

Article 2A.  
Sales under Power of Sale.  
Part 1. General Provisions.

**§ 45-21.1. Definitions; construction.**

(a) The following definitions apply in this Article:

- (1) "Resale" means a resale of real property or a resale of any leasehold interest created by a lease of real property held pursuant to G.S. 45-21.30.
- (2) "Sale" means a sale of real property or a sale of any leasehold interest created by a lease of real property pursuant to (i) an express power of sale contained in a mortgage, deed of trust, leasehold mortgage, or leasehold deed of trust or (ii) a "power of sale", under this Article, authorized by other statutory provisions.

(b) The following constructions apply in this Article:

- (1) The terms "mortgage" or "deed of trust" include leasehold mortgages or leasehold deeds of trust.
- (2) The terms "mortgagee" or "trustee" include any person or entity exercising a power of sale pursuant to this Article.
- (3) The terms "real property" or "property" include any leasehold interest created by a lease of real property. (1949, c. 720, s. 1; 1967, c. 562, s. 2; 1991, c. 255; 1993, c. 305, s. 1.)

**§ 45-21.2. Article not applicable to foreclosure by court action.**

This Article does not affect any right to foreclosure by action in court, and is not applicable to any such action. (1949, c. 720, s. 1.)

**§ 45-21.3. Repealed by Session Laws 1993, c. 305, s. 2.**

**§ 45-21.4. Place of sale of real property.**

(a) Every sale of real property shall be held in the county where the property is situated unless the property consists of a single tract situated in two or more counties.

(b) A sale of a single tract of real property situated in two or more counties may be held in any one of the counties in which any part of the tract is situated. As used in this section, a "single tract" means any tract which has a continuous boundary, regardless of whether parts thereof may have been acquired at different times or from different persons, or whether it may have been subdivided into other units or lots, or whether it is sold as a whole or in parts.

(c) When a mortgage or deed of trust with power of sale of real property designates the place of sale within the county, the sale shall be held at the place so designated.

(d) When a mortgage or deed of trust with power of sale of real property confers upon the mortgagee or trustee the right to designate the place of sale, the sale shall be held at the place designated by the notice of sale, which place shall be either on the premises to be sold or as follows:

- (1) Property situated wholly within a single county shall be sold at the courthouse door of the county in which the land is situated.
- (2) A single tract of property situated in two or more counties may be sold at the courthouse door of any one of the counties in which some part of the real property is situated.

(e) When a mortgage or deed of trust with power of sale of real property does not designate, or confer upon the mortgagee or trustee the right to designate, the place of sale, or when it designates as the place of sale some county in which no part of the property is situated, such real property shall be sold as follows:

- 1 (1) Property situated wholly within a single county shall be sold at the  
2 courthouse door of the county in which the land is situated.  
3 (2) A single tract of property situated in two or more counties may be sold at the  
4 courthouse door of any one of the counties in which some part of the real  
5 property is situated. (1949, c. 720, s. 1; 1975, c. 57, s. 1.)  
6

7 **§§ 45-21.5 through 45-21.6. Repealed by Session Laws 1967, c. 562, s. 2.**  
8

9 **§ 45-21.7. Sale of separate tracts in different counties.**

10 (a) When the property to be sold consists of separate tracts of real property situated in  
11 different counties, there shall be a separate advertisement, sale and report of sale of the  
12 property in each county. The report of sale for the property in any one county shall be filed  
13 with the clerk of the superior court of the county in which such property is situated. The sale of  
14 each such tract shall be subject to separate upset bids. The clerk of the superior court of the  
15 county where the property is situated has jurisdiction with respect to upset bids of property  
16 situated within his county. To the extent the clerk deems necessary, the sale of each separate  
17 tract within his county, with respect to which an upset bid is received, shall be treated as a  
18 separate sale for the purpose of determining the procedure applicable thereto.

19 (b) The exercise of the power of sale with respect to a separate tract of property in one  
20 county does not extinguish or otherwise affect the right to exercise the power of sale with  
21 respect to tracts of property in another county to satisfy the obligation secured by the mortgage  
22 or deed of trust. (1949, c. 720, s. 1; 1993, c. 305, s. 3.)  
23

24 **§ 45-21.8. Sale as a whole or in parts.**

25 (a) When the instrument pursuant to which a sale is to be held contains provisions with  
26 respect to whether the property therein described is to be sold as a whole or in parts, the terms  
27 of the instrument shall be complied with.

28 (b) When the instrument contains no provisions with respect to whether the property  
29 therein described is to be sold as a whole or in parts, the person exercising the power of sale  
30 may, in his discretion, subject to the provisions of G.S. 45-21.9, sell the property as a whole or  
31 in such parts or parcels thereof as are separately described in the instrument, or he may offer  
32 the property for sale by each method and sell the property by the method which produces the  
33 highest price.

34 (b1) When real property is sold in parts, the sale of any such part is subject to a separate  
35 upset bid; and, to the extent the clerk of superior court having jurisdiction deems advisable, the  
36 sale of each such part shall thereafter be treated as a separate sale for the purpose of  
37 determining the procedure applicable thereto.

38 (c) This section does not affect the equitable principle of marshaling assets. (1949, c.  
39 720, s. 1; 1993, c. 305, s. 4.)  
40

41 **§ 45-21.9. Amount to be sold when property sold in parts; sale of remainder if necessary.**

42 (a) When a person exercising a power of sale sells property in parts pursuant to G.S.  
43 45-21.8 he shall sell as many of such separately described units and parcels as in his judgment  
44 seems necessary to satisfy the obligation secured by the instrument pursuant to which the sale  
45 is being made, and the costs and expenses of the sale.

46 (b) If the proceeds of a sale of only a part of the property are insufficient to satisfy the  
47 obligation secured by the instrument pursuant to which the sale is made and the costs and  
48 expenses of the sale, the person authorized to exercise the power of sale may readvertise the  
49 unsold property and may sell as many additional units or parcels thereof as in his judgment  
50 seems necessary to satisfy the remainder of the secured obligation and the costs and expenses  
51 of the sale. As to any such sale, it shall not be necessary to comply with the provisions of G.S.

1 45-21.16 but the requirements of G.S. 45-21.17 relating to notices of sale shall be complied  
2 with.

3 (c) When the entire obligation has been satisfied by a sale of only a part of the property  
4 with respect to which a power of sale exists, the lien on the part of the property not so sold is  
5 discharged.

6 (d) The fact that more property is sold than is necessary to satisfy the obligation secured  
7 by the instrument pursuant to which the power of sale is exercised does not affect the validity  
8 of the title of any purchaser of property at any such sale. (1949, c. 720, s. 1; 1975, c. 492, s.  
9 15.)

10  
11 **§ 45-21.9A. Simultaneous foreclosure of two or more instruments.**

12 When two or more mortgages or deeds of trust held by the same person are secured in  
13 whole or in part by the same property, and there are no intervening liens, except for ad valorem  
14 taxes, between such mortgages or deeds of trust, the obligations secured by such mortgages or  
15 deeds of trust may be combined and the property sold once to satisfy the combined obligations  
16 if (i) powers of sale are provided in all such instruments; (ii) there is no provision in any such  
17 instrument which would not permit such a procedure; (iii) all the terms of all such instruments  
18 requiring compliance by the lender in connection with foreclosure sales are complied with; and  
19 (iv) all requirements of this Chapter governing power of sale foreclosures are met with respect  
20 to all such instruments. The proceeds of any sale shall be applied as provided in this Chapter.  
21 As between the combined obligations being foreclosed, proceeds shall be applied in the order  
22 of priority of the instruments securing them, and any deficiencies shall be determined  
23 accordingly. (1985, c. 515, s. 1; 1993, c. 305, s. 5.)

24  
25 **§ 45-21.10. Requirement of cash deposit at sale.**

26 (a) If a mortgage or deed of trust contains provisions with respect to a cash deposit at  
27 the sale, the terms of the instrument shall be complied with.

