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Bill Analysis

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Version: As Passed by the Senate

Primary Sponsor: Sen. Brenner

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SUMMARY

Residential appraisals

- Specifies that persons conducting appraisals of residential property for foreclosure and execution sales must be either a realtor, broker, or appraiser licensed in Ohio.
- Specifies that the appraisers must not be affiliated with the sheriff or private selling officer conducting the sale.
- Reduces the time within which residential appraisals must be provided to the court, from 21 days to 14 days.
- Specifies that the cost of residential appraisals cannot exceed a "reasonable and customary amount," as determined by the sheriff.
- Requires appraisals to be exterior only.

Subsequent foreclosure auctions

- Decreases from seven to three days the minimum time between foreclosure auctions involving residential real property that is not sold due to lack of bidders.
- Requires only one attempted auction of residential property, as opposed to two, before the property may be disposed of in any other manner permitted by the Execution Against Property Law.

Advertisements

- Requires advertisements for foreclosure and executions sales to commence immediately following the court's order to sell the property, as opposed to after the value of the property is determined.
- Requires the last date of advertisement to be four or more days before the sale date.

- Eliminates current law provisions concerning publication in daily and weekly newspapers.
- Retains the requirement that the first notice of the sale be published in a newspaper of general circulation in the county but allows (1) that first notice to be published in the newspaper's print or digital edition, and (2) subsequent notices to be posted on the sheriff's or private selling officer's website.
- Allows subsequent auctions of property that is not sold due to lack of bidders to be advertised in any manner that the sheriff or private selling officer deems to be suitable, including by online advertisement.
- Allows the sheriff or private selling officer to publish notice of the sale by alternative means if, despite reasonable efforts, they are unable to publish notice in the newspaper designated by the court order or another newspaper of general circulation in the county.
- Prohibits the sheriff or a private selling officer from collecting costs for advertisements on the sheriff's or private selling officer's website from the proceeds of the sale.

Private selling officers

- Allows plaintiffs seeking a mortgage foreclosure or execution sale of property to demand the use of a private selling officer to sell the property if the defendant does not respond to the lawsuit.
- Caps the amount of costs for a foreclosure or execution sale, handled by a private selling officer, that may be charged to the buyer or plaintiff at 10% of the sale price.
- Establishes that a private selling officer's submission of a report required by continuing law satisfies another continuing law requirement for return of the order of sale with a record of the sale's proceedings included.
- Requires, instead of permits as provided in current law, a private selling officer to take actions to market the real estate, conduct the auction, and execute and record a deed of conveyance.
- Reduces the amount of time an online foreclosure or execution sale carried out by a private selling officer must run, from seven days to three days.
- Requires online foreclosure or execution sales carried out by a private selling officer to display all bids at all times during the auction.
- Prohibits a private selling officer from being controlled by, or under common control with certain entities associated with the transaction.

Online sheriff sales

- Reduces the amount of time an online foreclosure or execution sale carried out by the sheriff must run, from seven days to three days.
- Requires online foreclosure or execution sales carried out by the sheriff to display all bids at all times during the auction.

Definitions

- Defines "start date" and "sale date" for purposes of foreclosure and execution sales and replaces various undefined terms referencing sale timing throughout the law.

Sale of real property owned by an estate

- Allows a court, under certain specified circumstances, to escalate the lien priority of costs, expenses, and fees incurred by the executor or administrator of an estate, when apportioning the proceeds of a sale of real property owned by the estate.
- Limits the amount of estate administrative fees that can be escalated in terms of lien priority to $5,000

DETAILED ANALYSIS

Courts sometimes order the sale of real estate to satisfy a debt. Such sales can result from debts related to the property being sold, such as unpaid mortgage debt or unpaid property taxes, or from unrelated debts. When property is sold to satisfy a debt that is not related to the property, that property is sold "on execution" or at an "execution sale," because the sale executes the court's order for the debtor to pay the debt.

