



Ohio Clerk of Courts Association

**Ohio House
Civil Justice Committee
April 23, 2024
Proponent Testimony on HB 390**

Good afternoon, Chairman Hillyer, Vice Chair Mathews, Ranking Member Isaacsohn, and members of the House Civil Justice Committee. My name is Branden Meyer and I am the Fairfield County Clerk of Courts and Legislative Co-chair of the Ohio Clerk of Courts Association. Thank you for the opportunity to testify as a proponent on House Bill 390, which revises the law to update and streamline the notice of excess funds in real property foreclosure sales.

First and foremost, I want thank Representatives Brown and Swearingen for introducing and working on this bill.

The law requires the Clerk to send a notice to the defendant that there is money remaining after the sale of property in a bank or tax foreclosure proceeding. The current process is expensive for the defendant and needs streamlined to reduce costs and ensure defendants receive the excess funds they are owed. We support the following provisions in HB 390.

1. Require Notice by Certified Mail if the amount owed to defendant is over \$500; Ordinary Mail if under \$500.

In some cases, after the sale of property, there are funds left over that are to be paid to the defendant. The remaining funds due to a defendant are typically over \$500. In very few cases is the amount lower than \$500. For example, from 2023 through today, the Butler County Clerk issued 49 checks paying excess funds to defendants. The average amount of the check for excess funds was \$25,982. Under current law, when a defendant is owed an amount over \$100, the Clerk must notify the defendant via Certified Mail (which is paid for out of the amount owed to the defendant). Often times, the cost of Certified Mail leaves the defendant with very little left to collect because it was spent on giving him or her notice. Therefore, we think increasing the amount that triggers a Clerk to send a Certified Mail notice to \$500 makes sense and will ultimately save time and money. Under the provisions of the bill, if there is \$500 or more due to the known defendant, the Clerk will be required to send a notification via Certified Mail within 90 days of the sale. If Certified Mail fails, the Clerk will send notice via ordinary mail. If ordinary mail is returned to the Clerk as undelivered, the Clerk must advertise in the newspaper, or post the notice on their website, or in a conspicuous public place.

When an amount less than \$500 is owed to a known defendant, the Clerk will still provide notification but *not* by Certified Mail. Rather notice will be provided via ordinary mail. This will be a tremendous cost savings to the defendant, too, because sometimes the cost of providing the Certified Mail is as much as is owed to the defendant, ultimately leaving the defendant with only a few dollars.

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2. Modify the notification requirement when the name and address of the judgment debtor is unknown.

Currently, when the Clerk is required to serve a party who is an unknown heir or unknown spouse, the Clerk is required to send the notice to “unknown name, unknown address” via Certified Mail. As you can imagine this is expensive and we believe the notice simply goes to the post office to then be returned to our office because there is actually no name or address on the envelope. Under the bill, we modify this notice requirement to individuals with an unknown name and/or unknown address by requiring notice by newspaper publication, posting on the Clerk’s website, sending a text message to the judgment debtor, or posting the notice in a conspicuous place in the court where the foreclosure action commenced. This will be the notification requirement only when we do not know the individuals name and address. If the name is unknown and the address is known, we will send notification either by Certified Mail, ordinary mail or by posting on the clerk website, send a text message or make a posting at the courthouse.

3. Ensures timely distribution of excess funds.

When money is left over after the sale of property in a bank foreclosure proceeding, the funds are sent to the Clerk for distribution to the defendant. This bill will apply the same process for distribution of excess funds from a bank foreclosure to the tax foreclosure process. Additionally, the bill requires the funds to be sent to the Clerk for distribution within 45 days of the sale of property under both the tax and bank foreclosure processes. In some counties, Clerks have experienced significant delays in receiving the excess funds.

Thank you again for the opportunity to provide proponent testimony on House Bill 390 and I welcome any questions from the committee.