

WFG Underwriting Bulletin



To: All Ohio Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: February 13, 2025
Bulletin No. OH 2025-01
Subject: Insuring Board of Revisions Tax Foreclosures

This Bulletin supersedes [OH 2020-05](#) and Ohio Guidelines “Ohio Special Risks and Curative Statutes” on Board of Revisions Tax Foreclosures.

Background

The State of Ohio enacted a statutory scheme to allow a County Board of Revision to hear tax foreclosures. Board of Revision Tax Foreclosures are a non-judicial foreclosure process, but the records of the proceeding are kept by the Clerk of the Common Pleas Court. This makes a Board of Revision proceeding difficult to distinguish from traditional tax foreclosures presided over by a common pleas judge.

The distinction is important when underwriting a tax foreclosure as different underwriting standards apply.

You can only tell the difference between the proceedings by examining the complaint for foreclosure. Board of Revision tax foreclosures will have a case caption reading “Before the Board of Revisions for _____ County, Ohio” whereas the judicial tax foreclosure will have a case caption reading, “In the Common Pleas Court of _____ County, Ohio” or similar language. A stylized example of each can be found in Exhibit A here: [Exhibit A](#)

Underwriting Standards for Board of Revision Tax Foreclosures

The Company will insure a Board of Revision Tax Foreclosure free of the interests of prior owners and lienholders (Except Liens in favor of the United States other than Federal Tax Liens) provided the following standards are met:

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1. At least one year has passed since the recording of the deed to the purchaser at the Board of Revision sale or if there was no purchaser, 1 year after the real estate has been forfeited to the State of Ohio (County);
2. All parties with an interest in the real estate must be joined as a party defendant and must be served with summons according the Ohio Rules of Civil Procedure or enter an appearance before the Board of Revision.
3. The property must be offered for sale with a minimum bid of the taxes owed. If there are no bidders, the property must be offered for sale a second time. Once offered for sale twice with no bids, the property is forfeited to the "State" and may be transferred to a "land bank" or sold at private sale by the county.
4. If a party with an interest in the real estate is joined as a defendant and served with summons or enters an appearance, their lien or ownership interest is eliminated and no exception should be taken or a deed/release required on your commitment.

The exception to this rule is a lien in favor of the United States other than a Federal Tax Lien. If there is a lien in favor of the United States which is not a Federal Tax Lien, you must require a release of that lien. Examples of such liens include:

- a. Mortgages in favor of HUD, VA, Department of Agriculture or any other Federal agency;
- b. Abstracts of Judgments (Judgment liens in favor of the United States);
- c. Anti-Terrorism and Effective Death Penalty Liens (While such liens attach to real estate as if they were a Federal Tax Lien, they are a lien that are not created by the Internal revenue laws of the United States. They are created by a criminal statute.);
- d. Restitution Liens;
- e. Any other lien in favor of the United States or an agency of the United States which does not arise under the Internal Revenue Code.

28 USC 2410 (c) provides that a lien in favor of the United States other than a Federal Tax Lien (Lien arising under the internal revenue laws of the United States) are eliminated in a state foreclosure action only when the foreclosure results in a "judicially ordered sale" of the real estate. The Board of Revision is not a court and its members are not judges.

Please see [Bulletin NB 2023-08](#) for non-judicial foreclosures of any kind and Federal Liens.

Examining Service of Process

The Ohio Rules of Civil Procedure dictate who may be served with summons, methods by which they may be served and what actions may be taken when a service method fails. The Civil Rules on Service of Summons are somewhat tedious, but they are straightforward and comprehensive.

The Rules for Service of Summons are found in Civil Rule 4 and that Rule breaks down as follows:

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Civil Rule 4.1 Methods of Service:

1. Certified Mail with return receipt showing delivery date, delivery address, and to whom it was delivered;
2. Commercial Carrier (UPS, FedEx, etc.) with a return receipt showing delivery date, delivery address, and to whom it was delivered;
3. Personal Service by the County Sheriff or a Process Server appointed for that purpose. They must deliver the Summons to the person to be served and will file a Return of Service indicating delivery date and to whom it was given. If they are unable to deliver the Summons within 28 days, they will return the summons with a service return indicating why they were unable to serve the person;
4. Residence Service by the County Sheriff or a Process Server appointed for that purpose. They will deliver the Summons to the "usual place of abode" of the person to be served by leaving the summons with a person of suitable age and discretion who resides there. When served, they will file a Return of Service showing the delivery date, delivery address and the name of the person to whom Summons was delivered. If they are unable to serve Summons within 28 days they will file a Return of Service indicating they were unable to serve the Summons;

The Plaintiff in the Board of Revision proceeding may request service under Rule 4.1 by multiple methods simultaneously. It is not unusual for service to be requested via certified mail/commercial carrier and personal/residence simultaneously when the proceeding is filed with the Clerk of Courts.

Civil Rule 4.2 Who May be Served

Civil Rule 4.2 is a comprehensive list of who may be served. It lists who is to be served when a defendant is a minor, an incompetent, an inmate in jail/prison, the State/subdivisions of the State, corporations, partnerships, LLCs, "unincorporated associations" (Some churches, lodges, business trusts, etc.), etc.

