

IN THE SUPREME COURT OF OHIO

**THE STATE OF OHIO, ex rel.
ELLIOTT G. FELTNER**

*

CASE NO. 2018-1307

*

RELATOR

*

**Original Action in Prohibition and
Mandamus**

-vs-

*

**CUYAHOGA COUNTY, OHIO
BOARD OF REVISION, et al.**

*

RESPONDENTS.

*

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I. INTRODUCTION

This case examines the unintended consequences of well-meaning legislation. The legislation that allowed the Boards of Revision to conduct foreclosure proceedings were designed to soften the blow to Ohio communities from the economic meltdown and foreclosure crisis of the last decade. With diminishing property values and a sluggish economy, many property owners faced foreclosure. Many more faced property tax bills that they could not pay. Local governments struggled to stay in the black, as the economy searched for traction. Meanwhile, many properties, especially in urban areas, were simply abandoned. Even banks walked away from their mortgages because post-crash property values did not justify the expense of a foreclosure.

In response, the General Assembly enacted several statutes to aid county and local governments in both tax collection and economic development. The enactments sought to streamline the tax foreclosure process and create new entities to drive economic growth. No one can honestly question the good intentions behind these laws. But good intentions are not the standard by which this, or any court, measures legislative acts.

The Relator in this case lost a valuable piece of commercial property through the use of some of these new statutes. His story reminds all of us that no matter how good the intentions behind a piece of legislation, the Constitutions of this state and this nation protect the separation of power among the branches of government and the use of that power to deprive an individual of his property rights.

The ultimate question before the Court is whether the General Assembly exceeded its constitutional authority in enacting R.C. 323.65, et seq., a law that grants to county boards of revision the authority to hear and decide certain real estate tax foreclosure actions. Did the

legislature impermissibly confer upon an administrative board judicial power in violation of the separation of powers doctrine? To wade through these issues, the Court must understand the statutory scheme at issue, as well as Cuyahoga County's governmental structure.

II. THE LEGAL STRUCTURE

To resolve this case, the Court must consider the nature of judicial power and determine whether R.C. 323.65, et seq. grants judicial power to county boards of revision. To complicate this matter, Cuyahoga County's form of government alters some of these statutory provisions, so a review of the County's form of government is also necessary. .

A. Boards of revision and expedited foreclosures

County boards of revision are administrative boards created pursuant to R.C. 5715.01, et seq. to hear and decide challenges to an Auditor's valuation of real estate. A board of revision in a non-charter county is composed of the county treasurer, the county auditor, and one member of the county board of commissioners. R.C. 5715.02. The statutory members of the board of revision may also "provide for one or more hearing boards when they deem the creation of such to be necessary to the expeditious hearing of valuation complaints." "Each official may appoint one qualified employee from the official's office to serve in the official's place and stead on a hearing board for the purpose of hearing complaints as to the value of real property only." R.C. 5715.02. But the General Assembly has added to the role of boards of revision by permitting them to decide certain tax foreclosures.

Board of revision foreclosure actions look and smell like normal tax foreclosure cases. The county treasurer commences the case by filing a complaint with the county clerk of courts, the county prosecutor prosecutes the cases on behalf of the county treasurer, and after judgment,

the properties can be sold at sheriff sale. Through the proceeding, the property owner's common law and statutory rights of redemption is terminated. R.C. 323.76.

The most dramatic difference between board of revision expedited foreclosures and conventional judicial foreclosures relates to how properties are disposed of after judgment. In a conventional tax foreclosure, properties are offered for sale at a sheriff's auction. And although sheriff sales can be ordered on board of revision foreclosures, the preferred method of disposing these tax foreclosed properties is through a direct transfer of the property at no charge to a political subdivision or county land bank that has elected to take the property. This can be accomplished under one of two provisions.

Under R.C. 323.73(G), if the total impositions (taxes, assessments, interest, penalties, etc.) against the property exceed the fair market value of the property, the board of revision may order the property directly transferred to a political subdivision or county land bank. If no political subdivision or land bank wants the property, it is taken through the normal public auction process.

If, however, the fair market value of the property exceeds the total impositions against the property, then the county treasurer, the plaintiff in the foreclosure action, can invoke what is referred to as the "alternative right of redemption." Ohio is the only known jurisdiction in the country to adopt this mechanism and it is only employed in board of revision foreclosures. The use of the alternative right of redemption eliminates the need to take the property through a sheriff sale.

In a conventional foreclosure, the property owner's right of redemption is terminated upon confirmation of the judicial sale. Under the alternative right of redemption, the termination of the property owner's right of redemption is not tied to a sheriff sale and subsequent

confirmation entry. Instead, R. C. 323.78 automatically extinguishes the right of redemption if the taxes are not fully paid within 28 days of board of revision's adjudication of foreclosure. In other words, the expiration of the alternative redemption period acts as a self-executing "confirmation." These direct transfers provide a steady source of properties to land banks and avoid the incidental time and cost associated with advertising for a sheriff sale. Once the 28-day period expires, the sheriff can execute a deed directly to a land bank, depriving the property owner of the equity he or she could have recovered in a traditional Sheriff's sale.

Upon direct transfer of the real estate, all impositions on the property are deemed satisfied and discharged. R.C. 323.78(B). And just like a regular foreclosure, all other liens and encumbrances are extinguished; clean title is transferred to the land bank without payment of any money. The land bank is then free to sell or transfer the property to whomever it wants.

B. Cuyahoga County's Charter

The issues in this case are complicated by the alternative form of county government adopted in Cuyahoga County. The County is organized under Chapter 302 of the Revised Code and operates under a Charter adopted by the citizens of Cuyahoga County. Under the Charter, the County has an elected County Executive, Respondent Armond Budish. It also has a nine-member Council, which functions as the county legislature.

As County Executive, Budish has broad power to run the affairs of the County. (Ex. 2, sec. 2.03) Under the County Charter, Budish appoints, and can remove, officers that are elected in other counties. (*Id.*) Both the county treasurer and the county fiscal officer, which performs many functions, including the duties of the county auditor, serve at the pleasure of Budish. (*Id.* Sec. 2.03(1)).

Under the County Charter, the board of revision is composed of a member of the County Council, the County Executive (Budish), and, at Budish's option, the county treasurer or the fiscal officer. (*Id.*, Sec. 6.02(1); Agreed Statement, ¶3.). However, under the County Charter, the members of the Cuyahoga County Board of Revision are prohibited from hearing valuation complaints. (*Id.*, Sec. 6.02(7)). Instead, the Board of Revision appoints three-person hearing panels, which, under the Charter, have power to decide valuation complaints. (*Id.*, Sec. 6.02(5)). However, the County Charter does not affirmatively grant hearing panels the power to adjudicate foreclosure cases.

C. The County Land Bank

The Cuyahoga Land Bank is an Ohio not-for-profit corporation incorporated by Cuyahoga County in 2009 pursuant to Revised Code Chapter 1724 (Agreed Statement, ¶4). The Land Bank is operated as a county land reutilization corporation for the essential governmental purposes provided for under Revised Code Chapters 1724 and 5722. Under the County Charter, both the county executive and the county treasurer are permanent members of the Board of Directors of the Land Bank (*Id.* ¶6).

The formation of the Land Bank was authorized by a resolution adopted by the Cuyahoga County Board of Commissioners on April 9, 2009, which found the need for “the implementation of a land reutilization program to foster either the return of such nonproductive land to tax revenue generating status or the devotion thereof to public use.” (Agreed Statement, ¶5; Ex. 5). The resolution went on to state that the formation of the Land Bank was in furtherance of the implementation of the County's land reutilization program.

Pursuant to the resolution, the Land Bank and Cuyahoga County entered into an *Agreement And Plan Of Reclamation, Rehabilitation, And Reutilization Of Vacant, Abandoned,*

Tax-Foreclosed Or Other Real Property In Cuyahoga County, Ohio whereby the Land Bank was designated to be the County's agent for "reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property in the County." (Ex. 8). The Land Bank has actively operated under the agreement since 2009.

III. STATEMENT OF FACTS

In November 2015, pursuant to R.C. 323.65, et seq., the Cuyahoga County Treasurer commenced a foreclosure case before the Cuyahoga County Board of Revision entitled *Treasurer, Cuyahoga County, Ohio v. Elliott G. Feltner, et al.*, Cuyahoga County Board of Revision Case No. BR 010620 ("Board of Revision Case"). (Ex. 1, p. 6) In the Board of Revision Case, the Treasurer sought to foreclose the county's lien for real estate taxes and assessments on real estate owned by Relator, Elliott Feltner.

The real estate at issue is Permanent Parcel No. 114-26-004, a roughly 0.63 acre commercial property located at 18927 St. Clair Ave., Cleveland, Ohio (the "Property"). At the time the lawsuit was commenced, certified delinquent taxes on the Property were \$9,353.25, and total taxes owed relative to the Property were \$42,785.26. (Ex. 1, p. 15). The Cuyahoga County Fiscal Officer valued the Property at \$146,000. (*Id.*). Aside from the lien for real estate taxes, the Property was unencumbered. (*Id.*).

Feltner was never served with either the initial complaint or the amended complaint. (Ex. 1, p. 217). He learned of the Board of Revision Case when he was in the process of selling the Property. The existence of the Board of Revision Case was disclosed during a title search performed by the buyer. (*Id.*). Ultimately, he was unable to sell the Property because of the Board of Revision Case.

The case proceeded to final hearing on June 21, 2017. The matter was not heard by the actual Members of the Board of Revision. Rather, the foreclosure case was heard and decided by a hearing panel appointed pursuant to the Charter to hear valuation complaints. (Ex. 12, ¶ 3).

At the final hearing, the hearing panel called the case, and the prosecutor called a witness, identified only as “Ms. Smith.” (Ex. 3). No evidence was offered as to who Ms. Smith was or the basis for her testimony. And although no exhibits were offered into evidence, the witness testified that the “Cuyahoga County Land Bank is interested in the parcel.” (*Id.*, p. 2). She also testified that “the impositions do not exceed the fair market value, therefore the property will transfer via the alternative right of redemption to the County Land Bank.” (*Id.*). The witness then testified that the estimated impositions on the Property were \$65,189.94 and the fair market value of the Property was \$144,500.00. (*Id.*).

At the end of Ms. Smith’s testimony, the hearing panel (a) found in favor of Murray on the foreclosure claim, (b) found that the Land Bank had “petitioned to acquire the property,” (c) ordered that the alternative redemption period of R.C. 323.65(J) and 323.78 apply, and (d) ordered the Sheriff to issue a deed to the Property directly to the Land Bank at the expiration of the alternative redemption period. (Ex. 1, p. 206). The hearing panel did not, however, make any finding that the Property had been, at any time, vacant, abandoned, or unoccupied. Feltner did not appeal the Board of Revision hearing panel’s decision.

