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Allison M. Mease

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ACT SUMMARY

County land reutilization programs

- Expressly extends political subdivision sovereign immunity to county land reutilization corporations (CLRCs).
- Provides that, in addition to preexisting criteria, land may be considered to be nonproductive, and therefore eligible for acquisition by a land bank, if the land is abandoned.
- Modifies the threshold occupation limit that prevents a CLRC from acquiring an interest in real property.
- Allows a land bank to acquire nonproductive land if the property has been offered for sale once, instead of twice, and has not been sold for a specified minimum price.
- Specifies that the property tax exemption for CLRC-owned property also extends to property held by a wholly owned subsidiary of a CLRC if identified as such in the deed transferring conveyance.
- Specifies that the conveyance fee exemption for CLRC-owned property extends to a wholly owned subsidiary of the CLRC.

- Exempts a CLRC and its wholly owned subsidiaries, and a political subdivision, from paying transfer and recording fees for nonproductive land.
- Specifies that, like a CLRC, a political subdivision is not required to apply to any county or state agency for property tax exemption for its land bank property.
- Allows a land bank to move to vacate an order transferring foreclosed property to the land bank if the land bank previously requested the transfer but no longer wishes to acquire the property.
- Requires, instead of allows, the county auditor to approve a conveyance of property in lieu of foreclosure if the land bank has certified in writing that the property is abandoned.
- Allows a political subdivision to sell property in its land bank program to a CLRC for less than fair market value.
- Provides that, when a CLRC purchases property sold pursuant to a nontax foreclosure proceeding, any taxes, penalties, and interest due on the property are automatically extinguished if the CLRC is also the judgment creditor in the foreclosure proceeding.
- Allows county treasurers and prosecuting attorneys to allocate surplus money in each officer's delinquent tax and assessment collection fund to pay for nuisance abatement actions taken by CLRCs.
- Increases the total amount that the officers in certain counties may allocate from the officer's delinquent tax and assessment collection fund for nuisance abatement.
- Allows a municipal corporation or CLRC to file a lien to recoup nuisance abatement costs and file a foreclosure action to enforce the lien, in addition to the remedies available in ongoing law to recoup such costs.
- Provides political subdivisions and CLRCs a right of entry to conduct assessments, appraisals, and other health and safety inspections for lands that have been forfeited to the state for nonpayment of taxes, and protection from liability for such entrances.

Expedited, nonjudicial tax foreclosure procedures

- Specifies that land is considered to be abandoned, and therefore eligible for expedited foreclosure, if the land is insecure, vacant, or vandalized upon visible inspection and meets other statutory criteria.



- Allows for the transfer of foreclosure cases between county boards of revision and courts of common pleas or municipal courts.
- Allows a property owner to move to transfer an expedited foreclosure complaint within 14 days after service of the complaint, instead of an owner moving to dismiss the complaint within 20 days after service of the complaint.
- Allows a county board of revision to issue subpoenas to compel witness testimony or the production of papers, books, and accounts with respect to an expedited foreclosure case.

General tax foreclosure procedures

- Allows a CLRC or political subdivision to repurchase a delinquent tax certificate at its original purchase price from the certificate holder under certain circumstances.
- Shortens the alternative redemption period that may be invoked in a foreclosure action involving abandoned property, from the period ending 45 days after the adjudication of foreclosure is journalized to the period ending 28 days thereafter.
- Provides that tax foreclosure actions may be started before the list of tax-delinquent property is published if the publication is not made as otherwise required by ongoing law.
- Changes the notice that is printed on property tax bills to reflect law unchanged by the act, which provides that property owners may face foreclosure if the billed taxes are not paid within 60 days after they are certified delinquent.

Review of real property conveyances

- Eliminates certain standards that are applied to real property conveyances when the county auditor, pursuant to continuing law, reviews the conveyances before transferring the property.

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CONTENT AND OPERATION

Overview

The act makes several changes to the law governing land reutilization programs and property tax foreclosures. The first part of this analysis addresses the changes to land reutilization programs. The second and third parts of the analysis discuss the act's changes to property tax foreclosure procedures. The fourth part of the analysis addresses the act's changes regarding the review of real property conveyances by a county auditor and county engineer.

County land revitalization programs

Under continuing Ohio law, a county, municipal corporation, or township may adopt a land reutilization program in order to facilitate the reutilization of nonproductive land located within its boundaries. (Land reutilization programs are commonly referred to as "land bank" programs.) Under such a program, the subdivision may acquire properties that have been foreclosed for tax delinquency, sell those properties to get them back on the tax rolls, or dedicate the properties to public use.



