

Syllabus:

1. Where a federal district court issues an order confirming the sale of real property which was the subject of foreclosure proceedings in the federal district court which is located in a county within the state other than the county in which the real property is situated, ordering the recorder of the county in which the subject property is situated to "satisfy the records in said office as to the mortgage of the United States," and to "cause the release of the mortgage of...[mortgagee bank, date of filing, volume and page number in mortgage records]," the county recorder is authorized to indicate the satisfaction of such mortgage in the manner specified in R.C. 5301.36. The county recorder shall charge the fees therefor, as prescribed by R.C. 317.32, which must be paid upon presentation of the instrument for record.

2. Where a federal district court issues an order confirming the sale of real property which was the subject of foreclosure proceedings in the federal district court which is located in a county within the state other than the county in which the real property is situated, ordering the clerk of the court of common pleas in whose office is filed a certificate of judgment which is a lien on the subject property to "cause the release of" a specific certificate of judgment on file in such clerk's office, such release may be effected by filing a copy of the order as provided for in R.C. 2329.022 for the filing of foreign judgments and charging the fee prescribed therefor by R.C. 2329.025 and the fee of one dollar prescribed by R.C. 2303.20(L) for entering satisfaction of the lien, or such order may be filed pursuant to R.C. 2323.261 upon payment of the fee prescribed by R.C. 2303.20(X). In the event that a particular order issued by a federal district court to a common pleas court clerk is unclear, the clerk may seek clarification of the order from the issuing court.

To: Jim Slagle, Marion County Prosecuting Attorney, Marion, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, October 13, 1988

I have before me your opinion request concerning the duties of the county recorder and the clerk of the court of common pleas with respect to various records maintained in their offices. Your specific concern is how such officers' records are to reflect the results of proceedings conducted in federal district court to foreclose on property located in the county. By way of background, your request states that:

The United States of America has commenced various foreclosure proceedings for real estate located in Marion County, with the proceedings taking place in the United States District Court for the Northern District of Ohio, Western Division. Pursuant to the provisions of Ohio Civil Rule 3(F), the Plaintiff in the District Court caused a certified copy of the Complaint to be filed with the Marion County Common Pleas Clerk of Courts. It appears thereafter, that the Federal District Court would issue a Foreclosure Confirmation Order.

As an example of the type of order with which you are concerned, you have sent a

"Consent Order Confirming Sale," issued by the federal district court, which states in pertinent part:

It is further ORDERED that the Recorder of Marion County, Ohio shall satisfy the records in said office as to the mortgage of the United States of America, as executed by...[name, date received and recorded, volume and page number] in the Marion County, Ohio Mortgage records and the purchaser shall take said property free of said mortgage.

It is further ORDERED that the Recorder of Marion County, Ohio shall cause the release of the mortgage of...[mortgagee bank, date of filing, volume and page number in mortgage records], to be entered upon the records of said office as to the real estate subject of this decree.

It is further ORDERED that the Clerk of Marion County, Ohio shall cause the release of the certificate of judgment of...[name, amount of judgment, date filed, volume and page where recorded], to be entered upon the records of said office as to the real estate subject of this decree.

As stated in your letter, although the county recorder and the clerk of courts were not made parties to the foreclosure proceeding, they were included in the above-quoted order of the court.

In light of the foregoing, I have restated your questions as follows:

1. Does the county recorder have authority to satisfy the record of a mortgage recorded in his office in favor of the United States or to cause the release of a mortgage to be entered upon the records of his office concerning real property which is the subject of a foreclosure proceeding in a federal district court where the court in a consent order confirming the sale of such real property has so ordered? If so, may the recorder charge a fee for such service?
2. Is the clerk of the court of common pleas authorized to cause the release of a certificate of judgment to be entered upon the records of his office concerning real property which is the subject of foreclosure proceedings in a federal district court where the court in a consent order confirming the sale of such real property has so ordered? If so, may the clerk charge a fee for such service?

In answering your first question, I note initially that the county recorder is a creature of statute and, therefore, has only such powers and duties as are prescribed by statute or as are necessarily implied therefrom. *State ex rel. Preston v. Shaver*, 172 Ohio St. 111, 114, 173 N.E.2d 758, 760 (1961) ("[a] county recorder is an elected public official charged with the performance of duties as prescribed by statute"); 1936 Op. Att'y Gen. No. 5383, vol. I, p. 451, 452 ("[c]ounty recorders being public officers have only such powers as are conferred by statute and such implied powers as are necessary to effectuate the express powers"). See generally R.C. Chapter 317 (election, powers, and duties of county recorder). It is, therefore, necessary to examine the statutory provisions setting forth the county recorder's duties with respect to keeping records of mortgages.

