



Ohio Revised Code

Section 2735.04 Powers of receiver.

Effective: March 23, 2015

Legislation: House Bill 9 - 130th General Assembly

(A) The powers of a receiver shall be set forth in the order of the court that appointed the receiver as those powers may be modified by the court or as otherwise approved by the court upon application of the receiver or a party to the action.

(B) Under the control of the court that appointed the receiver as provided in section 2735.01 of the Revised Code, the receiver may do any of the following:

(1) Bring and defend actions in the receiver's own name as receiver;

(2) Take and keep possession of real or personal property;

(3) Collect rents and other obligations, and compromise demands;

(4) Enter into contracts, including, but not limited to contracts of sale, lease, or, so long as existing lien rights will not be impacted, contracts for construction and for the completion of construction work;

(5) Sell and make transfers of real or personal property;

(6) Execute deeds, leases, or other documents of conveyance of real or personal property;

(7) Open and maintain deposit accounts in the receiver's name;

(8) Generally do any other acts that the court authorizes.

(C) Any funds that are expended by or on behalf of the receiver, including receivership fees, fees for professionals assisting the receivership, and those expended in entering into or performing contracts under division (B)(4) of this section, including those for the completion of construction work



authorized by the court, shall be taxed as court costs or otherwise treated as an administrative expense of the action. The court may require an additional deposit to cover funds that would be expended by the receiver under a contract entered into under division (B)(4) of this section only from the parties that have requested or expressly consented to the receiver incurring those expenses.

(D)(1)(a) Subject to the approval and supervision of the court and the requirements of this section, a receiver may sell property free and clear of liens by private sale pursuant to a written contract between the receiver and the prospective purchaser, by private auction, by public auction, or by any other method that the court determines is fair to the owner of the property and all other parties with an interest in the property, is reasonable under the circumstances, and will maximize the return from the property to the receivership estate, taking into account the potential cost of holding and operating the property.

(b) Before entering an order authorizing the sale of the property by the receiver, the court may require that the receiver provide evidence of the value of the property. That valuation may be provided by any evidence that the court determines is appropriate. In a public or private auction, the court may establish a minimum bid.

(c) If the receiver requests authority to sell the property pursuant to a prospective purchase contract and if warranted by the circumstances, the court may require that the receiver solicit and consider additional offers. If the receiver ultimately sells the property to a party other than the original proposed purchaser, if approved by the court, the receiver may pay to the unsuccessful original proposed purchaser a reasonable amount of costs and expenses from the sale proceeds in an amount determined by the court to compensate that proposed purchaser for participation in the sale process to the extent that participation brought value to the receivership.

(2) Any sale of real property under division (B)(5) of this section shall be made only after all of the following occur:

(a) An application is made by the receiver or the first mortgage holder that requests that the receiver be granted the authority to sell the specific real property and sets forth either of the following:

(i) If the receiver has not received a specific offer for sale that the receiver desires to accept, the



proposed procedures for the conduct of the sale;

(ii) If the receiver has received a specific offer for sale that the receiver desires to accept, the identity of the buyer and the proposed terms of the sale.

(b) At least ten days' prior written notice is given in accordance with the Rules of Civil Procedure to all of the owners of the real property, all parties to the action, and all other persons with a recorded or filed lien encumbering the real property to be sold as those persons are identified in a preliminary judicial report or a commitment for an owner's policy of title insurance previously filed with the court pursuant to section 2329.191 of the Revised Code or, if not previously filed, in a preliminary judicial report or a commitment for an owner's policy of title insurance filed with the application of the receiver for authority to sell the real property that otherwise complies with the requirements of section 2329.191 of the Revised Code, unless the lien or interest is barred by lis pendens pursuant to section 2703.26 of the Revised Code.

(c) An opportunity is given for a hearing at which all of the parties and persons to whom the notice is given under division (D)(2)(b) of this section may be heard, provided that if no such party or person objects to the proposed sale or requests a hearing within the period provided pursuant to that division, the court may proceed without a hearing.

(d) The court issues an order of sale of the real property that sets forth the required procedure for or the terms of the sale. The order of sale is the final appealable order with respect to the matters contained in the order.

