

As Reported by the House Civil Justice Committee

135th General Assembly

Regular Session

2023-2024

H. B. No. 390

Representatives Brown, Swearingen

**Cosponsors: Representatives Dell'Aquila, Denson, Troy, Brennan, Hillyer,
Wiggam, Carruthers, Schmidt**

A BILL

To amend sections 2329.01, 2329.44, and 5721.20 of
the Revised Code to revise the law relating to
the notice of excess funds in real property
foreclosure sales.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2329.01, 2329.44, and 5721.20 of
the Revised Code be amended to read as follows:

Sec. 2329.01. (A) Lands and tenements, including vested
legal interests therein, permanent leasehold estates renewable
forever, and goods and chattels, not exempt by law, shall be
subject to the payment of debts, and liable to be taken on
execution and sold as provided in sections 2329.02 to 2329.61 of
the Revised Code.

(B) As used in sections 2329.02 to 2329.61 of the Revised
Code:

(1) "Commercial property" means any property that is not
residential property.

(2) "Private selling officer" means a resident of this 17
state licensed as both an auctioneer under Chapter 4707. of the 18
Revised Code and as a real estate broker or real estate 19
salesperson under Chapter 4735. of the Revised Code. 20

(3) "Residential mortgage loan" and "residential property" 21
have the same meanings as in section 2308.01 of the Revised 22
Code. 23

(4) "Judgment debtor" includes any individual, 24
corporation, business trust, estate, trust, partnership, or 25
association. 26

Sec. 2329.44. (A) On a sale made pursuant to this chapter, 27
if the officer who makes the sale receives from the sale more 28
money than is necessary to satisfy the writ of execution, with 29
interest and costs, the officer who made the sale shall deliver 30
any balance remaining after satisfying the writ of execution, 31
with interest and costs, to the clerk of the court that issued 32
the writ of execution not later than forty-five days after 33
confirmation of the sale. The clerk then shall do one of the 34
following: 35

~~(1)~~ (1) (a) If the balance is ~~one~~ five hundred dollars or 36
more, send to the judgment debtor whose property was the subject 37
of the sale a notice that indicates the amount of the balance, 38
informs the judgment debtor that the judgment debtor is entitled 39
to receive the balance, and sets forth the procedure that the 40
judgment debtor is required to follow to obtain the balance. 41
~~This~~ Subject to divisions (A) (1) (b) and (c) of this section, 42
this notice shall be sent to in the following manner: 43

(i) To the judgment debtor at the address of the judgment 44
debtor in the caption on the judgment or at any different 45

address the judgment debtor may have provided, by certified 46
mail, return receipt requested, within ninety days after the 47
sale. 48

(ii) If the certified mail envelope sent under division 49
(A) (1) (a) (i) of this section is returned with an endorsement 50
showing failure or refusal of delivery, the clerk immediately 51
shall send the judgment debtor, at the address of the judgment 52
debtor in the caption on the judgment or any different address 53
the judgment debtor may have provided, a similar notice by 54
ordinary mail. 55

(iii) If the ordinary mail envelope sent under division 56
(A) (1) (a) (ii) of this section is returned for any reason, the 57
clerk immediately shall give a similar notice to the judgment 58
debtor that includes the case number, the name of the judgment 59
debtor, if known, and information on how to contact the clerk by 60
an advertisement in a newspaper published in and of general 61
circulation in the county, which advertisement shall run at 62
least once. ~~The advertisement shall include the case number, the~~ 63
~~name of the judgment debtor, and information on how to contact~~ 64
~~the clerk, a posting on the clerk's web site, a text message to~~ 65
the judgment debtor, or a posting in a conspicuous place in the 66
court where the action was commenced. 67

(b) If the address of the judgment debtor is not known, 68
the clerk shall not send a notice by mail under division (A) (1) 69
(a) (i) or (ii) of this section, but shall comply with division 70
(A) (1) (a) (iii) of this section. 71

(c) If the name of the judgment debtor is not known, but 72
the address of the judgment debtor is known, the clerk shall 73
send the notice required under division (A) (1) (a) of this 74
section in the manner prescribed by division (A) (1) (a) (i), (ii), 75

or (iii) of this section.

