



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Reps. Murray, Chandler, Letson, Okey, Phillips, Koziura, Yuko, Domenick, Foley, Pillich, Driehaus

BILL SUMMARY

- Generally provides procedures governing residential mortgage foreclosure actions.
- Requires the plaintiff to provide specified information at the time of filing a mortgage foreclosure action and additional information subsequent to the filing if the homeowner answers the summons and complaint.
- Requires the plaintiff in a foreclosure action to file a motion requesting a default judgment if the homeowner does not answer the summons and complaint and provides that failure to file such a motion within the bill's time limits is deemed an abandonment of any right to or claim against the property.
- Prohibits the sale at a sheriff's auction of a foreclosed residential property that constitutes a public nuisance and prohibits the county recorder from recording the deed for such a property.
- Requires a probable cause hearing to determine if a foreclosed property could be a public nuisance and specifies the basis upon which a court could find probable cause.
- Permits interested parties to intervene in a foreclosure action to bring a nuisance abatement action against the property.
- Permits a plaintiff to present information at the probable cause hearing, to pledge to abate the nuisance, or to purchase the property at auction and abate the nuisance after gaining title to the property.

- Requires the plaintiff to file notice with appropriate public agencies if the court finds probable cause that the property is a public nuisance.
- Limits the time period during which a judgment creditor may file for a writ of execution of a certificate of judgment in a residential foreclosure action and permits other lienholders to file contingent writs.
- Directs the clerk of court to issue the writ of execution in order of the rights of lienholders and specifies that proceeds of the sale be distributed in the order of the rights of the lienholders who filed for a writ of execution.
- Specifies that a lienholder's failure to file for a writ of execution within the bill's time frame is an abandonment of the property and if no lienholder files, the title of the property vests without further action in the name of the county recorder who may dispose of the property pursuant to rules the board of county commissioners adopts.
- Limits the period of redemption for a homeowner to not later than 60 days following the clerk's providing the notice of filing the certificate of judgment.
- Expands the Public Nuisance Law to include land, subsidized housing, and any type of building, not just buildings that contain residential units; removes from coverage buildings with three or fewer residential units and that are owner occupied unless the building is undergoing foreclosure and is the subject of a probable cause hearing.

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CONTENT AND OPERATION

Ohio foreclosure procedures

Overview

There are two primary types of foreclosure in the U.S.--judicial foreclosure, in which a court conducts and oversees the process and the lender obtains title only if the successful bidder at auction, and non-judicial, in which a lender or a trust may obtain title after a notice of foreclosure and the lender is responsible for sale of the property, often at private auction.

Ohio has the judicial form of foreclosure. In Ohio, a lender must file a complaint in a court of common pleas to initiate the foreclosure action. After a hearing in which the homeowner has an opportunity to be represented and heard, a court can issue a judgment in favor of the plaintiff lender. Then, the lender must file for a writ of execution of that judgment, which directs the sheriff to sell the property at auction. Upon receiving that order of sale, a sheriff sells that property at auction but that sale does not result in the title transferring. A court first must confirm the sale, indicating that the entire foreclosure procedure was conducted pursuant to the laws governing foreclosure. Only after the court's confirmation of the sale, and only if the plaintiff lender was the successful bidder at auction, does the lender obtain title to the property. The homeowner/borrower has until the court's confirmation of the sale to redeem the property and pay the amount owed. Ohio law also grants the lender the right to obtain a deficiency judgment against the homeowner if the proceeds of the sale did not cover the amount the homeowner owed on the mortgage.

Not all of the described steps in a foreclosure action are contained in the Revised Code. Mortgage foreclosure procedures in Ohio are governed by the Ohio Rules of Civil Procedure, common law, and statute. The early stages of foreclosure, including the filing for a foreclosure action and the notice provided to parties, are governed primarily by Civil Rule. The sale procedures and court confirmation are primarily governed by statute. Sub. H.B. 138 of the 127th General Assembly amended the foreclosure procedures by requiring specified information be provided at the time of filing for the action, prior to filing a writ of execution, and upon the sale of the property.

Definitions

The bill adopts the following definitions:

- "Abate," "abatement," and "neighbor" have the same meanings as in the Ohio Public Nuisance Law (see "**Changes to the Ohio Public Nuisance Law**").