When property is ordered sold to satisfy a debt related to the property, it is sold "at foreclosure" or "on order of sale." The term "foreclosure" refers to the foreclosure of the debtor's right to prevent the sale by paying the amount due, called "the equity of redemption," a longstanding tenet of mortgage law. Once the equity of redemption is foreclosed, the debtor no longer has the right to retain the property being sold by paying the amount due. In Ohio, foreclosure of the equity of redemption happens after the sale.[1]

Residential appraisals

Continuing law requires appraisal of property before it is sold at foreclosure or on execution. The appraisal must be conducted by three "disinterested freeholders" appointed by the sheriff after the clerk of courts issues the order of appraisal. The freeholders must be residents of, and property owners in, the county in which the land is located.

The bill makes several changes to the process of appraising residential property but largely retains current law as applied to commercial property. Under continuing law, appraisal of commercial properties are subject to more generic requirements. Specifically, that they be conducted "in accordance with the timing and other requirements, if any, that may be established for the sale."[2]

[1] R.C. 2329.33, not in the bill, and Black's Law Dictionary, 11th Edition.

[2] R.C. 2329.17(C).

Appraiser qualifications

The bill requires each individual appointed to appraise residential property to be a licensed real estate broker, salesperson, or appraiser. Furthermore, the bill specifies that none of the appraisers may be the sheriff or private selling officer conducting the sale or a person affiliated with the sheriff or private selling officer.[3]

Timing

Under current law, if the property being sold is residential property, the appraisers must deliver the appraisal to the sheriff and, if applicable, the private selling officer, within 21 days after the clerk's order of appraisal (which is likely before their appointment by the sheriff). The bill reduces that time to 14 days. Failure to meet that deadline results in the appraisers forfeiting their right to payment. It also results in the costs of the appraisal being omitted from the costs in the case, and the appraised value according to the county auditor's records setting the appraised value for the sale, unless the court authorizes another appraisal for good cause.[4]

Procedure and cost

The bill requires appraisals of residential property to be exterior only and specifies that the cost of the appraisals must not exceed an amount that the sheriff determines is "reasonable and customary." Under continuing law, if a private selling officer is responsible for the sale of the property, the appraisers must deliver a copy of their appraisals to the private selling officer contemporaneously with the delivery of their appraisal to the sheriff. The bill specifies that the copy delivered to the private selling officer must be electronic.[5]

Subsequent foreclosure auctions

Continuing law prohibits the sale of real property at the first foreclosure auction for less than ⅔ of its appraised value. In some cases, where a creditor seeks to enforce an inferior lien or mortgage against real property, the court may order a larger minimum bid amount.

Under current law, if residential real property is not sold at the first foreclosure auction due to lack of bidders, then the property must be offered for sale again no sooner than seven days after the first auction. No minimum bid applies to the second auction, but the court may decline to sell the property for less than the costs, allowances, and taxes charged against it. If residential real property is not sold at the second foreclosure auction, then it may be offered for sale again in the same manner as the second auction or disposed of in any manner permitted by state law.

The bill allows for the disposal of property by alternative means following the first unsuccessful auction attempt. So, if residential real property is not sold at the first foreclosure auction, the property may be offered for sale again with no minimum bid requirement (but subject to the court's discretion to decline a sale for less than the costs, allowances, and taxes)

[3] R.C. 2329.17(A)(2).

[4] R.C. 2329.17(B)(4)(a) and (5), 2329.19, and 2329.20.

[5] R.C. 2329.17(B)(1), (B)(3), and (B)(4)(b).

or disposed of in any manner permitted under the Execution Against Property Law. The bill also changes the earliest date for a subsequent auction to three days after the previous auction's start date, a reduction from the seven-day minimum prescribed by current law.[6]

Advertisements

The bill amends the advertising requirements for foreclosure and execution sales. Under current law, sales must be advertised for three consecutive weeks in a newspaper of general circulation in the county where the property is located. The sheriff or private selling officer may meet this requirement by publishing notice in a weekly newspaper for three consecutive weeks or, alternatively, if there is a daily newspaper that exceeds the weekly newspaper in terms of circulation, on the same day each week for three consecutive weeks.

The bill requires advertisement to commence immediately following the court's order to sell the property, as opposed to after the value of the property is determined. Furthermore, it requires the last date of publication be four or more calendar days before the sale date (see "**Sale definitions**," below). The bill eliminates the provisions in current law concerning publication in daily and weekly newspapers. Furthermore, it clarifies a requirement, for residential foreclosure sales only, that information regarding the location of any subsequent sales be included with the advertisement of the initial sale.

