

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2021

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SENATE BILL 769  
Second Edition Engrossed 6/7/22

Short Title: GSC Postponement/Judicial & Execution Sales. (Public)

Sponsors: Senators Galey and Daniel (Primary Sponsors).

Referred to: Rules and Operations of the Senate

May 24, 2022

A BILL TO BE ENTITLED

AN ACT TO ALIGN CERTAIN PROVISIONS FOR THE POSTPONEMENT OF JUDICIAL SALES AND EXECUTION SALES WITH THE CORRESPONDING PROVISIONS FOR POSTPONEMENT OF SALES AUTHORIZED UNDER POWER OF SALE AND TO MAKE TECHNICAL, CONFORMING, AND CLARIFYING CHANGES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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



- 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 shall issue in accordance with G.S. 1A-1, Rule 62. In no case shall an  
 24           execution against property issue until 10 days after entry of judgment. Executions shall be dated  
 25           as 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, andpostponement.  
 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, orbidders.  
 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 easualty,  
 35 orcasualty.  
 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, orday.  
 39 (4) When he-The person is unable to hold the sale because of illness or for other  
 40 good reason, orreason.  
 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 eancellation; 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 section related to notice to or filings with the clerk are~~ delayed until the  
8 next day the ~~Clerk's-clerk's~~ office 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 becomes effective October 1, 2022, and applies to sales  
21 noticed on or after that date.