

Article 29A.
Judicial Sales.
Part 1. General Provisions.

§ 1-339.1. Definitions.

(a) A judicial sale is a sale of property made pursuant to an order of a judge or clerk in an action or proceeding in the superior or district court, including a sale pursuant to an order made in an action in court to foreclose a mortgage or deed of trust, but is not

- (1) A sale made pursuant to a power of sale
 - a. Contained in a mortgage, deed of trust, or conditional sale contract, or
 - b. Granted by statute with respect to a mortgage, deed of trust, or conditional sale contract, or
- (2) A resale ordered with respect to any sale described in subsection (a)(1), where such original sale was not held under a court order, or
- (3) An execution sale, or
- (4) A sale ordered in a criminal action, or
- (5) A tax foreclosure sale, or
- (6) A sale made pursuant to Article 15 of Chapter 35A of the General Statutes, relating to sales of estates held by the entireties when one or both spouses are mentally incompetent, or
- (7) A sale made in the course of liquidation of a bank pursuant to Article 9 of Chapter 53C of the General Statutes, or
- (8) A sale made in the course of liquidation of an insurance company pursuant to Article 30 of Chapter 58 of the General Statutes, or
- (8a) A lease, sale, or exchange made pursuant to G.S. 35A-1251(17) or G.S. 35A-1252(14), unless any order thereunder requires, or
- (9) Any other sale the procedure for which is specially provided by any statute other than this Article.

(b) As hereafter used in this Article, "sale" means a judicial sale. (1949, c. 719, s. 1; 1971, c. 268, s. 16; 1987, c. 550, s. 12; 1989, c. 473, s. 10; 2003-221, s. 4; 2012-56, s. 5.)

§ 1-339.2. Application of Part 1.

The provisions of Part 1 of this Article apply to both public and private sales except where otherwise indicated. (1949, c. 719, s. 1.)

§ 1-339.3. Application of Article to sale ordered by clerk; by judge; authority to fix procedural details.

(a) The procedure prescribed by this Article applies to all sales ordered by a clerk of the superior court.

(b) The procedure prescribed by this Article applies to all sales ordered by a judge of the superior or district court, except that the judge having jurisdiction may, upon a finding and a recital in the order of sale of the necessity or advisability thereof, vary the procedure from that herein prescribed, but not inconsistently with G.S. 1-339.6 restricting the place of sale of real property.

(c) The judge or clerk of court having jurisdiction has authority to fix and determine all necessary procedural details with respect to sales in all instances in which this Article fails to make

definite provisions as to such procedure. (1949, c. 719, s. 1; 1971, c. 268, ss. 17, 18; 2001-271, s. 1.)

§ 1-339.3A. Judge or clerk may order public or private sale.

The judge or clerk of court having jurisdiction has authority in his discretion to determine whether a sale of either real or personal property shall be a public or private sale and whether a public sale of timber shall be by auction or by sealed bid. Any private sale conducted under an order issued prior to July 1, 1955 by a judge or clerk of court having jurisdiction is hereby validated as to the order that the sale be a private sale. (1955, c. 74; 1971, c. 268, s. 18; 1997-83, s. 1.)

§ 1-339.4. Who may hold sale.

An order of sale may authorize the persons designated below to hold the sale:

- (1) In any proceeding, a commissioner specially appointed therefor;
- (2) In a proceeding to sell property of a decedent, the administrator, executor or collector of such decedent's estate;
- (3) In a proceeding to sell property of a minor, the guardian of such minor's estate;
- (4) In a proceeding to sell property of an incompetent, the guardian or trustee of such incompetent's estate;
- (5) In a proceeding to sell property of an absent or missing person, the administrator, collector, conservator, or guardian of the estate of such absent or missing person;
- (6) In a proceeding to foreclose a deed of trust, the trustee named in the deed of trust;
- (7) In a receivership proceeding, the receiver;
- (8) In a proceeding to sell property of a trust, the trustee.
- (9) Repealed by Session Laws 1998-182, s. 13. (1949, c. 719, s. 1; 1993, c. 377, s. 2; 1997-379, s. 1.8; 1998-182, s. 13.)

§ 1-339.5. Days on which sale may be held.

A sale may be held on any day except Sunday. (1949, c. 719, s. 1.)

§ 1-339.6. Place of public sale.

(a) Every public 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 public 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. For the purposes of 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 separate units or lots or whether it is sold as a whole or in parts.

(c) A public sale of personal property may be held at any place in the State designated in the order. (1949, c. 719, s. 1.)

§ 1-339.7. Presence of personal property at public sale required.

The person holding a public sale of personal property shall have the property present at the place of sale unless the order of sale provides otherwise as authorized by G.S. 1-339.13(c). (1949, c. 719, s. 1.)

§ 1-339.8. Public sale of separate tracts in different counties.

(a) When an order of public sale directs the sales of separate tracts of real property situated in different counties, exclusive jurisdiction over the sale remains in the superior or district court of the county where the proceeding, in which the order of sale was issued, is pending, but there shall be a separate advertisement, sale and report of sale with respect to the property in each county. In any such sale proceeding, the clerk of the superior court of the county where the original order of sale was issued has jurisdiction with respect to upset bids submitted for separate tracts of property situated in other counties as well as in the clerk's own county. When the public sale is by auction an upset bid may be filed only with that clerk.

