

AN ACT

To amend sections 5721.37, 5721.38, and 5721.39 of the Revised Code to extend the time limit within which holders of tax certificates purchased through private sales may request foreclosure, but retain the limit on the accrual of interest on those certificates.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 5721.37, 5721.38, and 5721.39 of the Revised Code be amended to read as follows:

Sec. 5721.37. (A)(1) With respect to a tax certificate purchased under section 5721.32 of the Revised Code, at any time after one year from the date shown on the tax certificate as the date the tax certificate was sold, and not later than three years after that date, the certificate holder may file with the county treasurer a request for foreclosure on a form prescribed by the tax commissioner and provided by the county treasurer, provided the parcel has not yet been redeemed under division (A) or (C) of section 5721.38 of the Revised Code.

(2) With respect to a tax certificate purchased under section 5721.33 of the Revised Code, at any time after one year from the date shown on the tax certificate as the date the tax certificate was sold, and not later than ~~three~~ six years after that date or any extension of that date pursuant to division (C)(2) of section 5721.38 of the Revised Code, a private attorney on behalf of the certificate holder may file with the county treasurer a notice of intent to foreclose on a form prescribed by the tax commissioner and provided by the county treasurer, provided the parcel has not yet been redeemed under division (A) or (C) of section 5721.38 of the Revised Code.

(B) Along with a request filed under division (A)(1) of this section, or a notice of intent to foreclose filed under division (A)(2) of this section and prior to the transfer of title in connection with foreclosure proceedings filed under division (F) of this section, the certificate holder shall submit a payment to the treasurer equal to the sum of the following:

(1) The certificate redemption prices of any other prior tax certificates that have been sold on the parcel;

(2) Any prior delinquent taxes, assessments, penalties, interest, and charges that are charged against the certificate parcel that is the subject of the foreclosure proceedings and that are not covered by a tax certificate;

(3) If the foreclosure proceedings are filed by the county prosecuting attorney pursuant to section 323.25, 5721.14, or 5721.18 of the Revised Code, a fee in the amount prescribed by the county prosecuting attorney to cover the prosecuting attorney's legal costs incurred in the foreclosure proceeding;

(4) If the foreclosure proceedings are filed by a private attorney on behalf of the certificate holder pursuant to division (F) of this section, any other prior liens.

(C)(1) With respect to a certificate purchased under section 5721.32 of the Revised Code, if the certificate parcel has not been redeemed, the county treasurer shall provide certification to the county prosecuting attorney that the parcel has not been redeemed and that the certificate holder has made a foreclosure request. Within ninety days of receiving that certification, the prosecuting attorney shall commence a foreclosure proceeding in the name of the county treasurer in the manner provided under section 323.25, 5721.14, or 5721.18 of the Revised Code, to foreclose the lien vested in the certificate holder by the certificate. The prosecuting attorney shall attach to the complaint the county treasurer's certification that the parcel has not been redeemed.

(2) With respect to a certificate purchased under section 5721.33 of the Revised Code, if the certificate parcel has not been redeemed, the county treasurer shall provide certification to the private attorney that the parcel has not been redeemed. After receipt of that certification, the private attorney may commence a foreclosure proceeding in the name of the certificate holder in the manner provided under division (F) of this section, to foreclose the lien vested in the certificate holder by the certificate. The private attorney shall attach to the complaint the county treasurer's certification that the parcel has not been redeemed.

(D) The county treasurer shall credit the amount received under division (B)(1) of this section to the tax certificate redemption fund. The tax certificates respecting the payment shall be redeemed as provided in division (E) of section 5721.38 of the Revised Code. The amount received under division (B)(2) of this section shall be distributed to the taxing districts to which the delinquencies are owed. The treasurer shall deposit the fee received under division (B)(3) of this section in the county treasury to the credit of the delinquent tax and assessment collection fund. The amount received under division (B)(4) of this section shall be distributed to the

holder of the prior lien.

(E)(1) If, in the case of a certificate purchased under section 5721.32 of the Revised Code, the certificate holder does not file with the county treasurer a request for foreclosure along with the required payment within three years after the date shown on the tax certificate as the date the certificate was sold, and during that period the parcel is not redeemed or foreclosed upon, the certificate holder's lien against the parcel for the amount of delinquent taxes, assessments, penalties, interest, and charges that make up the certificate purchase price is canceled.

