



ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

TO: Clerks of Superior Court
Assistant Clerks of Superior Court
Deputy Clerks of Superior Court

FROM: Nicole Brinkley, Assistant Legal Counsel

DATE: September 19, 2022

SUBJECT: Legislation Aligning Statutes Authorizing Postponement of Judicial Sales, Execution Sales, and Sales Authorized Under Power of Sale; [S.L. 2022-60](#)¹

On July 8, 2022, the Governor signed into law SB 769², [S.L. 2022-60](#) (hereinafter the “Act”). The Act’s amendments (i) aligned the statutes that govern the postponement of (1) public judicial sales, (2) execution sales, and (3) sales authorized under power of sale foreclosure and (ii) made various technical, conforming, and clarifying changes, as recommended by the General Statutes Commission. The Act becomes effective October 1, 2022, and applies to sales noticed on or after that date. This memo summarizes the substantive changes in the Act.

1. Public Judicial Sales

The provisions in G.S. 1-339.20(a), which authorize the postponement of public judicial sales, were substantively amended as follows:

- A person authorized to hold a public sale by auction may postpone the sale to a date certain not later than 90 days after the original sale date under certain conditions listed in the statute (*e.g.*, there are no bidders). Previously, the statute authorized a postponement of not more than six days, exclusive of Sunday.
- 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 90 days after the original date under certain conditions listed in this statute (*e.g.*, there are no bidders). Previously, the statute authorized a postponement of not more than six days, exclusive of Sunday.
- The person authorized to hold a public sale may postpone the sale more than once when any of the conditions listed in the statute are met, so long as the sale is held not more than 90 days after the original sale date.

¹ For future reference, a copy of this memo will be available on the Administrative Office of the Courts (NCAOC)’s Juno site for Judicial Branch users at <http://juno.nccourts.org/legal-memos>, under the memo list for Civil Memos and Special Proceedings Memos.

² Full text of the enacted bill is available at: <https://www.ncleg.gov/Sessions/2021/Bills/Senate/PDF/S769v4.pdf>.

Further, G.S. 1-339.20(b) was amended to add a new subsection (2a) requiring the person postponing the sale to give written or oral notice of each postponement to parties previously served pursuant to G.S. 1A-1, Rule 4(j). Written notice must be served in any manner provided in G.S. 1A-1, Rule 5(b).

2. Execution Sales

The provisions in G.S. 1-339.58(a), which authorize the postponement of execution sales by the sheriff, were substantively amended as follows:

- The sheriff may postpone a sale to a day certain not later than 90 days after the original sale date under certain conditions listed in the statute (*e.g.*, there are no bidders). Previously, the statute authorized a postponement of not more than six days, exclusive of Sunday.
- The sheriff may postpone the sale more than once when any of the conditions listed in the statute are met, so long as the sale is held not more than 90 days after the original sale date.

G.S. 1-339.58(b) was amended to add a new subsection (3) requiring the sheriff postponing the sale to give written or oral notice of each postponement to the judgment debtor. Written notice must be served in any manner provided in G.S. 1A-1, Rule 5(b).

Finally, G.S. 1-310 was amended to allow an extension of the 90-day period to return an execution based on the number of days a sale is postponed. For example, if a sheriff postpones a sale by 5 days, the sheriff now has 95 days to return the execution instead of 90.

3. Sales Under Power of Sale Foreclosure

The provisions in G.S. 45-21.21, which authorize the postponement of sales by persons exercising a power of sale, were substantively amended as follows:

- A person exercising a power of sale may postpone a sale to a day certain not later than 90 days after the original sale date under certain conditions listed in the statute (*e.g.*, there are no bidders). Previously, the statute authorized a postponement of not later than 90 days, exclusive of Sundays.
- Both G.S. 45-21.21(a) and (e) previously authorized the postponement of a sale more than once. However, the Act (i) amended subsection (a) to clarify that a sale may be postponed more than once, so long as the sale is held not later than 90 days after the original date, and (ii) deleted subsection (e), eliminating duplicative language.
- Subsection (m) of G.S. 45-21.21(m) was deleted, which previously authorized reports to the Administrative Office of the Courts of habitual noncompliance of sale postponements.

Sale Postponement and G.S. 1A-1, Rule 6

The above provisions, which authorize the postponement of (1) public judicial sales, (2) execution sales, and (3) sales authorized under power of sale foreclosure, provide that the sale must occur not later than 90 days after the original sale date, as computed in the manner provided by G.S. 1A-1, Rule 6. The time computation under Rule 6(a) provides that “the day of the act, event, default or publication after which the designated time period begins is *not* to be included. The last day of the period so computed *is* to be included, unless it is a Saturday, Sunday or a legal holiday when the courthouse is closed for transactions, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a legal holiday when the courthouse is closed for transactions. (emphasis added).” For example, if the original sale is scheduled for Monday, September 19, 2022, and then postponed by the person authorized to conduct the sale (*e.g.*, sheriff in an execution sale), September 20 would be day one of the ninety-day window because the date of the original sale would be excluded from the count.

The last day to hold the public sale in this example would be Monday, December 19, because day 90 falls on a Sunday.

Court officials with any questions may contact or Nicole Brinkley at Nicole.N.Brinkley@nccourts.org or Matt Kraus at Matthew.R.Kraus@nccourts.org. Thank you.