

ORIGINAL

IN THE SUPREME COURT OF OHIO

Vanderbilt Mortgage Finance, Inc.	:	SUPREME COURT
	:	CASE NO. 13-0713
	:	
Appellant	:	
	:	ON APPEAL FROM THE
v.	:	FIFTH DISTRICT COURT
	:	OF APPEALS CASE NO. 2012 CA 001
	:	
Janette Donaker,	:	
Coshocton County Treasurer, et al	:	
	:	
Appellees	:	

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**Reply Brief of Appellant Vanderbilt Mortgage Finance, Inc.**

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Table of Contents

	Page
Table of Contents .....	ii
Table of Authorities .....	iv
I. Introduction .....	1 – 2
II. Alan Donaker has failed to file a Statement of the Facts which confirms with the requirements of Ohio Supreme Court Rule of Practice 16.03 and 16.02(B)(3) ...	2 – 3
III. There are differences between the statutory scheme for a tax foreclosure sale and the statutory scheme for a mortgage foreclosure and these differences account for the expanded right to redeem provided by §5721.25 (tax foreclosure redemption statute) which is not provided for in §2329.33 (mortgage foreclosure redemption statute) .....	3 – 4
IV. Vanderbilt has argued at every stage of this case that Ohio Revised Code section §5721.25 must be construed to allow Vanderbilt, a mortgage holder, to redeem the Property after sale but before confirmation .....	4 – 6
V. Vanderbilt did not slumber on its rights because, pursuant to the R.C. §5723.181 notice it received in this case, Vanderbilt was not required to do anything in this case but wait for the Sheriff’s sale and then redeem the property .....	6 – 7
VI. Conclusion .....	7

## Table of Authorities

Source	Page
 Case Law	
<i>Am. Sav. &amp; Loan Ass'n v. Taylor</i> (1985 12 <sup>th</sup> District), Butler App. No. CA85-02-015 .....	3
<i>Cole v. Benedict</i> (1996), 113 Ohio App.3d 561 .....	1
<i>Harris Trust and Savings Bank v. National Republic Bank of Chicago</i> (2004 9 <sup>th</sup> District), 2004-Ohio-1602 .....	3
<i>Harris v. Hurst</i> (1991), 1991 WL 215067 .....	1
<i>Huntington National Bank v. Burch</i> (2004 2nd District), 157 Ohio App.3d 71 .....	3
<i>In re Foreclosure of Liens for Delinquent Taxes</i> (1980), 62 Ohio St.2d 333 .....	6
<i>Mullane v. Central Hanover Bank &amp; Trust Co.</i> (1950), 339 U.S. 306 .....	6
<i>Ohio Savings Bank v. Ambrose</i> (1990), 56 Ohio St. 3d 53 .....	3, 4
<i>Reed v. Radigan</i> (1884), 42 Ohio St. 292 .....	3
<i>The Union Bank Co. v. Brumbaugh</i> (1982), 69 Ohio St.2d 202 .....	3
<i>Wayne Savings and Loan Company v. Young</i> (1976), 49 Ohio App.2d 35 .....	1
<i>Wilke v. Secretary of Housing and Urban Development</i> (1984), 1984 WL 7141 .....	1
 Ohio Revised Code	
2329.33 .....	3, 4, 5
5723.18 .....	1, 2, 4, 6, 7
5723.181 .....	1, 2, 4, 6, 7
5721.25 .....	1, 2, 3, 4, 5, 6, 7
 Ohio Supreme Court Rule of Practice	
16.02 .....	2
16.03 .....	2
16.09 .....	2
16.10 .....	2

## I. Introduction

Does Ohio Revised Code §5721.25 provide a right to mortgage holders to redeem property from tax foreclosure sales? Unfortunately after having received both an Appellant's Merit Brief and an Appellee's Merit Brief, the Ohio Supreme Court does not have any one specific case cited in either brief that is completely dispositive of the issue before this court. While in Appellee's Merit brief it was argued that other courts have already considered Ohio Revised Code §5721.25 and determined that the phrase "any person entitled to redeem the land" does not apply to mortgage holders, a cursory review of the cases cited in the Appellee's Merit brief show that is not true. Neither *Wilke v. Secretary of Housing and Urban Development* (1984), 1984 WL 7141 nor *Wayne Savings and Loan Company v. Young* (1976), 49 Ohio App.2d 35 involved situations right on point. Neither case involved a situation where a mortgage holder whose interest in the property existed at the time the tax foreclosure was filed and who received a §5721.18 Notice of Right to Redeem tried to redeem the property. Thus those cases are not on point. And, even though Appellee's Merit brief also cites to cases which it suggests supports the proposition that the right to redeem under Ohio Revised Code 5721.25 is limited to the defaulting owner, neither *Harris v. Hurst* (1991), 1991 WL 215067 nor *Cole v. Benedict* (1996), 113 Ohio App.3d 561 contain any specific language limiting who may redeem under Ohio Revised Code §5721.25. Instead, both of those cases merely stand for the proposition that a former owner is one of the people entitled to redeem under that statute and neither case states that the former owner is the *only* person who may redeem.