(b) The report of sale with respect to all sales of separate tracts situated in different counties shall be filed with the clerk of the superior court of the county in which the order of sale was issued, and is not required to be filed in any other county.

(c) When the public sale is by auction, the sale of each separate tract shall be subject to separate upset bids. To the extent deemed necessary by the judge or clerk of court of the county where the original order of sale was issued, the sale of each tract shall be treated as a separate sale.

(d) When real property is sold in a county other than the county where the proceeding, in which the sale was ordered, is pending, the person authorized to hold the sale shall cause a certified copy of the order of confirmation to be recorded in the office of the register of deeds of the county where such property is situated, and it shall not be necessary for the clerk of court to probate said certified copy of the order of confirmation. (1949, c. 719, s. 1; 1965, c. 805; 1971, c. 268, ss. 18, 19; 1997-83, ss. 2, 3; 2001-271, s. 2.)

§ 1-339.9. Sale as a whole or in parts.

(a) When real property to be sold consists of separate lots or other units or when personal property consists of more than one article, the judge or clerk of court having jurisdiction may direct specifically

- (1) That it be sold as a whole, or
- (2) That it be sold in designated parts, or
- (3) That it be offered for sale by each method, and then sold by the method which produces the highest price.

(b) When real property to be sold has not been subdivided but is of such nature that it may be advantageously subdivided for sale, the judge or clerk having jurisdiction may authorize the subdivision thereof and the dedication to the public of such portions thereof as are necessary or advisable for public highways, streets, alleys, or other public purposes.

(c) When an order of sale of such real or personal property as is described in subsection (a) of this section makes no specific provision for the sale of the property as a whole or in parts, the person authorized to make the sale has authority in his discretion to sell the property by whichever method described in subsection (a) of this section he deems most advantageous. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

§ 1-339.10. Bond of person holding sale.

(a) Whenever a commissioner specially appointed or a trustee in a deed of trust is ordered to sell property, the judge or clerk of court having jurisdiction

(1) May in any case require the commissioner or trustee, before receiving the proceeds of the sale, to furnish bond to cover such proceeds, and

(2) Shall require the commissioner or trustee to furnish such bond when the commissioner or trustee is to hold the proceeds of the sale other than for immediate disbursement upon confirmation of the sale.

(b) Whenever any administrator or collector of a decedent's estate, or guardian or trustee of a minor's or incompetent's estate, or administrator, collector, conservator or guardian of an absent or missing person's estate, is ordered to sell property, the judge or clerk having jurisdiction shall require such fiduciary, before receiving the proceeds of the sale, to furnish bond or to increase his then existing bond, to cover such proceeds.

(c) Whenever an executor or trustee of a testamentary trust is ordered to sell real property, the judge or clerk having jurisdiction shall require such executor or trustee of a testamentary trust, before receiving the proceeds of the sale, to furnish bond to cover such proceeds, unless the will provides otherwise, in which case the judge or clerk may require such bond.

(d) Whenever a receiver is ordered to sell real property, the judge having jurisdiction may, when he deems it advisable, require the receiver to furnish bond, or to increase his then existing bond, to cover such proceeds.

(e) The bond required by this section need not be furnished when the property is to be sold by a duly authorized trust company acting as commissioner or fiduciary.

(f) The bond shall be executed by one or more sureties and shall be subject to the approval of the judge or clerk having jurisdiction.

(g) If the bond is to be executed by personal sureties, the amount of the bond shall be double the amount of the proceeds of the sale to be received by the commissioner or fiduciary, if such amount can be determined in advance, and, if not, such amount as the judge or clerk may determine to be approximately double the amount of the proceeds to be received. If the bond is to be executed by a duly authorized surety company, the amount of the bond shall be one and one-fourth times the amount of the proceeds determined as set out in this subsection.

(h) The bonds shall be payable to the State of North Carolina for the use of the parties in interest. A bond furnished by a commissioner or by a trustee in a deed of trust shall be conditioned that the principal in the bond shall comply with the orders of the court made in the proceeding with respect to the funds received and shall properly account for the proceeds of the sale received by him. A bond furnished by any other fiduciary shall be conditioned as required by law for the original bond required, or which might have been required, of such fiduciary at the time of his qualification.

(i) The premium on any bond furnished pursuant to this section is a part of the costs of the proceeding, to be paid out of the proceeds of the sale. (1949, c. 719, s. 1; 1971, c. 268, s. 18; 1993, c. 377, s. 3.)

§ 1-339.11. Compensation of person holding sale.

(a) If the person holding a sale is a commissioner specially appointed or a trustee in a deed of trust, the judge or clerk of court having jurisdiction shall fix the amount of his compensation and order the payment thereof out of the proceeds of the sale.

(b) If the person holding a sale is any other person, the judge or clerk may, but is not required to, fix his compensation and order the payment thereof out of the proceeds of the sale;

when compensation is not fixed in this manner, compensation may be fixed and paid in the usual manner provided with respect to such fiduciary for receiving and disbursing funds. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

§ 1-339.12. Clerk's authority to compel report or accounting; contempt proceeding.