(2)(a) If, in the case of a certificate purchased under section 5721.33 of the Revised Code, the certificate holder does not file with the county treasurer a notice of intent to foreclose with respect to a certificate parcel within ~~three~~ six years after the date shown on the tax certificate as the date the certificate was sold or any extension of that date pursuant to division (C)(2) of section 5721.38 of the Revised Code, and during that period the parcel is not redeemed, the certificate holder's lien against the parcel for the amount of delinquent taxes, assessments, penalties, interest, and charges that make up the certificate purchase price is canceled, subject to division (E)(2)(b) of this section.

(b) In the case of any tax certificate purchased under section 5721.33 of the Revised Code prior to the effective date of this amendment, the county treasurer, upon application by the certificate holder, may sell to the certificate holder a new certificate extending the three-year period prescribed by division (e)(2) of this section, as that division existed prior to that effective date, to six years after the date shown on the original certificate as the date it was sold or any extension of that date. The county treasurer and the certificate holder shall negotiate the premium, in cash, to be paid for the new certificate sold under this section. If the county treasurer and certificate holder do not negotiate a mutually acceptable premium, the county treasurer and certificate holder may agree to engage a person experienced in the valuation of financial assets to appraise a fair premium for the new certificate. The certificate holder has the option to purchase the new certificate for the fair premium so appraised. Not less than one-half of the fee of the person so engaged shall be paid by the certificate holder requesting the new certificate; the remainder of the fee shall be paid from the proceeds of the sale of the new certificate. If the certificate holder does not purchase the new certificate for the premium so appraised, the certificate holder shall pay the entire fee. The county treasurer shall credit the remaining proceeds from the sale to the items of taxes, assessments, penalties, interest, and charges in the order in which they became due.

A certificate issued under this division vests in the certificate holder and its secured party, if any, the same rights, interests, privileges, and immunities as are vested by the original certificate under sections 5721.30 to 5721.41 of the Revised Code, except that interest payable under division (B) of section 5721.38 or division (B) of section 5721.39 of the Revised Code shall be subject to the amendments to those divisions by Sub. H.B. 533 of the 123rd general assembly. The certificate shall be issued in the same form as the form prescribed for the original certificate issued except for any modifications necessary, in the county treasurer's discretion, to reflect the extension under this division of the certificate holder's lien to six years after the date shown on the original certificate as the date it was sold or any extension of that date. The certificate holder may record a certificate issued under division (e)(2)(b) of this section or memorandum thereof as provided in division (b) of section 5721.35 of the Revised Code, and the county recorder shall index the certificate and record any subsequent cancellation of the lien as provided in that section. The sale of a certificate extending the lien under division (e)(2)(b) of this section does not impair the right of redemption of the owner of record of the certificate parcel or of any other person entitled to redeem the property.

(F) With respect to tax certificates purchased under section 5721.33 of the Revised Code, upon the delivery to the certificate holder by the county treasurer of the certification provided for under division (C)(2) of this section, a private attorney may institute a foreclosure proceeding under this division in the name of the certificate holder to foreclose such holder's lien, in any court with jurisdiction, unless the certificate redemption price is paid prior to the time a complaint is filed. The attorney shall prosecute the proceeding to final judgment and satisfaction, whether through sale of the property or the vesting of title and possession in the certificate holder. If there is a copy of a written undertaking under section 323.31 of the Revised Code attached to the tax certificate or if a copy of such an undertaking is received from the county treasurer prior to the commencement of the proceeding under this division, the attorney shall not institute the proceeding under this division, unless the attorney receives a certification of the treasurer that such undertaking has become void in accordance with section 323.31 of the Revised Code.

The foreclosure proceedings under this division, except as otherwise provided in this division, shall be instituted and prosecuted in the same manner as is provided by law for the foreclosure of mortgages on land, except that, if service by publication is necessary, such publication shall be made once a week for three consecutive weeks and the service shall be

complete at the expiration of three weeks after the date of the first publication.

Any notice given under this division shall include the name of the owner of the parcel as last set forth in the records of the county recorder, the owner's last known mailing address, the address of the subject parcel if different from that of the owner, and a complete legal description of the subject parcel. In any county that has adopted a permanent parcel number system, such notice may include the permanent parcel number in addition to a complete legal description.

