

STATE OF TENNESSEE

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Opinion No. 05-095

Real Property Foreclosure Notices

QUESTION

What are the minimum requirements under Tennessee law for publication and notice to be given to the owner of real property during a foreclosure on that real property?

OPINION

Tenn. Code Ann. §§ 35-5-101 *et seq.* provide the minimum requirements for publication and notice to be given to the owner of real property during a foreclosure on that real property. Those requirements depend upon the amount of the indebtedness for the payment of which the real property is being sold and upon the availability of a newspaper in which the notice can be published. Those statutory requirements are hereinafter specified.

ANALYSIS

Tenn. Code Ann. § 35-5-101 provides the minimum statutory requirements for publication of a notice to be given to the owner of real property during a foreclosure on that real property when publication of the notice can be made in a local newspaper. Section 35-5-101(a) provides

In any 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, advertisement of such sale shall be made at least three (3) different times in some newspaper published in the county where the sale is to be made.

Section 35-5-101(b) requires that “[t]he first publication shall be at least twenty (20) days previous to the sale”. If the amount of the indebtedness for the payment of which the property is being sold is two hundred dollars or less, publication of the notice in a local newspaper is not required. Tenn. Code Ann. § 35-5-101(c).

In the event that the amount of the indebtedness for the payment of which the property is being sold is two hundred dollars or less, publication of the notice of the foreclosure sale shall be

made by written notices posted for thirty days “in at least five of the most public places in the county” in which the foreclosure sale will be conducted. Tenn. Code Ann. §§ 35-5-101(c) and 35-5-103. Section 35-5-103 requires that one of the five notices be posted on “the courthouse door”, another of those notices be posted in the neighborhood of the debtor/mortgagor, and another of those notices be posted in the civil district where the real property involved in the advertised sale is located.

In the event that the required notice of the foreclosure sale cannot be made by newspaper in the county in which the real property is to be sold, advertisement by newspaper is not required; but advertisement of the sale must be made by posting written notices of the sale in the manner required by Section 35-5-103, as described above. See also Tenn. Code Ann. § 35-5-102.

Tenn. Code Ann. § 35-5-104 specifies the contents of the advertisement or notice of sale. Section 35-5-104(a) provides that the advertisement or notice of sale shall:

- (1) Give the names of the plaintiff and defendant, or parties interested;
- (2) Describe the land in brief terms, including street address if available;
- (3) Mention the time and place of sale;
- (4) Identify each and every lien or claimed lien of the United States with respect to which the provisions of 26 U.S.C. § 7425(b) require notice to be given to the United States in order for the sale of the land thus advertised not to be subject to such lien or claim of lien of the United States;
- (5) For every such lien or claim of lien of the United States so identified, affirmatively state that the notice required by 26 U.S.C. § 7425(b) to be given to the United States has been timely given;
- (6) For every such lien or claim of lien of the United States so identified, state that the sale of the land thus advertised will be subject to the right of the United States to redeem the land as provided for in 26 U.S.C. § 7425(d)(1);
- (7) Shall identify each and every lien or claimed lien of the state with respect to which the provisions of § 67-1-1433(b)(1) require notice to be given to the state in order for the sale of the land thus advertised not to be subject to such lien or claim of the lien of the state;

(8) For every such lien or claim of lien of the state so identified, affirmatively state that the notice required by § 67-1-1433(b)(1) to be given to the state has been timely given; and

(9) For such lien or claim of lien of the state of Tennessee so identified, state that the sale of the land thus advertised will be subject to the right of the state to redeem the land as provided for in § 67-1-1433(c)(1).

Tenn. Code Ann. § 35-5-104(a).

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