

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Baldwin's Ohio Revised Code Annotated
Title LVII. Taxation (Refs & Annos)
Chapter 5721. Delinquent Lands (Refs & Annos)
Tax Certificates

R.C. § 5721.37

5721.37 Request for foreclosure; notice of intent to foreclose; failure to foreclose in a timely manner

Effective: September 29, 2011

[Currentness](#)

(A)(1) At any time after one year from the date shown on the tax certificate as the date the tax certificate was sold, and not later than the end of the certificate period, a certificate holder, except for a county land reutilization corporation, may file with the county treasurer a request for foreclosure, or a private attorney on behalf of the certificate holder may file with the county treasurer a notice of intent to foreclose, on a form prescribed by the tax commissioner, provided the certificate parcel has not been redeemed under division (A) or (C) of [section 5721.38 of the Revised Code](#) and at least one certificate respecting the certificate parcel, held by the certificate holder filing the request for foreclosure or notice of intent to foreclose and eligible to be enforced through a foreclosure proceeding, has not been voided under [section 5721.381 of the Revised Code](#). If the certificate holder is a county land reutilization corporation, the corporation may institute a foreclosure action under the statutes pertaining to the foreclosure of mortgages or as permitted under [sections 323.65 to 323.79 of the Revised Code](#) at any time after it acquires the tax certificate.

(2) If, before the expiration of the certificate period, the owner of the property files a petition in bankruptcy, the county treasurer, upon being notified of the filing of the petition, shall notify the certificate holder by ordinary first-class or certified mail or by binary means of the filing of the petition. It is the obligation of the certificate holder to file a proof of claim with the bankruptcy court to protect the holder's interest in the certificate parcel. The last day on which the certificate holder may file a request for foreclosure or a notice of intent to foreclose is the later of the expiration of the certificate period or one hundred eighty days after the certificate parcel is no longer property of the bankruptcy estate; however, the certificate period is tolled while the property owner's bankruptcy case remains open. If the certificate holder is a county land reutilization corporation, the corporation may institute a foreclosure action under the statutes pertaining to the foreclosure of mortgages or as permitted under [sections 323.65 to 323.79 of the Revised Code](#) at any time after it acquires such tax certificate, subject to any restrictions under such bankruptcy law or proceeding.

Interest at the certificate rate of interest continues to accrue during any extension of time required by division (A)(2) of this section unless otherwise provided under Title 11 of the United States Code.

(3) If, before the expiration of three years from the date a tax certificate was sold, the owner of property for which the certificate was sold applies for an exemption under [section 3735.67](#) or [5715.27 of the Revised Code](#) or under any other section of the Revised Code under the jurisdiction of the director of environmental protection, the county treasurer shall notify the certificate holder by ordinary first-class or certified mail or by binary means of the filing of the application. Once a determination has been made on the exemption application, the county treasurer shall notify the certificate holder of the determination by ordinary first-class or certified mail or by binary means. Except with respect to a county land reutilization corporation, the last day on

which the certificate holder may file a request for foreclosure shall be the later of three years from the date the certificate was sold or forty-five days after notice of the determination was provided.

(B) When a request for foreclosure or a notice of intent to foreclose is filed under this section, the certificate holder shall submit a payment to the county treasurer equal to the sum of the following:

(1) The certificate redemption prices of all outstanding tax certificates that have been sold on the parcel, other than tax certificates held by the person requesting foreclosure;

(2) Any taxes, assessments, penalties, interest, and charges appearing on the tax duplicate charged against the certificate parcel that is the subject of the foreclosure proceedings and that are not covered by a tax certificate, but such amounts are not payable if the certificate holder is a county land reutilization corporation;

(3) If the foreclosure proceedings are filed by the county prosecuting attorney pursuant to [section 323.25](#), [sections 323.65 to 323.79](#), or [section 5721.14](#) or [5721.18 of the Revised Code](#), a fee in the amount prescribed by the county prosecuting attorney to cover the prosecuting attorney's legal costs incurred in the foreclosure proceeding.

(C)(1) With respect to a certificate purchased under [section 5721.32](#), [5721.33](#), or [5721.42 of the Revised Code](#), if the certificate parcel has not been redeemed and at least one certificate respecting the certificate parcel, held by the certificate holder filing the request for foreclosure and eligible to be enforced through a foreclosure proceeding, has not been voided under [section 5721.381 of the Revised Code](#), the county treasurer, within five days after receiving a foreclosure request and the payment required under division (B) of this section, shall certify notice to that effect to the county prosecuting attorney and shall provide a copy of the foreclosure request. The county treasurer also shall send notice by ordinary first class or certified mail to all certificate holders other than the certificate holder requesting foreclosure that foreclosure has been requested by a certificate holder and that payment for the tax certificates is forthcoming. Within ninety days of receiving the copy of the foreclosure request, the prosecuting attorney shall commence a foreclosure proceeding in the name of the county treasurer in the manner provided under [section 323.25](#), [sections 323.65 to 323.79](#), or [section 5721.14](#) or [5721.18 of the Revised Code](#), to enforce the lien vested in the certificate holder by the certificate. The prosecuting attorney shall attach to the complaint the foreclosure request and the county treasurer's written certification.

