

SENATE BILL 1066

By Barnes

AN ACT to amend Tennessee Code Annotated, Title 8,
Chapter 3 and Title 35, Chapter 5, relative to
foreclosure procedure.

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

SECTION 1. Tennessee Code Annotated, Section 8-3-104, is amended by adding the following new appropriately designated subdivision thereto:

() File all foreclosure notices submitted to the secretary of state in accordance with § 35-5-101, and establish and maintain a:

(A) Searchable system, available to the general public at no charge, for filing a notice of foreclosure, notice of postponement or cancellation of a foreclosure, and notice of completion; and

(B) Page on the web site of the secretary of state for posting notices of foreclosure, in accordance with title 35, chapter 5;

SECTION 2. Tennessee Code Annotated, Section 35-5-101, is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1)

(A) In any foreclosure sale of property under a deed of trust, mortgage, or other lien securing the payment of money or other thing of value, or under judicial order or process, either the trustee, substitute trustee or other party that sells the interest in the property, shall file a notice of foreclosure with the secretary of state and shall advertise the sale in a newspaper of general circulation distributed in the county where the sale is to be made.

(B) "Newspaper" means any publication that meets the criteria set forth in § 2-1-104(a)(13). Any publication that has been so certified by the state coordinator of elections shall be conclusively presumed to meet the criteria of this chapter.

(C) The secretary of state shall maintain a list of those publications that meet the criteria listed, which list shall be revised at least annually. The list shall be available from the secretary of state if requested and shall further be available on any web site maintained by the office of the secretary of state. Any publication that is on the list maintained by the secretary of state, as of the date of any advertisement required hereunder, or under the power of sale contained in any mortgage, deed of trust or similar document, shall be conclusively presumed to satisfy the requirements of this section or any similar requirement expressed in the mortgage, deed of trust or other legal instrument containing a power of sale.

(D) In any mortgage, deed of trust or other legal instrument containing a power of sale that calls for the newspaper to be printed or published in the county in which the property is located, such provision shall be satisfied if the newspaper is on the referenced list and is distributed in said county, notwithstanding that said newspaper is actually printed or published outside the county in which the property is located and is distributed in said county.

(2) The filing of the notice of the foreclosure with the secretary of state, and the first advertisement of the sale in the newspaper, shall be made at least

twenty (20) days prior to the scheduled sale date. The notice of the foreclosure shall be advertised in the newspaper at least three (3) different times, each of which shall be at least five (5) days apart.

(b)

(1) The notice of foreclosure filed with the secretary of state shall contain the information required by § 35-5-104(a), for which the secretary of state may charge a filing fee not to exceed fifty dollars (\$50.00).

(2) The notice of foreclosure advertised in the newspaper shall contain the information required by § 35-5-104(b).

(c) Nothing in this section shall be construed to eliminate any additional requirements that might otherwise be required pursuant to any contract executed or stated in the mortgage, deed of trust or other legal instrument being foreclosed.

(d)

(1) In any foreclosure sale of property under a deed of trust, mortgage, or other lien securing the payment of money or other thing of value or under judicial order of process, the trustee, substitute trustee or other party that sells the interest in the property shall send a copy of the notice of foreclosure described in § 35-5-104(a)(1) to each debtor or co-debtor and any record owner of the real property being foreclosed, if the record owner is not a debtor or co-debtor. The notice of foreclosure shall be sent on or before the first date the notice of foreclosure is advertised in a newspaper. The notice shall be sent by regular mail and registered or certified mail, return receipt requested, and shall be sent to the following:

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

(i) The mailing address of the property, if the property has a mailing address; and

(ii) The last known mailing address of the debtor or such other mailing address that the debtor has specifically designated for the purpose of receiving notices and that the debtor has delivered to the creditor in written correspondence or written notice to the creditor in accordance with any loan documents applicable to the property being foreclosed. The notice to the last known mailing address or other designated mailing address is required only if it is different from the mailing address of the property being foreclosed;

(B) 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 that the co-debtor has specifically designated for the purpose of receiving notices and that the co-debtor has delivered to the creditor in written correspondence or written notice to the creditor in accordance with any loan documents applicable to such co-debtor and the property being foreclosed; provided, however, notice to the co-debtor at the last known mailing address of the co-debtor or other mailing address designated by the co-debtor is required only if it is both different from the mailing address of the property being foreclosed and different from the mailing address of the debtor; and

(C) If to a record owner of the property being foreclosed, addressed to the record owner at the mailing address of the property and to any address shown on the recorded deed by which the record owner

obtained an interest in the property or any other mailing address of the record owner that the record owner has specifically designated for the purpose of receiving notices and that the record owner has delivered to the creditor in written correspondence to the creditor at the address shown for such creditor on any recorded deed of trust applicable to the property; provided, however, notice to the record owner at the last known mailing address of the owner or other mailing address designated by the record owner is required only if it is both different from the mailing address of the property being foreclosed and different from the mailing address of the record owner shown on the recorded deed by which the record owner obtained title to the property.