R.C. 317.08 requires the county recorder to keep certain records, including a record of mortgages, in which shall be recorded, among other things, "[a]ll mortgages, including amendments, supplements, modifications, and extensions thereof, or other instruments of writing by which lands, tenements, or hereditaments are or may be mortgaged or otherwise conditionally sold, conveyed, affected, or encumbered," R.C. 317.08(B)(1). See generally 1980 Op. Att'y Gen. No. 80-029 (discussing nature of recorder's duty to record instruments as provided for by statute and exceptions to such duty).

The procedure for recording various transactions respecting mortgages is set forth in R.C. Chapter 5301.¹ R.C. 5301.23 states in pertinent part: "All mortgages properly executed shall be recorded in the office of the county recorder of the county in which the mortgaged premises are situated, and take effect from the time they are delivered to such recorder for record." R.C. 5301.28, concerning the release of mortgages, states in part:

When the mortgagee of property within this state,...receives payment of any part of the money due the holder of such mortgage, and secured by the mortgage, and enters satisfaction or a receipt therefor, either on the mortgage or its record, such satisfaction or receipt, when entered on such record, or copied thereon from the original mortgage by the county recorder, will release the mortgage to the extent of such receipt....

In a county in which the county recorder has determined to use the microfilm process as provided by [R.C. 9.01], the recorder may require that all satisfactions of mortgages be made by separate instrument. The original instrument bearing the proper endorsement may be used as such separate instrument. Such separate instrument shall be recorded in the book provided by [R.C. 5301.34] for the satisfactions of mortgages. The recorder shall charge the fee for such recording as provided by [R.C. 317.32] for recording mortgages.

Concerning the provisions of G.C. 8546 (now R.C. 5301.28), one of my predecessors stated: "this section contemplates the release or discharge of a mortgage by either (1) a satisfaction on the mortgage record, or (2) the copying on the record of the satisfaction written on the original mortgage." 1943 Op. Att'y Gen. No. 5805, p. 58, 60. *See generally Swartz v. Leist*, 13 Ohio St. 419, 425 (1862)(concerning statutory language in a predecessor statute to R.C. 5301.28, states: "This statute was intended to facilitate the discharge of mortgage liens. It is remedial in its character, and should be liberally construed").

Further duties are imposed upon the county recorder by R.C. 5301.34 which requires the county recorder to discharge upon the county record thereof any mortgage for which there is presented to him "a certificate executed by the mortgagee or his assigns, acknowledged and witnessed as provided in [R.C. 5301.01], or when there is presented to him a deed of release executed by the governor as provided in [R.C. 5301.19], certifying that the mortgage has been fully paid and satisfied." The provisions of R.C. 5301.34 do not appear to apply to the situation you describe where a mortgage is satisfied or released as a result of judicial proceedings, since the statute addresses only releases by a "certificate executed by the mortgagee or his assigns, acknowledged and witnessed as provided in [R.C. 5301.01]" and "a deed of release executed by the governor as provided in [R.C. 5301.19]."

Specifically concerning satisfaction of a mortgage, R.C. 5301.36 states:

(A) Except in a county in which the county recorder has elected to require that all satisfactions of mortgages be recorded by separate instrument as allowed under [R.C. 5301.28], when recording a mortgage, county recorders shall leave space on the margin of the record for the entry of satisfaction, and record therein the satisfaction made on the mortgage, or permit the owner of the claim secured by the mortgage to enter such satisfaction. *Such record shall have the same effect as the record of a release of the mortgage.*

(B) Within ninety days from the date of the satisfaction of a residential mortgage, the mortgagee shall record the fact of the satisfaction in the appropriate county recorder's office and pay any fees required for the recording. The mortgagee may, by contract with the mortgagor, recover the cost of the fees required for the recording of the satisfaction by the county recorder.

¹ Since the order about which you ask appears to order the complete release of the mortgage, I will not address the statutory provisions regarding partial releases of mortgages, *see, e.g.*, R.C. 5301.31.

....
 (D) As used in this section, "residential mortgage" means an obligation to pay a sum of money evidenced by a note and secured by a lien upon real property located within this state containing two or fewer residential units or on which two or fewer residential units are to be constructed and shall include such an obligation on a residential condominium or cooperative unit. (Emphasis added.)

R.C. 5301.36 thus provides for the entry of satisfaction of a mortgage either by the recording of a separate instrument as allowed by R.C. 5301.28 or by entry of satisfaction on the margin of the record of the mortgage, and imposes certain recording duties upon the mortgagee when a residential mortgage, as defined in R.C. 5301.36 (D), has been satisfied.

