



# Ohio Legislative Service Commission

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## Fiscal Note & Local Impact Statement

**Bill:** Sub. S.B. 13 of the 128th G.A. **Date:** June 25, 2009

**Status:** As Reported by Senate Judiciary Civil Justice **Sponsor:** Sen. D. Miller

**Local Impact Statement Procedure Required:** Yes

**Contents:** Requires tenant notifications and specifies tenants' rights concerning certain foreclosure actions and sales of rental property

### State Fiscal Highlights

#### STATE FUND

#### FY 2010 – FUTURE YEARS

##### Department of Commerce

Revenues - 0 -

Expenditures Potential minimal increase to prepare and distribute foreclosure prevention publication

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- The bill requires that the Director of Commerce prepare a publication for owners and tenants of residential rental properties subject to foreclosure actions and make that publication available to clerks of courts so that they may provide it to owners and tenants undergoing foreclosure.
- The Department already provides county-by-county foreclosure prevention resources on its web site. If the Department were required to provide hard copies of this information to clerks of courts and others who request it, there would be some minimal new costs for printing and mailing these materials.

### Local Fiscal Highlights

#### LOCAL GOVERNMENT

#### FY 2010 – FUTURE YEARS

##### County Courts of Common Pleas

Revenues Potential offsetting gain from civil penalties for noncompliance and court costs

Expenditures Potential increase to send written notice to tenants concerning foreclosure actions and provide foreclosure publications

Potential increase for additional civil cases

##### Counties (Sheriffs' Offices)

Revenues Gain from increased charges to court costs, paid by property purchaser

Expenditures Increase to send written notice to property owners concerning foreclosure sales

Potential increase to comply with advanced notice requirements

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

## **County sheriffs**

- Because county sheriffs would be required to send written notice of the date, time, and location of a sheriff's sale or auction to the owner(s) of the property being foreclosed upon, they could incur substantial new costs to research title information on each foreclosure action and send or otherwise deliver the notices. However, these costs would ultimately be paid by the purchaser of the property in the form of increased court costs.
- There could also be a significant administrative burden for sheriff's offices to comply with the 35-day notice of sale date requirement, based on current sale notification timelines.

## **Courts**

- If a landlord fails to provide written notice to tenants concerning a foreclosure action, the tenant notification would be performed by the clerk of courts. As a result, there may be new costs for postage, labor, supplies, and equipment. However, the bill permits these costs, plus an additional penalty per rental unit, to be recouped through a civil penalty on the landlord, presumably offsetting any new costs. There may also be new postage costs to provide a copy of a foreclosure resource publication created by the Department of Commerce.
- As a result of the new civil remedies for residential tenants, there may be additional cases filed with municipal or county courts. Presumably, court cost revenue would offset some or all of any new costs created by the additional cases, making any new costs from the additional cases likely no more than minimal.

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## Detailed Fiscal Analysis

### Overview

The bill requires various notifications to owners and tenants of residential rental properties after certain foreclosure actions and before foreclosure sales occur, provides for the continuance of a rental agreement with a tenant current on rental payments after a foreclosure sale (upon the expiration of federal legislation requiring at least 90 days notice to tenants to vacate), and provides civil remedies for a tenant whose landlord violates the bill's provisions. The provisions with potential fiscal effects are discussed below.

### Notifications

#### Notices to owners of properties in foreclosure

##### Notice of foreclosure included within summons

The bill requires tenants of residential rental properties to receive several notifications during the foreclosure process. To begin the process of tenant notification, the bill requires the clerk of court of common pleas to include the following with the summons that is served on the owner of the residential rental property undergoing a foreclosure action: (1) a statement indicating that the property owner must notify tenants of a residential rental property of the foreclosure, (2) a description of the penalties for failing to so notify tenants, (3) a notice that the property owner must indicate the fact that the property is a residential rental property in the property owner's answer to the complaint, and (4) a statement that the property owner must include the names and addresses of the tenants of the residential rental property in the answer to the complaint. The property owner is then compelled to comply with those requirements.

##### Notice of foreclosed property sale date, time, and location

Under the bill, a law enforcement officer, typically a sheriff, taking a property must serve notice to the owner of the property being foreclosed upon of the date, time, and place of the sale of the property in foreclosure at least 35 days prior to the date of the sale, whether or not there is a default judgment. If the property is a residential rental property, the notice must also include a statement that the owner is required to notify the tenants of the property of the date, time, and place of the sale and must file an affidavit with the clerk of the court of common pleas certifying that this action has occurred. This differs from current law, under which the judgment creditor (lien holder) is responsible for (1) serving notice of the sale and (2) within seven calendar days prior to the date of the sale, filing proof with the clerk of court that the notice was

served on the judgment debtor. Under the bill, the latter responsibility would also fall to the officer taking the property.