It is sufficient, having been made a proper party to the foreclosure proceeding, for the certificate holder to allege in such holder's complaint that the tax certificate has been duly purchased by the certificate holder, that the certificate redemption price appearing to be due and unpaid is due and unpaid, and that there is a lien against the property described in the tax certificate, without setting forth in such holder's complaint any other special matter relating to the foreclosure proceeding. The prayer of the complaint shall be that the court issue an order that the property be sold by the sheriff or, if the action is in the municipal court, by the bailiff, in the manner provided in section 5721.19 of the Revised Code, unless the complaint includes an appraisal by an independent appraiser acceptable to the court that the value of the certificate parcel is less than the certificate purchase price. In that case, the prayer of the complaint shall be that fee simple title to the property be transferred to and vested in the certificate holder free and clear of all subordinate liens.

In the foreclosure proceeding, the certificate holder may join in one action any number of tax certificates relating to the same owner, provided that all parties on each of the tax certificates are identical as to name and priority of interest. However, the decree for each tax certificate shall be rendered separately and any proceeding may be severed, in the discretion of the court, for the purpose of trial or appeal. The court shall make such order for the payment of all costs related directly or indirectly to the redemption of the tax certificate, including, without limitation, attorney's fees of the holder's attorney, as is considered proper. The tax certificate purchased by the certificate holder is presumptive evidence in all courts and in all proceedings, including, without limitation, at the trial of the foreclosure action, of the amount and validity of the taxes, assessments, charges, penalties by the court and added to such principal amount, and interest appearing due and unpaid and of their nonpayment.

(G) For the purposes of this section:

(1) "Prior tax certificates" and "prior delinquent taxes, assessments,

penalties, interest, and charges" mean tax certificates and delinquent taxes, assessments, penalties, interest, and charges, the liens with respect to which attached to the certificate parcel prior to the attachment of the lien with respect to the tax certificate that is the subject of the foreclosure proceedings.

(2) "Prior liens" means liens that are prior in right to the lien with respect to the tax certificate that is the subject of the foreclosure proceedings.

Sec. 5721.38. (A) At any time prior to the commencement of foreclosure proceedings under section 5721.37 of the Revised Code by the submitting of the payment to the county treasurer by the certificate holder under division (B) of that section, the owner of record of the certificate parcel, or any other person entitled to redeem that parcel, may redeem the parcel by paying to the county treasurer an amount equal to the total of the certificate redemption prices of all tax certificates respecting that parcel plus the sum of taxes, assessments, penalties, charges, and interest charged against the parcel that have become due and payable since the date the last certificate was sold.

(B) At any time after the commencement of foreclosure proceedings under section 5721.37 of the Revised Code by the submitting of the payment to the county treasurer by the certificate holder under division (B) of that section and prior to the filing of the entry of confirmation of sale of a certificate parcel under foreclosure proceedings filed by the county prosecuting attorney or prior to the decree conveying title to the certificate holder as provided for in division (F) of section 5721.37 of the Revised Code, the owner of record of the certificate parcel or any other person entitled to redeem that parcel may redeem the parcel by paying to the county treasurer the sum of the following amounts:

(1) The amount described in division (A) of this section ~~plus interest;~~

(2) Interest on the certificate purchase price for each tax certificate sold respecting the parcel at the rate of eighteen per cent per year for the period beginning on the day on which the payment was submitted by the certificate holder, together with an and ending on the day the parcel is redeemed under this division, except that such interest shall not accrue for more than three years after the day the certificate was purchased if the certificate holder did not submit payment under division (B) of section 5721.37 of the Revised Code before the end of that three-year period;

(3) An amount equal to the sum of the prosecuting attorney's fee under division (C)(1) of section 5721.37 of the Revised Code if the tax certificate was purchased under section 5721.32 of the Revised Code, ~~and any;~~

(4) Any other costs and fees of the proceeding allocable to the certificate parcel as determined by the court.

(C)(1) During the period beginning on the date a tax certificate is sold under section 5721.32 of the Revised Code and ending one year from that date, the owner of record of the certificate parcel, or any other person entitled to redeem that parcel, may enter into a redemption payment plan with the county treasurer. The plan shall require the owner or other person to pay the certificate redemption price for the tax certificate in installments, with the final installment due no later than one year after the date the tax certificate is sold.