- "Residential area commercial property mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon a commercial property that meets all of the following criteria:
 - The structure or structures on the property total less than 4,000 square feet.
 - The property is located within 500 feet of a residential property.
 - The property is not a brownfield, (an abandoned, idled, or under-used industrial, commercial, or institutional property where expansion or redevelopment is complicated by known or potential releases of hazardous substances or petroleum).

"Residential mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon a residential property.

"Residential property" means real property located within Ohio consisting of land and a structure on that land containing four or fewer dwelling units, each of which is intended for occupancy by a separate household. "Residential property" includes a residential condominium unit owned by an individual, notwithstanding the number of units in the structure, and a manufactured or mobile home that is subject to real property taxes under the Manufactured Mobile Home Tax Law.

"Tenant" has the same meaning as the Ohio Landlord and Tenant Law--a person entitled under a rental agreement to the use and occupancy of residential premises to the exclusion of others (by reference to R.C. 5321.01). (R.C. 2308.01.)

Information required upon filing a complaint for foreclosure

Continuing law requires a person filing an action for foreclosure of residential real estate consisting of one to four single-family units to provide the court with specified information within 14 days of that filing. This information, called a "preliminary judicial report," must be provided on a form approved by the Department of Insurance and be prepared and issued by a licensed title insurance agent or authorized company. (R.C. 2329.191.)

The bill provides a cross reference to this continuing requirement, making the requirement applicable to mortgage foreclosures of residential properties as defined by the bill. The bill requires that within 14 days after filing the complaint to initiate the foreclosure, the plaintiff file the preliminary judicial report with the clerk. (R.C. 2308.02(B).)

In addition to the continuing information requirement, the bill requires that a person filing a residential mortgage foreclosure action *accompany* the complaint for foreclosure with a writing that contains all of the following:

(1) A statement setting forth the name of the holder of the note and asserting that the named holder is the true party in interest with a right to file the action;

(2) A statement as to whether the mortgage note has been securitized and if so, the identity of any mortgage-backed security that holds the loan and the name of the trustee of that mortgage-backed security;

(3) A statement, based on the best information of the person making the filing, as to whether the residential property is occupied and the date that its occupancy status last was assessed. (R.C. 2308.02(A).)

Additional information if the mortgagor answers

The bill requires the plaintiff to provide additional information if the mortgagor answers the summons and complaint the clerk issues. If the mortgagor answers, the bill requires that within 45 days following that answer, the plaintiff provide both of the following to the clerk:

(1) Based on the best information of the plaintiff, an estimate of the value of the property. This value may be the value the auditor of the county in which the property is located has assigned the property in the course of the auditor's most recent valuation, a good faith estimate by the plaintiff considering the property's current condition, or a formal appraisal conducted by a real estate professional or a licensed appraiser.

(2) A copy of a completed property status report in substantially the following form or the form that a court modifies by rule, at the court's discretion.

Case Number:

COURT OF COMMON PLEAS

..... COUNTY, OHIO

Judge

Residential Property Status Report

Address:

Titled Owner(s):

Number of Units: Occupied: YES NO

If YES, by whom:

If NO, when vacated:

Current city code violations: YES NO If YES, attach copy of violation notice(s)

Abandoned/Unlicensed Vehicles: YES NO

Is this property the subject of litigation in any other court? YES NO

Is owner a defendant in other foreclosure cases in this court? YES NO

If YES, list case number(s):

.....

How long has current owner owned property?

.....

If less than 5 years, list previous owners for last five years:

.....

Is this action being brought pursuant to:

(1) R.C. section 5721.39? YES NO

(2) The foreclosure of a residential mortgage loan? YES NO

(Please affix a color photograph of the premises not older than 30 days here)

I certify that the information contained herein is accurate and true, to the best of my knowledge.

.....

Attorney for Plaintiff Date

(R.C. 2308.02(C).)



Default judgment request when mortgagor does not answer

The bill provides that if the mortgagor does not file an answer to the clerk's summons and complaint within 60 days after that answer is due, the plaintiff may file with the clerk a motion for a default judgment. This motion must be filed within the time beginning on the 61st day after the answer is due and ending on the 121st day after the answer is due. Along with that motion, the bill requires the plaintiff to include an affidavit attesting that the plaintiff personally inspected the property, attempted to telephone all residents located on the property, and directed correspondence to all residences located on the property, and that the affiant has no reason to believe that the premises are occupied. The bill directs the clerk to issue a default judgment in favor of the plaintiff upon receiving the motion and accompanying affidavit. (R.C. 2308.02(D)(1).)

