

PUBLIC NOTICE BILL VIOLATES IMPORTANT LEGAL DOCTRINES

Published April 8, 2011 by Susan Lynn

WEB MEMO #1

IN BRIEF

Public Notice Bill Threatens Rights of Tennesseans

A piece of legislation stands to violate important constitutional rights of Tennesseans. SB1299 amends the requirement of advertisement for judicial or trust sales to one publication in the county where the sale is to be made and alters the description required in such advertisement. This paper examines many of the important principles that these ideas violate, and questions the need for this legislation. We hope this analysis is helpful to your research.

SB1299 / HB1920

The bill would decrease the number of publications necessary prior to foreclosing on a property from three to one, decrease relevant information contained in the notice, and the bill states that the law would allow errors. We find that this bill violates several important constitutional and judicial doctrines such as **constructive notice**, **due process**, **fundamental fairness** and the **vagueness doctrine**.

Bill Violates the Legal Doctrine of Constructive Notice

This bill decreases the number of publications for the public notice from three to one – thus violating a legal canon called constructive notice; the publication of a public notice three times. Courts allow constructive notice as a relief from liability for any claim of ignorance of the action. Should a debtor willfully avoid notice by not opening their mail or claiming that they never received the notice of foreclosure the maxim of constructive notice provides protection for the bank or other entity; it is allowed by courts as legal proof that notice of the action was provided to the individual and or to the community. Banks or other entities should be aware that they cannot get around the doctrine of constructive notice simply because the law may allow for only one printing. Courts may find that the new law does not provide for constructive notice and the individual's rights may be found to be violated.

Violates Procedural Due Process, Fundamental Fairness Doctrine and Vagueness Doctrines

Procedural due process of the law provides that any government action that unfairly deprives an individual of life, liberty, or property is unconstitutional. This bill changes the standard description of property used for generations in foreclosure matters whereby one can easily identify through the ad the property being taken. This bill would require only a "concise" description of the land in question; which means only a

LINK TO BILL

[SB1299 / HB1920](#)

We find that this bill violates several important constitutional and judicial doctrines such as constructive notice, due process, fundamental fairness and the vagueness doctrine.

reference to the deed book and page in the county register of deeds office that contains the complete legal description of the property – it is not reasonable to believe that most citizens would be able to understand that the legal notice of foreclosure is identifying their property by reading such a technical description in the newspaper thus a procedural violation of due process would exist.

An additional violation of due process set forth by the language of this bill is found in language that states “Any error or defect in the common description of the land shall not in any way void any sale of the land.” This violates what is called the fundamental fairness doctrine which is synonymous with due process. It is difficult to believe that a court would allow “errors or defects” in the legal description of a property being foreclosed to constitute a fair sale. Again, the principle of procedural due process provides that if a person “is deprived of life, liberty or property, he or she is entitled to adequate notice, hearing, counsel, and a neutral judge.”¹

The vagueness doctrine is a legal principle which states that law that does not provide a “person of ordinary intelligence a reasonable opportunity to know what is prohibited, proscribed or claimed” is unconstitutionally vague. This bill seems to allow language in legal notices which is intentionally vague and lacking in commonly useful information by changing the level of detail and standard description historically used to identify the property being taken.

Apparent Financial Benefit to Attorneys and Bankers

On the surface, decreasing the number of publications for a foreclosure does not produce a great cost savings for a single foreclosure but over the course of a year the savings may be enjoyable, especially in these days of a high number of foreclosures. In reality it really does not help the property owners, property debtors, nor does it help the public at large. This bill is penny wise and pound foolish – a bank or other property owner may find a court reversing the action due to the lack of fair notice.

Public Notice is built on a very important Principle

The public notice requirement is both Constitutional and in state law. It is built upon an important principle – *if the government intends to take some action that will limit or change our rights, or that may take our property, then government must provide public notice to the community.*

State Legislator’s Oath of Office

The oath of office for a state legislator declares that the legislator shall take no action which he or she finds to be injurious to the people. This bill is surely injurious to the rights of the people.

It is not reasonable to believe that most citizens would be able to understand that the legal notice of foreclosure is identifying their property...

It is difficult to believe that a court would allow “errors or defects” in the legal description of a property being foreclosed to constitute a fair sale

This bill is penny wise but pound foolish – a bank or other property owner may find a court reversing the action due to the lack of notice.

Full Bill Summary SB1299 / HB1920

This bill revises (2) to require that the advertisement or notice give a concise description of the land; such description means a reference to the deed book and page that contains the complete legal description of the property, and may also include a common description of the property, which may include, if available, the street name, number and map and parcel number. The description of the land must contain only the reference to the legal description of the property, and does not have to contain the full legal description contained in the deed book. Any error or defect in the common description of the land will not in any way void any sale of the land.

[LINK TO](#)

[Bill Text](#)

[Fiscal Note](#)

