



Faster and More Flexible Foreclosures: Tennessee Revises Foreclosure Sale Procedures and Notice Requirements

By Charles S. Sanger

In the recently completed session of the Tennessee Legislature, two Acts were passed which made three significant changes in the Tennessee foreclosure process. We will address the requirements in the order in which they normally occur in the foreclosure process. These changes are significant because they are cumulatively designed to shorten the foreclosure period and reduce publication costs. The legislation also clarifies one procedural aspect of foreclosure practice and answers a question long debated by debtors and creditors alike, namely how long may a foreclosure sale be postponed or adjourned without additional advertising and what notice requirements are imposed when a sale is postponed or adjourned?

Residential Foreclosures

The first change (Senate Bill 1451), in the context of a consumer residential foreclosure, requires that the lender furnish a Notice of Right to Foreclose. This notice must be given sixty (60) days before the first notice of sale is published. The amended statute, which Governor Haslam signed on April 25, 2011, provides that if a lender has previously met with a borrower and disclosed that the borrower's failure to meet his or her loan obligations may result in foreclosure proceedings, then no separate written notice is required. If the lender has met with the borrower, then an affidavit confirming the meeting is to be attached and recorded along with the trustee's deed.

Importantly, the Legislature provided that the entire requirement that a lender provide a Notice of Right to Foreclose would sunset and no longer apply to any foreclosure sales when the first notice of sale is published on or after January 1, 2013. We assume the Legislature anticipates that the current mortgage foreclosure crisis will have abated by that date.

Shorter Foreclosure Notices

In the second bill (House Bill 1920), signed by Governor Haslam on June 16, 2011, the Legislature adopted legislation which is intended to shorten the length of foreclosure notices. Under Tennessee laws, a creditor must publish a notice of foreclosure three (3) times in a newspaper of general circulation in the county in which the real estate is located. The new legislation is intended to eliminate the need for lengthy metes and bounds descriptions in foreclosure notices. Under the revised Act, a notice meets the legal requirement of describing the real estate if it provides "a legal description, which means a reference to the deed book and page that contains the complete legal description of the property, and common description, which means if available, the street address and map and parcel number of the property."

As an aside, the above legislation was a compromise. It was the result of a heated battle which included the proposal to reduce the number of required foreclosure notices from

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three to one. This failed initiative was based upon a presumption by certain creditors that the print media is attempting to unfairly benefit from the current crisis by increasing the advertising rates for foreclosure notices. The option to use an abbreviated legal description, described above, was a compromise measure which is intended to shorten the length of foreclosure notices and reduce publication costs. This new provision takes effect on July 1, 2011.

More Flexibility to Adjourn or Postpone Sales

In the third bill, T.C.A. § 35-5-101 was amended to provide that a foreclosure sale could be postponed and adjourned multiple times for up to one (1) year after the originally scheduled date. The trustee is directed to announce each postponement or adjournment and set forth the exact date, time, and location of the scheduled sale date. If the adjournment is for more than thirty (30) days, then notice of the new date must be mailed to the debtor and any co-debtor.

This last change clarified the hotly-debated question concerning the length of time a trustee could postpone a foreclosure sale. Many practitioners have been reluctant to postpone sales for more than thirty (30) days because of a concern that such a postponement would require the publication of new notices of foreclosure. The new legislation provides a safe harbor for the practice of postponing sales.

The Legislature again intended to minimize creditors' publication expenses by means of this measure. Also, legislators believe that this new measure will provide creditors with the flexibility to deal with debtors who, at the last minute, propose a workout of the problem credit. The hope is that lenders will be more willing to postpone a sale if they know with certainty that they will not need to incur new foreclosure publication expenses as a result of the postponement. Again, this legislation takes effect on July 1, 2011.

In conclusion, in this legislative session, three significant changes were made in the Tennessee foreclosure process. The new procedures should expedite residential foreclosures, reduce newspaper publication costs, and clarify the extent to which foreclosure sales may be postponed or adjourned to subsequent dates.

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