If the plaintiff does not file a motion for a default judgment as the bill allows, the bill directs the court to dismiss the foreclosure action with prejudice. In such a situation, the plaintiff is deemed to have abandoned any right to the property or make any claim against the property, and is precluded from receiving any proceeds from a sale of the property. (R.C. 2308.02(D)(2).)

Treatment of foreclosed nuisance property

The bill prohibits a court from issuing a judgment ordering the sale of a property that is the subject of a residential mortgage foreclosure action or residential area commercial property mortgage foreclosure action, and prohibits a county recorder from accepting for recording any deed based on that sale when a property constitutes a public nuisance¹ (R.C. 2308.03(A)).

Probable cause hearing

Under the bill, in a residential mortgage foreclosure action or a residential area commercial property mortgage foreclosure action, the court may hold a hearing to determine whether there is probable cause to believe that the property constitutes a public nuisance.² The court may hold the hearing on its own accord or upon a request from interested parties who are permitted to bring such a request under continuing Nuisance Law. The bill directs the court to consider whether there is probable cause on the basis of any of the following:

1 See "**Changes to the Ohio Public Nuisance Law**," below.

2 This determination is a rebuttable presumption.

(1) Information the plaintiff provides, including information contained in the property status report;

(2) Information in a public record that indicates the existence of a building with air pollution, sanitation, health, fire, zoning, or safety code violations or other conditions that constitute a public nuisance;

(3) A court ordered inspection of the property, or a voluntary authorization of inspection of the property under any right of the plaintiff to enter the property. (R.C. 2308.03(B).)

The bill requires the court to provide the plaintiff with notice of the time, date, place, and purpose of the hearing and provide the plaintiff an opportunity to present information that the property is not a public nuisance or to request the court to allow the plaintiff to abate the nuisance. The plaintiff has ten days after receiving the court's notice to make such requests. (R.C. 2308.03(C)(1).)

Request to abate nuisance

The bill directs the court to grant any request to abate the nuisance and require the plaintiff to report to the court within 30 days on the progress in abating the nuisance. If it determines that the plaintiff is making reasonable progress in the abatement, the court is to continue with the foreclosure proceedings. If the plaintiff does not make reasonable progress in abating the nuisance or does not report as required, the bill directs the court to immediately approve any request to bring a nuisance abatement action. (R.C. 2308.03(C)(2).)

Pledge to purchase and abate

Under the bill, during a probable cause hearing a plaintiff may pledge to purchase the property at the sheriff's auction and abate the nuisance condition. The bill directs a court to stay a probable cause hearing if the mortgagee or any other judgment creditor submits a writing to the court that pledges to bid at the sale of the property at least the balance owed on the mortgage principle and to abate the nuisance subsequent to taking title to the property, if the successful bidder. If the court stays the probable cause hearing and if the judgment creditor takes title to the property, not later than 30 days after taking title, the bill requires the judgment creditor to provide the court with a written appraisal of progress in abating the alleged nuisance conditions. If the court does not receive an appraisal of progress within that time the court may resume the probable cause hearing. (R.C. 2308.03(D).)

Notice of nuisance to public agency

The bill requires the plaintiff to file notice of any finding of probable cause of a public nuisance with any local agency that is responsible for enforcement of housing occupancy codes within the municipal corporation or county in which the residential property is located, if there is such an agency. An agency inspecting the residential property as a result of receiving such a notice may charge the judgment debtor a reasonable fee to cover the costs of the inspection. (R.C. 2308.03(E).)

Interested party intervention to bring nuisance action

The bill permits any of the following to intervene in as an interested party at any time prior to the issuance of a judgment in the foreclosure proceeding of a residential property to request the court's permission to bring a civil action to abate a public nuisance under the Ohio Public Nuisance Law: (1) any municipal corporation in which a property is located or (2) any neighbor, tenant, or nonprofit corporation that is duly organized and has as one of its goals the improvement of housing conditions in the county or municipal corporation in which the property is located. (R.C. 2308.04(A).)

The bill stipulates that if pursuant to a request to bring an abatement action, the court finds probable cause to believe that the property is a public nuisance the court may authorize the interested party to bring an abatement action and the court will stay the foreclosure action to allow hearings to be held on the public nuisance pursuant to the Ohio Public Nuisance Law. The bill requires the interested party to apprise the court of its progress in the action, in writing, not later than 30 days after the court grants permission to bring the action. If the court does not receive the notice within the specified time, it may resume the foreclosure proceedings. (R.C. 2308.04(B).)