Luckily, there is ironclad statutory authority that this court can look to when considering the sole issue before it. But Appellee's Merit Brief skirts around the bombshell which is Ohio Revised Code sections §5721.18 and §5721.181. Instead Appellee desperately urges this court to ignore Ohio Revised Code sections §5721.18 and §5721.181 and argues that these statutes do not show intent by the legislature to treat the statutory scheme for redemption in a tax foreclosure sale any different than the statutory scheme for redemption in a mortgage foreclosure action. It is also argued in the Appellee's Merit Brief

that Vanderbilt's ability to cite to these statutes have been waived because these statutes were not cited to in the lower courts. Lastly, the Appellee's Merit Brief suggests that even if §5721.18 and §5721.181 do illustrate who the "persons" are that have a right to redeem under Ohio Revised Code §5721.25, this court should punish Vanderbilt for slumbering on its rights in that Vanderbilt waited until after the Sheriff's Sale to redeem the property instead of buying the property at sheriff's sale.

In this Reply Brief, Defendant/Appellant, Vanderbilt Mortgage and Finance Inc's (hereinafter "Vanderbilt"), intends to point out the deficiencies with the Statement of Facts submitted by Appellee, Alan Donaker ("Donaker"); explain the difference between the statutory scheme for a tax foreclosure and the statutory scheme for a mortgage foreclosure; demonstrate that Vanderbilt, at every stage in this case, has argued that Ohio Revised Code §5721.25 needs to be construed such that Vanderbilt is considered a person entitled to redeem; and, explain why Vanderbilt had no obligation to do anything in this case other than redeem the property after sale, which it did do.

**II. Alan Donaker has failed to file a Statement of the Facts which conforms with the requirements of Ohio Supreme Court Rule of Practice 16.03 and 16.02(B)(3)**

Ohio Supreme Court Rule of Practice 16.02(B)(3) requires that the Statement of the Facts portion of a Merit Brief contain citations with page references, in parentheses, to supporting portions of both the original transcript of testimony and any supplement filed in the case pursuant to S.Ct.Prac.R. 16.09 through 16.10. Donaker in his Merit Brief of Appellee submits nearly 3 pages of Statement of Facts, but not a single fact is supported by a page reference, in parentheses to the original transcript or the supplement, as such, Donaker has failed to properly file a Statement of Facts. This failure to file a proper Statement of Facts by Donaker requires, at a minimum, that this court presume that Donaker agrees with Vanderbilt's Statement of the Facts pursuant to Ohio Supreme Court Rule of Practice 16.03(B)(2).

More specifically the following “allegations” of fact contained in Donaker’s Merit brief are not found anywhere in the records of the trial or appellate court and as such must be disregarded by this Court:

- In June 2003, Donaker sold a one acre pig farm to his daughter, Brandi Wagner
- The subject mortgage was never filed in Tuscarawas County Ohio
- Vanderbilt never advanced taxes on the subject property pursuant to R.C. §5301.233
- Plaintiff, Janette Donaker, the Coshocton County Treasurer, contacted Vanderbilt on five separate occasions to advise Vanderbilt of an intended tax foreclosure.
- Vanderbilt was represented at the Sheriff’s Sale and entered bids on both the property and on the mobile home located thereon.
- Vanderbilt’s agent misunderstood its instructions and bid the wrong amounts on the mobile home and Property.
- Mr. Matchett, the successful purchaser at Sheriff’s Sale, was contacted by an agent for Vanderbilt who demanded that he withdraw his bid on the Property.

**III. There are differences between the statutory scheme for a tax foreclosure sale and the statutory scheme for a mortgage foreclosure sale and these differences account for the expanded right to redeem provided by §5721.25 (tax foreclosure redemption statute) which is not provided for in §2329.33 (mortgage foreclosure redemption statute).**

Ohio Case law is well settled that while the primary object of judicial sales conducted pursuant to Ohio Revised Code §2329 is to raise the money due the creditor there is also a statutory scheme in place to avoid allowing the property to be sacrificed at a price significantly below its market value. *Reed v. Radigan* (1884), 42 Ohio St. 292; *The Union Bank Co. v. Brumbaugh* (1982), 69 Ohio St.2d 202; *Huntington National Bank v. Burch* (2004 2nd District), 157 Ohio App.3d 71; *Harris Trust and Savings Bank v. National Republic Bank of Chicago* (2004 9<sup>th</sup> District), 2004-Ohio-1602; *Am. Sav. & Loan Ass'n v. Taylor* (1985 12<sup>th</sup> District), Butler App. No. CA85-02-015. This is evidenced by the fact that a mortgage foreclosure sale of real property conducted pursuant to Ohio Revised Code §2329 utilizes a statutory scheme which provides great protections to those with an interest in the real property. *Ohio Savings Bank v. Ambrose* (1990), 56 Ohio St. 3d 53. The Ohio Supreme Court in *Ambrose* recognized those protections:

Ohio Revised Code §2329.17 provides that when execution is levied upon lands, the officer who makes the levy must call an inquest of three disinterested freeholders who

are residents of the county where the lands taken are situated. The appraisers must swear to impartially appraise the property and then return an estimate of the real value of the property. Thereafter, the officer must give public notice of the time and place of sale for at least 30 days before the sale by advertisement in a newspaper published in and of general circulation in the county. Ohio Revised Code §2329.26. The land cannot be sold for less than two thirds of the appraised value. Ohio Revised Code §2329.20. *Ohio Savings Bank v. Ambrose*. 56 Ohio St. 3d 53