Whenever any person fails to file any report or account, as provided by this Article, or files an incorrect or incomplete report or account, the clerk of the superior court, having jurisdiction, on his own motion or on motion of any interested party, may issue an order directing such person to file a correct and complete report or account within twenty days after service of the order on him. If such person fails to comply with the order, the clerk may issue an attachment against him for contempt, and may commit him to jail until he files such correct and complete report or account. (1949, c. 719, s. 1.)

Part 2. Procedure for Public Sales of Real and Personal Property.

§ 1-339.13. Public sale; order of sale.

- (a) Whenever a public sale is ordered, the order of sale shall
 - (1) Designate the person authorized to hold the sale;
 - (2) Direct that the property be sold at public auction to the highest bidder or, in the case of a sale of timber, direct that the timber be sold to the highest bidder and specify whether the sale is to be by public auction or by sealed bid;
 - (3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it;
 - (4) Describe personal property to be sold, by reference or otherwise, sufficiently to indicate its nature and quantity;
 - (5) Designate, consistently with G.S. 1-339.6, the county and the place therein at which the sale is to be held;
 - (6) Prescribe the terms of sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the sale; and
 - (7) If the sale is to be a sale of timber by sealed bid, specify:
 - a. The minimum number of bids that must be submitted, which shall not be less than three, and
 - b. The time at which any cash deposit required of the highest bidder must be made, which shall not be more than three business days after the date on which the sealed bids are opened.
- (b) The order of public sale may also, but is not required to
 - (1) State the method by which the property shall be sold, pursuant to G.S. 1-339.9;
 - (2) Direct any posting of the notice of sale or any advertisement of the sale, in addition to that required by G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, which the judge or clerk of the superior court deems advantageous; and
 - (3) Specify the number of appraisals to be obtained pursuant to G.S. 1-339.13A.
- (c) The order of public sale may provide that personal property need not be present at the place of sale when the nature, condition or use of the property is such that the judge or clerk ordering the sale deems it impractical or inadvisable to require the presence of the property at the sale. In such event, the order shall provide that reasonable opportunity be afforded prospective

bidders to inspect the property prior to the sale, and that notice as to the time and place for inspection shall be set out in the notice of sale. (1949, c. 719, s. 1; 1997-83, ss. 4, 5.)

§ 1-339.13A. Public sale of timber by sealed bid; appraisal; bid procedure.

(a) When a sale of timber by sealed bid is ordered, the person holding the sale, before giving notice of the sale, shall:

- (1) Obtain one or more appraisals of the timber to be sold;
- (2) Determine the place at which and the manner and form in which sealed bids should be submitted;
- (3) Determine the first date on which sealed bids will be accepted, which shall not be less than five days after the date on which the notice of sale is first published pursuant to G.S. 1-339.17; and
- (4) Determine the date, time, and place at which sealed bids will be opened.

(b) Each appraisal obtained pursuant to subsection (a) of this section shall be made by a registered professional forester or other person qualified by training and experience to appraise the timber to be sold. Copies of all appraisals obtained pursuant to this section shall be included in the report required under G.S. 1-339.24. A person conducting an appraisal pursuant to this section, including a partnership, corporation, company, or other business of the appraiser, may not submit a bid on the timber which is the subject of the appraisal. An appraisal conducted pursuant to this section shall remain confidential until the appraisal is filed with the report of sale pursuant to G.S. 1-339.24. The contents of the appraisal shall not be divulged by the appraiser to any person other than the person holding the sale nor may the appraiser conduct an appraisal of the timber for any other person until after the sale is confirmed.

(c) All sealed bids received on or after the first date set for submitting bids and, at or before the time set for opening the bids, shall be opened publicly at that time at the place set for doing so. If the minimum number of bids is received and there is only one highest bid, that bid shall be announced at that time; the highest bidder is the purchaser, and all bidders shall immediately be notified of that fact. If the minimum number of bids is not received, or if two or more bids in the same amount are the highest bids, that fact shall be announced at that time, and all bidders shall immediately be notified of that fact; the person holding the sale shall then obtain a new order of sale. (1997-83, s. 6.)

§ 1-339.14. Public sale; judge's approval of clerk's order of sale.

An order of public sale of personal property in which a minor or incompetent has an interest, which is made by a clerk of the superior court, shall not be effective, except in the case of perishable property as provided by G.S. 1-339.19, unless and until such order is approved by the resident judge or the judge regularly holding the courts of the district. (1949, c. 719, s. 1.)

§ 1-339.15. Public sale; contents of notice of sale.