28 (b) If the instrument contains no provision with respect to a cash deposit at the sale, the  
29 mortgagee or trustee may require the highest bidder immediately to make a cash deposit not to  
30 exceed the greater of five percent (5%) of the amount of the bid or seven hundred fifty dollars  
31 (\$750.00).

32 (c) If the highest bidder fails to make the required deposit, the person holding the sale  
33 may at the same time and place immediately reoffer the property for sale. (1949, c. 720, s. 1;  
34 1993, c. 305, s. 6.)

35  
36 **§ 45-21.11. Application of statute of limitations to serial notes.**

37 When a series of notes maturing at different times is secured by a mortgage or deed of trust  
38 and the exercise of the power of sale for the satisfaction of one or more of the notes is barred by  
39 the statute of limitations, that fact does not bar the exercise of the power of sale for the  
40 satisfaction of indebtedness represented by other notes of the series not so barred. (1949, c.  
41 720, s. 1; 1967, c. 562, s. 2.)

42  
43 **§ 45-21.12. Power of sale barred when foreclosure barred.**

44 (a) Except as provided in subsection (b), no person shall exercise any power of sale  
45 contained in any mortgage or deed of trust, or provided by statute, when an action to foreclose  
46 the mortgage or deed of trust, is barred by the statute of limitations.

47 (b) If a sale pursuant to a power of sale contained in a mortgage or deed of trust, or  
48 provided by statute, is commenced within the time allowed by the statute of limitations to  
49 foreclose such mortgage or deed of trust, the sale may be completed although such completion  
50 is effected after the time when commencement of an action to foreclose would be barred by the  
51 statute. For the purpose of this section, a sale is commenced when the notice of hearing or the

1 notice of sale is first filed, given, served, posted, or published, whichever occurs first, as  
2 provided by this Article or by the terms of the instrument pursuant to which the power of sale is  
3 being exercised. (1949, c. 720, s. 1; 1967, c. 562, s. 2; 1969, c. 984, s. 1; 1977, c. 359, s. 1.)  
4

5 **§ 45-21.12A. Power of sale barred during periods of military service.**

6 (a) Power of Sale Barred. – A mortgagee, trustee, or other creditor shall not exercise a  
7 power of sale contained in a mortgage or deed of trust, or provided by statute, during, or within  
8 90 days after, a mortgagor's, trustor's, or debtor's period of military service. The clerk of court  
9 shall not conduct a hearing pursuant to G.S. 45-21.16(d) unless the mortgagee, trustee or other  
10 creditor seeking to exercise a power of sale under a mortgage or deed of trust, or provided by  
11 statute, files with the clerk a certification that the hearing will take place at a time that is not  
12 during, or within 90 days after, a period of military service for the mortgagor, trustor or debtor.  
13 This subsection applies only to mortgages and deeds of trust that originated before the  
14 mortgagor's or trustor's period of military service.

15 (b) Waiver. – This section shall not apply if the mortgagor, trustor, or debtor waives his  
16 or her rights under this section pursuant to a written agreement of the parties executed during or  
17 after the mortgagor's, trustor's, or debtor's period of military service, as an instrument separate  
18 from the obligation or liability to which the waiver applies. Any waiver in writing of a right or  
19 protection provided by this section must be in at least 12 point type and shall specify the legal  
20 instrument creating the obligation or liability to which the waiver applies.

21 (c) Purpose. – The purpose of this section is to supplement and complement the  
22 provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501, et seq., and to afford  
23 greater peace and security for persons in federal active duty.

24 (d) Definitions. – The following definitions apply in this section:

25 (1) Military service. –

26 a. In the case of a member of the United States Army, Navy, Air Force,  
27 Marine Corps, or Coast Guard:

28 1. Active duty, as defined in 10 U.S.C. § 101(d)(1), and

29 2. In the case of a member of the National Guard, includes  
30 service under a call to active service authorized by the  
31 President or the Secretary of Defense for a period of more  
32 than 30 consecutive days under 32 U.S.C. § 502(f), for  
33 purposes of responding to a national emergency declared by  
34 the President and supported by federal funds.

35 b. In the case of a servicemember who is a commissioned officer of the  
36 Public Health Service or the National Oceanic and Atmospheric  
37 Administration, active service, and

38 c. Any period during which a servicemember is absent from duty on  
39 account of sickness, wounds, leave, or other lawful cause.

40 (2) Period of military service. – The period beginning on the date on which a  
41 servicemember enters military service and ending on the date on which the  
42 servicemember is released from military service or dies while in military  
43 service.

44 (3) Servicemember. – A member of the United States Army, Navy, Air Force,  
45 Marine Corps, Coast Guard, the commissioned corps of the National  
46 Oceanic and Atmospheric Administration, or the commissioned corps of the  
47 Public Health Service. (2010-190, s. 1; 2011-183, s. 127(b).)  
48

49 **§ 45-21.13. Repealed by Session Laws 1967, c. 562, s. 2.**

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51 **§ 45-21.14. Clerk's authority to compel report or accounting; contempt proceeding.**

1 Whenever any person fails to file any report or account, as provided by this Article, or files  
2 an incorrect or incomplete report or account, the clerk of the superior court having jurisdiction  
3 on his own motion or the motion of any interested party, may issue an order directing such  
4 person to file a correct and complete report or account within 20 days after service of the order  
5 on him. If such person fails to comply with the order, the clerk may issue an attachment against  
6 him for contempt, and may commit him to jail until he files such correct and complete report or  
7 account. (1949, c. 720, s. 1.)

8  
9 **§ 45-21.15. Trustee's fees.**

10 (a) When a sale has been held, the trustee is entitled to such compensation, if any, as is  
11 stipulated in the instrument.

12 (b) When no sale has actually been held, compensation for a trustee's services is  
13 determined as follows:

14 (1) If no compensation for the trustee's services in holding a sale is provided  
15 for in the instrument, the trustee is not entitled to any compensation;

16 (2) If compensation is specifically provided for the trustee's services when  
17 no sale is actually held, the trustee is entitled to such compensation;

18 (3) If the instrument provides for compensation for the trustee's services in  
19 actually holding a sale, but does not provide compensation for the trustee's  
20 services when no sale is actually held, the trustee is entitled to compensation  
21 as follows: (i) one-fourth of the completed sale compensation before the  
22 trustee files the notice of hearing; (ii) one-half after the filing of the notice of  
23 hearing; and (iii) three-fourths after the hearing.

24 (4) Repealed by Session Laws 1993, c. 305, s. 7. (1949, c. 720, s. 1; 1993, c.  
25 305, s. 7.)

26  
27 **§ 45-21.16. Notice and hearing.**

28 (a) The mortgagee or trustee granted a power of sale under a mortgage or deed of trust  
29 who seeks to exercise such power of sale shall file with the clerk of court a notice of hearing in  
30 accordance with the terms of this section. After the notice of hearing is filed, the notice of  
31 hearing shall be served upon each party entitled to notice under this section. The notice shall  
32 specify a time and place for the hearing before the clerk of court and shall be served not less  
33 than 10 days prior to the date of such hearing. The notice shall be served and proof of service  
34 shall be made in any manner provided by the Rules of Civil Procedure for service of summons,  
35 including service by registered mail or certified mail, return receipt requested. However, in  
36 those instances that publication would be authorized, service may be made by posting a notice  
37 in a conspicuous place and manner upon the property not less than 20 days prior to the date of  
38 the hearing, and if service upon a party cannot be effected after a reasonable and diligent effort  
39 in a manner authorized above, notice to such party may be given by posting the notice in a  
40 conspicuous place and manner upon the property not less than 20 days prior to the date of  
41 hearing. Service by posting may run concurrently with any other effort to effect service. The  
42 notice shall be posted by the sheriff. In the event that the service is obtained by posting, an  
43 affidavit shall be filed with the clerk of court showing the circumstances warranting the use of  
44 service by posting.

