

**Proponent Testimony on SB 25**

**Before the**

**Senate Judiciary Committee**

**March 29, 2023**

Chairman Manning, Vice Chair Reynolds, Ranking member Hicks-Hudson and members of the Senate Judiciary Committee. Thank you for the opportunity to provide proponent testimony on **SB 25**.

My name is Tony Fiore and I'm an attorney/lobbyist at the full-service law firm of Kegler Brown Hill + Ritter LPA here in downtown Columbus. I also serve as legislative counsel to Auction.com. Auction.com is the nation's largest online auction marketplace for distressed properties.

Every county in Ohio is plagued with foreclosed property. Several programs exist to help keep that individual or family in the home, but those financial resources are limited. Land banks can help, but any taxes due for schools and local governments are wiped out with such a transfer in addition to the cost to raze the property and redevelop. The best alternative for the defendant and community surrounding the foreclosure is an expedited, inexpensive process that results in a third-party purchasing the property for as high a value as possible. These are the goals of **SB 25**.

There are three types of foreclosure processes throughout the country.

- **Strict foreclosure** (CT and VT) is a special type of judicial foreclosure. The lender files suit against the borrower who is in default. If the borrower does not pay the mortgage within a time limit specified by the court, title to the property transfers to the lender directly, without requiring a sale.
- 29 states use the **power of sale (nonjudicial) foreclosure** process. The contract language allows a lender to conduct an auction to sell a foreclosed property without involvement from the judicial system, as long as they issue required notifications to the borrower and observe mandatory waiting period that varies in length by state and locality. But, these are generally much faster than the judicial foreclosure.
- The **judicial foreclosure** process is where Ohio and the remainder of states fall. This is typically a much longer process where the lender files suit with the court to initiate foreclosure, typically after the borrower misses their third consecutive mortgage payment (90 days). The borrower receives a letter indicating foreclosure will commence if they do not bring the loan current within 30 days (120 days). If payment is not made in time, the property is sold at auction. Until a few years ago that sale took place at the county courthouse by sheriffs. But, the law was changed around 2018 to permit the judgment creditor to use a private selling officer (PSO) to conduct the sale either live or online. That private selling officer is a licensed auctioneer, licensed real estate agent and resident of Ohio. **SB 25** is building off these reforms to address lingering issues with the foreclosure process.



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**Issue 1: The map illustrates the lack of uniformity regarding the ability of a judgment creditor to use a private selling officer to sell the foreclosed property in a residential foreclosure action.**

- O.R.C. 2329.152 authorizes courts to appoint a private selling officer (PSO) to sell foreclosed properties.
- The creation of this new method of selling foreclosed properties was intended to achieve the following policy objectives: *“The provisions of the Revised Code, including Title XXIII, relating to the judicial sale of real estate pursuant to a mortgage loan foreclosure action comprise a comprehensive regulatory framework intended to operate uniformly throughout the state to provide efficient sales procedures for foreclosed property, improve the market for such property by increasing sale prices and reduce the number of unoccupied and abandoned properties marring the cities of this state”* Sub. H.B. 390, Section 101.03(A)

**Solution: SB 25 limits judicial discretion in uncontested claims so PSOs can be used in every county.**

- This is a commonsense approach to uncontested claims. If there is no objection to the case shouldn't the goal be to get the home back in to productive use as fast as possible.
- It is how the law changed several years ago with tax foreclosures on abandoned homes (the elimination of the sheriff sale process and immediate possession at the end by land banks).
- This avoids blight on abandoned properties because the sale can be conducted faster by a third party PSO who can also market the property in a different manner and reach more potential buyers.

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**Issue 2: No other state in the nation authorizes sheriffs to hire “freeholders” to appraise properties in foreclosure.**

- Typical cost (but can be more) is \$150 = \$50 x 3
- The process adds at least 21 days to the foreclosure case
- This may have made sense in the 1800s before county auditors began using taxpayer money to update values every 3-6 years, but it's an outdated process and only drives up cost and time.
- Million's of taxpayer dollars go into updating property appraisals every 3 to 6 years
  - Franklin county alone the cost was over \$9 million

