

As Introduced

**134th General Assembly
Regular Session
2021-2022**

S. B. No. 334

Senator Blessing

A BILL

To amend section 2329.27 and to enact sections 1
2329.261 and 2329.313 of the Revised Code to 2
grant tenants and certain other eligible bidders 3
rights relating to the purchase of residential 4
property sold at foreclosure. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2329.27 be amended and sections 6
2329.261 and 2329.313 of the Revised Code be enacted to read as 7
follows: 8

Sec. 2329.261. (A) If residential property sold at public 9
sale pursuant to this chapter contains one to four single-family 10
units, the levying officer shall do all of the following: 11

(1) Include the following statement, in substantially the 12
following form, in the notice required by division (A) (2) of 13
section 2329.26 of the Revised Code: 14

"NOTICE TO TENANTS AND OTHER ELIGIBLE BIDDERS: You may 15
have a right to purchase this property after the sale pursuant 16
to R.C. 2329.313. If you are an "eligible-tenant buyer," you can 17
purchase the property if you match the successful bid placed at 18
the sale. If you are an "eligible bidder," you may be able to 19

purchase the property if you exceed the successful bid placed at 20
the sale. There are three steps to exercising this right of 21
purchase. 22

First, two calendar days after the date of the sale, you 23
can call [telephone number for information regarding the sale], 24
or visit this web site [web site address for information 25
regarding the sale], using the file number assigned to this case 26
[case file number] to find the date on which the sale was held, 27
the amount of the successful bid, and the address of the person 28
who conducted the sale. 29

Second, you must send a written notice of intent to place 30
a bid so that the person who conducted the sale receives it not 31
more than fifteen days after the date of the sale. 32

Third, you must submit a bid so that the person who 33
conducted the sale receives it not more than forty-five days 34
after the date of the sale. 35

If you think you may qualify as an "eligible tenant-buyer" 36
or "eligible bidder," you should consider contacting an attorney 37
or appropriate real estate professional immediately for advice 38
regarding this potential right to purchase." 39

(2) Post a copy of the notice required by division (A) (2) 40
of section 2329.26 of the Revised Code, as modified by division 41
(A) (1) of this section, in a conspicuous place on the 42
residential property to be sold at least three weeks before the 43
date of the sale, where possible and where not restricted for 44
any reason. The posting shall be on a door of each dwelling unit 45
on the residential property, but, if that is not possible or 46
access is restricted, then the notice shall be posted in a 47
conspicuous place on the residential property. If access is 48

denied because a common entrance to the residential property is 49
restricted by a guard gate or similar impediment, the notice may 50
be posted at that guard gate or impediment. 51

(3) Maintain a web site and telephone number to provide 52
information on applicable properties. A levying officer shall 53
provide information required by division (A) (3) of this section, 54
and, for completed sales, information regarding the sale date, 55
amount of the successful bid, and the levying officer's address, 56
to be accessible using the file number assigned to the case and 57
listed on the notice required by division (A) (2) of section 58
2329.26 of the Revised Code, as modified by division (A) (1) of 59
this section. This information shall be made available free of 60
charge and shall be available twenty-four hours a day, seven 61
days a week. 62

(B) A levying officer may use any web site maintained to 63
satisfy any other provision of this chapter, including the 64
official public sheriff sale web site established pursuant to 65
section 2329.153 of the Revised Code, to satisfy the 66
requirements of division (A) (3) of this section. 67

(C) As used in this section, "levying officer" means the 68
officer who makes the public sale of the residential property 69
subject to this section. "Levying officer" includes a private 70
selling officer. 71

Sec. 2329.27. (A) When the public notice required by 72
division (A) (2) of section 2329.26 or divisions (A) (1) and (2) 73
of section 2329.261 of the Revised Code is made in a newspaper 74
published weekly, it is sufficient to insert it for three 75
consecutive weeks. If both a daily and weekly edition of the 76
paper are published and the circulation of the daily in the 77
county exceeds that of the weekly in the county, or if the lands 78

and tenements taken in execution are situated in a city, both a 79
daily and weekly edition of the paper are published, and the 80
circulation of the daily in that city exceeds the circulation of 81
the weekly in that city, it is sufficient to publish the public 82
notice in the daily once a week for three consecutive weeks 83
before the day of sale, each insertion to be on the same day of 84
the week. The expense of that publication in a daily shall not 85
exceed the cost of publishing it in a weekly. 86