45 If any party is not served or is not timely served prior to the date of the hearing, the clerk  
46 shall order the hearing continued to a date and time certain, not less than 10 days from the date  
47 scheduled for the original hearing. All notices already timely served remain effective. The  
48 mortgagee or trustee shall satisfy the notice requirement of this section with respect to those  
49 parties not served or not timely served with respect to the original hearing. Any party timely  
50 served, who has not received actual notice of the date to which the hearing has been continued,  
51 shall be sent the order of continuance by first-class mail at his last known address.

1 (b) Notice of hearing shall be served in a manner authorized in subsection (a) upon:

2 (1) Any person to whom the security interest instrument itself directs notice to  
3 be sent in case of default.

4 (2) Any person obligated to repay the indebtedness against whom the holder  
5 thereof intends to assert liability therefor, and any such person not notified  
6 shall not be liable for any deficiency remaining after the sale.

7 (3) Every record owner of the real estate whose interest is of record in the  
8 county where the real property is located at the time the notice of hearing is  
9 filed in that county. The term "record owner" means any person owning a  
10 present or future interest in the real property, which interest is of record at  
11 the time that the notice of hearing is filed and would be affected by the  
12 foreclosure proceeding, but does not mean or include the trustee in a deed of  
13 trust or the owner or holder of a mortgage, deed of trust, judgment,  
14 mechanic's or materialman's lien, or other lien or security interest in the real  
15 property. Tenants in possession under unrecorded leases or rental  
16 agreements shall not be considered record owners.

17 (c) Notice shall be in writing and shall state in a manner reasonably calculated to make  
18 the party entitled to notice aware of the following:

19 (1) The particular real estate security interest being foreclosed, with such a  
20 description as is necessary to identify the real property, including the date,  
21 original amount, original holder, and book and page of the security  
22 instrument.

23 (2) The name and address of the holder of the security instrument at the time  
24 that the notice of hearing is filed.

25 (3) The nature of the default claimed.

26 (4) The fact, if such be the case, that the secured creditor has accelerated the  
27 maturity of the debt.

28 (5) Any right of the debtor to pay the indebtedness or cure the default if such is  
29 permitted.

30 (5a) The holder has confirmed in writing to the person giving the notice, or if the  
31 holder is giving the notice, the holder shall confirm in the notice, that, within  
32 30 days of the date of the notice, the debtor was sent by first-class mail at the  
33 debtor's last known address a detailed written statement of the amount of  
34 principal, interest, and any other fees, expenses, and disbursements that the  
35 holder in good faith is claiming to be due as of the date of the written  
36 statement, together with a daily interest charge based on the contract rate as  
37 of the date of the written statement. Nothing herein is intended to authorize  
38 any fees, charges, or methods of charging interest which is not otherwise  
39 permitted under contract between the parties and other applicable law.

40 (5b) To the knowledge of the holder, or the servicer acting on the holder's behalf,  
41 whether in the two years preceding the date of the statement any requests for  
42 information have been made by the borrower to the servicer pursuant to G.S.  
43 45-93 and, if so, whether such requests have been complied with. If the time  
44 limits set forth in G.S. 45-93 for complying with any such requests for  
45 information have not yet expired as of the date of the notice, the notice shall  
46 so state. If the holder is not giving the notice, the holder shall confirm in  
47 writing to the person giving the notice the information required by this  
48 subsection to be stated in the notice.

49 (6) Repealed by Session Laws 1977, c. 359, s. 7.

50 (7) The right of the debtor (or other party served) to appear before the clerk of  
51 court at a time and on a date specified, at which appearance he shall be

1                   afforded the opportunity to show cause as to why the foreclosure should not  
2 be allowed to be held. The notice shall contain all of the following:

- 3           a.       A statement that if the debtor does not intend to contest the creditor's  
4                   allegations of default, the debtor does not have to appear at the  
5                   hearing and that the debtor's failure to attend the hearing will not  
6                   affect the debtor's right to pay the indebtedness and thereby prevent  
7                   the proposed sale, or to attend the actual sale, should the debtor elect  
8                   to do so.
- 9           b.       A statement that the trustee, or substitute trustee, is a neutral party  
10                   and, while holding that position in the foreclosure proceeding, may  
11                   not advocate for the secured creditor or for the debtor in the  
12                   foreclosure proceeding.
- 13           c.       A statement that the debtor has the right to apply to a judge of the  
14                   superior court pursuant to G.S. 45-21.34 to enjoin the sale, upon any  
15                   legal or equitable ground that the court may deem sufficient prior to  
16                   the time that the rights of the parties to the sale or resale become  
17                   fixed, provided that the debtor complies with the requirements of  
18                   G.S. 45-21.34.
- 19           d.       A statement that the debtor has the right to appear at the hearing and  
20                   contest the evidence that the clerk is to consider under G.S.  
21                   45-21.16(d), and that to authorize the foreclosure the clerk must find  
22                   the existence of: (i) valid debt of which the party seeking to foreclose  
23                   is the holder, (ii) default, (iii) right to foreclose under the instrument,  
24                   and (iv) notice to those entitled to notice.
- 25           e.       A statement that if the debtor fails to appear at the hearing, the  
26                   trustee will ask the clerk for an order to sell the real property being  
27                   foreclosed.
- 28           f.       A statement that the debtor has the right to seek the advice of an  
29                   attorney and that free legal services may be available to the debtor by  
30                   contacting Legal Aid of North Carolina or other legal services  
31                   organizations.

32           (8)       That if the foreclosure sale is consummated, the purchaser will be entitled to  
33                   possession of the real estate as of the date of delivery of his deed, and that  
34                   the debtor, if still in possession, can then be evicted.

35           (8a)      The name, address, and telephone number of the trustee or mortgagee.

36           (9)       That the debtor should keep the trustee or mortgagee notified in writing of  
37                   his address so that he can be mailed copies of the notice of foreclosure  
38                   setting forth the terms under which the sale will be held, and notice of any  
39                   postponements or resales.

40           (10)     If the notice of hearing is intended to serve also as a notice of sale, such  
41                   additional information as is set forth in G.S. 45-21.16A.

42           (11)     That the hearing may be held on a date later than that stated in the notice and  
43                   that the party will be notified of any change in the hearing date.

44           (12)     That if the debtor is currently on military duty the foreclosure may be  
45                   prohibited by G.S. 45-21.12A.

46           (c1)     The person giving the notice of hearing, if other than the holder, may rely on the  
47                   written confirmation received from the holder under subdivisions (c)(5a) and (c)(5b) of this  
48                   section and is not liable for inaccuracies in the written confirmation.

49           (c2)     **(Expires May 31, 2013)** In any foreclosure filed on or after November 1, 2010,  
50                   where the underlying mortgage debt is a home loan as defined in G.S. 45-101(1b), the notice  
51                   required by subsection (b) of this section shall contain a certification by the filing party that the

1 pre-foreclosure notice and information required by G.S. 45-102 and G.S. 45-103 were provided  
2 in all material respects and that the periods of time established by Article 11 of this Chapter  
3 have elapsed.

4 (d) **(Effective until May 31, 2013)** The hearing provided by this section shall be held  
5 before the clerk of court in the county where the land, or any portion thereof, is situated. In the  
6 event that the property to be sold consists of separate tracts situated in different counties or a  
7 single tract in more than one county, only one hearing shall be necessary. However, prior to  
8 that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where  
9 any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the  
10 evidence of the parties and may consider, in addition to other forms of evidence required or  
11 permitted by law, affidavits and certified copies of documents. If the clerk finds the existence  
12 of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to  
13 foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), (v)  
14 that the underlying mortgage debt is not a home loan as defined in G.S. 45-101(1b), or if the  
15 loan is a home loan under G.S. 45-101(1b), that the pre-foreclosure notice under G.S. 45-102  
16 was provided in all material respects, and that the periods of time established by Article 11 of  
17 this Chapter have elapsed, and (vi) that the sale is not barred by G.S. 45-21.12A, then the clerk  
18 shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or  
19 trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A  
20 certified copy of any authorization or order by the clerk shall be filed in any other county where  
21 any portion of the property to be sold is located before the mortgagee or trustee may proceed to  
22 advertise and sell any property located in that county. In the event that sales are to be held in  
23 more than one county, the provisions of G.S. 45-21.7 apply.