At the direction of the Board of Revision hearing panel, a sheriff’s deed was issued to the Land Bank on July 28, 2017. (Ex. 9). As a result of the direct transfer of the Property to the Land Bank, all taxes, assessments, and impositions owed to the County were waived pursuant to R.C. 323.78(B). The County received nothing through the foreclosure process.

On August 21, 2017, the Land Bank issued a Quit Claim deed for the Property to East Side Automotive Services, Inc. (Ex. 10). According to the public records of the County Fiscal Officer, no consideration was given by East Side Automotive Services, Inc. for the Property. East Side Automotive Service, Inc. now uses the Property, presumably as an automotive repair facility. Feltner has received no compensation for the Property. (Ex. 11).

On November 3, 2017, Feltner filed a *Motion to Vacate Judgment* the Board of Revision Case for lack of service of process. (Ex. 11). No response has been filed to the Motion, and the Board of Revision has taken no action on the motion. (*Id.*).

IV. STANDARD ON PROHIBITION

In *State ex rel. Barclays Bank PLC v. Hamilton Cty. Court of Common Pleas*, 660 N.E.2d 458, 74 Ohio St.3d 536, 1996-Ohio-286, this Court stated the standard for the issuance of a writ of prohibition.

" 'For a writ of prohibition to issue, a relator must ordinarily establish: (1) that the court against whom it is sought is about to exercise judicial power, (2) that the exercise of such power is unauthorized by law, and (3) that, if the writ is denied, he will suffer injury for which no other adequate remedy exists.' " *State ex rel. Connor v. McGough* (1989), 46 Ohio St.3d 188, 189, 546 N.E.2d 407, 408, quoting *State ex rel. Largent v. Fisher* (1989), 43 Ohio St.3d 160, 161, 540 N.E.2d 239, 240; and *State ex rel. Fyffe v. Pierce* (1988), 40 Ohio St.3d 8, 9, 531 N.E.2d 673, 674.

Id. 74 Ohio St.3d at. p. 540.

This Court has routinely found that a writ of prohibition is an appropriate remedy in situations like that presented in this case. "[T]he function of the extraordinary prerogative writ of prohibition is to prevent inferior courts and tribunals from usurping jurisdiction beyond that with which they have been invested by law," *State ex rel. Winnefeld v. Court of Common Pleas of*

Butler County, 112 N.E.2d 27, 159 Ohio St. 225, 234 (1953); *see also*, *Scott, Adm'r v. Municipal Court of Cleveland*, 1951, 156 Ohio St. 179, 101 N.E.2d 387.

And if the lower tribunal patently and unambiguously lacks jurisdiction, the requirement of an adequate remedy at law will not prevent the issuance of a writ of prohibition. *Ohio Dept. of Adm. Serv., Office of Collective Bargaining v. State Emp. Relations Bd.*, 54 Ohio St.3d 48, 51, 562 N.E.2d 125, 129; *see also*, *State ex rel. Tollis v. Cuyahoga Cty. Court of Appeals*, 40 Ohio St.3d 145, 148, 532 N.E.2d 727, 729 (1988). Moreover, "[i]f a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, prohibition and mandamus will issue to correct the results of prior jurisdictionally unauthorized actions." *State ex rel. Mayer v. Henson*, 97 Ohio St.3d 276, 2002-Ohio-6323, 779 N.E.2d 223, ¶ 12; *see also* *State ex rel. Powell v. Markus*, 115 Ohio St.3d 219, 2007-Ohio-4793, 874 N.E.2d 775, ¶ 7.

V. ARGUMENT

Through the enactment of R.C. 323.65, et seq., the General Assembly violated the doctrine of separation of powers. It encroached on the constitutional delegation of judicial power to Ohio courts. And in so doing, the legislature also granted to county treasurers the power to decide their own cases for their own benefit.

A. Ohio's separation-of-powers doctrine provides an invaluable check on the legislature.

"The first, and defining, principle of a free constitutional government is the separation of powers." *State v. Bodyke*, 126 Ohio St.3d 266, 933 N.E.2d 753, 2010-Ohio-2424, ¶39. "The separation-of-powers doctrine represents the constitutional diffusion of power within our tripartite government. The doctrine was a deliberate design to secure liberty by simultaneously fostering autonomy and comity, as well as interdependence and independence, among the three

branches.” *Stetter v. R.J. Corman Derailment Services, L.L.C.*, 125 Ohio St.3d 280, 927 N.E.2d 1092, 2010-Ohio-1029, (2010); *see also Hale v. State* (1896), 55 Ohio St. 210, 214, 45 N.E. 199, 200 (“[T]he people possessing all governmental power, adopted constitutions, completely distributing it to appropriate departments.”).

One branch of Ohio’s tripartite government, of course, is our court system. And to the courts, the people of Ohio conferred all judicial power of the state. Art. IV, Sec. 1, Ohio Constitution. Although generally considered the weakest of the three branches of government, the judiciary’s function as an independent check on the excesses of the legislature and executive branches cannot be overvalued. This Court has long lauded the Constitution’s system of checks and balances:

As James Madison explained in Federalist Paper No. 47, the sharing of powers through a system of checks and balances complemented the principle of separation of powers by acting as an additional restraint on government. This blending of powers not only limits government itself, it also provides mechanisms by which each branch can defend its place in our constitutional system. The Federalist Papers No. 47 (Madison 1788) (Wills Ed.1982), at 243-246.

DeRolph v. State, 93 Ohio St.3d 309, 327, 754 N.E.2d 1184, 2001-Ohio-1343, (2001).

Only through fulfilling its role in this system can Ohio’s judiciary “guard the Constitution and the rights of individuals from the effects of those ill humors, which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, . . . have a tendency . . . to occasion dangerous innovations in the government, and serious oppressions of the minor party in the community.” The Federalist Papers, No. 78 (Hamilton 1788).

To that end, Ohio’s judiciary must “jealously guard the judicial power against encroachment from the other two branches of government and to conscientiously perform [its]

constitutional duties and continue [its] most precious legacy.” *State ex rel. Ohio Academy of Trial Lawyers v. Sheward*, 715 N.E.2d 1062, 86 Ohio St.3d 451, 467, 1999-Ohio-123, (Ohio 1998). This duty is “not born of self-reverence, but from the need to protect the borders separating the three branches in order to ensure the security and harmony of the government . . . and to avoid the evils that would flow from legislative encroachment on our independence.” *Bodyke*, ¶ 47 (citations omitted).

The question in this case becomes whether the General Assembly encroached on the bailiwick of the judicial branch. Answering such an enquiry may be difficult, especially when dealing with administrative agencies. *See, Fassig v. State Ex Rel Turner*, 95 Ohio St. 232, 116 N.E. 104, syllabus 2 (1917).

B. Quasi-judicial proceedings further the function of the administrative agency.

At times, it is difficult to draw a clear line distinction between the proper legislative delegation of quasi-judicial power and the improper delegation of purely judicial power. The issue comes down to one of definition. This Court has observed “the judicial article requires the judicial power of the state, to be vested in the courts and in justices of the peace; but of what this judicial power consists, and what are its limits, are not defined.” *State v. Harmon*, 31 Ohio St. 250, 258 (1877).

Quasi-judicial power has been defined as “the power to hear and determine controversies between the public and individuals that require a hearing resembling a judicial trial.” *State ex rel. Miller v. Warren Cty. Bd. of Elections*, 130 Ohio St.3d 24, 2011-Ohio-4623, 955 N.E.2d 379, ¶13 (citations omitted.); *see also State ex rel. Upper Arlington v. Franklin Cty. Bd. of Elections*, 119 Ohio St.3d 478, 2008-Ohio-5093, 895 N.E.2d 177, ¶16. Quasi-judicial power is often exercised by the executive branch in the fulfillment of its administrative duties: workers

compensation, unemployment compensation, professional licensing, real estate valuation, environmental protection, public utilities, and elections, to name a few.

But all of these examples have a common element – in them, the quasi-judicial powers are ancillary to administrative functions. The Bureau of Workers Compensation administers Ohio’s workers compensation benefit program. The PUCO regulates Ohio public utilities. The Department of Commerce oversees several professional licensing programs. And until 2008, county boards of revision heard only complaints about real estate values assessed by the county auditor.

In each instance, a private citizen voluntarily places herself under the authority of an executive agency by applying for a government benefit, seeking a license or permit, or entering a regulated field. The administrative agency then conducts fact finding consistent with the objective of its executive duty. However, during that fact-finding, the agency and the citizen are not adversaries. The most that can be said is that at the end of the quasi-judicial proceeding, the citizen is granted or denied a benefit or right under the program the agency administers. In none of these proceedings does a citizen lose title to her real estate.

C. The nature of judicial power is determining the rights and obligations of adverse parties.

The power of the General Assembly to dole out governmental power is great. Any limitation on its plenary power arises from special prohibition “found in express terms, or be clearly inferable, by necessary implication, from the language of the instrument [Constitution], when fairly construed according to its manifest spirit and meaning.” *Ostrander v. Preece*, 129 Ohio St. 625, 629, 196 N.E. 670, (1935).

In other words, it is the intent of the people in enacting the Constitution that controls this issue. “What constitutes judicial power, within the meaning of the constitution, is to be

determined in the light of the common law and of the history of our institutions as they existed anterior to and at the time of the adoption of the constitution.” *Harmon*, 31 Ohio St. at p. 258; *see also*, *De Camp v. Archibald*, 50 Ohio St. 618, 625 (1893) (“It is a rule of general application that words used in a constitution are to be interpreted with reference to the usages and customs of the country at the time of its adoption.”) “Whether power, in a given instance, ought to be assigned to the judicial department, is ordinarily determinable from the nature of the subject to which the power relates.” *Harmon*, pp. 258-59.

Over the years, the Court has made several other attempts to define judicial power. “A law that confers upon a court the authority to render a judgment or decree which shall be a judicial settlement of the question in controversy, is a law conferring judicial power.” *State v. Cox*, 87 Ohio St. 313, 101 N.E. 135, (1913), syll.1.; *see also*, *State ex rel. Attorney Gen. v. Guilbert*, 56 Ohio St. 575, 47 N.E. 551, 627-28 (1897). (the rendering of an entry that concluded “the rights of the adversary parties as would a decree in equity” was the exercise of judicial power.”); *State ex rel. Atty. Gen. v. Peters* (1885), 43 Ohio St. 629, 648, 4 N.E. 81, 86; *Stanton v. Tax Comm.* (1926), 114 Ohio St. 658, 672, 151 N.E. 760, 764 (“the primary functions of the judiciary are to declare what the law is and to determine the rights of parties conformably thereto”); *Fairview v. Giffie* (1905), 73 Ohio St. 183, 190, 76 N.E. 865, 867 (“It is indisputable that it is a judicial function to hear and determine a controversy between adverse parties, to ascertain the facts, and, applying the law to the facts, to render a final judgment.”).