R.C. Chapter 5301 further establishes a procedure whereby the record of a mortgage may reflect the fact that the mortgage has been released or satisfied in judicial proceedings.² R.C. 5301.39-42. See generally *Walker v. Scott*, 7 Ohio App. 335, 340 (Hamilton County 1914) (G.C. 8552 (predecessor of R.C. 5301.39) "provides for the cancellation of the mortgages satisfied by the foreclosure proceeding by an entry on the record thereof by the clerk of the court. This section is merely directory. Such an entry is in effect simply a reference to the court proceedings, and while it should be observed, because it is a great convenience to examiners of the record, it is not an essential one to effect a complete satisfaction of the mortgage or to remove it as a cloud upon the title when a proper foreclosure sale has been had"). This statutory procedure, however, concerns the duties of the clerk of the court in which the proceedings were conducted, but not those of the county recorder, the officer whom your first question addresses.

You specifically ask about a situation where the United States District Court has ordered the county recorder to "satisfy the records in said office as to the mortgage of the United States of America, as executed by...[name, date received and recorded, volume and page number] in the Marion County, Ohio Mortgage records and the purchaser shall take said property free of said mortgage." Since the mortgage about which you ask is recorded in the mortgage records of the county, the county recorder may, pursuant to R.C. 5301.36, indicate the satisfaction of the mortgage on the margin of the record. If, however, the recorder has elected to require that all satisfactions of mortgages be recorded by separate instrument, R.C. 5301.36 provides for the recording of such separate instrument as allowed by R.C. 5301.28. Pursuant to R.C. 5301.28:

The original instrument bearing the proper endorsement may be used as such separate instrument. Such separate instrument shall be recorded in the book provided by [R.C. 5301.34] for the satisfactions of mortgages. The recorder shall charge the fee for such recording as provided by [R.C. 317.32] for recording mortgages.

See generally R.C. 317.111 (requirement that certain instruments must contain name of preparer in order to be received for record or filing by the county recorder; such requirement does not apply, however, to, among other things, "any decree, order, judgment, or writ of any court"). R.C. 5301.36 thus requires the county recorder to enter the satisfaction of the mortgage on the margin of the mortgage record or to record a separate instrument, as allowed by R.C. 5301.28, indicating that the mortgage has been satisfied.³

² Currently, R. Civ. P. 3(F) establishes a procedure for notice of judicial actions affecting title to or possession of real property located in a county other than that in which the court is located. R. Civ. P. 3(F)(1), as discussed elsewhere in this opinion, provides for the application of that subsection to such actions conducted in a United States District Court.

³ Whether it may be appropriate to note the release or satisfaction of a mortgage of the United States under the terms of R.C. 317.09 will not be addressed in this opinion, since the mortgage about which you ask was filed in the record of mortgages, see generally R.C. 317.08(B), not in the federal tax lien index provided for in R.C. 317.09(A) for "[n]otices of liens

The second example about which you ask concerning the county recorder's duties is stated in the court order as follows: "It is further ORDERED that the Recorder of Marlon County, Ohio shall cause the release of the mortgage of...[mortgagee bank, date of filing, volume and page number in mortgage records], to be entered upon the records of said office as to the real estate subject of this decree." I am aware of no statute specifically authorizing the county recorder to release a mortgage where so ordered in foreclosure proceedings in a federal district court, *see generally* note 2, *infra*. Cf. R.C. 5301.40 (imposing certain duties upon the clerk of a state court in which foreclosure proceedings are conducted where "a mortgage or other lien is satisfied or declared void, in whole or in part, by a judgment, final order, or decree"). The court in *Snyder v. Castle*, 16 Ohio App. 333 (Pike County 1922), however, examined the statutory methods for recording the release of a mortgage and concluded that such statutory methods were not exclusive. In reaching its conclusion, the court explained the purpose for reflecting the release of recorded mortgages as follows:

The purpose of a release is to make the record show that the condition of the mortgage has been performed, and thus give notice to the public of the state of the title. It would seem that the important thing is that the release appear upon the record, and that it be intelligible enough to be understood.