SECTION 3. Tennessee Code Annotated, Section 35-5-104(a), is amended by deleting the subsection in its entirety, substituting instead the following and redesignating current subsections accordingly:

(a) The notice of foreclosure filed with the secretary of state shall include the following information in a form or format designated by the secretary of state:

(1)

(A) The names of the debtor, co-debtors, if any;

(B) The names of the parties in any judicial sale; and

(C) The names of any parties interested, including record property owners if they are other than the debtor or co-debtor;

(2) A description of the property, by providing the following:

(A) The mailing address of the property, if the property has a mailing address;

(B) The tax map and parcel number of the property;

(C) The name of the county in which the property is located;

(D) The book and page or instrument number of the deed of trust or other lien being foreclosed or if the sale is under a court order, the name of the case and case number from which the order issues; and

(E) As an attachment, a copy of the deed of trust, or other legal description of the property;

(3) The date, time, and place of sale;

(4) The name, address and phone number of the trustee, the substitute trustee, or other party conducting the sale;

(5) The identification of any recorded liens of the United States or of this state, or any other recorded liens of parties interested, as applicable, together with the recording information for any such liens; and

(6) Such other attachments or information as the trustee, substitute trustee or other party conducting the sale deems necessary or appropriate.

(b) The notice of foreclosure advertised in a newspaper pursuant to § 35-5-101

shall contain the following:

(1) State "Foreclosure Sale" in the first line;

(2)

(A) If a deed of trust sale, list the names of the debtor, co-debtors and any record owner;

(B) If a judicial or other sale, list the names of the parties by abbreviated case name or style, court and case number;

(3) The date, time and place of the sale;

(4) The name of the trustee, the substitute trustee, or other party conducting the sale;

(5) A brief description of the property by providing the following:

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

(B) The tax map and parcel number of the property or reference to the recorded instrument in which the property is described;

(6) State the following: “The Secretary of State’s web site contains a more detailed notice of foreclosure and provides important additional information regarding the sale”; and

(7) Provide the current web site address for the secretary of state's web site address.

(c) The deed memorializing the sale shall, in addition to any other requirements as may now or hereafter exist under the laws of the state with respect to the proper form of deeds, in order that they might qualify for recording in the various offices of registers of counties in this state, include a recitation of the publication of the notice or, have attached to said deed, a legible copy of the advertisement published in the newspaper, if publication is utilized, which copy shall identify the publication and show the dates of insertion in the publication.

SECTION 4. Tennessee Code Annotated, Section 35-5-114(a), is amended by adding the following language between the first and second sentence:

The sale shall be held in the county in which the property, or a portion thereof, is located.

SECTION 5. Tennessee Code Annotated, Section 35-5-117(e), is amended by deleting the subsection in its entirety and substituting instead the following:

(e) The notice of the right to foreclose shall be sent in a separate mailing; provided, however, that the notice may be sent concurrently in a separate mailing with

any default notice otherwise required by the deed of trust being foreclosed other applicable law.

SECTION 6. Tennessee Code Annotated, Section 35-5-117(h), is amended by deleting subdivision (3) in its entirety and substituting instead the following:

(3) Sale conducted after a bankruptcy petition is filed and the automatic stay is thereafter modified or terminated by the bankruptcy court to allow foreclosure or the automatic stay is terminated as a matter of law.

SECTION 7. Tennessee Code Annotated, Section 35-5-117, is amended by adding the following new subsection (k) thereto:

(k) The sale of any part of the property conveyed by any mortgage, deed or trust or under judicial sale shall operate as a foreclosure only as to the property sold, and if the debt secured by such mortgage, deed of trust or subject to judicial sale is not thereby satisfied in full, the other property conveyed by the mortgage or deed of trust or subject to judicial sale continues as security for such debt, and there may be a subsequent foreclosure sale of that mortgage, deed of trust, or by judicial sale. Every power of sale contained in any mortgage or deed of trust, unless the terms of such mortgage or deed of trust expressly states otherwise, shall be a continuing power of sale authorizing the trustee or substitute trustee or other party that sells the property to sell such additional property encumbered by such mortgage or deed of trust from time to time in separate tax lots or tax parcels, as may be necessary to satisfy the entire debt.

SECTION 8. Tennessee Code Annotated, Title 35, Chapter 5, Part 1, is amended by adding the following new sections thereto:

35-5-119.

Within thirty (30) days following the sale or cancellation of the sale, a trustee, substitute trustee, or other party conducting a sale under this part shall

notify the secretary of state, in a form or format designated by the secretary of state, of the completion of the sale, including the sale date, or cancellation of the foreclosure sale.

35-5-120.

(a) Unless postponement or adjournment is contractually prohibited, any sale hereunder may be adjourned and rescheduled one (1) or more times, without additional newspaper publication, upon compliance with the following provisions:

(1) The sale must be held within ninety (90) days of the originally scheduled sale date;

(2) Each adjournment must be to a new specified date and time, and must be announced at the date, time and location of the previously scheduled sale date;

(3) Notice of the new date, time and location must be mailed at least five (5) days prior to the sale date via regular mail to the debtor, co-debtor and interested parties; and

(4) Notice of the adjournment, including the date, time and place of the new sale date, must be posted on the website of the secretary of state at least five (5) days prior to the new sale date.