By comparison, tax sales conducted pursuant to Chapter §5721 of the Ohio Revised Code do not have as rigorous of a statutory scheme designed to avoid allowing the property to be sacrificed at a price significantly below its market value. Instead, tax sales establish the minimum sales price to be essentially the amount of delinquent taxes and the costs associated with the tax foreclosure sale. See Ohio Revised Code sections §5721.19. This is because the only purpose of a tax sale is to raise revenue to pay the delinquent taxes. Given this statutory scheme for tax foreclosure sales, it is not surprising that the right to redeem is extended to “any person entitled to redeem” under §5721.25. In contrast, Ohio Revised Code §2329.33 limits the right to redeem to the debtor, presumably because other parties with an interest in the land to be sold at a mortgage foreclosure sale are protected against the sacrifice of the land by the statutory scheme of protections provided for in Chapter §2329 of the Ohio Revised Code, especially the mandate that the land not be sold for less than two thirds of its appraised value. Ohio Revised Code §2329.20.

In acknowledgement of this greater likelihood of the sacrifice of the property below its market value, Ohio Revised Code §5721.18 and Ohio Revised Code §5721.181 require that notice be sent providing that at any time prior to the filing of an entry of confirmation of sale, any owner or lienholder of, or other person with an interest in, the property may redeem the property.

**IV. Vanderbilt has argued at every stage of this case that Ohio Revised Code section §5721.25 must be construed to allow Vanderbilt, a mortgage holder, to redeem the Property after sale but before confirmation.**

Vanderbilt first became aware of this case when it was served by certified mail with a Notice to Owner of a Parcel And Those with Interest in Parcel. (Supp.7). This Notice states in pertinent part that

Vanderbilt is an owner, lienholder or other person with an interest in the subject Property and as such may redeem the Property at any time prior to the filing of an entry of confirmation of sale. (Supp.8). On October 21, 2011, the subject Property was sold for the paltry sum of \$15,100.00 (free and clear of Vanderbilt mortgage). On November 2, 2011, prior to the judge signing any entry of confirmation of the sale, Vanderbilt deposited a \$6,000.00 Redemption Check with the Clerk of Courts (to pay off the Coshocton county tax bill and satisfy Coshocton County's interest in the property) along with a Notice of Redemption and a Motion to Stay Confirmation of the October 21, 2011 Sheriff's Sale. (Supp. 46 – 50). In this way, Vanderbilt asserted its rights pursuant to the Notice to Owner of a Parcel And Those with Interest in Parcel and argued that as a mortgage holder, it was a person entitled to redeem under a statutory construction of Ohio Revised Code section §5721.25.

On November 30, 2011, the matter came before the trial court upon oral hearing and a transcript of said hearing was filed with the Fifth District Court of Appeals in Case No. 2012CA0001. (Supp. 78 – 108, Tr. 1 – 31). In this oral argument, Vanderbilt asserted that it was a person entitled to redeem pursuant to a statutory construction of Ohio Revised Code §5721.25 in comparison with the language utilized in Ohio Revised Code §2329.33. Following oral argument, on December 5, 2011, the trial court accepted Vanderbilt's Notice of Redemption and vacated the Sheriff's Sale. (Supp. 109 – 112).

Appellant, Alan Donaker, assigned a single error on appeal and the sole issue before the Fifth District Court of Appeals was whether Vanderbilt had the right to redeem the Property prior to confirmation of the Sheriff's Sale pursuant to R.C. §5721.25. See Opinion of Fifth District Court of Appeals issued March 29, 2013 page 3 {¶ 7} (Supp. 119). Vanderbilt argued in the appellate court that while, R.C. §5721.25 does not define the phrase "any person entitled to redeem the land." Vanderbilt believed that it was such a person. Vanderbilt further argued upon appeal that Ohio Revised Code §5721.25 must be construed differently than Ohio Revised Code §2329.33 such that the phrase "persons entitled to redeem" contained within Ohio Revised Code §5721.25 includes mortgage holders.

Thus at every stage of this case, Vanderbilt relied upon the Notice provided to it pursuant to Ohio Revised Code §5721.18 and argued that Ohio Revised Code §5721.25 must be construed such that the phrase “persons entitled to redeem” includes mortgage holders.

**V. Vanderbilt did not slumber on its rights because, pursuant to the R.C. §5723.181 notice it received in this case, Vanderbilt was not required to do anything in this case but wait for the Sheriff’s sale and then redeem then property .**