(2) During the period beginning on the date a tax certificate is sold under section 5721.33 of the Revised Code and ending on the date the decree is rendered on the foreclosure proceeding under division (F) of section 5721.37 of the Revised Code, the owner of record of the certificate parcel, or any other person entitled to redeem that parcel, may enter into a redemption payment plan with the certificate holder and all secured parties of the certificate holder. The plan shall require the owner or other person to pay the certificate redemption price for the tax certificate, an administrative fee not to exceed one hundred dollars per year, and the actual fees and costs incurred, in installments, with the final installment due no later than three years after the date the tax certificate is sold. The certificate holder shall give written notice of the plan to the applicable county treasurer within sixty days after entering into the plan and written notice of default under the plan within ninety days after the default. If such a plan is entered into, the time period for filing a notice of intent to foreclose under section 5721.37 of the Revised Code is extended by the length of time the plan is in effect and not in default.

(D)(1) Immediately upon receipt of full payment under division (A) or (B) of this section, the county treasurer shall make an entry to that effect in the tax certificate register and notify each certificate holder by certified mail, return receipt requested, that the parcel has been redeemed and the lien canceled and that the tax certificates may be redeemed. The county treasurer shall deposit into the tax certificate redemption fund created in the county treasury an amount equal to the total of the certificate redemption prices, together with interest on the certificate purchase price for each tax certificate sold respecting the parcel at the rate of eighteen per cent per year paid under division (B) of this section for the period beginning when the payment was submitted by the certificate holder under division (B) of section 5721.37 of the Revised Code and ending when the parcel was redeemed. The county treasurer shall administer the fund for the purpose of redeeming tax

certificates. Interest earned on the fund shall be credited to the county general fund.

(2) If a redemption payment plan is entered into pursuant to division (C)(1) of this section, the county treasurer immediately shall notify each certificate holder by certified mail, return receipt requested, of the terms of the plan. Installment payments made pursuant to the plan shall be deposited in the tax certificate redemption fund. Any overpayment of the installments shall be refunded to the person responsible for causing the overpayment if the person applies for a refund under this section. If the person responsible for causing the overpayment fails to apply for a refund under this section within five years from the date the plan is satisfied, an amount equal to the overpayment shall be deposited into the general fund of the county.

Upon satisfaction of the plan, the county treasurer shall indicate in the tax certificate register that the plan has been satisfied, and shall notify each certificate holder by certified mail, return receipt requested, that the plan has been satisfied and that tax certificates may be redeemed.

If a plan becomes void, the county treasurer immediately shall notify each certificate holder by certified mail, return receipt requested. If a certificate holder files a request for foreclosure under section 5721.37 of the Revised Code, upon the confirmation of sale resulting from the foreclosure, any money paid under the plan prior to its becoming void shall be applied to payment as prescribed under divisions (A), (B), and (C) of section 5721.39 of the Revised Code. Any residue remaining after such payment shall be disposed of under section 5721.20 of the Revised Code.

(E) To redeem a tax certificate with respect to which payment has been made in full under division (A), (B), or (C)(1) of this section, the certificate holder shall present the tax certificate to the county treasurer, who shall prepare the redemption information. Upon presentation, the county auditor shall draw a warrant on the tax certificate redemption fund in the amount of the certificate redemption price. For a parcel that was redeemed under division (B) of this section, the certificate holder who paid the amounts under division (B) of section 5721.37 of the Revised Code shall be reimbursed for those amounts, together with interest at the rate of eighteen per cent per year on the amount paid under division (B)(1) of that section for the period beginning when the payment was submitted by the certificate holder under division (B) of that section and ending when the parcel was redeemed. The treasurer shall mark all copies of the tax certificate "redeemed" and return the certificate to the certificate holder. The canceled certificate shall serve as a receipt evidencing redemption of the tax certificate. If a certificate holder fails to redeem a tax certificate within five

years after notice is served under division (D) of this section that tax certificates may be redeemed, an amount equal to the certificate redemption price shall be deposited into the general fund of the county.

Sec. 5721.39. In its judgment of foreclosure rendered with respect to actions filed pursuant to section 5721.37 of the Revised Code, the court shall enter a finding with respect to the certificate parcel of the amount of the sum of the certificate redemption prices respecting all the tax certificates sold against the parcel; interest on the certificate purchase prices of those certificates at the rate of eighteen per cent per year for the period beginning on the day on which the payment was submitted by the certificate holder under division (B) of section 5721.37 of the Revised Code; any delinquent taxes, assessments, penalties, interest, and charges on the parcel that are not covered by a tax certificate; and fees and costs incurred in the foreclosure proceeding instituted against the parcel, including, without limitation, the fees and costs of the prosecuting attorney represented by the fee paid under division (B)(3) of section 5721.37 of the Revised Code or the fees and costs of the private attorney representing the certificate holder, and charges paid or incurred in procuring title searches and abstracting services relative to the subject premises. The court may order the certificate parcel to be sold, without appraisal, in the manner provided for in division (F) of section 5721.37 of the Revised Code and as set forth in the prayer of the complaint, for not less than the amount of its finding, or, in the event that the court finds that the value of the certificate parcel is less than the certificate purchase price, the court may, as prayed for in the complaint, issue a decree transferring fee simple title free and clear of all subordinate liens to the certificate holder. A decree of the court transferring such fee simple title to the certificate holder is forever a bar to all rights of redemption with respect to the certificate parcel.