(B) (1) Subject to divisions (B) (2) and (3) of this 87
section, all sales of lands and tenements taken in execution 88
that are made without compliance with the written notice 89
requirements of division (A) (1) (a) of section 2329.26 of the 90
Revised Code, the public notice requirements of division (A) (2) 91
of that section or divisions (A) (1) and (2) of section 2329.261 92
of the Revised Code, as applicable, the purchaser information 93
requirements of section 2329.271 of the Revised Code, and 94
division (A) of this section shall be set aside, on motion by 95
any interested party, by the court to which the execution is 96
returnable. 97

(2) Proof of service endorsed upon a copy of the written 98
notice required by division (A) (1) (a) of section 2329.26 of the 99
Revised Code shall be conclusive evidence of the service of the 100
written notice in compliance with the requirements of that 101
division, unless a party files a motion to set aside the sale of 102
the lands and tenements pursuant to division (B) (1) of this 103
section and establishes by a preponderance of the evidence that 104
the proof of service is fraudulent. 105

(3) If the court to which the execution is returnable 106
enters its order confirming the sale of the lands and tenements, 107
the order shall have both of the following effects: 108

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| (a) The order shall be deemed to constitute a judicial finding as follows: | 109 110 |
| (i) That the sale of the lands and tenements complied with the written notice requirements of division (A) (1) (a) of section 2329.26 of the Revised Code and the public notice requirements of division (A) (2) of that section, <u>or divisions (A) (1) and (2) of section 2329.261 of the Revised Code, as applicable,</u> and division (A) of this section, or that compliance of that nature did not occur but the failure to give a written notice to a party entitled to notice under division (A) (1) (a) of section 2329.26 of the Revised Code has not prejudiced that party; | 111 112 113 114 115 116 117 118 119 |
| (ii) That all parties entitled to notice under division (A) (1) (a) of section 2329.26 of the Revised Code received adequate notice of the date, time, and place of the sale of the lands and tenements; | 120 121 122 123 |
| (iii) That the purchaser has submitted the contact information required by section 2329.271 of the Revised Code. | 124 125 |
| (b) The order bars the filing of any further motions to set aside the sale of the lands and tenements. | 126 127 |
| <u>Sec. 2329.313.</u> (A) As used in this section: | 128 |
| <u>(1) "Eligible bidder" means any of the following:</u> | 129 |
| <u>(a) A prospective owner-occupant;</u> | 130 |
| <u>(b) An unincorporated nonprofit association as defined in section 1745.05 of the Revised Code, nonprofit corporation as defined in section 1702.01 of the Revised Code, or cooperative as defined in section 1729.01 of the Revised Code in which an eligible tenant-buyer or a prospective owner-occupant is a voting member or director;</u> | 131 132 133 134 135 136 |

(c) A nonprofit corporation, as defined in section 1702.01 137
of the Revised Code, based in this state whose primary activity 138
is the development and preservation of affordable rental 139
housing; 140

(d) A limited partnership or domestic limited partnership, 141
as defined in section 1782.01 of the Revised Code, in which a 142
general partner is a nonprofit corporation based in this state, 143
the primary activity of which is the development and 144
preservation of affordable housing; 145

(e) A limited liability company, as defined in section 146
1706.01 of the Revised Code, in which the manager is a nonprofit 147
corporation based in this state, the primary activity of which 148
is the development and preservation of affordable rental 149
housing; 150

(f) A community improvement corporation, as defined in 151
section 1724.01 of the Revised Code, or a community urban 152
redevelopment corporation, as defined in section 1728.01 of the 153
Revised Code; 154

(g) A public office. 155

(2) "Eligible tenant-buyer" means a natural person who, at 156
the time of the judicial sale, is all of the following: 157

(a) Occupying the residential property that is the subject 158
of the judicial sale as the person's primary residence; 159

