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**OPPOSITION TO SB 1299 AND HB 1920 BY THE KNOXVILLE JOURNAL**

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*Presented to*

**House Judiciary Committee  
and  
Senate Judiciary Committee**

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*Regarding*

**SB 1299 Sponsored By State Sen. Jack Johnson  
HB 1920 Sponsored By State Rep. Jimmy Matlock**

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*Submitted by*

**The Knoxville Journal**

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## **Overview of the Issues**

### **Comment**

KnoxNews stated: “The banking industry, it must be noted, bears much of the responsibility for the mortgage crisis that led to the recession. Banks and other lenders convinced too many people to buy mortgages they couldn’t afford. Thousands of Tennesseans are now out of work and having difficulties paying their mortgages.

Granting favors to banks seeking to foreclose on those properties is shameful. The foreclosure process is already too easy, and making it even easier would be brutal.”

The Knoxville Journal stated: “Other States are seeking to protect homeowners while Tennessee seeks to make it easier for banks to take homes.”

### **Introduction**

Tennessee House and Senate members are attempting to rush through two bills - SB 1299 and HB 1920 - which will make it easier for banks to foreclose on people’s homes; reducing the number of notices to homeowners from three (3) to one (1), permitting sale of homes after only twenty (20) days from that single notice, streamlining property description requirements and by preventing any challenge to the notice of foreclosure even where the lender makes mistakes or errors.

Eight Republican House members have signed on as co-sponsors. The sponsors also include House Democratic leader Craig Fitzhugh, a West Tennessee bank executive who serves as the Bankers Association’s President.

While states across this nation establishing programs to protect consumers and help people save their homes with programs to mediate with lenders, and extend the time for foreclosures to as much as 150 days, Tennessee permits homes to be taken within 20 days after the first notice.

Tennessee is going against national trends to protect consumers and homeowners. While many other states are acting to protect consumers and are particularly concerned about helping them keep their homes, SB 1299 and HB 1920 take Tennessee in the opposite directions granting special favor to banks.

Seniors, the disabled, the illiterate, and the weakest members of society will be the most likely victims of the proposed bills since there is no “notice accommodation” for those most susceptible to not being informed that their homes were about to be taken by the bank.

Despite what some term as “outrageous” bills expressed in papers from Memphis, to Nashville, to Knoxville, to Chattanooga and other papers around the State of Tennessee, the sponsors and supporters of SB 1299 and HB 1920 appear undeterred setting hearings on SB 1299 and HB 1920 on Tuesday April 26, 2011 in the Judiciary Committees of the Tennessee House and Senate in Nashville, Tennessee.<sup>1</sup>

Despite what some term as “outrageous” bills and outrage expressed in papers from Memphis, to Nashville, to Knoxville, to Chattanooga and other papers around this state, the sponsors and supporters of SB 1299 and HB 1920 Tennessee republicans go against national trends to protect consumers and homeowners. While many other states are acting to protect consumers and are particularly concerned about helping them keep their homes, SB 1299 and HB 1920 take Tennessee in the opposite directions granting special favor to banks.

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<sup>1</sup> “Banks want to reduce public notice for foreclosures” Written by Chas Sisk *The Tennessean*

With respect to Republican sponsors – which make up almost all the bills’ sponsors – they buck a GOP projected image that it is for the people. On a national level John Boehner, Majority Leader in the House has set a national popular tone pledging at his January 5<sup>th</sup> 2011 swearing-in that the republicans would be “responsive to [the people’s] needs” and that the GOP believed that it was a “privilege to serve” the people. Apparently Tennessee republicans believe that it is their job to serve the banks and make it easier for the banks to take people’s homes. Some would argue the national GOP populous message for the people has been rejected in Tennessee, and that Tennessee Republicans want to make clear that they serve the banks at the expense of the very people who voted them into office.

#### **Overview - State Bills Would Reduce Foreclosure Notices**

A bill making its way through the Tennessee Legislature would give homeowners less advance warning before their homes are sold at a foreclosure auction. State Sen. Jack Johnson, R-Franklin, and state Rep. Jimmy Matlock, R-Lenoir, have filed companion bills that would allow lenders to publish only one newspaper notice – instead of the current three – announcing that a mortgage is in default and a home is headed to the auction block. Under the proposed legislation, a common description of the property wouldn’t be required to be included in the new notices. Also, any errors or “defects” in the new notices would not prevent the foreclosure sale from going forward.

SB 1299 and HB 1920 make it easier for banks to Foreclose on people’s homes. SB 1299 and HB 1920 prevent the public and homeowners from being informed of a foreclosure and make it easier to take people’s homes that they’ve worked for all their lives. The effect of the proposed bill would be that a bank can foreclose with just one letter to the homeowner and one short notice

in the paper (instead of three) and the notice would no longer have to include the property's legal description, or even the address. Although Tennessee is one of five states that doesn't have judicial oversight of foreclosures, SB 1299 and HB 1920 would place Tennessee squarely on the side of banks and against the people who elected the legislatures.

### **Present Law**

Present law is bad enough in terms of consumer protection. Under present law, in any sale of land to foreclose a deed of trust, mortgage or other lien securing the payment of money or other thing of value or under judicial orders or process, advertisement of the sale must be made at least three different times in some newspaper published in the county where the sale is to be made.

This bill decreases the number of times the advertisement must be published from three to one.

Present law requires that the advertisement or notice: (1) Give the names of the plaintiff and defendant, or parties interested; (2) Describe the land in brief terms, including the street address if available; and (3) Mention the time and place of sale.

### **The Banks Don't Need Help**

Most of the \$787 Billion TARP bailout money went to banks that wouldn't loan the people money. Now, they seek greater profits at the expense of the people, when their profits are already obscene. For Example, in 2010 JP Morgan Chase announced \$11.7 billion in profits and \$26.9 billion in compensation, including bonuses that will run in the multimillions for the top executives. Goldman Sachs reported record profits of \$13.4 billion, and is set to dole out a staggering \$16.2 billion in compensation and bonuses, which could provide an average of nearly \$500,000 per employee. And Morgan Stanley, even having sustained a loss in 2009, has set aside

\$14.4 billion for compensation and bonuses. First Horizon National Corp. posted a first-quarter profit of \$40 million on revenue of \$370 million Thursday.