**Solution: SB 25 eliminates these appraisals and defaults to the county auditor appraised value to start bidding**

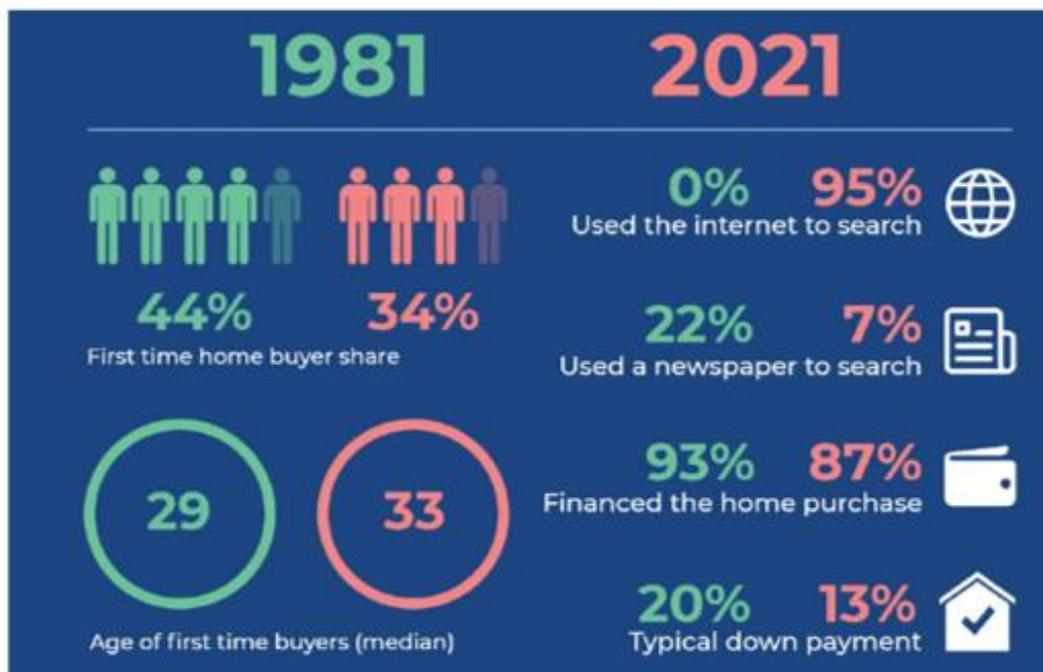
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**Issue 3: Statutory requirement to advertise in the newspaper of mass circulation does not reflect potential buyers today.**

- The problem with newspaper ads is that no one searches newspapers for real estate and most people today do not know how to access these newspapers.
- The newspapers utilized must meet certain criteria which can make the ads extremely county-specific. Creating this pigeonhole weakens the buyer-base and limits exposure of the auction.
- According to the National Association of Realtors in 2021, 95% of people used the internet to search for real estate. Only 7% used a newspaper.

## Home Buyers 1981 and 2021



- If a newspaper can show that there is a direct link between advertising and traffic to the auction of foreclosed property then PSOs may decide to use them in the future, but the state mandate should end.
- Radio, TV, social media, and others receive no similar state mandate/subsidy, so why should newspapers continue to receive it at the expense of the defendant in foreclosure and as an added cost to a potential buyer?
- In addition to county websites (which are free), it's also not hard to place a notice on the major real estate websites (Zillow, Trulia) and those sites are much less expensive than a newspaper ad.

**Solution: SB 25 maintains 3 weeks of advertising but eliminates the requirement and cost to do so in the newspaper.**

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**BIDDING**  
By The Day

89%  
In the last 3 days

11%  
In the first 4 days

**THE MYTH**  
Online auctions attract investors.

**FACT**  
75% of properties sold were sold to people who are not investors (they bought only one property).

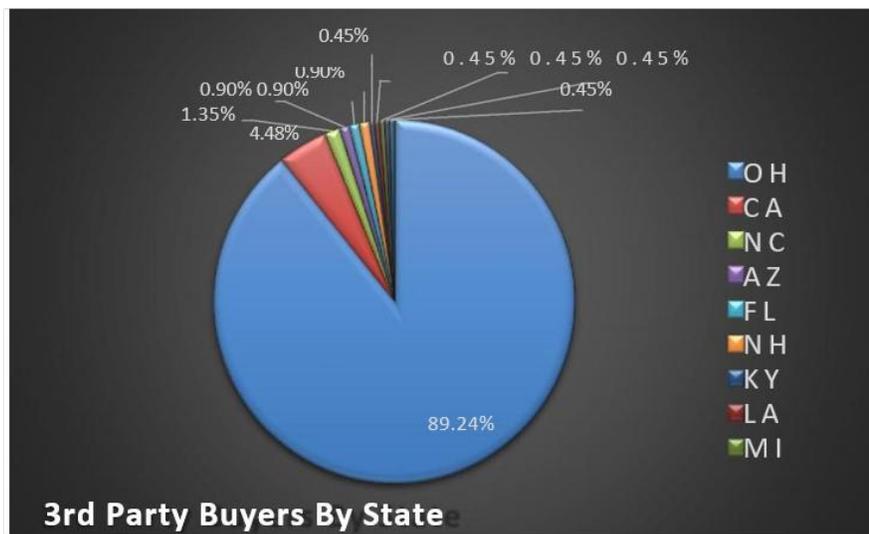
**THE MYTH**  
Online auctions attract people who don't live in the community.