Under any of these pronouncements, board of revision foreclosures require the exercise of purely judicial power.

D. The power to hear and decide foreclosure actions is purely judicial.

The ultimate question before the Court is whether the power to hear and decide a

foreclosure action is judicial power. Can such an adversarial action, which involves numerous parties advocating for their private interests, ever be deemed a purely administrative proceeding? Examining specific attributes of a foreclosure action aids the analysis significantly.

1. Foreclosure actions are adversarial.

The adversarial process is a hallmark of the American justice system. In it, a tribunal is presented with facts and legal arguments by partisans with a personal stake in the outcome of the proceeding. Both sides fight to win. And at the end of the matter, the tribunal finds either that the plaintiff was wronged or that the defendant is vindicated.

Unlike quasi-judicial proceedings, foreclosure actions are adversarial. And it is the adversarial nature of the proceedings that provides perhaps the greatest indicia that the power granted by the General Assembly is judicial. Unlike a claim for workers compensation or unemployment benefits, in which a citizen seeks a governmental benefit through application to an administrative agency, in tax foreclosure cases, property owners are summoned before the board without their consent through service of process and must defend against the government's claims for relief. If they fail to do so, the defendants are stripped of vested property rights through a decree of foreclosure.

When deciding an expedited foreclosure action, the county board of revision must conduct a hearing on the merits of the complaint and determine, among other things, the validity and amount "of any impositions alleged in the complaint." R.C. 323.70(A). The plaintiff – the county treasurer – must prove its entitlement to relief by a preponderance of the evidence presented at the hearing. *Id.* In other words, the government has a burden of proof and must meet that burden through the presentation of evidence in an adversarial setting.

The undeniable conclusion is that the General Assembly, through enactment of these

statutes, sought to give to boards of revision purely judicial powers. A private citizen is haled before the board of revision, against his will, to answer for taxes assessed against his property. His opponent, the county treasurer, a land bank, or a tax certificate purchaser, is represented by counsel, and the proceedings are conducted in the manner of other civil actions. And should he fail to appear or fail to prevail on the merits, the relief awarded by the board of revision is that which heretofore has been granted only by courts – a decree of foreclosure that terminates his rights of redemption.

An action that adjudicates the rights and duties of parties to an adversarial proceeding can be nothing but a judicial proceeding. And the power to grant a decree of foreclosure is, and in Ohio always has been, judicial power. Therefore, the enactment of R.C. 323.65-.78 is nothing but a legislative effort to grant powers to an administrative board that the Ohio Constitution has reserved exclusively to Ohio's courts. Such an effort is patently unconstitutional.

2. Boards of revision and common pleas court possess concurrent jurisdiction over these tax foreclosures.

The issue can be examined in another way, as well. A natural corollary to the fact that courts possess all judicial power in the state, is that the *only* power Ohio courts possess is judicial power. And this Court has recently held that Ohio common pleas courts have jurisdiction over foreclosure cases. *Bank of Am., N.A. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, ¶20 (“We have also long held that actions in foreclosure are within the subject matter jurisdiction of a court of common pleas.”). Therefore, through the enactment of R.C. 323.65-.79, the General Assembly sought to confer on boards of revision powers previously known only to common pleas courts. In other words, under R.C. 323.65, et seq. boards of revision and common pleas courts possess concurrent jurisdiction.

“A county board of revision may order that a proceeding arising from a complaint filed

under section 323.69 of the Revised Code be transferred to the court of common pleas or to a municipal court with jurisdiction.” R.C. 323.691(A)(1). That provision goes on to permit, but not require, a common pleas court to transfer to the board of revision tax foreclosure actions if the court determines the real estate at issue is abandoned land. R.C. 323.691(A)(2). That the statute permits transfer of these cases, as opposed to dismissal for lack of jurisdiction, the two tribunals possess concurrent jurisdiction.

The natural conclusion then is that boards of revision have been granted the same power a common pleas court possesses – judicial power.

3. Foreclosure actions involve numerous parties.

Whereas quasi-judicial proceedings are limited to disputes between the government and individuals, the power exercised by the Board of Revision is not so limited. Indeed, the ability to initiate a board of revision foreclosure is not limited to the county treasurer. Revised Code 323.65(A) provides that a board of revision may also hear complaints filed by a county land bank or by purchasers of tax certificates under R.C. 5721.30:

(A) Upon the completion of the title search required by section 323.68 of the Revised Code, ***the prosecuting attorney, representing the county treasurer, the county land reutilization corporation, or the certificate holder may file with the clerk of court a complaint for the foreclosure*** of each parcel of abandoned land appearing on the abandoned land list, and for the equity of redemption on each parcel. The complaint shall name all parties having any interest of record in the abandoned land that was discovered in the title search. ***The prosecuting attorney, county land reutilization corporation, or certificate holder may file such a complaint*** regardless of whether the parcel has appeared on a delinquent tax list or delinquent vacant land tax list published pursuant to division (B) of section 5721.03 of the Revised Code.

R.C. 323.65(A)(emphasis added). Thus, the statute expressly provides that the board of revision may hear disputes between two purely private individuals.

Also, inherent in a foreclosure action is the marshalling of liens. *Chemical Bank v.*

Sullivan, 6th Dist. Lucas No. L-96-361, 121 Ohio App.3d 111, 113, 699 N.E.2d 105 (1997).

"[T]he equitable principle of marshaling of liens provides that proceeds will be applied to all lienholders' claims, in order of their priority." *Lexington Ridge Homeowners Association v. Schlueter*, 9th Dist. Medina No. 10CA0087-M, 2013-Ohio-1601, ¶19 (*quoting Jackson Prod. Credit Assn. v. Perry*, 4th Dist. No. 409, 1984 WL 5628, *2 (Aug. 31, 1984)). In "an action to marshal liens, the creditor bears the burden of demonstrating that the account is owed and has not been paid." *Luper Neidenthal & Logan v. Albany Station, LLC*, 10th Dist. Franklin No. 13AP-651, 2014-Ohio-2906 ¶ 19 (*citing Zukerman, Daiker & Lear Co., L.P.A. v. Signer*, 8th Dist. Cuyahoga No. 91892, 186 Ohio App.3d 686, 2009-Ohio-968, ¶ 34. "Other creditors are thereby given the opportunity to contest competing liens and assert their superior rights to the collateral even where the primary obligor does not contest a particular debt in order to favor that creditor." *Id.* This means that all lienholders are made parties to a foreclosure action and must, as against each other, establish their claim and priority.

R.C. 323.68 requires that prior to filing an expedited tax foreclosure action, the county prosecutor, the county land bank, or the tax certificate holder instituting suit must perform a title search to determine all ownership and security interest in the property. And R.C. 323.69(B) requires that the holders of all interests be served with the summons and complaint.

One objective of a foreclosure case is to clear title to the subject property. To do that, all persons with an interest in the property must be named as parties to the case. And once involved, they must present and defend their interests or lost all right to the property. In Ohio, such interests have never otherwise been determined in the context of an administrative proceeding.

4. Foreclosures are actions in equity.

This Court has held a board of revision does not constitute a "court," and does not “exercise[] civil jurisdiction at law or in equity.” *HealthSouth Corp. v. Levin*, 121 Ohio St.3d 282, 2009-Ohio-584, 903 N.E.2d 1179, ¶ 24; *Meadows Dev., L.L.C. v. Champaign Cty. Bd. of Revision*, 922 N.E.2d 209, 124 Ohio St.3d 349, 2010-Ohio-249, ¶14. And a board of revision, as an administrative agency, “does not have equitable jurisdiction.” *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564, 569, 50 O.O. 457, 113 N.E.2d 1 (1953). Yet, equitable powers over numerous parties is exactly what the General Assembly purportedly conferred onto county boards of revision.

A foreclosure proceeding is purely an action in equity. *Alsdorf v. Reed* (1888), 45 Ohio St. 653, 17 N.E. 73, paragraph two of the syllabus; *see also, The Union Trust Co. v. Lessovitz*, 122 Ohio St. 406, 171 N.E. 849, paragraph one of the syllabus (1930). The “right to foreclose . . . can be viewed as a ‘right to an equitable remedy’ for the debtor’s default on the underlying obligation.” *Deutsche Bank Natl. Trust Co. v. Holden*, 147 Ohio St.3d 85, 2016-Ohio-4603, ¶ 27 (*quoting Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991)).

"Foreclosure" may be defined as "[a] legal proceeding to terminate a mortgagor's interest in property, instituted by the lender (the mortgagee) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property." *Downey v. 610 Morrison Road, LLC*, 10th Dist. Franklin No. 07AP-903, 2008-Ohio-3524, ¶14 (*quoting Black's Law Dictionary* (8 Ed.2004) 674). In fact, the term “foreclosure” refers to the termination of the rights in the property of all parties to the action. *Hembree v. Mid-America Federal Savings & Loan Assn.*, 64 Ohio App.3d 144, 580 N.E.2d 1103, (App. 2 Dist. 1989). This includes the termination of the property owners’ equity of redemption and statutory right of redemption.

The power to weigh equities is purely judicial. Such power is reserved exclusively to Ohio's courts. The grant of such power to an administrative agency is a blatant legislative overreach.

E. Legislative usurpation of judicial power is void.

" 'If an act is *unlawful* it [is] not erroneous or voidable, but it is wholly unauthorized and void.' " (Emphasis sic.) *State v. Simpkins*, 117 Ohio St.3d 420, 884 N.E.2d 568, 2008-Ohio-1197, ¶ 21 (2008) (quoting *State ex rel. Kudrick v. Meredith* (1922), 24 Ohio N.P. (N.S.) 120, 124, 1922 WL 2015, *3). More specifically, the attempt to vest judicial power in the executive branch is a nullity. *Guilbert, supra*, 47 N.E. at 629 ("The recorder, as a ministerial officer, is incompetent to receive a grant of judicial power from the legislature. His acts in the attempted exercise of such powers are necessarily nullities. They cannot be effective to impose any obligation or burden upon a citizen, or to deprive him of any right.").

Ohio's Constitution is the supreme law of the state, subject only to the U.S. Constitution and applicable decisions of the U.S. Supreme Court. Enactments of law that exceed the legislature's authority under the Ohio Constitution are utter nullities and void. To hold otherwise would give validity to an act that the people of Ohio expressly forbade. *See Bartlett v. State*, 73 Ohio St. 54, 75 N.E. 939, Syllabus 1 (1905) ("It is not within the power conferred . . . by the constitution, to declare that things done and created under and by virtue of unconstitutional acts of the general assembly, nevertheless 'shall continue to be and remain and be recognized and regarded as legal.' ").