### **Balancing the Burdens and Benefits**

Balancing the burdens upon unsuspecting homeowners such as the elderly, the disabled, the illiterate, and even the stronger healthier members of our society against the burdens upon banks in not increasing their profits, fairness in justice tips heavily in favor of people been given as much latitude as possible to keep their homes as against bankers being able to increase their bottom line. Balancing the benefits to homeowners in maximizing their opportunity to be made aware that their home is being foreclosed upon and being given the opportunity to keep their homes against the benefit of more profits for the banks, again, justice tips heavily in favor of the people keeping their homes.

Balancing the benefits to the banks of greater profits against the burdens upon smaller and weekly newspapers in being deprived of legal newspaper advertising, fairness, justice and the Constitution favor the newspapers. Freedom of press and freedom of speech will be burdened, if not eliminated, should SB 1299 and HB 1920 pass since it would eliminate two thirds of the income<sup>2</sup> from legal notice advertising which some smaller and weekly papers of general circulation rely on for their survival.

In balancing whether to proceed or not, the Tennessee House and Senate should place great weight upon freedom of speech and freedom of the press and should be concerned about helping

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<sup>2</sup> SB 1299 and HB 1920 would cut the number of notices required to be published in newspapers of general circulation from three to one. This not only reduces the potential for notice to the homeowner but it also will put some newspapers, such as *The Knoxville Journal* out of business since *The Knoxville Journal* relies heavily on legal notice advertising for its income.

spread the monopoly by Scripps-Howard and *The Knoxville News Sentinel* at the expense of smaller papers with alternative views.

In view of the consequences and the amount of savings the Tennessee House and Senate may think that Knox County gets, the burdens set forth herein far outweigh any benefits of the bill.

### **Costs of Foreclosure vs. Cost of Notice to Homeowners**

The cost of a foreclosure is pretty staggering especially when compared to the cost of public notice advertising which amount to no more than a few hundred dollars for three (3) weekly notices in a newspaper of general circulation.

According the Joint Economic Committee of Congress<sup>3</sup>, the average foreclosure costs \$77,935.

First of all, the cost does not accrue totally to the lender. The homeowner has a typical loss of \$7,200 which includes loss of equity in the property, moving expenses, and perhaps some legal fees. Those neighbors living in close proximity to the foreclosed house suffer \$1,508 in losses from the decrease in the value of their own home as the neighborhood begins to deteriorate .The local government loses \$19,227 through diminished taxes and fees and a shrinking tax base as home prices decrease. That leaves us with total costs of \$50,000 for the lender under the numbers produced by the Joint Economic Committee of Congress. The Committee does not break out these figures but a new study from Standard & Poor's (S&P) does. While there is not a total match between the two sets of data, they are close enough.

The Committee includes the following in its list of pre-and post-foreclosure expenses:

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<sup>3</sup> Foreclosures Cost Lenders, Homeowners, the Community Big Bucks by Glenn Setzer *Mortgage News Daily*

Loss on property/loan

Property maintenance

Appraisal

Legal fees

Lost revenue

Insurance

Marketing

Clean-up

And S&P breaks them down as follows: S&P assigns a staggering 26 percent of the loan amount for the costs of foreclosure. This category wraps up the remainder of the list above and include paying property taxes (3 percent, although many ignore this obligation, hoping to pass accrued taxes on to the eventual buyer), maintaining hazard insurance, legal fees (1 percent), an appraisal (although most lenders are choosing the far less expensive alternative of a brokers price opinion or windshield appraisal,) lost revenue (an estimated 13.6 percent of the loan amount) 6 percent marketing fees (broker's commission) and 3 percent spent on home maintenance.

### **Other States are seeking to protect homeowners**

Most states across the country seek legislation which provides greater protection for consumers and creates protections to help homeowners keep their homes. For example, in Indiana a bill to reduce the number of residential foreclosures has received final approval by the General Assembly and will be sent to the governor for his signature. The bill would increase notice to homeowners of their right to a settlement conference with their lender. In Indiana they have foreclosure prevention programs and must notify homeowners two times of their right to a

settlement package. Under SB 582, a third notice would come directly from the court, informing homeowners of their right to a face-to-face negotiation with their lender. The bill would also allow a judge to make a determination of modified mortgage payments, not exceeding the homeowner's monthly rate and based upon ability to pay, for the homeowner to yield to a special fund as a means for avoiding foreclosure. Although Tennessee is one of five states that doesn't have judicial oversight of foreclosures, SB 1299 and HB 1920 would place Tennessee squarely on the side of banks and against the people

### **Suppression of Freedom of Speech and Press**

The Constitution and the people seem to feel that freedom of press and speech is of high priority. *The Knoxville Journal* is the only Conservative, Republican, faith-based newspaper in Knox County which also covers local and national news and sports. Should this Committee choose to shut down *The Knoxville Journal* an alternate voice to *The Knoxville News Sentinel* will be eliminated and Conservative Republican opinions would be squelched. Should the House and Senate wish to advance *The Knoxville News Sentinel* as a monopoly and eliminate alternative opinions in Knox County then it should proceed with the proposed bills because that is exactly what will happen.

### **Public Reaction**

Attached to this document are articles from newspapers across the state of Tennessee. There is little, if any media support for SB 1299 and HB 1920. Titles such as "Stop attack on struggling home buyers", "Foreclosures Cost Lenders, Homeowners, the Community Big Bucks", " Banks want to reduce public notice for foreclosures", "TPA's Public Notice Week reached out to readers; 68 newspapers, 47 full pages" and "Fight government secrecy; preserve our basic

rights”, tells the story. This is just a sampling of the reaction to the proposed legislation to make it easier for banks to take people’s homes. When the media reacts like this you can count on the public following suit.

Public reaction to one of the articles included the following comments:

Margaret, a Tennessee blogger put it this way: “[I]t seems everyone has been bought off these days in the state of [Tennessee], they are trying to shorten the foreclosure period so they can push the illegal/fraudulent foreclosures through the system in this non judicial state. [I] am still confident right will prevail, it seems everyone is forgetting who still rules this earth “the unseen hand.” [T]his means that right always prevails, this illegal power struggle by the big banks and corrupt individuals playing the game will soon end; again, right and wrong are always rewarded as they are sown.”

Another said “Just my opinion, it wouldn't surprise me if they wanted the foreclosure sales to be less public so that they or their friends have better opportunities for making quick cash on flips.”