(b) A sale continued until a later time on the same day as scheduled is not an adjournment or rescheduled sale for the purpose of this section.

(c) The foreclosure deed must contain a recitation by the trustee, substitute trustee, or other party conducting the sale, that the above provisions have been complied with.

(d) There shall be no fee charged by the secretary of state for filing the adjournment notices set forth above.

35-5-121.

Unless otherwise specifically prohibited by the deed of trust, mortgage or judicial order, the trustee, substitute trustee or other party conducting a sale may:

- (1) Sell the property by legal division subject to § 35-5-108;
- (2) Conduct one (1) or more subsequent sales; provided that notice of such subsequent sale is given as provided in § 35-5-104 or § 35-5-117, as applicable;
- (3) Conduct the sale by any means affording access by the public, including, but not limited to, a public auction at a county courthouse or other public place, video conference, internet bidding, telephone bids, or text or e-mail bids;
- (4) Permit the acceptance of bids over any period of time preceding the sale date;
- (5) Accept one (1) or more contingent bids, which may be accepted in the event a prior bidder is unable to complete the purchase;
or
- (6) Enter into one (1) or more contracts for the sale of the property for cash or credit.

35-5-122.

(a) In any sale hereunder conducted pursuant to judicial order or process, delivery and recording of a deed containing the recitations required hereunder shall act as conclusive proof that the sale has been conducted in accordance with the provisions required herein, and the sale shall not be void nor voidable upon subsequent

determination that such sale was not conducted in accordance with the provisions required herein.

(b) In any non judicial sale conducted hereunder, upon the delivery and recording of a deed to a bona fide purchaser for value (which shall not include the creditor for whose benefit the sale is being conducted) containing the recitations required hereunder, or upon the subsequent delivery and recording of a deed from the creditor for whose benefit the sale was conducted and who obtained the property as successful bidder at said non judicial sale (pursuant to a deed containing the recitations required herein), or such person's successor and assigns, to a bona fide purchaser for value, the sale shall not be void or voidable upon subsequent determination that said sale was not conducted in accordance with the provisions required herein.

(c) Notwithstanding subsections (a) and (b), any trustee conducting a non judicial sale pursuant to this chapter shall be liable for actual damages incurred as a result of failing to follow the provisions of this chapter, including reasonable attorney fees, unless such failure is due to false or erroneous information provided to the trustee by the creditor for whom the sale was being conducted and further provided that the trustee had no actual knowledge that said information was false or erroneous. Any creditor that provides false or erroneous information to the trustee shall be deemed to have indemnified the trustee for any loss or damage incurred by the trustee as a result of the providing of said information, including reasonable attorney fees.

(d) Any creditor for whose benefit a sale is conducted pursuant to this chapter shall be liable for any actual damages, including reasonable attorney fees, resulting from negligently or intentionally providing false or erroneous information to any trustee or other officer or official conducting any sale hereunder.

35-5-123.

(a) In any non-judicial foreclosure conducted pursuant to this chapter, should the trustee or substitute trustee determine that there have been omissions or defects in the foreclosure process, the trustee or substitute trustee, with the concurrence of the purchaser at the foreclosure sale (and the purchaser's assigns if applicable), may re-foreclose pursuant to the provisions of this chapter, and the completion of such re-foreclosure shall constitute a rescission of the original foreclosure and render the same as null and void.

(b) If the trustee's or substitute trustee's deed from the original foreclosure has been recorded, the deed from the re-foreclosure must state that it is a re-foreclosure pursuant to this section, and refer to the deed from the original foreclosure.

35-5-124.

With regard to any sale conducted under this chapter, the trustee or substitute trustee shall be an attorney licensed to practice law in Tennessee. The trustee or substitute trustee may appoint an agent meeting the same requirements or employ a licensed Tennessee auctioneer to conduct the sale.

35-5-125.

For purposes of this chapter:

(1) "Co-debtor" means any person, other than the Debtor, who is obligated for the indebtedness or any part thereof;

(2) "Debtor" means any person who executes the deed of trust or mortgage, or is subject to any other lien securing the payment of money that forms the basis for the foreclosure;

(3) "Property" means real property subject to the foreclosure or any interest therein; and

(4) "Record owner" means the current owner of the property being foreclosed, as reflected in an instrument recorded in the register of deeds office for the county where the property is located at least thirty (30) days prior to the date of the first newspaper advertisement.

SECTION 9. For purposes of the development by the secretary of state of the system necessary to implement the provisions of SECTIONS 1 and 4 of this act, this act shall take effect upon becoming a law, the public welfare requiring it. The other provisions of this act shall take effect and shall apply to foreclosure sales of property commenced on or after January 1, 2012, the public welfare requiring it.