**FACT**  
The average distance between an in-state buyer and the property they bought is 19.9 miles. The median distance is 8.8 miles.

**THE MYTH**  
Online auctions attract out of state buyers.

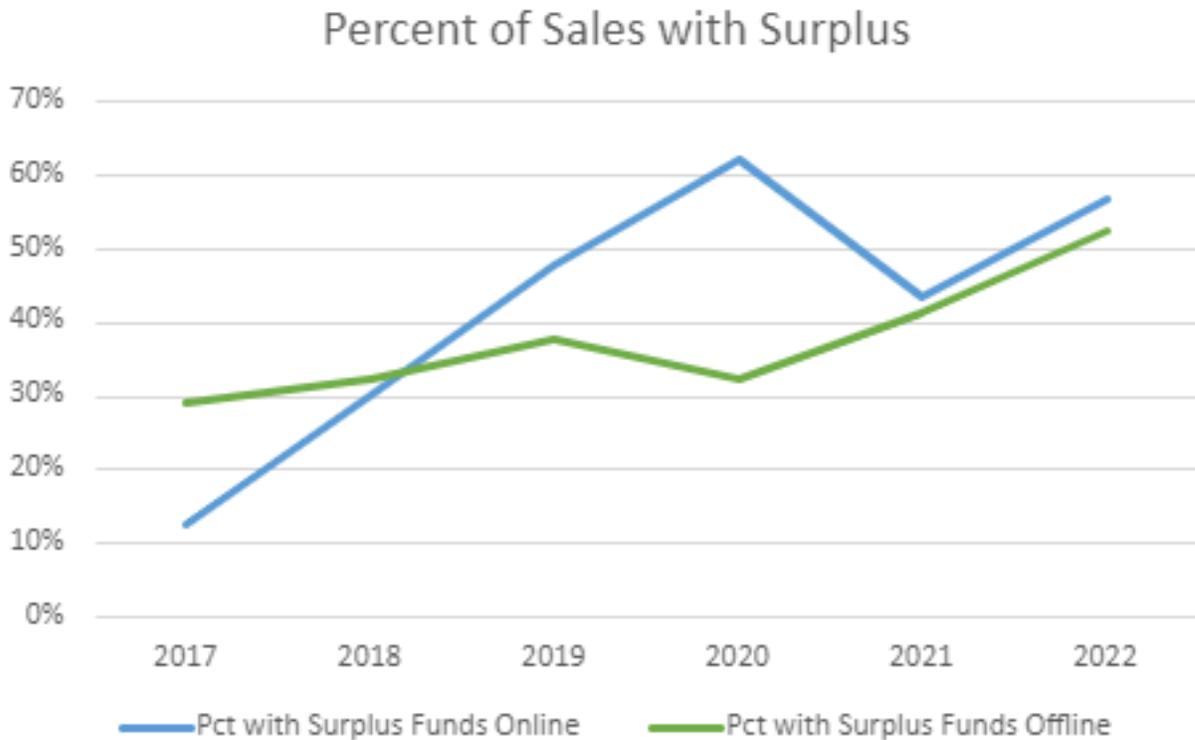
**FACT**  
More than 89% of all the winning third party buyers are based in Ohio

- The statute requires much more information from any buyer in order for local governments to enforce ordinances with the new buyer.
- Buyer details include: name, address (not a PO Box), phone number, e-mail address
- PSO legislation has been successful in reducing the timeframe of selling a foreclosed property and increasing the capacity to handle the spikes in volume of cases.
- This data shows the residency of third-party buyers according to sales indicating that almost all properties are purchased by Ohio residents.
- A concern was raised about out of state bidders or buyers that the data below should address.



**Why are PSO sales much better for communities and defendants? Surplus funds**

- ✓ Surplus funds means that after all expenses and debt is paid on the property upon confirmation of the sale and the defendant walks away with any money over and above.



- ✓ PSOs have been very successful in marketing properties and achieving surplus sales in dozens of cases across Ohio.

In conclusion, the use of PSOs in all 88 counties - Lower costs - Twenty-one fewer days - Shorter online sale periods – these are all positive changes to Ohio’s foreclosure process. These changes will result in more 3<sup>rd</sup> party buyers, more surplus sales (to help defendants) and higher community values around Ohio.

Mr. Chairman and members of the committee, thank you for the opportunity to provide proponent testimony on **SB 25**. I would be happy to try and answer any questions.