Each certificate parcel shall be advertised and sold by the officer to whom the order of sale is directed in the manner provided by law for the sale of real property on execution. The advertisement for sale of certificate parcels shall be published once a week for three consecutive weeks and shall include the date on which a second sale will be conducted if no bid is accepted at the first sale. Any number of parcels may be included in one advertisement.

Whenever the officer charged to conduct the sale offers a certificate parcel for sale and no bids are made equal to at least the amount of the court's finding, the officer shall adjourn the sale of the parcel to the second date that was specified in the advertisement of sale. The second sale shall be held at the same place and commence at the same time as set forth in the

advertisement of sale. The officer shall offer any parcel not sold at the first sale. Upon the conclusion of any sale, or if any parcel remains unsold after being offered at two sales, the officer conducting the sale shall report the results to the court.

Upon the confirmation of a sale, the proceeds of the sale shall be applied as follows:

(A) The fees and costs incurred in the proceeding filed against the parcel pursuant to section 5721.37 of the Revised Code, not including the county prosecutor's costs covered by the fee paid by the certificate holder under division (B)(3) of that section, shall be paid first.

(B) Following the payment required by division (A) of this section, the certificate holder that requested the foreclosure shall be paid the sum of the following amounts:

(1) The sum of the amount found due for the certificate redemption prices of all the tax certificates sold against the parcel; ~~any~~

(2) Any premium paid by the certificate holder at the time of purchase; ~~interest~~

(3) Interest on the certificate purchase prices of those certificates at the rate of eighteen per cent per year beginning on the day on which the payment was submitted by the certificate holder under division (B) of section 5721.37 of the Revised Code and ending on the day of the sale, except that such interest shall not accrue for more than three years after the day the certificate was purchased if the certificate holder did not submit that payment before the end of that three-year period; and the

(4) The amounts paid by the certificate holder under divisions (B)(2) and (3) of section 5721.37 of the Revised Code.

(C) Following the payment required by division (B) of this section, any amount due for taxes, assessments, charges, penalties, and interest not covered by the tax certificate holder's payment under division (B)(2) of section 5721.37 of the Revised Code shall be paid, including all taxes, assessments, charges, penalties, and interest payable subsequent to the entry of the finding and prior to the transfer of the deed of the parcel to the purchaser following confirmation of sale. If the proceeds available for distribution pursuant to this division are insufficient to pay the entire amount of those taxes, assessments, charges, penalties, and interest, the proceeds shall be paid to each claimant in proportion to the amount of those taxes, assessments, charges, penalties, and interest that each is due, and those taxes, assessments, charges, penalties, and interest are deemed satisfied.

Any residue of money from proceeds of the sale shall be disposed of as prescribed by section 5721.20 of the Revised Code.

Unless the parcel previously was redeemed pursuant to section 5721.25 or 5721.38 of the Revised Code, upon the filing of the entry of confirmation of sale, the title to the parcel is incontestable in the purchaser and is free and clear of all liens and encumbrances, except a federal tax lien notice of which is properly filed in accordance with section 317.09 of the Revised Code prior to the date that a foreclosure proceeding is instituted pursuant to section 5721.37 of the Revised Code, which lien was foreclosed in accordance with 28 U.S.C.A. 2410(c), and the easements and covenants of record running with the land or lots that were created prior to the time the taxes or assessments, for the nonpayment of which a tax certificate was issued and the parcel sold at foreclosure, became due and payable.

The title shall not be invalid because of any irregularity, informality, or omission of any proceedings under this chapter, or in any processes of taxation, if such irregularity, informality, or omission does not abrogate the provision for notice to holders of title, lien, or mortgage to, or other interests in, such foreclosed parcels, as prescribed in this chapter.

SECTION 2. That existing sections 5721.37, 5721.38, and 5721.39 of the Revised Code are hereby repealed.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. H. B. No. 533

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____