Rather than requiring all notifications be made in a newspaper of general circulation, the bill requires that only the first notice to be made in a newspaper, but specifies that such notice may be in either the print or digital edition of the newspaper. Subsequent notices may be made on the sheriff's or private selling officer's website, as applicable, or in a newspaper of general circulation in the county. The bill specifies that notices are not required to include a description of the property in metes and bounds. Subsequent sales of real property that is not sold at the first auction may be advertised in any suitable method, including by online advertisement.

If the court ordering the sale designates the newspaper in which the public notice is to be published, and the sheriff or private selling officer is unable to publish notice in that newspaper, the bill allows the sheriff or private selling officer to publish notice in another newspaper of general circulation in the county. If the sheriff or private selling officer, despite reasonable efforts, is unable to find a newspaper of general circulation in the county that will publish notice of the sale, the sheriff or private selling officer may instead publish notice of the sale on the sheriff or private selling officer's website, or a website maintained by the sheriff or private selling officer for those purposes. Expenses for advertisements on a sheriff or private selling officer's website are not allowed to be taxed as costs in a sale.[7]

[6] R.C. 2329.52(B) and 2329.211.

[7] R.C. 2329.152, 2329.20, 2329.26, and 2329.27.

Private selling officers

Appointment

Under continuing law, the county sheriff conducts a foreclosure or execution sale unless the creditor who brought the lawsuit files a motion with the court to authorize a private selling officer to sell the property. A "private selling officer" must be an Ohio resident who is licensed both as (1) an auctioneer and (2) either a real estate broker or real estate salesperson.

Under current law, the court has discretion as to whether to approve the use of a private selling officer. The bill removes that discretion in cases where the defendant does not respond to the lawsuit as required by the Rules of Civil Procedure. In those cases, the bill allows the creditor who brought suit to file a praecipe (typically a written motion or request but, in this case, a demand) with the clerk of courts directing the clerk to issue an order of sale to a private selling officer. The praecipe may specify multiple private selling officers, and, in that case, any of those officers may conduct the sale.

The bill allows any lienholder who is a party to the suit to object to the use of a private selling officer within ten days after the issuance of the order of sale. If the motion is timely filed and the court determines that there is good and reasonable cause, the court may order that the sale be reset, republished, and conducted by either the county sheriff or another private selling officer. "Good and reasonable cause" is defined as being a situation where the lienholder is more likely to have its lien satisfied, in whole or in part, if the sale is conducted by the county sheriff or another private selling officer.[8]

Independence of private selling officers

The bill prohibits private selling officers from being controlled by, or under common control with any of the following:

- The mortgagee or mortgage servicer of the property being auctioned;
- A subsidiary of a mortgagee or mortgage servicer of the property being auctioned;
- A law firm providing legal services in relation to the property being auctioned.

The bill specifies that the prohibition is not to be construed as prohibiting a mortgagee or mortgage servicer from engaging in a regular course of business with an independent private selling officer.[9]

Costs

Under current law, when a private selling officer sells property at foreclosure or execution sale, various costs are taxed as costs in the case. Those are:

- The cost of the appraisal;

[8] R.C. 2329.152(A).

[9] R.C. 2329.151(C).

- The cost of required advertisements for the sale;
- The fee charged by the private selling officer and all costs incurred by the private selling officer, excluding the cost of appraisal and advertising, and capped at 1.5% of the property's ultimate sale price.

When the private selling officer's fee and other costs, aside from appraisal and advertising costs, exceed 1.5% then the amount over that threshold is not taxed as costs of the sale. Instead, fees and costs in excess of that amount are paid by the buyer, the judgement creditor, or from the judgment creditor's portion of the sale proceeds. The bill limits the amount that a private selling officer may assess to a buyer or judgment creditor to 10% of the property's sale price.[10]

Sale records

Continuing law requires the levying officer in a foreclosure or execution sale (i.e., the sheriff or private selling officer) to record the officer's proceedings on the "writ of execution" and, after the sale is completed or canceled, to return the writ to the clerk of courts. The law only refers to a writ of execution, which, as discussed above, is different from an order of sale in a foreclosure proceeding. Yet, courts maintain this requirement in foreclosure sales as well as execution sales.

