



Ohio Legislative Service Commission

Bill Analysis

Aida S. Montano

Sub. H.B. 610* 129th General Assembly (As Reported by H. Judiciary and Ethics)

Rep. Stautberg

BILL SUMMARY

- Modifies current law prohibiting any party, attorney, or person interested in an action from being appointed receiver except by consent of the parties by providing that the consent be of all of the parties to the case and all other persons holding a recorded ownership interest in or financial lien on the property that is subject to the proceeding.
- Modifies one of the conditions for appointing a receiver in foreclosure actions by providing that either the property is probably insufficient to discharge the mortgage debt (existing law) or the mortgagor has consented in writing to the appointment of a receiver.
- Provides that a receiver may be appointed to enforce a contractual assignment of rents and leases.
- Requires that a receiver appointed in specified types of actions be appointed only with respect to the particular property that is the subject of the action, and permits a receiver to be appointed as a general receiver in other types of proceedings.
- Requires the powers of a receiver to be specified in the order of the court that appointed the receiver as those powers may be modified by the court or otherwise approved by the court upon application of the receiver or a party to the action.
- Expands the powers of receivers to include the execution of deeds, leases, or other documents of conveyance of real or personal property and to open and maintain deposit accounts in the receiver's name.

* This analysis was prepared before the report of the House Judiciary and Ethics Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Specifically authorizes a receiver to enter into contracts, including sale, lease, or construction contracts and contracts for the completion of construction work, and requires that funds expended in entering or performing the contracts be taxed as court costs or otherwise treated as a priority administrative expense of the proceeding.
- Specifies that a receiver may make transfers of real or personal property and the requirements for such a sale, including an application by the receiver or the first mortgage holder for authority to sell the property and notice and an opportunity to be heard given to the property owners, parties to the action, and all parties with interest in the property.
- Authorizes a court to order that property be sold free and clear of all liens, other than a lien for real estate taxes and assessments, if so requested in the receiver's application for authority to sell and upon a finding by the court after notice and an opportunity to be heard that it is in the best interest of all parties that the property be sold free and clear of those liens.
- Requires that the court order approving the receiver's application for authority to sell property set a reasonable time after the date of the order, but not less than three days, for the owner and all parties possessing an equity of redemption in the property to exercise that equity or to have it forever barred.
- Generally, until the court confirms the sale, permits a fee owner to redeem the property from the sale by paying the receiver the greater of the sale price or an amount equal to the total of all liens that were to be canceled by virtue of the sale, including principal, interest, costs, and other amounts secured by the liens.
- Requires a receiver to execute and deliver a receiver's deed to the purchaser of the property if the sale is conducted in accordance with the terms of the court order and to file with the court and serve upon all of the parties receiving the notice of the application for authority to sell a certificate and report of sale.
- Generally permits any party in the action to file an objection with the court that the sale was not conducted in accordance with the court order and provides that the objection cannot be grounds to set aside the sale unless the court finds that the purchaser did not purchase the property in good faith.
- Specifies that, subject to the court's approval and supervision, a receiver may sell the property by private sale, by private auction, by public auction, or by any other method determined by the court to be fair to the owners and parties, reasonable, and will maximize the return to the receivership estate.

- Modifies the laws pertaining to attachment proceedings and the examination of a judgment debtor in proceedings in aid of execution to provide that a receiver appointed in those proceedings, under the control of the appointing judge, may exercise the same powers specified in the bill and in existing law.

CONTENT AND OPERATION

Appointment of receiver

The bill modifies the Receivership Law by providing that a receiver may be appointed by the Supreme Court or a justice of that Court, the court of appeals or a judge of that court in the district, the court of common pleas or a judge of that court in the county, or the probate court, in causes pending in those courts respectively, in the following types of cases (modified language is italicized):¹

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject property or a fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of a party whose right to or interest in the property or fund, or their proceeds, is probable, and when it is shown that the property or fund is in danger of being lost, removed, or materially injured;

(2) In an action by a mortgagee, for the foreclosure of the mortgagee's mortgage and sale of the mortgage property, when it appears that the mortgaged property is in danger of being lost, removed, materially injured, *diminished in value, or squandered*, or that the condition of the mortgage has not been performed, and *either of the following applies*: (a) the property is probably insufficient to discharge the mortgage debt, or (b) *the mortgagor has consented in writing to the appointment of a receiver*.

