How Shift In Ohio Foreclosure Appeals Alters Lenders' Risk

By **Terry Posey** (October 29, 2026)

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In the course of six weeks this past summer, the Ohio Supreme Court ended a practice Ohio lenders relied on for decades: letting the sheriff's sale defeat a borrower's appeal.

In Wells Fargo Bank v. Doberdruk, decided July 15, the court unanimously held that an appeal from a foreclosure judgment is not moot when the borrower fails to post a bond and the sale proceeds have been distributed, because Ohio Revised Code Section 2329.45 lets the borrower recover restitution from the lender.[1]

And in Drushal v. Miller, decided Aug. 25, the court held that a creditor's own enforcement of a judgment is not a voluntary satisfaction and cannot moot the debtor's appeal, and it openly questioned its own 1990 decision in Blodgett v. Blodgett.[2] Two days later, in a second Doberdruk decision, the court vacated the Ohio Court of Appeals, Eighth District's dismissal of the borrower's separate appeal from the order confirming the sale.[3]

Here is the takeaway: In Ohio, a foreclosure appeal now survives the sale, the confirmation, the distribution of proceeds and the deed. Lenders should plan for merits briefing in every appealed foreclosure; treat credit-bid real estate owned, or REO, with a pending appeal as encumbered; and expect title underwriters to say the same. Borrowers may gain leverage, but less than the headlines suggest: Without a stay, the remedy is money, not the house, unless the lender bought at its own sale.

How the Shortcut Worked

The shortcut began with Blodgett, a 1990 divorce case holding that a party who voluntarily satisfies a judgment moots the appeal.[4]

Some appellate courts extended that rule to involuntary satisfaction. Because Rule 62 of the Ohio Rules of Civil Procedure requires a stay — typically secured by a bond at or above the judgment amount — if a bond was not secured, a borrower could see the property sold and the proceeds distributed, prompting the lender to seek dismissal as moot.

The districts split. The Eighth and Ninth Districts held that Section 2329.45 restitution ended once the court distributed the proceeds.[5] The Second and Sixth Districts held that the statute preserved restitution against the lender and that Blodgett did not apply to a borrower unable to post bond. Doberdruk adopted the latter view.[6]

Doberdruk: The Statute Does the Work

In Doberdruk, the mortgagor obtained a January 2024 foreclosure judgment against Grace Doberdruk in Cuyahoga County. She appealed but did not post the required bond. A third party bought the property at the May 2024 sheriff's sale, which the court confirmed. The Eighth Appellate District dismissed her merits appeal as moot and certified the conflict.

Writing for a unanimous court, Justice Daniel Hawkins applied Section 2329.45. If a foreclosure judgment is reversed, the purchaser keeps title, but the judgment creditor must

repay the sale price with interest. The remedy applies to the foreclosure decree, requires no stay and survives distribution because the lender — not the court — owes restitution. The dismissing courts therefore misapplied mootness, which asks only whether a favorable decision can still provide effectual relief.

On Aug. 27, the court also vacated the dismissal of Doberdruk's appeal from the sale confirmation order. Together, the decisions preserve appeals from both final foreclosure orders: the decree and the confirmation.

Drushal: No Voluntary Satisfaction, and a Warning Shot at Blodgett

Drushal was not a mortgage case, giving it wider application to more judgment types. Creditors holding a $167,000 judgment against Tyler Miller sued to reach his interest in Pike County land purchased under a land contract. After no defendant appeared, the default judgment substituted Drushal for the Millers, awarded possession and voided the sellers' interest. The sellers appealed without a stay, and the Fourth Appellate District dismissed the appeal as moot.

Justice Jennifer Brunner authored the reversal. Blodgett did not apply because the creditor recorded the judgment while the debtors did nothing; failure to seek a stay is not voluntary satisfaction. Because reversal generally requires restitution of property taken under a judgment, a creditor cannot moot an appeal through its own enforcement.

More consequentially, the court called Blodgett arguably inconsistent with traditional mootness principles and "misguided," although its validity was not squarely presented. The court's language could invite a future challenge.

What Changes for Lenders, Servicers and Title Underwriters

The concept of "finality of judgment" has changed. In the Eighth and Ninth Districts, a lender could count on finality the day the stay lapsed and the sale was confirmed. Now the appeal runs its course, and the borrower may seek Supreme Court review, so a contested foreclosure's life cycle extends a year or more past the sheriff's deed.

A mootness motion is no longer a viable response to an unstayed foreclosure judgment appeal anywhere in Ohio, and counsel should budget for merits briefing in every appealed foreclosure, including pro se appeals.

REO disposition has changed. Restitution under Section 2329.45 is the lender's liability, so a lender whose property went to a third party owes the sale price plus interest if the decree is reversed. Where the lender itself bought, the exposure is the property, as the next section explains.

Title underwriting has changed. Underwriters that treated a dismissed appeal as the end of the risk will now look for an affirmance or the expiration of appeal time before insuring a resale without exception. Expect indemnity and escrow demands on properties with pending appeals, and prepare for some underwriters to decline the risk until the appeal concludes.

Settlement leverage has shifted. A borrower whose appeal has colorable merit, such as a standing defect or a lost note, holds a restitution claim that survives the sale. Lenders should evaluate those appeals early, while a modification or cash-for-keys resolution still costs less than restitution of the sale price.

