

ASSEMBLY, No. 5697

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 12, 2021

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District 2 (Atlantic)

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District 31 (Hudson)

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SYNOPSIS

Creates “New Jersey Online Foreclosure Sale Act.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/12/2021)

1 AN ACT concerning the electronic sale of real properties at
2 foreclosure and amending N.J.S.2A:61-1 and N.J.S.2A:61-4, and
3 supplementing Title 2A of the New Jersey Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. (New section) This act shall be known and may be cited as the
9 “New Jersey Online Foreclosure Sale Act.”

10
11 2. N.J.S.2A:61-1 is amended to read as follows:

12 2A:61-1. a. When any sheriff, coroner, master, executor,
13 administrator, guardian, commissioner, auditor or other officer or
14 person is authorized or required by any public statute or the direction
15 of any court of competent jurisdiction in this State to make sales of
16 real estate, he shall, unless otherwise specially directed or authorized
17 by law, before making the sale, give notice of the time and place of
18 the sale by public advertisement, signed by himself, and set up in the
19 office of the sheriff of the county or counties where the real estate is
20 located and at the premises to be sold, at least 3 weeks before the
21 time appointed for the sale. The notice need not be set up at any other
22 place. The notice of sale shall include either a diagram of the
23 premises or a concise statement indicating the municipality, the tax
24 lot and block and where appropriate, the street and street number, and
25 the dimensions of the premises, as well as the number of feet to the
26 nearest cross street. The notice of sale shall state that the diagram or
27 concise description does not constitute a full legal description of the
28 premises, and shall state where the full legal description can be
29 found.

30 Such officer or person shall also cause the notice to be published
31 4 times, at least once a week, during 4 consecutive weeks, in two
32 newspapers as set forth in paragraphs (a) through (d) of this
33 subsection, or online and in one newspaper as set forth in paragraph
34 (e) of this subsection, to be by him designated**[,]**as follows:

35 (a) both printed and published in the county where the real estate
36 to be sold is located, one of which shall be either a newspaper
37 published at the county seat of the county or a newspaper published
38 in the municipality in the county having the largest population
39 according to the latest census**[, or]**;

40 (b) one printed and published in the county and one circulating in
41 the county, if only one daily newspaper is printed and published in
42 the county**[, or]**;

43 (c) one published at the county seat and one circulating in the
44 county, if no daily newspaper is published in the county**[, or]**;

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

(d) both circulating in the county, if no newspapers are printed and published in the county; or

(e) if the sale of property is to be conducted in an online, electronic format, online at the public website at which the sale will be conducted electronically and one newspaper, which, as applicable shall be:

(1) a newspaper printed and published in the county where the real estate to be sold is located, either published at the county seat of the county or in the municipality in the county having the largest population according to the latest census;

(2) one printed and published in the county, if no newspaper is published at the county seat of the county or in the municipality in the county having the largest population according to the latest census; or

(3) one circulating in the county, if no daily newspaper is published in the county.

The first publication shall be at least 21 days prior and the last publication not more than 8 days prior to the time appointed for the sale of the real estate.

Whenever, in the opinion of any such officer or person, the ends of justice shall require it, or the sale being conducted by him will be benefited thereby, the notice of sale may be published in three newspapers instead of two as required by the second paragraph of this section, if there be that number printed and published in the county where the real estate to be sold is located.

The officer or person so advertising in the newspapers shall be entitled therefor, in addition to his other fees, to the sum of \$1.50, except where it is otherwise specifically provided.

b. If the sale of real estate is conducted electronically pursuant to section 4 of P.L. , c. (C.)(pending before the Legislature as this bill), then in addition to the requirements in subsection a. of this section, the notice shall state that the sale is being held by means of an online auction, and the notice shall include a link to the auction website, and if possible, the link to the auction of the specific property in the notice.

If the sale of real estate is conducted electronically pursuant to section 4 of P.L. , c. (C.)(pending before the Legislature as this bill), then the publication requirement set forth in subsection a. of this section may be satisfied by publishing a notice in the format of a display advertisement rather than a legal advertisement. The display advertisement shall be at least two inches by three inches with a bold black border. The notice contained in the display advertisement shall set forth the following information:

(a) The tax lot and block of the real property to be sold and where appropriate, the street, street number and municipality;

(b) A statement that the sale shall be conducted through an online auction;

(c) The full website link where the sale may be viewed;

1 (d) A statement that the sale information may be viewed without
2 registration or cost; and

3 (e) The date and time of the sale.

