

**As Reported by the House Civil Justice Committee**

**135th General Assembly**

**Regular Session**

**2023-2024**

**H. B. No. 390**

**Representatives Brown, Swearingen**

**Cosponsors: Representatives Dell'Aquila, Denson, Troy, Brennan, Hillyer,  
Wiggam, Carruthers, Schmidt**

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**A BILL**

To amend sections 2329.01, 2329.44, and 5721.20 of 1  
the Revised Code to revise the law relating to 2  
the notice of excess funds in real property 3  
foreclosure sales. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 2329.01, 2329.44, and 5721.20 of 5  
the Revised Code be amended to read as follows: 6

**Sec. 2329.01.** (A) Lands and tenements, including vested 7  
legal interests therein, permanent leasehold estates renewable 8  
forever, and goods and chattels, not exempt by law, shall be 9  
subject to the payment of debts, and liable to be taken on 10  
execution and sold as provided in sections 2329.02 to 2329.61 of 11  
the Revised Code. 12

(B) As used in sections 2329.02 to 2329.61 of the Revised 13  
Code: 14

(1) "Commercial property" means any property that is not 15  
residential property. 16

(2) "Private selling officer" means a resident of this state licensed as both an auctioneer under Chapter 4707. of the Revised Code and as a real estate broker or real estate salesperson under Chapter 4735. of the Revised Code.

(3) "Residential mortgage loan" and "residential property" have the same meanings as in section 2308.01 of the Revised Code.

(4) "Judgment debtor" includes any individual, corporation, business trust, estate, trust, partnership, or association.

**Sec. 2329.44.** (A) On a sale made pursuant to this chapter, if the officer who makes the sale receives from the sale more money than is necessary to satisfy the writ of execution, with interest and costs, the officer who made the sale shall deliver any balance remaining after satisfying the writ of execution, with interest and costs, to the clerk of the court that issued the writ of execution not later than forty-five days after confirmation of the sale. The clerk then shall do one of the following:

~~(1)~~ (1)(a) If the balance is ~~one~~ five hundred dollars or more, send to the judgment debtor whose property was the subject of the sale a notice that indicates the amount of the balance, informs the judgment debtor that the judgment debtor is entitled to receive the balance, and sets forth the procedure that the judgment debtor is required to follow to obtain the balance. This Subject to divisions (A) (1) (b) and (c) of this section, this notice shall be sent ~~to~~ in the following manner:

(i) To the judgment debtor at the address of the judgment debtor in the caption on the judgment or at any different

address the judgment debtor may have provided, by certified 46  
mail, return receipt requested, within ninety days after the 47  
sale. 48

(ii) If the certified mail envelope sent under division 49  
(A) (1) (a) (i) of this section is returned with an endorsement 50  
showing failure or refusal of delivery, the clerk immediately 51  
shall send the judgment debtor, at the address of the judgment 52  
debtor in the caption on the judgment or any different address 53  
the judgment debtor may have provided, a similar notice by 54  
ordinary mail. 55

(iii) If the ordinary mail envelope sent under division 56  
(A) (1) (a) (ii) of this section is returned for any reason, the 57  
clerk immediately shall give a similar notice to the judgment 58  
debtor that includes the case number, the name of the judgment 59  
debtor, if known, and information on how to contact the clerk by 60  
an advertisement in a newspaper published in and of general 61  
circulation in the county, which advertisement shall run at 62  
least once. ~~The advertisement shall include the case number, the~~ 63  
~~name of the judgment debtor, and information on how to contact~~ 64  
~~the clerk, a posting on the clerk's web site, a text message to~~ 65  
the judgment debtor, or a posting in a conspicuous place in the 66  
court where the action was commenced. 67

(b) If the address of the judgment debtor is not known, 68  
the clerk shall not send a notice by mail under division (A) (1) 69  
(a) (i) or (ii) of this section, but shall comply with division 70  
(A) (1) (a) (iii) of this section. 71

(c) If the name of the judgment debtor is not known, but 72  
the address of the judgment debtor is known, the clerk shall 73  
send the notice required under division (A) (1) (a) of this 74  
section in the manner prescribed by division (A) (1) (a) (i), (ii), 75

or (iii) of this section. 76

(d) If the balance remains unclaimed for ninety days 77  
following the ~~first date of last mailing, publication, posting,~~ 78  
or text message required under division (A)(1)(a), (b), or (c) 79  
of this section, the clerk shall dispose of the balance in the 80  
same manner as unclaimed money is disposed of under sections 81  
2335.34 and 2335.35 of the Revised Code. 82