24 (d) **(Effective May 31, 2013)** The hearing provided by this section shall be held before  
25 the clerk of court in the county where the land, or any portion thereof, is situated. In the event  
26 that the property to be sold consists of separate tracts situated in different counties or a single  
27 tract in more than one county, only one hearing shall be necessary. However, prior to that  
28 hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any  
29 portion of the property to be sold is located. Upon such hearing, the clerk shall consider the  
30 evidence of the parties and may consider, in addition to other forms of evidence required or  
31 permitted by law, affidavits and certified copies of documents. If the clerk finds the existence  
32 of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to  
33 foreclose under the instrument, and (iv) notice to those entitled to such under subsection (b),  
34 and (v) that the sale is not barred by G.S. 45-21.12A, and (vi) that the sale is not barred by G.S.  
35 45-21.12A, then the clerk shall authorize the mortgagee or trustee to proceed under the  
36 instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the  
37 provisions of this Article. A certified copy of any authorization or order by the clerk shall be  
38 filed in any other county where any portion of the property to be sold is located before the  
39 mortgagee or trustee may proceed to advertise and sell any property located in that county. In  
40 the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7  
41 apply.

42 (d1) The act of the clerk in so finding or refusing to so find is a judicial act and may be  
43 appealed to the judge of the district or superior court having jurisdiction at any time within 10  
44 days after said act. Appeals from said act of the clerk shall be heard de novo. If an appeal is  
45 taken from the clerk's findings, the appealing party shall post a bond with sufficient surety as  
46 the clerk deems adequate to protect the opposing party from any probable loss by reason of  
47 appeal; and upon posting of the bond the clerk shall stay the foreclosure pending appeal. If the  
48 appealing party owns and occupies the property to be sold as his or her principal residence, the  
49 clerk shall require a bond in the amount of one percent (1%) of the principal balance due on the  
50 note or debt instrument, provided that the clerk, in the clerk's discretion, may require a lesser  
51 amount in cases of undue hardship or for other good cause shown; and further provided that the

1 clerk, in the clerk's discretion, may require a higher bond if there is a likelihood of waste or  
2 damage to the property during the pendency of the appeal or for other good cause shown.

3 (e) In the event of an appeal, either party may demand that the matter be heard at the  
4 next succeeding term of the court to which the appeal is taken which convenes 10 or more days  
5 after the hearing before the clerk, and such hearing shall take precedence over the trial of other  
6 cases except cases of exceptions to homesteads and appeals in summary ejectment actions,  
7 provided the presiding judge may in his discretion postpone such hearing if the rights of the  
8 parties or the public in any other pending case require that such case be heard first. In those  
9 counties where no session of court is scheduled within 30 days from the date of hearing before  
10 the clerk, either party may petition any regular or special superior court judge resident in a  
11 district or assigned to hold courts in a district where any part of the real estate is located, or the  
12 chief district judge of a district where any part of the real estate is located, who shall be  
13 authorized to hear the appeal. A certified copy of any order entered as a result of the appeal  
14 shall be filed in all counties where the notice of hearing has been filed.

15 (f) Waiver of the right to notice and hearing provided herein shall not be permitted  
16 except as set forth herein. In any case in which the original principal amount of indebtedness  
17 secured was one hundred thousand dollars (\$100,000), or more, any person entitled to notice  
18 and hearing may waive after default the right to notice and hearing by written instrument  
19 signed and duly acknowledged by such party. In all other cases, at any time subsequent to  
20 service of the notice of hearing provided above, the clerk, upon the request of the mortgagee or  
21 trustee, shall mail to all other parties entitled to notice of such hearing a form by which such  
22 parties may waive their rights to the hearing. Upon the return of the forms to the clerk bearing  
23 the signatures of each such party and that of a witness to each such party's signature (which  
24 witness shall not be an agent or employee of the mortgagee or trustee), the clerk in his  
25 discretion may dispense with the necessity of a hearing and proceed to issue the order  
26 authorizing sale as set forth above.

27 (g) Any notice, order, or other papers required by this Article to be filed in the office of  
28 the clerk of superior court shall be filed in the same manner as a special proceeding. (1975, c.  
29 492, s. 2; 1977, c. 359, ss. 2-10; 1983, c. 335, s. 1; 1983 (Reg. Sess., 1984), c. 1108, ss. 1, 2;  
30 1993, c. 305, s. 8; 1995, c. 509, s. 135.1(g); 1999-137, ss. 1, 2; 2007-351, s. 4; 2008-226, ss. 2,  
31 3; 2009-573, s. 2; 2010-168, ss. 2, 3, 9; 2010-190, ss. 2, 3.)  
32

### 33 **§ 45-21.16A. Contents of notice of sale.**

34 (a) Except as provided in subsection (b) of this section, the notice of sale shall include  
35 all of the following:

- 36 (1) Describe the instrument pursuant to which the sale is held, by identifying the  
37 original mortgagors and recording data. If the record owner is different from  
38 the original mortgagors, the notice shall also list the record owner of the  
39 property, as reflected on the records of the register of deeds not more than 10  
40 days prior to posting the notice. The notice may also reflect the owner not  
41 reflected on the records if known.
- 42 (2) Designate the date, hour and place of sale consistent with the provisions of  
43 the instrument and this Article.
- 44 (3) Describe the real property to be sold in a manner that is reasonably  
45 calculated to inform the public as to what is being sold. The description may  
46 be in general terms and may incorporate by reference the description used in  
47 the instrument containing the power of sale. Any property described in the  
48 instrument containing the power of sale which is not being offered for sale  
49 should also be described in a manner to enable prospective purchasers to  
50 determine what is and what is not being offered for sale.
- 51 (4) Repealed by Session Laws 1967, c. 562, s. 2.

- 1 (5) State the terms of the sale provided for by the instrument pursuant to which  
2 the sale is held, including the amount of the cash deposit, if any, to be made  
3 by the highest bidder at the sale.
- 4 (6) Include any other provisions required by the instrument to be included.
- 5 (7) State that the property will be sold subject to taxes and special assessments if  
6 it is to be so sold.
- 7 (8) State whether the property is being sold subject to or together with any  
8 subordinate rights or interests provided those rights and interests are  
9 sufficiently identified.

10 (b) In addition to the requirements contained in subsection (a) of this section, the notice  
11 of sale of residential real property with less than 15 rental units shall also state all of the  
12 following:

- 13 (1) That an order for possession of the property may be issued pursuant to G.S.  
14 45-21.29 in favor of the purchaser and against the party or parties in  
15 possession by the clerk of superior court of the county in which the property  
16 is sold.
- 17 (2) Any person who occupies the property pursuant to a rental agreement  
18 entered into or renewed on or after October 1, 2007, may, after receiving the  
19 notice of sale, terminate the rental agreement upon 10 days' written notice to  
20 the landlord. The notice shall also state that upon termination of a rental  
21 agreement, the tenant is liable for rent due under the rental agreement  
22 prorated to the effective date of the termination. (1949, c. 720, s. 1; 1951, c.  
23 252, s. 1; 1967, c. 562, s. 2; 1975, c. 492, s. 1; 1987, c. 493; 1993, c. 305, s.  
24 9; 2007-353, s. 1.)  
25

26 **§ 45-21.16B. Suspension of foreclosure proceedings.**

27 (a) The Clerk of Superior Court shall suspend foreclosure proceedings, including any  
28 hearing or order for sale, for 60 days if notified by the Commissioner of Banks as provided in  
29 G.S. 53-243.12(n). During the suspension period, all deadlines under this Article are tolled.

30 (b) When a clerk enters a suspension order pursuant to subsection (a) of this section  
31 prior to a hearing required under G.S. 45-21.16, upon completion of the 60-day suspension  
32 period, the trustee or mortgagee may proceed with the hearing by providing written notice to all  
33 parties of the new hearing date, not less than 10 days prior to the hearing date.