16 Ohio App. at 338.

In light of the purpose served by the release of a mortgage, I note that R.C. 5301.36, as set forth above, establishes a statutory procedure by which the satisfaction of a mortgage may be recorded, either by entry of satisfaction on the margin of the record or by recording a separate instrument as allowed under R.C. 5301.28. R.C. 5301.36(A) states, in pertinent part: "Such record shall have the same effect as the record of a release of the mortgage." Thus, although the entry of satisfaction of a mortgage, as provided for by R.C. 5301.36, may not be the same as the release of such mortgage, as directed by the court order about which you ask, the effect of such an entry is, pursuant to R.C. 5301.36, the same as that of a release. It is not clear that R.C. 5301.36 prescribes the method required to reflect the release of the mortgage in the second example about which you ask. It appears, however, that the use of such procedure would further the purpose of the scheme concerning the recording of mortgages. The recorder's use of the method prescribed by R.C. 5301.36, therefore, appears to be a valid method by which he may effect the release of the mortgage as described in the second example about which you ask.⁴

Part of your first question concerns the fees to which the recorder is entitled in the situation about which you ask. The fees which the county recorder may charge are set forth primarily in R.C. 317.32 which states in pertinent part:

For his services, the county recorder *shall charge and collect* the following fees:

(A) For recording manually or through the use of a typewriter a mortgage, deed of conveyance, power of attorney, or other instrument of writing, one dollar for each hundred words actually written, typewritten, or printed on the records;

for internal revenue taxes and of *any other lien in favor of the United States*, as provided in the statutes of the United States or in any revision of the statutes, certificates discharging the liens, and certificates of release of the liens," (emphasis added).

⁴ As discussed in *Walker v. Scott*, 7 Ohio App. 335 (Hamilton County 1914), the statutory method for the reflection of the results of foreclosure proceedings in state courts is designed merely for informational purposes to refer to the court proceedings in which the foreclosure was accomplished. *See generally* R.C. 5301.42 (stating that R.C. 5301.39-.41 "do not give to any judgment, order, or decree an effect, by reason of the entry thereof in the county recorder's office, other than that which it would have had without such entry").

(B) For indexing it, twenty cents for each grantor and each grantee in such instrument;

...
 (D) For recording and indexing when the photocopy or any similar process is employed, ten dollars for the first two pages and two dollars for each page thereafter, size eight and one-half inches by fourteen inches, or fraction thereof, including the caption page, of such instrument;

...
 (F) For manual or typewritten recording of assignment or satisfaction of mortgage or lease or any other marginal entry, two dollars;

(G) For entering any marginal reference by separate recorded instrument, one dollar for each marginal reference set out in such instrument, in addition to the recording fee set forth in division (D) of this section....

....
 The fees provided in this section shall be paid upon the presentation of the instruments for record, or upon the application for any certified copy of the record excepting fees and expenses incurred in the filing of United States tax liens, discharges, and releases, the payment for which shall be governed by [R.C. 317.09]. (Emphasis added.)

Pursuant to R.C. 317.32, where the county recorder utilizes the statutory method prescribed by R.C. 5301.36 for the entry of satisfaction, the fees which the recorder shall charge for making the entry are those prescribed by R.C. 317.32. The amount to be charged in any particular instance depends upon whether the recorder elects to use the marginal entry method, as set forth in R.C. 5301.36, or whether such entry is made by a separate instrument, as provided in R.C. 5301.28. *See generally* 1965 Op. Att'y Gen. 65-224 (syllabus) ("if an attorney should seek to record a typed release of mortgage or lien by having the county recorder make a photocopy of the separate instrument upon which such release appears, then the county recorder is entitled to the charges set forth in both [R.C. 317.32(D) and R.C.317.32(H)(currently at R.C. 317.32(G))]").

R.C. 317.32 expressly states that the fees provided for therein "shall be paid upon the presentation of the instruments for record, or upon the application for any certified copy of the record excepting fees and expenses incurred in the filing of United States tax liens, discharges, and releases, the payment for which shall be governed by [R.C. 317.09]." Thus, where fees are charged under authority of R.C. 317.32, such fees are required to be paid upon the presentation of the instruments for record, or upon the application for any certified copy of the record.

Concerning the county recorder's collection of fees prescribed by statute, one of my predecessors concluded:

County recorders being public officers have only such powers as are conferred by statute and such implied powers as are necessary to effectuate the express powers. Consequently, public officials who are required by law to collect certain fees have no authority to decide that in certain cases it would be inequitable or unwise to assess the statutory fees.

1936 Op. No. 5383 at 452. The duty of the county recorder to collect the fees imposed by R.C. 317.32 is mandatory. R.C. 325.32 ("[n]o county officer named in [R.C. 325.27, including the county recorder], shall make any reduction, abatement, or remission of any fees, costs, percentages, penalties, allowances, or perquisites of any kind, required to be charged and collected by him"). *See generally Dorrian v. Scioto Conservancy Dist.*, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971) (syllabus, paragraph one) ("[i]n statutory construction, the word 'may' shall be construed as permissive and the word 'shall' shall be construed as mandatory unless there appears a clear and unequivocal legislative intent that they receive a construction other than their ordinary usage").