In lieu of establishing its own land bank program, a county with a population of more than 60,000 may create a county land reutilization corporation (CLRC). A CLRC is a nonprofit organization that has the same powers as a subdivision with its own land bank program, but that has a different funding mechanism, greater authority to acquire foreclosed and forfeited land, and the power to regionally address vacant housing problems.

Nonproductive land definition

A land bank is charged with acquiring and disposing of "nonproductive" land located within its boundaries. Under law largely unchanged by the act, nonproductive land is tax delinquent land that is subject to a property tax foreclosure proceeding and that fits into one of the following categories:

(1) The land is vacant;

(2) The land contains buildings or structures that are not occupied and upon which proceedings have been instituted for the removal or demolition of buildings due to their being insecure, unsafe, or structurally defective;

(3) The land contains buildings or structures that are not occupied at the time the foreclosure proceeding is initiated and whose acquisition the municipal corporation, county, or township determines to be necessary for the implementation of an effective land bank program.

Subdivisions and CLRCs may acquire nonproductive land once the tax lien has been foreclosed and, in the general case, the property has been offered for sale at a specified minimum price but remains unsold. (Under two alternative procedures, subdivisions and CLRCs may purchase nonproductive land directly from the owner before the tax lien is foreclosed,¹ or by a conveyance in lieu of foreclosure. See "**Conveyance in lieu of foreclosure**," below.)

The act adds that property may be considered to be nonproductive if the property qualifies as abandoned (for a definition of abandoned property, see "**Abandoned land definition**," below). In addition, the act modifies (3) to require that, instead of determining that acquisition of a property is necessary to the effectiveness of the land bank, a subdivision or CLRC need only determine that the land is eligible for the land bank program.²

¹ R.C. 5722.21, not in the act.

² R.C. 5722.01.



CLRC ownership of unoccupied property

The act modifies the threshold occupation limit that prevents a CLRC from acquiring an interest in real property. Under former law, the CLRC was prevented from acquiring real property if the acquisition caused the percentage of occupied real properties owned by the CLRC to exceed 25%. Under the act, the threshold is the greater of 50 properties or 25%. In addition, the act defines "occupied" property to mean any property that does not meet the definition of "unoccupied" property in law largely unchanged by the act (see "**Abandoned land definition**," below).³

Tax sale requirement; acquisition costs

The act allows a subdivision or CLRC to acquire nonproductive land it has selected for its land bank if the property has been offered for sale once but has not been sold for a specified minimum price.⁴ (Generally, the minimum price is set at either the amount of the tax delinquency, including penalties and interest and various costs of foreclosure, the fair market value as shown on the tax list, or two-thirds of a newly appraised value, depending on the foreclosure proceeding.) Under the act, in the case of property foreclosed under R.C. 323.25, only one sale offer at a minimum price will be required if the property qualifies as "abandoned land" (see "**Abandoned land definition**," below).⁵ Ongoing law generally requires tax-delinquent property to be offered for sale twice at the specified minimum price before it may be acquired by a subdivision or CLRC under the land bank law.

Under law retained in part by the act, once a subdivision or CLRC acquires nonproductive land that failed to sell at a tax sale, the subdivision or CLRC must pay a share of the foreclosure costs in proportion to the subdivision's or CLRC's share of property taxes charged against the property (a CLRC's share is the county's share), and must pay the deed transfer and recording fees.⁶

The act exempts CLRCs, its wholly owned subsidiaries, and subdivisions from having to pay the transfer and recording fees for nonproductive land it so acquires.⁷ Similarly, continuing law exempts a CLRC from paying conveyance fees to the county

³ R.C. 1724.02 and, by reference R.C. 323.65.

⁴ R.C. 5722.03(D).

⁵ R.C. 323.28(D).

⁶ R.C. 5722.03(D), (E), and (F).

⁷ R.C. 317.32, 1724.10(B)(2), and 5722.03.



auditor. The act extends this exemption to include wholly owned subsidiaries of the CLRC.⁸

Property tax exemption

Under continuing law, land held by a CLRC or political subdivision as part of a land bank program is exempt from taxation. The act provides that this exemption extends to property held by any subsidiary that is wholly owned by a CLRC that is identified as "a wholly owned subsidiary of a county land reutilization corporation" in the deed of conveyance transferring title to the subsidiary.