As a sample of public perception another Tennessean wrote "CONFLICT OF INTEREST"!!!

Who does this yahoo owe his life to? The bank that he works for or should I say the debtors of the bank he works for? This guy and all of those signing on to this bill as sponsors should all be charged with malfeasance, tried by a jury of voters and thrown under the jail!!!”

### **Economic, Age, Disability and Illiteracy Discrimination**

It is a legal maxim that one intends the natural and probable consequences of their actions. Since the natural and probable consequences of SB 1299 and HB 1920 is to reduce consumer protection, make it easier for banks to foreclose and take people’s homes, and to put certain newspapers of general circulation out of business, the bills target the weaker members in our

society – the poor, seniors and the Illiteracy and the disabled. These discriminations are a concern.

LaFollette resident Susan Seratt commented on the bills stating, “Passing these bills would essentially be discriminating against seniors, the disabled and the poor people and all the demographics that fall under that category.” It is probable that the single notice proposed under the bills will not impart to the elderly, the disabled, especially those with Alzheimer’s and dementia, or the illiterate that their home will be taken by a bank within 20 days.

### **No Protection for the Elderly, Disabled, or Illiterate**

There is nothing in the bills that would assure that the elderly, the disabled, and the illiterate would be made aware that their homes were about to be taken in a matter of days. The bills appear to allow the banks to monitor themselves and enhances the potential for fraud and deception. In a society where most of our mail is junk mail, a single written notice, even if certified, may in many cases not impart to a homeowner what is about to happen to them. There is no requirement for a special envelope, large fonts, emphasis, or explanation as to what is happening or any kind of protection for the homeowners. Under the bills as written, if someone is on vacation for a month, and a notice is sent by mail, and published one time in the newspaper, when they could get back from their vacation their home could be in the hands of a bank. Rather than making it easier for the banks to foreclose on people’s homes, Tennessee should, as in other states, be introducing bills to protect homeowners and extend the time for them to attempt to save their homes.

### **No Protection for Tenants**

Other states tenants are protected when there is a foreclosure. The bills make no provision to protection for tenants in foreclosed buildings. In Massachusetts a tenant can only be evicted for just cause. A lender cannot evict a tenant for failure to pay rent unless a written notice with proper contact information has been posted and delivered. It does not prohibit a lender from evicting tenants for valid reasons, such as using a unit for illegal purposes or not allowing the lender to enter the unit to make repairs.

### **Bills Subject to Abuse**

The bills appear to allow the banks to monitor themselves and enhances the potential for fraud and deception. In a society where most of our mail is junk mail, a single written notice, even if certified, may in many cases not impart to a homeowner what is about to happen to them. There is no requirement for a special envelope, large fonts, emphasis, or explanation as to what is happening or any kind of protection for the homeowners. Under the bills as written, if someone is on vacation for a month, and a notice is sent by mail, and published one time in the newspaper, when they could get back from their vacation their home could be in the hands of a bank. Rather than making it easier for the banks to foreclose on people's homes, Tennessee should, as in other states, be introducing bills to protect homeowners and extend the time for them to attempt to save their homes.

### **Right-To-Cure Period**

For homeowners, the Massachusetts legislation temporarily extends the 90-day right-to-cure period, enacted by the legislature in 2007, to 150 days and expands the content of the notice of right-to-cure that banks must send to homeowners. The 2007 law gave homeowners 90 days to come up with past due payments on their mortgage before the lender could require full payment

of the unpaid balance. Tennessee gives its homeowners no reasonable time to cure and save their homes.

### **Tennessee Permits Sale 20 Days from First Notice**

Tennessee Permits Sale 20 Days from First Notice. See T.C.A. § 35-5-101(d); Galyon v. First Tennessee Bank Nat. Ass'n, 803 S.W.2d 218 (Tenn. 1991) (citing Napier v. Stone, 21 Tenn. App. 626, 114 S.W.2d 57, 61 (1937)); see also C.J.S., Mortgages § 566(a)

### **Impact on Small Newspapers is a Statewide Problem**

Turning to the impact upon *The Knoxville Journal* which is East Tennessee's oldest paper since 1839. There are only two newspapers of general circulation in Knox County, Tennessee - *The Knoxville Journal* and *The Knoxville News Sentinel*.

*The Knoxville Journal* relies heavily upon legal notice advertising for its existence. This this bill could effectively put *The Knoxville Journal* out of business. *The Knoxville News Sentinel* is a much larger company being owned by Scripps-Howard which is a national media conglomerate. A cut in their legal advertising would have little or no effect on their business. The Committee should recognize that the bill, should it pass, would create a monopoly in Knox County for newspapers of general circulation because it would eliminate the only other "newspaper of general circulation," *The Knoxville Journal*, by putting us out of business.

### **Advancing Monopoly**

*The Knoxville News Sentinel* is owned by Scripps-Howard media, one of the biggest media conglomerates in The United States. It is common knowledge they have been buying up every small paper they can, vertically integrating, printing for multiple papers, and otherwise dominating the newspaper industry in East Tennessee and across the nation. Some of the profits from *The Knoxville News Sentinel* go out of state to Cincinnati where the real home base for Scripps-Howard is located.

In any event, any action attempting to prevent small newspapers from carrying legal notices in a pilot project in Knoxville is tantamount to a deadly virus that will spread across the state of Tennessee rapidly wiping out small newspapers so that the media giants can swoop in and have complete control of the media newspaper business.

### **Loss of Jobs**

The Journal has 38 part time and full time employees. The proposed bill would put most of them on the street. Multiply this many times across the State and see the hardship this Committee will impose. We have already gotten complaints out of Chattanooga by newspapers and citizens about the harm online legal notices would do to them.

### **Tough job market**

It would seem to be cruel to throw people out of their jobs they have been at for years when there is an economy that is struggling and it is very difficult to get jobs. This would be especially true for people that work in the newspaper business, like the employees of *The Knoxville Journal*, since one of the few options they would have would be *The Knoxville News Sentinel* or some other smaller paper which already has a staff. The proposed bill will leave these breadwinners and their families without any source of income.

### **Loss of homes**

Without income, *Journal* employees with homes will not be able to pay their mortgages, face loss of their homes and the City and County would suffer the loss of property taxes revenue.