Your second question concerns the duty of the clerk of the court of common pleas to cause the release of a certificate of judgment to be entered upon the records of his office with respect to real property which is the subject of foreclosure proceedings in a federal district court when the court in a consent order confirming the sale of such real property has so ordered.

I begin by noting that R.C. 2303.01 provides for the election quadrennially in each county of a clerk of the court of common pleas. Concerning the duties of a common pleas court clerk, R.C. 2303.26 states: "The clerk of the court of common pleas shall exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law; and in the performance of his duties he shall be under the direction of his court." See generally *State ex rel. Wanamaker v. Miller*, 164 Ohio St. 176, 128 N.E.2d 110 (1955) (concerning the clerk's duties to file papers presented for filing and to act under the direction of the court which he serves); *State ex rel. Glass v. Chapman*, 67 Ohio St. 1, 65 N.E. 154 (1902) (characterizing the duties of the common pleas court clerk as "ministerial and non-judicial"). In order to answer your question, it is therefore necessary to examine not only the statutory duties of the clerk of courts, but also other sources of law which may empower the clerk of courts to cause the release of a certificate of judgment under the circumstances you describe.⁵

The powers and duties of clerks of court are governed in part by the Ohio Rules of Civil Procedure. R. Civ. P. 3(F) states in part:

(1) When an action affecting the title to or possession of real property or tangible personal property is commenced in a county other than the county in which all of the real property or tangible personal

⁵ R.C. 5301.40, which sets forth a procedure to be followed where a mortgage or other lien is satisfied or declared void in certain judicial proceedings, states in part:

When a mortgage or other lien is satisfied or declared void, in whole or in part, by a judgment, final order, or decree, the clerk of the court in which such proceedings are had shall enter upon the record of such mortgage or other lien, *in the county recorder's office where it is recorded*, a memorandum of the character of such proceedings, giving also the volume and page of the record where they are recorded.

Such clerk may tax in the bill of costs the fees of the recorder provided by law for the entry of such memorandum, release, satisfaction, or record, including a fee to himself for making such entry as provided for in [R.C. 2303.20(L)], and the fees provided by law for official copies of records.

In a county in which the county recorder has determined to use the microfilm process as provided by [R.C. 9.01] and has elected to require a separate instrument for satisfactions of mortgages and other liens, the judgment, final order, or decree may constitute the separate instrument and shall be recorded as appropriate for the type of action involved. (Emphasis added.)

R.C. 5301.40, while referring to the entry of satisfaction of a mortgage or "other lien," appears to refer only to other liens of record in the office of the county recorder. Certificates of judgment, however, become a lien upon the property of the judgment debtor when the certificate of judgment is filed in the office of the clerk of the court of common pleas. R.C. 2329.02. R.C. 5301.40 does not, therefore, appear to establish a procedure for reflecting the fact that a certificate of judgment of record in the office of the common pleas court clerk has been satisfied in a federal district court action. *But see* 1952 Op. Att'y Gen. No. 1897, p. 730 (syllabus, paragraph two) (concluding that the statutory procedure set forth, in part, in G.C. 8552-8554 (currently at R.C. 5301.39-.40) applies to the clerk of courts' entry of release or satisfaction of a judgment lien).

property is situated, the plaintiff may cause a certified copy of the complaint to be filed with the clerk of the court of common pleas in each county or additional county in which the real property or tangible personal property affected by the action is situated. If the plaintiff fails to file such certified copy of the complaint, third persons will not be charged with notice of the pendency of the action.

To the extent authorized by the laws of the United States, this subsection also applies to actions, other than proceedings in bankruptcy, affecting title to or possession of real property in this state commenced in a United States District Court whenever such real property is situated wholly or partly in a county other than the county in which the permanent records of such court are kept.

(2) After final judgment, or upon dismissal of the action, the clerk of the court that issued the judgment shall transmit a certified copy of the judgment or dismissal to the clerk of the court of common pleas in each county or additional county in which real or tangible personal property affected by the action is situated.

....
 (4) The clerk of the court receiving a certified copy filed or transmitted in accordance with the provisions of this subdivision shall number, index, docket and file it in the records of the receiving court. He shall index the first such certified copy he receives in connection with a particular action in the indices to the records of actions commenced in his own court, but he may number, docket and file it in either the regular records of his own court or in a separate set of records. *When he subsequently receives a certified copy in connection with that same action, he need not index it, but he shall docket and file it in the same set of records under the same case number he previously assigned to the action.*

(5) When an action affecting title to registered land is commenced in a county other than the county in which all of such land is situated, any certified copy required or permitted by this subdivision shall be filed with or transmitted to the county recorder, rather than the clerk of the court of common pleas, of each county or additional county in which such land is situated. (Emphasis added.)

