



September 29, 2016

OHIO FORECLOSURE REFORM BILL NOW EFFECTIVE

The Ohio Legislature passed foreclosure reform legislation as a part of H.B. No. 390. The bill became effective September 28, 2016. H.B. No. 390 implements significant changes to Ohio foreclosure law and practice and affects both residential and commercial foreclosures.

H.B. No. 390 created the following new sections addressing property auctions:

- Section 2329.152 outlines a process for a judgment creditor to file a motion with the court for an order authorizing a specified private selling officer to sell the real estate at a public auction. If the court authorizes a private selling officer to sell the real estate, the judgment creditor may seek to have the property sold by the private selling officer authorized by the court or by the county sheriff. If the judgment creditor elects to have the property sold by the private selling officer authorized by the court, the judgment creditor must file with the clerk of the court a praecipe requesting the issuance of an order of appraisal to the sheriff and an order of sale to the private selling officer authorized by the court. Upon the filing of that praecipe, the clerk of the court must immediately issue both of the following: (i) An order of appraisal to the sheriff, who will obtain an appraisal of the real estate in conformity with Sections 2329.17 and 2329.18 and (ii) an order of sale to the private selling officer, who, after the return or determination of the appraisal, will advertise and sell the real estate in conformity with applicable provisions of Sections 2329.01 to 2329.61.
- Section 2329.153 provides that no later than 90 days after the bill becomes effective, the department of administrative services will solicit competitive sealed proposals for the creation, operation and maintenance of an official public sheriff sale web site and an integrated auction management system. This will be a single statewide system for use by all county sheriffs.

H.B. No. 390 also amended a number of currently existing provisions. Highlights of these amendments include:

- Section 1303.38 provides that a person not in possession of an instrument is entitled to enforce the instrument if all of the following apply: (i) the person seeking to enforce the instrument

was entitled to enforce the instrument when loss of possession occurred or has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred; (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

- Section 2329.31 provides that the officer making the sale must record the prepared deed within 14 days after confirmation of sale and payment of balance due. If the deed is not prepared and recorded within the 14 day period, the purchaser may file a motion with the court to proceed with the transfer of title. If the court finds that a proper sale was made, it must enter an order transferring the title of the lands and tenements to the purchaser, ordering the plaintiff to present a certified copy of the order to the county recorder for recording and ordering the county recorder to record the order in the record of deeds. The order, when filed with the county recorder, will have the same effect as a deed prepared pursuant to Section 2329.36.

We are able to answer questions regarding this new law and how it may affect your business. □

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