



Aida S. Montano

Bill Analysis
Legislative Service Commission

H.B. 626

127th General Assembly
(As Introduced)

Reps. Celeste and Foley, Beatty, Yuko, Harwood, B. Williams, Ujvagi, Slesnick, Skindell, Letson, Newcomb, D. Stewart, R. Hagan, S. Williams, Heard, Mallory, Setzer, Lundy

BILL SUMMARY

- Except as described in the second following dot point, requires any rental agreement for a residential property that is the subject of a foreclosure action to convert to a month-to-month rental agreement upon the approval of a sale at auction by a court.
- Requires any landlord of a residential property that is the subject of a foreclosure action to provide each tenant at that property written notice of the foreclosure action, prescribes the form of the notice, and requires the landlord to provide each tenant written notice of the date, time, and place of the sale of the foreclosed property at least 30 days before the sale date.
- If a tenant enters into a rental agreement after foreclosure begins and the tenant is not provided with the required written notice of a foreclosure action or written notice of sale, requires an owner who purchases the property at auction to offer to honor the existing rental agreement within 14 days after that purchase, and, if the tenant does not accept that offer within 14 days, requires the rental agreement to convert to a month-to-month rental agreement.
- Permits a tenant to recover the greater of actual damages or one month's rent plus the security deposit amount and reasonable attorney's fees, obtain injunctive relief to enforce the rental agreement, or both, if a landlord or a successor in interest fails to honor a rental agreement as required by the bill or to provide the required notice of the foreclosure action or notice of sale.

CONTENT AND OPERATION

Effect on rental agreement of foreclosure of residential rental property

The bill generally requires any *rental agreement* for a residential property that is the subject of a foreclosure action to convert to a month-to-month rental agreement upon the approval of a sale at auction by a court pursuant to R.C. 2329.33 (see **COMMENT 1**). However, if a *tenant* enters into a rental agreement after foreclosure begins and the tenant is not provided by the *landlord* with the written notice of a foreclosure action or the written notice of sale as required by the bill (see below), an owner who purchases the property at auction, within 14 days after that purchase, must offer to honor the existing rental agreement. If the tenant does not accept that offer within 14 days, the rental agreement must convert to a month-to-month rental agreement. (R.C. 5321.20(A) and (B).) (See **COMMENT 2** for definitions of italicized terms.)

Notice of foreclosure action

The bill requires any landlord of a residential property that is the subject of a foreclosure action to provide each tenant at that property written notice of the foreclosure action. If the rental agreement is entered into before the foreclosure action is initiated, the landlord must provide the written notice of foreclosure within 30 days after the foreclosure action is filed. If the rental agreement is entered into after the foreclosure action is initiated, the landlord must include the written notice of foreclosure in the rental agreement. (R.C. 5321.20(C)(1) and (2).)

Form of notice

The above described notice must include a statement in substantially the following form (R.C. 5321.20(C)(1)):

"This property is undergoing foreclosure. For more information on this action, you should contact the (your county) Clerk of Courts for the Court of Common Pleas, (address), at (phone number).

A sale at auction may or may not occur as a result of this foreclosure. Currently, the sale of this property has been set for (time, date, and place) *or* no date for sale of this property has been established. You will receive written notice of the sale at least thirty days before it takes place.

If there is a sale of this property at auction, the following will occur:

If you entered into your rental agreement before (date the foreclosure action was initiated), your current rental agreement converts to a month-to-month tenancy upon the sale of the property.

If you entered into your rental agreement after (date the foreclosure action was initiated) and the agreement included a notice of the foreclosure, your rental agreement will become a month-to-month rental agreement on the date a court approves the sale. The new owner may offer to honor your current rental agreement but is not required to do so. You may accept or reject any such offer.

If you entered into your rental agreement after (date the foreclosure action was initiated) and the agreement did not include a notice of the foreclosure, within fourteen days after purchasing the home the new owner must give you a written offer to honor your current rental agreement. If you do not accept that offer, your rental agreement will become a month-to-month agreement.

Note: With a month-to-month rental agreement, either the tenant or the landlord may terminate the agreement by providing written notice of termination to the other at least thirty days prior to a date on which the rent payment normally is due. The rental agreement then terminates on that date."

Notice of sale

The bill requires any landlord of a residential property that is the subject of a foreclosure action to provide each tenant at that property written notice of the date, time, and place of the sale of the foreclosed property at least 30 days before the sale date (R.C. 5321.20(D)).

Existing law requires a judgment creditor who seeks the sale of lands and tenements taken in execution or the judgment creditor's attorney generally (1) to cause a written notice of the date, time, and place of the sale to be served in accordance with Civil Rule 5(A) and (B) (service: when required and how made) upon the judgment debtor and each other party to the action in which the judgment giving rise to the execution was rendered and (2) at least seven calendar days prior to the date of the sale, to file with the clerk of the court that rendered the judgment giving rise to the execution a copy of that written notice with proof of service endorsed on the copy in the form described in Civil Rule 5(D) (see **COMMENT 3**). The bill modifies existing law by requiring that, if the lands and tenements are residential property, the written notice of the date, time, and place of the sale must also be served upon any tenant residing in the residential property who is not a party to the action. The service must be made at the address of that residential property at least 30 days before the sale date. The requirement described in (2), above, would also apply to the written notice served upon any such tenant. The

bill defines "tenant" as in the existing Landlord-Tenant Law (see COMMENT 2). (R.C. 2329.26(A)(1)(a), (C), and (D).)

