



ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

To: Clerks of Superior Court
Assistant Clerks of Superior Court
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From: Nicole Brinkley, Assistant Counsel

Date: June 29, 2018

Subject: New Requirement for Persons Exercising a Power of Sale Foreclosure to Immediately Notify Clerks of Superior Court of Cancellations and Postponements of Sale ([Session Law 2018-40](#), Section 11.1, effective July 1, 2018))

Section 11.1 of Session Law 2018-40 added new sections to G.S. 45-21.21—Postponement of Sale.

Previously under G.S. 45-21.21(b) when a person exercising the power of sale postponed a sale, there was no requirement to provide written notice to the Clerk of Superior Court. For foreclosure sales noticed on or after July 1, 2018, new subsection (g) of G.S. 45-21.21 requires that a person exercising the power of sale provide written notice to the Clerk as soon as that person knows that a scheduled sale will not occur. All other provisions of G.S. 45-21.21 remain in effect.

New subsection (g) states that the person exercising the power of sale shall deliver, prior to the scheduled sale time, written notice to the Clerk of Superior Court immediately upon determining that the sale will not occur. The written notice must include the following:

- (1) The case number assigned by the Clerk.
- (2) The mortgagor(s) and record owner(s) name(s).
- (3) The United States Postal Service address of the property or, if no address has been assigned, a brief description of the location of the property.
- (4) The originally scheduled date and time for the sale.
- (5) A statement that the foreclosure sale has been withdrawn, rescheduled for a specific date and time, or postponed with no date yet set, as appropriate.

In order for a person exercising the power of sale to comply with the requirement to immediately notify the Clerk, the Clerk must provide an email address and/or fax telephone number, **upon request**, for delivery of said notices. If advance notice is not received by the Clerk prior to the sale (for example, if a trustee determines hours or minutes before the sale that the sale will not occur), then the person exercising the power of sale or his or her agent or attorney is still required to hand-deliver written notice

to the Clerk's office, in addition to complying with the other requirements in subsection (h) of G.S. 45-21.21.¹

Clerks are **not required** to post these notices, even if received in advance of the sale. Per new subsection (k), all notices involving a scheduled sale must be posted by the person exercising the power of sale in the location at the county courthouse normally used for posting public notices on the same day they are delivered to the Clerk. The posting shall remain in place for at least 30 days or until replaced by a notice of rescheduled or withdrawn sale.

In addition, newly added subsection (f) clarifies that sales must be conducted between the hours of 10:00 A.M. and 4:00 P.M. on any day the Clerk's office is *normally open for transactions*.

A Clerk of Superior Court **may** report habitual noncompliance with the requirements in G.S. 45-21.21 to the Administrative Office of the Courts by email communication to Gabrielle McKeithen at Gabrielle.C.McKeithen@nccourts.org.

These additions to G.S. 45-21.21 are effective July 1, 2018 and apply to foreclosure sales noticed on or after that date.

¹ The requirements of new subsections (h)(1) through (3) are identical to the requirements contained in already existing subsections (b)(1) through (3). However, subsection (h)(4) adds a requirement to hand deliver written notice to the Clerk. The Office of General Counsel has been informed by legislative staff that references to "subsection (b)" contained in subsections (h) and (i) are drafting errors. Subsections (h) and (i) logically refer to new subsection (g), not to subsection (b). These drafting errors will be addressed in the next legislative session.