

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

FILED SENATE
May 23, 2022
S.B. 769
PRINCIPAL CLERK

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SENATE BILL DRS35363-MVz-2A

Short Title: GSC Postponement/Judicial & Execution Sales.

(Public)

Sponsors: Senators Galey and Daniel (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALIGN CERTAIN PROVISIONS FOR THE POSTPONEMENT OF JUDICIAL
3 SALES AND EXECUTION SALES WITH THE CORRESPONDING PROVISIONS FOR
4 POSTPONEMENT OF SALES AUTHORIZED UNDER POWER OF SALE AND TO
5 MAKE TECHNICAL, CONFORMING, AND CLARIFYING CHANGES, AS
6 RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. G.S. 1-339.20 reads as rewritten:

9 "§ 1-339.20. Public sale; postponement of sale.

10 (a) A person authorized to hold a public sale by auction may postpone the sale to a day
11 certain not later than ~~six days, exclusive of Sunday,~~ 90 days after the original date for the sale,
12 and a person authorized to hold a public sale of timber by sealed bid may postpone the time for
13 submitting and opening bids to a date, time, and place certain not later than ~~six days, exclusive~~
14 ~~of Sunday,~~ 90 days after the original date for the opening of ~~bids;~~ bids if any of the following
15 occurs:

- 16 (1) ~~When there~~ There are no ~~bidders, or bidders.~~
17 (2) ~~When, in his~~ In the person's judgment, the number of prospective bidders at
18 the sale is substantially decreased by inclement weather or by any ~~casualty, or~~
19 casualty.
20 (3) ~~When there~~ There are so many other sales advertised to be held at the same
21 time and place as to make it inexpedient and impracticable, in ~~his~~ the person's
22 judgment, to hold the sale on that ~~day, or day.~~
23 (4) ~~When he~~ The person is unable to hold the sale because of illness or for other
24 good ~~reason, or reason.~~
25 (5) ~~When other~~ Other good cause exists.

26 The person authorized to hold the sale may postpone the sale more than once whenever any of
27 these conditions are met, so long as the sale is held not later than 90 days after the original date
28 for the sale, as computed pursuant to G.S. 1A-1, Rule 6.

29 (b) Upon each postponement of public sale the person authorized to hold the sale shall
30 personally, or through ~~his~~ the person's agent or ~~attorney~~ attorney, do all of the following:

- 31 (1) At the time and place advertised for the sale or for the opening of sealed bids,
32 publicly announce the ~~postponement thereof;~~ postponement.
33 (2) On the same day, attach to or enter on the ~~original~~ notice of sale or a copy
34 ~~thereof posted,~~ sale, as provided in G.S. 1-339.17 in the case of real property
35 or G.S. 1-339.18 in the case of personal property, a notice of the
36 ~~postponement; and~~ postponement.



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- 1 (2a) Give written or oral notice of postponement to each party previously served
 2 pursuant to G.S. 1A-1, Rule 4(j). Written notice of postponement shall be
 3 served in any manner provided in G.S. 1A-1, Rule 5(b).
 4 (3) In the case of a public sale of timber by sealed bid, give notice of
 5 postponement to each person ~~who~~ that submitted a bid.
 6 (c) The notice of postponement ~~shall~~ shall be signed by the person authorized to hold the
 7 sale, or by the person's agent or attorney, and shall state the following:
 8 (1) ~~State that~~ That the sale is ~~postponed,~~ postponed.
 9 (2) In the case of a sale by public auction, ~~state~~ the hour and date to which the
 10 sale is ~~postponed,~~ postponed.
 11 (2a) In the case of a sale of timber by sealed bid, ~~state~~ the date, time, and place to
 12 which the opening of bids is ~~postponed,~~ postponed.
 13 (3) ~~State the~~ The reason for the ~~postponement,~~ and postponement.
 14 (4) ~~Be signed by the person authorized to hold the sale, or by his agent or attorney.~~
 15 (d) If a public sale is not held at the time fixed ~~therefor~~ for the sale and is not postponed
 16 as provided by this section, ~~or if a postponed sale is not held at the time fixed therefor,~~ the person
 17 authorized to make the sale shall report ~~the these facts with respect thereto~~ to the judge or clerk
 18 of court having jurisdiction, who shall thereupon make an order for the time and place of the
 19 public sale of the property to be held at such time and place and upon such notice to be given in
 20 such and the manner and for such length of time as he deems advisable for the notice of the sale."

