

Sample Proposed Decision (Revised 10-19-2016)

The following provides a framework.

1. List of pleadings and dispositive motions.
2. Finding that all who are necessary to the action have been joined and a finding against each defaulting party. Finding related to state lienholder where state lienholder's liens contested and state lienholder fails to file answer.
3. Ruling on additional dispositive motions.
4. Finding for County Treasurer for real estate taxes.
5. Finding regarding amount due on debt.
6. Finding on the mortgage or lien, including priority and entitlement to foreclose.
7. Finding for potential recovery of advances.
8. Acknowledgement of parties with asserted interest and finding that if any interest exists, it is junior to the first lien holder.
9. Finding that any interest pleaded for which specific findings are not made is transferred from the property to the funds generated by the sale.
10. Finding for state lienholder if state liens are uncontested.
11. Finding that there is no just reason for delay.
12. Provision extinguishing the equity of redemption and permitting sale of the property.
13. Provision allowing the party entitled to foreclose to file a Praecipe for a subsequent sale if the property does not sell.
14. Provision distributing the sheriff's sale proceeds. The costs for title reports are calculated as follows: \$3.50 per thousand dollars of the first lien plus a \$300.00 premium. For example, assuming a first lien of \$100,000.00, the title report costs awarded would be $\$3.50 \times 100 + \300.00 or \$650.00.
15. Provision applying deposits.
16. Provision allowing advances for property protection, hazard insurance and real estate taxes.
17. Provision ordering Recorder/Clerk to release encumbrances.
18. Provision allowing a writ of possession.
19. Notice regarding the need to file a motion for advances upon the sale of the property. *See U.S. Bank v. Alex*, (2015), Slip. Op. 2015-Ohio-871.

20. Rule 53 notice.
21. PHOTOCOPY of legal description from preliminary judicial report.
22. Certificate of service for use by the Clerk of Courts.

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

The Bank,)	
)	
Plaintiff)	CASE NO. _____
)	
)	JUDGE His or Her Honor
)	
)	<u>MAGISTRATE'S DECISION</u>
)	
-vs-)	
)	
Property Owner, et al)	
)	
Defendants)	

1

This cause was submitted to the magistrate and heard upon the complaint, the motion for default judgment of the plaintiff, the motion for summary judgment of the plaintiff and the affidavit and exhibits in support thereof, the answer of defendant Property Owner, the answer of defendant KeyBank, N.A., and the evidence.

2

All necessary parties have been served with summons according to law and are properly before the court. Defendants Other Creditor, and Jane Doe Unknown Spouse, if any, of Property Owner, are in default of answer or other response to the complaint and have thereby confessed the allegations of the complaint to be true.

Defendant [state lienholder] and the Ohio Attorney General have been properly served with plaintiff's notice dispute of [state lienholder's] lien and [state lienholder] has

failed to timely file a responsive pleading asserting the disputed lien. Accordingly, the magistrate finds that the disputed lien does not encumber the subject property.

3

Reasonable minds could conclude from the evidence submitted only that plaintiff is entitled to judgment and a decree of foreclosure. Accordingly, plaintiff's motion for summary judgment is granted.

4

There is due the Cuyahoga County Treasurer, taxes, accrued taxes, assessments, and penalties on the premises described herein including: (1) taxes, assessments, interest, and penalties, the lien for which attaches before the date of sale but that are not yet determined, assessed and levied for the year that includes the date of sale, apportioned pro rata to the part of that year that precedes the date of sale, and (2) all other taxes, assessments, penalties, and interest which attached for a prior tax year but have not been paid on or before the date of the judicial sale. The exact amount of said taxes, accrued taxes, assessments, and penalties are unascertainable at this time, but will be determined at the time of the sale of said premises for which amount the Cuyahoga County Treasurer has a good and valid lien.

5

There is due plaintiff on the promissory note set forth in the complaint, the sum of \$98,916.73 plus interest thereon at the rate of 7.12% per annum from April 1, 2003, for which sum judgment is hereby rendered in favor of plaintiff against defendant [debtor obligated on the note].

6

In order to secure the payment of the promissory note aforesaid, Property Owner, married, executed and delivered to Original Mortgagee, Inc., a certain mortgage deed as in the said Complaint described, thereby conveying the following described premises:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND
INCORPORATED HEREIN:

Said premises are commonly known as: 12345 Main Street, Cleveland, OH

Permanent Parcel Number: 123-45-678

This mortgage was duly filed with the Recorder of Cuyahoga County, Ohio on November 23, 2005 at 2:31 p.m. and was by him thereafter recorded as AFN 200511231234 of the Mortgage Records of said county, and thereby became and is a valid first mortgage lien upon said premises, subject only to the lien of the Treasurer for taxes. This mortgage deed was assigned to the plaintiff. The conditions in the mortgage deed have been broken by reason of non-payment and the same has become absolute. As a consequence, plaintiff is entitled to have the equity of redemption and dower of all the defendants in and to said premises foreclosed.

7

Plaintiff may have advanced or may advance during the pendency of this action sums for the payment of taxes, hazard insurance premiums and protection of the property described herein, the total amount of which is undetermined at the present time, but which amount will be ascertainable at the time of the judicial sale, which amount may be added to the first mortgage lien of plaintiff. Determination of the exact, if any, amount due plaintiff for said advances is reserved for further order.

8

Defendant KeyBank, N.A. claims some right, title, interest, or lien upon the premises described, as set forth in its answer filed herein, but that any right, title interest, or lien said defendant may have is inferior and subsequent to the lien of plaintiff.