The act also specifies that a political subdivision is not required to apply to any county or state agency for exemption of its land bank property. Law unchanged by the act already includes a similar provision for CLRCs.⁹

Rejection of selected properties

Continuing law allows a land bank to acquire delinquent property that is not sold at a foreclosure auction for a minimum price (see "**Tax sale requirement; acquisition costs**," above). The subdivision or CLRC must notify the prosecuting attorney that it wishes to acquire the property before the property is advertised for sale. If the property is not sold at auction for the applicable minimum price, the court of common pleas or board of revision will issue an order transferring the property to the land bank.

The act provides that, if a land bank selects such a property and a court or board orders the property transferred to the land bank, the land bank may move to vacate the transfer order if it no longer wishes to acquire the parcel by filing a petition and serving notice to all parties who are not in default. If the land bank files a petition to vacate the transfer within 60 days after the transfer order was journalized, the court or board must vacate the transfer. If the petition is filed after that 60-day period, the court or board may vacate the transfer at its discretion using the standards outlined in Civil Rule 60.

If an order transferring property to a land bank is vacated, the court or board must reinstate the foreclosure proceedings. The court or board may not transfer the parcel to the land bank again unless the land bank re-elects to acquire the parcel at least

⁸ R.C. 319.54(G)(3)(y).

⁹ R.C. 5709.12 and 5722.11.



seven days prior to the scheduled final hearing or sale of the parcel. In such a case, the land bank may not subsequently reject the transfer.¹⁰

Conveyance in lieu of foreclosure

In addition to acquiring foreclosed property that is not sold at auction, a land bank may also acquire property through a conveyance in lieu of foreclosure from the property owner. Any such conveyance must receive the consent of the county auditor. Under law largely unchanged by the act, the auditor may consent to a conveyance at the auditor's discretion. The act retains this standard for most conveyances, but requires the auditor to consent if a land bank certifies in writing that the property subject to the conveyance qualifies as abandoned (for a definition of abandoned property, see "**Abandoned land definition**," below).¹¹

Sale of land bank property between subdivision and CLRC

The act allows a political subdivision to sell property in its land bank program to a CLRC for less than fair market value. Under ongoing law, a CLRC or political subdivision may sell property acquired through its land bank program to any person without competitive bidding. Under former law, a CLRC could sell the property for less than fair market value, but a political subdivision could not. Under the act, a CLRC may still sell property for less than fair market value, and a political subdivision may sell land bank property for less than fair market value to a CLRC, but not to any other purchaser.¹²

Extinguishment of taxes in certain nontax foreclosure acquisitions

Under continuing law, when property subject to a nontax foreclosure proceeding is sold pursuant to a judicial order, any taxes, assessments, penalties, and interest that are due on the property or that accrue before confirmation of the sale are deducted from the proceeds of the sale and used to pay the tax debt. The act creates an exception to this rule for certain property purchased by a CLRC. Under the act, such taxes and charges will not be applied against the proceeds of the sale, but instead will be automatically extinguished, if the CLRC both purchases the property and is the judgment creditor or assignee of all rights, title, and interest in the judgment arising from the foreclosure proceeding.¹³

¹⁰ R.C. 5722.031.

¹¹ R.C. 5722.10.

¹² R.C. 5722.07.

¹³ R.C. 323.47.

CLRC immunity from tort liability

Under continuing law, a political subdivision is not liable in damages in a civil action for harm allegedly caused by the political subdivision or its employees in connection with a governmental or proprietary function, subject to several exceptions enumerated by law. The distinction between governmental and proprietary functions determines, among other things, whether a subdivision may be held liable for a negligent act of an employee: a subdivision may be held liable for negligent acts by a subdivision employee with respect to a proprietary (but not governmental) function of the subdivision.¹⁴

The act expressly extends political subdivision sovereign immunity to CLRCs and specifies that all CLRC activities authorized by law are considered to be governmental functions for purposes of the sovereign immunity law.¹⁵ Continuing law already exempts a CLRC from liability for damages from leaking underground storage tanks, air pollution, sewage waste, or hazardous waste released from a CLRC-acquired property.¹⁶

Delinquent tax and assessment collection fund allocations

Under continuing law, 5% of all delinquent property taxes and assessments collected by the county treasurer are deposited in the county's delinquent tax and assessment collection (DTAC) funds (the treasurer and prosecutor each have a DTAC fund). In general, the county treasurer and the county prosecuting attorney each receive one-half of the money. The treasurer may use a portion of the treasurer's allocation for the benefit of a CLRC. In addition, if requested by the county treasurer, the board of county commissioners may designate an additional amount, up to 5%, of all delinquent property taxes collected to be deposited in the treasurer's DTAC fund for the use of a CLRC.

