

Revised 8-11-20 at 9:00 am

This rule has been extensively rewritten, making standard redlining difficult and confusing. In the revisions below, the comparable existing provisions have been placed in close proximity to their new counterparts and then redlined in the standard manner.

Explanations for the proposed changes in brackets below the revised text.

Loc. R. 27.0 SHERIFF'S JUDICIAL SALES

- A. ~~The Sheriff shall conduct sales of real property on Mondays, except where a Monday is a legal holiday such sales will be conducted on the following day. Sales relating to tax delinquency foreclosures may be conducted by the Sheriff on any day when the Court is in session.~~

Day of Sheriff's Sale. Except for sales of real property relating to tax delinquencies, the sheriff must conduct all sales of real property on Mondays. If the court is not open for business on a Monday, such sales must be conducted on the next business day. The sheriff may conduct sales of real property relating to tax delinquencies on any day when the court is open for business.

[This provision has no substantive changes from the current rule and was revised for readability]

- B. **Sheriff's Fee in Private Selling Officer Sales.** The sheriff may charge the party requesting the judicial sale of property by a private selling officer a fee of \$25.00 upon the receipt of an Order to Appraise from the Clerk of Courts. The sheriff may refrain from conducting the appraisal of the property until this fee is paid.

[This is a new section. No similar section appears in the prior rule. The sheriff charges a \$50.00 fee, authorized by statute, for orders of sale. In private selling officer cases, the sheriff receives an "order to appraise", not an order of sale. The statute authorizing the fee for orders of sale was not amended to account for the new order to appraise. This rule corrects that omission. The fee is less because the work required of the sheriff upon receipt of an order to appraise is less than that associated with an order of sale.]

- C. ~~One week from the date of a sale, the Sheriff shall make his return to the Court and have the sale confirmed and deed ordered. As to tax delinquency foreclosure sales, the Sheriff shall make his return two (2) weeks from the date of sale.~~

Return of Order of Sale. The sheriff or a private selling officer appointed under R.C. 2329.152 must make his or her return of the order of sale to the court within 14 days of the date of sale for sales relating to tax delinquencies and within seven days for all other sales.

[This provision has no substantive changes from the current rule and was revised for readability]

- D. ~~The Court will not confirm any Sheriff's sale until such time as the party ordering the sale has filed a certificate of service of notice of the sale stating that the notice of the sale has been sent to all parties who have appeared in the action, by ordinary mail to their last known address or attorney of record.~~

Notice of Sale. The party requesting the sale must send notice of the date, time, and place of the sheriff's sale by ordinary mail to the last known address or attorney of record of all parties who have appeared in the case.

[This provision has no substantive changes from the current rule and was revised for readability]

- E. Notice to Forgo the Payment of Certain Taxes. If the plaintiff is the sheriff's sale purchaser or the party electing to purchase the property at the appraised value in a partition action, and the plaintiff desires to exercise the right to forgo the payment from the sale proceeds of certain taxes as provided in R.C. 323.47(A) & (B), the plaintiff must conspicuously provide notice that he or she is exercising this right in the successful bidder's form. Failure to do so will result in waiver of this right.

[This is a new section. No similar section appears in the prior rule. It was added to provide a set procedure for a party to elect to exercise its rights under R.C. 323.47. R.C. 323.47 was changed significantly as part of HB 390 in 2016]

- F. ~~In every Sheriff's sale of real property the purchaser, except where an electing municipal corporation as defined by Section 5722.01 of the Ohio Revised Code is the purchaser, as soon as his bid is accepted, shall be required to deposit in cash or by certified check payable to the Sheriff ten percent (10%) of the amount of the accepted bid. Where the amount bid is \$3,000.00 or less, the minimum amount of such deposit shall be \$300.00. The maximum amount of a deposit in any case shall be \$10,000.00. Unless specifically exempted by this rule, there shall be no waiver of deposit for any Sheriff sale.~~

Sheriff's Sale Purchaser's Deposit. In sheriff's sales of residential real property, if the party awarded a decree of foreclosure is the purchaser at the sale, the purchaser will not be required to make a sale deposit. In all other sheriff's sales of real property, the purchaser must deposit the following amount at the time of sale:

If the appraised value of the property (or minimum bid in cases that do not require an appraisal) is:

1. Less than or equal to \$10,000.00, the deposit will be \$2,000.00;
2. Greater than \$10,000.00 but less than or equal to \$200,000.00, the deposit will be \$5,000.00;

3. Greater than \$200,000, the deposit will be \$10,000.

[Revised to conform to R.C. 2329.211 and to include deposit requirements for non-residential foreclosures. R.C. 2329.211 was created as part of HB 390 in 2016]

- G. In the event that a party shall register a bid at a Sheriff's sale and such bid is accepted by the Sheriff as the successful bid, and the party offering the bid fails to deposit in cash or by certified check payable to the Sheriff ten percent (10%) of the amount of the accepted bid, the Sheriff shall disregard the bid, and shall immediately re-offer the property for sale as before.

Failure to Make Deposit. For sheriff's sales conducted in person and not online, if a successful bidder cannot make the appropriate deposit immediately following the sheriff's sale, the sheriff will disregard the bid and must immediately re-offer the property for sale.

[For the most part this section was revised only for readability. The only substantive revision is to make it applicable only to in-person sheriff's sales. Because of the deposit requirements of Real Auction.Com, the entity that will be conducting on-line sheriff's sales, the scenario contemplated by this rule cannot happen in an on-line sale]

- H. **Failure of Purchaser to Provide Information Required by R.C. 2329.271.** If the purchaser fails to provide the information required by R.C. 2329.271, including proof of its active status with the Secretary of State (if the purchaser is not an individual), the sale will be vacated upon the motion of any interested party, as provided in R.C. 2329.27(B)(1).

[This is a new section. No similar section appears in the prior rule. It was created to conform to R.C. 2329.271 and to address the community's concerns about unlicensed LLC's and corporations bidding at sheriff's sales. R.C. 2329.211 was created as part of HB 390 in 2016]

- I. ~~The unpaid balance of the purchase price shall be due and payable to the Sheriff within thirty (30) days from the date of sale. The purchaser shall be required to pay interest on unpaid balance of ten percent (10%) per annum from the date of sale to the date of payment of the balance unless the balance shall be paid within eight (8) days from the date of sale, fifteen (15) days from the date of sale of tax delinquent foreclosure property. Any interest received shall be distributed by the Sheriff to the parties entitled to distribution of the proceeds of sale in the proper order of priority. In each advertisement of sale, the Sheriff shall cause to be included notice that the full purchase price shall be paid within thirty (30) days from the date of sale and unless paid within eight (8) days after sale, fifteen (15) days for tax delinquent property, shall bear interest at ten percent (10%) until paid, otherwise, the purchaser shall be adjudged to be in contempt of Court.~~

Time to Pay Balance of Purchase Price and Interest on Unpaid Balance.

1. The purchaser must pay the balance of the purchase price to the sheriff within 30 days of the confirmation of the sale.

2. Unless the purchase price is paid in full within 15 days of date of sale relating to tax delinquencies or within eight days of other sales, the balance due will bear interest at the rate of 10% per annum from the date of sale to the date of payment. The sheriff must apply the interest to the costs of the case and, if interest remains, distribute the balance to the parties in the proper order of priority.
3. The sheriff must include notice of these payment provisions in each advertisement of sale.

[This provision has no substantive changes from the current rule and was revised for readability]

- J. **Extension of Time to Pay.** The purchaser for good cause may move for an extension of time to pay the balance of the purchase price. The court has discretion to grant or deny the extension.

[This is a new section. No similar section appears in the prior rule. It was created to conform to actual practice]

- K. ~~On the day following such return and confirmation, the Clerk shall notify the Sheriff to issue the deed to the purchaser. Such deed shall be issued and recorded in conformity with R.C. 2329.36. In the event the attorney who files the writ of execution fails to prepare a deed or deliver the deed to the Sheriff within seven days of the confirmation of the Sheriff's sale as required by R.C. 2329.36(A), the Sheriff may cause a deed to be prepared and bill the attorney who filed the writ of execution an appropriate fee for preparing the deed.~~

Sheriff's Deed. On the day following confirmation, the clerk must notify the sheriff of the confirmation. The party who orders the sale must prepare a proposed deed and deliver the deed to the sheriff within seven days of the confirmation of the sheriff's sale. If a deed is not timely delivered to the sheriff, the sheriff may prepare a deed and bill the party who ordered the sale or the party's attorney an appropriate fee for preparing the deed.

