

## Publications

### *Client Alert: Foreclosure Reform in Ohio is Here - Expediting, Modernizing, and Unifying the Foreclosure Process and Battling Community Blight*

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#### CLIENT ALERT | 9.27.2016

House Bill 390 (HB 390), originally drafted as a natural gas sales tax exemption, was amended right before the Ohio legislature recessed for summer break to include what was once HB 463, the Foreclosures and Private Selling Officers Bill. HB 390, effective on September 28, 2016, covers a multitude of categories - foreclosure reform; motion picture tax credits; reauthorization of the Ohio Judicial Conference until 2020; appropriations for the Court of Claims to conduct its newly assigned responsibilities under the Public Relations Bill; composition of the Correctional Institution Inspection Committee; and creation of a capital case attorney fee council to determine rates for indigent defense in capital cases.

The foreclosure reform included in HB 390 impacts both residential and commercial property foreclosures. O.R.C. §2308.01 defines residential property as land and a structure containing four or fewer dwelling units, each of which is intended for occupancy by a separate household. Commercial property is defined as property that is not residential. HB 390 attempts to expedite, modernize and unify the Ohio foreclosure process and to battle community blight caused by abandoned homes and properties often languishing within the process.

HB 390 expedites, modernizes, and unifies the Ohio foreclosure process as follows:

#### **Unifying Formula for Proration of Real Estate Taxes** - O.R.C.

§323.47 now provides that apportioned pro rata taxes shall include all taxes due and payable to the county treasurer as reflected on the tax bill/list. Further, the real estate taxes are paid from the sale proceeds.

#### **Unifying Treatment in Enforcement of Lost or Destroyed**

**Promissory Note** - O.R.C. §1303.38 now provides that a person not in possession of the instrument or promissory note may enforce it when it is shown that the person was entitled to enforce when the loss of possession occurred, or, that the person directly or

indirectly acquired ownership from a person who was entitled to enforce the instrument when the loss of possession occurred.

**Newly-Created O.R.C. §2329.152** - This section creates a process by which a judgment creditor may file a motion with the Court for a specified private selling officer - a resident of Ohio, licensed as an auctioneer and authorized by the Court or the county sheriff - to sell the real estate at a public auction. The real property appraisal is still conducted by disinterested persons appointed by the county sheriff, but the private selling officer advertises and sells the property. The personal selling officer's fee, the appraisal costs, and advertisement costs are taxed as costs.

**Modernization of Sale Process** - Newly-created O.R.C. §2329.153 provides for the creation, operation, and maintenance of an official public sheriff sale website and integrated management system - a single statewide system for use by all county sheriffs. When this single statewide system is implemented, sale procedures and bidding procedures also will be further modified.

**Time Requirements for Appraisal** - O.R.C. §2329.17 has been expanded to provide for procedures if the disinterested persons appointed by the county sheriff do not return a residential appraisal within twenty-one calendar days of when the order for appraisal is issued. The appraisers must be residents of, and real property owners in, the county in which the property is located. This section also provides that a commercial property appraisal shall include an estimate of the value of property in money in accordance with the timing and other requirements for the sale.

**Uniformity of Sale Deposit** - O.R.C. §2329.11 now provides that the judgment creditor who is the purchaser of residential property **shall not** be required to make a sale deposit. It also sets specific deposit levels based upon the appraised value of the property. For commercial property, the purchaser **is required** to make a deposit pursuant to the requirements established in the sale order.

**If Residential Property Does Not Sell** - O.R.C. §2329.52 now provides that if a residential property is not sold at the first auction, held at a fixed location and not online, then a second auction shall be held and sold to the highest bidder without regard to the two-thirds minimum bid requirement.

**Timing to Record Deed** - O.R.C. §2329.31 provides that the officer making the sale shall record the deed within fourteen days after confirmation of sale and payment of the balance due. The attorney for the party successful in obtaining the decree of foreclosure no longer prepares the deed. If the deed is not prepared and recorded within this time period, the purchaser may file a motion to proceed with the transfer. If this motion is granted, the Court order will transfer title to the purchaser and set forth the procedure for the recorder's office to record the order.

HB 390 also seeks to combat community blight not only with the above-highlighted reforms but as follows:

**Expedited Foreclosure Schedule for Abandoned Residential Properties** - O.R.C. §2308.02 now allows a mortgagee to file a motion within the foreclosure action to proceed in an expedited manner on the basis that the residential property is vacant and abandoned. The Court must find by a preponderance of evidence that the residential mortgage is in default and that the mortgagee is - a person entitled to enforce the instrument secured by the mortgage or a person with the right to enforce the obligation secured by a mortgage. In addition, the Court must find by clear and convincing evidence that at least three of a list of ten criteria (and an eleventh catch-all criterion) are true.

Once the Court finds that the residential property is vacant and abandoned, and enters a final decree of foreclosure, the property must be offered for sale not later than seventy-five days after the issuance of the order of sale. Upon the finding that the residential property is vacant and abandoned, the mortgagee also may enter the property to secure and protect it from additional damage. Further, O.R.C. §2308.03 now provides that the equitable and statutory rights to redemption of such a residential property expire upon confirmation of the sale of the property.

**Newly-created O.R.C. §2329.071** - This section authorizes an Ohio county prosecutor to bring a foreclosed residential property to sale if the foreclosure sale has been unreasonably delayed for twelve months after entry of the decree of foreclosure. The Court is required to decide on the motion to sell by the prosecuting attorney not sooner than thirty days after the motion is filed. If the Court finds that there is no good cause for the residential property not being sold, the county prosecutor then issues the praecipe for order of sale.

**Penalties for Damage to Residential Property Subject to Foreclosure** - O.R.C. §2308.04 now provides that a person is guilty of committing criminal mischief if he/she knowingly and with purpose diminishes the value or enjoyment of the residential property after being served with the summons and foreclosure complaint.

Whether or not the goals of this foreclosure reform will be obtained is still to be seen. From the Court's side, this foreclosure reform will require new forms, new procedures, and amended Court rules, among other things. From the lender's side, this foreclosure reform may make a more expedited and uniform process available, especially when dealing with an abandoned or vacant residential property.

We would be happy to discuss any questions that you have regarding this foreclosure reform and how this reform may impact you.