The act allows county treasurers and prosecuting attorneys to allocate excess money in each officer's DTAC fund to CLRCs to carry out nuisance abatement activities. Under former law, only municipal corporations and townships could receive money from either the treasurer's or prosecuting attorney's DTAC funds specifically for that purpose.

¹⁴ R.C. 2744.02(B)(2), not in the act.

¹⁵ R.C. 2744.01.

¹⁶ R.C. 5722.22, not in the act.



The act also increases, from \$3 million to \$5 million per year, the limit on the amount of excess DTAC money that treasurers or prosecuting attorneys in certain counties may allocate from a DTAC fund for nuisance abatement activities on foreclosed residential property. The limit applies only to counties with a population of more than 100,000 according to the Department of Development's 2006 population estimate.

A treasurer or prosecuting attorney may also use excess money in the officer's DTAC fund for foreclosure prevention activities. Under prior law, the officer was required to first obtain approval for such expenditures from the County Investment Advisory Committee. The act removes this requirement.¹⁷

Recoupment of nuisance abatement costs

Continuing law allows a municipal corporation or, a CLRC acting as its agent, to incur costs to (1) abate a nuisance, (2) remove, repair, or secure insecure, unsafe, structurally defective, abandoned, deserted, or open and vacant buildings or other structures, or (3) make emergency corrections of hazardous conditions. The act defines (1), (2), and (3) as "abatement activities." The municipal corporation or CLRC may recoup the costs by bringing a civil action against the property owner or by requesting that the county auditor place the abatement costs on the property tax list and collect the costs in the same manner as other taxes and assessments. To place the abatement costs on the property tax list, continuing law requires the clerk of the legislative authority of the municipal corporation or its agent to provide certain information with the certification of total costs. The act requires additional information to be supplied with the certification, including the date the costs were incurred for each abatement activity and the name of the owner of record at the time the costs were incurred for each abatement activity.

The act provides another remedy that a CLRC or municipal corporation may use to recoup the cost of abatement activities: the CLRC or municipal corporation may place a lien on a property for abatement costs and bring a foreclosure action to enforce the lien. The foreclosure action may be brought in the court of common pleas, a municipal court with jurisdiction, or the county board of revision. If the property is foreclosed, it must be offered for sale at one auction, and the minimum bid must equal the total amount of taxes, assessments, and other charges due on the property, the nuisance abatement costs incurred by the municipal corporation or CLRC, and any court costs. An owner of the property may redeem it by paying the minimum bid within ten days after the entry of the decree of foreclosure. The municipal corporation or CLRC may

¹⁷ R.C. 321.261.



elect to acquire any property that is not sold at auction. In the case of such an election, the property will be transferred to the municipal corporation or CLRC as if the property were transferred by all owners in title in lieu of foreclosure. Absent such an election, the property will be forfeited to the state or another political subdivision.¹⁸

Affidavit

The act expressly authorizes a municipal corporation or CLRC to file an affidavit with the county recorder relating to title, as described under continuing law, that states the nature and extent of any proceeding undertaken for the recoupment of nuisance abatement costs. The affidavit may include a legal description of a parcel or, in lieu of that, the common address of the parcel and the permanent parcel number to which the address applies.¹⁹

Responsibility for liens on acquired property

The act specifies that a CLRC acquires property free and clear of any lien for unpaid water rents or charges, or for costs incurred by a municipal corporation or the CLRC to abate nuisance conditions at the property, as long as the costs or charges were incurred before the CLRC acquired the property and the CLRC did not incur the costs or charges. In such cases, the CLRC is also immune from liability in any action to enforce the lien. Furthermore, under the act if a CLRC takes title to property before any costs or charges have been certified or any lien has been placed on the property for unpaid water rents and charges or nuisance abatement, the CLRC is deemed to be a bona fide purchaser for value without knowledge of the costs or lien, regardless of whether the CLRC has actual or constructive knowledge of the costs or lien, and the lien is considered void and unenforceable against the CLRC and its successors in title. A municipal corporation may collect unpaid water rents and charges that are extinguished by the transfer of property to a CLRC by collecting them through lawsuits against any owner, tenant, or other person liable to pay them.²⁰

Certification and placement on tax list of abatement activity costs and unpaid water rents or charges

Continuing law prohibits a municipal corporation from certifying to the county auditor for placement upon the tax list and duplicate the cost of any abatement activity that is taken on land that has been forfeited to the state for delinquent taxes, unless the owner of record redeems the land. The act also prohibits a municipal corporation or

¹⁸ R.C. 715.261.