~~(2)~~ (2)(a) If the balance is less than ~~one~~ five hundred 83  
dollars, send to the judgment debtor whose property was the 84  
subject of the sale a notice that indicates the amount of the 85  
balance, informs the judgment debtor that the judgment debtor is 86  
entitled to receive the balance, and sets forth the procedure 87  
that the judgment debtor is required to follow to obtain the 88  
balance. This notice shall be sent to the judgment debtor ~~at~~ in 89  
the following manner: 90

(i) At the address of the judgment debtor in the caption 91  
on the judgment or at any different address the judgment debtor 92  
may have provided, by ordinary mail; 93

(ii) If the address of the judgment debtor is not known, 94  
the clerk shall notify the judgment debtor in the same manner 95  
prescribed by division (A)(1)(a)(iii) of this section. 96

(iii) If the name of the judgment debtor is not known, but 97  
the address of the judgment debtor is known, the clerk shall 98  
notify the judgment debtor in the manner prescribed by either 99  
division (A)(2)(a)(i) or (A)(1)(a)(iii) of this section. 100

(b) If the balance remains unclaimed for ninety days 101  
following the date of the last mailing, publication, posting, or 102  
text message required by division (A)(2)(a) of this section, the 103  
clerk shall dispose of the balance in the same manner as 104

unclaimed money is disposed of under sections 2335.34 and 105  
2335.35 of the Revised Code. 106

(B) (1) Subject to division (B) (2) of this section, the 107  
clerk of the court that issued the writ of execution, on demand 108  
and whether or not the notice required by division (A) (1) or (2) 109  
of this section is provided as prescribed, shall pay the balance 110  
to the judgment debtor or the judgment debtor's legal 111  
representatives. 112

(2) The clerk of the court that issued the writ of 113  
execution is not required to pay the balance to the judgment 114  
debtor or the judgment debtor's legal representatives pursuant 115  
to division (B) (1) of this section until the judgment debtor or 116  
the legal representatives pay to the clerk the actual costs 117  
incurred in the provision of the notice required by division (A) 118  
(1) or (2) of this section. 119

**Sec. 5721.20.** Except in cases where the property is 120  
transferred without sale to a municipal corporation, township, 121  
county, community development organization, or county land 122  
reutilization corporation pursuant to the alternative redemption 123  
period procedures contained in section 323.78 of the Revised 124  
Code, both of the following apply: 125

(A) If the officer who makes the sale receives from the 126  
sale more money than is necessary to satisfy the writ of 127  
execution, with interest and costs, the officer who made the 128  
sale shall deliver any balance remaining after satisfying the 129  
writ of execution, with interest and costs, to the clerk of the 130  
court that issued the writ of execution not later than forty- 131  
five days after confirmation of sale; 132

(B) The clerk of the court that issued the writ of 133

execution shall notify the owner of any residue of moneys from 134  
the sale or foreclosure of lands remaining to the owner on the 135  
order of distribution, in a manner consistent with division (A) 136  
of section 2329.44 of the Revised Code. Any residue of moneys 137  
from the sale or foreclosure of lands remaining to the owner and 138  
unclaimed by such owner within ~~sixty-ninety~~ days from ~~its~~ 139  
~~receipt~~the day the final notice is provided in accordance with 140  
division (A) of section 2329.44 of the Revised Code, shall be 141  
paid into the county treasury and shall be charged separately to 142  
the county treasurer by the county auditor, in the name of the 143  
supposed owner. The treasurer shall retain such excess in the 144  
treasury for the proper owner of such lands upon which the 145  
foreclosure was had, and upon demand by such owner, within three 146  
years from the date of receipt, shall pay such excess to the 147  
owner. If the owner does not demand payment of the excess within 148  
three years, then the excess shall be forfeited to the 149  
delinquent tax and assessment collection fund created under 150  
section ~~323.261~~321.261 of the Revised Code, or in counties that 151  
have established a county land reutilization corporation fund 152  
under section ~~323.263~~321.263 of the Revised Code, to the county 153  
land reutilization corporation fund. 154

**Section 2.** That existing sections 2329.01, 2329.44, and 155  
5721.20 of the Revised Code are hereby repealed. 156