(3) *To enforce a contractual assignment of rents and leases;*

(4) After judgment, to carry the judgment into effect;

(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;

(6) When a corporation, *limited liability company, partnership, limited partnership, or other entity* has been dissolved, is insolvent, is in imminent danger of insolvency, or has

¹ R.C. 2735.01(A).

forfeited its corporate, *limited liability company, partnership, limited partnership, or other entity* rights;

(7) In all other cases in which receivers have been appointed by the usages of equity.

The bill requires that a receiver appointed under paragraph (1), (2), (3), or (5) above 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. A receiver appointed under paragraph (6) may be appointed as a general receiver to manage the affairs of the corporation, limited liability company, partnership, limited partnership, or other entity with respect to which the appointment of a receiver is sought. A receiver appointed under paragraph (4) or (7) above may be appointed as a general receiver or as a receiver with respect to particular property as determined by the court.²

Current law prohibits the appointment of certain persons as a receiver. The bill modifies current law as described in this paragraph (modified language is italicized). It prohibits any party, attorney, or person interested in an action from being appointed receiver *in the action* except by consent of *all of the parties to the case and all other persons holding a recorded ownership interest in or financial lien on the property that is subject to the proceeding*. No person except a resident of Ohio can be appointed or act as receiver of a (the bill deletes "railroad or other") corporation, *partnership, limited liability company, or other entity created under the laws of this state*. *In selecting a receiver, priority consideration must be afforded to any of the qualified persons nominated by the party seeking the receivership. No nomination of qualified persons for the receivership is binding upon the court.*³

Powers of receiver

The Receivership Law also specifies the powers of receivers. The bill requires the powers of a receiver to be set forth in the order of the court that appointed the receiver as those powers may be modified by the court or as otherwise approved by the court upon application of the receiver or a party to the action.⁴ The bill modifies the powers by providing that, under the control of the court that appointed the receiver, the receiver may do any of the following (modified language is italicized):⁵

(1) Bring and defend actions in the receiver's own name as receiver;

² R.C. 2735.01(B), (C), and (D).

³ R.C. 2735.02.

⁴ R.C. 2735.04(A).

⁵ R.C. 2735.04(B).

- (2) Take and keep possession of *real or personal* property;
- (3) Receive rents and collect (the bill removes "compound for, and compromise") demands;
- (4) *Generally enter into contracts, including, but not limited to, contracts of sale, lease, or construction and contracts for the completion of construction work;*
- (5) Make transfers of *real or personal* property;
- (6) *Execute deeds, leases, or other documents of conveyance of real or personal property;*
- (7) *Open and maintain deposit accounts in the receiver's name;*
- (8) Generally do any other acts (the bill deletes "respecting the property") that the court authorizes.

Power to enter into contracts

The bill requires that any funds that are expended by or on behalf of the receiver, including receivership fees, fees for professionals assisting the receivership, and those expended in entering into or performing contracts under paragraph (4), above, including those for the completion of construction work authorized by the court, be taxed as court costs or otherwise treated as a priority administrative expense of the proceeding. The court may from time to time require an additional deposit to cover that administrative expense by the party that sought the receivership or by all parties likely to be directly benefited by the construction work.⁶

Power to sell property

The bill requires that any sale of real or personal property as described in paragraph (5), above, be made only after all of the following occur:⁷

- (1) An application is made by the receiver or the first mortgage holder requesting that the receiver be granted the authority to sell the specific property and setting forth either of the following: (a) if a specific offer for sale that the receiver desires to accept has not been received, the proposed procedures for the conduct of the sale, or (b) if a specific offer for sale that the receiver desires to accept has been received, the identity of the buyer and the proposed terms of the sale.

⁶ R.C. 2735.04(C).

⁷ R.C. 2735.04(D)(1).

