



Ohio Legislative Service Commission

Bill Analysis

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Am. Sub. H.B. 323 128th General Assembly (As Passed by the House)

Reps. Murray, Chandler, Letson, Okey, Phillips, Koziura, Yuko, Domenick, Foley, Pillich, Driehaus, Luckie, Winburn, Stewart, Heard, Belcher, Boyd, Brown, DeGeeter, Dyer, Goyal, Harris, O'Farrell, Patten, Pryor, Skindell, Slesnick, Walter, Weddington, B. Williams

BILL SUMMARY

- Generally provides procedures governing residential mortgage foreclosure actions.
- Requires a preliminary judicial report or a commitment for an owner's fee policy of title insurance to be filed along with the filing of the complaint for foreclosure instead of 14 days after filing the complaint as under existing law.
- Requires the plaintiff in a foreclosure action to file a motion requesting a default judgment under specified circumstances and establishes that failure to file as required results in dismissal of the action.
- Permits a plaintiff requesting a default judgment to also request a transfer in lieu of sale and in lieu of the right to a deficiency judgment under specified circumstances.
- Requires the plaintiff and any other lienholder to file for a writ of execution of a judgment on a foreclosed residential property within 60 days after the clerk files the judgment; establishes that failure to file is grounds for the court deeming the property abandoned unless good cause is shown.
- Generally prohibits a plaintiff and other lienholders from withdrawing or seeking dismissal of a petition for a writ of execution or an order of sale unless for good cause.

- Enables a court to deem foreclosed residential properties abandoned when the plaintiff does not seek a writ of execution as required or a property fails to sell at sheriff's auction three times.
- Provides for the transfer of abandoned property to the board of county commissioners for use pursuant to rules the commissioners adopt.
- Generally exempts a board of county commissioners from liability with respect to abandoned properties that are transferred to it.
- Authorizes a lender who has filed a residential foreclosure action to enter and secure the property if the lender has documented a good faith belief that the property is abandoned.
- Provides that an owner knowingly causing physical harm to a foreclosed property is guilty of vandalism.
- Places additional duties on the clerk of courts with respect to notices; requires clerk to collect an additional fee of \$20 for each foreclosure filing.
- Permits a plaintiff to make a written bid on a property prior to a sheriff's sale and enables the sheriff to open the auction at that price.
- Prohibits charging fees to a purchasing lienholder in a sheriff's sale prior to the time the purchase price is due.
- Establishes a procedure for the court to confirm a sale at auction by deeming the sale final if no objections have been received.
- Enables purchaser at sheriff's sale to submit the deed for recording upon payment of balance of price along with an affidavit promising to file; establishes that failure to so file may result in contempt of court.
- Establishes new notice of sale procedures for sales subsequent to the first attempt.
- Establishes new procedures for pricing residential properties at a sheriff's sale.
- Provides that properties foreclosed due to delinquent taxes that are forfeited to a political subdivision, school district, or land bank are free of taxes, assessment charges, penalties, interest, costs, and subordinate liens.
- Permits the trial of a corporation in absentia in a criminal proceeding initiated by complaint.

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CONTENT AND OPERATION

Ohio foreclosure procedures--background

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 then may sell 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 has the property appraised and sells it at auction.

Before the title of the property may transfer to the purchaser the court 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 do 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, statute, and local court rules. 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 for the purposes of residential foreclosures:

"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. (R.C. 2308.01, 2329.01, and 2909.05.)

Information required with filing

Preliminary judicial report

Existing law requires a person filing for a foreclosure action on residential real estate consisting of one to four single-family units to provide the court with specified information within 14 days after that filing. This information, called a "preliminary judicial report," must be issued by a licensed title insurance agent or authorized company on a form the Department of Insurance approves. If more than four single-family units or commercial real estate are involved, the party seeking that judicial sale must file with the clerk either a preliminary judicial report or a commitment for an owner's fee policy of title insurance within 14 days after filing the pleadings requesting relief. This filing also must be on a form the Department of Insurance approves, and be prepared and issued by a duly licensed title insurance agent on behalf of a licensed title insurance company. (R.C. 2329.191.)

The bill changes the time at which the preliminary judicial report must be provided in all residential foreclosure actions for which continuing law requires the report. The bill requires the report or commitment to be filed when the plaintiff files the complaint to initiate a foreclosure action while existing law requires the report or commitment be filed within 14 days after filing the motion to initiate the foreclosure action. (R.C. 2308.02 and 2329.191.)

