

BANKING LAW ALERT

www.raineykizer.com

August 2015 Issue

Jackson Offices
105 S. Highland Avenue
Jackson, TN 38301
and
209 E. Main Street
Jackson, TN 38301
P 731.423.2414

Memphis Office
50 N. Front Street, Ste. 610
Memphis, TN 38103
P 901.333.8101

Thomas H. Rainey, of
Counsel

Jerry D. Kizer, Jr.
Russell E. Reviere
William C. Bell, Jr.
John D. Burleson
Laura A. Williams
Robert O. Binkley, Jr.
R. Dale Thomas
Deana C. Seymour
Charles C. Exum
Marty R. Phillips
Dale Conder, Jr.
Timothy G. Wehner
Bradford D. Box
Patrick W. Rogers
Michael L. Mansfield
Michelle Greenway Sellers
Keely N. Wilson
Amanda C. Waddell
Geoffrey A. Lindley
Craig P. Sanders
Jonathan D. Stewart
James V. Thompson
Adam C. Crider
Ashley D. Cleek
John O. Alexander, IV
Nathan E. Shelby
Michael Burnett Joiner
Matthew R. Courtner
J. Caleb Meriwether
W. Chris Frulla
Brandon W. Reedy
Adam P. Nelson
Brandon J. Stout
Gregory D. Jordan, of
Counsel

AREAS OF PRACTICE

Business and Finance
Estate Planning, Wills
and Trusts
Litigation
Professional
Malpractice Defense
Tort and Insurance
Defense
Employment and Civil
Rights
Healthcare
Mediation

CONDUCT YOUR FORECLOSURE SALES AS REQUIRED IN THE TRUST DEED

In the case of **Wells Fargo Bank v. Lockett**, the court dealt with the issue of whether Wells Fargo's foreclosure was conducted in accordance with the terms of its trust deed. The mortgagors defaulted on the deed of trust. A foreclosure sale was advertised properly. The foreclosure sale was adjourned at the day of the sale to another date, and this was done in accordance with the allowed provisions in the trust deed. The trustee announced that the sale had been postponed. The mortgagors were not present on that date.

No new publications were done, but the trustee mailed a notice of the postponement to the mortgagors, which provided the new date for the sale, but failed to specify the time. The mortgagors somehow learned that the sale had been scheduled for 11:00 o'clock A.M. They arrived at the appointed time, only to learn that the property had been sold prior to the appointed time.

After the foreclosure sale, Wells Fargo filed a detainer action against the mortgagors to have them removed from the property. The mortgagors filed a counter claim asserting that the foreclosure was wrongful because it occurred prior to the designated time.

The trial court granted a motion for summary judgment in favor of Wells Fargo and held that the mortgagors were not entitled to rescission of the foreclosure sale, even if the foreclosure sale occurred prior to the scheduled time. The Court of Appeals reversed the trial court and remanded the case for trial. The Court of Appeals ruled that failure to conduct the foreclosure sale at the time and under the terms designated in the Notice of Sale would be a violation of the terms contained in the deed of trust. Because questions remained as to whether the sale was held at the time and under the terms designated in the Notice of Sale, the Court of Appeals remanded the case for trial at the trial court.

In explaining its ruling, the Court of Appeals wrote that parties are not limited to statutory terms in the foreclosure statute. The parties may provide for different terms for conducting a foreclosure in a deed of trust, and said terms generally will supersede the statutory requirements. However, a foreclosure sale held pursuant to a deed of trust requires strict compliance with its terms for the conveyance to be valid.

OUR RECOMMENDATION: Make sure that the Trustee conducting your foreclosure sales complies strictly with the terms of the deed of trust, especially if the deed of trust varies from the provisions of Tennessee statutory law on foreclosures. This situation can arise frequently when foreclosure sales are postponed from the advertised date in the public notice to a future date.



William C. Bell, Jr.
wbell@raineykizer.com



Laura A. Williams
lwilliams@raineykizer.com



Charles C. Exum
cexum@raineykizer.com



Adam C. Crider
acrider@raineykizer.com

The content of this newsletter is provided for educational purposes only and is not intended to serve as legal advice for a specific situation. You should consult with your attorney for further legal advice. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter. Please address any questions concerning the newsletter to the Administrator, Rainey, Kizer, Reviere & Bell, P.L.C., P.O. Box 1147, Jackson, TN 38302. To insure compliance with requirements imposed by the Internal Revenue Service, we inform you that any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication.