



SOTTILE & BARILE
ATTORNEYS AT LAW

**NEW OHIO LAW
IMPACTING MORTGAGE
SERVICERS AND HOLDERS
OF SERVICING RIGHTS
(January 23, 2019)**

On December 19, 2018, Governor Kasich signed into law Amended Substitute House Bill 480 and Amended Ohio House Bill 489. Both laws made significant changes in the real estate world and will be explained individually.

House Bill 489 amended Ohio Revised Code Section 1322, specifically relating to mortgage servicers. The law creates a new provision in Section 1322.01(AA), which defines "Mortgage Servicers". The provision specifically states:

(AA) "Mortgage servicer" means an entity that, for itself or on behalf of the holder of a mortgage loan, holds the servicing rights, records mortgage payments on its books, or performs other functions to carry out the mortgage holder's obligations or rights under the mortgage agreement including, when applicable, the receipt of funds from the mortgagor to be held in escrow for payment of real estate taxes and insurance premiums and the distribution of such funds to the taxing authority and insurance company.

Section 1322.07(A) of the Ohio Revised Code is amended to state that a mortgage servicer is now required to obtain a certificate of registration from the superintendent of financial institutions for the principal office and every branch office. The new Section 1322.07(A) specifically states:

No person, on the person's own behalf or on behalf of any other person, shall act as a mortgage lender, mortgage servicer, or mortgage broker without first having obtained a certificate of registration from the superintendent of financial institutions for the principal office and every branch office to be maintained by the person for the transaction of business as a mortgage lender, mortgage servicer, or mortgage broker in this state. **A registrant shall maintain an office location for the transaction of business as a mortgage lender, mortgage servicer, or mortgage broker in this state.**

There is some ambiguity as it relates to whether a mortgage servicer must maintain an office in the state of Ohio, however the new statute is written as to possibly allow a mortgage servicer to simply maintain an office in any state. All entities affected by this new law should have their corporate inhouse legal team review this issue, as this is simply an advisory and not to be deemed as legal advice.

THE NEW LAW WILL BECOME EFFECTIVE 91 DAYS AFTER PASSAGE.

Ohio House Bill 489 also adds a new section to the Ohio Revised Code, Section 1349.72. This new Section of the code applies to junior lienholders and states before a person collecting a debt secured by residential real property collects or attempts to collect a debt, the person must first send a written notice

described in Section 1349.72(B). Section (B) includes the necessary language of the new notice requirement and if a notice was not sent, the owner of the debt can be sued by the debtor injured by the error of not sending notice. While a debtor can maintain a civil action against the owner of the debt, a debtor CANNOT maintain a class action for a violation of the section.

Governor Kasich also signed into law Amended Substitute House Bill 480. Along with establishing oversight and regulation for multi-parcel auctions of real property, the act contained several amendments to Ohio's foreclosure sale procedures, mostly relating to foreclosure sales conducted through the use of a private selling officer, that become effective in mid-March.

The first amendment to the foreclosure procedures clarified the calculation of time for the seven-calendar-day bidding period on an auction sale conducted by the private selling officer online by stating that the sale remains open for at least seven calendar days after the first day it is posted. For example, an auction sale that posted on February 1st would remain open on February 2nd through February 8th. R.C. 2329.152(C)(2) and (E)(1)(a). The second amendment allows the private selling officer to submit his indorsement of the sale results electronically rather than requiring a liquid ink signature. R.C.2329.28.

The final amendments relating to foreclosure sales relate to second sales when the premises fail to be sold at the first attempted auction sale. Those second sales are to be set not earlier than seven days and not later than thirty days after the first auction sale and can now be held online or at a physical location. R.C.2329.211(A)(2) and 2329.52(B)(1). These changes reflect an ongoing intent on the part of the Ohio Legislature to promote sales by private selling officers where a foreclosing party determines that a sale by the private selling officer maximizes the bid result at the foreclosure sale.

For more information, please feel free to contact Partner, Franco Barile or Senior Counsel, David Cliffe, at franco.barile@sottileandbarile.com or david.cliffe@sottileandbarile.com, respectively.