

FORECLOSURE, TITLE REFORM: Beginning to Address Needed Updates to Real Property Law in Ohio



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Four recent bills (three originating from the Ohio House and one from the Ohio Senate) recently set out changes and, in some cases, long-awaited updates to the real property law in Ohio. While most of the changes specifically target foreclosure law, the bills certainly do not end there.

With Ohio consistently ranking in the top ten for the highest number of foreclosures since the 2008 Housing Market Crash (by many accounts over the years), and considering the drastic impacts that crash had on the residential real estate market (especially considering the effects the crisis had on exacerbating blight), something had to be done to update the law concerning foreclosures in Ohio. See, e.g. Dunn, Laura, *The 10 states with the highest foreclosure rates in July*, BANKRATE (August 12, 2016); *10 states with the most homes in foreclosure*, MARKETWATCH.COM (January 18, 2013); Harress, Christopher, *The American Nightmare: Ten Worst States for Foreclosure*, INTERNATIONAL BUSINESS TIMES (September 25, 2013). Fast forward to September 28, 2016, the date when (most of) the provisions of Ohio House Bill 390 (“HB 390”) became effective. See 2015 Bill Text OH H.B. 390. Legislation more than three years in the making finally passed in 2016 to reform the foreclosure law in the state, with respect to both residential and commercial real estate. *Id.*

HB 390 attempts to provide the State of Ohio and its citizens with tools to handle a multitude of issues presented by the foreclosure process. Representative Jonathan Dever for the 28th District of Ohio recently spoke at the December CLE Round-Up at the Dayton Bar Association, Real Property Committee CLE as to what tools were implemented in the legislative text and what tools are still being tinkered with in other bills. Jonathan Dever, *Real Property Law CLE: House Bill 390: Revamping Ohio’s Foreclosure Processes*, DAYTON BAR ASSOCIATION, (December 14,

2016). Ultimately, with respect to foreclosure processes in Ohio, HB 390 does eight major things: (1) expedites the foreclosure process for “vacant and abandoned” residential property; (2) provides for the use of Private Selling Officers and remote bidding (for both residential and commercial property); (3) provides for on-line auctions and progression toward an online system within five years of the enactment of the bill; (4) provides that real estate taxes are to be paid from sale proceeds; (5) establishes who is entitled to enforce a lost note; (6) allows for the recording of confirmation to transfer title in lieu of a sheriff’s deed if the deed is not timely filed; (7) implements a procedure for selling property that does not garner two-thirds of its appraised value at sale; and (8) creates a right for the prosecutor to move for sale if the property is not sold or the sale is not underway within twelve months of the decree. 2015 Bill Text OH H.B. 390; OHIO REV.

CODE ANN. §§ 323.47; 1303.38; 2308.01-.04; 2327.01; 2329.01; 2329.071; 2329.151-.154; 2329.18-.21; 2329.26; 2329.31; 2329.311; 2329.52; 5302.31 & 5721.371-.373. That is not to say the bill ends there in its changes. Those eight mentioned above are what several practitioners point to as the sweeping or major changes that are derived from the bill, however. See, e.g. Brenda K. Bowers, *Client Alert: Foreclosure Reform in Ohio is Here – Expediting, Modernizing, and Unifying the Foreclosure Process and Battling Community Blight*, VORYS, SATER, SEYMOUR AND PEASE LLP (September 27, 2016); Joseph E. Lenhart & Geoffrey G. Leder, *Ohio Foreclosure Reform Brings Standardization and Modernization*

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to County Foreclosure Processes and Paves the Way for the Expedited Foreclosure of Vacant and Abandoned Residential Properties, KEATING, MUETHING & KLEKAMP PLL (September 28, 2016); Tyson A. Crist, *Changes to Ohio Foreclosure Law Under House Bill 390*, ICE MILLER LLP (October 4, 2016).

The 131st General Assembly also managed to implement the D.O.L.L.A.R. Deed Program by passing Ohio House Bill 303 (“HB 303”). Also effective September 28, 2016, the “Deed Over, Lender Leaseback, Agreed Refinance” program provides an option whereby homeowners can stay in their homes and avoid foreclosure by entering into an agreement with the lender and becoming a tenant. *2015 Bill Text OH H.B. 303*. If a borrower applies for the D.O.L.L.A.R. Deed Program and the lender approves the application, then the parties shall execute: (i) a deed in lieu of foreclosure transferring borrower’s right, title and interest in the real property to the lender; (ii) a notarized estoppel affirming, among other things, that: (x) “the mortgage and title to the property are not merged” by

virtue of the deed; and (y) “lender retains its lien position and its right to foreclose on any junior lienholders after the transfer”; and (iii) a lease with an option to purchase setting forth the statutorily required length of the lease and rent due under the lease. OHIO REV. CODE ANN. § 5315.04; *H.B. 303*.

Even more recently passed by both chambers was Ohio House Bill 463 (“HB 463”). *See 2015 Bill Text OH H.B. 463*. HB 463 amends O.R.C. §1349.21 to prohibit an escrow or closing agent, within an escrow transaction, from knowingly making disbursement from an escrow account on behalf of another person unless certain conditions are met, as provided therein. *Id.* Further, HB 463 (via O.R.C. §2308.031) bans the use of plywood in boarding up a property that is deemed vacant and abandoned in order to secure and preserve the property. *Id.* The purpose of this “plywood provision” is to: (i) make these buildings safer when inspected or when police or emergency personnel must attend to a situation at such a property, and (ii) help keep water and other damaging elements out by using material other

than plywood, which might deteriorate at a slower rate. *Dever, supra* paragraph 3. This can be accomplished, for example, by using a clear material that is bulletproof/waterproof in lieu of the plywood. *Id.* Additionally, HB 463 makes further revisions to some of the HB 390 subject matter. *H.B. 463*.

Finally, foreclosure law was not the only area of real property law to get a facelift. As part of Ohio Senate Bill 257, the legislature revised Ohio’s curative title statute. These revisions, in part, create a rebuttable presumption of validity for recorded real property instruments and reduce the time period for curing certain defects related to those instruments. *2015 Bill Text OH S.B. 257*; OHIO REV. CODE ANN. § 5301.07.

It remains to be seen if even more changes are coming down the pike anytime soon, but Ohio’s legislature has certainly been busy recently in updating. ●

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