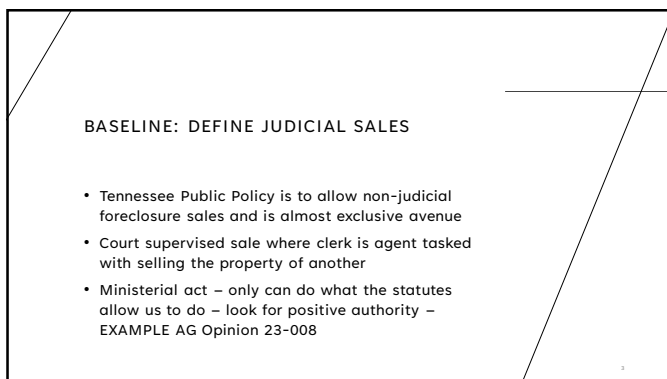


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DUTIES OF THE COURT

It is an exercise of great power on the part of a Court to sell a person's property, and especially his land, against his will. In ordering a judicial sale, the Court should diligently ascertain: (1) that the proper parties are before the Court to give a good title to the purchaser; (2) that the pleadings and proof justify the sale; (3) that there is a proper decree of sale; (4) that the sale is made by the Master in strict compliance with the decree; (5) that the best price possible is obtained for the property sold; and (6) that the report of sale by the Master, and the confirmation thereof, are in regular form. The Court acts as a sort of judicial agent for the parties in making a sale.

In ordering sales of property, real or personal, the Court has a duty to the owner of the property coupled with a duty to the buyer of the property. The duty to the owner of the property is discharged when the highest possible price has been obtained for it. The duty to the purchaser is discharged by giving him a good title to what he buys, or at least, such a title as he has the right in reason to expect. It savors of judicial tyranny and oppression, and is certainly judicial injustice, either to sacrifice the owner, by selling his property for a grossly inadequate price, or to sacrifice the buyer, by taking his money and giving him a defective title in return.

Headrick v. Headrick, No. E2008-02284-COA-R3-CV (Tenn. Ct. App. Oct. 30, 2009) (citing *Gibson's Suits in Chancery* § 279 (Inman, 7th ed.))

4

TYPES OF JUDICIAL SALES

Sales

- Judicial Sales
- Delinquent Property Tax Sales
- Sale of Land to Pay Debts (Probate)
- Partition
- Uniform Partition of Heirs Property Act
- Judgment for Specific Acts

T.C.A. references

- 35-5-101 et seq
- 67-5-2701 et seq
- 30-2-401 et seq (don't forget 31-2-103 & 30-2-615)
- 29-27-101
- 29-27-301
- Tenn. R. Civ. Pro. 70

5

PARTIES & SERVICE OF PROCESS

Parties

Those with an interest in the property:

- Obtain a title report independently
- Owners & heirs
- Encumbrancers
- Taxing Authorities
- Environmental lienholders

Service of Process

Ensures that the Court and Clerk have legal authority to divest title and pass good title:

- Personal service
- Agent for Service of Process
- Service by Publication
- Can wreck the entire sale

6

NOTICE OF SALE

Publication

- Review statutes carefully
- Work with publisher and parties
- **Special attention if taxes or environmental liens**
- Local gov't websites

Interest Parties

Notice by Certified Mail:

- Rely on title report (don't forget encumbrancers)
- Keep the "green card"
- Due diligence required

Other Forms of notice:

- Email distribution
- Social media
- On-site signage

7

7

TIPS & TRICKS

- Proactive with counsel
- Review draft of order, if possible
- Marketing budget approval
- Send draft of notices to counsel
- Make title report available
- Are on-line sales an option?

8

8

BIDDER QUALIFICATIONS

- Individual or entity – does agent have proof of authority to bid
- Cannot require a deposit to place bids (Tenn. AG Op. 23-008 05/22/2023)
- Successful bidders become "quasi-party" – no vested rights until Court confirms the sale
- Could not find any definitive guidance

9

9

SALE DAY

- Record the Sale from start to finish
- Announcements
 - Terms of Sale (down payment permitted, promissory note)
 - "As is, where is, if is"
 - No representations or warranties
 - Subject to the Court's confirmation
 - Upset bid procedures, if allowed

10

10

REPORT OF SALE & CONFIRMATION**Report of Sale**

- Recite relevant facts
 - Decree directing sale and terms
 - Parties identified by title report
 - Notice given, when, and how
 - Results (include upset bids, if any)
 - Sale was commercially reasonable
- Serve copy on all parties, including bidder

Order Confirming Sale

- Recite facts from Report of Sale
- Divest title from parties and vest in bidder (or its assignee)
- Parties' rights attach to sale proceeds after payment of commissions, costs, and other items with priority
- Approve commissions, costs, and other items with priority – BE SPECIFIC FOR AUDITORS and immediate payment or wait until order is final
- Excess Proceeds – interesting bearing account

11

11

CLOSING

- Deed delivered once order of confirmation is final judgment
- Settlement statement
- "As is, where is, if is"
- No representations or warranties
- Recite orders leading up to execution of deed
- Do you need to issue a 1099 – S or INT? Generally, no if to foreclose a debt, but partition action?

12

12



THANK YOU

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13