Civil Rule 4.3 Service on Party in Another State

They may serve summons on a party located outside of Ohio via the methods listed in Civil Rule 4.1; however, please note that personal service/residence service via a sheriff will be made by a sheriff for the county in the state where the person is located.

Civil Rule 4.4 Service by Publication

Unknown Residence:

If the person to be served cannot be located due to an unknown residence, service via publication may be made after filing a request for service via publication with an affidavit reciting:

1. The residence of the party is unknown;
2. The specific efforts made to locate the individual; and
3. The residence of the party cannot be determined through the exercise of reasonable diligence.

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Please note that a generic statement in the affidavit reciting the affiant has made a “diligent search” or “reasonable search” does not satisfy the requirements of the affidavit.

Known Residence:

Service must be made via Civil Rules 4.1, 4.3 (B) (Out of state Residence) or 4.5 (Resides in Another Country), 4.6 (C) (Service Refused), or 4.6 (D) (Unclaimed mail/carrier). If service cannot be made by one of these methods, then service may be made by publication.

In a tax foreclosure, the length of publication is made once a week for 3 weeks in a newspaper of general circulation in the county where the real estate is located pursuant to ORC 5721.18 instead of six weeks as set forth in the Rule.

Service is deemed complete on the last publication date as evidenced by an affidavit filed by the publisher of the newspaper filed with the Clerk of Courts.

Civil Rule 4.5 Service in a Foreign Country

If the party to be served is located in another country, you will need to make a determination on whether the country is:

1. Countries who are signatories of the “Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents For Use in Legal or Commercial Matters”. (Use Google to obtain the most current list and please note this is different than the list of countries for the “Apostille Treaty” aka foreign notaries.) Service on these countries is made via the methods allowed in the Treaty.
2. All other countries. Service may be made via:
 - a. Civil Rule 4.3 (B)(1);
 - b. Civil Rule 4.4;
 - c. In the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction when service is calculated to give actual notice;
 - d. As directed by the foreign authority in response to a letter rogatory when service is calculated to give actual notice;
 - e. Upon an individual by delivery to him or her personally;
 - f. Upon a corporation or partnership or association by delivery to an officer, a managing or general agent;
 - g. By any form of delivery requiring a signed receipt, when the clerk of the court addresses the delivery to the party to be served and delivers the summons to the person who will make the service;
 - h. As directed by order of the court.

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Civil Rule 4.6 Service Refused or Service Unclaimed

If Service is "Refused" or "Unclaimed", service may be made by requesting the Clerk to send the summons via regular US Mail to the address of the party to be served.

If the regular mail service is not returned to the Clerk as undeliverable, forwarding order expired, no such person at this address, etc., service is deemed complete as of the date mailed.

Civil rule 4.7 Waiver of Service

The plaintiff in the Board of Revision case may request a defendant waive service pursuant to Civil Rule 4.7. Service waivers are unusual in the context of a tax foreclosure and foreclosures generally, but a party may waive service either by entering an appearance (filing an answer) or via a specific service waiver filed with the court.

The Board of Revisions may not waive service on behalf of a party. The Due Process Clause of the 14th Amendment to the US Constitutions require states and their political subdivisions/agencies such as the Board of Revisions to give persons affected by foreclosures or any other lawsuit, notice of the proceeding and the opportunity to be heard before the state takes further action.

Full Copy of the Ohio Civil Rules:

<https://www.supremecourt.ohio.gov/docs/LegalResources/Rules/civil/CivilProcedure.pdf>

Special Rules for Service on the United States for Federal Tax Liens

Please note that the Internal Revenue Code provides that any foreclosure (judicial or non-judicial) requires service of summons be made on the United States according to rules set by the IRS. Currently, the IRS requires that service of process be made upon the United States by delivering a copy of the summons and complaint to:

1. The local IRS office who filed the Federal Tax Lien; and
2. The US Attorney's Office located in the district where the real estate is located; and
3. The Commissioner of the IRS in Washington D.C.; and
4. The US Attorney General's Office in Washington D.C.

Service is not complete upon the United States unless all four are served; however, if the United States enters an appearance in the foreclosure action, defects in service are moot.

Additionally, if there was a Federal Tax Lien in favor of the United States where service was properly made upon the United States as outlined above, the United States retains a right of redemption in the property. You must take an exception to the right of redemption:

"Right of the United States to redeem the property as set forth in 28 USC 2410 (c)."

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Summary

Board of Revisions and other tax foreclosures are labor intensive and thus costly to insure.

Simply, many counties do not do an adequate job of ensuring that all parties with an interest in the real estate are joined as defendants and served with summons. The County is more concerned with collecting the taxes owed than they are with delivering fee simple title free of liens and claims to the purchaser. Caveat Emptor or Buyer Beware is law in Ohio when purchasing real estate at any foreclosure sale and even more caution is required when the foreclosure is a tax foreclosure.

Consequently, the proceedings in a tax foreclosure must be examined to ensure compliance with joinder of all parties with an interest and service of summons. You may not rely upon statements by the Board of Revisions reciting all parties were served with summons.

If you have a party with an interest in the real estate who was not joined as a defendant or who was not served with summons, did not enter an appearance or did not file a service waiver, take exception to their interest and require a deed or a release as appropriate.

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