F. Concentration of power in the county executive violates separation of powers and ignores due process.

The doctrine of separation-of-powers guards against more than just an encroachment on the role of the judiciary. It also protects against the consolidation of power in a single branch of government. As this Court has observed, the concentration of governmental power in a single branch is antithetical to the concept of liberty.

As Montesquieu warned, " '[w]hen the legislative and executive powers are united in the same person, or in the same body of magistracy, there can be then no liberty * * *. [And] there is no liberty, if the power of judging be not separated from the legislative and executive powers.' " *Evans v. State*, 872 A.2d at 544, quoting Baron de Montesquieu, *The Spirit of the Laws* (Thomas Nugent trans., 1949), fn. 39. See also *Clinton v. New York* (1998), 524 U.S. 417, 450, 118 S.Ct. 2091, 141 L.Ed.2d 393 (the separation-of-powers doctrine guards against the threat to liberty posed by the concentration of power in a single branch of government).

Bodyke, supra, ¶47.

Indeed, the U.S. Supreme Court has acknowledged:

It is this concern of encroachment and aggrandizement that has animated our separation of powers jurisprudence and aroused our vigilance against the "hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power." *Ibid.* Accordingly, we have not hesitated to strike down provisions of law that either accrete to a single Branch powers more appropriately diffused among separate Branches or that undermine the authority and independence of one or another coordinate Branch.

Mistretta v. United States, 109 S.Ct. 647, 660, 488 U.S. 361, 382, 102 L.Ed.2d 714, (1989). For this reason, the legislature's grant of judicial powers is void if it violates the doctrine of separation of powers. *State, ex rel Shafer v. Otter*, 106 Ohio St. 415, 140 N.E. 399, Syllabus 4 (1922).

One of the sins sought to be avoided through separation-of-powers is the pollution of judicial and quasi-judicial proceedings by the personal or institutional self-interest of

governmental actors. This risk not only endangers our tripartite governmental framework, which safeguards liberty on a structural level, but it also threatens the individual's right to due process of law under the Fifth and Fourteenth Amendments to the U.S. Constitution. These twin pillars – a system that protects the competing interests of all in our society and the fairness of specific proceedings involving individuals of society – are undermined through the concentration of inordinate power in a single branch of government.

The Board of Revision foreclosure process is rife with such conflicts of personal and institutional self-interest. The county treasurer is both the plaintiff and sits on the board of the entity that is often given the appropriated real estate at no cost. The treasurer also appoints members of the hearing panels that decide the cases. Further the county executive, who appoints the treasurer, also appoints those who sit in judgment of the treasurer's claims.

A "fair trial in a fair tribunal is a basic requirement of due process." *In re Murchison*, 349 U.S. 133, 136 (1955). This applies with equal force to quasi-judicial proceedings before administrative agencies. *Gibson v. Berryhill*, 411 U.S. 564, 579 (1973). "Not only is a biased decisionmaker constitutionally unacceptable, but 'our system of law has always endeavored to prevent even the probability of unfairness.' " *Withrow v. Larkin*, 421 U.S. 35, 47, 95 S.Ct. 1456, 43 L.Ed.2d 712 (quoting *In re Murchison*, *supra* at 136).

"[T]hose with substantial pecuniary interest in legal proceedings should not adjudicate these disputes. *Tumey v. Ohio*, 273 U.S. 510 (1927). The financial interest of a judge need not be direct or positive as found in *Tumey*." *Gibson v. Berryhill*, 411 U.S. 564, 579, 93 S.Ct. 1689, 36 L.Ed.2d 488 (1973) (citing *Ward v. Village of Monroeville*, 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed.2d 267 (1972)). In *Ward*, the Supreme Court stated plainly that every litigant has a right to a disinterested, impartial judge:

Petitioner was denied a trial before a disinterested and impartial judicial officer as guaranteed by the Due Process Clause of the Fourteenth Amendment where he was compelled to stand trial for traffic offenses before the mayor, who was responsible for village finances and whose court, through fines, forfeitures, costs, and fees, provided a substantial portion of village funds. *Tumey v. Ohio*, 273 U.S. 510. A statutory provision for the disqualification of interested or biased judges did not accord petitioner sufficient safeguard, and it is of no constitutional relevance that petitioner could later be tried *de novo* in another court, as he was entitled to an impartial judge in the first instance. Pp. 59-62.

Id., at syllabus.

Under the statute before the Court, the General Assembly dictated that accelerated tax foreclosures can be heard by an administrative board – part of the executive branch – of which the plaintiff – another part of the executive branch – is, by statute, a member. Further, the General Assembly has created an incentive for the county treasurer – who already occupies the positions of plaintiff and judge in these cases – to exercise her discretion in invoking the alternative redemption period of R.C. 323.78 to permit direct transfer to county land banks, on whose board of directors she sits. *See*, R.C. 1724.03(B).

Under Cuyahoga County's Charter, the concentration of power is even greater. Both the county treasurer and the county fiscal officer (who fills the role of auditor) serve at the pleasure of the County Executive. Thus, the plaintiff in these foreclosure cases (the county treasurer) is beholden to the County Executive for his job. And not only is the County Executive a member of the Board of Revision, he also appoints another member to the Board– in this case the fiscal officer. Therefore, the County Executive controls two of the three votes of the Board of Revision. Finally, under the Charter, both the County Executive and the treasurer are members of the board of directors of the Land Bank, the beneficiary of the direct transfer of the Property.

This incestuous structure was designed to limit property owners' access to due process. The game was rigged from the beginning, the General Assembly paying nothing more than lip-

service to the demands of due process. In the Declaration of Independence, the Founders of this great nation accounted similar transgressions among their many grievances against George III. That such deprivations of liberty are being revisited on Ohioans nearly 250 years after the Declaration was published is a sad commentary on the state of our State.

VI. CONCLUSION

The Constitution of the state of Ohio was adopted by the people both to allocate governmental power. The people chose to delegate judicial power to the courts. They did not give the legislature the discretion to dole out judicial power to anyone else. No policy argument, no good intention, can alter the Constitution. Only the people of this state can do so.

The General Assembly overstepped its authority in enacting R.C. 323.65, et seq. It gave to the executive branch a power it had no right to give.

For these reasons, Relator asks that the Court issue a writ of prohibition invalidating, in their entirety, the proceedings before the Cuyahoga County, Ohio Board of Revision in Case No. BR 010620.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Merit Brief of Relator* was served by ordinary U.S. mail this 19th day of April 2019 upon the following:

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APPENDIX 1

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Ohio Constitution The 1851 Constitution with Amendments to 2015

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IV.01 In whom power vested

The judicial power of the state is vested in a supreme court, courts of appeals, courts of common pleas and divisions thereof, and such other courts inferior to the Supreme Court as may from time to time be established by law.

(Amended 7-7, 1968; Nov. 6, 1973; SJR No.30.)

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323.65 Expedited foreclosure on unoccupied land definitions.

As used in sections 323.65 to 323.79 of the Revised Code:

(A) "Abandoned land" means delinquent lands or delinquent vacant lands, including any improvements on the lands, that are unoccupied and that first appeared on the list compiled under division (C) of section 323.67 of the Revised Code, or the delinquent tax list or delinquent vacant land tax list compiled under section 5721.03 of the Revised Code, at whichever of the following times is applicable:

(1) In the case of lands other than agricultural lands, at any time after the county auditor makes the certification of the delinquent land list under section 5721.011 of the Revised Code;

(2) In the case of agricultural lands, at any time after two years after the county auditor makes the certification of the delinquent land list under section 5721.011 of the Revised Code.

(B) "Agricultural land" means lands on the agricultural land tax list maintained under section 5713.33 of the Revised Code.

(C) "Clerk of court" means the clerk of the court of common pleas of the county in which specified abandoned land is located.

(D) "Delinquent lands" and "delinquent vacant lands" have the same meanings as in section 5721.01 of the Revised Code.

(E)

"Impositions" means delinquent taxes, assessments, penalties, interest, costs, reasonable attorney's fees of a certificate holder, applicable and permissible costs of the prosecuting attorney of a county, and other permissible charges against abandoned land.

(F)

(1) "Unoccupied," with respect to a parcel of land, means any of the following:

(a) No building, structure, land, or other improvement that is subject to taxation and that is located on the parcel is physically inhabited as a dwelling;

(b) No trade or business is actively being conducted on the parcel by the owner, a tenant, or another party occupying the parcel pursuant to a lease or other legal authority, or in a building, structure, or other improvement that is subject to taxation and that is located on the parcel;

(c) The parcel is uninhabited and there are no signs that it is undergoing a change in tenancy and remains legally habitable, or that it is undergoing improvements, as indicated by an application for a building permit or other facts indicating that the parcel is experiencing ongoing improvements

.

(2) For purposes of division (F)(1) of this section, it is prima-facie evidence and a rebuttable presumption that may be rebutted to the county board of revision that a parcel of land is unoccupied if, at the time the county auditor makes the certification under section 5721.011 of the Revised Code, the parcel is not agricultural land, and two or more of the following apply:

(a) At the time of the inspection of the parcel by a county, municipal corporation, or township in which the parcel is located, no person, trade, or business inhabits, or is visibly present from an exterior inspection of, the parcel.

(b) No utility connections, including, but not limited to, water, sewer, natural gas, or electric connections, service the parcel, or no such utility connections are actively being billed by any utility provider regarding the parcel.

(c) The parcel or any improvement thereon is boarded up or otherwise sealed because, immediately prior to being boarded up or sealed, it was deemed by a political subdivision pursuant to its municipal, county, state, or federal authority to be open, vacant, or vandalized.

(d) The parcel or any improvement thereon is, upon visible inspection, insecure, vacant, or vandalized.

(G) "Community development organization" means a nonprofit corporation that is formed or organized under Chapter 1702. or 1724. of the Revised Code and to which both of the following apply:

(1) The organization is in good standing under law at the time the county auditor makes the certification under section 5721.011 of the Revised Code and has remained in good standing uninterrupted for at least the two years immediately preceding the time of that certification or, in the case of a county land reutilization corporation, has remained so from the date of organization if less than two years.

(2) As of the time the county auditor makes the certification under section 5721.011 of the Revised Code, the organization has received from the county, municipal corporation, or township in which abandoned land is located official authority or agreement by a duly authorized officer of that county, municipal corporation, or township to accept the owner's fee simple interest in the abandoned land and to the abandoned land being foreclosed, and that official authority or agreement had been delivered to the county treasurer or county board of revision in a form that will reasonably confirm the county's, municipal corporation's, or township's assent to transfer the land to that community development organization under section 323.74 of the Revised Code. No such official authority or agreement by a duly authorized officer of a county, municipal corporation, or township must be received if a county land reutilization corporation is authorized to receive tax-foreclosed property under its articles of incorporation, regulations, or Chapter 1724. of the Revised Code.