Duty to file for default judgment

The bill requires a plaintiff to file a motion for default judgment if the property is not occupied and the owner has not answered or otherwise responded to the clerk's summons and complaint in accordance with the Rules of Civil Procedure. If the owner in a residential mortgage foreclosure action has not answered within ten days after the last due date for any defendant who was served with a summons and complaint, the clerk must notify the plaintiff of that failure to respond and inform the plaintiff that if the property is not occupied, the plaintiff must either file a motion for default judgment with the court or submit a statement showing cause sufficient to the court why the plaintiff is not filing such a motion. The bill requires the plaintiff to file the motion or statement within 60 days after the date of the clerk's notice. If the plaintiff fails to comply with the filing requirement, the bill requires the court to dismiss the action without prejudice. (R.C. 2308.03.)

Transfer in lieu of sale and in lieu of right to deficiency judgment

Under existing law, if a plaintiff obtains a default judgment, the judgment requires the property be sold at sheriff's auction. In order to obtain possession of the property, the plaintiff must be the successful bidder at auction.

The bill enables a plaintiff who is filing a motion for default judgment under the bill's requirements (when the owner did not respond to the clerk's summons and complaint and the property is not occupied) to also request the court to deem that the title be transferred directly and immediately to the plaintiff in lieu of sale and in lieu of the plaintiff's right to a deficiency judgment. The plaintiff may make such a request for a transfer, and a court may grant such a request, only if all of the following apply:

(1) In the plaintiff's prayer and complaint to initiate the residential mortgage foreclosure action, the plaintiff specifically reserved the right to request the additional relief of a transfer in lieu of sale and in lieu of a right to a deficiency judgment in the event that the plaintiff filed a motion for a default judgment in the course of the foreclosure action.

(2) All liens attached to the property, other than liens for real property taxes, are those of the plaintiff.

(3) The owner did not answer or otherwise respond to the clerk's summons and complaint in accordance with the Rules of Civil Procedure. (R.C. 2308.04(A).)

Notice to owner of default judgment and transfer

The bill directs the court, upon receiving a motion for default judgment that is accompanied by a request for a transfer in lieu of sale and in lieu of a default judgment, to immediately provide the owner with written notice that the motion for default judgment has been filed and that the additional relief has been sought. The court must order the owner to show cause within 30 days why the court should not enter a default judgment and transfer the property directly and immediately to the plaintiff. If the owner does not timely show cause, the owner is deemed to not oppose the default judgment and transfer of the property to the plaintiff. (R.C. 2308.04(B)(1).)

Transfer treated as if sale

When a transfer is made in lieu of sale and in lieu of a deficiency judgment, that transfer is treated as if a sale at auction had been made. The bill directs the plaintiff to provide the information that continuing law requires when a person is the successful purchaser at sale, directs the officer who would have made the sale to prepare the deed as is required under continuing law, and directs the court to confirm the transfer in the

same manner as the court confirms sales under continuing law. Further, the transfer is deemed a release of the owner's liability on the underlying debt to the plaintiff, and the value of the property is deemed to equal the amount of the underlying debt. (R.C. 2308.04(B)(2).)

Duty to file for writ of execution

Under existing law, a judgment becomes dormant after five years (R.C. 2329.07, not in the bill). Otherwise, there is no time limit under existing law for a plaintiff to file for a writ of execution after a plaintiff receives a judgment of foreclosure.

Time limit for filing writ

The bill establishes a time limit for the filing for a writ of execution in a residential mortgage foreclosure action. Under the bill, the plaintiff and any other lienholder must file for a writ of execution of a judgment, or show cause why that filing is not being made, within 60 days after receiving the clerk's notice of the filing of the judgment of foreclosure. A lienholder other than the primary lienholder is directed to file for a contingent writ within that same time period, or show cause why that is not being sought. The bill directs the court to issue an order to the owner, the plaintiff, and any other lienholder who appeared in the action giving notice of the 60-day filing requirement and the need to show cause why the property should not be deemed abandoned and transferred pursuant to the bill's procedures. A party may assert any reason that the property should not be deemed abandoned, including those listed under Rule 60 of the Rules of Civil Procedure. (R.C. 2308.05(A)(1).)

Under the bill, when a property is deemed abandoned the rights of the plaintiff and other lienholders to seek to collect the debts through other means or against assets other than the real property that is the subject of the foreclosure action, remains unaffected. This right lasts for two years and then is unenforceable. (R.C. 2308.05(A)(5).)