The notice of public sale shall:

- (1) Refer to the order authorizing the sale;
- (2) If the sale is to be by public auction, designate the date, hour and place of sale;
- (2a) If the sale is to be a sale of timber by sealed bid, specify:
 - a. The date on which sealed bids will first be accepted;
 - b. The place or address at which sealed bids are to be submitted;

- c. The manner and form in which sealed bids are to be submitted;
 - d. The time and place at which any sealed bids received will be opened; and
 - e. The minimum number of bids required, as determined pursuant to G.S. 1-339.13(a)(7);
- (3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it, and may add any further description as will acquaint bidders with the nature and location of the property;
 - (4) Describe personal property to be sold sufficiently to indicate its nature and quantity, and may add any further description as will acquaint bidders with the nature of the property;
 - (5) State the terms of the sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the sale and, in the case of a sale by sealed bid, the date by which any deposit shall be made, as determined pursuant to G.S. 1-339.13(a)(7); and
 - (6) Include any other provisions required by the order of sale to be included therein. (1949, c. 719, s. 1; 1997-83, s. 7.)

§ 1-339.16. Public sale; time for beginning advertisement.

An order of sale may provide for the beginning of the advertisement of sale at any time after the order is issued. If the order does not specify such time, the advertisement may be begun at any time after the order is issued. (1949, c. 719, s. 1.)

§ 1-339.17. Public sale; posting and publishing notice of sale of real property.

- (a) Subject to subsection (d) of this section, notice of public sale of real property shall:
 - (1) Be posted, in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for at least 20 days immediately preceding the sale; and
 - (2) Be published once a week for at least two successive weeks:
 - a. In a newspaper qualified for legal advertising published in the county; or
 - b. If no newspaper qualified for legal advertising is published in the county, in a newspaper having general circulation in the county.
- (b) When the notice of public sale is published in a newspaper:
 - (1) The period from the date of the first publication to the date of the last publication, both dates inclusive, shall not be less than seven days, including Sundays; and
 - (2) The date of the last publication shall be not more than 10 days preceding the date of the sale in a sale by auction or the date on which sealed bids are opened in a sale by sealed bid.
- (c) When the real property to be sold is situated in more than one county, the provisions of subsections (a) and (b) of this section shall be complied with in each county in which any part of the property is situated.
 - (c1) When the public sale is a sale of timber by sealed bid, the notice shall also be given in writing, not less than 21 days before the date on which bids are opened, to a reasonable number of

prospective timber buyers, which in all cases shall include the timber buyers listed in the office of the North Carolina Forest Service of the Department of Agriculture and Consumer Services for the county or counties in which the timber to be sold is located.

(d) In addition to the other requirements of this section, the notice of public sale shall be posted or the sale shall be advertised as may be required by the judge or clerk pursuant to the provisions of G.S. 1-339.13(b)(2).

(e) If the sale is a sale of timber by sealed bid, the person holding the sale shall include in the report required by G.S. 1-339.24 an affidavit showing that the requirements of this section have been complied with and listing all the persons notified pursuant to subsection (c1) of this section. (1949, c. 719, s. 1; 1965, c. 41; 1967, c. 979, s. 1; 1997-83, s. 8; 2001-271, s. 3; 2011-145, s. 13.25(kk); 2013-155, s. 1.)

§ 1-339.18. Public sale; posting notice of sale of personal property.

(a) The notice of public sale of personal property, except in the case of perishable property as provided by G.S. 1-339.19, shall be posted, in the area designated by the clerk of superior court for the posting of notices, in the county in which the sale is to be held, for ten days immediately preceding the date of sale.

(b) In addition to the foregoing, the notice of public sale shall be otherwise advertised as may be required by the judge or clerk of court pursuant to the provisions of G.S. 1-339.13(b)(2). (1949, c. 719, s. 1; 1971, c. 268, s. 18; 1997-83, s. 9.)

§ 1-339.19. Public sale; exception; perishable property.

If personal property to be sold at public sale is determined by the judge or clerk of court having jurisdiction to be perishable property because subject to rapid deterioration, he may order the sale thereof to be held at such time and place and upon such notice to be given in such manner and for such length of time as he deems advisable. The order of sale of such perishable property of a minor or incompetent when made by the clerk need not be approved by the judge. Confirmation of any sale of such perishable property is not necessary unless required by the order of sale. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

§ 1-339.20. Public sale; postponement of sale.

(a) A person authorized to hold a public sale by auction may postpone the sale to a day certain not later than six days, exclusive of Sunday, after the original date for the sale, and a person authorized to hold a public sale of timber by sealed bid may postpone the time for submitting and opening bids to a date, time, and place certain not later than six days, exclusive of Sunday, after the original date for the opening of bids:

- (1) When there are no bidders, or
- (2) When, in his judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty, or
- (3) When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in his judgment, to hold the sale on that day, or
- (4) When he is unable to hold the sale because of illness or for other good reason, or
- (5) When other good cause exists.

- (b) Upon postponement of public sale the person authorized to hold the sale shall personally, or through his agent or attorney
- (1) At the time and place advertised for the sale or for the opening of sealed bids, publicly announce the postponement thereof;
 - (2) On the same day, attach to or enter on the original notice of sale or a copy thereof posted, as provided in G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, a notice of the postponement; and
 - (3) In the case of a public sale of timber by sealed bid, give notice of postponement to each person who submitted a bid.
- (c) The notice of postponement shall:
- (1) State that the sale is postponed,
 - (2) In the case of a sale by public auction, state the hour and date to which the sale is postponed,
 - (2a) In the case of a sale of timber by sealed bid, state the date, time, and place to which the opening of bids is postponed,
 - (3) State the reason for the postponement, and
 - (4) Be signed by the person authorized to hold the sale, or by his agent or attorney.
- (d) If a public sale is not held at the time fixed therefor and is not postponed as provided by this section, or if a postponed sale is not held at the time fixed therefor, the person authorized to make the sale shall report the facts with respect thereto to the judge or clerk of court having jurisdiction, who shall thereupon make an order for the public sale of the property to be held at such time and place and upon such notice to be given in such manner and for such length of time as he deems advisable. (1949, c. 719, s. 1; 1971, c. 268, s. 18; 1997-83, ss. 10-12.)