21 **SECTION 2.(a)** G.S. 1-310 reads as rewritten:

22 "**§ 1-310. When dated and returnable.**

23 (a) Executions against property shall issue in accordance with G.S. 1A-1, Rule 62. In no
 24 case shall an execution issue until 10 days after entry of judgment. Executions shall be dated as
 25 of the day on which they were issued, and shall be issued and are returnable to the court from
 26 which they were issued not more than 90 days from said date, and no executions against property
 27 shall issue until 10 days after entry of judgment that date. If an execution sale is postponed
 28 pursuant to G.S. 1-339.58, the 90-day period to return the execution to the court is extended by
 29 the number of days the sale is postponed.

30 (b) The sheriff shall separately notate on the return of execution for a judgment requiring
 31 the payment of money (i) any amount collected without an execution sale and the date of
 32 collection and, if multiple payments to the sheriff are collected on different dates pursuant to a
 33 single writ of execution, the individual dates of collection and the amount collected on each date
 34 and (ii) the date of levy and description of property levied and sold through an execution sale
 35 pursuant to Article 29B of this Chapter."

36 **SECTION 2.(b)** G.S. 1-339.58 reads as rewritten:

37 "**§ 1-339.58. Postponement of sale.**

38 (a) The sheriff may postpone the sale to a day certain not later than ~~six days, exclusive~~
 39 of Sunday, 90 days after the original date for the ~~sale;~~ sale if any of the following occurs:

- 40 (1) ~~When there~~ There are no ~~bidders,~~ bidders.
 41 (2) ~~When, in~~ In the sheriff's judgment, the number of prospective bidders at the
 42 sale is substantially decreased by inclement weather or by any ~~easualty,~~
 43 casualty.
 44 (3) ~~When there~~ There are so many other sales advertised to be held at the same
 45 time and place as to make it inexpedient and impracticable, in the sheriff's
 46 judgment, to hold the sale on that ~~day,~~ day.
 47 (4) ~~When the~~ The sheriff is unable to hold the sale because of illness or for other
 48 good ~~reason,~~ reason.
 49 (5) ~~When other~~ Other good cause exists.

1 The sheriff may postpone the sale more than once whenever any of these conditions are met, so
 2 long as the sale is held not later than 90 days after the original date for the sale, as computed
 3 pursuant to G.S. 1A-1, Rule 6.

4 (b) Upon each postponement of a the sale, the sheriff shall:shall do all of the following:

- 5 (1) At the time and place advertised for the sale, publicly announce the
 6 postponement of the sale; and sale.
 7 (2) On the same day, attach to or enter on the ~~original~~ notice of sale ~~or a copy of~~
 8 ~~the notice, sale,~~ posted as provided by G.S. 1-339.52 in the case of real
 9 property or G.S. 1-339.53 in the case of personal property, a notice of the
 10 postponement.
 11 (3) Give written or oral notice of postponement to the judgment debtor. Written
 12 notice of postponement shall be served in any manner provided in G.S. 1A-1,
 13 Rule 5(b).

14 (c) The posted notice of postponement ~~shall:~~shall be signed by the sheriff and shall state
 15 the following:

- 16 (1) ~~State that~~ That the sale is postponed, postponed.
 17 (2) ~~State the~~ The hour and date to which the sale is postponed, postponed.
 18 (3) ~~State the~~ The reason for the postponement, and postponement.
 19 (4) ~~Be signed by the sheriff.~~

20 (d) If a sale is not held at the time fixed for the sale and is not postponed as provided by
 21 this section, ~~or if a postponed sale is not held at the time fixed for the sale,~~ the sheriff shall report
 22 ~~the these~~ facts with respect thereto to the clerk of the superior court, who shall ~~thereupon make~~
 23 ~~an order for the~~ time and place of the sale of the property to be held at such time and place and
 24 ~~upon such notice to be given in and~~ the manner and for the length of time as ~~the clerk of the~~
 25 ~~superior court deems advisable, but nothing for the notice of the sale. Nothing~~ in this section
 26 relieves the sheriff of liability for the nonperformance of the sheriff's official duty."