The bill directs the clerk to issue a writ of execution pursuant to procedures in continuing law. At its discretion, the court may extend the time period for filing for the writ or issuing the writ if the plaintiff and the owner in the action so request, for any reason the court considers appropriate. (R.C. 2308.05(B) and (C).)

Property deemed abandoned for failure to file for writ

A plaintiff or other lienholder who fails to file for a writ of execution and who does not show cause for that failure or show why the property should not be deemed abandoned and transferred, and an owner who fails to show why that property should not be deemed abandoned and transferred, is deemed to have abandoned all interest in

the property and to any right of redemption. Any party who is deemed to have abandoned 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)(2).)

Abandoned property transfers to county

If the plaintiff, other lienholders, and the owner are deemed to have abandoned the property for a failure to file for a writ of execution or to show cause why the property should not be deemed abandoned, the property is transferred pursuant to the bill's procedures 60 days after the court enters the order of abandonment. Unless a motion to vacate the order is filed prior to entering an order of abandonment and the motion is approved, the property is transferred to the board of county commissioners in accordance with the bill. The bill directs the court to vacate any order of abandonment if the plaintiff or other lienholder files a motion under Rule 60 of the Rules of Civil Procedure, establishing that the party's failure was due to mistake or inadvertence, or other good cause. The bill provides procedures for the transfer of property that is deemed abandoned under the bill to the board of county commissioners of the county in which it is located. (R.C. 2308.05(A)(3) and (4).)

Conditions for deeming a property abandoned

A property in a residential mortgage foreclosure action is subject to being deemed abandoned and transferred under the bill if either of the following occur:

(1) The plaintiff, all other lienholders, and the owner are deemed to have abandoned their rights due to a failure of the plaintiff and other lienholders to file for a writ of execution as the bill requires and no party showed cause sufficient to the court as to why the property should not be deemed abandoned.

(2) The officer making the sale advertised the sale three times pursuant to the bill's procedures and held three auctions on the property, and at those auctions no person placed a bid (see "**Establishing the price for sheriff's sale**," below). (R.C. 2308.06(A).)

Vesting of title in the county

Under the bill, when a property is deemed abandoned by one of the two methods above, the title vests without further action in the board of county commissioners in the county where the property is located. The clerk issues a notice of that vesting to the board of county commissioners. The county prosecuting attorney prepares a deed that contains the names of the parties to the judgment and the owners of the foreclosed property, a reference to the volume and page of the recording of the

recorded instrument by or through which the board claims title, the date and the amount of the judgment, and the date on which the owner and each lienholder is deemed to have abandoned the property. The bill requires the board of county commissioners to record the deed within 14 business days after the latest date on which an owner and any lienholder is deemed to have abandoned the property. (R.C. 2308.06(B).)

The board of county commissioners may dispose of abandoned property it acquires under the bill pursuant to rules it adopts. The rules must specify that the property be placed in the county's land bank if the county has a land bank. If the county does not have a land bank, the board is to dispose of the property at its discretion. (R.C. 2308.06(C).)

County liability

The bill immunizes the board of county commissioners from specified types of liability for the abandoned property transferred to it pursuant to the bill. The board is not liable for damages caused by leaking underground storage tanks, air pollution, sewage waste, and hazardous wastes and chemicals, arising from a breach, or subject to equitable remedies for a breach of common law duty, or for other violations the bill specifies that was committed by another person in connection with the abandoned property.¹ (R.C. 2308.06(D).)

Delays and stays in a foreclosure action

Other rights to collect on debt not affected

When a property is deemed abandoned pursuant to the bill, the rights of the plaintiff and other lienholders to collect the debts through other means or against assets other than the real property that is the subject of the foreclosure action remain unaffected. This right lasts for two years and then is unenforceable. (R.C. 2308.05(A)(5).)

The bill enables the court to, for good cause, stay the issuance or enforcement of a writ of execution if the owner and the plaintiff, along with all other lienholders, enter into forbearance or loan modification agreement that allows the owner to make

¹ The immunity specifically refers to violations of the Underground Storage Tank Law, the Air Pollution Control Law, the Solid and Hazardous Waste Law, the Environmental Protection Agency Law, the Voluntary Action Program Law, the Emergency Planning Law, the Hazardous Substances Law, the Cessation of Regulated Operations Law, the Conservancy District Law, and the Water Pollution Control Law and any rule adopted or order, permit, license, variance, or plan approval issued under any of those laws (R.C. 2308.06(D)).

payments over a specified period of time and that agreement is filed with the court. The stay is effective so long as all of the parties to the agreement comply with the terms of the agreement. (R.C. 2308.05(D).)