The bill permits the court to establish any guidelines it considers appropriate as a condition of granting the interested party permission to bring an abatement action against the residential property undergoing foreclosure. (R.C. 2308.04(C).)

Limited time to file writ of execution

Under existing law, a judgment becomes dormant after five years (R.C. 2329.07, amended by the bill). Otherwise, there is no time limit for a plaintiff's filing for a writ of execution after a plaintiff receives a judgment.

The bill establishes a time limit for the filing for a writ of execution in relation to a foreclosure of a residential mortgage. Under the bill, within 60 days after the clerk of court provides lienholders with the notice that the clerk has filed the certificate of judgment, the judgment creditor and any other lienholder may file for a writ of execution of that judgment. A lienholder other than the primary lienholder is directed

to file for a contingent writ of execution. A lienholder who fails to file within the timeframe the bill establishes will be deemed to have abandoned any right to the judgment and to the property, is barred from seeking another judgment on that property or making any claim against the property, and may not receive any proceeds from a sale of the property. (R.C. 2308.05(A).)

The bill directs the clerk to issue the writ of execution 60 days after providing notice to lienholders of the filing of the certificate of judgment. The clerk is to issue the writ in the order of priority of the liens of the lienholders who filed for a writ of execution. The clerk, likewise, is to direct the officer conducting the sale to distribute the proceeds from the sale in the order of priority of the liens of the lienholders who filed for a writ of execution. (R.C. 2308.05(B)(1).)

The bill enables the court, at its discretion, to extend the time period for filing for a writ of execution or issuing that writ if the mortgagee and the mortgagor in the action so request, for any reason that the court considers appropriate. (R.C. 2308.05(B)(2).) The court also may stay the issuance of a writ of execution if the judgment debtor and the judgment creditor, along with all other lienholders, enter into a forbearance agreement that allows the judgment debtor to make payments over a specific period of time and that agreement is filed with the court. The stay will be effective so long as all of the parties to the agreement comply with the terms of the agreement. (R.C. 2308.05(C).)

Property to county if no filing for writ of execution

Under the bill, any lienholder who fails to file for a writ of execution as the bill directs is deemed to have abandoned any right to the lien and has no further right to claim on the property or to collect from any proceeds of the sale of the property (R.C. 2329.02(G)(3) and 2329.07(D)). The bill specifies that if no lienholder files for a writ of execution or a contingent writ of execution as the bill provides, and if the property owner does not redeem the property, the property is deemed an abandoned property and the title of such a property vests without further action in the name of the county recorder (R.C. 2308.06(A)).

When a property is deemed abandoned as the bill describes, the prosecuting attorney of the county is to prepare a deed to convey the property from the judgment debtor to the county recorder. The deed is to contain information that the bill specifies and is to be recorded by the county recorder within 14 business days after the latest date on which a lienholder is deemed to have abandoned the property. (R.C. 2308.06(B).)

The county recorder may dispose of such an abandoned property pursuant to rules the board of county commissioners adopts. The bill directs the rules to specify that if the county has a land bank, the county recorder must place the property in that land bank pursuant to the rules. If the county does not have a land bank, the recorder is directed to dispose of the property pursuant to the discretion of the board of county commissioners. (R.C. 2308.06(C).)

Judicial foreclosure only option in Ohio

Continuing law specifies that when a mortgage is foreclosed or a specific lien enforced, the court must order a sale of the property or a transfer under specified conditions (which do not apply to a mortgage foreclosure action). The bill clarifies that the sale of a property pursuant to judicial procedure is the only order a court may make for the execution of a judgment on a residential property when the action is brought by a mortgagee or that property. (R.C. 2323.07.)

Clerk's duties in foreclosure action

When a court issues any judgment or decree, under continuing law the clerk of court files and docket the certificate of that judgment. Until this time the judgment is not a lien on the property.

The bill places additional duties on the clerk of court upon the filing of the certificate of judgment in a residential mortgage foreclosure action. The bill directs the clerk of the court to include a notation on any certificate the clerk files with respect to a residential mortgage foreclosure action that the payment of that judgment is to be made to the judgment creditor and other lienholders in the order of the priority of the liens of the lienholders who file for a writ of execution of judgment as the bill directs. (R.C. 2329.02(G).)