34 (c) When a clerk enters a suspension order pursuant to subsection (a) of this section,  
35 after entry of any authorization by the clerk pursuant to G.S. 45-21.16 and before the expiration  
36 of the 10-day upset bid period, the trustee or mortgagee shall not be required to comply with  
37 the provisions of G.S. 45-21.16, but shall advertise and hold the sale in accordance with G.S.  
38 45-21.16A, 45-21.17, and 45-21.17A. (2008-228, s. 18.)  
39

40 **§ 45-21.16C. Opportunity for parties to resolve foreclosure of owner-occupied residential**  
41 **property.**

42 (a) At the commencement of the hearing, the clerk shall inquire as to whether the  
43 debtor occupies the real property at issue as his or her principal residence. If it appears that the  
44 debtor does currently occupy the property as a principal residence, the clerk shall further  
45 inquire as to the efforts the mortgagee, trustee, or loan servicer has made to communicate with  
46 the debtor and to attempt to resolve the matter voluntarily before the foreclosure proceeding.  
47 The clerk's inquiry shall not be required if the mortgagee or trustee has submitted, at or before  
48 the hearing, an affidavit briefly describing any efforts that have been made to resolve the  
49 default with the debtor and the results of any such efforts.

50 (b) The clerk shall order the hearing continued if the clerk finds that there is good cause  
51 to believe that additional time or additional measures have a reasonable likelihood of resolving

1 the delinquency without foreclosure. In determining whether to continue the hearing, the clerk  
2 may consider (i) whether the mortgagee, trustee, or loan servicer has offered the debtor an  
3 opportunity to resolve the foreclosure through forbearance, loan modification, or other  
4 commonly accepted resolution plan appropriate under the circumstances, (ii) whether the  
5 mortgagee, trustee, or loan servicer has engaged in actual responsive communication with the  
6 debtor, including telephone conferences or in-person meetings with the debtor or other actual  
7 two-party communications, (iii) whether the debtor has indicated that he or she has the intent  
8 and ability to resolve the delinquency by making future payments under a foreclosure  
9 resolution plan, and (iv) whether the initiation or continuance of good faith voluntary resolution  
10 efforts between the parties may resolve the matter without a foreclosure sale. Where good  
11 cause exists to continue the hearing, the clerk shall order the hearing continued to a date and  
12 time certain not more than 60 days from the date scheduled for the original hearing. Nothing in  
13 this part shall limit the authority of the clerk to continue a hearing for other good cause shown.  
14 (2009-573, s. 3.)  
15

16 **§ 45-21.17. Posting and publishing notice of sale of real property.**

17 In addition to complying with such provisions with respect to posting or publishing notice  
18 of sale as are contained in the security instrument,

- 19 (1) Notice of sale of real property shall  
20 a. Be posted, in the area designated by the clerk of superior court for  
21 posting public notices in the county in which the property is situated,  
22 at least 20 days immediately preceding the sale.  
23 b. And in addition thereto,  
24 1. The notice shall be published once a week for at least two  
25 successive weeks in a newspaper published and qualified for  
26 legal advertising in the county in which the property is  
27 situated.  
28 2. If no such newspaper is published in the county, then notice  
29 shall be published once a week for at least two successive  
30 weeks in a newspaper having a general circulation in the  
31 county.  
32 3. In addition to the required newspaper advertisement, the clerk  
33 may in his discretion, on application of any interested party,  
34 authorize such additional advertisement as in the opinion of  
35 the clerk will serve the interest of the parties, and permit the  
36 charges for such further advertisement to be taxed as a part of  
37 the costs of the foreclosure.
- 38 (2) When the notice of sale is published in a newspaper,  
39 a. The period from the date of the first publication to the date of the last  
40 publication, both dates inclusive, shall not be less than seven days,  
41 including Sundays, and  
42 b. The date of the last publication shall be not more than 10 days  
43 preceding the date of the sale.
- 44 (3) When the real property to be sold is situated in more than one county, the  
45 provisions of subdivisions (1) and (2) shall be complied with in each county  
46 in which any part of the property is situated.
- 47 (4) The notice of sale shall be mailed by first-class mail at least 20 days prior to  
48 the date of sale to each party entitled to notice of the hearing provided by  
49 G.S. 45-21.16 whose address is known to the trustee or mortgagee and in  
50 addition shall also be mailed by first-class mail to any party desiring a copy  
51 of the notice of sale who has complied with G.S. 45-21.17A. If the property

1 is residential and contains less than 15 rental units, the notice of sale shall  
2 also be mailed to any person who occupies the property pursuant to a  
3 residential rental agreement by name, if known, at the address of the  
4 property to be sold. If the name of the person who occupies the property is  
5 not known, the notice shall be sent to "occupant" at the address of the  
6 property to be sold. Notice of the hearing required by G.S. 45-21.16 shall be  
7 sufficient to satisfy the requirement of notice under this section provided  
8 such notice contains the information required by G.S. 45-21.16A.

9 (5) Repealed by Session Laws 1993, c. 305, s. 10.

10 (6) Any time periods relating to notice of hearing or notice of sale that are  
11 provided in the security instrument may commence with and run  
12 concurrently with the time periods provided in G.S. 45-21.16, 45-21.17, or  
13 45-21.17A. (1949, c. 720, s. 1; 1965, c. 41; 1967, c. 979, s. 3; 1975, c. 492,  
14 s. 3; 1977, c. 359, ss. 11-14; 1985, c. 567, s. 1; 1993, c. 305, s. 10; 2007-353,  
15 s. 2.)  
16

17 **§ 45-21.17A. Requests for copies of notice.**

18 (a) Any person desiring a copy of any notice of sale may, at any time subsequent to the  
19 recordation of the security instrument and prior to the filing of notice of hearing provided for in  
20 G.S. 45-21.16, cause to be filed for record in the office of the register of deeds of each county  
21 where all or any part of the real property is situated, a duly acknowledged request for a copy of  
22 such notice of sale. This request shall be a separate instrument entitled "Request for Notice"  
23 and shall be signed and acknowledged by the party making the request, shall specify the name  
24 and address of the party to whom the notice is to be mailed, shall identify the deed of trust or  
25 mortgage by stating the names of the parties thereto, the date of recordation, and the book and  
26 page where the same is recorded, and shall be in substantially the following form:

27 "REQUEST FOR NOTICE"

28 In accordance with the provisions of G.S. 45-21.17A, request is hereby made that a copy of  
29 any notice of sale under the deed of trust (mortgage) recorded on \_\_\_\_\_, \_\_\_\_\_, in Book  
30 \_\_\_\_\_, page \_\_\_\_\_, records of \_\_\_\_\_ County, North Carolina, executed by \_\_\_\_\_ as trustor  
31 (mortgagor), in which \_\_\_\_\_ is named as beneficiary (mortgagee), and \_\_\_\_\_ as  
32 trustee, be mailed to \_\_\_\_\_ at the following address: \_\_\_\_\_.

33 Signature: \_\_\_\_\_

34 [Acknowledgement]

35 (b) Register of Deeds' Duties. – Upon the filing for record of such request, the register  
36 of deeds shall index in the general index of grantors the names of the trustors (mortgagors)  
37 recited therein, and the names of the persons requesting copies, with a reference in the index of  
38 the book and page of the recorded security instrument to which the request refers; or upon the  
39 filing for record of such request, the register of deeds may, instead of indexing such request on  
40 the general index of grantors, stamp upon the face of the security instrument referred to in the  
41 request the book and page of each request for notice thereunder.

42 (c) Mailing Notice. – The mortgagee, trustee, or other person authorized to conduct the  
43 sale shall at least 20 days prior to the date of the sale cause to be deposited in the United States  
44 mail an envelope with postage prepaid containing a copy of the notice of sale, addressed to  
45 each person whose name and address are set forth in the Request for Notice, and directed to the  
46 address designated in such request.