The bill prohibits the plaintiff and other lienholders from withdrawing or dismissing a petition for a writ of execution or an order of sale unless the plaintiff or the owner requests such a dismissal and shows good cause for that dismissal (R.C. 2308.05(E)).

The bill prohibits a plaintiff or other lienholder in a residential mortgage foreclosure action from filing a motion to dismiss or vacate the judgment, the writ of execution, the order of sale, the sale, or the confirmation of the sale, and prohibits a court from accepting such a motion unless for good cause shown. However, the bill provides for a stay of the foreclosure action when a plaintiff and an owner enter into a workout agreement or loan modification. The bill directs the court to stay the foreclosure action at any time prior to the sale upon the filing of a motion and affidavit indicating that the plaintiff and owner have entered into a workout agreement or loan modification. Following that stay, the bill provides that at any time the plaintiff notifies the court that the owner did not make payments as agreed, the court must notify the owner that it will resume the foreclosure action. (R.C. 2308.07.)

Enforcement of lien by other means

Continuing law specifies that when a mortgage is foreclosed or a specific lien enforced, the court must order a sale of the property or, under specified conditions that do not apply to a mortgage foreclosure action, order a transfer of the property.

The bill places additional requirements with respect to the enforcement of a debt or lien on a residential property by a means other than foreclosure. Under the bill, no specific lien may be enforced or suit brought on a note on a residential property unless that action initially is brought in a judicial foreclosure proceeding. (R.C. 2323.07.)

Right to enter the property

The bill enables a lender who has filed a foreclosure action on a property for which the lender holds a mortgage, and who has a documented good faith belief that the owner has abandoned the property, to enter that property to secure it and prevent damage, unless otherwise prohibited by the mortgage contract or a specific provision of law. If the lender has not yet filed a mortgage foreclosure action, the lender may enter the property only if the mortgage contract or other documents allow such an entry. (R.C. 2308.08(B) and (C).)

A lender may establish a good faith belief that the owner has abandoned the property by documenting that belief. Documentation may include contacting or attempting to contact the owner by telephone, mail, or electronic communications, and photographing the property for signs of neglect or abandonment. (R.C. 2308.08(A).)

The bill allows that for five years after the bill's effective date, a plaintiff in a residential mortgage foreclosure action who has a good faith belief that the property is abandoned may provide the court with the documentation and request the court to deny the owner the equitable and statutory rights to redemption of the mortgage on that property (R.C. 2308.08(D)).

Owner's physical harm is vandalism

Under the bill, a person who is an owner of residential property who knowingly causes physical harm to that property after the person has been personally served with a summons and complaint in a residential mortgage foreclosure action related to the property is guilty of vandalism. Under continuing law, vandalism is a felony, with the degree of the felony ranging from fifth degree to third degree, depending on the value of the property or the dollar amount of the harm. (R.C. 2308.09 and 2909.05.)

Clerk's duties in foreclosure action

Notice to parties upon filing judgment of foreclosure

When a court issues any judgment or decree, under continuing law the clerk of court files and docket the certificate of the judgment. The bill places additional duties on the clerk of courts related to the filing of the judgment of foreclosure. In a residential mortgage foreclosure action, upon filing the certificate of judgment, the clerk must provide notice of the judgment of foreclosure to the judgment debtor, the judgment creditor, and any other lienholder who has appeared in the action. The notice is to include information with respect to the bill's requirement that the plaintiff and any other lienholder file for a writ of execution or a contingent writ, and the consequences of a failure to comply with that requirement. (R.C. 2329.02(G).)

Notation of clerk's costs

Under continuing law, upon issuing a writ of execution of the judgment in a foreclosure action, the clerk delivers the order of sale to the officer making the sale. The bill directs the clerk to include a notation that sets forth all of the clerk's costs with respect to that foreclosure action and sale on any order of sale that the clerk delivers in a residential mortgage foreclosure action. The bill instructs the clerk to also deliver a copy of the order of sale to the attorney for the lienholder who filed for the writ of execution. (R.C. 2329.09(B).)