Ohio Revised Code §5721.18 requires that in all tax foreclosure actions a Notice with specific statutory language set forth in Ohio Revised Code §5721.181 be sent to the Owner of the Parcel and Those with Interest in Parcel informing them that “[a]t any time prior to the filing of an entry of confirmation of sale, any owner or lienholder of, or other person with an interest in, a parcel may redeem the parcel...” Vanderbilt received such a notice in this case. (Supp 7, 8). Thus, Vanderbilt was provided notice that all it needed to do in this case in order to protect its interest in the subject property was wait until after the sale of the subject property and redeem it prior to confirmation of the tax sale. The Ohio Supreme Court has already determined that the notice required by Ohio Revised Code §5721.18 and §5721.181 meets the minimum requirements of due process. *In re Foreclosure of Liens for Delinquent Taxes* (1980), 62 Ohio St.2d 333. The constitutionality of a notice mechanism is dependent upon the likelihood of its ultimate success in notifying an interested party of a pending action and allowing them to protect their rights. *Id.* The Ohio Supreme Court deferred to the test articulated by the United States Supreme Court in *Mullane v. Central Hanover Bank & Trust Co.* (1950), 339 U.S. 306, wherein the United States Supreme Court held, at page 314, that a method for providing notice must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to [protect their rights]” *Id.* 62 Ohio St.2d 333. It was determined that Ohio Revised Code §5721.18 meets this “reasonably calculated” standard. *Id.* As such, Vanderbilt was appropriately served with Notice of what it needed to do to protect its rights in the subject property. That Notice stated that Vanderbilt need only redeem the property at any time prior to the filing of an entry of confirmation of sale. To require Vanderbilt to anything more or, worse yet, to bar Vanderbilt from

exercising the very right it received notice of would be to deny Vanderbilt the due process purportedly provided by said notice.

## VI. CONCLUSION

As explained above, there is not one specific case which is completely dispositive of the issue before this court. But, Ohio Revised Code §5721.18 and § 5721.181 are ironclad statutory authority showing that Ohio Revised Code §5721.25 grants an expansive right to redeem property from tax foreclosure sales to mortgage holders and other lien holders. The undisputed Facts of this case (as presented by Appellant, Vanderbilt) illustrate the difference between the statutory scheme for a tax foreclosure and the statutory scheme for a mortgage foreclosure and, in doing so, make clear why the right to redeem property from tax foreclosure sales is open to mortgage holders. Despite Appellee's concerns, this court should not ignore Ohio Revised Code sections §5721.18 and §5721.181 as Vanderbilt, at every stage in this case, has argued that Ohio Revised Code §5721.25 needs to be construed such that Vanderbilt is considered a person entitled to redeem. In redeeming the subject property prior to the confirmation of the Sheriff's Sale, Vanderbilt did all that was required by it to protect its rights in the subject property. Therefore, this Court should hold that a mortgage holder's right of redemption is independent and distinct from the rights of redemption possessed by the delinquent property owner. And, in doing so, the Court should overturn the Fifth District Court of Appeals decision in this case.

Respectfully Submitted,



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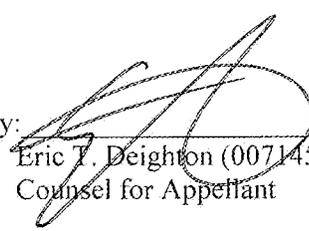
CERTIFICATE OF SERVICE

I certify that a copy of this Merit Brief of Appellant was sent by ordinary U.S. Mail to the undersigned counsel on December 23, 2013

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**2329.33 Redemption by judgment debtor.**

In sales of real estate on execution or order of sale, at any time before the confirmation thereof, the debtor may redeem it from sale by depositing in the hands of the clerk of the court of common pleas to which such execution or order is returnable, the amount of the judgment or decree upon which such lands were sold, with all costs, including poundage, and interest at the rate of eight per cent per annum on the purchase money from the day of sale to the time of such deposit, except where the judgment creditor is the purchaser, the interest at such rate on the excess above his claim. The court of common pleas thereupon shall make an order setting aside such sale, and apply the deposit to the payment of such judgment or decree and costs, and award such interest to the purchaser, who shall received from the officer making the sale the purchase money paid by him, and the interest from the clerk. This section does not take away the power of the court to set aside such sale for any reason for which it might have been set aside prior to April 16, 1888.

Effective Date: 08-06-1976

## **5721.18 Foreclosure proceedings on lien of state.**

The county prosecuting attorney, upon the delivery to the prosecuting attorney by the county auditor of a delinquent land or delinquent vacant land tax certificate, or of a master list of delinquent or delinquent vacant tracts, shall institute a foreclosure proceeding under this section in the name of the county treasurer to foreclose the lien of the state, in any court with jurisdiction or in the county board of revision with jurisdiction pursuant to section 323.66 of the Revised Code, unless the taxes, assessments, charges, penalties, and interest are paid prior to the time a complaint is filed, or unless a foreclosure or foreclosure and forfeiture action has been or will be instituted under section 323.25, sections 323.65 to 323.79, or section 5721.14 of the Revised Code. If the delinquent land or delinquent vacant land tax certificate or the master list of delinquent or delinquent vacant tracts lists minerals or rights to minerals listed pursuant to sections 5713.04, 5713.05, and 5713.06 of the Revised Code, the county prosecuting attorney may institute a foreclosure proceeding in the name of the county treasurer, in any court with jurisdiction, to foreclose the lien of the state against such minerals or rights to minerals, unless the taxes, assessments, charges, penalties, and interest are paid prior to the time the complaint is filed, or unless a foreclosure or foreclosure and forfeiture action has been or will be instituted under section 323.25, sections 323.65 to 323.79, or section 5721.14 of the Revised Code.

The prosecuting attorney shall prosecute the proceeding to final judgment and satisfaction. Within ten days after obtaining a judgment, the prosecuting attorney shall notify the treasurer in writing that judgment has been rendered. If there is a copy of a written delinquent tax contract attached to the certificate or an asterisk next to an entry on the master list, or if a copy of a delinquent tax contract is received from the auditor prior to the commencement of the proceeding under this section, the prosecuting attorney shall not institute the proceeding under this section, unless the prosecuting attorney receives a certification of the treasurer that the delinquent tax contract has become void.

