



Ohio Legislative Service Commission

Bill Analysis

Daniel M. DeSantis

Am. Sub. H.B. 9

128th General Assembly
(As Passed by the House)

Reps. Celeste and Foley, Garrison, Heard, Okey, Harris, Boyd, Newcomb, Harwood, Koziura, Hagan, Skindell, Stewart, Slesnick, Chandler, Brown, Murray, Mallory, DeBose, Patten, Oelslager, Lehner, Yuko, Moran, Pryor, S. Williams, Pillich, Phillips, B. Williams, Letson, Winburn, Fende, Luckie, Driehaus, Garland, Weddington, Carney, DeGeeter, Dodd, Lundy, Sayre, Sykes, Szollosi, Ujvagi, Yates

BILL SUMMARY

- Requires any rental agreement for a residential property that has been sold pursuant to a court order under a foreclosure action to convert to a month-to-month rental agreement when the court has confirmed the sale.
- Provides that a successor in interest to a property, subsequent to a foreclosure sale, assumes interest in the rental agreement and becomes the landlord under the rental agreement.
- Requires any landlord of a residential property that is notified of a foreclosure action to provide each tenant at that property written notice of the foreclosure action and prescribes the form of the notice.
- Requires the landlord to provide each tenant written notice of the date, time, and place of the sale of the foreclosed property at least 21 days before the sale date.
- Requires a landlord to include, in any written rental agreement, a provision informing the tenant of the landlord's obligations under this bill.
- Requires the previous owner, who was subject to a foreclosure, to forward to the successor in interest an amount equal to any security deposits paid by the tenant.
- Provides that a successor in interest assumes the right of entry subject to current law.

- Provides that a tenant and successor in interest may mutually agree that the existing rental agreement will continue in effect with the successor as the landlord and not convert to a month-to-month rental agreement.
- Permits a tenant to recover damages 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 abide by the provisions of this bill.

CONTENT AND OPERATION

Effect on rental agreement of foreclosure of residential rental property

(R.C. 5321.20(A))

The bill requires any rental agreement for a residential property that has been sold pursuant to a court order under a foreclosure action to convert to a month-to-month rental agreement upon the confirmation of sale by a court pursuant to R.C. 2329.31.¹ Also, upon confirmation, the successor in interest assumes interest in the rental agreement and becomes the landlord.² Confirmation generally takes place within 30 days after the selling authority, usually the sheriff, has advised the court that the property has been sold as the court ordered.³

¹ A "rental agreement" under Ohio law governing landlords and tenants (R.C. Chapter 5321.) 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 (R.C. 5321.01). "Residential property" is not defined by the bill or Ohio law governing landlords and tenants. That law does, however, provide a definition of "residential premises," which generally 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 and includes a dwelling unit that is owned or operated by a college or university. Various facilities are excluded from the definition, such as, for example, places of incarceration or correction, hospitals, boarding schools, and orphanages.

² Under Ohio law governing landlords and tenants, "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 (R.C. 5321.01).

³ R.C. 2329.31.

Notice of foreclosure action

(R.C. 5321.20(B)(1) and (2))

The bill requires any landlord of a residential property that has been notified by a court that the property is the subject of a foreclosure action to provide each tenant at that property written notice of the foreclosure action.⁴ If the rental agreement is entered into before the foreclosure action is initiated, the landlord must provide the written notice of foreclosure within 60 days after having been notified by the court that the foreclosure action has been 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.

Form of notice

The above described notice must include a statement, printed in 14-point, times new roman font, in substantially the following form:

"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 twenty-one days before it takes place.

If there is a sale of this property at auction, your current rental agreement will convert to a month-to-month rental agreement upon the sale of the property.

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

(R.C. 5321.20(C))

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,

⁴ "Tenant," under Ohio's law governing landlords and tenants, means a person entitled under a rental agreement to the use and occupancy of "residential premises" to the exclusion of others (R.C. 5321.01).

time, and place of the sale of the foreclosed property at least 21 days before the sale date.

Standard notice in all written rental agreements

(R.C. 5321.04(A)(10))

The bill requires that a landlord who is party to a written rental agreement must include a notice in the agreement that informs the tenant of the landlord's obligations under the bill. The notice must substantially conform to the following:

"The landlord must notify you within sixty days after a foreclosure action is filed that the property you reside in may be sold at auction pursuant to that action. The landlord must also notify you of the date, time, and place of the sale at least twenty-one days before the date of the sale at auction. If the property is sold at auction, the new owner will become your landlord, the rental agreement will convert to a month-to-month rental agreement, and the previous owner is required to remit to the new owner any security deposits that you have paid."⁵

Security deposit transfer

(R.C. 5321.20(D))

The bill requires the previous owner, who was subject to the foreclosure action, to forward to the successor in interest, within seven days after confirmation, an amount equal to any security deposits paid by the tenant to the previous owner. Each security deposit that the successor receives becomes the security deposit under the converted rental agreement. The successor is liable as the landlord only for the security deposits that the successor has received.

Successor landlord may enter property

(R.C. 5321.20(G))

Under current law, a landlord has a right to enter a residential premise provided that the landlord gives the tenant reasonable notice of the landlord's intent to do so.⁶ The bill confirms that the successor in interest assumes the right to enter subject to the current law.

⁵ As discussed under "**Tenant and successor may agree to continue the original rental agreement**," the bill permits the existing agreement to continue in effect without conversion to a month-to-month rental agreement, if the new landlord and the tenant agree.

⁶ R.C. 5321.04(A)(8).

Tenant and successor may agree to continue the original rental agreement

(R.C. 5321.20(D))

The tenant and the successor in interest may mutually agree that the tenant's rental agreement, as of the date the foreclosure sale is confirmed, will continue in effect and will be enforceable with the successor as the landlord rather than convert to a month-to-month agreement.

Tenant's remedies

(R.C. 5321.20(E) and (F))

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, as required by the bill, (1) fails to honor a rental agreement or (2) fails to provide the required written notice of the foreclosure action or written notice of sale.

The rights and remedies provided for in the bill are in addition to, and do not preempt, any other rights and remedies that a tenant or landlord may be entitled to under law.

HISTORY

ACTION	DATE
Introduced	02-17-09
Reported, H. Financial Institutions, Real Estate & Securities	03-26-09
Passed House (53-42)	05-06-09

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