



## Ohio Revised Code

### Section 2329.152 Authorization of private selling officer.

Effective: September 28, 2016

Legislation: House Bill 390 - 131st General Assembly

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(A) In every action demanding the judicial or execution sale of real estate, the county sheriff shall sell the real estate at a public auction, unless the judgment creditor files a motion with the court for an order authorizing a specified private selling officer to sell the real estate at a public auction. If the court authorizes a private selling officer to sell the real estate, the judgment creditor may seek to have the property sold by the private selling officer authorized by the court or by the county sheriff. If the judgment creditor elects to have the property sold by the private selling officer authorized by the court, the judgment creditor shall file with the clerk of the court a praecipe requesting the issuance of an order of appraisal to the sheriff and an order of sale to the private selling officer authorized by the court. Upon the filing of that praecipe, the clerk of the court shall immediately issue both of the following:

(1) An order of appraisal to the sheriff, who shall obtain an appraisal of the real estate in conformity with sections 2329.17 and 2329.18 of the Revised Code;

(2) An order of sale to the private selling officer, who, after the return or determination of the appraisal, shall advertise and sell the real estate in conformity with applicable provisions of sections 2329.01 to 2329.61 of the Revised Code.

(B)(1) As used in this division:

(a) "Business day" means a calendar day that is not a Saturday or Sunday or a legal holiday as defined in section 1.14 of the Revised Code.

(b) "Remote bid" means a bid submitted in writing via facsimile, electronic mail, or overnight delivery or courier.

(2) If the sale of the real estate is conducted at a physical location and not online, then each judgment creditor and lienholder who was a party to the action may submit a remote bid to the sheriff or the



private selling officer. Each sheriff and private selling officer shall establish and maintain a facsimile number or an electronic mail address for use by judgment creditors and lienholders in submitting remote bids. Each remote bid shall be of a fixed maximum amount and shall be delivered to the sheriff or private selling officer on or before four-thirty p.m. on the business day immediately preceding the date of the sale.

(3) Before the sale, the sheriff or the private selling officer shall confirm receipt of the remote bid by sending notice of such receipt via facsimile or electronic mail to the judgment creditor or lienholder who submitted the remote bid. During the sale, the sheriff or the private selling officer shall place the remote bid on behalf of the judgment creditor or lienholder who submitted the remote bid. After the sale, the sheriff or the private selling officer shall provide notice of the results of the sale not later than the close of business on the day of the sale to all judgment creditors and lienholders who submitted remote bids. Such notice shall be sent via facsimile or electronic mail to the judgment creditor or lienholder or by posting the results of the sale on a public web site.

(4) If a sheriff or private selling officer fails to place a remote bid on behalf of a judgment creditor or lienholder to the prejudice of the judgment creditor or lienholder, then, upon the filing of a motion to vacate the sale within ten business days after the sale date, the sale shall be vacated.

(C)(1) A judgment creditor that obtains a court order authorizing a specified private selling officer to sell the real estate at a public auction pursuant to division (A) of this section may instruct the private selling officer to postpone the sale of the real estate one or more times, provided, however that all rescheduled sale dates shall be within one hundred eighty days of the initial sale date. Upon receiving this instruction, the private selling officer shall postpone the sale of the real estate by announcing that the sale is postponed. If the sale is at a physical location, this announcement shall be made at the sale and shall include the date, time, and place of the rescheduled sale of the real estate. If the sale is online, this announcement shall be made on the auction web site and shall include the date of the rescheduled sale of real estate. Each such announcement shall be deemed to meet the notice requirement in section 2329.26 of the Revised Code.

(2) If the judgment creditor does not wish to postpone the sale of the real estate, the judgment creditor may instruct the private selling officer to cancel the sale of the real estate. Upon receiving this instruction, the private selling officer shall cancel the sale of the real estate by announcing that



the sale is canceled. If the sale is at a physical location, this announcement shall be made at the sale. If the sale is online, this announcement shall be made on the auction web site and shall remain posted there until at least the end of the seven-day bidding period described in division (E)(1)(a) of section 2329.152 of the Revised Code.

(3) If the sale of the real estate is postponed or canceled as described in divisions (C)(1) and (2) of this section, all bids made on the real estate prior to the postponement or cancellation of the sale shall be void.

(D)(1) If the judgment creditor obtains a court order to have the real estate sold by a private selling officer, then:

(a) The cost of the appraisal required by section 2329.17 of the Revised Code shall be taxed as costs in the case.

(b) The cost of the advertisement required by section 2329.26 of the Revised Code shall be taxed as costs in the case.

(c) The fee charged by the private selling officer and all costs incurred by the private selling officer other than the costs described in divisions (D)(1)(a) and (b) of this section shall be taxed as costs in the case up to an amount equal to one and one-half per cent of the sale price of the real estate. To the extent the fees and costs described in division (D)(1)(c) of this section exceed one and one-half per cent of the sale price of the real estate, they shall not be included in the amount necessary to redeem real estate under section 2329.33 of the Revised Code or in the calculation of any deficiency judgment under section 2329.08 of the Revised Code but rather shall be paid by the judgment creditor or from the judgment creditor's portion of the proceeds of the sale.

(2) The private selling officer shall file with the court that issued the order of sale an itemized report of all appraisal, publication, marketing, and other expenses of a sale conducted under this section and all fees charged by the private selling officer for marketing the real estate or conducting the sale of the real estate, including the fee charged by the title agent or title insurance company for administrative services, if applicable, and title, escrow, and closing services.



(E)(1) The private selling officer who conducts a sale under this section may do any of the following:

(a) Market the real estate and conduct the public auction of the real estate online or at any physical location in the county in which the real estate is situated. If the auction occurs online, the auction shall be open for bidding for a minimum of seven days.

(b) Hire a title insurance agent licensed under Chapter 3953. of the Revised Code or title insurance company authorized to do business under that chapter to assist the private selling officer in performing administrative services;

(c) Execute to the purchaser, or to the purchaser's legal representatives, a deed of conveyance of the real estate sold;

(d) Record on behalf of the purchaser the deed conveying title to the real estate sold, notwithstanding that the deed may not actually have been delivered to the purchaser prior to its recording.

(2) By placing a bid at a sale conducted pursuant to this section, a purchaser appoints the private selling officer who conducts the sale as agent of the purchaser for the sole purpose of accepting delivery of the deed.

(3) The private selling officer who conducts the sale shall hire a title insurance agent licensed under Chapter 3953. of the Revised Code or title insurance company authorized to do business under that chapter to perform title, escrow, and closing services related to the sale of the real estate.

(F) The fee charged by the title agent or title insurance company for services provided under divisions (E)(1)(b) and (3) of this section shall be taxed as costs in the case provided they are reasonable. Fees less than or equal to five hundred dollars are presumed to be reasonable. Fees exceeding five hundred dollars shall be paid only if authorized by a court order.