9

No finding is made at this time as to the right, title, interest, or lien of said defendant, except to note that such right, title, interest, or lien of said defendant is hereby ordered transferred to the proceeds derived from the sale of said premises, after the payment of the costs of the within action, taxes due and payable, and the amount found due the plaintiff, and the same is hereby ordered continued until further order.

10

Defendant [state lienholder] has a lien or liens on the property as set forth in the title reports filed herein. The liens of [state lienholder] are inferior and subsequent to the lien of the plaintiff. No further finding is made at this time as to the liens of [state lienholder] except to note that such liens are hereby ordered transferred to the proceeds derived from the sale of said premises, after the payment of the costs of the within action, taxes due and payable, and the amount found due the plaintiff, and the same is hereby ordered continued until further order.

11

Pursuant to Civ. R. 54(B) there is no just reason for delay in entering judgment for the plaintiff.

12

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, unless the sums hereinabove found due, together with the costs of this action, be fully paid within three days of the date of the adoption of the magistrate's decision, the equity of redemption and dower of all the defendants in and to said premises will be foreclosed, and said premises sold; and that an order of sale shall issue to the Sheriff of Cuyahoga County, directing him to appraise, advertise in a paper of general circulation within the county, and sell said premises as upon execution and according to law, free and clear of

the interest of all parties to this action. If the court authorizes a private selling officer to sell the real estate, then the sale must proceed in accordance with R.C. §2329.152.

If this is a residential property and the property remains unsold after the first auction, then a second auction shall be held and the property shall be sold to the highest bidder without regard to the minimum bid requirement in §2329.20 of the Revised Code. This auction shall be held no earlier than seven days and not later than thirty days after the first auction.

If there is a bidder at the second or subsequent sales, the judgment creditor and the first lien holder have the right to redeem the property within fourteen days of the sale, by paying the purchase price to the Clerk of Courts. Upon timely payment, the court will proceed as described in R.C. §2329.31 with the redeeming party considered the successful purchaser at sale.

13

In the event an order of sale is returned by the selling officer unexecuted, subsequent orders of sale shall issue in accord with appraisal instructions contained in the praecipe for those sales.

14

And, coming now to distribute the proceeds of said sale, it is ordered that the Sheriff or private selling officer out of the funds in his hands pay:

FIRST: To the Clerk of Courts the costs of this action, including the sum of \$643.00 payable to the plaintiff for the judicial reports filed herein, which sum is hereby taxed as costs.

SECOND: **IF THE PLAINTIFF IS THE PURCHASER AND HAS ELECTED TO FORGO THE PAYMENT FROM THE SALE PROCEEDS OF CERTAIN TAXES AS PROVIDED IN R.C. §323.47(B):**

To the Treasurer of Cuyahoga County, Ohio, taxes, accrued taxes, assessments, and penalties on the premises hereinafter described, as shown on the tax duplicate;

OTHERWISE:

To the Cuyahoga County Treasurer, taxes, assessments, interest, and penalties, the lien for which attaches before the date of sale but that are not yet determined, assessed and levied for the year that includes the date of sale, apportioned pro rata to the part of that year that precedes the date of sale, and all other taxes, assessments, penalties, and interest which attached for a prior tax year but have not been paid on or before the date of sale.

THIRD: To plaintiff, the sum of \$98,916.73 plus interest thereon at the rate of 7.12% per annum from April 1, 2003.

FOURTH: The balance, if any, to the Clerk of Courts to be held pending further order.

15

In the event plaintiff is the successful bidder at the sale, the amount of the deposits made herein by plaintiff and the cost of the preliminary judicial report in the sum of \$643.00, shall be deducted from the total amount of costs otherwise payable herein.

16

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there may be due plaintiff, additional sums advanced by it under the terms of the note and mortgage to pay real estate taxes, hazard insurance premiums, and property protection, which sums are to be determined by further order.

17

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, upon the confirmation of sale, a minute of these proceedings be entered upon the Cuyahoga County Records involved in this action to reflect that they are released as liens against the premises.

18

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, after the sale has been completed, a deed will be conveyed to the purchaser and a writ of possession of said property will be issued.

19

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, if a successful sale occurs, the parties are ordered to file any motions for reimbursement of advances pursuant to R.C. § 5301.233 within 21 days from the sale. A party may move the court to extend this deadline for good cause shown. No party will be granted reimbursement for advances if such a motion is not filed before this deadline. Within seven days from the filing of a motion for reimbursement, a party may file a brief in opposition. The court will then make a careful examination of the sale pursuant to the applicable statutes. If, however, this case does not involve advances or no mortgagee intends to seek advances, a party may file a notice to this effect within seven days of the sale. Where such notice is filed, no party filing such notice will be granted reimbursement for advances and the court will make a careful examination of the sale pursuant to the applicable statutes upon the return of the order of sale. A party may redeem before confirmation of the sale. Nothing in this order prevents the court from staying the confirmation of sale to permit a property owner additional time to redeem.

MAGISTRATE

--NOTICE--

A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

Exhibit A

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Exhibit A

[Legal description – Photocopy from Preliminary Judicial Report.]

CERTIFICATE OF SERVICE

Copies of the foregoing have been sent via Ordinary U.S. Mail, to the following:

Jane Albright, Esq.
XY and Z Law Firm
1212 Main Street
Cleveland, OH 44113

John Honorable, Esq.
AB and C Law Firm
2323 Other Street
Cleveland, OH 44109

(Attorney for Defendant
Property Owner)

Jane Doe, Unknown Spouse, if any, of Property Owner
12345 Main Street
Cleveland, Ohio 44106

Office of the Ohio Attorney General
12345 Town Street
Columbus, Ohio 444000

Other Creditor
12345 Oak Street
Youngstown, Ohio 444444

Copies mailed by Clerk _____
(Date)

CLERK OF COURTS