(A) This division applies to all foreclosure proceedings not instituted and prosecuted under section 323.25 of the Revised Code or division (B) or (C) of this section. The foreclosure proceedings shall be instituted and prosecuted in the same manner as is provided by law for the foreclosure of mortgages on land, except that, if service by publication is necessary, such publication shall be made once a week for three consecutive weeks instead of as provided by the Rules of Civil Procedure, and the service shall be complete at the expiration of three weeks after the date of the first publication. In any proceeding prosecuted under this section, if the prosecuting attorney determines that service upon a defendant may be obtained ultimately only by publication, the prosecuting attorney may cause service to be made simultaneously by certified mail, return receipt requested, ordinary mail, and publication.

In any county that has adopted a permanent parcel number system, the parcel may be described in the notice by parcel number only, instead of also with a complete legal description, if the prosecuting attorney determines that the publication of the complete legal description is not necessary to provide reasonable notice of the foreclosure proceeding to the interested parties. If the complete legal description is not published, the notice shall indicate where the complete legal description may be obtained.

It is sufficient, having been made a proper party to the foreclosure proceeding, for the treasurer to allege in the treasurer's complaint that the certificate or master list has been duly filed by the auditor, that the amount of money appearing to be due and unpaid is due and unpaid, and that there is a lien against the property described in the certificate or master list, without setting forth in the complaint

any other or special matter relating to the foreclosure proceeding. The prayer of the complaint shall be that the court or the county board of revision with jurisdiction pursuant to section 323.66 of the Revised Code issue an order that the property be sold or conveyed by the sheriff or otherwise be disposed of, and the equity of redemption be extinguished, according to the alternative redemption procedures prescribed in sections 323.65 to 323.79 of the Revised Code, or if the action is in the municipal court by the bailiff, in the manner provided in section 5721.19 of the Revised Code.

In the foreclosure proceeding, the treasurer may join in one action any number of lots or lands, but the decree shall be rendered separately, and any proceedings may be severed, in the discretion of the court or board of revision, for the purpose of trial or appeal, and the court or board of revision shall make such order for the payment of costs as is considered proper. The certificate or master list filed by the auditor with the prosecuting attorney is prima-facie evidence at the trial of the foreclosure action of the amount and validity of the taxes, assessments, charges, penalties, and interest appearing due and unpaid and of their nonpayment.

(B) Foreclosure proceedings constituting an action in rem may be commenced by the filing of a complaint after the end of the second year from the date on which the delinquency was first certified by the auditor. Prior to filing such an action in rem, the prosecuting attorney shall cause a title search to be conducted for the purpose of identifying any lienholders or other persons with interests in the property subject to foreclosure. Following the title search, the action in rem shall be instituted by filing in the office of the clerk of a court with jurisdiction a complaint bearing a caption substantially in the form set forth in division (A) of section 5721.181 of the Revised Code.

Any number of parcels may be joined in one action. Each separate parcel included in a complaint shall be given a serial number and shall be separately indexed and docketed by the clerk of the court in a book kept by the clerk for such purpose. A complaint shall contain the permanent parcel number of each parcel included in it, the full street address of the parcel when available, a description of the parcel as set forth in the certificate or master list, the name and address of the last known owner of the parcel if they appear on the general tax list, the name and address of each lienholder and other person with an interest in the parcel identified in the title search relating to the parcel that is required by this division, and the amount of taxes, assessments, charges, penalties, and interest due and unpaid with respect to the parcel. It is sufficient for the treasurer to allege in the complaint that the certificate or master list has been duly filed by the auditor with respect to each parcel listed, that the amount of money with respect to each parcel appearing to be due and unpaid is due and unpaid, and that there is a lien against each parcel, without setting forth any other or special matters. The prayer of the complaint shall be that the court issue an order that the land described in the complaint be sold in the manner provided in section 5721.19 of the Revised Code.

(1) Within thirty days after the filing of a complaint, the clerk of the court in which the complaint was filed shall cause a notice of foreclosure substantially in the form of the notice set forth in division (B) of section 5721.181 of the Revised Code to be published once a week for three consecutive weeks in a newspaper of general circulation in the county. The newspaper shall meet the requirements of section 7.12 of the Revised Code. In any county that has adopted a permanent parcel number system, the parcel may be described in the notice by parcel number only, instead of also with a complete legal description, if the prosecuting attorney determines that the publication of the complete legal description is not necessary to provide reasonable notice of the foreclosure proceeding to the interested parties. If the complete legal description is not published, the notice shall indicate where the complete legal description may be obtained.

After the third publication, the publisher shall file with the clerk of the court an affidavit stating the fact of the publication and including a copy of the notice of foreclosure as published. Service of process for purposes of the action in rem shall be considered as complete on the date of the last publication.