47 (d) Effect of Request on Title. – No request for a copy of any notice filed pursuant to  
48 this section nor any statement or allegation in any such request nor any record thereof shall  
49 affect the title to real property, or be deemed notice to any person that the person requesting  
50 copies of notice has any claim or any right, title or interest in, or lien or charge upon, the  
51 property described in the deed of trust or mortgage referred to therein.

1 (e) Evidence of Compliance. – The affidavit of the mortgagee, trustee, or other person  
2 authorized to conduct the sale that copies of the notice of sale have been mailed to all parties  
3 filing requests for the same hereunder shall be deemed prima facie true. If on hearing it is  
4 proven that a party seeking to have the foreclosure sale set aside or seeking damages resulting  
5 from the foreclosure sale was mailed notice in accordance with this section or had actual notice  
6 of the sale before it was held (or if a resale was involved, prior to the date of the last resale),  
7 then the party shall not prevail. Costs, expenses, and reasonable attorneys' fees incurred by the  
8 prevailing party in any action to set aside the foreclosure sale or for damages resulting from the  
9 foreclosure sale shall be allowed as of course to the prevailing party.

10 (f) Action to Set Foreclosure Sale Aside for Failure to Comply. – A person entitled to  
11 notice of sale by virtue of this section shall not bring any action to set the sale aside on grounds  
12 that he was not mailed the notice of sale unless such action is brought prior to the filing of the  
13 final report and account as provided in G.S. 45-21.33, if the property was purchased by  
14 someone other than the secured party; or if brought by the secured party, unless such action is  
15 brought within six months of the date of such filing and prior to the time the secured party sells  
16 the property to a bona fide purchaser for value, if the property was purchased by the secured  
17 party. In either event, the party bringing such an action shall also tender an amount exceeding  
18 the reported sale price or the amount of the secured party's interest in the property, including all  
19 expenses and accrued interest, whichever is greater. Such tender shall be irrevocable pending  
20 final adjudication of the action.

21 (g) Action for Damages from Foreclosure Sale for Failure to Comply. – A person  
22 entitled to notice of sale by virtue of this section shall not bring any action for damages  
23 resulting from the sale on grounds that he was not mailed the notice unless such action is  
24 brought within six months of the date of the filing of the final report and account as provided in  
25 G.S. 45-21.33. The party bringing such an action shall also deposit with the clerk a cash or  
26 surety bond approved by the clerk and in such amount as the clerk deems adequate to secure  
27 the party defending the action for such costs, expenses, and reasonable attorneys' fees to be  
28 incurred in the action. (1993, c. 305, s. 11; 1999-456, s. 59; 2011-246, s. 2.)

29  
30 **§§ 45-21.18 through 45-21.19. Repealed by Session Laws 1967, c. 562, s. 2.**

31  
32 **§ 45-21.20. Satisfaction of debt after publishing or posting notice, but before completion**  
33 **of sale.**

34 A power of sale is terminated if, prior to the time fixed for a sale, or prior to the expiration  
35 of the time for submitting any upset bid after a sale or resale has been held, payment is made or  
36 tendered of –

- 37 (1) The obligation secured by the mortgage or deed of trust, and  
38 (2) The expenses incurred with respect to the sale or proposed sale, which in the  
39 case of a deed of trust also include compensation for the trustee's services  
40 under the conditions set forth in G.S. 45-21.15. (1949, c. 720, s. 1; 1967, c.  
41 562, s. 2.)  
42

43 **§ 45-21.21. Postponement of sale.**

44 (a) Any person exercising a power of sale may postpone the sale to a day certain not  
45 later than 90 days, exclusive of Sunday, after the original date for the sale –

- 46 (1) When there are no bidders, or  
47 (2) When, in his judgment, the number of prospective bidders at the sale is  
48 substantially decreased by inclement weather or by any casualty, or  
49 (3) When there are so many other sales advertised to be held at the same time  
50 and place as to make it inexpedient and impracticable, in his judgment, to  
51 hold the sale on that day, or

- 1 (4) When he is unable to hold the sale because of illness or for other good  
2 reason, or  
3 (5) When other good cause exists.

4 The person exercising a power of sale may postpone the sale more than once whenever any of  
5 the above conditions are met, so long as the sale is held not later than 90 days after the original  
6 date for the sale.

7 (b) Upon postponement of a sale, the person exercising the power of sale shall  
8 personally, or through his agent or attorney –

- 9 (1) At the time and place advertised for the sale, publicly announce the  
10 postponement thereof;  
11 (2) On the same day, attach to or enter on the original notice of sale or a copy  
12 thereof, posted at the courthouse door, as provided by G.S. 45-21.17, a  
13 notice of the postponement; and  
14 (3) Give written or oral notice of postponement to each party entitled to notice  
15 of sale under G.S. 45-21.17.

16 (c) The posted notice of postponement shall –

- 17 (1) State that the sale is postponed,  
18 (2) State the hour and date to which the sale is postponed,  
19 (3) State the reason for the postponement, and  
20 (4) Be signed by the person authorized to hold the sale, or by his agent or  
21 attorney.

22 (d) If a sale is not held at the time fixed therefor and is not postponed as provided by  
23 this section, or if a postponed sale is not held at the time fixed therefor or within 90 days of the  
24 date originally fixed for the sale, then prior to such sale taking place the provisions of G.S.  
25 45-21.16 need not be complied with but the provisions of G.S. 45-21.16A, 45-21.17, and  
26 45-21.17A shall be again complied with, or if on appeal, the appellate court orders the sale to  
27 be held, as to such sale so authorized the provisions of G.S. 45-21.16 need not be complied  
28 with again but those of G.S. 45-21.16A, 45-21.17, and 45-21.17A shall be.

29 (e) A sale may be postponed more than once provided the final postponed sale date is  
30 not later than 90 days, exclusive of Sunday and legal holidays when the courthouse is closed  
31 for transactions, after the original date for the sale. (1949, c. 720, s. 1; 1967, c. 562, s. 2; 1975,  
32 c. 492, ss. 4-6; 1983, c. 335, s. 2; 1989, c. 257; 1991 (Reg. Sess., 1992), c. 777, s. 1; 1993, c.  
33 305, s. 12; 1995, c. 509, s. 25; 2003-337, s. 3.)

34  
35 **§ 45-21.22. Procedure upon dissolution of order restraining or enjoining sale, or upon**  
36 **debtor's bankruptcy before completion of sale.**

37 (a) When, before the date fixed for a sale, a judge dissolves an order restraining or  
38 enjoining the sale, he may, if the required notice of sale has been given, provide by order that  
39 the sale shall be held without additional notice at the time and place originally fixed therefor, or  
40 he may, in his discretion, make an order with respect thereto as provided in subsection (b).

41 (b) When, after the date fixed for a sale, a judge dissolves an order restraining or  
42 enjoining the sale, he shall by order fix the time and place for the sale to be held upon notice to  
43 be given in such manner and for such length of time as he deems advisable.

44 (c) When, after the entry of any authorization or order by the clerk of superior court  
45 pursuant to G.S. 45-21.16 and before the expiration of the 10-day upset bid period, the  
46 foreclosure sale is stayed pursuant to 11 U.S.C. § 105 or 362, and thereafter the stay is lifted,  
47 terminated, or dissolved, the trustee or mortgagee shall not be required to comply with the  
48 provisions of G.S. 45-21.16, but shall advertise and hold the sale in accordance with the  
49 provisions of G.S. 45-21.16A, 45-21.17, and 45-21.17A.

