State Representative
Richard Dell'Aquila

Chairman Roemer, Vice Chairman Merrin, Ranking Member Troy, and members of the House Ways and Means Committee, thank you for allowing me and my Joint Sponsor, Representative Tavia Galonski, to present Sponsor Testimony on House Bill 134 to protect Ohio homeowners and create a more transparent financial system for tax lien sales, by amendment to O.R.C. Section 5721.31.

Under current law, as I am about to describe, problems can arise and parties involved can incur substantial losses and/or impairment of their lien priorities for lack of a simple remedy. House Bill 134 can create opportunities to help resolve at least some of those issues, protect home ownership rights, preserve liens and save everyone money, all for the cost of a postage stamp and a little additional effort.

Generally, a lien is a creditor's claim against an owner's interest in real property. Real property can be subject to more than one lien. Some liens are placed voluntarily by the owner, such as a mortgage lien, but others are involuntary, like judgment liens or tax liens.

A tax lien is a legal governmental claim against real property for which taxes can be assessed. Tax liens are high priority liens. Other liens have a lower priority, such as a mortgage lien or a court ordered judgment lien for money. Lien priorities are documented by perfecting a lien against real property by recording them for public record. With some exceptions, an earlier recorded lien will take priority over those subsequently filed. This means they are paid first in the event of a foreclosure and sheriff's sale. One of those exceptions are government tax liens, which take priority over the others.

Since that lien priority determines the order in which the creditors are paid in the event of a foreclosure, the second and later liens are paid in order of their priority. Sometimes the lower priority liens are paid nothing at all if insufficient funds are generated in the sheriff's sale.

As we know, each county Treasurer is responsible for collecting real estate taxes within their respective county. When those taxes fall into arrears, under the current language of O.R.C. Section 5721.31, the Treasurer will send out certified mail notices to the owner(s) of record.

At some point, the Treasurer may also determine to auction or negotiate a sale of the tax certificate to a third party, typically at a fraction of the total tax arrearage. Thereupon the third party may seek to collect the past due taxes in full or foreclose on the property using the government's tax lien priority.

House Bill 134 would change the notice that must be given before a tax certificate auction or negotiated sale of the tax certificate by requiring thirty (30) days advance ordinary mail notice to all lienholders of the property who could be identified through a title search. O.R.C. Section 5721.31 currently only allows, but does not require, notice to lienholders.

The bill is intended to address those cases in which the county sale of these tax certificates is completed without advance notice to the mortgage lender of the Treasurer's intention to sell the claim on real property which is their mortgage collateral. This then deprives the mortgage lenders of the opportunity to intervene to assist the property owner or even to resolve the tax issue on their own, and save the property from foreclosure. The result of all this is that the county loses tax dollars, the home owner loses their home, and lower priority lienholders may lose the protection of their lien if the net proceeds of sale are insufficient to pay them.

House Bill 134 would require an advance notice of a lien sale to all interested parties to ensure that our system is providing sufficient time and opportunity for the lenders to take action to address issues with the owner(s) of record directly, rather than scramble in response to actions that third parties could have already initiated. While the bill as written would require a 30 day notice to lienholders, some of the stakeholders, (e.g. county treasurers & bankers) have suggested a longer period of time, such as 120 days' notice.

As I'm sure my fellow joint sponsor will speak to, neither our constituents, the county taxing authorities, nor financial institutions have anything to lose and everything to gain from this legislation. No one should have to struggle with foreclosure or losing their home as a result of miscommunication or lack of an opportunity for a willing mortgage creditor to intervene in bringing their back taxes current. House Bill 134 makes only a small modification to existing law but could be a significant help to property owners who may have lost employment, are suffering medical conditions, or other issues that have impaired their finances.

We ask that you support this legislation and I know that Representative Galonski has some remarks as well. I thank you for the opportunity to present this information to you.