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Ohio House Civil Justice Committee Opposition to AM1842  
April 30, 2024

Chairman Hillyer, Vice Chairman Mathews, Ranking Member Isaacsohn and members of the House Civil Justice Committee. Thank you for letting me provide testimony on behalf of the Ohio Land Bank Association. We do not have a position on House Bill 390, but we are here today in opposition to AM1842.

My name is Shawn Carvin and I serve as the Executive Director of the Ohio Land Bank Association (OLBA). The OLBA is a statewide nonprofit organization with the purpose of supporting the work of and advocating on behalf of all county land reutilization corporations, commonly known as land banks, across Ohio. The OLBA works with its 69 member counties to identify their organizational and community needs and works to close the gap on those needs through policy, support, and advocacy.

The OLBA wishes to express its concerns regarding AM1842, which seeks to modify certain elements of Ohio's tax foreclosure statutes. Ohio's land banks have been instrumental in addressing tax-foreclosed, abandoned and deteriorated properties.

We firmly believe in the principle that every property owner should have the right to secure any surplus proceeds arising from a tax foreclosure sale, a right that Ohio has consistently upheld and is already enshrined in existing law. (*refer to R.C. 5721.20*).

In the wake of the 2009 foreclosure crisis, the General Assembly introduced a specific amendment to address the growing issue of vacant and abandoned properties that were deteriorating Ohio's communities. This amendment applied ONLY to unoccupied, vacant, abandoned, and tax-delinquent properties that are a blight to many communities, both urban and rural. This exception allowed for a direct transfer of such properties to county land banks instead of a sale, ensuring these properties were managed responsibly to curb the spread of blight. Determining whether a property is vacant and abandoned, qualifying it for foreclosure under R.C. 323.78, is a factual matter that must be established during the foreclosure proceedings. An owner need only file a paper declaring that the property is not vacant, and this would automatically and unilaterally force there to be a sale of the property, whereupon any surplus proceeds would go to the owner as a matter of existing law.

Minnesota's *Tyler v. Hennepin* is the catalyst for this amendment, with an out-of-state legal organization being the bill's biggest advocate.

*Tyler* involved a property owner in Minnesota whose condominium home was foreclosed by Hennepin County for the non-payment of \$15,000 of real property taxes, penalties, and interest. As a result of the foreclosure, title to Tyler's condominium was transferred to the County in satisfaction of her tax debt. The County later sold the condominium for \$40,000 and, as provided by Minnesota law, the county retained the \$25,000 of sale proceeds. Tyler then sued, arguing that the County's retention of the sale proceeds deprived her of \$25,000 of home equity without just compensation in violation of the U.S. Constitution's Takings Clause. In its unanimous ruling, the Supreme Court upheld the tax foreclosure of Tyler's property to satisfy the \$15,000 judgment but overruled the lower court's decision and found that Minnesota's "strict tax foreclosure" process took Tyler's property without an opportunity for Tyler to be compensated for any lost home equity by receiving the \$25,000 of sale proceeds.

What happened in *Tyler* is limited to Minnesota and states with similar tax foreclosure rules. *Tyler* would never and could never happen in Ohio because existing law forbids it when an owner states that the property is not vacant and abandoned. Consequently, there must be a conventional sheriff sale where the property owner has a vehicle to seek any potential equity. This is a sensible outcome under Ohio law because all owners must be served with the action and have this unilateral right to force a sale.

Unlike states such as Minnesota and Michigan, which enforce such strict tax foreclosure on all properties, Ohio's approach more favors the property owner, focusing solely on long tax delinquent, vacant and abandoned properties. This distinction ensures that property owners in Ohio have the opportunity to protect their home equity, and the Ohio Supreme Court has upheld this, as demonstrated in cases like *State ex rel. US Bank Trust, N.A. v. Cuyahoga County*.

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Very importantly, Tyler stated specifically that as long as a property owner is in a position (as is the case in Ohio) to unilaterally demand and secure a sheriff sale, due process has been satisfied. This principle is stated in the case of *Nelson v. New York* and was supported by Tyler.

This amendment does not protect homeowners who are living in their homes or responsible property owners who maintain their property and pay their taxes, but rather protects slumlords, absentee and often out-of-state property owners who have abandoned their properties. The persistent issue of unoccupied and neglected properties continues to plague Ohio's communities. When property owners neglect their responsibilities, including property maintenance and tax payments, leaving the burden of addressing the property squarely on the surrounding property owners, nonprofits, land banks, local governments and taxpayers, this often results in demolition with the limited resources available to communities.

Expedited tax foreclosure (R.C. 323.65 – 323.79) has been a pivotal tool in this context. Since its inception, this mechanism has facilitated the transfer of properties abandoned by their owners to county land banks, we believe that the proposed reforms in the amendment are not in the best interest of the broader community.

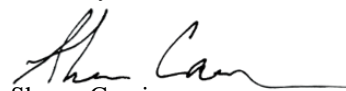
The real facts are that these are abandoned, vacant, unoccupied, tax delinquent properties; the owner has ignored the tax bills and notices to pay, the owner has not gone on a payment plan, the owner gets served with the foreclosure yet ignores the summons and complaint, fails to attend the hearing after being given notice, fails to redeem the property even after the decree, and fails to appeal any allegation of lost surplus, leaving the taxpayers with having to mop up the chaos. If there were truly a surplus in the dilapidated properties, the owner could easily list the property for sale and capture whatever equity may exist. Why is it the duty of taxpayers to be burdened with this task?

This amendment is the same language as HB153, which currently sits in House State and Local Government Committee. Although Ohio's existing law already provides numerous ways for a person to protect any perceived equity in a tax-foreclosed property, we offered compromise language last year during that committee process to expressly provide for the protections required by the Tyler holding last year. Rather than discarding a system that has proven effective, OLBA has suggested a modification to Ohio R.C. 323.78. This would be a simple statutory amendment to make it absolutely clear that an owner or any other person with an interest in tax delinquent real property that is found to be vacant and abandoned during the foreclosure can unconditionally and unilaterally request the public auction of the property at any time during the 12-24 month of the foreclosure proceedings. In doing so, they are able to protect any potential equity they believe is present in the property. Any amount of proceeds generated from the sale above the tax debt owed to the government will be distributed to the owner and/or lien holders in accordance with Ohio's existing law. This approach ensures that owners can secure surplus proceeds while also allowing county land banks to manage properties that have been neglected by absentee property owners.

We are grateful for the continued support from the Ohio General Assembly and remain committed to working collaboratively to achieve our shared objectives.

Chairman Hillyer, Vice Chairman Mathews, Ranking Member Isaacsohn and members of the House Civil Justice Committee Thank you for allowing me the opportunity to provide opponent testimony on AM1842. We look forward to working with the legislature to come to a consensus on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Carvin".

Shawn Carvin  
Executive Director,  
Ohio Land Bank Association