27 **SECTION 3.** G.S. 45-21.21 reads as rewritten:

28 "**§ 45-21.21. Postponement of sale; notice of cancellation.**

29 (a) Any person exercising a power of sale may postpone the sale to a day certain not later
 30 than 90 ~~days, exclusive of Sunday,~~ days after the original date for the sale—sale if any of the
 31 following occurs:

- 32 (1) ~~When there~~ There are no bidders, or bidders.
 33 (2) ~~When, in his~~ In the person's judgment, the number of prospective bidders at
 34 the sale is substantially decreased by inclement weather or by any ~~casualty,~~
 35 or ~~casualty.~~
 36 (3) ~~When there~~ There are so many other sales advertised to be held at the same
 37 time and place as to make it inexpedient and impracticable, in ~~his~~ the person's
 38 judgment, to hold the sale on that ~~day, or~~ day.
 39 (4) ~~When he~~ The person is unable to hold the sale because of illness or for other
 40 good ~~reason, or~~ reason.
 41 (5) ~~When other~~ Other good cause exists.

42 The person exercising a power of sale may postpone the sale more than once whenever any of
 43 ~~the above these~~ conditions are met, so long as the sale is held not later than 90 days after the
 44 original date for the sale. The 90-day time period is computed in the manner provided by
 45 G.S. 1A-1, Rule 6.

46 (b) Upon postponement of a sale, the person exercising the power of sale shall personally,
 47 or through ~~his~~ the person's agent or attorney—attorney, do all of the following:

- 48 (1) At the time and place advertised for the sale, publicly announce the
 49 postponement thereof; postponement.