(H) "Certificate holder" has the same meaning as in section 5721.30 of the Revised Code.

(I) "Abandoned land list" means the list of abandoned lands compiled under division (A) of section 323.67 of the Revised Code.

(J) "Alternative redemption period," in any action to foreclose the state's lien for unpaid delinquent taxes, assessments, charges, penalties, interest, and costs on a parcel of real property pursuant to section 323.25, sections 323.65 to 323.79, or section 5721.18 of the Revised Code, means twenty-eight days after an adjudication of foreclosure of the parcel is journalized by a court or county board of revision having jurisdiction over the foreclosure proceedings. Upon the expiration of the alternative redemption period, the right and equity of redemption of any owner or party shall terminate without further order of the court or board of revision. As used in any section of the Revised Code and for any proceeding under this chapter or section 5721.18 of the Revised Code, for purposes of determining the alternative redemption period, the period commences on the day immediately following the journalization of the adjudication of foreclosure and ends on and includes the twenty-eighth day thereafter.

(K) "County land reutilization corporation" means a corporation organized under Chapter 1724. of the Revised Code.

Amended by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.

Effective Date: 09-28-2006; 2008 SB353 04-07-2009

323.66 Expedited foreclosure by board of revision on unoccupied land.

(A) In lieu of utilizing the judicial foreclosure proceedings and other procedures and remedies available under sections [323.25](#) to [323.28](#) or under Chapter 5721., 5722., or 5723. of the Revised Code, a county board of revision created under section [5715.01](#) of the Revised Code, upon the board's initiative, expressed by resolution, may foreclose the state's lien for real estate taxes upon abandoned land in the county and, upon the complaint of a certificate holder or county land reutilization corporation, foreclose the lien of the state or the certificate holder held under sections [5721.30](#) to [5721.43](#) of the Revised Code. The board shall order disposition of the abandoned land by public auction or by other conveyance in the manner prescribed by sections [323.65](#) to [323.79](#) of the Revised Code.

(B)

(1) A county board of revision may adopt rules as are necessary to administer cases subject to its jurisdiction under Chapter 5715. or adjudicated under sections [323.65](#) to [323.79](#) of the Revised Code, as long as the rules are consistent with rules adopted by the tax commissioner under Chapter 5715. of the Revised Code. Rules adopted by a board shall be limited to rules relating to hearing procedure, the scheduling and location of proceedings, case management, and practice forms.

(2) A county board of revision, upon any adjudication of foreclosure under sections [323.65](#) to [323.79](#) of the Revised Code, may prepare final orders of sale and deeds. For such purposes, the board may create its own

order of sale and deed forms. The sheriff or clerk of court shall execute and deliver any forms prepared under this division in the manner prescribed in sections [323.65](#) to [323.79](#) of the Revised Code.

(C) In addition to all other duties and functions provided by law, under sections [323.65](#) to [323.79](#) of the Revised Code the clerk of court, in the same manner as in civil actions, shall provide summons and notice of hearings, maintain an official case file, docket all proceedings, and tax as costs all necessary actions in connection therewith in furtherance of the foreclosure of abandoned land under those sections. The county board of revision shall file with the clerk of court all orders and adjudications of the board, and the clerk shall docket, as needed, and journalize all orders and adjudications so filed by the board. The clerk may utilize the court's existing journal or maintain a separate journal for purposes of sections [323.65](#) to [323.79](#) of the Revised Code. Other than notices of hearings, the orders and adjudications of the board shall not become effective until journalized by the clerk. Staff of the board of revision may schedule and execute, and file with the clerk of courts, notices of hearings.

(D) For the purpose of efficiently and promptly implementing sections [323.65](#) to [323.79](#) of the Revised Code, the prosecuting attorney of the county, the county treasurer, the clerk of court of the county, the county auditor, and the sheriff of the county may promulgate rules, not inconsistent with sections [323.65](#) to [323.79](#) of the Revised Code, regarding practice forms, forms of notice for hearings and notice to parties, forms of orders and adjudications, fees, publication, and other procedures customarily within their official purview and respective duties.

Effective Date: 09-28-2006; 2008 SB353 04-07-2009 .

323.67 List of parcels of abandoned land.

(A) The county treasurer, county auditor, a county land reutilization corporation, or a certificate holder, from the list compiled under division (C) of this section or the delinquent tax list or delinquent vacant land tax list compiled under section [5721.03](#) of the Revised Code, may identify and compile a list of the parcels in the county that the treasurer, auditor, corporation, or certificate holder determines to be abandoned lands suitable for disposition under sections [323.65](#) to [323.79](#) of the Revised Code. The list may contain one or more parcels and may be transmitted to the board of revision in such a form and manner that allows the board to reasonably discern that the parcels constitute abandoned lands.

(B)

(1) From the list of parcels compiled under division (A) of this section , the county treasurer or prosecuting attorney, for purposes of collecting the delinquent taxes, interest, penalties, and charges levied on those parcels and expeditiously restoring them to the tax list , may proceed to foreclose the lien for those impositions in the manner prescribed by sections [323.65](#) to [323.79](#) of the Revised Code.

(2) If a certificate holder or county land reutilization corporation compiles a list of parcels under division (A) of this section that the certificate holder determines to be abandoned lands suitable for disposition under sections [323.65](#) to [323.79](#) of the Revised Code, the certificate holder or corporation may proceed under sections [323.68](#) and [323.69](#) of the Revised Code.

(C) For purposes of sections [323.65](#) to [323.79](#) of the Revised Code, the county auditor or county treasurer may compile or certify a list of abandoned lands in any manner and at such times as will give effect to the expedited foreclosure of abandoned land.

Effective Date: 09-28-2006; 2008 SB353 04-07-2009 .

323.68 Title search to identify persons with interest in land.

(A)

(1) For each parcel subject to foreclosure under sections [323.65](#) to [323.79](#) of the Revised Code, the prosecuting attorney shall cause a title search to be conducted for the purpose of identifying any lienholders or other persons having a legal or equitable ownership interest or other security interest of record in such abandoned land .

(2) If a certificate holder or a county land reutilization corporation compiles a list of the parcels that the certificate holder or corporation determines to be abandoned land under division (A) of section [323.67](#) of the Revised Code, the certificate holder or corporation shall cause a title search to be conducted for the purpose of identifying any lienholders or other persons having a legal or equitable ownership interest or other security interest of record in the abandoned land .

(B) Notwithstanding section [5301.252](#) of the Revised Code, an affidavit of a type described in that section shall not be considered a lien or encumbrance on the abandoned land, and the recording of an affidavit of a type described in that section shall not serve in any way to impede the bona fide purchaser status of the purchaser of any abandoned land sold at public auction under sections [323.65](#) to [323.79](#) of the Revised Code or of any other recipient of abandoned land transferred under those sections. However, any affiant who records an affidavit pursuant to section [5301.252](#) of the Revised Code shall be given notice and summons under sections [323.69](#) to [323.79](#) of the Revised Code in the same manner as any lienholder.

Effective Date: 09-28-2006; 2008 SB353 04-07-2009 .

323.69 Complaint for foreclosure - dismissal by board.

(A) Upon the completion of the title search required by section 323.68 of the Revised Code, the prosecuting attorney, representing the county treasurer, the county land reutilization corporation, or the certificate holder may file with the clerk of court a complaint for the foreclosure of each parcel of abandoned land appearing on the abandoned land list, and for the equity of redemption on each parcel. The complaint shall name all parties having any interest of record in the abandoned land that was discovered in the title search. The prosecuting attorney, county land reutilization corporation, or certificate holder may file such a complaint regardless of whether the parcel has appeared on a delinquent tax list or delinquent vacant land tax list published pursuant to division (B) of section 5721.03 of the Revised Code.

(B)

(1) In accordance with Civil Rule 4, the clerk of court promptly shall serve notice of the summons and the complaint filed under division (A) of this section to the last known address of the record owner of the abandoned land and to the last known address of each lienholder or other person having a legal or equitable ownership interest or security interest of record identified by the title search. The notice shall inform the addressee that delinquent taxes stand charged against the abandoned land; that the land will be sold at public auction or otherwise disposed of if not redeemed by the owner or other addressee; that the sale or transfer will occur at a date, time, and place, and in the manner prescribed in sections 323.65 to 323.79 of the Revised Code; that the owner or other addressee may redeem the land by paying the total of the impositions against the land at any time before confirmation of sale or transfer of the parcel as prescribed in sections 323.65 to 323.79 of the Revised Code or before the expiration of the alternative redemption period, as may be applicable to the proceeding; that the case is being prosecuted by the prosecuting attorney of the county in the name of the county treasurer for the county in which the abandoned land is located or by a certificate holder, whichever is applicable; of the name, address, and telephone number of the county board of revision before which the action is pending; of the board case number for the action, which shall be maintained in the official file and docket of the clerk of court; and that all subsequent pleadings, petitions, and papers associated with the case and filed by any interested party must be filed with the clerk of court and will become part of the case file for the board of revision.

(2) The notice required by division (B)(1) of this section also shall inform the addressee that any owner of record may, at any time on or before the fourteenth day after service of process is perfected, file a pleading with the clerk of court requesting that the board transfer the case to a court of competent jurisdiction to be conducted in accordance with the applicable laws.

(C) Subject to division (D) of this section, subsequent pleadings, motions, or papers associated with the case and filed with the clerk of court shall be served upon all parties of record in accordance with Civil Rules 4 and 5, except that service by publication in any case requiring such service shall require that any such publication shall be advertised in the manner, and for the time periods and frequency, prescribed in section 5721.18 of the Revised Code. Any inadvertent noncompliance with those rules does not serve to defeat or terminate the case, or subject the case to dismissal, as long as actual notice or service of filed papers is shown by a preponderance of the evidence or is acknowledged by the party charged with notice or service, including by having made an appearance or filing in relation to the case. The county board of revision may conduct evidentiary hearings on the sufficiency of process, service of process, or sufficiency of service of papers in any proceeding arising from a complaint filed under this section. Other than the notice and service provisions contained in Civil Rules 4 and 5, the Rules of Civil Procedure shall not be applicable to the proceedings of the board. The board of revision may utilize procedures contained in the Rules of Civil Procedure to the extent that such use facilitates the needs of the proceedings, such as vacating orders, correcting clerical mistakes, and providing notice to parties. To the extent not otherwise provided in sections 323.65 to 323.79 of the Revised Code, the board may apply the procedures prescribed by sections 323.25 to 323.28 or Chapters 5721., 5722., and 5723. of the Revised Code. Board practice shall be in accordance with the practice and rules, if any, of the board that are promulgated by

the board under section 323.66 of the Revised Code and are not inconsistent with sections 323.65 to 323.79 of the Revised Code.

