

County Land Bank Bells and Whistles, Subsequent Amendments and Upcoming Proposed Amendments

By: Gus Frangos, Esq and Douglas Sawyer, Esq.

- I. Bells and Whistles Attached to SB 353 (127th General Assembly)
- II. Post SB 353 and HB 294 (126th General Assembly) Amendments relating to Land Banking or Tax Foreclosure

HB 138 (127th General; Assembly): Orders of Sale, BOR Deeds, Praecipes

- Clarifies that municipal courts are statutorily allowed to pursue tax foreclosure and other foreclosure cases. R.C. 323.25;
- Clarifies the rebuttable presumption of auditor valuations for purposes of valuation-based direct transfers; and affirms that upon the journalization of a direct transfer, the confirmation is self-executing for purposes of terminating the right of redemption. R.C. 323.28(E);
- Allows the Sheriff to simply read the parcel number (as opposed to the entire legal description) when auctioning foreclosed properties. R.C. 323.28(F); R.C 2703.141(B); R.C. 5721.19(C)(1);
- Provides that writs, orders of sale, orders of execution may be executed not only by the “clerk of courts,” but also by the courts and BOR themselves without reference to the Clerk of Courts. R.C. 2303.011; R.C 2323/07; R.C 2327.01 and 02;
- The officer that sells the property at auction is authorize, but not required to file the deed on its own, or on behalf of a buyer. Any bidder at auction is deemed to have consented to the officer accepting delivery and filing the deed. R.C 2327(C); 2329.36(B);
- Clarifies that upon a writ of execution to sell property, a municipal corporation may inspect any structures on the lands which are subject to the writ. 2329.17(B);

SB 172 (130th General Assembly)

- Recording and Certification Fees (LRCs and Subsidiaries Exempt) R.C. 317.32;
- Real Estate Conveyance Fee Exemption Extended to Wholly Owned Subsidiary of LRC. R.C. 319.549(F)(3)(y);
- Use of DTAC Funds by the Treasurer or Prosecutor for LRC support need not obtain the consent of the Investment Advisory Committee R.C. 321.261(D)(1);
- DTAC funds, and excess DTAC funds may be used to support LRCs R.C. 321,261(D)(2);
- Clarifies that under R.C. 323.25, tax foreclosures may occur within 60 days after delinquency, regardless of whether the “...delinquent land tax list ...that includes the premises has been published...” under R.C. 5721.02. R.C. 323.25;
- Authorizes only one Sheriff sale (not two) in the case of foreclosure decrees of abandoned lands. R.C. 323.28(D);
- If the LRC is pursuing a foreclosure action (other than a tax foreclosure in order to collect a debt) secured by a lien, it does not have to pay the typical taxes and

assessments if it ends up being the purchaser by way of bidding its own lien. R.C. 323.47(B)(3);

- The alternate right of redemption period changed from 45 days to 28 days. R.C. 323.65(J);
- Changes the 14 day period upon which an owner can automatically demand that a BOR case be dismissed and forced to start all over, to a right to TRANSFER to a court, thus preserving all PJRs and notices. R.C. 323.69(B)(2);
- Provides that only a part served by publication is required to file an answer with 28 days of perfecting notice by publication. Failure to do so, renders that party in default, thus removing the requirement that subsequent papers be served on parties. Parties in default due to failure to appear to a final hearing or not responding in said 28 days are deemed in default. R.C. 323.69(D);

Creates a system of allowing cross transfer of cases between the court and the BOR. R.C. 323.691;

- A record owner may, as of right, may have a case transferred to a court with 14 days after service. Also, BORs are given the right to issue subpoenas. R.C. 323.70(C) and (D);
- Eliminates the right of an owner or lienholder to dismiss a case due to the complexity” of the cases, but only allows for a discretionary transfer by the BOR. R.C. 323.72;
- Provides for a forfeiture of the deposit if a bidder at a Sheriff sale fails to pay the bid timely. R.C. 323.73(C);
- Clarifies the application of the alternative right of redemption period and clarifies the time for appeal to the Court of Common Pleas pursuant to Chapter R.C. 2505 R.C 323.78 and R.C. 323.79
- Clarifies that a LRC or a municipality may pursue any one or all of the remedies available to collect a nuisance abatement lien under R. C. 715.261 such that they can pursue their own foreclosure action, pursue a money judgment action and/or certify the nuisance liens to the duplicate for foreclosure by the Prosecutor as and for unpaid taxes. R.C. 715.261;
- This section provides that if an electing subdivision including a LRC forecloses on its lien and there are no bidders at sale, the property may be transferred and treated as a R.C. 5722.19 “deed in lieu” to the LRC. R.C. 715.261(B);
- Any land transferred to a LRC after a foreclosure action which results in a transfer to a LRC, forbids a municipality from placing nuisance abatement liens on the property prior to the LRC’s acquisition. And, if a citizen subsequently acquires the parcel from the LRC, the changes provides a method for the citizen to have the lien removed as a matter of law. R.C. 715.261(D) and (H);
- Prohibits the filing of water liens on a parcel acquired by a LRC, and the removal of same, once acquired by the LRC and provided the lien was not the result of the LRC’s usage. R.C. 743.04;
- Authorizes sovereign immunity under R.C. 2744;
- Provides that any transfers to an electing subdivision, however acquired, are exempt from having to file an exemption application with the Tax Commissioner retroactive to April 2009. Deals with transfers from a LRC to a City, technically not a foreclosure acquisition by the City. R.C. 5709.12(F);

