

Maintenance of Property

Sec. [X]. **Abatement of nuisance before Foreclosure** *[Adapted from proposed OH HB 323]*

As used in this chapter:

(A) "Abate," "abatement," and "neighbor" have the same meanings as in section 3767.41 of the Revised Code.

(B) "Residential area commercial property mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon a commercial property that meets all of the following criteria:

(1) The structure or structures on the property total less 17 than four thousand square feet.

(2) The property is located within five hundred feet of a residential property.

(3) The property is not a brownfield, as defined in [state law].

(C) "Residential mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon a residential property.

(D) "Residential property" means real property located within this state consisting of land and a structure on that land containing four or fewer dwelling units, each of which is intended for occupancy by a separate household. "Residential property" includes a residential condominium unit owned by an individual, notwithstanding the number of units in the structure, and a manufactured or mobile home that is subject to real property taxes under [state law].

(E) "Tenant" has the same meaning as in [state law].

Sec. [X].

(A) No court may issue a judgment that orders the sale of a property that is the subject of a residential mortgage foreclosure action or residential area commercial property mortgage foreclosure action, and no county recorder shall accept for recording any deed based on that sale, if that property constitutes a public nuisance as defined in [state law].

(B) Except as otherwise provided in division (D) of this section, in any residential mortgage foreclosure action or residential area commercial property mortgage foreclosure action, a court may hold a hearing to determine whether there is probable cause to believe that the property constitutes a public nuisance. A court's determination that there is probable cause to believe that the property is a public nuisance is a

rebuttable presumption. The court may hold a probable cause hearing on its own accord or upon a request made pursuant to [state law]. If the court holds such a hearing, the court shall consider whether there is probable cause on the basis of any of the following:

(1) Information the plaintiff provides, including information contained in the property status report;

(2) Information in a public record that indicates the existence of a building with air pollution, sanitation, health, fire, zoning, or safety code violations or other conditions that constitute a public nuisance;

(3) A court ordered inspection of the property, or a voluntary authorization of inspection of the property under any right of the plaintiff to enter the property.

(C)

(1) In any hearing held pursuant to division (B) of this section, the court shall provide the plaintiff in the foreclosure action with notice of time, date, place, and purpose of the hearing and provide the plaintiff an opportunity to present information that the property is not a public nuisance or to request the court to allow the plaintiff to abate the nuisance. If the plaintiff wishes to have an opportunity to present information of that nature or to abate the nuisance, the plaintiff shall request the opportunity from the court within ten days after receiving the court's notice of the hearing.

(2) If at the hearing a plaintiff elects to abate the nuisance, the court shall grant that request and require the plaintiff to report to the court within thirty days on the progress the plaintiff is making in abating the nuisance. The court shall continue with the foreclosure proceedings if it determines that the plaintiff is making reasonable progress in abating the nuisance condition. If the plaintiff does not make reasonable progress in abating the nuisance or does not report as required, the court immediately shall approve any request made pursuant to section 2308.04 of the Revised Code to bring a nuisance abatement action.

(D) A court shall stay any probable cause hearing on an alleged nuisance condition if the mortgagee or any other judgment creditor submits a writing to the court that pledges to bid at the sale of the property at least the balance owed on the mortgage principle on the property and, if the mortgagee or other judgment creditor is the successful bidder at the sale, to abate the nuisance subsequent to taking title to the property. If the court stays a probable cause hearing pursuant to this division and if a judgment creditor takes title to the property, not later than thirty days after the judgment creditor takes title to the property, the judgment creditor shall provide the court with a written appraisal of progress in abating the alleged nuisance conditions. If the court does not receive an appraisal of progress within that time, the court may resume the probable cause hearing.

(E) If the court finds probable cause that the residential property constitutes a public nuisance, the plaintiff shall file notice of that finding with the agency that is responsible for enforcement of housing

occupancy codes within the municipal corporation or county in which the residential property is located, if there is such an agency. An agency inspecting the residential property as a result of receiving such a notice may charge the judgment debtor a reasonable fee to cover the costs of the inspection.

Sec. [X].

(A) Any municipal corporation in which a property is located, or any neighbor, tenant, or nonprofit corporation that is duly organized and has as one of its goals the improvement of housing conditions in the county or municipal corporation in which the property is located may intervene as an interested party at any time prior to the issuance of a judgment in the foreclosure proceeding of a residential property to request the court's permission to bring a civil action under [state law] for the abatement of a public nuisance.

(B) If pursuant to a request made pursuant to division (A) of this section a court finds under [state law] probable cause to believe that the property is a public nuisance, the court may authorize the interested party to bring an abatement action and the court shall stay the foreclosure action to allow hearings to be held on the public nuisance pursuant to [state law]. The interested party shall apprise the court of its progress in the action in writing not later than thirty days after the court grants permission to bring an action. If the court does not receive this notice within the specified time, it may resume the foreclosure proceedings.

(C) In addition to the requirement that the court find probable cause that the property is a public nuisance under division (B) of [state law], the court may establish any guidelines it considers appropriate as a condition of granting the interested party permission to bring an abatement action against the residential property undergoing foreclosure.

(D) Nothing in the section shall be construed as preventing a court from staying a hearing when a judgment creditor complies with a decision of a probable cause hearing.

Sec [X]

Adapted from NV AB 140 - Maintenance of property after foreclosure

(A) Any vacant residential property purchased or acquired by a person at a foreclosure sale pursuant to [state foreclosure states] must

1. Be maintained by that person in accordance with subsection 2.
2. In addition to complying with any other ordinance or rule as required by the applicable governmental entity, the purchaser shall care for the exterior of the property, including, without limitation:
 - (a) Limiting the excessive growth of foliage which would otherwise diminish the value of that property or of the surrounding properties;
 - (b) Preventing trespassers from remaining on the property;

- (c) Preventing mosquito larvae from growing in standing water; and
- (d) Preventing any other condition that creates a public nuisance.

3. If a person violates subsection 2, the applicable governmental entity shall mail to the last known address of the person, by certified mail, a notice:

- (a) Describing the violation;
- (b) Informing the person that a civil penalty may be imposed pursuant to this section unless the person acts to correct the violation within 14 days after the date of receipt of the notice and completes the correction within 30 days after the date of receipt of the notice; and
- (c) Informing the person that he may contest the allegation pursuant to subsection 4.

4. If a person, within 5 days after a notice is mailed to him pursuant to subsection 3, requests a hearing to contest the allegation of a violation of subsection 2, the applicable governmental entity shall apply for a hearing before a court of competent jurisdiction.

5. Except as otherwise provided in subsection 8, in addition to any other penalty, the applicable governmental entity may impose a civil penalty of not more than \$1,000 per day for a violation of subsection 2:

- (a) Commencing on the day following the expiration of the period of time described in subsection 3; or
- (b) If the person requested a hearing pursuant to subsection 4, commencing on the day following a determination by the court in favor of the applicable governmental entity.

6. The applicable governmental entity may waive or extend the period of time described in subsection 3 if:

- (a) The person to whom a notice is sent pursuant to subsection 3 makes a good faith effort to correct the violation; and
- (b) The violation cannot be corrected in the period of time described in subsection 3.

7. Any penalty collected by the applicable governmental entity pursuant to this section must be directed to local nuisance abatement programs.

8. The applicable governmental entity may not assess any penalty pursuant to this section in addition to any penalty prescribed by a local ordinance. This section shall not be deemed to preempt any local ordinance.

9. If the applicable governmental entity assesses any penalty pursuant to this section, any lien related thereto must be recorded in the office of the county recorder.