Date of sale

The bill requires that within 14 days after receiving an order of sale from the clerk, the officer making that sale shall set the date of the sale (R.C. 2329.09(C)).

Fees

Under continuing law, the clerk of courts collects fees for various services the clerk performs. The bill directs the clerk to collect an additional fee of \$20 for each filing for a residential mortgage foreclosure action (R.C. 2303.20(AA)).

Modifications to judicial sale procedures

Establishing the price for sheriff's sale

Under existing law, property sold at a sheriff's auction must be appraised and the sale price may not be less than $\frac{2}{3}$ of that appraised value. If the property remains unsold after the first sale, the court, on motion of the plaintiff or defendant, may order a new appraisal and sale or direct the amount for which the property may be sold.

Under the bill, if a residential property remains unsold after the first auction with a minimum bid of $\frac{2}{3}$ of the appraised value, a second auction is required with a minimum bid at $\frac{2}{3}$ of the prior minimum bid (i.e. $\frac{4}{9}$ of the appraised value). If the property remains unsold after the second auction, a third auction is to be held with a minimum bid in an amount the court establishes at its discretion. If the property remains unsold after three auctions, the bill requires it be deemed abandoned and be subject to transfer as section 2308.06 requires (see "**Vesting of title in the county**," above). (R.C. 2329.20 and 2329.52.)

Price at sale and market value of other properties

The bill specifies that the price at which a residential property is sold at a sheriff's auction may not be used to establish the market value of any other property (R.C. 2329.20).

Notice of sale

Continuing law generally requires publication of an upcoming sheriff's sale in a newspaper of general circulation. Under the bill, notice of the first attempt to sell the property is to be made as existing law requires. However, the bill permits notices of subsequent sales of the property to be made electronically on a web site the officer making the sale maintains. The officer is to set the date for any subsequent sale to be not later than 30 days following the immediate prior attempt to sell. (R.C. 2329.26(A).)

Accepting written bids

Continuing law requires the judicial sale of foreclosed property at public auction (R.C. 2329.151, not in the bill). The bill enables the officer making the sale to accept a written bid from a lienholder at any time prior to the auction. The bill permits the public notice of the sale to include notice of the opportunity for a lienholder to make a written bid and permits the officer making the sale, at the officer's discretion, to open the bidding at the amount of a written bid. (R.C. 2329.26(B).)

Deposit and fees; assignment

Currently, the practices vary among counties with respect to collecting a deposit from a lienholder who has purchased a property at auction; the bill directs the officer making the sale to not charge such a purchaser any deposit or other fees prior to the time at which the purchase price is due. Further, under the bill, if a purchaser at auction plans to assign the right to purchase that property to another party, and that other party will be paying the balance of the purchase price to the officer making the sale, the assignment of the purchaser's bid may be made at any time prior to the preparation of the deed and notice of that assignment may be filed with the officer at any time prior to the preparation of the deed. (R.C. 2329.26(C) and (D).)

Assessment of taxes on judicial sale property

Existing law provides a method of assessing taxes on property sold at judicial sale that approximate the method of computing taxes owed in private sales of real estate (the proceeds of the sale are used to discharge taxes and assessments the lien for which attaches before the confirmation of the sale). The bill instead specifies that the amount of taxes and assessments for real estate sold at judicial sale will be paid from the proceeds of that sale in an amount that is owed based on the date of the sale. (R.C. 323.47(B).)

Confirmation of the sale

Under existing law, the sheriff returns the writ of execution to the clerk after a sale at sheriff's auction, indicating the property has been sold. The court then examines the proceedings of the officer making the sale within 30 days after the return of the writ. If the sale was conducted in conformity with the law, the court directs the clerk to make an entry that the court is satisfied with the legality of the sale. The attorney who filed the writ of execution is directed to make to the purchaser a deed for the property.

Under the bill, if the clerk of court receives no written objection to the sale within seven days after the return of the writ of execution to the clerk, on careful examination of the proceedings of the officer making the sale, the court must deem that the sale is

final and confirm the sale. The clerk must then make an entry on the journal that the sale is deemed legal. (R.C. 2329.31(A).)

Extension of time to pay

Under existing law, the officer making the sale at auction must require the purchaser of a property at auction to pay the amount due within 30 days after the confirmation of the sale. The bill enables the court to grant the purchaser an extension for good cause. (R.C. 2329.31(B).)