(b) Occupying the residential property under a rental 160
agreement entered into as the result of an arm's length 161
transaction with the mortgagor on a date prior to a default on 162
the note secured by the mortgage that led to the action for 163
judicial sale and foreclosure; 164

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| <u>(c) Not the mortgagor, or the child, spouse, or parent of the mortgagor.</u> | 165 |
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| <u>(3) "Levying officer" has the same meaning as in section 2329.261 of the Revised Code.</u> | 167 |
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| <u>(4) "Prospective owner-occupant" means a natural person who executes an affidavit pursuant to division (B) of this section and delivers it to a levying officer.</u> | 169 |
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| <u>(5) "Public office" means any state agency as defined in section 1.60 of the Revised Code, state institution of higher education as defined in section 3345.011 of the Revised Code, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government.</u> | 172 |
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| <u>(B) To qualify as a prospective owner-occupant for purposes of this section, a bidder shall be a natural person who provides the levying officer with an affidavit swearing or affirming all of the following:</u> | 179 |
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| <u>(1) That the person will occupy the residential property offered at sale under this chapter as the person's primary residence within sixty days of recording of a deed to the residential property or issuance of an order pursuant to division (C) of section 2329.31 of the Revised Code;</u> | 183 |
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| <u>(2) That the person will maintain the person's occupancy at the residential property for at least one year;</u> | 188 |
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| <u>(3) That the person is not the mortgagor, or the child, spouse, or parent of the mortgagor;</u> | 190 |
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| <u>(4) That the person is not acting as the agent of any</u> | 192 |

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| <u>other person or entity in purchasing the real property.</u> | 193 |
| <u>An eligible tenant-buyer may qualify as a prospective</u> | 194 |
| <u>owner-occupant.</u> | 195 |
| <u>(C) Notwithstanding section 2329.53 of the Revised Code,</u> | 196 |
| <u>if residential property sold at public sale on order of sale</u> | 197 |
| <u>pursuant to this chapter contains one to four single-family</u> | 198 |
| <u>units, and the successful bidder at the public sale is not a</u> | 199 |
| <u>prospective owner-occupant, the levying officer shall not return</u> | 200 |
| <u>the writ of execution pursuant to sections 2329.28 and 2329.53</u> | 201 |
| <u>of the Revised Code until the earliest of the following dates:</u> | 202 |
| <u>(1) The date that is sixteen days after the date of the</u> | 203 |
| <u>public sale, unless at least one eligible tenant-buyer or</u> | 204 |
| <u>eligible bidder submits, and the levying officer receives, a bid</u> | 205 |
| <u>pursuant to division (D) or (E) of this section or a nonbinding</u> | 206 |
| <u>written notice of intent to place such a bid. To be effective, a</u> | 207 |
| <u>written notice of intent to place a bid must be sent to the</u> | 208 |
| <u>levying officer by certified mail, overnight delivery, or other</u> | 209 |
| <u>method that allows for confirmation of the delivery date and</u> | 210 |
| <u>must be received by the levying officer not more than fifteen</u> | 211 |
| <u>days after the date of the public sale.</u> | 212 |
| <u>(2) The date upon which all eligible tenant-buyers are</u> | 213 |
| <u>deemed the successful bidders pursuant to division (D) of this</u> | 214 |
| <u>section or an eligible bidder is deemed the successful bidder</u> | 215 |
| <u>pursuant to division (E) of this section.</u> | 216 |
| <u>(3) The date that is forty-six days after the date of the</u> | 217 |
| <u>public sale.</u> | 218 |
| <u>(D) If residential property sold at public sale on order</u> | 219 |
| <u>of sale pursuant to this chapter contains one to four single-</u> | 220 |
| <u>family units, eligible tenant-buyers, if any, are deemed to have</u> | 221 |

submitted the successful bid at the public sale of residential 222
property sold on order of sale under this chapter if both of the 223
following are true: 224

(1) The successful bidder at the public sale was not a 225
prospective owner-occupant. 226

(2) Not more than forty-five days after the date of the 227
public sale, the levying officer receives both of the following 228
from a representative of all eligible tenant-buyers, by 229
certified mail, overnight delivery, or other method that allows 230
for confirmation of the delivery date: 231