(2) At least ten days' prior notice is given to all of the owners of the property, all parties to the action, and all parties with an interest in the property to be sold as those parties are identified in a preliminary judicial report or a commitment for an owner's fee policy of title insurance previously filed with the court pursuant to R.C. 2329.191 or, if not previously filed, in a preliminary judicial report or a commitment for an owner's fee policy of title insurance filed with the receiver's application for authority to sell the property that otherwise complies with the requirements of R.C. 2329.191, unless the lien or interest of that party is barred by lis pendens pursuant to R.C. 2703.26.

(3) An opportunity is given for a hearing at which all of the parties to whom the notice is given as described above may be heard, provided that if no party objects to the proposed sale or requests a hearing within the above ten-day period, the court may proceed without a hearing.

(4) The court issues an order of sale of the 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.

Sale of property free and clear of liens

The bill provides that if requested in the receiver's application for authority to sell the property, upon a finding by the court after notice and an opportunity for a hearing as described above that it is in the best interest of all of the parties that the property be sold free and clear of liens, the court may order that the property be sold free and clear of all liens other than the lien of the treasurer of the county in which the property is located for real estate taxes and assessments. In the event of a sale free and clear of liens, upon the recording of the deed by the receiver to the purchaser, those liens must be canceled as to the property and be transferred to the proceeds of the sale in the hands of the receiver with the same priority as those liens previously attached to the property sold.⁸

Nonapplicability of R.C. Chapter 2329

The bill provides that the sale of property under its provisions is in lieu of a sale pursuant to R.C. Chapter 2329. (execution against property), and except as described above with respect to the applicability of R.C. 2329.191 and 2329.37, the provisions of R.C. Chapter 2329. do not apply to that sale.⁹

⁸ R.C. 2735.04(D)(2).

⁹ R.C. 2735.04(D)(3).

Private sale

Under the bill, if the contemplated sale of property is a private sale to an identified purchaser and upon the terms described in the application for authority to sell the property, the court may approve and confirm the sale in the same order.¹⁰

Redemption rights; forfeiture of redemption rights

If the contemplated sale of property is other than as described in the preceding paragraph or if the court does not confirm the sale in its order approving the sale, the redemption rights described below must be extinguished upon the court entering an order confirming the sale.¹¹

The bill requires the court's order approving the receiver's application for authority to sell property to establish a reasonable time after the date of the order, but not less than three days, for the owner and all other parties possessing an equity of redemption in the property to exercise their equity of redemption or to have that equity of redemption forever barred. R.C. 2329.33 (redemption by judgment debtor in execution proceedings against property) does not apply to a sale by a receiver under the bill.¹²

Until the court has confirmed a sale of property, unless the court orders the termination of the fee owner's time to redeem the property, any fee owner of the property proposed to be sold may redeem the property from the sale by paying to the receiver by cashier's check or other form of immediately available funds an amount equal to the greater of the following: (a) the sale price at which the property was sold, or (b) an amount equal to the total of all liens upon the property that were to be canceled as liens upon the property by virtue of the sale, including all principal, interest, costs, and other amounts secured by those liens through the date of payment to the receiver. The amount determined above must include interest on the amount of the sale price at the rate of 8% per annum from the date of the sale to the date of the payment of the full amount to the receiver. Upon receipt of this amount, the receiver must advise the court and all of the parties to whom notice was given as described above of the receipt of that amount and must set aside the sale. The fee title to the property must remain in the name of the owner of the property, and the liens upon the

¹⁰ R.C. 2735.04(D)(4).

¹¹ R.C. 2735.04(D)(5).