(D)

(1) A party shall be deemed to be in default of the proceedings in an action brought under sections 323.65 to 323.79 of the Revised Code if either of the following occurs:

(a) The party fails to appear at any hearing after being served with notice of the summons and complaint by certified or ordinary mail.

(b) For a party upon whom notice of summons and complaint is required by publication as provided under section 5721.18 of the Revised Code and has been considered served pursuant to that section, the party fails to appear, move, or plead to the complaint within twenty-eight days after service by publication is completed.

(2) If a party is deemed to be in default pursuant to division (D)(1) of this section, no further service of any subsequent pleadings, papers, or proceedings is required on the party by the court or any other party.

(E) At any time after a foreclosure action is filed under this section, the county board of revision may, upon its own motion, transfer the case to a court pursuant to section 323.691 of the Revised Code if it determines that, given the complexity of the case or other circumstances, a court would be a more appropriate forum for the action.

Amended by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.

Effective Date: 09-28-2006; 2008 SB353 04-07-2009

323.691 Transfer of complaint to court of common please or municipal court.

(A)

(1) A county board of revision may order that a proceeding arising from a complaint filed under section 323.69 of the Revised Code be transferred to the court of common pleas or to a municipal court with jurisdiction. The board may order such a transfer upon the motion of the record owner of the parcel or the county prosecuting attorney, representing the county treasurer, or upon its own motion.

(2) A court of common pleas or municipal court may order that a proceeding arising from a complaint filed under sections 323.25 to 323.28 or Chapter 5721. of the Revised Code be transferred to a county board of revision if the court determines that the real property that is the subject of the complaint is abandoned land, provided that the appropriate board of revision has adopted a resolution under section 323.66 of the Revised Code to adjudicate cases as provided under sections 323.65 to 323.79 of the Revised Code. There is a rebuttable presumption that a parcel of land is unoccupied if any of the factors described in division (F)(2) of section 323.65 of the Revised Code apply to the parcel. The court may order a transfer under this division upon the motion of the record owner of the parcel or the county prosecuting attorney, representing the county treasurer, or upon its own motion.

(B) On or before the twenty-eighth day after the journalization of an order of transfer issued pursuant to division (A) of this section, the county prosecuting attorney shall file a copy of the journalized order of transfer and a notice of transfer and dismissal with the clerk of court and with the court or board to which the case was transferred. In any action transferred to a county board of revision, the prosecuting attorney shall serve the notice of transfer upon all parties to the action except any party that previously failed to answer, plea, or appear in the proceeding as required in Civil Rule 12. In any action transferred to a court, the prosecuting attorney shall serve the notice of transfer upon all parties to the action except those parties deemed to be in default under division (D) of section 323.69 of the Revised Code.

(C) Upon journalization of the order of transfer, the clerk of court shall proceed as if the transferred complaint had been filed with the court or board to which the proceeding was transferred, except that the clerk is not required to perfect a notice of summons and complaint to any party that had already been served such notice. When the prosecuting attorney files the notice of transfer as prescribed in division (B) of this section, the clerk shall stamp or otherwise indicate on the notice a new case number for the proceeding. The clerk shall assign the entire case file to the court or board to which the proceeding was transferred, including any preliminary or final reports, documents, or other evidence made available to the transferring court or board. All such reports,

documents, and other evidence shall be received by the court or board to which the proceeding was transferred as competent evidence for the purposes of adjudicating the proceeding. That court or board shall accept all such reports, documents, and evidence in the case file unless otherwise required by law or unless the court or board determines that doing so would not be in the interests of justice.

The court or board to which the proceeding is transferred shall serve notice of the summons and the complaint as required in Civil Rule 4 or section 323.69 of the Revised Code, as applicable, upon any parties not yet served such notice in the proceeding.

(D) If a county prosecuting attorney does not file a notice of transfer as required under division (B) of this section on or before the twenty-eighth day after the journalization of an order of transfer issued under division (A) of this section, or upon the motion of the prosecuting attorney, court, or board before that date, the complaint that is the subject of the order of transfer shall be deemed to have been dismissed without prejudice by both the court and the board of revision.

(E) Upon the journalization of an order of transfer issued under division (A) of this section, the case shall be deemed to have been dismissed without prejudice by the transferring court or board.

Added by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.

323.70 Final hearing on complaint - dismissal on petition.

(A) Subject to this section and to sections 323.71 and 323.72 of the Revised Code, a county board of revision shall conduct a final hearing on the merits of a complaint filed under section 323.69 of the Revised Code, including the validity or amount of any impositions alleged in the complaint, not sooner than thirty days after the service of notice of summons and complaint has been perfected. If, after a hearing, the board finds that the validity or amount of all or a portion of the impositions is not supported by a preponderance of the evidence, the board may order the county auditor to remove from the tax list and duplicate amounts the board finds invalid or not supported by a preponderance of the evidence. The auditor shall remove all such amounts from the tax list and duplicate as ordered by the board of revision, including any impositions asserted under sections 715.26 and 715.261 of the Revised Code.

(B) If, on or before the fourteenth day after service of process is perfected under division (B) of section 323.69 of the Revised Code, a record owner files with the clerk of court a motion requesting that the county board of revision order the case to be transferred to a court pursuant to section 323.691 of the Revised Code, the board shall, without conducting a hearing on the matter, promptly transfer the case for foreclosure of that land to a court pursuant to section 323.691 of the Revised Code to be conducted in accordance with the applicable laws.

(C) A county board of revision, in accordance with the Rules of Civil Procedure, may issue subpoenas compelling the attendance of witnesses and the production of papers, books, accounts, and testimony as necessary to conduct a hearing under this section or to otherwise adjudicate a case under sections 323.65 to 323.79 of the Revised Code.

Amended by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.

Effective Date: 09-28-2006; 2008 SB353 04-07-2009

323.71 Procedure where impositions exceed fair market value.

(A)

(1) If the county board of revision, upon its own motion or pursuant to a hearing under division (A)(2) of this section, determines that the impositions against a parcel of abandoned land that is the subject of a complaint filed under section 323.69 of the Revised Code exceed the fair market value of that parcel as currently shown by the latest valuation by the auditor of the county in which the land is located, then the board may proceed to hear and adjudicate the case as provided under sections 323.70 and 323.72 of the Revised Code. Upon entry of an order of foreclosure, the parcel may be disposed of as prescribed by division (G) of section 323.73 of the Revised Code.

If the board of revision, upon its own motion or pursuant to a hearing under division (A)(2) of this section, determines that the impositions against a parcel do not exceed the fair market value of the parcel as shown by the county auditor's then-current valuation of the parcel, the parcel shall not be disposed of as prescribed by

division (G) of section 323.73 of the Revised Code, but may be disposed of as otherwise provided in section 323.73, 323.74, 323.75, 323.77, or 323.78 of the Revised Code.

(2) By a motion filed not later than seven days before a final hearing on a complaint is held under section 323.70 of the Revised Code, an owner or lienholder may file with the county board of revision a good faith appraisal of the parcel from a licensed professional appraiser and request a hearing to determine whether the impositions against the parcel of abandoned land exceed or do not exceed the fair market value of that parcel as shown by the auditor's then-current valuation of that parcel. If the motion is timely filed, the board of revision shall conduct a hearing and shall make a factual finding as to whether the impositions against the parcel exceed or do not exceed the fair market value of that parcel as shown by the auditor's then-current valuation of that parcel. An owner or lienholder must show by a preponderance of the evidence that the impositions against the parcel do not exceed the auditor's then-current valuation of the parcel in order to preclude the application of division (G) of section 323.73 of the Revised Code.

(B)

Notwithstanding sections 323.65 to 323.79 of the Revised Code to the contrary, for purposes of determining in any proceeding under those sections whether the total of the impositions against the abandoned land exceed the fair market value of the abandoned land, it is prima-facie evidence and a rebuttable presumption that may be rebutted to the county board of revision that the auditor's then-current valuation of that abandoned land is the fair market value of the land, regardless of whether an independent appraisal has been performed.

Amended by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.

Effective Date: 09-28-2006; 2008 SB353 04-07-2009

323.72 Answer - hearing on or dismissal of complaint.

(A)

(1) At any time after a complaint is filed under section 323.69 of the Revised Code, and before a decree of foreclosure is entered, the record owner or another person having a legal or equitable ownership interest in the abandoned land may plead only that the impositions shown by the notice to be due and outstanding have been paid in full or are invalid or inapplicable in whole or in part, and may raise issues pertaining to service of process and the parcel's status as abandoned land.

(2) At any time before a decree of foreclosure is filed under section 323.69 of the Revised Code, a lienholder or another person having a security interest of record in the abandoned land may plead either of the following:

(a) That the impositions shown by the notice to be due and outstanding have been paid in full ;

(b) Subject to division (C) of this section, that in order to preserve the lienholder's or other person's security interest of record in the land, the abandoned land should not be disposed of as provided in sections 323.65 to 323.79 of the Revised Code and the case should be transferred to a court pursuant to section 323.691 of the Revised Code.

(B) If the record owner or another person having a legal or equitable ownership interest in a parcel of abandoned land files a pleading with the county board of revision under division (A)(1) of this section, or if a lienholder or another person having a security interest of record in the abandoned land files a pleading with the board under division (A)(2) of this section that asserts that the impositions have been paid in full, the board shall schedule a hearing for a date not sooner than thirty days, and not later than ninety days, after the board receives the pleading. Upon scheduling the hearing, the board shall notify the person that filed the pleading and all interested parties, other than parties in default, of the date, time, and place of the hearing, and shall conduct the hearing. The only questions to be considered at the hearing are the amount and validity of all or a portion of the impositions, whether those impositions have in fact been paid in full, and, under division (A)(1) of this section, whether valid issues pertaining to service of process and the parcel's status as abandoned land have been raised. If the record owner, lienholder, or other person shows by a preponderance of the evidence that all impositions against the parcel have been paid, the board shall dismiss the complaint and remove the parcel of abandoned land from the abandoned land list, and that land shall not be offered for sale or otherwise conveyed under sections 323.65 to 323.79 of the Revised Code. If the record owner, lienholder, or other person fails to appear, or appears and fails to show by a preponderance of the evidence that all impositions against the parcel have been paid, the board shall proceed in the manner prescribed in section 323.73 of the Revised Code. A

hearing under this division may be consolidated with any final hearing on the matter under section 323.70 of the Revised Code.

If the board determines that the impositions have been paid, then the board, on its own motion, may dismiss the case without a hearing.