Tenant's remedies

The bill provides that in addition to any other remedy under law, a tenant may recover the greater of actual damages or one month's rent plus the security deposit amount and reasonable attorney's fees, obtain injunctive relief to enforce the rental agreement, or both, if a landlord or a successor in interest (1) fails to honor a rental agreement as the bill requires (see "Effect on rental agreement of foreclosure of residential rental property," above) or (2) fails to provide the required written notice of the foreclosure action or written notice of sale as described above (R.C. 5321.20(E)).

COMMENT

1. This provision in the bill refers to the approval of a sale by a court pursuant to R.C. 2329.33 (not in the bill). There appears to be an error in the reference to that section, which provides for the *redemption* by a judgment debtor of the property at any time prior to confirmation of its sale on execution or judicial order of sale. The approval or confirmation of a judicial sale is found in R.C. 2329.31 (not in the bill), which provides in relevant part as follows:

(A) Upon the return of any writ of execution for the satisfaction of which lands and tenements have been sold, on careful examination of the proceedings of the officer making the sale, if the court of common pleas finds that the sale was made, in all respects, in conformity with sections 2329.01 to 2329.61 of the Revised Code, it shall, within thirty days of the return of the writ, direct the clerk of the court of common pleas to make an entry on the journal that the court is satisfied of the legality of such sale and that the attorney who filed the writ of execution make to the purchaser a deed for the lands and tenements. Nothing in this section prevents the court of common pleas from staying the confirmation of the sale to permit a property owner time to redeem the property or for any other reason that it determines is appropriate. In those instances, the sale shall be confirmed within thirty days after the termination of any stay of confirmation.

.....

2. Existing R.C. 5321.01, not in the bill, defines the following terms as used in the Landlord-Tenant Law and the definitions apply to the bill's provisions:

"Tenant" means a person entitled under a rental agreement to the use and occupancy of "residential premises" to the exclusion of others.

"Landlord" means the owner, lessor, or sublessor of residential premises, the agent of the owner, lessor, or sublessor, or any person authorized by the owner, lessor, or sublessor to manage the premises or to receive rent from a tenant under a rental agreement.

"Residential premises" means a dwelling unit for residential use and occupancy and the structure of which it is a part, the facilities and appurtenances in it, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant. "Residential premises" includes a dwelling unit that is owned or operated by a college or university. "Residential premises" does *not* include any of the following:

(a) Prisons, jails, workhouses, and other places of incarceration or correction, including, but not limited to, halfway houses or residential arrangements that are used or occupied as a requirement of a community control sanction, a post-release control sanction, or parole;

(b) Hospitals and similar institutions with the primary purpose of providing medical services and homes licensed pursuant to R.C. Chapter 3721. (nursing homes);

(c) Tourist homes, hotels, motels, recreational vehicle parks, recreation camps, combined park-camps, temporary park-camps, and other similar facilities where circumstances indicate a transient occupancy;

(d) Elementary and secondary boarding schools, where the cost of room and board is included as part of the cost of tuition;

(e) Orphanages and similar institutions;

(f) Farm residences furnished in connection with the rental of land of a minimum of two acres for production of agricultural products by one or more of the occupants;

(g) Dwelling units subject to R.C. 3733.41 to 3733.49 (agricultural labor camps);

(h) Occupancy by an owner of a condominium unit;

(i) Occupancy in a facility licensed as an SRO (single room occupancy) facility pursuant to R.C. Chapter 3731. (hotels), if the facility is owned or operated by an organization that is exempt from taxation under section 501(c)(3) of the "Internal Revenue Code of 1986," 26 U.S.C.A. 501, as amended, or by an entity or group of entities in which such an organization has a controlling interest, and if either of the following applies: (i) the occupancy is for a period of less than 60 days or (ii) the occupancy is for participation in a program operated by the facility, or by a public entity or private charitable organization pursuant to a contract with the facility, to provide services licensed, certified, registered, or approved by a governmental agency or private accrediting organization for the rehabilitation of mentally ill persons, developmentally disabled persons, adults or juveniles convicted of criminal offenses, or persons suffering from substance abuse, or to provide shelter for juvenile runaways, victims of domestic violence, or homeless persons.

(j) Emergency shelters operated by organizations exempt from federal income taxation under section 501(c)(3) of the "Internal Revenue Code of 1986" for persons whose circumstances indicate a transient occupancy, including homeless people, victims of domestic violence, and juvenile runaways.

"Rental agreement" means any agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties.

3. Civil Rule 5(D) requires that the proof of service state the date and manner of service and be signed in accordance with Civil Rule 11.

HISTORY

ACTION	DATE
Introduced	10-07-08

H0626-I-127.doc/jc