### **Loss of income**

Consider this - if *The Knoxville Journal* is put out of business the city will lose approximately \$8,000 per year in property taxes paid to the City and County on the building out of which *The Knoxville Journal* operates. In addition, the City and County will lose a substantial amount of business taxes paid by *The Knoxville Journal*. Moreover, 38 employees at *The Knoxville Journal*

spend money in Knoxville and Knox County and the loss of their jobs will reduce sales taxes in the City and County.

The proposed bill is presented in a manner implying an effort is being made to save money for the taxpayers by placing the legal notices online. Ironically this bill will probably cost taxpayers more than it saves.

### **Serious Consequences**

If the intent is to wipe out *The Knoxville Journal* and other small newspapers across Tennessee and help Scripps-Howard and *The News Sentinel* become a monopoly in East Tennessee then please so state, and state it openly. If that is not the intent then do not proceed with the legislation. Surely this Committee has many other issues that warrant attention with a greater impact on helping the taxpayer than this one which, as I've outlined, may cost the taxpayers much more than the intent was to save them. There are bigger fish to fry and we respectfully request the Committee focuses on them.

Although the intent and purpose of saving money for the taxpayers may be well intentioned, the fallout, and the consequences created to City and County income, property taxes, sales taxes, and putting a number of people out of work when jobs are hard to get, outweighs any potential benefit for what may be a loss to the taxpayer.

The bill could be termed an assault on free speech in order to create a monopoly for *The Knoxville News Sentinel* and seriously concerns *The Knoxville Journal*.

### **Additional unemployment draining State Resources**

If newspapers are put out of business their employees will seek unemployment benefits at a substantial cost to the State.

### **Unconstitutional in Violation of Due Process**

Although Tennessee may be a non judicial foreclosure state, it is still governed by the United States Constitution which prevents a taking without due process of law. It may be argued that the 20 day period for notice to sale of property in the state of Tennessee doesn't provide any real notice or opportunity for the homeowner to be heard or save the homeowner's home. However, the Supreme Court has considered due process violations where a simple mailing and nothing more was involved or where an individual with a mental illness received a standard denial of benefits notice where there were no notice accommodations to account for the mental illness.

In Covey v. Town of Somers, 351 U.S. 141, 76 S.Ct. 724, 100 L.Ed. 1021 (1956), the Court identified a due process violation where the State provided notice of judicial foreclosure through simple mailing and nothing more, "[a]lthough [the taxpayer] was known by the officials and citizens of the Town of Somers to be a person without mental capacity to handle her affairs or to understand the meaning of any notice served upon her, [and] no attempt was made to have a Committee appointed for her person or property until after entry of the judgment of foreclosure in this proceeding." *Id.* at 146, 76 S.Ct. 724. And in Parker v. Califano, 644 F.2d 1199 (6th Cir.1981), this court remanded a due process claim for further consideration when a social security applicant with mental illness received a standard denial of benefits notice requiring her to file an appeal within six months, with no notice accommodations to account for her mental illness. *See id.* at 1200, 1203. (See, Rosen v. Goetz 410 F.3d 919, 932 (C.A.6 (Tenn.),2005)

Just as it was unconstitutional in Covey and Parker to provide a simple mailing as notice or where there is no special notice accommodations to account for mental illness, or in this case, age, disability, or illiteracy, the bills that are being rushed through do not meet constitutional due process standards. As already noted, there is no “Notice of Accommodations” for the weakest members of our society enhancing the potential for big banks to take advantage of this segment of society just to make a greater profit.

### **Political Consequences**

There may be political consequences to bills that burden the press and prevent freedom of speech when alternative voices are needed for a proper functioning democracy.

### **Commitment by John Boehner to the American People**

At his January 5, 2011 swearing-in speech John Boehner made a commitment by his party to the American people stating “The American people have humbled us. They have refreshed our memories as to just how temporary the privilege to serve is. They have reminded us that everything here is on loan from them. That includes this gavel, which I accept cheerfully and gratefully, knowing I am but its caretaker. After all, this is the people's House. This is their Congress. It's about them, not us. What they want is a government that is honest, accountable and responsive to their needs. A government that respects individual liberty, honors our heritage, and bows before the public it serves.”

### **Tennessee Republicans Violate Boehner’s Commitment to the American People**

At a time when the GOP is attempting to reach out to the people with an economic populous message, many republicans in the state of Tennessee, are overtly rejecting such a concept by pushing the legislation at issue. While the GOP on a national level is attempting to cast off its

image as only concerned about the big corporations, some republicans in Tennessee have decided to openly reject such a proposition, and side with the bankers against the people.

### **Conclusion**

SB 1299 and HB 1920 should be rejected in committee and if they make it out of committee then the full House and full Senate should reject this outrageous assault upon homeowners at a time when they can least afford it and should reject siding with the banks who are already making obscene profits against the people. Rather than proposing legislation that makes it easier for banks to take people's homes, the state of Tennessee would be better served by legislation, as has been adopted in virtually every state across the country, which expands the time for foreclosures in order to give homeowners a greater opportunity to save their home, provide mediation between lenders and homeowners, and promote and establish programs to assist distressed homeowners and create a means for greater oversight of the banks in the foreclosure process.

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Exhibit A

**SENATE BILL 1299**

By Johnson

**HOUSE BILL 1920**

By Matlock

AN ACT to amend Tennessee Code Annotated, Title 35,  
Chapter 5, relative to judicial or trust sales.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 35-5-101(a), is amended by deleting the phrase “three (3) different times” and substituting instead the phrase “one (1) time”.

SECTION 2. Tennessee Code Annotated, Section 35-5-101(b), is amended by deleting the word “first”.

SECTION 3. Tennessee Code Annotated, Section 35-5-101(e), is amended by deleting the word “first” wherever it appears.

SECTION 4. Tennessee Code Annotated, Section 35-5-104(a)(2), is amended by deleting the subdivision in its entirety and substituting instead the following as a new subdivision (a)(2):

(2) 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.

(A) For purposes of this subdivision, the description of the land shall contain only the reference to the legal description of the property, and shall not contain the full legal description contained in the deed book.

(B) Any error or defect in the common description of the land shall not in any way void any sale of the land.

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.

Exhibit B

**T.C.A. § 35-5-101. Twenty days' notice by publication.**

(a) In any sale of land to foreclose a deed of trust, mortgage or other lien securing the payment of money or other thing of value or under judicial orders or process, advertisement of the sale shall be made at least three (3) different times in some newspaper published in the county where the sale is to be made.