¹⁹ R.C. 715.261(I) and, by reference R.C. 5301.252, not in the act.

²⁰ R.C. 715.261, 743.04, 5722.03, 5722.04, 5722.10, 5723.04, 5723.12, and 6119.06.



regional water and sewer district from certifying to the county auditor for placement upon the tax list and duplicate the cost of any unpaid water rents or charges on property served by a water or sewer connection that has been forfeited to the state for delinquent taxes, unless the owner of record redeems the property. The act prohibits the county auditor from placing such abatement costs or unpaid water rents or charges as a charge against the land or property in those cases.

Additionally, the act prohibits (1) a municipal corporation from certifying an abatement activity charge, (2) a municipal corporation's director of public service or other official body from certifying an unpaid water rent or charge, (3) a regional water and sewer district from certifying an unpaid water rent or charge, and (4) a county auditor from placing the preceding charges on the tax list and duplicate, if either of the following apply:

(1) Both of the following apply:

- The abatement activity occurred on land, or the connection served property, that has been transferred or sold to a CLRC or subdivision, regardless of whether the CLRC or subdivision is still the owner of the land;
- The abatement activity occurred on a date, or any unpaid water rents or charges together with any penalties arose from a time period, prior to the transfer or confirmation of sale to the CLRC or subdivision.

(2) All of the following apply:

- The abatement activity occurred on land, or the water connection served property, that has been sold to a purchaser at sheriff's sale or auditor's sale;
- The abatement activity occurred on a date, or the unpaid water rents or charges together with any penalties arose from a time period, prior to the confirmation of sale;
- The purchaser is not any of the following:
 - The owner of record of the land immediately prior to the judgment of foreclosure;
 - A member of that owner's immediate family;



- A person with a power of attorney appointed by that owner who subsequently transfers the land to the owner;
- A sole proprietorship owned by that owner or a member of that owner's immediate family;
- A partnership, trust, business trust, corporation, or association of which the owner or a member of the owner's immediate family owns or controls directly or indirectly more than 50%.

If any owner possessing an ownership interest of record of the land or property, or the CLRC or subdivision previously in the chain of title of the land or property, provides written notice to the county auditor that costs were certified or placed in violation of these conditions, the act requires the county auditor to remove the charge from the tax duplicate. The written notice must include the parcel number of the land, the common address of the land, the date of the recording of the transfer of the land to the owner, CLRC, or subdivision, and the charge allegedly placed in violation of the law.²¹

Right of entry on forfeited lands

The act permits a subdivision or CLRC, or an officer, agent, or employee of the subdivision or CLRC, to enter unoccupied lands that have been forfeited to the state due to failure to sell at a tax foreclosure sale, and any buildings, structures, or other improvements located on that land to conduct (1) an appraisal or inspection of the buildings, structure, or other improvements, (2) a voluntary action concerning contamination or other environment assessment, or (3) any other health and safety inspection. This right of entry is available from and after the date of journalization of the order of forfeiture until the land is redeemed by the former owner or transferred to the CLRC.

The act provides protection for a subdivision or CLRC from civil or administrative actions for liability unless an action or omission by the subdivision or CLRC, by clear and convincing evidence, constitutes willful or wanton misconduct or intentionally tortious conduct. The type of action that the provision provides immunity for includes an action in trespass or any tort action resulting from the testing for or actual presence of hazardous substances or petroleum at, or the release of hazardous substances or petroleum from, a property where a voluntary action is being or has been conducted in accordance with the law and the rules adopted under it, for such entrance. This immunity is in addition to any immunity from civil liability or defenses established by statutory or common law. Any such entry does not constitute the exercise of

²¹ R.C. 715.261(D), 743.04(A)(2) and (3), and 6119.06(W)(2) and (3).

dominion or control over the land or buildings, structures, or improvements on the land when the entry is for purposes described in (1), (2), and (3).²²

Expedited, nonjudicial tax foreclosure procedures

The act makes several changes to the expedited, nonjudicial tax foreclosure process available for abandoned property. In 2006, county boards of revision were given the authority to hear tax foreclosure complaints on such property. The procedure is in lieu of the traditional judicial foreclosure process. Under the procedure, the board of revision must conduct a foreclosure hearing between 30 and 180 days after service of the foreclosure complaint. The board may then foreclose the state's lien for property taxes and order that the property be sold at auction or otherwise conveyed to a political subdivision or CLRC.²³