§ 1-339.21. Public sale by auction; time of sale.

- (a) A public sale by auction shall begin at the time designated in the notice of sale or as soon thereafter as practicable, but not later than one hour after the time fixed therefor unless it is delayed by other sales held at the same place.
- (b) No public sale by auction shall commence before 10:00 o'clock A.M. or after 4:00 o'clock P.M.
- (c) No public sale by auction shall continue after 4:00 o'clock P.M., except that in cities or towns of more than 5,000 inhabitants, as shown by the most recent federal census, sales of personal property may continue until 10:00 o'clock P.M. (1949, c. 719, s. 1; 1997-83, s. 13.)

§ 1-339.22. Public sale by auction; continuance of uncompleted sale.

A public sale by auction commenced but not completed within the time allowed by G.S. 1-339.21 shall be continued by the person holding the sale to a designated time between 10:00 o'clock A.M. and 4:00 o'clock P.M. the next following day, other than Sunday. In case a continuance becomes necessary, the person holding the sale shall publicly announce the time to which the sale is continued. (1949, c. 719, s. 1; 1997-83, s. 14.)

§ 1-339.23. Public sale; when confirmation of sale of personal property necessary; delivery of property; bill of sale.

- (a) When any person interested as a creditor, devisee, distributee, or otherwise, in the proceeds of a public sale of personal property, objects at the sale to the completion of the sale of

any article of property on account of the insufficiency of the amount bid, title to such property shall not pass and possession of the property shall not be delivered until the sale of such property is reported and is confirmed by the judge or clerk of court having jurisdiction; but such objection to the completion of the sale of any article of property shall not prevent the completion of the sales of articles of property to which no objection is made where the same have been separately sold. When a judge or clerk having jurisdiction fails or refuses to confirm a sale of property which has thus been objected to, the procedure for a new sale of such property, including a new order of sale, shall be the same as if no such attempted sale has been held. This subsection shall not apply to perishable property sold pursuant to G.S. 1-339.19.

(b) Except as provided in subsection (a), the person holding a public sale of personal property shall deliver the property to the purchaser immediately upon compliance by the purchaser with the terms of the sale.

(c) The person holding a public sale may execute and deliver a bill of sale or other muniment of title for any personal property sold, and, upon application of the purchaser, shall do so when required by the judge or clerk of court having jurisdiction. (1949, c. 719, s. 1; 1971, c. 268, s. 18; 2011-284, s. 4.)

§ 1-339.24. Public sale; report of sale; when final as to personal property.

(a) The person holding a public sale shall, within five days after the date of the sale if the sale was by auction, or within five days after the date on which bids were opened if the sale was a sale of timber by sealed bid, file a report thereof with the clerk of the superior court of the county where the proceeding for the sale is pending.

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

- (1) The title of the action or proceeding;
- (2) The authority under which the person making the sale acted;
- (3) If the sale was by public auction, the date, hour and place of the sale;
- (3a) If the sale was a sale of timber by sealed bid, the date, time, and place at which the sealed bids were opened, the number of bids received, and the amount of each bid;
- (4) A description of real property sold, by reference or otherwise, sufficient to identify it, and, if sold in parts, a description of each part so sold; and
- (5) A description of personal property sold, sufficient to indicate the nature and quantity of the property sold to each purchaser;
- (6) The names of the purchasers;
- (7) The price at which the property, or each part thereof, was sold and that this price was the highest bid therefor; and
- (8) The date of the report.

(c) The report of sale of personal property, when confirmation of the sale is not required, may include such additional information as is required by G.S. 1-339.31 or G.S. 1-339.32, whichever is applicable, and when such additional information is included, the report shall constitute the final report of sale of personal property. If the report does not include the additional information required by G.S. 1-339.31 or G.S. 1-339.32, the final report required by those sections shall be subsequently filed.

(d) The report of a sale of timber by sealed bid shall include the information required by G.S. 1-339.13A(b) and G.S. 1-339.17(c1). (1949, c. 719, s. 1; 1997-83, ss. 15-17.)

§ 1-339.25. Public sale; upset bid on real property; compliance bond.

(a) An upset bid is an advanced, increased, or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price or the last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars (\$750.00). Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of the sale or the last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars (\$750.00). The deposit required by this section shall be filed with the clerk of the superior court with whom the report of sale or the last notice of upset bid was filed, by the close of normal business hours on the tenth day after the filing of the report of sale or the last notice of upset bid, and if the tenth day falls upon a Sunday or legal holiday when the courthouse is closed for transactions, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the notice of upset bid may be filed on the day following when the office is open for the regular dispatch of its business. Except as provided in G.S. 1-339.27A and G.S. 1-339.30, there shall be no resales; however, there may be successive upset bids, each of which shall be followed by a period of 10 days for a further upset bid. If a timely motion for resale is filed under G.S. 1-339.27A, no upset bids may be filed while the motion is pending.