(b) The first publication shall be at least twenty (20) days previous to the sale.

(c) This section shall not apply where the amount of indebtedness for the payment of which the property being sold does not amount to more than two hundred dollars (\$200), in which event the owner of the property may order that advertisement be made by written notices posted as provided in § [35-5-103](#), instead of by notices published in a newspaper.

(d) Nothing in this section shall be construed as applying to any notice published in accordance with any contract entered into heretofore, and expressed in a mortgage, deed of trust or other legal instruments.

(e) In any sale of land to foreclose a deed of trust, mortgage, or other lien securing the payment of money or other thing of value or under judicial orders of process, the trustee or other party that sells the property shall send to the debtor and any co-debtor a copy of the notice required in § [35-5-104](#). The notice shall be sent on or before the first date of publication provided in subsection (b) by registered or certified mail, return receipt requested. The notice shall be sent to

the following:

(1) If to the debtor, addressed to the debtor at:

(A) The mailing address of the property, if any; and

(B) The last known mailing address of the debtor or any other mailing address of the debtor specifically designated for purposes of receiving notices provided at least thirty (30) days prior to the first publication date in written correspondence or written notice in accordance with the loan agreement from the debtor to the creditor, but only if the last known mailing address of the debtor or other mailing address designated by the debtor is different from the mailing address of the property; and

(2) If to a co-debtor, addressed to the co-debtor at the last known mailing address of the co-debtor or any other mailing address of the co-debtor specifically designated for purposes of receiving notices provided at least thirty (30) days prior to the first publication date in written correspondence or written notice in accordance with the loan agreement from the co-debtor to the creditor, but only if the last known mailing address of the co-debtor or other mailing address designated by the co-debtor is both different from the mailing address of the property and different from the mailing address of the debtor determined as provided in subdivision (e)(1)(B).

Code 1858, § 2145 (deriv. Acts 1855-1856, ch. 83, § 1); Acts 1859-1860, ch. 60; Shan., § 3838; mod. Code 1932, § 7793; Acts 1943, ch. 123, § 1; mod. C. Supp. 1950, § 7793; Acts 1957, ch. 41, § 1; T.C.A. (orig. ed.), § 35-501; Acts 2006, ch. 801, § 10; 2008, ch. 743, § 1.

**Exhibit C**

**T.C.A. § 35-5-104. Contents of advertisement or notice**

Contents of deed memorializing sale.

(a) The advertisement or notice shall:

(1) Give the names of the plaintiff and defendant, or parties interested;

(2) Describe the land in brief terms, including the street address if available;

(3) Mention the time and place of sale;

(4) (A) Identify each and every lien or claimed lien of the United States with respect to which 26 U.S.C. § 7425(b) requires notice to be given to the United States in order for the sale of the land thus advertised not to be subject to the lien or claim of lien of the United States;

(B) For every lien or claim of lien of the United States so identified, affirmatively state that the notice required by 26 U.S.C. § 7425(b) to be given to the United States has been timely given;

(C) For every lien or claim of lien of the United States so identified, state that the sale of the land thus advertised will be subject to the right of the United States to redeem the land as

provided for in 26 U.S.C. § 7425(d)(1); and

**(5) (A)** Identify each and every lien or claimed lien of the state with respect to which § [67-1-1433\(b\)\(1\)](#) requires notice to be given to the state in order for the sale of the land thus advertised not to be subject to the lien or claim of lien of the state;

**(B)** For every lien or claim of lien of the state so identified, affirmatively state that the notice required by § [67-1-1433\(b\)\(1\)](#) to be given to the state has been timely given; and

**(C)** For every lien or claim of lien of the state so identified, state that the sale of the land thus advertised will be subject to the right of the state to redeem the land as provided for in § [67-1-1433\(c\)\(1\)](#).

**(b)** The deed memorializing the sale shall, in addition to any other requirements as may now or hereafter exist under the laws of the state with respect to the proper form of deeds, in order that they might qualify for recording in the various offices of registers of counties in this state, whenever subsection (a) has required notice to be given to the United States and/or to this state, state that the land described therein is conveyed subject to the rights of the United States to redeem the land as provided for in 26 U.S.C. § 7425(d)(1) and/or is subject to the right of this state to redeem the land as provided for in § [67-1-1433\(c\)\(1\)](#), as appropriate, shall have attached to it, as exhibits, a copy of the notice thus provided to the United States, a copy of the written response of the United States to the notice thus provided, if any, a copy of the notice thus provided to the state, and a copy of the written response of the state to the notice thus provided,

if any, as appropriate.

(c) Nothing in this section shall be construed to require inclusion of a street address if it does not exist or is not in common use. Also, utilization of the street address, if any, which appears in the records of the assessor of property with respect to the property involved shall be conclusively presumed to be in compliance with this section.

(d) For the purposes of this section, “parties interested” includes, without limitation, the record holders of any mortgage, deed of trust, or other lien that will be extinguished or adversely affected by the sale and which mortgage, deed of trust, or lien, or notice or evidence thereof, was recorded more than ten (10) days prior to the first advertisement or notice in the register's office of the county in which the real property is located.

Code 1858, § 2149 (deriv. Acts 1855-1856, ch. 83, § 1); Shan., § 3842; Code 1932, § 7797; Acts 1982, ch. 801, § 1; T.C.A. (orig. ed.), § 35-504; Acts 1992, ch. 621, § 1; 1994, ch. 618, § 1; 1999, ch. 66, § 1.

**Exhibit D**

**Article: Banks want to reduce public notice for foreclosures**

Written by

**Chas Sisk  
The Tennessean**

04/18/2011

Bankers are trying to cut how much public notice is required before they can foreclose on homes, drawing fire from an assortment of activists, lawyers and open-government groups.

The Tennessee Bankers Association is urging state lawmakers to pass a bill that would reduce the amount of public notice legally required before foreclosures. The group argues that the current rule of three ads is excessive and too costly.

But critics ranging from AARP to lawyers involved in foreclosures are opposing the bill. They say the measure removes the few protections for homeowners in Tennessee's relatively simple foreclosures procedures.

"It's almost like you're squeezing the golden goose to death by slimming it down too much," said Steve Baker, a Nashville lawyer who is often hired by banks to serve as a trustee on foreclosures but opposes the bill.