The Credit-Bid Trap

Section 2329.45 protects a third-party purchaser, not the foreclosing plaintiff. Applying that rule in Fannie Mae v. Hicks in 2018, the Eighth Appellate District held that when Fannie Mae credit-bid at the sheriff's sale and later lost the appeal, neither Section 2329.45 nor Section 2325.03 protected it. The reversal nullified the sale and confirmation, requiring return of the deed.

Doberdruk left that rule intact. If the buyer is a third party, reversal requires the lender to pay restitution while the buyer keeps the property. If the lender credit-bids, it may have to return the property and absorb its preservation, rehabilitation, marketing and resale exposure.

The safest response is to hold credit-bid REO while an appeal is pending and defer capital improvements. If the lender sells, it should disclose the appeal to the buyer and title underwriter and price the restitution risk into the deal.

What the Rulings Do Not Do

Borrowers' counsel should resist reading Doberdruk as a license to skip the stay. The court said the opposite: Because a confirmed sale passes title to a third-party buyer, a stay remains a critical step for a borrower who wants the property rather than money.

The money is also capped. Section 2329.45 fixes restitution at the sale price with interest, not fair market value. The statutory minimum bid at a first sheriff's sale is two-thirds of appraised value, and a second sale of residential property has no minimum, so a borrower whose home sold cheaply recovers the cheap price.

The statute also directs the court to consider everyone who lost an interest in the property and their priority, so junior lienholders may share in the restitution ahead of the borrower.

Nothing in either decision touches the merits of the underlying appeal**.** The decisions change who bears the risk of an erroneous judgment during the appeal, not who should prevail. And a borrower who signs a settlement or accepts a payoff is still caught by Blodgett, at least until the court takes up its own invitation.

Open Questions

Blodgett may not be good law. Drushal all but announced that a majority is prepared to revisit it. Creditors who rely on a satisfaction of judgment to end a case should obtain an express waiver of appeal, not just a satisfaction.

There are new arguments on whether Revised Code Section 2329.45 is the exclusive remedy. A borrower whose home sold for far less than its value will argue that the common-law restitution right Drushal invoked supplements the statutory sale price measure. Lenders will argue the statute occupies the field when a third party buys.

Be careful in assuming a universal rule. Drushal involved a judgment lien and a land contract. The same reasoning reaches execution sales on money judgments and association, mechanic's and other lien foreclosures. Tax foreclosures proceed under a separate chapter with its own finality provisions, and whether Doberdruk reaches them is unsettled.

Nothing addresses the deficiency. A lender that owes restitution of the sale price still holds

the note. Nothing in Doberdruk tells trial courts how to net the restitution award against the unpaid debt on remand.

A Practical Checklist

Lenders and servicers should take the following steps in light of the decisions:

- Audit your Ohio portfolio for appealed foreclosures that counsel expected to end in a mootness dismissal, and reassign them for merits briefing.
- Tag every REO acquired by credit-bid with an appeal pending, hold it from the liquidation pipeline and defer capital spending.
- Before reselling any property with an appeal pending, disclose the docket to the buyer and the title underwriter and reserve for restitution.
- When settling with a borrower, obtain an express dismissal of the appeal rather than relying on a satisfaction of judgment.

Borrowers' counsel should consider the following:

- Still seek a stay. Ask the trial court to set a bond below the judgment amount and, if it refuses, move in the court of appeals under Rule 7 of the Ohio Rules of Appellate Procedure. Restitution after sheriff's sale may only get you money; the stay preserves the house.
- Appeal both the decree and the confirmation. Each is a final order, and each now survives the sale.
- On reversal, move at once for restitution if a third party did the buying, or for vacatur of the sale and return of the deed under Hicks if the lender did.

The Ohio Supreme Court has changed who bears the risk of an erroneous foreclosure judgment while an appeal is pending. For 35 years, in much of the state, the borrower bore it. Now the lender does. Counsel on both sides should make adjustments to long-standing expectations.

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[1] Wells Fargo Bank, Natl. Assn. v. Doberdruk, Slip Opinion No. 2026-Ohio-2674 (July 15, 2026) (Hawkins, J.). https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2026/2026-Ohio-2674.pdf.

[2] Drushal v. Miller, Slip Opinion No. 2026-Ohio-3269 (Aug. 25, 2026) (Brunner, J.;

Fischer, J., concurring in judgment only).
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2026/2026-Ohio-3269.pdf.

[3] Wells Fargo Bank, Natl. Assn. v. Doberdruk, Slip Opinion No. 2026-Ohio-3310 (Aug. 27, 2026), vacating 2025-Ohio-749 (8th Dist.).
https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2026/2026-Ohio-3310.pdf.

[4] Blodgett v. Blodgett, 49 Ohio St.3d 243 (1990).

[5] Bankers Trust Co. of California, N.A. v. Tutin, 2009-Ohio-1333 (9th Dist.).
https://www.supremecourt.ohio.gov/rod/docs/pdf/9/2009/2009-Ohio-1333.pdf.

[6] Fannie Mae v. Hicks, 2016-Ohio-8484 (8th Dist.) (on reconsideration), relying on McBain v. McBain, 15 Ohio St. 337 (1864), and Ins. Co. v. Sampson, 38 Ohio St. 672 (1883).
https://www.supremecourt.ohio.gov/rod/docs/pdf/8/2016/2016-Ohio-8484.pdf.