(b) The clerk of the superior court may require an upset bidder or the highest bidder at a resale held under G.S. 1-339.30 also to deposit with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond, approved by the clerk. The compliance bond shall be in the amount the clerk deems adequate, but in no case greater than the amount of the bid of the person being required to furnish the bond, less the amount of any required deposit. The compliance bond shall be payable to the State of North Carolina for the use of the parties in interest and shall be conditioned on the principal obligor's compliance with the bid.

(c) Repealed by Session Laws 2001-271, s. 4, effective January 1, 2002. See editor's note for applicability.

(d) Repealed by Session Laws 2001-271, s. 4, effective January 1, 2002. See editor's note for applicability.

(d1) At the time that an upset bid on real property is submitted to the court as provided in subsection (a) of this section, together with a compliance bond if one is required, the upset bidder shall file with the clerk a notice of upset bid. The notice of upset bid shall:

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

(d2) When an upset bid is made as provided in this section, the clerk shall notify the person holding the sale who shall thereafter mail a written notice of upset bid by first-class mail to the last known address of the last prior bidder and the current record owners of the property.

(d3) When an upset bid is made as provided in this section, the last prior bidder, regardless of how the bid was made, is released from any further obligation on account of the bid, and any deposit or bond provided by the last prior bidder shall be released.

(d4) Any person offering to purchase real property by upset bid as permitted in this Article is subject to and bound by the terms of the original notice of sale except as modified by court order or the provisions of this Article.

(d5) The clerk of superior court shall make all orders as may be just and necessary to safeguard the interests of all parties and may fix and determine all necessary procedural details with respect to upset bids in all instances in which this Article fails to make definite provisions as to that procedure.

(e) The provisions of this section do not apply to public sales of timber by sealed bid. (1949, c. 719, s. 1; 1963, c. 858; 1967, c. 979, s. 1; 1997-83, ss. 18, 19; 1997-119, s. 1; 1997-456, s. 28; 2001-271, s. 4; 2002-28, s. 1; 2003-337, s. 8.)

§ 1-339.26. Public sale by auction; separate upset bids when real property sold in parts; subsequent procedure.

When real property is sold at public sale by auction in parts, as provided by G.S. 1-339.9, the sale of any part shall be subject to a separate upset bid; and, to the extent the judge or clerk of court having jurisdiction deems advisable, the sale of each part shall thereafter be treated as a separate sale for the purpose of determining the applicable procedure. (1949, c. 719, s. 1; 1971, c. 268, s. 18; 1997-83, s. 20; 2001-271, s. 5.)

§ 1-339.27: Repealed by Session Laws 2001-271, s. 6.

§ 1-339.27A. Ordering resale of real property after sale or upset bid.

Upon motion of an interested person filed within 10 days after a sale or upset bid and for good cause, the judge or clerk having jurisdiction may order a resale of real property. If the motion is granted based on the inadequacy of the last bid, the procedure for the resale is the same in every respect as is provided by this Article in the case of an original public sale, and the last bidder is released from the bidder's obligations under the bid. If the motion is granted for any other reason, the last bid becomes the opening bid at resale, and if there is no bid at resale other than the last bid, the person who made the last bid is the highest bidder at resale. If the motion is denied, the 10-day period for subsequent upset bids begins upon the entry of the order. (2001-271, s. 7.)

§ 1-339.28. Public sale; confirmation of sale.

(a) No public sale of real property may be consummated until confirmed as follows:

- (1) If a public sale is ordered by a judge of the Superior Court Division, it may thereafter be confirmed by a resident superior court judge of the district or a superior court judge regularly holding the courts of the district.
- (2) If a public sale is ordered by a judge of the District Court Division, it may thereafter be confirmed by the judge so ordering, the chief district judge, or any district judge authorized by the chief judge to hear motions and enter interlocutory orders.
- (3) If a public sale is ordered by a clerk of court, it may thereafter be confirmed by the clerk of court so ordering.

(b) No public sale of real property of a minor or incompetent originally ordered by a clerk may be consummated until confirmed both by the clerk and by a resident superior court judge of,

or a judge regularly holding the courts of, the district or set of districts as defined in G.S. 7A-41.1(a).

(c) No public sale of real property sold at public auction may be confirmed until the time for submitting an upset bid, pursuant to G.S. 1-339.25, has expired.

(d) Confirmation of the public sale of personal property is necessary only in the case set out in G.S. 1-339.23(a), or when the order of sale provides for such confirmation.