(C) If a lienholder or another person having a security interest of record in the abandoned land, other than the owner, timely files a pleading under division (A)(2)(b) of this section requesting that the abandoned land not be disposed of as provided in sections 323.65 to 323.79 of the Revised Code and the complaint be transferred to a court pursuant to section 323.691 of the Revised Code in order to preserve the lienholder's or other person's security interest, the county board of revision may approve the request if the board finds that the sale or other conveyance of the parcel of land under sections 323.65 to 323.79 of the Revised Code would unreasonably jeopardize the lienholder's or other person's ability to enforce the security interest or to otherwise preserve the lienholder's or other person's security interest. The board may conduct a hearing on the request and make a ruling based on the available and submitted evidence of the parties. If the board approves the request without a hearing, the board shall file the decision with the clerk of court, and the clerk shall send a notice of the decision to the lienholder or other person by ordinary mail. In order for a lienholder or other person having a security interest to show for purposes of this division that the parcel of abandoned land should not be disposed of pursuant to sections 323.65 to 323.78 of the Revised Code and the complaint should be transferred to a court pursuant to section 323.691 of the Revised Code in order "to preserve the lienholder's or other person's security interest," the lienholder or other person must first make a minimum showing by a preponderance of the evidence pursuant to section 323.71 of the Revised Code that the impositions against the parcel of abandoned land do not exceed the fair market value of the abandoned land as determined by the auditor's then-current valuation of that parcel, which valuation is presumed, subject to rebuttal, to be the fair market value of the land. If the lienholder or other person having a security interest makes the minimum showing, the board of revision may consider the request and make a ruling based on the available and submitted evidence of the parties. If the lienholder or other person having a security interest fails to make the minimum showing, the board of revision shall deny the request.

(D) If a pleading as described in division (B) or (C) of this section is filed and the county board of revision approves a request made under those divisions, regardless of whether a hearing is conducted under division (C) of this section, the board shall dismiss the complaint in the case of pleadings described in division (B) of this section or transfer the complaint to a court in the case of pleadings described in division (C) of this section.

If the county board of revision does not dismiss the complaint in the case of pleadings described in division (B) of this section or does not approve a request to transfer to a court as described in division (C) of this section after conducting a hearing, the board shall proceed with the final hearing prescribed in section 323.70 of the Revised Code and file its decision on the complaint for foreclosure with the clerk of court. The clerk shall send written notice of the decision to the parties by ordinary mail or by certified mail, return receipt requested. If the board renders a decision ordering the foreclosure and forfeiture of the parcel of abandoned land, the parcel shall be disposed of under section 323.73 of the Revised Code.

Amended by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.

Effective Date: 09-28-2006; 2008 SB353 04-07-2009

323.73 Disposal of abandoned land at public auction.

(A) Except as provided in division (G) of this section or section [323.78](#) of the Revised Code, a parcel of abandoned land that is to be disposed of under this section shall be disposed of at a public auction scheduled and conducted as described in this section. At least twenty-one days prior to the date of the public auction, the clerk of court or sheriff of the county shall advertise the public auction in a newspaper of general circulation that meets the requirements of section [7.12](#) of the Revised Code in the county in which the land is located. The advertisement shall include the date, time, and place of the auction, the permanent parcel number of the land if a permanent parcel number system is in effect in the county as provided in section [319.28](#) of the Revised Code or, if a permanent parcel number system is not in effect, any other means of identifying the parcel, and a notice stating that the abandoned land is to be sold subject to the terms of sections [323.65](#) to [323.79](#) of the Revised Code.

(B) The sheriff of the county or a designee of the sheriff shall conduct the public auction at which the abandoned land will be offered for sale. To qualify as a bidder, a person shall file with the sheriff on a form provided by the sheriff a written acknowledgment that the abandoned land being offered for sale is to be conveyed in fee simple

to the successful bidder. At the auction, the sheriff of the county or a designee of the sheriff shall begin the bidding at an amount equal to the total of the impositions against the abandoned land, plus the costs apportioned to the land under section [323.75](#) of the Revised Code. The abandoned land shall be sold to the highest bidder. The county sheriff or designee may reject any and all bids not meeting the minimum bid requirements specified in this division.

(C) Except as otherwise permitted under section [323.74](#) of the Revised Code, the successful bidder at a public auction conducted under this section shall pay the sheriff of the county or a designee of the sheriff a deposit of at least ten per cent of the purchase price in cash, or by bank draft or official bank check, at the time of the public auction, and shall pay the balance of the purchase price within thirty days after the day on which the auction was held. At the time of the public auction and before the successful bidder pays the deposit, the sheriff or a designee of the sheriff may provide notice to the successful bidder that failure to pay the balance of the purchase price within the prescribed period shall be considered a default under the terms of the sale and shall result in retention of the deposit as payment for the costs associated with advertising and offering the abandoned land for sale at a future public auction. If such a notice is provided to the successful bidder and the bidder fails to pay the balance of the purchase price within the prescribed period, the sale shall be deemed rejected by the county board of revision due to default, and the sheriff shall retain the full amount of the deposit. In such a case, rejection of the sale shall occur automatically without any action necessary on the part of the sheriff, county prosecuting attorney, or board. If the amount retained by the sheriff is less than the total costs of advertising and offering the abandoned land for sale at a future public auction, the sheriff or county prosecuting attorney may initiate an action to recover the amount of any deficiency from the bidder in the court of common pleas of the county or in a municipal court with jurisdiction.

Following a default and rejection of sale under this division, the abandoned land involved in the rejected sale shall be disposed of in accordance with sections [323.65](#) to [323.79](#) of the Revised Code or as otherwise prescribed by law. The defaulting bidder, any member of the bidder's immediate family, any person with a power of attorney granted by the bidder, and any pass-through entity, trust, corporation, association, or other entity directly or indirectly owned or controlled by the bidder or a member of the defaulting bidder's immediate family shall be prohibited from bidding on the abandoned land at any future public auction for five years from the date of the bidder's default.

Notwithstanding section [321.261](#) of the Revised Code, with respect to any proceedings initiated pursuant to sections [323.65](#) to [323.79](#) of the Revised Code, from the total proceeds arising from the sale, transfer, or redemption of abandoned land, twenty per cent of such proceeds shall be deposited to the credit of the county treasurer's delinquent tax and assessment collection fund to reimburse the fund for costs paid from the fund for the transfer, redemption, or sale of abandoned land at public auction. Not more than one-half of the twenty per cent may be used by the treasurer for community development, nuisance abatement, foreclosure prevention, demolition, and related services or distributed by the treasurer to a land reutilization corporation. The balance of the proceeds, if any, shall be distributed to the appropriate political subdivisions and other taxing units in proportion to their respective claims for taxes, assessments, interest, and penalties on the land. Upon the sale of foreclosed lands, the clerk of court shall hold any surplus proceeds in excess of the impositions until the clerk receives an order of priority and amount of distribution of the surplus that are adjudicated by a court of competent jurisdiction or receives a certified copy of an agreement between the parties entitled to a share of the surplus providing for the priority and distribution of the surplus. Any party to the action claiming a right to distribution of surplus shall have a separate cause of action in the county or municipal court of the jurisdiction in which the land reposes, provided the board confirms the transfer or regularity of the sale. Any dispute over the distribution of the surplus shall not affect or revive the equity of redemption after the board confirms the transfer or sale.

(D) Upon the confirmation of sale or transfer of abandoned land pursuant to this section, the owner's fee simple interest in the land shall be conveyed to the purchaser. A conveyance under this division is free and clear of any liens and encumbrances of the parties named in the complaint for foreclosure attaching before the sale or transfer, and free and clear of any liens for taxes, except for federal tax liens and covenants and easements of record attaching before the sale.

(E) The county board of revision shall reject the sale of abandoned land to any person if it is shown by a preponderance of the evidence that the person is delinquent in the payment of taxes levied by or pursuant to Chapter 307., 322., 5737., 5739., 5741., or 5743. of the Revised Code or any real property taxing provision of the Revised Code. The board also shall reject the sale of abandoned land to any person if it is shown by a preponderance of the evidence that the person is delinquent in the payment of property taxes on any parcel in the county, or to a member of any of the following classes of parties connected to that person:

- (1) A member of that person's immediate family;
- (2) Any other person with a power of attorney appointed by that person;
- (3) A sole proprietorship owned by that person or a member of that person's immediate family;
- (4) A partnership, trust, business trust, corporation, association, or other entity in which that person or a member of that person's immediate family owns or controls directly or indirectly any beneficial or legal interest.

(F) If the purchase of abandoned land sold pursuant to this section or section [323.74](#) of the Revised Code is for less than the sum of the impositions against the abandoned land and the costs apportioned to the land under division (A) of section [323.75](#) of the Revised Code, then, upon the sale or transfer, all liens for taxes due at the time the deed of the property is conveyed to the purchaser following the sale or transfer, and liens subordinate to liens for taxes, shall be deemed satisfied and discharged.

(G) If the county board of revision finds that the total of the impositions against the abandoned land are greater than the fair market value of the abandoned land as determined by the auditor's then-current valuation of that land, the board, at any final hearing under section [323.70](#) of the Revised Code, may order the property foreclosed and, without an appraisal or public auction, order the sheriff to execute a deed to the certificate holder or county land reutilization corporation that filed a complaint under section [323.69](#) of the Revised Code, or to a community development organization, school district, municipal corporation, county, or township, whichever is applicable, as provided in section [323.74](#) of the Revised Code. Upon a transfer under this division, all liens for taxes due at the time the deed of the property is transferred to the certificate holder, community development organization, school district, municipal corporation, county, or township following the conveyance, and liens subordinate to liens for taxes, shall be deemed satisfied and discharged.

Amended by 131st General Assembly File No. TBD, HB 390, §101.01, eff. 9/28/2016.

Amended by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 09-28-2006; 2008 SB353 04-07-2009

323.74 Disposition of abandoned land not sold at auction.

(A) If a public auction is held for abandoned land pursuant to section [323.73](#) of the Revised Code, but the land is not sold at the public auction, the county board of revision may order the disposition of the abandoned land in accordance with division (B) or (C) of this section.

(B) The abandoned land offered for sale at a public auction as described in section [323.73](#) of the Revised Code, but not sold at the auction, may be offered for sale in any usual and customary manner by the sheriff as otherwise provided by law. The subsequent public auction may be held in the same manner as the public auction was held under section [323.73](#) of the Revised Code, but the minimum bid at an auction held under this division shall be the lesser of fifty per cent of fair market value of the abandoned land as currently shown by the county auditor's latest valuation, or the sum of the impositions against the abandoned land plus the costs apportioned to the land under section [323.75](#) of the Revised Code. Notice of any subsequent sale pursuant to this section may be given in the original notice of sale listing the time, date, and place of the subsequent sale.

