

HOUSE BILL 1355

By Farmer

AN ACT to amend Tennessee Code Annotated, Title 35,
relative to foreclosure sales.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 35-5-101, is amended by deleting the section and substituting instead the following:

(a) In a sale of land to foreclose a deed of trust, mortgage, or other lien securing the payment of money or other thing of value or under judicial orders or process, public notice of the sale must be made by the foreclosing party at least twenty (20) days in advance of the sale, as provided under this chapter.

(b)

(1) Except as otherwise provided in this section, the requirement to provide public notice is satisfied if the foreclosing party causes a copy of the public notice to be:

(A) Published at least three (3) different times in a newspaper in the county where the sale is to be made; and

(B) Posted on the secretary of state's website for a minimum of twenty (20) continuous days.

(2) The first date that the public notice is either published in print or posted on the website is deemed the public notice date for calculating days in accordance with subsection (a).

(3) On and after January 1, 2025, absent specific, contrary, or additional requirements in the relevant legal instrument governing a foreclosure, public notice is satisfied by providing public notice as described in (b)(1)(B) only.

(4) The fee for posting public notice on the secretary of state's website is two hundred dollars (\$200), per posting.

(c) This section applies only where the amount of indebtedness for the payment of which the property being sold is greater than two hundred dollars (\$200).

(d) In a sale of land to foreclose a deed of trust, mortgage, or other lien securing the payment of money or other thing of value or under judicial orders of process, the trustee or other party that sells the property shall send to the debtor and any co-debtor a copy of the public notice. The public notice must be sent on or before the public notice date described in subsection (b) by registered or certified mail, return receipt requested.

The notice must be sent as follows:

(1) If to the debtor, addressed to the debtor at:

(A) The mailing address of the property, if any; and

(B) The last known mailing address of the debtor or any other mailing address of the debtor specifically designated for purposes of receiving notices under the deed of trust, mortgage, or other lien instrument that was provided at least thirty (30) days prior to the public notice date in written correspondence or written notice in accordance with the loan agreement from the debtor to the creditor, but only if the last known mailing address of the debtor or other mailing address designated by the debtor is different from the mailing address of the property; and

(2) If to a co-debtor, addressed to the co-debtor at the last known mailing address of the co-debtor or any other mailing address of the co-debtor

specifically designated for purposes of receiving notices that was provided at least thirty (30) days prior to the public notice date in written correspondence or written notice in accordance with the loan agreement from the co-debtor to the creditor, but only if the last known mailing address of the co-debtor or other mailing address designated by the co-debtor is both different from the mailing address of the property and different from the mailing address of the debtor described in subdivision (d)(1)(B).

(e) Unless postponement or adjournment is contractually prohibited, a sale may be adjourned and rescheduled one (1) or more times upon compliance with the following:

(1) The sale must be held within one (1) year of the date scheduled in the original public notice;

(2) Each postponement or adjournment must be set to a specified date and time and must be announced by posting the date, time, and location of each scheduled sale on the secretary of state's website; provided, that the foreclosing party posts notice on the website regarding the continuance at least five (5) days prior to the immediately preceding posted sale date. If the continuance is not properly posted at least five (5) days prior to the then-scheduled sale date, then the postponement or adjournment must be announced on the date and at the location and time of the then-scheduled sale; and

(3) For each postponement or adjournment, notice of the new date, time, and location must be mailed to the debtor and co-debtor via regular mail at least ten (10) calendar days prior to the sale date unless the postponement or adjournment occurs within ten (10) days of the scheduled sale date, in which case notice must be mailed as soon as practical.

SECTION 2. Tennessee Code Annotated, Section 35-5-102, is amended by deleting the section and substituting instead the following:

If a newspaper is not published in the county in which the land is to be sold, then the requirement to provide public notice in a newspaper is dispensed with, unless ordered by court. Regardless, public notice must be posted on the secretary of state's website.

SECTION 3. Tennessee Code Annotated, Section 35-5-103, is amended by deleting the section and substituting instead the following:

Whenever public notice is required to be provided in a newspaper pursuant to this chapter, but the foreclosing party is unable to make public notice in a newspaper, the foreclosing party shall make publication of the sale for thirty (30) days by written notices posted in at least five (5) of the most public places in the county, one (1) of which must be the courthouse door, and another in the neighborhood of the defendant or, if realty, in the civil district where the land lies. Public notice requirements are satisfied by posting notice on the secretary of state's website.

SECTION 4. Tennessee Code Annotated, Section 35-5-104(a), is amended by deleting the language "The advertisement or notice shall" and substituting instead the language "The public notice must"; by deleting the language "names of the plaintiff and defendant, or parties interested" in subdivision (a)(1) and substituting instead the language "names of the foreclosing party, the property owner, and any interested parties"; and by deleting the last sentence of subdivision (a)(2) and substituting instead the following:

A metes and bounds description is not required to be included in the description of the land;

SECTION 5. Tennessee Code Annotated, Section 35-5-104(d), is amended by deleting the language "parties interested" includes, without limitation," and substituting instead the

language "'interested parties' include, without limitation, the owner of the property, "; by deleting the language "advertisement or notice" and substituting instead the language "public notice date"; and by deleting the language "Parties interested" and substituting instead the language "Interested parties".

SECTION 6. Tennessee Code Annotated, Section 35-5-105, is amended by deleting the section and substituting instead the following:

If the printer will not publish public notice for the rates provided in § 8-21-1301, then publishing public notice in a newspaper shall not be required. Regardless, public notice must be posted on the secretary of state's website.

SECTION 7. Tennessee Code Annotated, Section 35-5-106, is amended by adding the language "or of the legal instruments governing the foreclosure," immediately after the language "this chapter,".

SECTION 8. This act takes effect January 1, 2024, the public welfare requiring it.