- R.C. 5721.18(D) was repealed which created an ambiguity regarding in rem foreclosures. Most foreclosures in Ohio are now in personam;
- Surplus funds after a tax foreclosure may be paid to the County Land Reutilization Fund for Land bank purposes if not redeemed within 3 years. R.C. 5721.20
- Allows a county or LRC within one year of a sale, to repurchase a tax lien certificate from a bulk buyer (auction or negotiated) by repaying the actual costs thereof of the certificate buyer. R.C. 5721.36(A)(3);
- Provides that only one sheriff sale is necessary when the foreclosed parcel is abandoned. R.C. 5722.03(D);
- Provides that water, sewer and nuisance liens whenever incurred or result in a lien on a property, such charge or lien may not be visited upon a LRC unless it is responsible for the charges. A municipality may pursue money damages against the prior owner that incurred the charges. R.C. 5722.03(F);
- In the case of an acquisition by a LRC that it deems to have been improvident for any reason, or if it turns out the property was occupied or otherwise was acquired by mistake, LRCs are authorized and given standing to file a motion to vacate such decree of foreclosure. The Court or BOR must grant the motion if made within 60 days of the original decree, and thereafter may do so with the Court's or BOR's discretion. R.C.5722.031;
- Provides for the extinguishment of water, sewer and nuisance liens of properties acquired by a LRC. Creates bonafide purchaser status. RC. 5722.04(C);
- Properties that are abandoned may be conveyed to a LRC upon the Auditors consent. Such consent is made more mandatory in cases of unproductive lands. R.C. 5722.10;
- Allows for entry onto forfeited lands for the purpose of safety inspection. R.C. 5723.01;
- Prohibits a sewer district or public provider from placing liens on a parcel that is owned by a LRC, provided the LRC was not the entity that incurred the charges; R.C.6119.06

III. Proposed and Upcoming Amendments: By Subject Matter.

- A. Addressing priority and effectiveness of Municipal and LRC Nuisance Abatement Liens;
- B. Addressing cost recovery on forfeitures, and transfers to land banks for tax foreclosure litigation costs at annual settlement;
- C. Reducing one-year incontestability to 90 days for abandoned land tax foreclosures.
- D. Addressing motions to vacate in the BOR not to be used as a substitute for timely appeal;
- E. Elimination of land bank sale recapture to the taxing districts, clarifying consent of taxing districts and eliminating "fair market value" restrictions of abandoned lands and authorizing application of proceeds to land reutilization programs in the affected municipality;
- F. Eliminate (or make voluntary) taxing district representatives and committees;
- G. Addressing deeds in lieu as authorized even if there are subordinate liens on the parcel, but subject in all cases to those liens;

- H. The fifteen year auction requirement should be eliminated;
- I. Addressing who may charge for asbestos notification fees;
- J. Addressing deed tax mailing address to be deemed presumptively as adequate service on abandoned property for purposes of service of process;
- K. Title guarantees or insurance should inure to the purchaser of the property at Sheriff sale or to an electing subdivision acquired through tax foreclosure;
- L. Limited Right to inspect abandon lands during foreclosure, immunity, termination of right;
- M. Electronic Service of Process in lieu of costly daily paper publication of general circulation;
- N. Addressing HB 294 and BOR's discretionary powers to transfer a case because of a lienholder's "security."
- O. Authorizing sheriff to be able to convey parcels to a LRC prior to actual recovery of unreimbursed settlement costs from the Budget Commission;
- P. Authorizes discretionary Auditor sales and the selection of parcels in such sales.