In addition to the return of the writ, continuing law also requires that a private selling officer file a report with the court that issued the order of sale that itemizes all sale expenses and the private selling officer's fees. The bill amends the law to deem the filing of the private selling officer's report as meeting the requirement for return of the writ of execution to the clerk.[11]

Authorized actions

Current law provides a private selling officer who conducts a sale discretionary authority to do all of the following:

- Market the real estate and conduct the public auction of the real estate online or at a physical location;
- Execute to the purchaser or to the purchaser's legal representatives, a deed of conveyance of the real estate sold;
- Record on behalf of the purchaser the deed conveying title to the real estate sold.

The bill instead requires that a private selling officer do all of these things. Note that the bill maintains the discretionary authority of a private selling officer to hire a licensed title insurance agent or title insurance company to assist the private selling officer in performing administrative services.

Additionally, the bill amends the requirements related to the online sale of properties. For online sales, current law requires the auction to be open for at least seven calendar days,

[10] R.C. 2329.152(D)(1).

[11] R.C. 2329.152(D)(2); R.C. 2329.28, not in the bill, and *Satanik v. LaGorga*, 1980 Ohio App. LEXIS 14076, *5.

excluding the first day the auction is open for bidding and counting all subsequent calendar days. The bill reduces the minimum to three days. It also adds a requirement that the auction display all bids publicly upon entry during bidding.[12]

Online sheriff sales

Continuing law allows sheriffs to sell residential property through judicial sale on a statewide auction website; the law will eventually require use of that website. Current law requires the auction to be open for at least seven days, though the manner of calculating days is not included as it is for online sales by private selling officers. The bill reduces the minimum to three days. It also requires that all auctions on the site publicly display all bids upon entry and during bidding.[13]

Sale definitions

The bill makes changes to how dates are treated for notice and advertising requirements. Current law uses various terms to discuss the timing requirements. Those include "the date of the sale," the "start date," the "day of sale," and "sale date." Some of these references account for the fact that at least some sales are now conducted on the internet over several days, but others do not, and none of the terms are defined.

The bill defines the terms "start date" and "sale date" and inserts them in lieu of the various existing terms. Under the bill:

- "**Sale date**" means the day on which an auction for real estate concludes.
- "**Start date**" means the first day an auction for real estate is open for bidding to the public.[14]

Sale of real property owned by an estate

The bill allows a court, under certain specified circumstances, to escalate the lien priority of costs, expenses, and fees incurred by the executor or administrator of an estate, when apportioning the proceeds of a sale of real property owned by the estate. Current law requires such proceeds to be applied in the following order:

1. To pay any costs attributed to the sale, including "reasonable" fees fixed by the probate court for services provided by attorneys and the administrator or executor in connection with the sale;
2. All of the following, in order of lien priority:
    a. Taxes, interest, penalties, and assessments due against the real property;
    b. Mortgages secured by the real property;

[12] R.C. 2329.152(C)(2) and (E)(1)(a).

[13] R.C. 2329.153(C)(6) and (E).

[14] R.C. 2329.01, 2329.152, 2329.211, 2329.26, and 2329.52.

c. Judgments against the deceased person or the estate, including judgments that operate as a lien on the real property and judgments that operate as a lien on the estate.

3. Legacies (i.e., gifts) with which the real property of the deceased was charged;

4. Debts owed by the estate, including those incurred in administering the estate.

Under the bill, where the assets of an estate are insufficient to pay the costs, expenses, or fees incurred by the executor or administrator, a court may allow some or all of those costs, expenses, and fees to move up in the order, right behind the costs apportioned to the sale. This includes fees for services performed by attorneys employed by the executor or administrator in relation to the entire estate. The bill specifies that the escalation in lien priority is allowed even when the property is purchased by a lien holder. However, liens that attached to the real property before the bill's effective date must still be extinguished before the costs, expenses, and fees of the executor or administrator. The bill limits the amount of estate administrative fees that can be escalated to $5,000.[15]

HISTORY

Action	Date
Introduced	03-05-25
Reported, S. Judiciary	05-20-26
Passed Senate (31-0)	06-03-26

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[15] R.C. 2127.38 and 5721.10.