- 1 (2) On the same day, attach to or enter on the ~~original~~ notice of sale or a copy
2 ~~thereof, sale, posted at the courthouse door,~~ as provided by G.S. 45-21.17,
3 G.S. 45-21.17(1)a., a notice of the postponement; and postponement.
- 4 (3) Give written or oral notice of postponement to each party entitled to notice of
5 sale under G.S. 45-21.17.
- 6 (c) The posted notice of postponement ~~shall~~ shall be signed by the person authorized to
7 hold the sale, or by the person's agent or attorney, and shall state the following:
- 8 (1) ~~State that That~~ the sale is ~~postponed,~~ postponed.
- 9 (2) ~~State the The~~ hour and date to which the sale is ~~postponed,~~ postponed.
- 10 (3) ~~State the The~~ reason for the ~~postponement, and~~ postponement.
- 11 (4) ~~Be signed by the person authorized to hold the sale, or by his agent or attorney.~~
- 12 (d) ~~If a sale is not held at the time fixed therefor and is not postponed as provided by this~~
13 ~~section, or if a postponed sale is not held at the time fixed therefor or within 90 days of the date~~
14 ~~originally fixed for the sale, then prior to such sale taking place the provisions of G.S. 45-21.16~~
15 ~~need not be complied with but the provisions of G.S. 45-21.16A, 45-21.17, and 45-21.17A shall~~
16 ~~be again complied with, or if on appeal, the appellate court orders the sale to be held, as to such~~
17 ~~sale so authorized the provisions of G.S. 45-21.16 need not be complied with again but those of~~
18 ~~G.S. 45-21.16A, 45-21.17, and 45-21.17A shall be.~~ If a sale is not held at the time fixed for the
19 sale and is not postponed as provided by this section, or if on appeal, the appellate court orders a
20 sale to be held, then prior to the sale taking place, G.S. 45-21.16 does not apply, but
21 G.S. 45-21.16A, 45-21.17, and 45-21.17A again apply.
- 22 (e) ~~A sale may be postponed more than once provided the final postponed sale date is not~~
23 ~~later than 90 days, exclusive of Sunday and legal holidays when the courthouse is closed for~~
24 ~~transactions, after the original date for the sale.~~
- 25 (f) Repealed by Session Laws 2019-243, s. 26(a), effective November 6, 2019.
- 26 (g) If it is determined that the sale cannot be held in accordance with this section or is
27 postponed pursuant to this section, then the person exercising the power of sale shall,
28 immediately upon determining that the sale will not occur and prior to the scheduled time of the
29 sale, deliver a written notice to the ~~Clerk of Superior Court~~ clerk of superior court that is to
30 include all of the following:
- 31 (1) The case number assigned by the ~~Clerk~~ clerk.
- 32 (2) The ~~mortgagor(s) and record owner(s) name(s).~~ name of each mortgagor and
33 record owner.
- 34 (3) The United States Postal Service address of the property or, if no address has
35 been assigned, a brief description of the location of the property.
- 36 (4) The originally scheduled date and time for the sale.
- 37 (5) A statement that the foreclosure sale has been withdrawn, rescheduled for a
38 specific date and time, or postponed with no date yet set, as appropriate.
- 39 (h) If the notice required by subsection (g) of this section is not received by the ~~Clerk~~
40 ~~clerk~~ prior to the scheduled time of the sale, then the person exercising the power of sale shall
41 personally, or through his or her the person's agent or attorney, do all of the following:
- 42 (1) At the time and place advertised for the sale, publicly announce the
43 ~~cancellation thereof;~~ cancellation.
- 44 (2) On the same day, attach to or enter on the ~~original~~ notice of sale or a copy
45 ~~thereof, sale, posted at the courthouse door,~~ as provided by G.S. 45-21.17,
46 G.S. 45-21.17(1)a., a notice of the cancellation; cancellation.
- 47 (3) Give written or oral notice of cancellation to each party entitled to notice of
48 sale under ~~G.S. 45-21.17; and~~ G.S. 45-21.17.
- 49 (4) Hand-deliver the written notice required under subdivision (2) of this
50 subsection to the ~~Clerk's~~ clerk's office.

1 (i) So that the notice required by subsection (g) of this section may be delivered in the
2 time frame ~~required therein, required,~~ the ~~Clerk's~~ clerk's office shall, upon request, provide to the
3 person exercising the power of sale an ~~e-mail~~ email address ~~and/or or~~ fax telephone ~~number~~
4 number, or both, to use for delivery of ~~said~~ notices.

5 (j) Should the ~~Clerk's~~ clerk's office be unexpectedly closed on the day of the ~~sale,~~ sale or
6 at the time designated for the sale to take place pursuant to G.S. 45-21.23, the requirements of
7 ~~this subsection shall be~~ (g) of this section are delayed until the next day the ~~Clerk's~~ clerk's office
8 is open for transactions.

9 (k) All notices of a scheduled foreclosure sale, withdrawal of a scheduled sale, or
10 postponement of a scheduled sale shall, on the day of receipt by the ~~Clerk,~~ clerk, be posted by
11 the person exercising the power of sale in the location at the county courthouse normally used
12 for the posting of public notices. If a scheduled sale has been withdrawn, ~~that the~~ notice shall
13 remain in ~~that the~~ location for no less than 30 days. If the sale has been postponed, ~~that the~~ notice
14 shall remain in ~~that the~~ location until it is replaced by a notice of a rescheduled sale or of a
15 withdrawn sale.

16 (l) The delivery of notices required by this section in no way removes any responsibility
17 of any party to file documents with the ~~Clerk~~ clerk as required elsewhere by law.

18 (m) ~~A clerk of superior court may report habitual noncompliance with this subsection to~~
19 ~~the Administrative Office of the Courts."~~

20 **SECTION 4.** This act is effective when it becomes law and applies to sales noticed
21 on or after that date.