[This provision has no substantive changes from the current rule and was revised for readability]

- L. ~~In the event a purchaser fails to pay the balance due on the purchase price within thirty (30) days after the date of the sale, he shall be in contempt of the Court and the Sheriff shall forthwith cause a citation to issue commanding such defaulting purchaser to appear before the assigned Judge and show cause why he should not be punished. Upon a finding of guilt or contempt, the Court may further proceed in accord with O.R.C. 2327.04.~~

Failure to Pay.

1. **Motion for Contempt Filed by the Sheriff.** If a purchaser fails to timely pay the full purchase price as provided in Part I of this rule, upon motion filed by the sheriff, the case will proceed according to R.C. 2329.30, R.C. 2327.04, and R.C. 2705.05.
2. **Motion for Contempt Filed by a Party to the Case.** Unless otherwise ordered by the court, if a purchaser fails to timely pay the full purchase price as provided in Part I of this rule,

upon motion filed by any interested party to the case, or the court's own motion, the sheriff's sale and confirmation will be vacated, the order of sale will be returned without execution and the purchaser's will be deposit forfeited. These consequences of failure to pay are in addition to any sanctions the court may impose on the defaulting purchaser for contempt pursuant to R.C. 2329.30, R.C. 2327.04, and R.C. 2705.05.

[This section was revised for readability, to conform to actual practice, and to permit any interested party to move to find the purchaser in contempt, not just the sheriff (as permitted by the cited code sections)]

3. **Distribution of Deposit.** In any case where the purchaser's deposit has been forfeited, the sheriff must reimburse the costs related to the failed sale, including sheriff's costs, to the party who ordered the sale out of this deposit. Unless otherwise ordered by the court, the sheriff must refund the remainder of the deposit to the sheriff's sale purchaser.

[This is a new section. No similar section appears in the prior rule. Often, a judge will vacate a sale for contempt and forfeit the purchasers deposit but not provide for a disposition of the deposit, leaving these funds in a kind of limbo. This rule provides a framework of the deposit's disposition].

- M. ~~In the event that the purchaser shall be an electing municipal corporation, such deed shall be delivered to the electing municipal corporation only upon receipt delivered to the Sheriff evidencing that the municipal corporation has paid the County Auditor all costs for the parcel, as determined by the Court, incurred in the proceeding instituted under Section 5721.18 of the Ohio Revised Code.~~

Land Bank Provisions. An electing subdivision, as defined in R.C. 5722.01, that purchases the property at sheriff's sale is exempt from the deposit requirements in Part F of this rule. All costs of the proceeding must be paid before a deed may be issued to an electing subdivision that purchases property at sheriff's sale.

[This provision has no substantive changes from the current rule and was revised for readability]

N. **Sheriff's Appraisers' Fees.**

1. ~~Appraisal fees shall be based on the Auditor's last tax appraisal of the property as shown by his duplicates and the fees allowable shall be scaled as follows: Up to \$100,000 tax value, each appraiser \$ 50.00. On all appraisals where the tax value exceeds \$100,000, each appraiser shall receive \$1.25 for each \$5,000 or fraction in excess of the amount.~~

Standard Appraisals. Appraisal fees are based on the fiscal officer's last tax appraisal of the property as shown by the tax duplicates and are scaled as follows:

- a. For property with a tax value of \$0 to \$100,000: each appraiser will receive \$50;

- b. For properties with a tax value in excess of \$100,000: each appraiser will receive an additional \$1.25 for each \$5,000 of value or fraction thereof in excess of \$100,000.
- c. In addition to the fees above, the appraiser who uses his personal vehicle to transport the appraisers to the appraised property is entitled to mileage as determined by the Sheriff.
- d. The appraisers are entitled to a separate appraisal fee for each legal description appraised. If a legal description is associated with multiple parcel numbers, the appraisers will be entitled to only one appraisal fee.

