## Sample Proposed Decision (Revised 6-2011)

The following provides a framework.

- 1. List all pleadings and dispositive motions.
- 2. Finding that all who are necessary to the action have been joined and a finding against each defaulting party.
- 3. Ruling on additional dispositive motions.
- 4. Finding for County Treasurer for real estate taxes.
- 5. Amount due on debt.
- 6. Finding on the mortgage or lien, including priority and entitlement to foreclose.
- 7. Potential recovery of advances.
- 8. All parties with asserted interest acknowledge as claiming some interest and the Court's finding that if any interest exists, it is junior to the first lien holder.
- 9. Any interest pleaded for which specific findings are not made is transferred from the property to the fund generated by the sale.
- 10. No just reason for delay.
- 11. The court orders that if payment is not made, the equity of redemption will be extinguished and the property sold.
- 12. If the property does not sell at the first sale the party entitled to foreclose may file a Praecipe for a subsequent sale.
- 13. Distribution. 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 x 100 + \$300.00 or \$650.00.
- 14. Application of deposits.
- 15. Advances.
- 16. Recorder/Clerk to release encumbrances.
- 17. Writ of possession to issue.
- 18. Rule 53 Notice.
- 19. PHOTOCOPY of Legal Description from Preliminary Judicial Report.
- 20. Certificate of Service for use by the Clerk.

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

| The Bank,             | )                              |
|-----------------------|--------------------------------|
| Plaintiff             | )<br>)<br>CASE NO              |
|                       | ) CASE NO                      |
|                       | ) JUDGE His Honor              |
|                       | ) <u>MAGISTRATE'S DECISION</u> |
| -VS-                  | )                              |
| Property Owner, et al | )                              |
| Troperty Owner, et al | )                              |
| Defendants            | )                              |

- 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 the State of Ohio, Department of Taxation, and the evidence.
- The Magistrate finds that all necessary parties have been served with summons according to law and are properly before the Court; that the 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.

- The Magistrate finds that reasonable minds can come to but one conclusion, which is adverse to the Defendant, Property Owner, that there exists no genuine issue of material fact and that the Plaintiff is entitled to a judgment in its favor as a matter of law. The Plaintiff's Motion for Summary Judgment is granted.
  - The Magistrate finds that there is due the Cuyahoga County Treasurer, taxes, accrued taxes, assessments, and penalties on the premises described herein including: (1) taxes and assessments which attach before the confirmation of sale for the year in which confirmation occurs, apportioned pro rata to the part of that year that precedes confirmation, and any penalties and interest on those taxes and assessments 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 confirmation. 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 Sheriff's sale of said premises for which amount the Cuyahoga County Treasurer has a good and valid lien.
- The Magistrate finds on evidence adduced that there is due the 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 the Plaintiff against the Defendant, Property Owner.
- The Magistrate further finds that in order to secure the payment of the promissory note aforesaid, Property Owner, unmarried, 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

The Magistrate finds that said 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; that said mortgage deed was assigned to the Plaintiff; that said conditions in the mortgage deed have been broken by reason of non-payment and the same has become absolute and that the Plaintiff is entitled to have the equity of redemption and dower of all the Defendants in and to said premises foreclosed.

- The Magistrate further finds that 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 Sheriff's Sale, which amount may be added to the first mortgage lien of the Plaintiff. The Magistrate reserves for further order a determination of the exact, if any, amount due Plaintiff for said advances.
- The Magistrate finds that the Defendant State of Ohio Department of Taxation 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, claim or lien said Defendant may have is inferior and subsequent to the lien of the Plaintiff.

The Magistrate makes no finding at this time as to the right, title, interest or lien of said Defendant as set forth in its pleadings, except to note that such claim, 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.

The Magistrate further finds that there is no just reason for delay in entering judgment for the Plaintiff.

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 (3) days from the date of the Court's adoption of the Magistrate's Decision, the equity of redemption and dower of all the Defendants in and to said premises shall 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.

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

And, coming now to distribute the proceeds of said sale, it is ordered that the Sheriff 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 Report filed herein,

which sum is hereby taxed as costs.

SECOND: To the Cuyahoga County Treasurer, taxes, accrued taxes,

assessments, and penalties on the premises described herein due and payable as of the date of confirmation of sheriff's sale and taxes, assessments, penalties and interest which attach before the confirmation of sale for the year in which confirmation occurs, apportioned pro rata to the part of that year that precedes

confirmation.

THIRD: To the 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 be held by the Sheriff, pending further

order.

In the event Plaintiff is the successful bidder at the Sheriff's sale, the amount of the deposits made herein by the Plaintiff and the cost of the Preliminary Judicial Report in the sum of \$643.00, shall be deducted from the total amount of Court costs otherwise payable herein.

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.

It is further ORDERED, ADJUDGED, AND DECREED that, upon the confirmation of sale made herein, a minute of these proceedings be entered upon the

| Cuyahoga (  | County R  | Records i | involved | in this | action | to reflect | t that th | ney are | released | as | liens |
|-------------|-----------|-----------|----------|---------|--------|------------|-----------|---------|----------|----|-------|
| against the | subject p | remises   |          |         |        |            |           |         |          |    |       |

It is further ORDERED, ADJUDGED AND DECREED that, after said sale has been completed, the Sheriff of Cuyahoga County convey to the purchaser said real property and that a Writ of Possession of said property be issued.

RECORD IS HEREBY ORDERED.



18 --NOTICE--

A party shall not assign as error on appeal the Court's adoption of any finding of fact or conclusion of law unless the party timely and specifically objects to that finding or conclusion as required by Civil Rule 53(D)(3).

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[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<br>Property Owner)  |                 |
| Jane Doe, Unknown Spouse, if any, of Property Owner<br>12345 Main Street<br>Cleveland, Ohio 44106     |                 |
| Jack Public Servant, Esq. Office of the Ohio Attorney General 12345 Town Street Columbus, Ohio 444000 |                 |
| (Attorney for the State of Ohio)  |                 |
| Other Creditor<br>12345 Oak Street<br>Youngstown, Ohio 444444   |                 |
| Copies mailed by Clerk(Date)  | -               |
|   |                 |
|   | CLERK OF COURTS |