See generally Union Bank Co. v. Brumbaugh, 69 Ohio St. 2d 202, 206, 431 N.E.2d 1020, 1023 (1982) ("[t]he Civil Rules became effective July 1, 1970. They were intended to supersede all laws in conflict with them").

Since the federal court action about which you ask affects the title to real property located in a county other than the county in which the court is located, the second paragraph of R. Civ. P. 3(F)(1) is pertinent to the duties of the common pleas court clerk in the situation you describe. The purpose of the second paragraph in R. Civ. P. 3(F)(1) was explained in the staff notes as follows:

The additional paragraph is intended to make it clear that when actions affecting title to or possession of real property are commenced in a federal court which sits in a county other than where the property is situated, the plaintiff must cause a certified copy of the complaint to be filed with the clerk of court of the situs county in the same manner as if he had commenced the action in a state court, if he wishes to charge third persons with notice of the pendency of the action. Federal law (28 U.S.C. §1964) allows a state to make such requirement if the state law "authorizes a notice of an action concerning real property in a United States district court to be...recorded...in the same manner, or in the same place [as notice of such an action commenced in a state court]." In short, the new paragraph applies the *lis pendens* principle to certain actions in a federal court which involve real property.

R. Civ. P. 3(F)(1), thus, applies the provisions of that subsection, "[t]o the extent authorized by the laws of the United States," to certain actions in district court where such proceedings affect the title to or possession of real property.

Pursuant to the second paragraph of R. Civ. P. 3(F)(1), as set forth above, only the provisions of that *subsection* apply to district court proceedings in the type of action described therein. As stated in the staff notes, the purpose of the second paragraph of R. Civ. P. 3(F)(1) is merely to give constructive notice of the pending federal court action. If subsections (2)-(4) of R. Civ. P. 3(F) were meant to apply to federal court proceedings, the rule could have expressly so provided. Thus, although R. Civ. P. 3(F)(2)-(4) provides a complete scheme for reflecting the disposition of judicial proceedings conducted in a state court outside the county in which all of the subject property is located,⁶ such scheme does not apply to such proceedings conducted in a United States district court. *See generally Pease Co. v. Huntington Nat'l Bank*, 24 Ohio App. 3d 227, 230, 495 N.E.2d 45, 50 (Franklin County 1985)("[u]nder Civ. R. 3(F), the mere filing of a complaint in the situs county charges third persons with notice of the pendency of the action").

In addition to the provisions of R. Civ. P. 3(F) concerning notice of actions "affecting the title to or possession of real property...[commenced] in a county other than the county in which all of the real property...is situated," there is a statutory scheme governing *lis pendens* set forth in R.C. 2703.26 and .27. R.C. 2703.26, concerning *lis pendens* generally, states: "When summons has been served or publication made, the action is pending so as to charge third persons with notice of its pendency. While pending, no interest can be acquired by third persons in the subject of the action, as against the plaintiff's title." Specifically concerning an action brought in a county other than that in which the subject real property is located, R.C. 2703.27 states:

When a part of real property, the subject matter of an action, is situated in a county other than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the county recorder's office of such other county before it operates therein as notice so as to charge third persons, as provided in [R.C. 2703.26]. It shall operate as such notice, without record, in the county where it is rendered. This section does not apply to actions or proceedings under any statute which does not require such record.

Under R.C. 2703.27, unlike R. Civ. P. 3(F), in order for third persons to be charged with notice, a certified copy of the judgment must be filed in the office of the recorder of the county in which the subject property is located. Thus, if R.C. 2703.27 were applicable to federal court proceedings by virtue of 28 U.S.C. §1964, a copy of the judgment rendered in the federal court proceedings would have to be filed in the office of the county recorder. It appears, however, that since R. Civ. P. 3(F)(1) specifically applies the provisions of that subsection to federal court proceedings of the type about which you ask, the notice provisions of that subsection, i.e., the plaintiff's filing of a certified copy of the complaint with the clerk of the common pleas court of the county where the property is located, rather than the procedure set forth in R.C. 2703.26 and .27, govern the proceedings in question.