(a) A bid in an amount equal to the full amount of the 232
successful bid at the public sale, in the form of cash, a 233
cashier's check drawn on a state or national bank, a cashier's 234
check drawn on a state or federal credit union, or a cashier's 235
check drawn on a state or federal savings and loan association, 236
savings association, or savings bank specified and authorized to 237
do business in this state; 238

(b) An affidavit stating that the persons represented are 239
eligible bidders as defined by this section and the facts 240
supporting that statement. The levying officer may reasonably 241
rely on this affidavit. 242

The levying officer shall return all unsuccessful bids 243
from eligible tenant-buyers to the bidders that submitted them 244
not later than the date the levying officer returns the writ of 245
execution. 246

(E) If residential property sold at public sale on order 247
of sale pursuant to this chapter contains one to four single- 248
family units, an eligible bidder is deemed to have submitted the 249
successful bid at the public sale if, not more than forty-five 250

days after the date of the public sale, all of the following are 251
true: 252

(1) The successful bidder at the public sale was not a 253
prospective owner-occupant. 254

(2) No eligible tenant-buyers are deemed to have submitted 255
the successful bid pursuant to division (D) of this section. 256

(3) The levying officer receives both of the following 257
from the eligible bidder, by certified mail, overnight delivery, 258
or other method that allows for confirmation of the delivery 259
date: 260

(a) A bid in an amount that exceeds the successful bid at 261
the public sale and all other bids submitted by other eligible 262
bidders, in the form of cash, a cashier's check drawn on a state 263
or national bank, a cashier's check drawn on a state or federal 264
credit union, or a cashier's check drawn on a state or federal 265
savings and loan association, savings association, or savings 266
bank and authorized to do business in this state; 267

(b) An affidavit stating that the bidder is an eligible 268
bidder as defined by this section, and the facts supporting that 269
statement. The levying officer may reasonably rely on this 270
affidavit. 271

The levying officer shall return all unsuccessful bids 272
from eligible bidders to the bidders that submitted them not 273
later than the date the levying officer returns the writ of 274
execution. 275

(F) If residential property sold pursuant to this chapter 276
contains one to four single-family units, and the successful 277
bidder at the public sale is not a prospective owner-occupant, 278
then: 279

(1) Not later than two calendar days after the date of the public sale of residential property, the levying officer or an authorized agent shall post on the web site set forth on the notice of sale, as required by section 2329.261 of the Revised Code, the following information: 280
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(a) The date on which the public sale took place; 285

(b) The amount of the successful bid at the public sale; 286

(c) An address at which the levying officer can receive documents sent by United States mail and by a method of delivery providing for overnight delivery. 287
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(2) The information required to be posted on the web site under division (F) (1) of this section shall also be made available not later than two calendar days after the date of the public sale of the residential property by calling the telephone number set forth on the notice of sale as required by section 2329.261 of the Revised Code. 290
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(3) The information required to be provided under divisions (F) (1) and (2) of this section shall be made available using the file number assigned to the case that is set forth on the notice of sale as required under division (A) (1) of section 2329.261 of the Revised Code. 296
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(4) The information required to be provided under divisions (F) (1) and (2) of this section shall be made available for a period of not less than forty-five days after the date of the sale. 301
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(5) A disruption of any of these methods of providing the information required under divisions (F) (1) and (2) of this section to allow for reasonable maintenance or due to a service outage shall not be considered to be a violation of division (F) 305
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| <u>(1), (2), or (4) of this section.</u> | 309 |
| <u>(G) A prospective owner-occupant does not commit perjury</u> | 310 |
| <u>by submitting an affidavit under this section if the prospective</u> | 311 |
| <u>owner-occupant cannot occupy the property as the person's</u> | 312 |
| <u>primary residence within sixty days of the deed to the property</u> | 313 |
| <u>being recorded pursuant to section 2329.31 of the Revised Code</u> | 314 |
| <u>because an action under Chapter 1923. of the Revised Code or a</u> | 315 |
| <u>writ of possession from the court that entered the order of sale</u> | 316 |
| <u>is needed to obtain possession of the property.</u> | 317 |
| Section 2. That existing section 2329.27 of the Revised | 318 |
| Code is hereby repealed. | 319 |