(2) With respect to a certificate purchased under [section 5721.32](#), [5721.33](#), or [5721.42 of the Revised Code](#), if the certificate parcel has not been redeemed, at least one certificate respecting the certificate parcel, held by the certificate holder filing the notice of intent to foreclose and eligible to be enforced through a foreclosure proceeding, has not been voided under [section 5721.381 of the Revised Code](#), a notice of intent to foreclose has been filed, and the payment required under division (B) of this section has been made, the county treasurer shall certify notice to that effect to the private attorney. The county treasurer also shall send notice by ordinary first class or certified mail or by binary means to all certificate holders other than the certificate holder represented by the attorney that a notice of intent to foreclose has been filed and that payment for the tax certificates is forthcoming. After receipt of the treasurer's certification and not later than one hundred twenty days after the filing of the intent to foreclose or the number of days specified under the terms of a negotiated sale under [section 5721.33 of the Revised Code](#), the private attorney shall commence a foreclosure proceeding in the name of the certificate holder in the manner provided under division (F) of this section to enforce the lien vested in the certificate holder by the certificate. The private attorney shall attach to the complaint the notice of intent to foreclose and the county treasurer's written certification.

(D) The county treasurer shall credit the amount received under division (B)(1) of this section to the tax certificate redemption fund. The tax certificates respecting the payment shall be paid as provided in [division \(D\) of section 5721.38 of the Revised Code](#). The amount received under division (B)(2) of this section shall be distributed to the taxing districts to which the delinquent and unpaid amounts are owed. The county treasurer shall deposit the fee received under division (B)(3) of this section in the county treasury to the credit of the delinquent tax and assessment collection fund.

(E)(1) Except with respect to a county land reutilization corporation, if the certificate holder does not file with the county treasurer a request for foreclosure or a notice of intent to foreclose with respect to a certificate parcel with the required payment within the certificate period or any extension of that period pursuant to [division \(C\)\(2\) of section 5721.38 of the Revised Code](#), or within the period provided under division (A)(2) of this section, and during that time the certificate has not been voided under [section 5721.381 of the Revised Code](#) and the certificate parcel has not been redeemed or foreclosed upon, the certificate holder's lien against the parcel is canceled and the certificate is voided, subject to division (E)(2) of this section.

(2) In the case of any tax certificate purchased under [section 5721.32 of the Revised Code](#) or under [section 5721.42 of the Revised Code](#) by the holder of a certificate issued under [section 5721.32 of the Revised Code](#) prior to June 24, 2008, the county treasurer, upon application by the certificate holder, may sell to the certificate holder a new certificate extending the three-year period prescribed by division (E)(1) of this section, as that division existed prior to that date, to six years after the date shown on the original certificate as the date it was sold or any extension of that date.

The county treasurer and the certificate holder shall negotiate the premium, in cash, to be paid for a new certificate sold under division (E)(2) of this section. If the county treasurer and certificate holder do not negotiate a mutually acceptable premium, the county treasurer and certificate holder may agree to engage a person experienced in the valuation of financial assets to appraise a fair premium for the new certificate. The certificate holder has the option to purchase the new certificate for the fair premium so appraised. Not less than one-half of the fee of the person so engaged shall be paid by the certificate holder requesting the new certificate; the remainder of the fee shall be paid from the proceeds of the sale of the new certificate. If the certificate holder does not purchase the new certificate for the premium so appraised, the certificate holder shall pay the entire fee. The county treasurer shall credit the remaining proceeds from the sale to the items of taxes, assessments, penalties, interest, and charges in the order in which they became due.

A certificate issued under division (E)(2) of this section vests in the certificate holder and its secured party, if any, the same rights, interests, privileges, and immunities as are vested by the original certificate under [sections 5721.30 to 5721.43 of the Revised Code](#). The certificate shall be issued in the same form as the form prescribed for the original certificate issued except for any modifications necessary, in the county treasurer's discretion, to reflect the extension under this division of the certificate holder's lien to six years after the date shown on the original certificate as the date it was sold or any extension of that date. The certificate holder may record a certificate issued under division (E)(2) of this section or memorandum thereof as provided in [division \(B\) of section 5721.35 of the Revised Code](#), and the county recorder shall index the certificate and record any subsequent cancellation of the lien as provided in that section. The sale of a certificate extending the lien under division (E)(2) of this section does not impair the right of redemption of the owner of record of the certificate parcel or of any other person entitled to redeem the property.