Within thirty days after the filing of a complaint and before the final date of publication of the notice of foreclosure, the clerk of the court also shall cause a copy of a notice substantially in the form of the notice set forth in division (C) of section 5721.181 of the Revised Code to be mailed by certified mail, with postage prepaid, to each person named in the complaint as being the last known owner of a parcel included in it, or as being a lienholder or other person with an interest in a parcel included in it. The notice shall be sent to the address of each such person, as set forth in the complaint, and the clerk shall enter the fact of such mailing upon the appearance docket. If the name and address of the last known owner of a parcel included in a complaint is not set forth in it, the auditor shall file an affidavit with the clerk stating that the name and address of the last known owner does not appear on the general tax list.

(2)

(a) An answer may be filed in an action in rem under this division by any person owning or claiming any right, title, or interest in, or lien upon, any parcel described in the complaint. The answer shall contain the caption and number of the action and the serial number of the parcel concerned. The answer shall set forth the nature and amount of interest claimed in the parcel and any defense or objection to the foreclosure of the lien of the state for delinquent taxes, assessments, charges, penalties, and interest as shown in the complaint. The answer shall be filed in the office of the clerk of the court, and a copy of the answer shall be served on the prosecuting attorney, not later than twenty-eight days after the date of final publication of the notice of foreclosure. If an answer is not filed within such time, a default judgment may be taken as to any parcel included in a complaint as to which no answer has been filed. A default judgment is valid and effective with respect to all persons owning or claiming any right, title, or interest in, or lien upon, any such parcel, notwithstanding that one or more of such persons are minors, incompetents, absentees or nonresidents of the state, or convicts in confinement.

(b)

(i) A receiver appointed pursuant to divisions (C)(2) and (3) of section 3767.41 of the Revised Code may file an answer pursuant to division (B)(2)(a) of this section, but is not required to do so as a condition of receiving proceeds in a distribution under division (B)(1) of section 5721.17 of the Revised Code.

(ii) When a receivership under section 3767.41 of the Revised Code is associated with a parcel, the notice of foreclosure set forth in division (B) of section 5721.181 of the Revised Code and the notice set forth in division (C) of that section shall be modified to reflect the provisions of division (B)(2)(b)(i) of this section.

(3) At the trial of an action in rem under this division, the certificate or master list filed by the auditor with the prosecuting attorney shall be prima-facie evidence of the amount and validity of the taxes, assessments, charges, penalties, and interest appearing due and unpaid on the parcel to which the certificate or master list relates and their nonpayment. If an answer is properly filed, the court may, in its discretion, and shall, at the request of the person filing the answer, grant a severance of the proceedings as to any parcel described in such answer for purposes of trial or appeal.

(C) In addition to the actions in rem authorized under division (B) of this section and section 5721.14 of the Revised Code, an action in rem may be commenced under this division. An action commenced under this division shall conform to all of the requirements of division (B) of this section except as follows:

(1) The prosecuting attorney shall not cause a title search to be conducted for the purpose of identifying any lienholders or other persons with interests in the property subject to foreclosure, except that the prosecuting attorney shall cause a title search to be conducted to identify any receiver's lien.

(2) The names and addresses of lienholders and persons with an interest in the parcel shall not be contained in the complaint, and notice shall not be mailed to lienholders and persons with an interest as provided in division (B)(1) of this section, except that the name and address of a receiver under section 3767.41 of the Revised Code shall be contained in the complaint and notice shall be mailed to the receiver.

(3) With respect to the forms applicable to actions commenced under division (B) of this section and contained in section 5721.181 of the Revised Code:

(a) The notice of foreclosure prescribed by division (B) of section 5721.181 of the Revised Code shall be revised to exclude any reference to the inclusion of the name and address of each lienholder and other person with an interest in the parcel identified in a statutorily required title search relating to the parcel, and to exclude any such names and addresses from the published notice, except that the revised notice shall refer to the inclusion of the name and address of a receiver under section 3767.41 of the Revised Code and the published notice shall include the receiver's name and address. The notice of foreclosure also shall include the following in boldface type:

"If pursuant to the action the parcel is sold, the sale shall not affect or extinguish any lien or encumbrance with respect to the parcel other than a receiver's lien and other than the lien for land taxes, assessments, charges, interest, and penalties for which the lien is foreclosed and in satisfaction of which the property is sold. All other liens and encumbrances with respect to the parcel shall survive the sale."

(b) The notice to the owner, lienholders, and other persons with an interest in a parcel shall be a notice only to the owner and to any receiver under section 3767.41 of the Revised Code, and the last two sentences of the notice shall be omitted.

(4) As used in this division, a "receiver's lien" means the lien of a receiver appointed pursuant to divisions (C)(2) and (3) of section 3767.41 of the Revised Code that is acquired pursuant to division (H)(2)(b) of that section for any unreimbursed expenses and other amounts paid in accordance with division (F) of that section by the receiver and for the fees of the receiver approved pursuant to division (H)(1) of that section.

(D) If the prosecuting attorney determines that an action in rem under division (B) or (C) of this section is precluded by law, then foreclosure proceedings shall be filed pursuant to division (A) of this section, and the complaint in the action in personam shall set forth the grounds upon which the action in rem is precluded.