The bill also requires the clerk to provide notice of the time limit for the filing of a writ of execution. Under the bill, when a clerk files a certificate of judgment, the clerk is to provide notice of that filing to the judgment debtor, the judgment creditor, and all lienholders and interested parties the bill designates. The notice must state that a certificate of judgment has been filed and that the lienholder has 60 days from the date of the notice to file for a writ of execution to request the sale of the property. The bill directs a lienholder who is not the primary lienholder to file a contingency request for a writ of execution of judgment and directs the clerk to issue the writ in the order of priority of the liens of the lienholders who file. (R.C. 2329.02(G)(2).)

Right of redemption limited

Under existing law, a property owner who is foreclosed upon may redeem the property by paying the amount owed to the clerk of court. The debtor has until the court confirms the sale of the property to redeem that property.³ The bill limits the right of redemption for residential mortgage foreclosure actions by permitting the debtor to redeem the property not later than 60 days following the date the clerk of court provides notice of the filing of the certificate of judgment. The right of redemption expires at the end of the business day on the 60th day following that filing. (R.C. 2329.33).

Changes to the Ohio Public Nuisance Law

Expansion of the law

The bill expands the types of buildings to which the law applies to include buildings that do not have residential units. It also limits the types of residential buildings to which the law applies. Generally, the bill extends the existing Ohio Public Nuisance Law to cover: (1) buildings that do not include residential units, (2) land, and (3) subsidized housing. In addition, under the bill, buildings with three or fewer residential units and that are owner occupied are no longer subject to the Ohio Public Nuisance Law, unless the building is undergoing a mortgage foreclosure action and the issue of a public nuisance is being addressed in a probable cause hearing pursuant to that action.

Under existing law, a "building" for purposes of the Ohio Public Nuisance Law is any building or structure used or intended for residential purposes. The law covers buildings used for other purposes if there is at least one floor of the building intended for residential purposes.

The bill defines a building as type of any building or structure, but does not include a building or structure that contains three or fewer residential units when one of the units is occupied by the owner of the building *unless* that building or structure is a residential property as defined by the bill (see "**Ohio foreclosure procedures, Definitions**," above) and the nuisance action is initiated in the course of a foreclosure proceeding. (R.C. 3767.41(A)(1).)

In addition to the expansion of the law to cover broader classes of buildings, as discussed above, the bill generally expands the existing law provisions to include a public nuisance when that nuisance involves *land or subsidized housing* (R.C. 3767.41).

³ This right of redemption is known as a statutory right of redemption. The statute extends the common law equitable right of redemption until after the sale of the property.

The bill also expands the duties of the judge in a nuisance action by allowing the judge to conduct a summary hearing to consider and issue any temporary orders that are necessary to protect the public health, welfare, and safety pending further proceedings (R.C. 3767.41(B)(2)(b)).

The bill contains the following definitions that apply to Ohio Public Nuisance Law, with additions, or changes from existing law indicted in italics.

- "Abate" or "abatement" means the removal or correction of any conditions that constitute a public nuisance and *in connection with any building includes* the making of any other improvements that are needed to effect a rehabilitation of the building that is consistent with maintaining safe and habitable conditions over its remaining useful life. The closing or boarding up of any building that is found to be a public nuisance, *by itself, does not serve as an abatement of the public nuisance.*
- "*Land*" means any parcel of land that is not the site of a building or other structure.
- "Public nuisance" *as it applies to a building* means a building that is a menace to the public health, welfare, or safety; that is structurally unsafe, unsanitary, or not provided with adequate safe egress; that constitutes a fire hazard or is otherwise dangerous to human life; that is no longer fit and habitable *if the building is used or designed to be used for residential purposes*; or that, in relation to its existing use, constitutes a hazard to the public health, welfare, or safety by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.
- "*Public nuisance*" *as it applies to land* means land that constitutes a hazard to the public health, welfare, or safety by reason of unsafe or unsanitary conditions.
- "Neighbor" means any owner of *real* property, including, but not limited to, any person who is purchasing *real* property by land installment contract or under a duly executed purchase contract, that is located within 500 feet of any *real* property that becomes subject to the jurisdiction of a court pursuant to the public nuisance abatement law, and any occupant of a building that is so located.

HISTORY

ACTION

DATE

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