### **Costs to county sheriffs**

As a result of these changes, sheriff's offices could incur new costs to research title information on each foreclosure action in order to ensure that notices are sent to the proper persons and addresses. According to a civil administrative specialist who conducts foreclosure sales for the Butler County sheriff's office, this information is not readily available, and could require sheriffs to hire additional personnel or to contract with law firms or title companies to retrieve the information. These expenses, which could be several hundred dollars per case, would ultimately be passed on to the purchaser in the form of higher court costs.

Although any new costs would be difficult to quantify, requiring that sheriffs send notices 35 days before the date of the sale could impose new administrative burdens on sheriff's offices since the notice would be required two weeks sooner than sale dates are set currently. According to the Buckeye State Sheriff's Association, sheriffs normally set the date of a property's sale ten days after the appraisal of the property has been returned to the court. The sale typically occurs about three weeks after the sale date is set.

### **Tenant notifications**

#### **Landlord responsibilities**

The bill requires that, within 60 days after receiving a summons for foreclosure on residential rental property, a landlord provide written notice of this action to tenants, including a statement that the tenant may contact the Ohio foreclosure prevention web site ([savethedream.ohio.gov](http://savethedream.ohio.gov)) or a toll-free telephone number (the "Save the Dream" hotline) to obtain a copy of a publication on foreclosure created by the Department of Commerce. The landlord must then file an affidavit with the clerk of courts certifying that these tenant notifications have been made. If the landlord does not fulfill these requirements, the clerk of courts would be responsible for making the tenant notifications within seven days after the notification period has elapsed.

As noted above, the bill also requires a landlord to notify tenants of the date, time, and place of the scheduled sale of the foreclosed property at least 21 days before the sale. Like the foreclosure notice requirement above, the landlord would have to file an affidavit certifying that this requirement has been fulfilled. If the landlord does not comply, the clerk of courts is required to remind the landlord of that requirement at least 14 days before the date of the sale.

Finally, the bill requires that, no more than seven days after the confirmation of the foreclosure sale, the landlord provide to the successor owner the names of those tenants not current on rent as of the date of the confirmation of sale. However, this

requirement would only apply after the repeal or expiration of the federal Protecting Tenants at Foreclosure Act of 2009.<sup>1</sup>

### **Costs to the clerk of courts**

If a landlord fails to comply with these tenant notification requirements, a clerk of courts would incur costs for (1) postage to send the mailings, (2) inputting tenant names in the clerk of courts' case management system, and (3) supplies and equipment for paper and printing. While postage costs could be recouped through charges against a plaintiff's court cost deposit, the labor, equipment and supplies necessary to provide the additional notices would not be recoverable in this way. There may also be some postage costs to provide a copy of a foreclosure resource publication created by the Department of Commerce to those that request it from a clerk of court.

The largest potential expense that the clerk of courts would incur as a result of the tenant notification requirement would likely be for additional office staffing. Any new costs would vary by county and would depend on landlord compliance with the notification requirements. The volume of foreclosures, the number of parties involved in individual foreclosure actions, and other variables would affect costs. However, to reimburse the clerk of courts for these expenses, the bill permits the court to impose a civil penalty on the landlord that equals the cost incurred in sending out the written notice plus \$100 per rental unit, though the additional rental unit penalty is capped at \$1,000. This would offset the clerk of courts' expenses for carrying out the tenant notification requirements of the bill.

### **Department of Commerce**

The bill requires that the Department of Commerce provide a foreclosure resource publication to owners and tenants of residential rental properties in foreclosure proceedings. The bill further requires that the publication be made available to clerks of courts so that they can provide it to owners and tenants undergoing foreclosure. The Department already has developed an on-line resource concerning foreclosure prevention resources, but there may be some new printing and mailing costs if the Department were required to provide hard copies to clerks of courts and those who request it. Even so, the cost for meeting this requirement would likely be minimal. This information, tailored for each county, is available on-line through its Save the Dream Foreclosure Prevention web site (<http://www.com.ohio.gov/SaveTheDream/ResourcesLocal.aspx>).

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<sup>1</sup> This law requires a successor in interest of a property sold pursuant to a foreclosure action to provide to a tenant the right to reside in the property for the duration of the lease, unless the successor in interest intends to reside at the property. In that case, the successor in interest must provide at least 90 days' notice to the tenant to vacate the property. The law sunsets on December 31, 2012.

## **Civil actions**

The bill provides civil remedies for tenants whose landlord violates the bill's provisions. These remedies would apply if (1) a landlord does not provide the notices required by the bill, (2) after the repeal or expiration of the federal Protecting Tenants at Foreclosure Act of 2009, a landlord fails to honor a month-to-month rental agreement with a tenant that is current on rental payments once a property is sold at auction, (3) an owner of a property fails to forward to the successor in interest all security deposits held on behalf of tenants, or (4) a successor in interest fails to return the security deposit in the amount that it was forwarded to the successor in interest. In these situations, the bill permits a tenant to file a civil action for injunctive relief and to recover reasonable attorney's fees and the greater of actual damages or one month's rent. As a result, there may be additional cases filed with municipal or county courts. Presumably, court cost revenue would offset some or all of any new costs created by the additional cases, making any new costs likely no more than minimal.