(e) No public sale of timber sold by sealed bid shall be confirmed until the court determines that the highest bid is an adequate price for the timber sold and that sale to the highest bidder is in the best interest of the person or estate for whom the timber is being sold. In so doing, the court may consider any of the following factors:

- (1) The appraisals obtained by the person who conducted the sale;
- (2) The number and amounts of the other bids received;
- (3) Comparable sales of similar timber within the relevant time period;
- (4) Short-term market factors that depressed the price at the time of the sale;
- (5) The likelihood of significantly increasing the price through another sale;
- (6) The additional cost of conducting another sale;
- (7) The effect on the person or estate for whom the timber is being sold of the delay that would result from conducting another sale; and
- (8) Any other factors in evidence that the court considers relevant. (1949, c. 719, s. 1; 1971, c. 268, s. 20; 1997-83, ss. 26-28.)

§ 1-339.29. Public sale; real property; deed; order for possession.

(a) Upon confirmation of a public sale of real property, the person authorized to hold the sale, or such other person as may be designated by the judge or clerk of court having jurisdiction, shall prepare and tender to the purchaser a duly executed deed for the property sold and, upon compliance by the purchaser with the terms of sale, shall deliver the deed to the purchaser.

(b) A person executing a deed to real property being conveyed pursuant to a public sale may recite in the deed, in addition to the usual provisions, substantially as follows

- (1) The authority for making the sale,
- (2) The title of the action or proceeding in which the sale was had,
- (3) The name of the person authorized to make the sale,
- (4) The fact that the sale was duly advertised,
- (5) The date of the sale,
- (6) The name of the highest bidder and the price bid,
- (7) That the sale has been confirmed,
- (8) That the terms of the sale have been complied with, and
- (9) That the person executing the deed has been authorized to execute it.

(c) The judge or clerk of court having jurisdiction of the proceeding in which the property is sold may grant an order for possession of real property so sold and conveyed, as against all persons in possession who are parties to the proceeding.

(d) An order for possession granted pursuant to the preceding subsection shall be directed to the sheriff, shall authorize him to remove the party or parties in possession, and their personal property, from the premises and to put the purchaser in possession, and shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2. (1949, c. 719, s. 1; 1971, c. 268, s. 18; 1987, c. 627, s. 1.)

§ 1-339.30. Public sale; failure of bidder to make cash deposit or to comply with bid; resale.

(a) If an order of public sale by auction requires the highest bidder to make a cash deposit at the sale, and the highest bidder fails to make the required deposit, the person holding the sale shall at the same time and place again offer the property for sale.

(a1) If an order of public sale of timber by sealed bid requires the highest bidder to make a cash deposit and the bidder fails to make the required deposit within the time specified in the order, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale.

(b) When the highest bidder at a public sale of personal property not required to be confirmed fails to make the cash payment, if any, required by the terms of the sale, the person holding the sale shall at the same time and place again offer the property for sale. In the event no other bid is received, a new sale may be advertised in the regular manner provided by this Article for an original sale.

(c) When the highest bidder at a public sale of personal property required to be confirmed fails to comply with his bid within 10 days after notice given by the person holding the sale or after a bona fide attempt to give such notice that the sale has been confirmed, the judge or clerk having jurisdiction may order a resale. The procedure for the resale is the same in every respect as is provided by this Article in the case of an original public sale of personal property.

(d) When the highest bidder at a public sale or resale of real property by auction or any upset bidder fails to comply with the bid within 10 days after the tender to the bidder of a deed for the property or after a bona fide attempt to tender the deed, the judge or clerk having jurisdiction may order a resale. The procedure for a resale of real property is the same in every respect as is provided by this Article in the case of an original public sale of real property.

(d1) When the highest bidder at a public sale or resale of timber by sealed bid fails to comply with the bid within 10 days after the tender to the bidder of a deed for the timber or after a bona fide attempt to tender a timber deed, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale.

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

(f) Nothing in this section deprives any person of any other remedy against the defaulting bidder. (1949, c. 719, s. 1; 1997-83, ss. 29-33; 2001-271, s. 8.)

§ 1-339.31. Public sale; report of commissioner or trustee in deed of trust.

(a) A commissioner or a trustee in a deed of trust, authorized pursuant to G.S. 1-339.4 to hold a public sale of property, shall, in addition to all other reports required by this Article, file with the clerk of the superior court an account of his receipts and disbursements as follows:

- (1) When the sale is for cash, a final report shall be filed within thirty days after receipt of the proceeds of the sale;
- (2) When the sale is wholly or partly on time and the commissioner or trustee is not required to collect deferred payments, a final report shall be filed within thirty

days after receipt of the cash payment, if any is required, and the receipt of all securities for the purchase price;

- (3) When the commissioner or trustee is required to collect deferred payments,
 - a. He shall file a preliminary report within thirty days after receipt of the cash payment, if any is required, and the receipt of all securities for the purchase price, and
 - b. If the period of time during which he is required to collect deferred payments extends over more than one year, he shall file an annual report of his receipts and disbursements, and
 - c. After collecting all deferred payments, he shall file a final report.

(b) The clerk shall audit and record the reports and accounts required to be filed pursuant to this section. (1949, c. 719, s. 1.)

§ 1-339.32. Public sale; final report of person, other than commissioner or trustee in deed of trust.