The debate strikes at one of the foundations of Tennessee's foreclosure laws. Tennessee is one of only five states that do not require a court to review or approve a foreclosure sale, treating the matter as a business deal between property owners and banks.

One of Tennessee law's few requirements is that banks have to publish a notice of foreclosure three times in a local newspaper. Banks want to cut detailed information about the property from the listings and reduce the number of times they have to run to just once.

Banks and some state lawmakers say that the advertisements are confusing and rarely read and that they simply add to the cost of foreclosures.

“The only people that are guaranteed to get paid are the newspapers,” said state Rep. Jimmy Matlock, the bill’s main sponsor in the House of Representatives.

But opponents of the bill say the advertising cost is small compared with the sums involved in a mortgage and foreclosure. They argue the requirement is the main way in which the broader community learns a foreclosure will take place, opening new opportunities to save homes from foreclosure and bringing more bidders to the sale if one occurs.

“This is just a good way for communities to keep a watch out,” said Shelley Courington, advocacy director for AARP Tennessee.

The bill is making its way through the legislature after the bursting of the real estate bubble has driven down home prices, creating a rise in foreclosures across the nation and in Tennessee.

Foreclosure activity in Tennessee rose more than 50 percent from 2006 to 2008, and it remains high, according to data from RealtyTracs and Moody’s Analytics.

“I can’t say that (the bill) is precipitated by the rise in foreclosures,” said Tim Amos, the TBA’s senior vice president and general counsel. “But it may have created awareness.”

### **Political momentum**

The bill cleared a House subcommittee Wednesday, the first step toward making its way to the House floor. Eight other House members have signed on as co-sponsors. The group includes House Democratic leader Craig Fitzhugh, a West Tennessee bank executive who serves as the Bankers Association’s President.

In the Senate, the bill is sponsored by state Sen. Jack Johnson, a former banker and chairman of the Senate Commerce Committee. Lt. Gov. Ron Ramsey has expressed limited support for the bill.

Other lawmakers may be sympathetic to the industry. Banks gave more than \$200,000 to Tennessee candidates for the state legislature and governor last year, including \$184,750 that went to 134 candidates through the TBA's political action committee. The contributions were in line with the TBA's donations in previous years.

The contributions went to candidates who the organization believes "will make good public officials and leaders" and would not give the TBA any extra influence in the legislature, Amos said.

"The bottom line is this (bill) saves consumers money," Amos said. "This is the biggest cost that consumers incur other than the cost to catch up on payments."

Bankers and opponents of the bill disagree on who usually pays for the cost of advertising.

Mortgages typically include a clause that requires borrowers to pay for notifications, which can run from several hundred dollars to as much as \$3,000, depending on the length of the ad and the circulation of the newspaper in which they appear, supporters of the bill say.

The cost is supposed to be taken out of any money that is left over after the mortgage and other liens on a property are satisfied. Since homes sold in foreclosure rarely fetch enough to cover these debts, the banks usually wind up covering advertising, Baker said.

"Occasionally there are excess proceeds," he said, "but it's less than one in 100."

## Other requirements

The bill would not shorten the amount of time needed to complete a foreclosure. Although only one notice would be published, banks would still have to wait 21 days before they could complete the process.

Banks also would have to comply with a federal law that requires them to send a certified letter to the borrower before beginning foreclosure procedures. Supporters of the bill say this requirement and other communications give borrowers plenty of notice that they risk losing their property.

“The days of that being the only type of notice of a foreclosure are over now,” Fitzhugh said.

One of the main complaints about Tennessee’s notification requirement is that it is excessive. The newspaper ads typically include lengthy descriptions of the property based on surveyor records.

Ramsey, the top-ranking Republican in the Senate, says he does not favor reducing the number of notices that have to be printed, but he does believe they could be shortened.

Opponents of the bill counter that current law does not require such details; lawyers who draft legal notices have just developed a practice of including them. They say the bill’s solution — to ban long descriptions and require only instructions on how to find the listing in county property records — will leave readers of foreclosure ads with too little information.

“Proper notice is not going to be given when the process of foreclosure used in this state is one in which it is already pretty easy to foreclose,” said Art Powers, president of the Tennessee Press Association and publisher of the *Johnson City Press*.

The bill could ultimately threaten the state’s foreclosure law itself, Baker said.

If Tennesseans conclude they are not being told enough about foreclosures, they could demand courts to take a greater role. That would slow the process and lead to costs far higher than the price of advertising, he said.

“This thing is not broken,” he said. “I think it’s a bad bill for both sides.”

### **Public Reaction posted online**

“Another Legislative shell game to shield unscrupulous bankers from public view...call your legislative reps...before its too late...”

“Banks only want to streamline the process and remove any roadblocks that stand between them and the potential sale of a property. If they can't get to the property faster, they will just stack a few more fees on other services and continue to nickel and dime the rest of us who make our payments on time!”

“I have never understood why banks are required to post a public notice anyway. The plethora of foreclosure notices sent from the bank are not enough to make one aware of the situation? The banks are not at fault in a foreclosure situation. People know if they are current on their mortgage. It takes a long time for a foreclosure to actually happen. The benefit to an ad is that maybe a knight in shining armor will help to save a home, but most likely the neighbors will just have something new to discuss.”

Reply: “It's not to make the owner aware of the foreclosure, it's to make everyone else who may have an interest aware of the foreclosure. I'm referring to people who might be interested in buying the property.”



**Exhibit E**

**Article: TPA's Public Notice Week reached out to readers; 68 newspapers, 47 full pages**

BY GREG SHERRILL

*TPA executive director*

Tennessee Press Association is working to raise awareness about the importance of public notices in our state. In late January, we staged the first "Public Notice Week," during which we asked our member newspapers to run a collection of guest editorials, house ads and editorial cartoons to educate readers about the importance of protecting their right to know.

This is more important this year than ever as we fight an unprecedented number of bills that would remove public notices from print newspapers and instead allow governments to run them on websites. If that were to happen, the notices would be seen by many fewer Tennesseans, and the government would be taking business away from small companies across our state.

I am happy to report that Public Notice Week was a success on multiple fronts.