(3) If the holder of a certificate purchased under [section 5721.32](#), [5721.33](#), or [5721.42 of the Revised Code](#) submits a notice of intent to foreclose to the county treasurer but fails to file a foreclosure action in a court of competent jurisdiction within the time specified in division (C)(2) of this section, the liens represented by all tax certificates respecting the certificate parcel held by that certificate holder, and for which the deadline for filing a notice of intent to foreclose has passed, are canceled and the certificates voided, and the certificate holder forfeits the payment of the amounts described in division (B)(2) of this section.

(F) With respect to tax certificates purchased under [section 5721.32](#), [5721.33](#), or [5721.42 of the Revised Code](#), upon the delivery to the private attorney by the county treasurer of the certification provided for under division (C)(2) of this section, the private attorney shall institute a foreclosure proceeding under this division in the name of the certificate holder to enforce the holder's lien, in any court or board of revision with jurisdiction, unless the certificate redemption price is paid prior to the time a complaint is filed. The attorney shall prosecute the proceeding to final judgment and satisfaction, whether through sale of the property or the vesting of title and possession in the certificate holder or other disposition under [sections 323.65 to 323.79 of the Revised Code](#) or as may otherwise be provided by law.

The foreclosure proceedings under this division, except as otherwise provided in this division, 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 and the service shall be complete at the expiration of three weeks after the date of the first publication.

Any notice given under this division shall include the name of the owner of the parcel as last set forth in the records of the county recorder, the owner's last known mailing address, the address of the subject parcel if different from that of the owner, and a complete legal description of the subject parcel. In any county that has adopted a permanent parcel number system, such notice may include the permanent parcel number in addition to a complete legal description.

It is sufficient, having been made a proper party to the foreclosure proceeding, for the certificate holder to allege in such holder's complaint that the tax certificate has been duly purchased by the certificate holder, that the certificate redemption price is due and unpaid, that there is a lien against the property described in the tax certificate, and, if applicable, that the certificate holder desires to invoke the alternative redemption period prescribed in [sections 323.65 to 323.79 of the Revised Code](#), without setting forth in such holder's complaint any other special matter relating to the foreclosure proceeding. The complaint shall pray for an order directing the sheriff, or the bailiff if the complaint is filed in municipal court, to offer the property for sale in the manner provided in [section 5721.19 of the Revised Code](#) or otherwise transferred according to any applicable procedures provided in [sections 323.65 to 323.79 of the Revised Code](#), unless the complaint documents that the county auditor has determined that the true value of the certificate parcel is less than the certificate purchase price. In that case, the prayer of the complaint shall request that fee simple title to the property be transferred to and vested in the certificate holder free and clear of all subordinate liens.

In the foreclosure proceeding, the certificate holder may join in one action any number of tax certificates relating to the same owner. However, the decree for each tax certificate shall be rendered separately and any proceeding may be severed, in the discretion of the court or board of revision, for the purpose of trial or appeal. Except as may otherwise be provided in [sections 323.65 to 323.79 of the Revised Code](#), upon confirmation of sale, the court or board of revision shall order payment of all costs related directly or indirectly to the tax certificate, including, without limitation, attorney's fees of the holder's attorney in accordance with [section 5721.371 of the Revised Code](#). The tax certificate purchased by the certificate holder is presumptive evidence in all courts and boards of revision and in all proceedings, including, without limitation, at the trial of the foreclosure action, of the amount and validity of the taxes, assessments, charges, penalties by the court and added to such principal amount, and interest appearing due and unpaid and of their nonpayment.

(G) If a parcel is sold under this section, the officer who conducted the sale shall collect the recording fee from the purchaser at the time of the sale and, following confirmation of the sale, shall prepare and record the deed conveying the title to the parcel to the purchaser.

CREDIT(S)

(2011 H 153, eff. 9-29-11; 2008 S 353, eff. 4-7-09; 2008 H 562, eff. 9-23-08; 2004 H 168, eff. 6-15-04; 2000 H 493, eff. 10-27-00; 2000 H 533, eff. 10-10-00; 1997 H 371, eff. 2-25-98)

Notes of Decisions (14)

R.C. § 5721.37, OH ST § 5721.37

Current through Files 1 to 56 of the 135th General Assembly (2023-2024) and 2023 Statewide Issues 1 and 2 (November Election).

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