An administrator, executor or collector of a decedent's estate, or a receiver, or a guardian or trustee of a minor's or incompetent's estate, or an administrator, collector, conservator or guardian of an absent or missing person's estate, is not required to file a special account of his receipts and disbursements for property sold at public sale pursuant to this Article unless so directed by the judge or clerk of court having jurisdiction of the sale proceeding, but shall include in his next following account or report, either annual or final, an account of such receipts and disbursements. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

Part 3. Procedure for Private Sales of Real and Personal Property.

§ 1-339.33. Private sale; order of sale.

Whenever a private sale is ordered, the order of sale shall

- (1) Designate the person authorized to make the sale;
- (2) Describe real property to be sold, by reference or otherwise, sufficiently to identify it;
- (3) Describe personal property to be sold, by reference or otherwise, sufficiently to indicate its nature and quantity; and
- (4) Prescribe such terms of sale as the judge or clerk of court ordering the sale deems advisable. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

§ 1-339.34. Private sale; exception; certain personal property.

(a) Notwithstanding any provisions of this Article, property described below may be sold at private sale at the current market price after first obtaining an order of sale:

- (1) Property consisting of stocks, bonds or other securities the current market value of which is established by sales on any stock or securities exchange supervised or regulated by the United States government or any other of its agencies or departments, or
- (2) Property consisting of stocks, bonds or other securities which are not sold on any stock or securities exchange supervised or regulated by the United States government or any other of its agencies or departments, but which are found by

the judge or clerk having jurisdiction to have a known or readily ascertainable market value, or

- (3) Property consisting of cattle, hogs, or other livestock, or cotton, corn, tobacco, peanuts or other farm commodities or produce, found by the judge or clerk having jurisdiction to have a known or readily ascertainable market value.

(b) Property determined by the judge or clerk having jurisdiction to be perishable property because subject to rapid deterioration may be sold at private sale after first obtaining an order of sale.

(c) Any sale made pursuant to this section is not subject to an upset bid, and is not required to be confirmed, but such sale is final. (1949, c. 719, s. 1.)

§ 1-339.35. Private sale; report of sale.

(a) The person holding a private sale shall, within five days after the date of the sale, file a report with the clerk of the superior court of the county where the proceeding for the sale is pending.

(b) The report shall be signed and shall show

- (1) The title of the action or proceeding;
- (2) The authority under which the person making the sale acted;
- (3) A description of real property sold, by reference or otherwise, sufficient to identify it, and, if sold in parts, a description of each part so sold;
- (4) A description of personal property sold, sufficient to indicate the nature and quantity of the property sold to each purchaser;
- (5) The name or names of the person or persons to whom the property was sold;
- (6) The price at which the property, or each part thereof, was sold, and the terms of the sale; and
- (7) The date of the report. (1947, c. 719, s. 1.)

§ 1-339.36. Private sale; upset bid; subsequent procedure.

(a) Every private sale of real or personal property, except a sale of personal property as provided by G.S. 1-339.34, is subject to an upset bid on the same conditions and in the same manner as is provided by G.S. 1-339.25.

(b) When an upset bid is made for property sold at private sale, subsequent procedure with respect to the upset bid is the same as for upset bids submitted in connection with real property sold at public sale, except that the notice of any resale of personal property held pursuant to an order granted under G.S. 1-339.27A need not be published in a newspaper but shall be posted as provided by G.S. 1-339.17. (1949, c. 719, s. 1; 2001-271, s. 9.)

§ 1-339.37. Private sale; confirmation.

If no upset bid for property sold at private sale is submitted within 10 days after the report of sale or the last notice of upset bid is filed, the sale may then be confirmed, and the provisions of G.S. 1-339.28(a) and (b) are applicable to such confirmation whether the property sold is real or personal. Unless otherwise provided in the order of sale, no confirmation is required of any sale held as provided by G.S. 1-339.34. (1949, c. 719, s. 1; 2001-271, s. 10.)

§ 1-339.38. Private sale; real property; deed; order for possession.

(a) Upon confirmation of a private sale of real property, the person authorized to hold the sale, or such other person as may be designated by the judge or clerk of court having jurisdiction, shall prepare and tender to the purchaser a duly executed deed for the property sold and, upon compliance by the purchaser with the terms of the sale, shall deliver the deed to the purchaser.

(b) The judge or clerk of court having jurisdiction of the proceeding in which the property is sold may grant an order for possession of real property so sold and conveyed, as against all persons in possession who are parties to the proceeding. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

§ 1-339.39. Private sale; personal property; delivery; bill of sale.

Upon compliance by the purchaser with the terms of a private sale of personal property, and upon confirmation of the sale when confirmation is required by G.S. 1-339.37, the person authorized to hold the sale, or such other person as may be designated by the judge or clerk of court having jurisdiction, shall deliver the property to the purchaser, and may execute and deliver a bill of sale or other muniment of title, and, upon application of the purchaser, shall do so when required by the judge or clerk having jurisdiction. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

§ 1-339.40. Private sale; final report.

(a) A commissioner or a trustee in a deed of trust authorized pursuant to G.S. 1-339.4 to hold a private sale of property shall make such a final report as is specified in G.S. 1-339.31.

(b) Any other person authorized pursuant to G.S. 1-339.4 to hold a private sale of property shall make such a final report as is specified in G.S. 1-339.32. (1949, c. 719, s. 1.)