Abandoned land definition

The expedited foreclosure process is available for property that qualifies as "abandoned" land. Under continuing law, land is abandoned if it is unoccupied and has appeared on the delinquent tax list or delinquent vacant land tax list. Continuing law establishes a presumption that land is unoccupied if two or more of the following criteria are met:

(1) A county, municipal corporation, or township inspects the parcel and finds that no person, trade, or business inhabits, or is visibly present from an exterior inspection of, the parcel;

(2) No utility connections service the parcel, and no utilities are actively being billed by a utility provider with respect to the parcel;

(3) The parcel is boarded up or otherwise sealed because a political subdivision determined that it was open, vacant, or vandalized.

The act adds a fourth criterion that may be used to establish a presumption that land is unoccupied. The new criterion requires a finding that the land or any improvement on the land is insecure, vacant, or vandalized upon visible inspection.²⁴

²² R.C. 5723.01.

²³ R.C. 323.65 to 323.79.

²⁴ R.C. 323.65(F)(2).

Time period for appeals

Continuing law permits any party to an expedited foreclosure proceeding who is aggrieved in any proceedings of the county board of revision to file an appeal in the court of common pleas within a certain time period. The act retains law that prohibits a party from filing an appeal later than 14 days after the date on which the order of confirmation of a sale is filed with and journalized by the clerk. The act clarifies that in the case of a direct transfer of property to a certificate holder, community development organization, CLRC, municipal corporation, county, or township, a party may not file an appeal later than 14 days after the date on which an order of transfer or conveyance, whether included in the decree of foreclosure or a separate order, is *first* filed with and journalized by the clerk. In addition, the act provides that the expiration of the 14-day period does not extinguish or otherwise affect the right of a party to redeem the parcel as otherwise provided in continuing law.²⁵

Transfer of cases between courts and BORs

The act allows for the transfer of foreclosure cases between county boards of revision and courts of common pleas or municipal courts. A court or board may order the transfer of a case upon the motion of the property owner, the prosecuting attorney, or the court or board itself. A court may transfer a proceeding to a board of revision only if the board of revision adjudicates property tax foreclosures and only upon a finding that the property subject to the proceeding is abandoned land.

If a court or board orders the transfer of a case, the prosecuting attorney must notify the clerk of court and the court or board to which the case was transferred within 28 days after the transfer order is journalized. The prosecuting attorney must also provide notice of the transfer to all parties to the action, except any party that has failed to appear, answer, or plea in the action. If the prosecuting attorney fails to file the notice of transfer with the clerk of court within 28 days, the complaint is considered to have been dismissed without prejudice by both the court and board of revision.

Upon the transfer of a case, the clerk of court must proceed as if the case had been originally filed with the court or board to which the case was transferred, including (1) stamping or otherwise indicating on the notice a new case number for the proceeding and (2) assigning the entire case file to the court or board to which the proceeding was transferred, including any preliminary or final reports, documents, or other evidence made available to the transferring court or board. All evidence filed with the transferring court or board must be accepted by the court or board to which the case is transferred as competent evidence in the proceeding, unless otherwise required by

²⁵ R.C. 323.79.



law or unless the court or board determines that accepting the evidence would not be in the interests of justice. Upon the journalization of a transfer order, the case is deemed to have been dismissed without prejudice by the transferring court or board.²⁶

Pleadings for transfer

Under continuing law, an expedited foreclosure case is initiated by a complaint brought by a delinquent tax certificate holder, a CLRC, or the board of revision itself. The act allows any owner of record to file a pleading to **transfer** the case from a county board of revision, within 14 days after service of the foreclosure complaint, to a court of competent jurisdiction to be conducted in accordance with applicable laws. Former law allowed a property owner to move to **dismiss** the complaint and have the land removed from the abandoned land list by filing a petition within 20 days after service of the complaint. The act replaces the option for a motion for dismissal with the ability to plead for a transfer. The act also specifies that, if an owner cannot be located and is served notice of the complaint by publication in a newspaper, the owner must answer or appear in the proceeding within 28 days after the publication. If the owner does not do so, the owner is considered to be default and will not receive further notice of the proceeding.

Ongoing law allows a lienholder or another person having a security interest of record to plead, within a certain period of time, that the impositions shown by the notice to be due and outstanding have been paid in full. Former law allowed that pleading at any time before confirmation of sale or transfer of abandoned land or before the expiration of the alternative redemption period. The act allows that pleading at any time before a decree of foreclosure is filed. In addition to that pleading, the act allows such a person, at any time before a decree of foreclosure is filed, to plead, in order to preserve the lienholder's or other person's security interest of record in the land, that the case should be **transferred** to a court of competent jurisdiction. Former law permitted such a person to plead, at any time before confirmation of sale or transfer of abandoned land or before the expiration of the alternative redemption period, that, in order to preserve the lienholder's or other person's security interest of record in the land, the complaint should be **dismissed** and the abandoned land should be removed from the abandoned land list. The act specifies that if the lienholder or other person having a security interest makes the minimum showing required by continuing law (that the impositions against the abandoned land do not exceed the fair market value), the board of revision may consider the transfer request and make a ruling based on the available

²⁶ R.C. 323.25, 323.69(E), and 323.691.



and submitted evidence of the parties. If such person fails to make the minimum showing, the act directs the county board of revision to deny the transfer request.²⁷

Power to issue subpoenas

The act allows a county board of revision to issue subpoenas to compel witness testimony or the production of papers, books, and accounts, if the testimony or documents are necessary to adjudicate an expedited tax foreclosure case.²⁸

Public auction of abandoned foreclosed land

Under continuing law, a board of revision may order that abandoned foreclosed land be disposed of at a public auction. At any such auction, the successful bidder must pay a deposit of at least 10% of the purchase price on the day of the auction and the remaining balance within 30 days after that date.

The act adds that the sale of such land may be automatically rejected due to default and the sheriff may keep the 10% deposit paid at the time of the auction if (1) the successful bidder does not pay the balance due in the time required and (2) the sheriff or the sheriff's designee provided notice of this possibility at the time of the auction and before the deposit was paid. If the deposit amount is less than the total costs of advertising and offering the land for sale at a future auction, the sheriff or prosecuting attorney may also bring an action against the bidder to recover the deficiency. In the event of a default, the bidder, any member of the bidder's family, and any entity owned or controlled by the bidder or the bidder's family are prohibited from bidding on the abandoned land at any future auction for five years.²⁹

The act also provides that upon the **confirmation** of sale or transfer of the abandoned land pursuant to the public auction, the owner's fee simple interest in the land is to be conveyed to the purchaser. Former law provided for this conveyance upon the sale or transfer of the land.³⁰

²⁷ R.C. 323.69, 323.70, and 323.72, conforming changes in R.C. 323.71.

²⁸ R.C. 323.70(C).

²⁹ R.C. 323.73(C).

³⁰ R.C. 323.73(D).



General tax foreclosure procedures

Acquisition of tax certificates by CLRC or political subdivision

The act allows a CLRC, county, municipal corporation, or township to acquire a property tax certificate from a certificate holder for the same price paid by the certificate holder, if the CLRC or subdivision requests to purchase the certificate within one year from the date the certificate is sold, the certificate was sold at a block sale, and the certificate relates to a parcel of abandoned land.

Continuing law authorizes county treasurers to sell property tax "certificates," which essentially transfer a taxing authority's lien for delinquent taxes to a private entity. Through the sale of such certificates, taxing authorities may recover unpaid taxes before ordinary tax foreclosure proceedings would otherwise conclude. A certificate purchaser may initiate foreclosure proceedings or request the county treasurer to initiate proceedings on the person's behalf. The purchaser may also transfer the certificate to another person.³¹

Alternative redemption period

Continuing law provides a "statutory right of redemption" whereby an owner of foreclosed property may pay the amount due to stop the foreclosure proceeding and repossess the property. Typically, the right of redemption continues until a court issues a confirmation of sale of the property following a sheriff's sale. However, if the foreclosed property at issue is abandoned and is located in a county in which a CLRC operates, the county treasurer may request the use of an "alternative redemption period" in the petition to foreclose the property.

Under prior law, the alternative redemption period ended 45 days after an adjudication of foreclosure was journalized by the court or board of revision. The act shortens this period to 28 days.³²

Continuing law also requires that, upon the expiration of an alternative redemption period, a court or board of revision must transfer foreclosed property directly to a CLRC or political subdivision without a sale if the CLRC or subdivision requests the transfer. The act specifies that such transfers are required even when the amount of tax, penalties, and interest due on the property and the costs of the foreclosure action do not exceed the property's fair market value. Generally, in proceedings that do not involve the alternative redemption period, a court or board

³¹ R.C. 5721.36(A)(3).

