

PUBLICATION

Recent Changes in Tennessee Foreclosure Law

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In its most recent session, the Tennessee General Assembly passed two bills that affect foreclosures in Tennessee, particularly with regard to notice provisions. The bills are found in Public Chapter Nos. 122 and 505 of 2011.

Public Chapter No. 505 of 2011

The most significant changes are found in Chapter 505. The first section of Chapter 505 amends Tennessee Code Annotated § 35-5-104(a)(2), which stated that the Notice of Sale to be published in the newspaper must "describe the land in brief terms, including the street address if available." Years of practice and court decisions have interpreted this section to require a metes and bounds description of the land or at least a reference to a recorded plat.

The new § 35-5-104(a)(2) specifically states that a metes and bounds description is not required in the public notice. The new language requires a "legal description," which means a reference to the book and page of the deed that contains the complete legal description, and a "common description," which means the street address and the map and parcel number of the property. If no street address exists, a subdivision lot or a tract number may be used.

Section 2 of PC 505 clarifies the law in Tennessee regarding postponement or adjournment of foreclosure sales. Foreclosure sales can now be postponed for up to a year in Tennessee. Without language to the contrary, this change appears to apply to all sales currently pending. The conditions on postponements are:

1. The postponement must be within one year of the original sale date.
2. Each postponement must be to a certain date and time and announced at the time and location of each scheduled sale date.
3. If the postponement is for more than 30 days, a notice of the new date and time must be mailed at least 10 days prior to the sale date.
4. Notices of postponements are not required to be published in the newspaper.

Public Chapter No. 122 of 2011

Chapter 122 amends Tennessee Code Annotated § 35-5-117. This Section was enacted in 2010 to require a 60-day Notice of Right to Foreclose be sent to all borrowers prior to the first publication when the property is the residence of the borrower.

Section 1 of Chapter 122 amends § 35-5-117(i) to remove the requirement that the giving of the Notice of Intent to Foreclose be set forth in the Notice of Foreclosure. The requirement remains for deeds memorializing the sale.

Section 2 of Chapter 122 states that no written Notice of Intent to Foreclosure is required if the lender, trustee or agent met with the borrower in person 180 days prior to the first publication to explain that failure to meet the obligation of the loan may result in a foreclosure. If this provision is used, the person who met with the

borrower must provide an affidavit stating the time and place of the meeting to be recorded with the Substitute Trustee's Deed. The language "written notice of foreclosure" is limited to the "60-day Notice of Intent to Foreclose" contained in § 35-5-117. Other notice requirements remain in effect.

Section 3 amends Tennessee Code Annotated § 35-5-117(h)(4) relating to the exceptions to the 60-day notice. Prior language stated that no notice of intent to foreclose was required if the borrower obtained a loan modification prior to July 1, 2010. The amended language removes the requirement of the notice if the borrower obtains a loan modification after July 1, 2011.

Section 4 repeals the entire portion of § 35-5-117 that deals with the "60-day Notice" on January 1, 2013.