by paying to the receiver by cashier's check or 242
other form of immediately available funds an amount equal to the 243
greater of the following: 244

(i) The sale price at which the real property was sold; 245

(ii) An amount equal to the total of all liens upon the real 246
property that were to be canceled as liens upon the real property 247
by virtue of the sale, including all principal, interest, costs, 248
and other amounts secured by those liens through the date of 249
payment to the receiver. 250

(b) The amount determined under division (D)(8)(a)(i) or (ii) 251
of this section may include interest on the amount of the sale 252
price at a rate that may be fixed by the court, from the date of 253
the sale to the date of the payment of the full amount to the 254
receiver. 255

(c) Upon receipt of the amount determined under divisions 256
(D)(8)(a) and (b) of this section, the receiver shall advise the 257
court and all of the parties and persons to whom notice was given 258
pursuant to division (D)(2)(b) of this section of the receipt of 259

that amount and shall set aside the sale. The fee title to the 260
real property shall remain in the name of the owner of the real 261
property, and the liens upon the real property, except as provided 262
in division (D)(3) of this section, shall be transferred in the 263
same order of priority to the proceeds received by the receiver 264
from the owner of the real property. 265

(9) If the sale of the real property by the receiver under 266
division (D)(2) of this section is conducted in accordance with 267
the terms of the order of the court authorizing the sale, upon 268
closing of the sale the receiver shall execute and deliver a 269
receiver's deed for the real property sold to the purchaser. The 270
receiver's deed has the effect provided for in section 2329.37 of 271
the Revised Code. 272

(10) If the contemplated sale of the real property is under 273
division (D)(2)(a)(ii) of this section, as soon as is reasonably 274
possible following the delivery of the deed to the purchaser under 275
division (D)(9) of this section, the receiver shall file with the 276
court and serve upon all of the parties and persons to whom the 277
notice of the application for the authority to sell the real 278
property was given under division (D)(2)(b) of this section a 279
certificate and report of sale in which the receiver certifies all 280
of the following: 281

(a) That the sale was conducted in accordance with the order 282
authorizing the sale; 283

(b) The date of the sale; 284

(c) The name of the purchaser; 285

(d) The purchase price; 286

(e) The amount of the net proceeds of the sale after payment 287
of all expenses associated with the sale; 288

(f) A copy of the closing statement, if a closing statement 289

was prepared; 290

(g) Any other information that the court may require. 291

Section 2. That existing sections 2333.22, 2715.21, 2735.01, 292

2735.02, and 2735.04 of the Revised Code are hereby repealed. 293