First of all, a huge thank you to the 68 TPA member newspapers who downloaded the public notice materials from our website and made space available in their publications. They represent 54 percent of our membership, and I hope we can count on many more papers to run the materials over the course of this year. That's right – even if you did not pick up any materials during Public Notice Week, you can still download them free from

[www.tnpress.com/publicnoticeweek.html](http://www.tnpress.com/publicnoticeweek.html) and run them any time. The materials, not dated, are a great way to keep public notice on the minds of readers.

I think the most significant result was that legislators reported hearing from their constituents about the public notice message. Those readers urged them to vote against measures that would take notices out of newspapers and bury them on obscure government websites. One legislator reported getting more than 12 calls about the issue.

Grassroots support from the public is crucial to keeping notices where they belong – in our newspapers, where they are more likely to be noticed! We need to reach out to our readers.

And reach out you did.

Let me share some statistics. I asked our Clipping Bureau to track which newspapers ran the Public Notice Week materials. As I mentioned, 68 TPA member papers contributed more than 9,000 square inches to the effort. That represents more than 47 full pages of content that educated readers about the importance of public notice.

Some papers ran full-page house ads and complemented those with guest editorials on opposing pages.

I'd like to give kudos to the 10 papers that contributed the most space to this important issue:

*The Daily Post-Athenian*, Athens, 630 square inches

*Johnson City Press*, 405 square inches

*Citizen Tribune*, Morristown, 397 square inches

*Tennessee Star Journal*, Pigeon Forge, 378 square inches

*The Dickson Herald*, 340 square inches

*Robertson County Times*, Springfield, 323 square inches

*Hamilton County Herald*, Chattanooga, 315 square inches

*Herald and Tribune*, Jonesborough, 301 square inches

*Shelbyville Times-Gazette*, 299 square inches

*News-Herald*, Lenoir City, 292 square inches

Again, thank you to the publishers and editors at our member newspapers for making Public Notice Week such a success. Next year, we hope to expand the materials we offer and get more newspapers involved in protecting the public's right to know.

Because if newspapers don't act as a watchdog and report what our government is doing and spending, who will?

**Exhibit F**

**Article: Fight government secrecy; preserve our basic rights**

BY DWIGHT LEWIS

AND MARK SILVERMAN

*The Tennessean, Nashville*

Today begins Sunshine Week — the annual national celebration of open government in the United States. But this year, that celebration takes on a somber tone as new efforts by lawmakers and others threaten to rob you of your rights.

Indeed, the fundamental American rights to open government and access to information about what government officials and workers are doing are under siege, especially in Tennessee.

The battle rages over your right to know when government bodies meet and what they will discuss; over full disclosure of deals made by government employees, often involving your tax dollars; and over full access to information that has a direct bearing on your life and on the affairs of your city, state and country.

Many of your Tennessee lawmakers are callously working to deprive you of those rights and hide their business behind a curtain of secrecy. Don't let them do it.

Recently came the news that some Memphis legislators are pushing a bill in the General Assembly to allow local governments to keep many of their negotiations and deals with developers secret for up to five years.

Why? They claim openness might hurt efforts to attract businesses with sweet tax breaks and other benefits. But that's your money on the table.

Wouldn't you like to know your true cost of luring development?

"Every year some governmental agency, and some years the same agency, comes and asks to close their records for reasons they see as very relevant," Sen. Jim Kyle of Memphis said Thursday. "We listen and sometimes we say yes, and sometimes we say no."

Kyle wants to take a strong step toward openness. He says he will propose that the General Assembly be subject to the same rules as city and county governments.

That just seems fair, doesn't it?

That Memphis attempt is just the tip of the iceberg.

Consider:

Bills in both the state Senate and House would hide 911 calls in a cave of secrecy. That means you wouldn't know how police and emergency workers act when they respond to calls. Do you really want to be left in the dark?

And here's something with even more sinister and wide-ranging implications:

A bevy of bills would make it much harder for you to keep track of public meetings and basic records. Rather than requiring public notices to be listed in local newspapers, some lawmakers would remove that requirement and allow notices to be published only on the Internet. By some estimates, that would deny almost a third of the state's residents access to the information.

Information would be posted less frequently and with less detail and for shorter periods of time.

So much for easily discovering where and when your elected officials are meeting and what they discuss and do.

Other proposals would hide some property transactions, declaring them no longer public records and therefore not subject to your inspection.

Yes, newspapers benefit from the requirement that some information be published in print. And yes, all media benefit when they can gain access to information for stories.

But the media help you find out what officials are up to — and you need that information to exercise your democratic rights.

Public records laws allowed The Tennessean to report that former Revenue Commissioner Reagan Farr had been laying the groundwork for a new company involving solar energy that would position him, then-Gov.

Phil Bredesen and the state's top economic development official to profit from an industry they had spent more than two years trying to develop in Tennessee. Isn't that worth knowing?

And a Tennessean analysis of domestic violence complaints last year showed that Nashville police dropped investigations at a rate much higher than that of other police departments. That report was based on public records. Don't you want to know that?

Every attempt to exempt public records from your view, to shield information from scrutiny, to limit your access to even basic public meetings information is a blow to your rights as an American.

Last year, politician after politician campaigned on a pledge to take back a government they claimed had grown out of touch with residents.

Yet many of those same lawmakers would further isolate government from the people — indeed they would place government above the people — by limiting your access to information and truncating your right to know.

Now is the time to say no to these attempts to rob you of your rights.

Tell your lawmakers to back off their attempts to hide in the darkness of secrecy.

(March 13, 2011)

**Exhibit G**

## **Editorial: Stop attack on struggling home buyers**

By NEWS SENTINEL EDITORIAL BOARD

Published Monday, April 11, 2011

A bill in the state Legislature that's backed by the Tennessee Bankers' Association would remove just about all of the few protections for struggling home buyers in Tennessee.

The bill - sponsored by state Sen. Jack Johnson, R-Franklin, and state Rep. Jimmy Matlock, R-Lenoir City - would make it even easier for banks to foreclose on homes throughout the state with little warning.

The bill amounts to an assault on those having the toughest time rebounding from the deepest downturn since the Great Depression.

Tennessee is a "non-judicial-review" state, which means that no court reviews foreclosure proceedings. Only four other states have no judicial oversight.

That means that home buyers who find themselves targeted by banks for foreclosure have only one option if they want to salvage the dream of home ownership - personal bankruptcy. It's probably no coincidence that Tennessee is among the nation's leaders in bankruptcy filings.