[Part 1, a and b have no substantive changes from the current rule and were revised for readability. Parts 1, c and d were added at the request of the sheriff and conform to actual practice.]

- 2. **Proposed Order to Pay Standard Appraisals.** Compensation for appraisals pursuant to this standard scale may be made without a motion. In cases where the standard scale applies, the sheriff may submit for the court's consideration a proposed order compensating the appraisers per the scale.

[Part 2 is a new section. No similar section appears in the prior rule. It was added conform to actual practice.]

- 3. ~~In considering appraisals on commercial property for good cause shown, the Court may award fees in excess of the scale.~~

Special Appraisals. For good cause shown, the court may award fees in excess of this scale for commercial property or residential property that requires an appraisal more extensive than the standard appraisal. Such appraisals are known as "special appraisals."

[This section was revised for readability and to define "special appraisals"]

- 4. ~~All appraisal fees of commercial property must be approved by the Court upon submission of supporting affidavits and other evidence which shall include the number of hours spent and statement of hourly rates. No person shall receive any compensation for any appraisal without approval of the Court. Should an appraiser seek a fee in excess of the scale, the Sheriff will include at the top of the status form (to be signed by the Judge) a notice of the date, time and place of the sale. This information shall, in turn, be contained in the Clerk's postcard notice to all parties or their attorneys, and the sending of the notice shall be shown on the docket.~~

Motion for Special Appraisal Fees. To be compensated for a special appraisal, the appraisers must file with the Clerk of Courts a properly supported motion for fees along with a proposed order. Support for the motion must include affidavits that detail the number of hours spent and a statement of hourly rates. The motion must provide a contact address for each appraiser.

[Part 4 has no substantive changes from the current rule and was revised for readability]

5. **Appraisers to be Made Court Parties and Notification.** Upon the filing of a motion for special appraisers' fees, the clerk must make the appraisers court parties for the limited purpose of notification. The clerk must send all future notifications to the appraisers at the addresses indicated in the motion.

[Part 5 is a new section. No similar section appears in the prior rule. It was added at the request of the sheriff's appraisers so that they would receive notice of any hearings on their motions for fees.]

6. **Hearing.** The court, in its discretion, may set a hearing on the motion.
7. **Approval of the Court.** No person will receive any compensation for any appraisal without approval of the court.

[Parts 6 & 7 are new sections. No similar sections appear in the prior rule. They were added conform to actual practice.]

8. **Deposit for Special Appraisals.**

1. In all foreclosure cases in which a special appraisal is necessary, upon notification by the sheriff, the party ordering a sheriff's sale must make a \$4,000 deposit with the clerk against the cost of the special appraisal. This deposit must be made in addition to all other required deposits and may be used only to cover the cost of the sheriff's sale appraisal.
2. Prior to making the deposit, the party required to make a deposit may move with a supporting affidavit or other evidence to lower the deposit amount.
3. No special appraisal may be undertaken until such deposit is made.
4. If the actual cost of the special appraisal is greater than the amount deposited, upon notification by the sheriff of the actual cost of the special appraisal, the party ordering a sheriff's sale must make an additional deposit for the balance.
5. If the actual cost of the special appraisal is less than the amount deposited or if the property is never appraised, the party ordering a sheriff's sale may move the court for a refund of the balance of the special appraisal deposit.

[This is a new section. No similar section appears in the prior rule. Appraisers currently get paid when the property sells at sale as part of the payment of court costs. If the party awarded a decree of foreclosure delays in ordering sale (or never orders sale, as happens on occasion) the appraisers are not timely paid for their services. This has led to a scarcity of commercial appraisers willing to do this work for the sheriff. This rule would allow the

appraisers to receive full compensation for their services immediately upon approval of their fees]

9. **Posting of this Rule.** The sheriff ~~shall also~~ must keep a copy of this entire rule conspicuously posted at the place where he conducts sales and ~~shall~~ must call attention to the rule before receiving bids. For online sales, the sheriff must conspicuously provide a link to this rule on the sale website.

[For the most part this section was revised only for readability. The only substantive revision is to require the sheriff to include a link to this rule for on-line sales].