(C) Upon certification from the sheriff that abandoned land was offered for sale at a public auction as described in section [323.73](#) of the Revised Code but was not purchased, a community development organization or any school district, municipal corporation, county, or township in which the land is located may request that title to the land be transferred to the community development organization, school district, municipal corporation, county, or township at the time described in this division. The request shall be delivered to the board of revision at any time from the date the complaint for foreclosure is filed under section [323.69](#) of the Revised Code, but not later than sixty days after the date on which the land was first offered for sale. The request shall include a representation that the organization, district, or political subdivision, not later than thirty days after receiving legal title to the abandoned land, will begin basic exterior improvements that will protect the land from further unreasonable deterioration. The improvements shall include, but are not limited to, the removal of trash and refuse from the exterior of the premises and the securing of open, vacant, or vandalized areas on the exterior of

the premises. The representation shall be deemed to have been given if the notice is supplied by an electing subdivision as defined in section [5722.01](#) of the Revised Code.

(D) The county board of revision, upon any adjudication of foreclosure and forfeiture against the abandoned land, may order the sheriff to dispose of the abandoned land as prescribed in sections [323.65](#) to [323.79](#) of the Revised Code. The order by the board shall include instructions to the sheriff to transfer the land to the specified community development organization, school district, municipal corporation, county, or township after payment of the costs of disposing of the abandoned land pursuant to section [323.75](#) of the Revised Code or, if any negotiated price has been agreed to between the county treasurer and the community development organization, school district, municipal corporation, county, or township, after payment of that negotiated price as certified by the board to the sheriff.

(E) Upon receipt of payment under this section, the sheriff shall convey by sheriff's deed the fee simple interest in, and to, the abandoned land. If the abandoned land is transferred pursuant to division (D) of this section and the county treasurer reasonably determines that the transfer will result in the property being occupied, the county treasurer may waive, but is not required to waive, some or all of the impositions against the abandoned land or costs apportioned to the land under section [323.75](#) of the Revised Code.

(F) Upon a transfer under this section, all liens for taxes due at the time the deed of the property is conveyed to a purchaser or transferred to a community development organization, school district, municipal corporation, county, or township, and liens subordinate to liens for taxes, shall be deemed satisfied and discharged.

(G) Any parcel that has been advertised and offered for sale pursuant to foreclosure proceedings and has not sold for want of bidders or been otherwise transferred under sections [323.65](#) to [323.79](#) of the Revised Code shall be forfeited or otherwise disposed of in the same manner as lands under section [323.25](#) or [5721.18](#) or Chapter 5723. of the Revised Code.

Amended by 128th General Assembly File No.9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 09-28-2006; 2008 SB353 04-07-2009

323.75 Apportionment of costs of sale at auction.

(A) The county treasurer or county prosecuting attorney shall apportion the costs of the proceedings with respect to abandoned lands offered for sale at a public auction held pursuant to section [323.73](#) or [323.74](#) of the Revised Code among those lands according to actual identified costs, equally, or in proportion to the fair market values of the lands. The costs of the proceedings include the costs of conducting the title search, notifying record owners or other persons required to be notified of the pending sale, advertising the sale, and any other costs incurred by the county board of revision, county treasurer, county auditor, clerk of court, prosecuting attorney, or county sheriff in performing their duties under sections [323.65](#) to [323.79](#) of the Revised Code.

(B) All costs assessed in connection with proceedings under sections [323.65](#) to [323.79](#) of the Revised Code may be paid after they are incurred, as follows:

- (1) If the abandoned land in question is purchased at public auction, from the purchaser of the abandoned land;
- (2) In the case of abandoned land transferred to a community development organization, school district, municipal corporation, county, or township under section [323.74](#) of the Revised Code, from either of the following:
 - (a) At the discretion of the county treasurer, in whole or in part from the delinquent tax and assessment collection funds created under section [321.261](#) of the Revised Code, allocated equally among the respective funds of the county treasurer and of the prosecuting attorney;
 - (b) From the community development organization, school district, municipal corporation, county, or township, whichever is applicable.
- (3) If the abandoned land in question is transferred to a certificate holder, from the certificate holder.

(C) If a parcel of abandoned land is sold or otherwise transferred pursuant to sections [323.65](#) to [323.79](#) of the Revised Code, the officer who conducted the sale or made the transfer, the prosecuting attorney, or the county treasurer may collect a recording fee from the purchaser or transferee of the parcel at the time of the sale or transfer and shall prepare the deed conveying title to the parcel or execute the deed prepared by the board for that purpose. That officer or the prosecuting attorney or treasurer is authorized to record on behalf of that

323.76 Termination of right of redemption on sale or transfer.

Upon the sale of abandoned land at public auction pursuant to section [323.73](#) or [323.74](#) of the Revised Code, or upon the county board of revision's order to the sheriff to transfer abandoned land to a community development organization, school district, municipal corporation, county, or township under section [323.74](#) of the Revised Code, any common law or statutory right of redemption shall forever terminate upon the occurrence of whichever of the following is applicable:

(A) In the case of a sale of the land at public auction, upon the order of confirmation of the sale by the county board of revision and the filing of such order with the clerk of court, who shall enter it upon the journal of the court or a separate journal, upon confirmation of that sale or transfer, the deed shall be deemed delivered to the purchaser or transferee of the parcel.

(B) In the case of a transfer of the land to a community development organization, school district, municipal corporation, county, or township under section [323.74](#) of the Revised Code, upon the filing with the clerk of court an order to transfer the parcel based on the adjudication of foreclosure by the county board of revision ordering the sheriff to transfer the land in fee simple to the community development organization, school district, municipal corporation, county, or township pursuant to such adjudication, which the clerk shall enter upon the journal of the court or a separate journal;

(C)

(1) In the case of a transfer of the land to a certificate holder or county land reutilization corporation pursuant to division (G) of section [323.73](#) of the Revised Code, upon the filing with the clerk of court the county board of revision's order to the sheriff to execute a deed to the certificate holder or corporation based on the adjudication of foreclosure, which the clerk shall enter upon the journal of the court or a separate journal;

(2) In the case of an adjudication of foreclosure in which a court or board of revision has included in its adjudication decree that the alternative redemption period authorized in section [323.78](#) of the Revised Code applies, then upon the expiration of such alternative redemption period.

Effective Date: 09-28-2006; 2008 SB353 04-07-2009 .

323.77 Notice by electing subdivision of desire to acquire land.

(A) As used in this section, "electing subdivision" has the same meaning as in section [5722.01](#) of the Revised Code.

(B) At any time from the date the complaint for foreclosure is filed under section [323.69](#) of the Revised Code, but not later than sixty days after the date on which the land was first offered for sale, an electing subdivision or a county land reutilization corporation may give the county treasurer, prosecuting attorney, or board of revision notice in writing that it seeks to acquire any parcel of abandoned land, identified by parcel number, from the abandoned land list. If any such parcel of abandoned land identified under this section is offered for sale pursuant to section [323.73](#) of the Revised Code, but is not sold for want of a minimum bid, the electing subdivision or a county land reutilization corporation that identified that parcel of abandoned land shall be deemed to have appeared at the sale and submitted the winning bid at the auction, and the parcel of abandoned land shall be sold to the electing subdivision or corporation for no consideration other than the costs prescribed in section [323.75](#) of the Revised Code or those costs to which the electing subdivision or corporation and the county treasurer mutually agree. The conveyance shall be confirmed, and any common law or statutory right of redemption forever terminated, upon the filing with the clerk of court the order of confirmation based on the adjudication of foreclosure by the county board of revision, which the clerk shall enter upon the journal of the court or a separate journal.

323.78 Invocation of alternative redemption period.

(A) Notwithstanding anything in Chapters 323., 5721., and 5723. of the Revised Code, a county treasurer may elect to invoke the alternative redemption period in any petition for foreclosure of abandoned lands under section 323.25, sections 323.65 to 323.79, or section 5721.18 of the Revised Code.

(B) If a county treasurer invokes the alternative redemption period pursuant to this section, and if a municipal corporation, township, county, school district, community development organization, or county land reutilization corporation has requested title to the parcel, then upon adjudication of foreclosure of the parcel, the court or board of revision shall order, in the decree of foreclosure or by separate order, that the equity of redemption and any statutory or common law right of redemption in the parcel by its owner shall be forever terminated after the expiration of the alternative redemption period and that the parcel shall be transferred by deed directly to the requesting municipal corporation, township, county, school district, community development corporation, or county land reutilization corporation without appraisal and without a sale, free and clear of all impositions and any other liens on the property, which shall be deemed forever satisfied and discharged. The court or board of revision shall order such a transfer regardless of whether the value of the taxes, assessments, penalties, interest, and other charges due on the parcel, and the costs of the action, exceed the fair market value of the parcel. No further act of confirmation or other order shall be required for such a transfer, or for the extinguishment of any statutory or common law right of redemption.

(C) If a county treasurer invokes the alternative redemption period pursuant to this section and if no community development organization, county land reutilization corporation, municipal corporation, county, township, or school district has requested title to the parcel, then upon adjudication of foreclosure of the parcel, the court or board of revision shall order the property sold as otherwise provided in Chapters 323. and 5721. of the Revised Code, and, failing any bid at any such sale, the parcel shall be forfeited to the state and otherwise disposed of pursuant to Chapter 5723. of the Revised Code.

Amended by 130th General Assembly File No. TBD, SB 172, §1, eff. 9/4/2014.

Amended by 128th General Assembly File No. 31, HB 313, §1, eff. 7/7/2010.

Amended by 128th General Assembly File No. 9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 2008 SB353 04-07-2009

323.79 Appeal by aggrieved party in court of common pleas.

Any party to any proceeding instituted pursuant to sections 323.65 to 323.79 of the Revised Code who is aggrieved in any of the proceedings of the county board of revision under those sections may file an appeal in the court of common pleas pursuant to Chapters 2505. and 2506. of the Revised Code upon a final order of foreclosure and forfeiture by the board. A final order of foreclosure and forfeiture occurs upon confirmation of any sale or upon confirmation of any conveyance or transfer to a certificate holder, community development organization, county land reutilization corporation organized under Chapter 1724. of the Revised Code, municipal corporation, county, or township pursuant to sections 323.65 to 323.79 of the Revised Code. An appeal as provided in this section shall proceed as an appeal de novo and may include issues raised or adjudicated in the proceedings before the county board of revision, as well as other issues that are raised for the first time on appeal and that are pertinent to the abandoned land that is the subject of those proceedings.

An appeal shall be filed not later than fourteen days after one of the following dates:

(A) The date on which the order of confirmation of the sale is filed with and journalized by the clerk of court;