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(d) If the balance remains unclaimed for ninety days
following the ~~first date of last mailing, publication, posting,~~
or text message required under division (A) (1) (a) , (b) , or (c)
of this section, the clerk shall dispose of the balance in the
same manner as unclaimed money is disposed of under sections
2335.34 and 2335.35 of the Revised Code.

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~~(2)~~ (2) (a) If the balance is less than ~~one~~ five hundred
dollars, send to the judgment debtor whose property was the
subject of the sale a notice that indicates the amount of the
balance, informs the judgment debtor that the judgment debtor is
entitled to receive the balance, and sets forth the procedure
that the judgment debtor is required to follow to obtain the
balance. This notice shall be sent to the judgment debtor ~~at~~ in
the following manner:

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(i) At the address of the judgment debtor in the caption
on the judgment or at any different address the judgment debtor
may have provided, by ordinary mail;

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(ii) If the address of the judgment debtor is not known,
the clerk shall notify the judgment debtor in the same manner
prescribed by division (A) (1) (a) (iii) of this section.

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(iii) If the name of the judgment debtor is not known, but
the address of the judgment debtor is known, the clerk shall
notify the judgment debtor in the manner prescribed by either
division (A) (2) (a) (i) or (A) (1) (a) (iii) of this section.

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(b) If the balance remains unclaimed for ninety days
following the date of the last mailing, publication, posting, or
text message required by division (A) (2) (a) of this section, the
clerk shall dispose of the balance in the same manner as

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unclaimed money is disposed of under sections 2335.34 and 105
2335.35 of the Revised Code. 106

(B) (1) Subject to division (B) (2) of this section, the 107
clerk of the court that issued the writ of execution, on demand 108
and whether or not the notice required by division (A) (1) or (2) 109
of this section is provided as prescribed, shall pay the balance 110
to the judgment debtor or the judgment debtor's legal 111
representatives. 112

(2) The clerk of the court that issued the writ of 113
execution is not required to pay the balance to the judgment 114
debtor or the judgment debtor's legal representatives pursuant 115
to division (B) (1) of this section until the judgment debtor or 116
the legal representatives pay to the clerk the actual costs 117
incurred in the provision of the notice required by division (A) 118
(1) or (2) of this section. 119

Sec. 5721.20. Except in cases where the property is 120
transferred without sale to a municipal corporation, township, 121
county, community development organization, or county land 122
reutilization corporation pursuant to the alternative redemption 123
period procedures contained in section 323.78 of the Revised 124
Code, both of the following apply: 125

(A) If the officer who makes the sale receives from the 126
sale more money than is necessary to satisfy the writ of 127
execution, with interest and costs, the officer who made the 128
sale shall deliver any balance remaining after satisfying the 129
writ of execution, with interest and costs, to the clerk of the 130
court that issued the writ of execution not later than forty- 131
five days after confirmation of sale; 132

(B) The clerk of the court that issued the writ of 133

execution shall notify the owner of any residue of moneys from 134
the sale or foreclosure of lands remaining to the owner on the 135
order of distribution, in a manner consistent with division (A) 136
of section 2329.44 of the Revised Code. Any residue of moneys 137
from the sale or foreclosure of lands remaining to the owner and 138
unclaimed by such owner within ~~sixty-ninety~~ days from its 139
~~receipt~~the day the final notice is provided in accordance with 140
division (A) of section 2329.44 of the Revised Code, shall be 141
paid into the county treasury and shall be charged separately to 142
the county treasurer by the county auditor, in the name of the 143
supposed owner. The treasurer shall retain such excess in the 144
treasury for the proper owner of such lands upon which the 145
foreclosure was had, and upon demand by such owner, within three 146
years from the date of receipt, shall pay such excess to the 147
owner. If the owner does not demand payment of the excess within 148
three years, then the excess shall be forfeited to the 149
delinquent tax and assessment collection fund created under 150
section ~~323.261~~321.261 of the Revised Code, or in counties that 151
have established a county land reutilization corporation fund 152
under section ~~323.263~~321.263 of the Revised Code, to the county 153
land reutilization corporation fund. 154

Section 2. That existing sections 2329.01, 2329.44, and 155
5721.20 of the Revised Code are hereby repealed. 156