(E) The conveyance by the owner of any parcel against which a complaint has been filed pursuant to this section at any time after the date of publication of the parcel on the delinquent tax list but before

the date of a judgment of foreclosure pursuant to section 5721.19 of the Revised Code shall not nullify the right of the county to proceed with the foreclosure.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Effective Date: 10-27-2000; 2008 HB138 09-11-2008; 2008 SB353 04-07-2009

**5721.181 Substance of forms.**

The forms of caption, notice of foreclosure, and notice to property owners, lienholders, and other interested persons to be utilized in a foreclosure proceeding instituted pursuant to division (B) of section 5721.18 of the Revised Code shall be in substance as follows:

(A) Form of caption:

"In the . . . . . court of . . . . ., Ohio, in the matter of the foreclosure of liens for delinquent land taxes by action in rem.

County treasurer of . . . . . county, Ohio,

Plaintiff vs .

Parcels of land encumbered with delinquent tax liens, defendants"

(B) Form of notice of foreclosure:

". . . . . court . . . . . county, Ohio

Notice of foreclosure of liens for delinquent land taxes, by action in rem by county treasurer of . . . . . county, Ohio

Public notice is hereby given that on the . . . . day of . . . . ., . . . ., the county treasurer of . . . . county, Ohio, filed a complaint in the . . . . court of . . . ., Ohio, at . . . . . (stating the city), for the foreclosure of liens for delinquent taxes, assessments, charges, penalties, and interest against certain real property situated in such county, as described in that complaint.

The object of the action is to obtain from the court a judgment foreclosing the tax liens against such real estate and ordering the sale of such real estate for the satisfaction of the tax liens on it.

Such action is brought against the real property only and no personal judgment shall be entered in it. However, if pursuant to the action the property is sold for an amount that is less than the amount of the delinquent taxes, assessments, charges, penalties, and interest against it, the court, in a separate order, may enter a deficiency judgment against the owner of record of a parcel for the amount of the difference; if that owner of record is a corporation, the court may enter the deficiency judgment against the stockholder holding a majority of the corporation's stock.

The permanent parcel number of each parcel included in such action; the full street address of the parcel, if available; a description of the parcel as set forth in the associated delinquent land tax certificate or master list of delinquent tracts; a statement of the amount of the taxes, assessments, charges, penalties, and interest due and unpaid on the parcel; the name and address of the last known owner of the parcel as they appear on the general tax list; and the names and addresses of each lienholder and other person with an interest in the parcel identified in a statutorily required title search relating to the parcel; all as more fully set forth in the complaint, are as follows:

(Here set forth the respective permanent parcel numbers, street addresses, descriptions, names and addresses of owners, lienholders, and other interested persons, and statements of amounts due as taxes, assessments, charges, penalties, and interest, together with the respective serial numbers assigned to each parcel if the complaint covers more than one parcel. If parcels are identified in this

notice by permanent parcel number only, instead of also with a complete legal description, as authorized by division (B)(1) of section 5721.18 of the Revised Code, here also set forth where the complete legal description of the parcel may be obtained.)

Any person owning or claiming any right, title, or interest in, or lien upon, any parcel of real property above listed may file an answer in such action setting forth the nature and amount of interest owned or claimed and any defense or objection to the foreclosure. Such answer shall be filed in the office of the undersigned clerk of the court, and a copy of the answer shall be served on the prosecuting attorney, on or before the . . . . . day of . . . . ., . . . . (twenty-eight days after the date of final publication of this notice).

If no answer is filed with respect to a parcel listed in the complaint, on or before the date specified as the last day for filing an answer, a judgment of foreclosure will be taken by default as to that parcel. Any parcel as to which a foreclosure is taken by default shall be sold for the satisfaction of the taxes, assessments, charges, penalties, and interest, and the costs incurred in the foreclosure proceeding, which are due and unpaid.

At any time prior to the filing of an entry of confirmation of sale, any owner or lienholder of, or other person with an interest in, a parcel listed in the complaint may redeem the parcel by tendering to the treasurer the amount of the taxes, assessments, charges, penalties, and interest due and unpaid on the parcel, together with all costs incurred in the proceeding instituted against the parcel under section 5721.18 of the Revised Code. Upon the filing of any entry of confirmation of sale, there shall be no further equity of redemption. After the filing of any such entry, any person claiming any right, title, or interest in, or lien upon, any parcel shall be forever barred and foreclosed of any such right, title, or interest in, lien upon, and any equity of redemption in, such parcel.

.....  
Clerk of the Court  
..... Court  
....., Ohio"

(C) Form of notice to owner, lienholders, and other persons with an interest in a parcel:

"To the person to whom this notice is addressed:

You are the last known owner, according to the general tax list, or a lienholder of, or a person with another interest in, the following described parcel:

(Description as shown in complaint)

Such parcel has been included in an action instituted by the county treasurer, being case No. . . . filed in the . . . . . court, . . . . ., Ohio, on. . . . ., . . . . ., seeking the foreclosure and sale of such parcel for the nonpayment of delinquent taxes, assessments, charges, penalties, and interest (specify which) in the amount of \$. . . . .

Any person owning or claiming any right, title, or interest in, or lien upon, such parcel may file an answer in the action setting forth the nature and amount of the person's interest and any defense or objection to the foreclosure. Any such answer shall be filed in the office of the undersigned clerk of the court, and a copy of the answer shall be delivered to the prosecuting attorney, on or before . . . . .,

. . . (twenty-eight days after the final publication of the associated notice of foreclosure in accordance with law).