Limit on time for debtor to redeem

Under existing law, a debtor may redeem a foreclosed property from sale by depositing the amount due along with costs with the court at any time before the confirmation of the sale. Under the bill, for a residential foreclosure action, the debtor must make this redemption and deposit the required amount with the clerk not later than 60 days following the clerk's notice of the filing of the judgment of foreclosure. (R.C. 2329.33.)

Recording the deed

Existing law directs the sheriff to record the deed with the county recorder within 14 *business days* after the date the purchaser pays the balance due on a property sold at sheriff's auction. The bill changes the time to 14 *days* after the date the purchaser pays the balance due. Existing law also requires the sheriff to charge the purchaser a fee to cover the actual costs of recording the deed. The bill additionally permits the sheriff to charge the purchaser a fee to cover the actual cost of preparing the deed.

The bill also permits a purchaser to deliver any remaining balance of the purchase price to the sheriff together with an affidavit stating the purchaser will submit the deed for recording within seven days after receipt of the deed. Upon receiving the remaining balance and affidavit, the bill directs the sheriff to release the unrecorded deed to the purchaser, who is to submit that deed for recording within seven days and deliver evidence of that recording to the sheriff or face penalties for contempt of court. If the purchaser fails to deliver evidence to the sheriff that the deed has been submitted for recording within that seven-day period, the sheriff must notify the court and the court must schedule proceedings against the purchaser for contempt of court. (R.C. 2329.36(C).)

Liens on forfeited tax foreclosed properties

Continuing law provides for the forfeiture of properties that are foreclosed due to tax delinquencies and that have failed to sell on two separate occasions for want of

bidders. Any political subdivision, school district, or county land reutilization corporation may petition the court to request forfeiture of the property to it. The court certifies to the county auditor a copy of its entry ordering the transfer of the property and thereupon, the property vests in the political subdivision, school district, or corporation. If no such entity has requested forfeiture of the property to it, the property is forfeited to the state. (R.C. 5723.01.)

Under continuing law, when the forfeiture is to a county land reutilization corporation (county land bank), the transfer of the property is free of "taxes, assessment, charges, penalties, interest, and costs" and subordinate liens (R.C. 5723.04, not in the bill). However, the law is silent with respect to the treatment of liens when the transfer is made to a political subdivision or a school district.

The bill extends the general exemption of liens to all properties foreclosed due to tax delinquency that are forfeited after failure to sell. Under the bill, when a property is forfeited, the county auditor is directed to promptly transfer to the political subdivision, school district, or corporation, by auditor's deed, the fee simple title to the property free and clear of all taxes, assessments, charges, penalties, interest, and costs. Any subordinate liens are deemed fully and forever satisfied and discharged. The property is deemed sold by the state for no consideration. The bill directs the political subdivision, school district, or corporation to file the deed for recording. (R.C. 5723.01(A).)

Trials of corporations in absentia

Under existing law, when a corporation is indicted or an information is filed against it, the prosecuting attorney may request the court to order the sheriff to notify the corporation of that fact. The summons, with a copy of the *indictment*, must be served and returned in the same manner as for service upon corporations in civil actions. If the service cannot be made in the county where the prosecution began, the sheriff may make service in any other Ohio county, upon specified corporate officers, or by leaving a copy at the corporation's general or branch office or usual place of doing business, with the person having charge of that office or place. The corporation must appear and answer the indictment or information. Upon failure to make such an appearance and answer, the clerk of *the court of common pleas* must enter a plea of "not guilty." The corporation is then before the court until the case's final disposition. No warrant of arrest may issue on the indictment or information except for individuals included in the indictment or information.

In *Cleveland v. Washington Mutual Bank* (2010), 2010-Ohio-2219, the Ohio Supreme Court held that this provision does not authorize the trial of a corporation in absentia in a criminal proceeding that is initiated by affidavit or complaint in a municipal court.

The bill expands this provision to include (1) situations in which the criminal charges are brought by complaint, (2) situations in which the criminal charges are brought in a court other than the court of common pleas, and (3) charges brought by information in the provision relating to service of process upon corporations in the same manner as in civil actions. The bill also repeals the provision describing the methods by which service may be made on the corporation out-of-county; service upon the corporation is covered by Rule 4.2 of the Rules of Civil Procedure. (R.C. 2941.47.)

HISTORY

ACTION	DATE
Introduced	10-21-09
Reported, H. Housing & Urban Revitalization	02-08-10
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