Examining other statutory provisions, I note that, the General Assembly has enacted a specific statutory procedure governing the enforcement of foreign judgments, R.C. 2329.021-.027. As used in those sections, a "foreign judgment" means "any judgment, decree, or order of a court of the United States, or of any court of another state, that is entitled to full faith and credit in this state," (emphasis added). R.C. 2329.021. Concerning the filing of copies of foreign judgments, R.C. 2329.022 states:

⁶ R. Civ. P. 3(F)(5) provides an exception for actions affecting title to registered land where such action is commenced in a county other than the county in which all of such land is located. In such a situation, R. Civ. P. 3(F)(5) makes the recorder, rather than the common pleas court clerk, of the county in which the land is located the proper person to whom the certified copies required or authorized by R. Civ. P. 3(F) shall be transmitted or with whom such copies are filed.

A copy of any foreign judgment authenticated in accordance with section 1738 of Title 28 of the United States Code, 62 Stat. 947 (1948),⁷ may be filed with the clerk of any court of common pleas. The clerk shall treat the foreign judgment in the same manner as a judgment of a court of common pleas. A foreign judgment filed pursuant to this section has the same effect, and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a court of common pleas and may be enforced or satisfied in same manner as a judgment of a court of common pleas. (Emphasis and footnote added.)

In the situation about which you ask, the consent order confirming sale is a foreign judgment, as that term is defined in R.C. 2329.021. Pursuant to R.C. 2329.022, a properly authenticated foreign judgment which is filed pursuant to that section has the same effect as a judgment of a court of common pleas.⁸ As stated in *Edwards v. Passarelli Brothers Automotive Service*, 8 Ohio St. 2d 6, 9, 221 N.E.2d 708, 711 (1966): "It is the standard procedure in Ohio for the party who is entitled to an entry of satisfaction of a judgment rendered against him to obtain an order for such entry on motion and proof of payment." Pursuant to R.C. 2303.08, setting forth the general duties of the common pleas court clerk, the clerk has a duty to "enter all orders, decrees, judgments, and proceedings of the courts of which he is the clerk." Thus, if the common pleas court had ordered an entry of satisfaction of the judgment, it would be the duty of the clerk under R.C. 2303.08 to reflect the satisfaction of such judgment. Since R.C. 2329.022 gives a properly authenticated foreign judgment filed with the common pleas court clerk the "same effect" as a judgment of the court of common pleas, it appears that the clerk shall, pursuant to R.C. 2303.08, enter satisfaction of the judgment in accordance with the consent order of the district court, once the order is filed under R.C. 2329.022.

Concerning the fee for such filing, R.C. 2329.025 states: "Any person who files a foreign judgment pursuant to [R.C. 2329.022] shall pay a filing fee of fifteen dollars. Fees for docketing, transcription, or other enforcement proceedings shall be as provided in [R.C. 2303.20]." R.C. 2329.025 thus prescribes a filing fee of fifteen dollars to be paid by any person filing a foreign judgment in accordance with R.C. 2329.022.

In addition, however, I note that R.C. 2303.20 prescribes the fees to be charged by common pleas court clerks, stating in pertinent part: "The clerk of the court of common pleas shall charge the following fees and no more: ... (L) One dollar for entering satisfaction of lien on record in county recorder's office, and county clerk's office...." Thus, under the scheme provided by R.C. 2329.021-.027, the district court order about which you ask could be filed upon the payment of fifteen dollars as prescribed by R.C. 2329.025 for the filing of a foreign judgment and, pursuant to R.C. 2303.20(L), one dollar for entering satisfaction of the lien as ordered by the district court.

Another potential source of statutory authority for the common pleas court clerk's causing satisfaction of the certificate of judgment, as ordered by the federal district court, is contained in R.C. 2323.261 which states:

⁷ In *Stoll v. Gottlieb*, 305 U.S. 165, 170 (1938), the Supreme Court interpreted the meaning of the predecessor of 28 U.S.C. §1738 as providing, in part: "the judgments and decrees of the Federal courts in a state are declared to have the same dignity in the courts of that state as those of its own courts in a like case and under similar circumstances." (Footnote omitted.)

⁸ Although it appears that the scheme prescribed by R.C. 2329.021-.027 is designed to facilitate the enforcement of foreign judgments, *see, e.g.*, R.C. 2329.023-.024, the federal district court order about which you ask, although not being filed for purposes of enforcement of the judgment of the federal court, falls within the definition of a "foreign judgment" for purposes of R.C. 2329.021-.027 and is, therefore, entitled to be filed pursuant to R.C. 2329.022.

A copy of the record or part of the record of any extracounty action or proceeding that affects the title to or possession of real property, when authenticated as provided in Civil Rule 44, may be filed in the office of the clerk of the court of common pleas of the county in which the real property or any part of the real property is situated. Upon payment of the fees prescribed by [R.C. 2303.20(X)], the copy shall be admitted to record, and be numbered, docketed, indexed, and filed in the same manner and shall have the same effect as a similar record of a local action or proceeding affecting the title to or possession of real property in the county.

Since the entry of the court as described in your opinion request is part of the record of the out-of-county federal district court proceedings affecting the title to the real property upon which the certificate of judgment was a lien, pursuant to R.C. 2323.261, it may be filed in the clerk's office upon payment of the fees prescribed by R.C. 2303.20(X),⁹ so long as it has been authenticated in the manner prescribed by R. Civ. P. 44. Further, pursuant to R.C. 2323.261, upon payment of the fee prescribed by R.C. 2303.20(X), the copy is admitted to record and has the same effect as a similar record of a local action or proceeding affecting the title to or possession of real property. *See generally Steel v. Katzenmeyer*, 5 Ohio C.C. (n.s.) 25, 28 (Wood County 1903)("the satisfaction or dormancy of the judgment are the only ways by which, or contingencies upon which, the judgment ceases to operate as a lien"); *Kremer v. Keating*, 35 Ohio Op. 1, 4, 72 N.E.2d 596, 600 (C.P. Belmont County 1947)("[t]he satisfaction or dormancy of a judgment are the only contingencies under which a judgment lien ceases to exist against the real estate of the debtor. The effect of such satisfaction or dormancy is to relieve the land of the judgment debtor, both in the county wherein the judgment was rendered and in those counties into which it has been extended by the issuing and levying of a foreign execution or the filing of a certificate of judgment").

As is apparent from the foregoing, there appears to be no single method provided by law for the reflection of the satisfaction of a certificate of judgment as a result of proceedings in federal district court. *See, e.g.*, R.C. 2329.022 and R.C. 2323.261. It is unclear whether, in a situation where a federal district court orders a common pleas court clerk to release a certificate of judgment which is contained in the records of said office, the clerk need only file such order as part of the proceedings of the federal court action, or whether the clerk is required to make a notation on the certificate of judgment which has been released in the federal court proceedings.

I note that, if a particular order is unclear as to the duties it imposes upon the clerk of courts, it may be appropriate to seek modification or clarification of the order from the court which issued the order. *See* 1986 Op. Att'y Gen. No. 86-034. *See generally Huntington Nat'l Bank v. Miller*, 36 Ohio App. 3d 208, 209, 521 N.E.2d 844, 845 (Franklin County 1987) ("ordinarily the clerk cannot refuse to accept papers for filing if the determination of propriety of filing constitutes a question of law since only a court can determine the rights of a party. Furthermore, if a party presents a paper for filing and the clerk refuses to accept the paper for filing, the clerk should so indicate on the docket, together with the reason for refusal").

It is, therefore, my opinion, and you are hereby advised, that:

1. Where a federal district court issues an order confirming the sale of real property which was the subject of foreclosure proceedings in the federal district court which is located in a county within the state other than the county in which the real property is situated, ordering the recorder of the county in which the subject property is situated to "satisfy the records in said office as to the

⁹ R.C. 2303.20(X) prescribes the fee the clerk of courts shall charge as follows: "Two dollars for numbering, docketing, indexing, and filing each authenticated or certified copy of the record, or any portion thereof, of an extracounty action or proceeding that does not exceed five pages, and ten cents for each additional page of such copy."

mortgage of the United States," and to "cause the release of the mortgage of...[mortgagee bank, date of filing, volume and page number in mortgage records]," the county recorder is authorized to indicate the satisfaction of such mortgage in the manner specified in R.C. 5301.36. The county recorder shall charge the fees therefor, as prescribed by R.C. 317.32, which must be paid upon presentation of the instrument for record.

2. Where a federal district court issues an order confirming the sale of real property which was the subject of foreclosure proceedings in the federal district court which is located in a county within the state other than the county in which the real property is situated, ordering the clerk of the court of common pleas in whose office is filed a certificate of judgment which is a lien on the subject property to "cause the release of" a specific certificate of judgment on file in such clerk's office, such release may be effected by filing a copy of the order as provided for in R.C. 2329.022 for the filing of foreign judgments and charging the fee prescribed therefor by R.C. 2329.025 and the fee of one dollar prescribed by R.C. 2303.20(L) for entering satisfaction of the lien, or such order may be filed pursuant to R.C. 2323.261 upon payment of the fee prescribed by R.C. 2303.20(X). In the event that a particular order issued by a federal district court to a common pleas court clerk is unclear, the clerk may seek clarification of the order from the issuing court.