

OPINION NO. 2009-019**Syllabus:**

2009-019

R.C. 2329.191, which requires the submission of Preliminary Judicial Reports in actions demanding the judicial sale of residential real estate, is rendered by R.C. 2329.22 inapplicable to sales of lands by the state. Because the county acts as the agent of the state in proceedings relating to delinquent and forfeited lands and the certification and sale of those lands, the Preliminary Judicial Report requirements of R.C. 2329.191 do not apply to proceedings in which county governments seek the sale of real property to enforce a lien for delinquent real property taxes.

To: Jonathan D. Blanton, Jackson County Prosecuting Attorney, Jackson, Ohio

By: Richard Cordray, Ohio Attorney General, May 19, 2009

We have received your request for an opinion pertaining to R.C. 2329.191, recently enacted in Sub. H.B. 138, 127th Gen. A. (2008) (eff. Sept. 11, 2008). You have asked:

1. Does R.C. 2329.191 require county governments to submit preliminary judicial reports in sales of property for delinquent real property taxes?
2. Are county governments required to provide the report by a duly licensed insurance agent on behalf of a licensed insurance company?
3. Does it matter whether the title exam is performed by an employee of the prosecuting attorney's office or through a contract for services?
4. If the county is not required to file a preliminary judicial report in compliance with R.C. 2329.191, where can this exception be found?

R.C. 2329.191 requires the filing of a Preliminary Judicial Report in the following circumstances:

(B) *In every action demanding the judicial sale of residential real estate consisting of one to four single-family units, the party seeking that judicial sale shall file with the clerk of the court of common pleas within fourteen days after filing the pleadings requesting relief a preliminary judicial report on a form that is approved by the department of insurance that is prepared and issued by a duly licensed title insurance agent on behalf of a licensed title insurance company or by a title insurance company that is authorized by the department of insurance to transact business in this state.*

In the case of residential real estate consisting of more than four single-family units or of commercial real estate, the party seeking judicial sale has the option of filing either a Preliminary Judicial Report as described in division (B) or a commitment for an owner's fee policy of title insurance that is prepared and issued by a duly licensed title insurance agent on behalf of a licensed title insurance company. R.C. 2329.191(C).¹

R.C. 2329.191 states plainly that in *every* action demanding the judicial sale of real estate, the party seeking the judicial sale *shall* file a Preliminary Judicial Report, unless the filing of a commitment for an owner's fee policy of title insurance is permitted. However, an exception is provided under R.C. 2329.22, which states that R.C. 2329.19-.21 "do not affect the sale of lands by the state," providing that "[a]ll lands, the property of individuals, indebted to the state for debt, taxes, or in any other manner shall be sold without valuation for the discharge of such debt or taxes."²

Your questions pertain to actions in which county governments seek the

¹ R.C. 2329.191(B) lists information that must be in the Preliminary Judicial Report, including, at a minimum, a legal description of each parcel of real estate, the street address, the county treasurer's permanent parcel number or other tax identification number, the names of the owners of record, the volume and page or instrument number of the recording by which the owners acquired title, a description of the record title, and the names and addresses of lienholders.

² R.C. 2329.22 removes sales for tax delinquency from the requirement of R.C. 2329.20 that no tract of land shall be sold for less than two-thirds of the value returned in an appraisal under R.C. 2329.17. *See, e.g., State v. Johnson*, No. 96CA793, 1997 Ohio App. LEXIS 5983 (Jackson County Dec. 23, 1997); *Harvey v. Eagle One Contractors, Inc.*, No. 91-A-1658, 1992 Ohio App. LEXIS 4288 (Ash-tabula County Aug. 21, 1992). In tax delinquency actions brought by the county, parcels are sold without appraisal and are given a fair market value as determined by the county auditor. *See* R.C. 5721.16(A), .19(A); *cf.* R.C. 323.28(A) (in an action for enforcement of a tax lien under R.C. 323.35, the county treasurer may apply for an appraisal and in that case the premises shall be appraised as provided in R.C. 2329.17 and sold for at least two-thirds of the appraised value; otherwise, the sale must be for not less than the total of taxes and related amounts found due, or the fair market value of the premises as determined by the county auditor plus the costs of the proceeding); R.C. 323.28(E) and 5721.19(I) (upon adjudication of foreclosure,

sale of real property to enforce a lien for delinquent real property taxes. *See* R.C. 323.01(E), .25, .28; R.C. 5721.01(A), .011, .03, .14-.18. In proceedings relating to delinquent and forfeited lands and the certification and sale of those lands, the county auditor acts as the agent of the state. R.C. 5721.09. The county prosecutor brings an action in the name of the county treasurer to foreclose the lien of the state against delinquent lands. R.C. 323.25; R.C. 5721.10 (except as provided in connection with tax certificates under R.C. 5721.30-.43, “the state shall have the first lien on the lands and lots described in the delinquent land list, for the amount of taxes, assessments, interest, and penalty charged prior to the delivery of such list”); R.C. 5721.14(A)(1) (the prosecuting attorney files a complaint in the name of the county treasurer, requesting the foreclosure of the state’s lien on the identified property and forfeiture of the property to the state); R.C. 5725.18; *see also* R.C. 5721.19(F)(1) (“[w]hen the land or lots stand charged on the tax duplicate as certified delinquent, it is not necessary to make the state a party to the foreclosure proceeding, but the state shall be deemed a party to such action through and be represented by the county treasurer”); R.C. Chapter 5723.

A delinquent tax foreclosure action by the county is thus brought by the county as the agent of the state and comes within the exception set forth in R.C. 2329.22. Recently-enacted R.C. 2329.191 is located within “[s]ections 2329.19 to 2329.21, inclusive,” as provided in R.C. 2329.22, and, therefore, “does not affect” the sale of lands by the state—including sales of lands by a county acting as agent of the state. Thus, R.C. 2329.191, which requires the submission of Preliminary Judicial Reports in actions demanding the judicial sale of residential real estate, does not apply to proceedings by counties to sell property to enforce a lien for delinquent real property taxes. The conclusion that the county is not required to submit a Preliminary Judicial Report makes it unnecessary to address your second and third questions.³

Therefore, it is my opinion and you are advised that R.C. 2329.191, which requires the submission of Preliminary Judicial Reports in actions demanding the judicial sale of residential real estate, is rendered by R.C. 2329.22 inapplicable to sales of lands by the state. Because the county acts as the agent of the state in proceedings relating to delinquent and forfeited lands and the certification and sale of those lands, the Preliminary Judicial Report requirements of R.C. 2329.191 do not apply to proceedings in which county governments seek the sale of real property to enforce a lien for delinquent real property taxes.

authorizing the transfer of certain tax delinquent lands to an electing subdivision without appraisal or sale).

³ Although a county is not required to submit a Preliminary Judicial Report in a foreclosure for tax delinquency, it is required to provide various kinds of information, including title searches, in specific circumstances. *See, e.g.*, R.C. 5721.14, .18.