50 (d) In the event that completion of the foreclosure sale is stayed pursuant to 11 U.S.C. §  
51 105 or 362, before the expiration of the 10-day upset bid period:

- 1 (1) The clerk of superior court who received a deposit from an upset bidder shall  
2 release any deposits held on behalf of the upset bidder to the upset bidder  
3 upon receipt of a certified copy of an order or notice from the bankruptcy  
4 court indicating that the debtor has filed a bankruptcy petition; or  
5 (2) The trustee or mortgagee who received a cash deposit from the high bidder  
6 at the foreclosure sale, upon notification of the bankruptcy stay, shall release  
7 any deposits held on behalf of the high bidder to the high bidder. (1949, c.  
8 720, s. 1; 1993, c. 305, s. 13; 2011-204, s. 1.)  
9

10 **§ 45-21.23. Time of sale.**

11 A sale shall begin at the time designated in the notice of sale or as soon thereafter as  
12 practicable, but not later than one hour after the time fixed therefor unless it is delayed by other  
13 sales held at the same place. The sale shall be held between the hours of 10:00 A.M. and 4:00  
14 P.M. on any day other than Sunday or a legal holiday when the courthouse is closed for  
15 transactions. (1949, c. 720, s. 1; 1993, c. 305, s. 14; 2003-337, s. 4.)  
16

17 **§ 45-21.24. Continuance of uncompleted sale.**

18 A sale commenced but not completed within the time allowed by G.S. 45-21.23 shall be  
19 continued by the person holding the sale to a designated time between 10:00 o'clock A.M. and  
20 4:00 o'clock P.M. the next following day, other than Sunday or a legal holiday when the  
21 courthouse is closed for transactions. In case such continuance becomes necessary, the person  
22 holding the sale shall publicly announce the time to which the sale is continued. (1949, c. 720,  
23 s. 1; 1993, c. 305, s. 15; 2003-337, s. 5.)  
24

25 **§ 45-21.25. Repealed by Session Laws 1967, c. 562, s. 2.**

26  
27 **§ 45-21.26. Preliminary report of sale of real property.**

28 (a) The person exercising a power of sale of real property, shall, within five days after  
29 the date of the sale, file a report thereof with the clerk of the superior court of the county in  
30 which the sale was had.

31 (b) The report shall be signed by the person authorized to hold the sale, or by his agent  
32 or attorney, and shall show –

- 33 (1) The authority under which the person making the sale acted;  
34 (2) The name of the mortgagor or grantor;  
35 (3) The name of the mortgagee or trustee;  
36 (4) The date, time and place of the sale;  
37 (5) A reference to the book and page in the office of the register of deeds, where  
38 the instrument is recorded or, if not recorded, a description of the property  
39 sold, sufficient to identify it, and, if sold in parts, a description of each part  
40 so sold;  
41 (6) The name or names of the person or persons to whom the property was sold;  
42 (7) The price at which the property, or each part thereof, was sold, and that such  
43 price was the highest bid therefor;  
44 (8) The name of the person making the report; and  
45 (9) The date of the report. (1949, c. 720, s. 1; 1951, c. 252, s. 2.)  
46

47 **§ 45-21.27. Upset bid on real property; compliance bonds.**

48 (a) An upset bid is an advanced, increased, or raised bid whereby any person offers to  
49 purchase real property theretofore sold, for an amount exceeding the reported sale price or last  
50 upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum  
51 increase of seven hundred fifty dollars (\$750.00). Subject to the provisions of subsection (b) of

1 this section, an upset bid shall be made by delivering to the clerk of superior court, with whom  
2 the report of sale or last notice of upset bid was filed, a deposit in cash or by certified check or  
3 cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%)  
4 of the amount of the upset bid but in no event less than seven hundred fifty dollars (\$750.00).  
5 The deposit required by this section shall be filed with the clerk of the superior court, with  
6 whom the report of the sale or the last notice of upset bid was filed by the close of normal  
7 business hours on the tenth day after the filing of the report of the sale or the last notice of upset  
8 bid, and if the tenth day shall fall upon a Sunday or legal holiday when the courthouse is closed  
9 for transactions, or upon a day in which the office of the clerk is not open for the regular  
10 dispatch of its business, the deposit may be made and the notice of upset bid filed on the day  
11 following when said office is open for the regular dispatch of its business. Subject to the  
12 provisions of G.S. 45-21.30, there shall be no resales; rather, there may be successive upset  
13 bids each of which shall be followed by a period of 10 days for a further upset bid. When an  
14 upset bid is not filed following a sale, resale, or prior upset bid within the time specified, the  
15 rights of the parties to the sale or resale become fixed.

16 (b) The clerk of the superior court may require an upset bidder or the highest bidder at a  
17 resale held pursuant to G.S. 45-21.30 also to deposit with the clerk a cash bond, or, in lieu  
18 thereof at the option of the bidder, a surety bond, approved by the clerk. The compliance bond  
19 shall be in such amount as the clerk deems adequate, but in no case greater than the amount of  
20 the bid of the person being required to furnish the bond, less the amount of any required  
21 deposit. The compliance bond shall be payable to the State of North Carolina for the use of the  
22 parties in interest and shall be conditioned on the principal obligor's compliance with the bid.

23 (c), (d) Repealed by Session Laws 1993, c. 305, s. 16.

24 (e) At the same time that an upset bid on real property is submitted to the court as  
25 provided for in subsection (a) above, together with a compliance bond if one is required, the  
26 upset bidder shall simultaneously file with the clerk a notice of upset bid. The notice of upset  
27 bid shall:

- 28 (1) State the name, address, and telephone number of the upset bidder;
- 29 (2) Specify the amount of the upset bid;
- 30 (3) Provide that the sale shall remain open for a period of 10 days after the date  
31 on which the notice of upset bid is filed for the filing of additional upset bids  
32 as permitted by law; and
- 33 (4) Be signed by the upset bidder or the attorney or the agent of the upset bidder.

34 (e1) When an upset bid is made as provided in this section, the clerk shall notify the  
35 trustee or mortgagee who shall thereafter mail a written notice of upset bid by first-class mail to  
36 the last known address of the last prior bidder and the current record owner(s) of the property.

37 (f) When an upset bid is made as provided in this section, the last prior bidder,  
38 regardless of how the bid was made, shall be released from any further obligation on account of  
39 the bid and any deposit or bond provided by him shall be released.

40 (g) Any person offering to purchase real property by upset bid as permitted in this  
41 Article shall be subject to and bound by the terms of the original notice of sale except as  
42 modified by court order or the provisions of this Article.

43 (h) The clerk of superior court shall make all such orders as may be just and necessary  
44 to safeguard the interests of all parties, and shall have the authority to fix and determine all  
45 necessary procedural details with respect to upset bids in all instances in which this Article fails  
46 to make definite provisions as to that procedure. (1949, c. 720, s. 1; 1963, c. 377; 1967, c. 979,  
47 s. 3; 1993, c. 305, s. 16; 2003-337, s. 6.)

48  
49 **§ 45-21.28: Repealed by Session Laws 1993, c. 305, s. 17.**

50  
51 **§ 45-21.29. Orders for possession.**

1 (a)-(j) Repealed by Session Laws 1993, c. 305, s. 18.

2 (k) Orders for possession of real property sold pursuant to this Article, in favor of the  
3 purchaser and against any party or parties in possession at the time of application therefor, may  
4 be issued by the clerk of the superior court of the county in which the property is sold if all of  
5 the following apply:

6 (1) The property has been sold in the exercise of the power of sale contained in  
7 any mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, or a  
8 power of sale authorized by any other statutory provisions.

9 (2) Repealed by Session Laws 1993, c. 305, s. 18.

10 (2a) The provisions of this Article have been complied with.

11 (3) The sale has been consummated, and the purchase price has been paid.

12 (4) The purchaser has acquired title to and is entitled to possession of the real  
13 property sold.

14 (5) Ten days' notice has been given to the party or parties who remain in  
15 possession at the time application is made, or, in the case of residential  
16 property containing 15 or more rental units, 30 days' notice has been given to  
17 the party or parties who remain in possession at the time the application is  
18 made.

19 (6) Application is made by petition to the clerk by the mortgagee, the trustee,  
20 the purchaser of the property, or any authorized representative of the  
21 mortgagee, trustee, or purchaser of the property.