Judicial review would be welcome in Tennessee, though even a court's oversight doesn't necessarily protect consumers. Bank of America and other lenders had to halt foreclosures in judicial review states last year because the proceedings were poisoned by an epidemic of improper paperwork.

Of course, banks didn't even have to bother with Tennessee.

All that's required in Tennessee is that a bank or other lender mail a letter to the home buyer and publish three notices in a newspaper of general circulation. Oftentimes, the only way home

buyers find out they and their families face eviction is when a relative, neighbor or friend tells them they saw a notice in the paper. Sometimes they're able to save their property; too often, they can't.

The Matlock-Johnson bill (HB1920 and SB 1299) would reduce the number of published notices to one. The amount of information included in the notice would be limited, and the printing of the property's legal description would be barred. Informational errors wouldn't be penalized - the foreclosure sale would go on without a hitch.

Newspapers stand to lose a little money under the law because they charge for the publication. But the relatively light sting of that revenue loss is nothing compared to the financial wounds inflicted upon home buyers.

The banking industry, it must be noted, bears much of the responsibility for the mortgage crisis that led to the recession. Banks and other lenders convinced too many people to buy mortgages they couldn't afford. Thousands of Tennesseans are now out of work and having difficulties paying their mortgages.

Granting favors to banks seeking to foreclose on those properties is shameful. The foreclosure process is already too easy, and making it even easier would be brutal.

Lawmakers of good will have an opportunity to derail the bill on Wednesday, when the House Judiciary Committee is scheduled to take consider it. Debate has yet to be scheduled in the Senate Judiciary Committee.

Legislators should remember they represent the people of Tennessee, not the Tennessee Bankers' Association, and have a duty to protect the due process rights of struggling home buyers.

**Exhibit H**

## **Article: Foreclosures Cost Lenders, Homeowners, the Community Big Bucks**

By Glenn Setzer, *Mortgage News Daily*

Earlier this month a reader, Pamela Norvell, wrote a suggestion for lessening the foreclosure crisis. She suggested a freeze and/or a rollback of interest rates to their original levels. In making her suggestion Ms. Norvell wondered what it was causing lenders to foreclose on properties rather than do a workout or a restructure. Made us curious too.

The cost of a foreclosure, it turns out, is pretty staggering and we wonder why lenders and the investors they represent aren't jumping at a solution, any solution, that would allow them to avoid going to foreclosure whenever possible.

According the Joint Economic Committee of Congress, the average foreclosure costs \$77,935 while preventing a foreclosure runs \$3,300.

The cost of preventing a foreclosure is not easily categorized. We assume that it includes the staff costs of talking to the borrower, collecting financial documents (a task we have noted seems unreasonably difficult for the borrower) reviewing the documents, ordering and reviewing the appraisal, the cost of that appraisal (more likely to be a less expensive brokers price opinion or BPO) and the preparation of a justification to decision makers for any workout plan.

We have seen figures from non-profits that the cost of averting a foreclosure through the use of credit counseling from a non-profit agency approved by the Department of Housing and Urban Development can range from a bit under \$1,000 to \$14,000 and we don't quite know what to do with that large and disparate range. We do know that counseling programs vary greatly and we assume that those on the high side include programs that provide emergency funds to homeowners to bring loans current while those on the low side are primarily advising and educating their clients.

But the \$77,934 cost to foreclosure figure seems fairly easy to document and, compared to others that are widely bandied about ' from \$58,000 to 30 percent of the pre-foreclosure value of the house ' seems reasonable.

First of all, the cost does not accrue totally to the lender. The homeowner has a typical loss of \$7,200 which includes loss of equity in the property, moving expenses, and perhaps some legal fees.

Those neighbors living in close proximity to the foreclosed house suffer \$1,508 in losses from the decrease in the value of their own home as the neighborhood begins to deteriorate.

The local government loses \$19,227 through diminished taxes and fees and a shrinking tax base as home prices decrease. This is a hard number to justify. First of all, only a portion of the declining tax base is due to foreclosures. A big chunk of it is based on falling prices community wide. And we'll bet that even as we talk about it local governments are busy adjusting assessments and mill-levies to keep total revenues close to pre-housing crisis levels. This means that the neighbor's share of the costs should be higher as they absorb increased tax levels.

Also, while the cities and towns are permanently losing some income from fees such as trash pick-up and water and sewer charges, if and when the house is sold they will collect back property taxes or, if they remain unpaid, they will become the owners of the property through tax title. (That opens a whole new area of concern, but one for discussion on a different day.)

That leaves us with total costs of \$50,000 for the lender under the numbers produced by the Joint Economic Committee of Congress. The Committee does not break out these figures but a new study from Standard & Poor's (S&P) does. While there is not a total match between the two sets of data, they are close enough.

The Committee includes the following in its list of pre-and post-foreclosure expenses:

Loss on property/loan

Property maintenance

Appraisal

Legal fees

Lost revenue

Insurance

Marketing

Clean-up

And S&P breaks them down as follows:

The largest component of the \$50,000 is cash loss on the property. S&P pegs this number at \$40,000 for a typical loan of \$210,000. Investors who buy short sales tell us that the big lenders are unwilling to sell property or take payoffs for more than a 15 to 20 percent discount so these numbers are closely in sync. S&P however includes only the actual decline in property values in that 19 percent loss figure.

S&P assigns a staggering 26 percent of the loan amount for the costs of foreclosure. This category wraps up the remainder of the list above and include paying property taxes (3 percent, although many ignore this obligation, hoping to pass accrued taxes on to the eventual buyer), maintaining hazard insurance, legal fees (1 percent), an appraisal (although most lenders are choosing the far less expensive alternative of a brokers price opinion or windshield appraisal,) lost revenue (an estimated 13.6 percent of the loan amount) 6 percent marketing fees (broker's commission) and 3 percent spent on home maintenance.

There is a figure that is usually not taken into account ' cash reserves. Bank regulations require that lenders put aside a percentage of their capital to cover potential losses. That amount,

whether \$100,000 or \$500,000 is that much less that the bank has to loan to others and means more lost revenue.

It is obvious that no one is a winner in the foreclosure game. But we wonder if lenders and their real estate agents are not exacerbating the situation for all involved through their property management and marketing policies. A look at that later in the week.