4 (cf: P.L.1979, c.364, s.1)

5
6 3. N.J.S.2A:61-4 is amended to read as follows:

7 2A:61-4. a. Any officer or person [mentioned] who is
8 authorized or required in [section] N.J.S. 2A:61-1 of this title,
9 making a sale of real estate governed by this chapter, shall, at the
10 time and place appointed therefor, between the hours of 12 and 5 in
11 the afternoon, if requested by any person interested in the sale of the
12 real estate to be sold, read the description of the real estate to be sold
13 by metes and bounds, or, in the absence of such a request, the officer
14 or person making the sale shall announce the street and number, or
15 streets and numbers, of the real estate to be sold, or the block and lot
16 number or numbers by which such real estate is designated on the
17 taxing maps of the municipality or municipalities in which the same
18 is situate, if the same is not identified by a street and number or
19 streets and numbers on such taxing maps, and where there is no street
20 number or lot and block number, the officer or person making the
21 sale may announce such description or designation as to him may be
22 deemed sufficient, and sell such real estate at public vendue to the
23 highest bidder.

24 b. As an alternative to the procedures in subsection a. of this
25 section, any officer or person who is authorized or required in N.J.S.
26 2A:61-1 of this title, making a sale of real estate governed by this
27 chapter, may conduct the sale by means of electronic auction
28 conducted online and advertised in conformance with the provisions
29 of N.J.S.2A:61-1.

30 (cf: N.J.S.2A:61-4)

31
32 4. (New Section) Any sheriff or other officer or person wishing
33 to conduct an online foreclosure sale of real estate may do so, in
34 accordance with the following provisions and requirements:

35 a. Any contract with a vendor to conduct an online foreclosure
36 sale of real estate shall require that New Jersey law shall govern the
37 contract and the relationship between vendor and the officer.

38 b. The officer may conduct the public auction of the real estate
39 online, at a physical location in the county as permitted by law, or
40 both.

41 c. If the auction occurs only online, the auction shall be open for
42 bidding at the time set forth by the notice and be held open for a
43 minimum of two hours.

44 d. Notwithstanding any other provision of law to the contrary,
45 an electronic real property foreclosure service may be procured
46 through competitive contracting pursuant to P.L.1999, c.440
47 (C.40A:11-4.1 et seq.), without the need for a resolution by the
48 governing body.

1 e. If the auction occurs online, any vendor providing online sale
2 services shall maintain satisfactory internal controls and shall meet
3 the performance requirements of a Service Organization Control
4 (SOC) 2 engagement based upon the existing Trust Services
5 Principles (WebTrustTM and SysTrustTM) carried out in accordance
6 with AT 101 standards, with the ability to test and report on the
7 design effectiveness (Type I) and operating effectiveness (Type II)
8 of the vendor's controls. Upon the request of the officer, a vendor
9 shall provide evidence of satisfactory internal controls set forth in
10 this section.

11 f. All bid information and participant financial data is deemed
12 property of the officer.

13 g. Any officer, employee, or independent contractor of the
14 vendor shall be prohibited from participating in the auction.

15 h. All bids entered during the auction shall be visible to the
16 public online and displayed at the time they are placed. Any
17 maximum bid amounts provided by bidders ahead of the sale shall
18 not be visible to the public or to the sheriff while the auction is in
19 process until the bid is placed.

20 Notwithstanding any other provision of law to the contrary, the
21 cost of an electronic real property foreclosure service shall be
22 deemed a reasonable and necessary taxable expense under N.J.S.
23 22A:2-8. The website shall not charge a fee for members of the public
24 to view properties for sale, and no fee may be charged to a buyer at
25 the sale of real estate over and above the winning bid amount,
26 including but not limited to, a buyer's premium to cover the cost of
27 the electronic real property foreclosure service.

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29 5. This act shall take effect immediately.

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STATEMENT

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34 This bill permits the sale of foreclosed upon property in an
35 electronic, online forum that is open to the public. If the sale is
36 conducted in an online format, then the person conducting the sale
37 has the option of advertising the sale online and in one newspaper
38 rather than the publishing notice required by current law for sheriff
39 sales.

40 If the sale of real estate is conducted electronically, the bill
41 provides that the notice of the sale is required to state that the sale is
42 being held by means of an online auction, and the notice is required
43 to include a link to the auction website, and if possible, the link to
44 the auction of the specific property in the notice.

45 Additionally, if the sale of real estate is conducted electronically,
46 then the publication requirement may be satisfied by publishing a
47 notice in the format of a display advertisement rather than a legal
48 advertisement. The display advertisement is required to be at least

- 1 two inches by three inches with a bold black border. The notice
2 contained in the display advertisement is required to set forth the
3 following information:
- 4 (a) The tax lot and block of the real property to be sold and where
5 appropriate, the street, street number and municipality;
 - 6 (b) A statement that the sale shall be conducted through an online
7 auction;
 - 8 (c) The full website link where the sale may be viewed;
 - 9 (d) A statement that the sale information may be viewed without
10 registration or cost; and
 - 11 (e) The date and time of the sale.