(3)(a) If requested in the receiver's application for authority to sell the real property under division (D)(2)(a) of this section, upon a finding by the court after notice and an opportunity for a hearing as provided in divisions (D)(2)(b) and (c) of this section that it is in the best interest of the receivership estate that the real property be sold free and clear of liens, the court may order that the real property be sold free and clear of all liens other than the lien of the treasurer of the county in which the real property is located for real estate taxes and assessments.

(b) In the event of a sale free and clear of liens, upon the recording of the deed from the receiver to the purchaser, those liens shall be canceled as to the real property and shall be transferred to the



proceeds of the sale in the hands of the receiver with the same priority as those liens previously attached to the real property sold.

(4) The sale of real property under division (D)(2) of this section is in lieu of a sale pursuant to Chapter 2329. of the Revised Code, and except as provided in division (D)(2)(b) of this section with respect to the applicability of section 2329.191 of the Revised Code and as provided in division (D)(9) of this section with respect to the applicability of section 2329.37 of the Revised Code, the provisions of Chapter 2329. of the Revised Code do not apply to a sale of real property under division (D)(2) of this section.

(5) If the contemplated sale of real property is under division (D)(2)(a)(ii) of this section, the court may finally approve the sale, and no separate confirmation order is required.

(6) If the contemplated sale of real property is under division (D)(2)(a)(i) of this section, following the sale or auction process described in the application, the receiver or first mortgage holder shall seek an order confirming the sale process and approving the proposed sale.

(7) The court's order approving the application by a receiver or first mortgage holder for authority to sell real property under division (D)(2)(a) of this section shall establish a reasonable time, but not less than three days, after the date of the order approving the specific sale or the sale process for the owner and all other parties possessing an equity of redemption in the real property to exercise their equity of redemption in the real property or to have that equity of redemption forever barred. Section 2329.33 of the Revised Code does not apply to a sale by a receiver under this section.

(8)(a) Until the date the court sets for the termination of the fee owner's time to redeem the real property, any fee owner of the real property proposed to be sold may redeem the real property from the sale by paying to the receiver by cashier's check or other form of immediately available funds an amount equal to the greater of the following:

(i) The sale price at which the real property was sold;

(ii) An amount equal to the total of all liens upon the real property that were to be canceled as liens upon the real property by virtue of the sale, including all principal, interest, costs, and other amounts



secured by those liens through the date of payment to the receiver.

(b) The amount determined under division (D)(8)(a)(i) or (ii) of this section may include interest on the amount of the sale price at a rate that may be fixed by the court, from the date of the sale to the date of the payment of the full amount to the receiver.

(c) Upon receipt of the amount determined under divisions (D)(8)(a) and (b) of this section, the receiver shall advise the court and all of the parties and persons to whom notice was given pursuant to division (D)(2)(b) of this section of the receipt of that amount and shall set aside the sale. The fee title to the real property shall remain in the name of the owner of the real property, and the liens upon the real property, except as provided in division (D)(3) of this section, shall be transferred in the same order of priority to the proceeds received by the receiver from the owner of the real property.

(9) If the sale of the real property by the receiver under division (D)(2) of this section is conducted in accordance with the terms of the order of the court authorizing the sale, upon closing of the sale the receiver shall execute and deliver a receiver's deed for the real property sold to the purchaser. The receiver's deed has the effect provided for in section 2329.37 of the Revised Code.

(10) If the contemplated sale of the real property is under division (D)(2)(a)(ii) of this section, as soon as is reasonably possible following the delivery of the deed to the purchaser under division (D)(9) of this section, the receiver shall file with the court and serve upon all of the parties and persons to whom the notice of the application for the authority to sell the real property was given under division (D)(2)(b) of this section a certificate and report of sale in which the receiver certifies all of the following:

(a) That the sale was conducted in accordance with the order authorizing the sale;

(b) The date of the sale;

(c) The name of the purchaser;

(d) The purchase price;



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- (e) The amount of the net proceeds of the sale after payment of all expenses associated with the sale;
- (f) A copy of the closing statement, if a closing statement was prepared;
- (g) Any other information that the court may require.