¹² R.C. 2735.04(D)(6).

property, except as described above must be transferred in the same order of priority to the proceeds received by the receiver from the owner of the property.¹³

Delivery of deed; receiver's certificate and report of sale

If the sale of the property by the receiver is conducted in accordance with the terms of the court's order authorizing the sale, upon closing of the sale the receiver must execute and deliver a receiver's deed for the property sold to the purchaser. The receiver's deed has the effect provided for in R.C. 2329.37 (deed is prima facie evidence of the legality and regularity of the sale).¹⁴

Within ten days following the delivery of the deed to the purchaser or as soon thereafter as is reasonably possible, the receiver must file with the court and serve upon all of the parties to whom the notice of the application for the authority to sell the property was given a certificate and report of sale in which the receiver certifies all of the following: (a) that the sale was conducted in accordance with the order authorizing the sale, (b) the date of the sale, (c) the name of the purchaser, (d) the purchase price, (e) the amount of the net proceeds of the sale after payment of all expenses associated with the sale, and (f) any other information that the court may require.¹⁵

Objection to the sale

The bill provides that unless the sale was previously confirmed, within ten days following service of the receiver's certificate and report of sale, any party in the action may file with the court an objection alleging that the receiver did not conduct the sale in accordance with the order authorizing the sale. Unless the court finds that the purchaser did not purchase the property in good faith, that objection cannot be grounds to set aside the sale. The objecting party's sole remedy is a claim against the receivership estate and the receiver's bond.¹⁶

Manner of sale; valuation of property

The bill provides that subject to the approval and supervision of the court, a receiver also may sell property by private sale pursuant to a written contract between the receiver and the prospective purchaser, by private auction, by public auction, or by any other method that the court determines is fair to the owner of the property and all other parties with an interest in the property, is reasonable under the circumstances,

¹³ R.C. 2735.04(D)(7).

¹⁴ R.C. 2735.04(D)(8).

¹⁵ R.C. 2735.04(D)(9).

¹⁶ R.C. 2735.04(D)(10).

and will maximize the return from the property to the receivership estate, taking into account the potential cost of holding and operating the property. Before entering an order authorizing the sale of the property by the receiver, the court may require that the receiver provide evidence of the fair market value of the property. That valuation may be provided by expert appraisal testimony or any other evidence that the court determines is appropriate. In a public or private auction, the court may establish a minimum bid.¹⁷

If the receiver requests authority to sell the property pursuant to a prospective purchase contract, the court may require that the receiver solicit additional offers. If the receiver ultimately sells the property to a party other than the original proposed purchaser, the receiver must pay to the unsuccessful original proposed purchaser a fee from the sale proceeds in an amount determined by the court to compensate that proposed purchaser for participation in the sale process.¹⁸

Proceedings in aid of execution

Under current law, in proceedings for the examination of a judgment debtor concerning the debtor's property, income, or other means of satisfying a judgment, the judge by order may appoint the sheriff of the proper county or other suitable person a receiver of the property of the judgment debtor. The judge also, by order, may forbid a transfer, or other disposition of or interference with, the property of the judgment debtor not exempt by law. The bill provides that, under the control of the judge who appointed a receiver and except as ordered by the judge as described in the preceding sentence, the receiver may do any of the acts described above under "**Powers of receiver.**"¹⁹

Attachment proceedings

Continuing law provides that an attachment against the property, other than personal earnings, of a defendant may be had in a civil action for the recovery of money, at or after its commencement, upon any one of specified statutory grounds.²⁰ On application of the plaintiff and for good cause shown, a court may appoint a receiver who must take an oath and give a bond as is provided in other cases.²¹ Current

¹⁷ R.C. 2735.04(D)(11)(a) and (b).

¹⁸ R.C. 2735.04(D)(11)(c).

¹⁹ R.C. 2333.22.

²⁰ R.C. 2715.01(A), not in the bill.

²¹ R.C. 2715.20, not in the bill.

law requires the appointed receiver to take possession of all notes, due bills, books of account, accounts, and other evidences of debt that have been taken by the levying officer as the property of the defendant in attachment and proceed to settle and collect them. For that purpose, the receiver may commence and maintain actions in the receiver's own name as receiver but no right of defense in the action can be impaired or affected. The bill provides that, under the control of the court that appointed the receiver, the receiver may do any of the acts described above in "**Powers of receiver.**"²²

HISTORY

ACTION	DATE
Introduced	11-27-12
Reported, H. Judiciary and Ethics	---

H0610-RH-129.docx/emr

²² R.C. 2715.21.