22 (l) An order for possession issued pursuant to G.S. 45-21.29(k) shall be directed to the  
23 sheriff and shall authorize the sheriff to remove all occupants and their personal property from  
24 the premises and to put the purchaser in possession, and shall be executed in accordance with  
25 the procedure for executing a writ or order for possession in a summary ejectment proceeding  
26 under G.S. 42-36.2. The purchaser shall have the same rights and remedies in connection with  
27 the execution of an order for possession and the disposition of personal property following  
28 execution as are provided to a landlord under North Carolina law, including Chapters 42 and  
29 44A of the General Statutes.

30 (m) When the real property sold is situated in more than one county, the provisions of  
31 subsection (l) of this section shall be complied with in each county in which any part of the  
32 property is situated. (1949, c. 720, s. 1; 1951, c. 252, s. 3; 1965, c. 299; 1967, c. 979, s. 3; 1975,  
33 c. 492, ss. 7-9; 1987, c. 627, s. 3; 1993, c. 305, s. 18; 2007-353, s. 4.)

34  
35 **§ 45-21.29A. No necessity for confirmation of sale.**

36 No confirmation of sales or resales of real property made pursuant to this Article shall be  
37 required. If an upset bid is not filed following a sale, resale, or prior upset bid within the period  
38 specified in this Article, the rights of the parties to the sale or resale become fixed. (1967, c.  
39 979, s. 3; 1993, c. 305, s. 19.)

40  
41 **§ 45-21.30. Failure of bidder to make cash deposit or to comply with bid; resale.**

42 (a) If the terms of a sale of real property require the highest bidder to make a cash  
43 deposit at the sale, and he fails to make such required deposit, the person holding the sale shall  
44 at the same time and place again offer the property for sale.

45 (b) Repealed by Session Laws 1967, c. 562, s. 2.

46 (c) When the highest bidder at a sale or resale or any upset bidder fails to comply with  
47 his bid upon tender to him of a deed for the real property or after a bona fide attempt to tender  
48 such a deed, the clerk of superior court may, upon motion, enter an order authorizing a resale of  
49 the real property. The procedure for such resale shall be the same in every respect as is  
50 provided by this Article in the case of an original sale of real property except that the  
51 provisions of G.S. 45-21.16 are not applicable to the resale.

1 (d) A defaulting bidder at any sale or resale or any defaulting upset bidder is liable on  
2 his bid, and in case a resale is had because of such default, he shall remain liable to the extent  
3 that the final sale price is less than his bid plus all the costs of the resale. Any deposit or  
4 compliance bond made by the defaulting bidder shall secure payment of the amount, if any, for  
5 which the defaulting bidder remains liable under this section.

6 (e) Nothing in this section deprives any person of any other remedy against the  
7 defaulting bidder. (1949, c. 720, s. 1; 1967, c. 562, s. 2; 1975, c. 492, s. 10; 1977, c. 359, s. 15;  
8 1993, c. 305, s. 20.)  
9

10 **§ 45-21.31. Disposition of proceeds of sale; payment of surplus to clerk.**

11 (a) The proceeds of any sale shall be applied by the person making the sale, in the  
12 following order, to the payment of –

- 13 (1) Costs and expenses of the sale, including the trustee's commission, if any,  
14 and a reasonable auctioneer's fee if such expense has been incurred;
- 15 (2) Taxes due and unpaid on the property sold, as provided by G.S. 105-385,  
16 unless the notice of sale provided that the property be sold subject to taxes  
17 thereon and the property was so sold;
- 18 (3) Special assessments, or any installments thereof, against the property sold,  
19 which are due and unpaid, as provided by G.S. 105-385, unless the notice of  
20 sale provided that the property be sold subject to special assessments thereon  
21 and the property was so sold;
- 22 (4) The obligation secured by the mortgage, deed of trust or conditional sale  
23 contract.

24 (b) Any surplus remaining after the application of the proceeds of the sale as set out in  
25 subsection (a) shall be paid to the person or persons entitled thereto, if the person who made the  
26 sale knows who is entitled thereto. Otherwise, the surplus shall be paid to the clerk of the  
27 superior court of the county where the sale was had–

- 28 (1) In all cases when the owner of the property sold is dead and there is no  
29 qualified and acting personal representative of his estate, and
- 30 (2) In all cases when he is unable to locate the persons entitled thereto, and
- 31 (3) In all cases when the mortgagee, trustee or vendor is, for any cause, in doubt  
32 as to who is entitled to such surplus money, and
- 33 (4) In all cases when adverse claims thereto are asserted.

34 (c) Such payment to the clerk discharges the mortgagee, trustee or vendor from liability  
35 to the extent of the amount so paid.

36 (d) The clerk shall receive such money from the mortgagee, trustee or vendor and shall  
37 execute a receipt therefor.

38 (e) The clerk is liable on his official bond for the safekeeping of money so received  
39 until it is paid to the party or parties entitled thereto, or until it is paid out under the order of a  
40 court of competent jurisdiction. (1949, c. 720, s. 1; 1951, c. 252, s. 1; 1967, c. 562, s. 2; 1981,  
41 c. 682, s. 10.)  
42

43 **§ 45-21.32. Special proceeding to determine ownership of surplus.**

44 (a) A special proceeding may be instituted before the clerk of the superior court by any  
45 person claiming any money, or part thereof, paid into the clerk's office under G.S. 45-21.31, to  
46 determine who is entitled thereto.

47 (b) All other persons who have filed with the clerk notice of their claim to the money or  
48 any part thereof, or who, as far as the petitioner or petitioners know, assert any claim to the  
49 money or any part thereof, shall be made defendants in the proceeding.

50 (c) If any answer is filed raising issues of fact as to the ownership of the money, the  
51 proceeding shall be transferred to the civil issue docket of the superior court for trial. When a

1 proceeding is so transferred, the clerk may require any party to the proceeding who asserts a  
2 claim to the fund by petition or answer to furnish a bond for costs in the amount of two hundred  
3 dollars (\$200.00) or otherwise comply with the provisions of G.S. 1-109.

4 (d) The court may, in its discretion, allow a reasonable attorney's fee for any attorney  
5 appearing in behalf of the party or parties who prevail, to be paid out of the funds in  
6 controversy, and shall tax all costs against the losing party or parties who asserted a claim to  
7 the fund by petition or answer. (1949, c. 720, s. 1.)

8  
9 **§ 45-21.33. Final report of sale of real property.**

10 (a) A person who holds a sale of real property pursuant to a power of sale shall file with  
11 the clerk of the superior court of the county where the sale is held a final report and account of  
12 his receipts and disbursements within 30 days after the receipt of the proceeds of such sale.  
13 Such report shall show whether the property was sold as a whole or in parts and whether all of  
14 the property was sold. The report shall also show whether all or only a part of the obligation  
15 was satisfied with respect to which the power of sale of property was exercised.

16 (b) The clerk shall audit the account and record it.

17 (c) The person who holds the sale shall also file with the clerk –

18 (1) A copy of the notices of sale and resale, if any, which were posted, and

19 (2) A copy of the notices of sale and resale, if any, which were published in a  
20 newspaper, together with an affidavit of publication thereof, if the notices  
21 were so published;

22 (3) Proof as required by the clerk, which may be by affidavit, that notices of  
23 hearing, sale and resale were served upon all parties entitled thereto under  
24 G.S. 45-21.16, 45-21.17, 45-21.17A, and 45-21.30. In the absence of an  
25 affidavit to the contrary filed with the clerk, an affidavit by the person  
26 holding the sale that the notice of sale was posted in the area designated by  
27 the clerk of superior court for posting public notices in the county or  
28 counties in which the property is situated 20 days prior to the sale shall be  
29 proof of compliance with the requirements of G.S. 45-21.17(1)a.

30 (d) The clerk's fee for auditing and recording the final account is a part of the expenses  
31 of the sale, and the person holding the sale shall pay the clerk's fee as part of such expenses.  
32 (1949, c. 720, s. 1; 1975, c. 492, s. 11; 1983, c. 799; 1993, c. 305, s. 21; 1995, c. 509, s. 26.)