³² R.C. 323.65 and 323.78.



may order a direct transfer without sale only if the total impositions against the property exceed its fair market value.³³

The act additionally requires a court or board of revision to order a property sold if a county treasurer invokes the alternative redemption period and if no entity has requested title to the parcel. Formerly, the court or board was permitted to order such a sale upon the expiration of the alternative redemption period.³⁴

Time for tax foreclosure actions to begin

The act states that tax foreclosure actions may be started before the list of tax-delinquent property is published if the publication is not made as otherwise required by ongoing law.³⁵ Under ongoing law, each county auditor must compile a list of tax-delinquent land each year and have it published in a newspaper. The publication serves as a notice to property owners and lienholders of the delinquency and of the potential for a foreclosure action if the taxes are not paid, in addition to the other required notice attempts by mail or in person. Publication must occur twice within a 60-day period that begins when the county auditor delivers a copy of the list to the county treasurer. Since the list must be delivered to the treasurer within 30 days after the second of two property tax settlements per year (which must occur by August 10), the published list must appear twice between about September 10 and November 9.

Under the act, a delay in the publication of the tax delinquency list would not preclude the initiation of a tax foreclosure action under any of the foreclosure procedures or the sale of tax certificates. Under ongoing law, tax foreclosure proceedings may be initiated once the delinquent tax list is compiled or at least 60 days thereafter, depending on the authorizing statute.³⁶

Notice on tax bills

The act changes the notice that is printed on property tax bills informing property owners of the potential for foreclosure if taxes are not paid. Formerly, the notice stated that the property was subject to foreclosure if the billed taxes were not paid within one year after the tax due date. The act changes the notice to state that

³³ R.C. 323.78(B).

³⁴ R.C. 323.78(C).

³⁵ R.C. 323.25, 323.69, 5721.03(B)(5), and 5721.18.

³⁶ R.C. 323.25, 323.67 (not in the act), 5721.14, and 5721.18.



property is subject to foreclosure if the billed taxes are not paid within 60 days after the taxes are certified delinquent.³⁷

Actions in rem

Under former law, in a foreclosure proceeding on a state lien, if a prosecuting attorney determined that an action in rem was precluded by law, the prosecuting attorney was required to institute and prosecute foreclosure proceedings in a similar manner to mortgage foreclosures and to set forth the grounds upon which the action in rem was precluded in the (in personam) complaint for foreclosure. The act eliminates these requirements.³⁸

Delinquent vacant land definition

The act conforms the definition of delinquent vacant land across the various tax foreclosure statutes to include only land that has been delinquent for at least one year and that has not been improved by any structure. Formerly, the law governing traditional tax foreclosures used this definition, but the law governing the expedited foreclosure process and land bank programs did not include the one-year requirement.³⁹

Delinquent lands definition

The act clarifies that "delinquent lands" includes **lands that are unimproved by any dwelling** upon which delinquent taxes remain unpaid at the time a settlement is made between the county treasurer and auditor pursuant to continuing law.⁴⁰

Other changes

The act makes a technical change in R.C. 5721.19.

Review of real property conveyances

The county auditor and county engineer of each county are required by continuing law to adopt standards governing conveyances of real property in the county. Sub. H.B. 72 of the 130th General Assembly amended that law to require not only that the county auditor review real property conveyances to determine whether they comply with those standards, but also review the conveyances to determine

³⁷ R.C. 323.131.

³⁸ R.C. 5721.18(D).

³⁹ R.C. 323.65 and 5722.01.

⁴⁰ R.C. 5721.01.



whether they comply with (1) local county recorder requirements and (2) the County Recorder Law. The act eliminates (1) and (2), which returns the law to the way in which it applied before it was amended by Sub. H.B. 72.⁴¹

HISTORY

ACTION	DATE
Introduced	08-08-13
Reported, S. Public Safety, Local Gov't & Veterans Affairs	11-21-13
Passed Senate (31-2)	12-04-13
Reported, H. Financial Institutions, Housing & Urban Development	02-26-14
Passed House (87-2)	04-02-14
Senate refused to concur in House amendments (0-33)	05-07-14
House requested conference committee	05-14-14
Senate acceded to request for conference committee	05-15-14
House agreed to conference committee report (95-1)	05-28-14
Senate agreed to conference committee report (30-1)	05-28-14

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⁴¹ R.C. 319.203.

