



General Statutes Commission

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MEMORANDUM

To: Senate Rules and Operations of the Senate
From: General Statutes Commission
Re: SB 769 (GSC Postponement/Judicial & Execution Sales)
Date: June 1, 2022

General Comments

This bill, recommended by the General Statutes Commission, would allow judicial sales and execution sales to be postponed up to 90 days, aligning the postponement authority for judicial and execution sales with that of sales under a contractual power of sale clause. The bill also makes conforming, clarifying, and numerous technical changes to each statute amended.

In addition to publishing all its drafts online, the General Statutes Commission circulated a draft to the Administrative Office of the Courts, Real Estate Lawyers Association of NC, Legal Aid of NC, NC Sheriffs' Association, NC Bar Association, NC Advocates for Justice, NC Justice Center, UNC School of Government, NC Land Title Association, Center for Responsible Lending, and others. There is no known opposition to the bill.

Background

Under current law, judicial sales and execution sales may be postponed up to six days from the original date set for the sale, while sales under a contractual power of sale clause may be postponed up to 90 days from the original date set for the sale.

Specific Comments

Section 1 amends G.S. 1-339.20 to make the following changes related to judicial sales:

- In subsection (a), extends the authority to postpone a judicial sale from "not later than six days" to "not later than 90 days" from the original date of the sale, if any of the enumerated circumstances occur. This section also allows a judicial sale to be postponed more than once, so long as the postponed sale is not more than 90 days from the original date for the sale. Additionally, it adds language to confirm that the 90-day period is computed pursuant to the NC Rules of Civil Procedure, and it makes technical changes to modernize the format of a list and to make language gender-neutral.
- In subsection (b), adds a requirement to provide written or oral notice of the postponement to each party. This section also makes a conforming change to account for the possibility of multiple postponements and makes technical changes to make language gender-neutral, to modernize the format of a list, to remove unnecessary language, and to fix a relative pronoun.
- In subsection (c), modernizes the format of a list, reordering some of the language in the list by adding it to the lead-in language for greater clarity.
- In subsection (d), replaces legalese with plain English, removes unnecessary language, and makes language gender-neutral.

Section 2(a) amends G.S. 1-310 to make a conforming change so that, if an execution sale is postponed, the time to return the execution to the court is extended by the same number of days the sale is postponed. In response to comments from the NC Association of Sheriffs, this section adds a cross-reference to Rule 62 of the NC Rules of Civil Procedure to clarify that the length of a stay before issuing an execution is determined in accordance with Rule 62. It also makes technical changes to split the statutory section into two subsections, to reorder language for greater clarity, to replace legalese with plain English, and to fix punctuation.

Section 2(b) amends G.S. 1-339.58 to make the following changes related to execution sales:

- In subsection (a), extends the authority to postpone an execution sale from "not later than six days" to "not later than 90 days" from the original date of the sale, if any of the enumerated circumstances occur. This section also allows an execution sale to be postponed more than once, so long as the postponed sale is not more than 90 days from the original date for the sale. Additionally, it confirms that the 90-day period is computed pursuant to the NC Rules of Civil Procedure, and it makes the technical change of modernizing the format of a list.
- In subsection (b), in response to comments from the NC Sheriffs' Association, adds a requirement to provide written or oral notice of the postponement to the judgment debtor. This section also makes a conforming change to account for the possibility of multiple postponements and makes technical changes to change an indefinite article to a definite article, to modernize the format of a list, and to remove unnecessary language.
- In subsection (c), modernizes the format of a list, reordering some of the language in the list by adding it to the lead-in language for greater clarity.
- In subsection (d), removes unnecessary language, replaces legalese with plain English, and splits up a sentence for greater clarity.

Section 3 amends G.S. 45-21.21 to make the following changes related to sales under a contractual power of sale clause:

- In subsection (a), removes unnecessary language, modernizes the format of a list, makes language gender-neutral, replaces an ambiguous term for greater clarity, and specifies that the 90-day period is computed in the same manner as it would be under the NC Rules of Civil Procedure.
- In subsection (b), makes language gender-neutral, modernizes the format of a list, removes unnecessary language, removes obsolete language, and makes a cross-reference more specific.
- In subsection (c), modernizes the format of a list, reordering some of the language in the list by adding it to the lead-in language for greater clarity.
- In subsection (d), rewrites the subsection for greater clarity.
- Repeals subsection (e) to remove redundancy with subsection (a).
- In subsection (g), fixes capitalization and rewords for greater clarity.
- In subsection (h), fixes capitalization, makes language gender-neutral, modernizes the format of a list, removes unnecessary language, removes obsolete language, and makes a cross-reference more specific.
- In subsection (i), removes unnecessary language, fixes capitalization, modernizes a term, and rewords for greater clarity.
- In subsection (j), clarifies that certain notice requirements are delayed not just if the clerk's office is closed on the day of the sale, but also if the clerk's office is unexpectedly closed at the time designated for the sale, and makes technical changes to fix capitalization and to fix a cross-reference.

- In subsection (k), fixes capitalization and replaces a word for greater clarity.
- In subsection (l), fixes capitalization.
- In subsection (m), in response to comments from the Administrative Office of the Courts, repeals the subsection as unutilized.

Section 4 of the bill provides that this act becomes effective when it becomes law and applies to sales noticed on or after that date.