If no answer is filed, a judgment of foreclosure will be taken by default and such parcel shall be ordered sold for the satisfaction of the tax lien on it.

If, pursuant to the action, the property is sold for an amount that is less than the amount of the delinquent taxes, assessments, charges, penalties, and interest against it, the court, in a separate order, may enter a deficiency judgment against the owner of record of a parcel for the amount of the difference. If that owner of record is a corporation, the court may enter the deficiency judgment against the stockholder holding a majority of that corporation's stock.

At any time prior to the filing of any entry of confirmation of sale, any owner or lienholder of, or other person with an interest in, a parcel may redeem the parcel by tendering to the treasurer the full amount of the taxes, assessments, charges, penalties, and interest due and unpaid on the parcel, together with all costs incurred in the proceeding instituted against the parcel under section 5721.18 of the Revised Code. Upon the filing of any entry confirming the sale of the parcel, there shall be no further equity of redemption. After the filing of any such entry, any person claiming any right, title, or interest in, or lien upon, the parcel shall be forever barred and foreclosed of any such right, title, or interest in, lien upon, and any equity of redemption in, the parcel.

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Clerk of the Court

..... Court

....., Ohio"

Effective Date: 05-09-2000

## **5721.25 Redemption of delinquent land.**

All delinquent land upon which the taxes, assessments, penalties, interest, or charges have become delinquent may be redeemed before foreclosure proceedings have been instituted by tendering to the county treasurer an amount sufficient, as determined by the court, to pay the taxes, assessments, penalties, interest, and charges then due and unpaid, and the costs incurred in any proceeding instituted against such land under Chapter 323. or this chapter of the Revised Code.

After a foreclosure proceeding has been instituted under Chapter 323. or this chapter of the Revised Code with respect to delinquent land, but before the filing of an entry of confirmation of sale pursuant to the proceeding or before the expiration of the alternative redemption period as may apply under section 323.78 of the Revised Code, any person entitled to redeem the land may do so by tendering to the county treasurer an amount sufficient, as determined by the court, to pay the taxes, assessments, penalties, interest, and charges then due and unpaid, and the costs incurred in any proceeding instituted against such land under Chapter 323. or this chapter of the Revised Code, and by demonstrating that the property is in compliance with all applicable zoning regulations, land use restrictions, and building, health, and safety codes.

In addition, after a foreclosure proceeding has been instituted, but before the filing of an entry of confirmation of sale pursuant to the proceeding or before the expiration of the alternative redemption period as may apply under section 323.78 of the Revised Code, any person entitled to redeem the land who has not previously defaulted on a delinquent tax contract under section 323.31 of the Revised Code with respect to that delinquent land may enter into a delinquent tax contract with the county treasurer for the payment of the taxes, assessments, penalties, interest, and charges found to be due and unpaid on such land, together with the costs incurred in the proceeding as determined by the court or board of revision, upon demonstrating that the property is in compliance with all applicable zoning regulations, land use restrictions, and building, health, and safety codes. The execution of a delinquent tax contract shall not stop the prosecution of a proceeding to judgment. The delinquent tax contract shall be paid as prescribed by section 323.31 of the Revised Code over a period not to exceed five years after the date of the first payment made under the contract. The delinquent tax contract may be terminated if the court or board of revision determines that the property is not in compliance with all applicable zoning regulations, land use restrictions, and building, health, and safety codes during the term of the contract. The court or board of revision shall retain jurisdiction over the delinquent land until the total amount set forth in the delinquent tax contract is paid, notwithstanding any conveyance of the land to another owner during the period that the delinquent tax contract is outstanding.

If any payment under a delinquent tax contract is not paid when due, or if the contract is terminated because the property is not in compliance with all applicable zoning regulations, land use restrictions, and building, health, and safety codes, the county treasurer shall, at the time the payment is due and unpaid or the contract is terminated, advise the court or board of revision rendering the judgment of foreclosure, and the court or board of revision shall order such land sold for the amount of taxes, assessments, penalties, interest, and charges then due and owing on such land in the manner provided in section 5721.19 of the Revised Code, or disposed of as otherwise applicable under sections 323.65 to 323.79 of the Revised Code, without appraisal or sale.

Upon the receipt of each payment pursuant to any delinquent tax contract, the county treasurer shall enter the amount of such payment on the tax duplicate, and, upon request, shall give a receipt for the

amount paid to the person paying it. The receipt shall be in the form prescribed by the tax commissioner.

Except as otherwise provided in this section, the portion of the amount tendered under this section representing taxes, and penalties and interest thereon, shall be apportioned among the several taxing districts in the same proportion that the amount of taxes levied by each district against the delinquent property in the preceding tax year bears to the taxes levied by all such districts against the property in the preceding tax year. The portion of the payment representing assessments and other charges shall be credited to those items in the order in which they became due. To the extent that the county treasurer, under section 321.341 of the Revised Code, had made advance payments to the several taxing districts, from sources other than the later collection of such taxes, of the current year unpaid taxes or current year delinquent taxes during the year when such taxes were levied for collection, such taxes, together with the penalties and interest charged on such taxes during such year, shall, upon collection, not be apportioned among the several taxing districts, but shall be retained by the county treasurer and applied in accordance with section 321.341 of the Revised Code.

Effective Date: 03-11-2004; 2008 SB353 04-07-2009