



## Ohio Revised Code

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

Effective: September 4, 2014

Legislation: Senate Bill 172 - 130th General Assembly

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.

Nothing in this section or section 5721.03 of the Revised Code prohibits the prosecuting attorney from instituting a proceeding under this section before the delinquent tax list or delinquent vacant land tax list that includes the parcel is published pursuant to division (B) of section 5721.03 of the Revised Code if the list is not published within the time prescribed by that division. 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) The conveyance by the owner of any parcel against which a complaint has been filed pursuant



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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.