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This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

If you have friends or associates whom you think would enjoy receiving a copy of this Client Bulletin, please feel free to forward it on. Thank you.



Client Bulletin

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So You Want to be a “Flipper” and Buy at a Foreclosure Sale?

Possibly due to the number of television shows where people buy a rundown house and/or buy in a distress sale, such as a foreclosure sale, renovate the house and sell it, so-called “flipping,” making a nice profit, it appears that more people are trying to do the same thing, including purchasing at foreclosure sales, some of which sales are conducted online. A recent case out of the Tenth District Court of Appeals (Franklin County), *Village at Gender Condominium Assn. v. JHM Rental Mgt., LLC*, 2021-Ohio-3216 (the “condo association case”), demonstrates a peril of purchasing at a foreclosure sale without appropriate legal assistance or knowledge.

Hassan Ghetas purchased in an online auction a residential condo unit being sold as a result of the plaintiff condo association having obtained a default judgment in a foreclosure suit. Mr. Ghetas asserted that he spent his family’s life savings to purchase the property and borrowed money to renovate it. Several months after the Court confirmed the sale to Mr. Ghetas and ordered distribution of the sheriff’s sale proceeds, Mr. Ghetas was served with a complaint by foreclosure by Fannie Mae/Nationstar Mortgage for failure to pay on the Fannie Mae/Nationstar mortgage on the condo unit. Mr. Ghetas then filed a motion in the condo association case asking the Court to vacate the confirmation of the sheriff’s sale to him on the grounds of “excusable neglect” because he did not know that the Court’s order of sale provided that the sale was to be “subject to the Fannie Mae/Nationstar mortgage.” Essentially, he was asking the Court to “undo” the sheriff’s sale, and his purchase of the condo unit, because he made a “unilateral mistake” as to the sheriff’s sale being subject to the Fannie Mae/Nationstar mortgage.

It is long established contract law, which is applicable to purchases at auctions, including foreclosure sales, that a contract can be rescinded for a “mutual mistake,” but not for a “unilateral mistake.” The sheriff’s website contains a notice that all real property sold at auction may be subject to liens that may not be extinguished by the sale. The website’s description of the property being sold included the foreclosure case number, which could be used to search the Clerk of Court’s website and read the trial court’s decree of foreclosure, and also included a link to the full listing of the condo unit, which listing contained a note indicating that the condo unit was being sold subject to the Fannie Mae/Nationstar mortgage. The official notice of sale in The Daily Reporter also indicated that the sale of the condo unit was subject to the Fannie Mae/Nationstar mortgage.

Based on these facts, the Court of Appeals confirmed the trial court’s denial of Mr. Ghetas’s motion to set aside the confirmation of sale and his purchase of the condo unit, holding that his “unilateral mistake” was not “excusable neglect.”

Residential Rental Property Registration Notice

Ohio Revised Code section 5323.02 was implemented in 2007 and requires an owner of residential rental property to register a contact agent for that property with the county auditor’s office within 60 days following the day a real property conveyance form for that property is filed with the county auditor. Delaware County recently reached the population threshold so this registration is now required for rental properties in Delaware County. A copy of the Residential Rental Property Registration Notice is on the back of this Bulletin. The registration form can be found on the county auditor website.

Residential Rental Property Registration Notice

Ohio Revised Code section (R.C.) 5323.02 requires an owner of residential rental property to register a contact agent for that property with the county auditor's office within 60 days (including weekends and holidays) following the day a real property conveyance form for that property is filed with the county auditor. Failure to file this information in a timely manner may result in the assessment of a penalty of up to \$150 against the property that is the subject of the violation.

What is Residential Rental Property?

- 1) A real property parcel on which at least one dwelling unit leased or otherwise rented to tenants solely for residential purposes is located.
- 2) A real property parcel that is located in a mobile home park or other permanent or semi-permanent site at which lots are leased or otherwise rented to tenants for parking a manufactured home, a mobile home or a recreational vehicle used solely for residential purposes.
- 3) Residential rental property does not include a hotel or a college or university dormitory.

Who Must File?

R.C. 5323.02 requires an owner of residential rental property to file information about a contact agent with the county auditor. If a property has multiple individual owners, only one

owner is required to file as the contact agent. If the property is owned by a trust, business trust, estate, partnership, limited partnership, limited liability company, association, corporation or any other business entity, then one of the following individuals, as indicated below, must file as the contact agent.

If the property is owned by:

- a trust – a trustee must file
- an estate – the executor or administrator must file
- a partnership or a limited partnership – a general partner must file
- a limited liability company – a member, manager or officer of the company must file
- an association – an associate must file
- a corporation – an officer must file
- any other business entity – a member, manager or officer must file

What Information Must Be Filed?

The contact agent must file the name, address and telephone number of the individual who is filing as the contact agent for the property, and the street address and permanent parcel number of the residential rental property.

Please contact your county auditor for additional information about how to register a contact agent.