

Article 29B.

Execution Sales.

Part 1. General Provisions.

§ 1-339.41. Definitions.

- (a) An execution sale is a sale of property by a sheriff or other officer made pursuant to an execution.
- (b) As used in this article,
 - (1) "Sale" means an execution sale;
 - (2) "Sheriff" means a sheriff or any officer authorized to hold an execution sale. (1949, c. 719, s. 1.)

§ 1-339.42. Clerk's authority to fix procedural details.

The clerk of the superior court who issues an execution 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.)

§ 1-339.43. Days on which sale may be held.

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

§ 1-339.44. Place of sale.

- (a) Every sale of real property shall be held at the courthouse door 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 at the courthouse door in any one of the counties in which any part of the tract is situated, but no sheriff shall hold any sale outside his own county. 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) A sale of personal property may be held at any place in his county designated by the sheriff in the notice of sale. (1949, c. 719, s. 1.)

§ 1-339.45. Presence of personal property at sale required.

A sheriff holding a sale of personal property shall have the property present at the place of sale. (1949, c. 719, s. 1.)

§ 1-339.46. Sale as a whole or in parts.

When real property to be sold consists of separate lots or other units or when personal property consists of more than one article, the sheriff may sell such real or personal property as a whole or in designated parts, or may offer the property for sale by each method, and then sell the property by the method which produces the highest price; but regardless of which method is followed, the sheriff shall not sell more property than is reasonably necessary to satisfy the judgment together with the costs of the execution and the sale. (1949, c. 719, s. 1.)

§ 1-339.47. Sale to be made for cash.

Every sale shall be made for cash. (1949, c. 719, s. 1.)

§ 1-339.48. Life of execution.

If an execution is issued on a judgment, within the time provided by G.S. 1-306, and a sale, by authority of that execution, is commenced within the time provided by G.S. 1-310, the sale, including any resale, may be had and completed even though such sales, resales or other procedure are had after the time when the execution is required to be returned by G.S. 1-310, or after the time within which an execution could be issued with respect to such judgment pursuant to the provisions of G.S. 1-306. For the purpose of this section, a sale is commenced when the notice of sale is first published in the case of real property as required by G.S. 1-339.52, or first posted in the case of personal property as required by G.S. 1-339.53. (1949, c. 719, s. 1.)

§ 1-339.49. Penalty for selling contrary to law.

A sheriff or other officer who makes any sale contrary to the true intent and meaning of this Article shall forfeit two hundred dollars to any person suing for it, one half for his own use and the other half to the use of the county where the offense is committed. (1820, c. 1066, s. 2, P.R.; 1822, c. 1153, s. 3, P.R.; R.C., c. 45, s. 18; Code, s. 461; Rev., s. 649; C.S., s. 696; 1949, c. 719, s. 2.)

§ 1-339.50. Officer's return of no sale for want of bidders; penalty.

When a sheriff or other officer returns upon an execution that he has made no sale for want of bidders, he must state in his return the several places he has advertised and offered for sale the property levied on; and an officer failing to make such statement is on motion subject to a fine of forty dollars, for the use and benefit of the plaintiff in the execution; for which, on motion of the plaintiff, judgment shall be granted by the court to which, or by justice to whom, the execution shall be returned. Nothing in, nor any recovery under, this section is a bar to any action for a false return against the sheriff or other officer. (1815, c. 887, P.R.; R.C., c. 45, s. 19; Code, s. 462; Rev., s. 650; C.S., s. 697; 1949, c. 719, s. 2; 1995, c. 379, s. 14(a).)

Part 2. Procedure for Sale.

§ 1-339.51. Contents of notice of sale.

The notice of sale shall

- (1) Refer to the execution authorizing the sale;
- (2) Designate the date, hour and place of sale;
- (3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it, and may add such 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 such further description as will acquaint bidders with the nature of the property; and
- (5) State that the sale will be made to the highest bidder for cash. (1949, c. 719, s. 1.)

§ 1-339.52. Posting and publishing notice of sale of real property.

(a) The notice of 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 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.
- (c) When the real property to be sold is situated in more than one county, the provisions of subsections (a) and (b) shall be complied with in each county in which any part of the property is situated. (1949, c. 719, s. 1; 1967, c. 979, s. 2; 2001-271, s. 11.)

§ 1-339.53. Posting notice of sale of personal property.

The notice of sale of personal property, except in the case of perishable property as specified in G.S. 1-339.56, 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 10 days immediately preceding the date of sale. (1949, c. 719, s. 1; 2001-271, s. 12.)

§ 1-339.54. Notice to judgment debtor of sale of real property.

In addition to complying with G.S. 1-339.52, relating to posting and publishing the notice of sale, the sheriff shall, at least ten days before the sale of real property,

- (1) If the judgment debtor is found in the county, serve a copy of the notice of sale on him personally, or
- (2) If the judgment debtor is not found in the county,
 - a. Send a copy of the notice of sale by registered mail to the judgment debtor at his last address known to the sheriff, and
 - b. Serve a copy of the notice of sale on the judgment debtor's agent, if there is in the county a person known to the sheriff to be an agent who has custody or management of, or who exercises control over, any property in the county belonging to the judgment debtor. (1949, c. 719, s. 1.)

§ 1-339.55. Notification of Governor and Attorney General.

When the State is a stockholder in any corporation whose property is to be sold under execution, notice in writing shall be given by the sheriff by registered mail to the Governor and the Attorney General at least thirty days before the sale, stating the time and place of the sale and including a copy of the process under the authority of which such sale is to be made. Any sale held without complying with the provisions of this section is invalid with respect to the State. (1949, c. 719, s. 1.)

§ 1-339.56. Exception; perishable property.

If, in the opinion of the sheriff, any personal property levied on under execution is perishable because subject to rapid deterioration, he shall forthwith report such levy, together with a description of the property, to the clerk of the superior court, and request instructions as to the sale

of such property. If the clerk then determines that the property is such perishable property, he shall thereupon order a 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. If the clerk determines that the property is not perishable, he shall order it to be sold in the same manner as other nonperishable property. (1949, c. 719, s. 1.)

§ 1-339.57. Satisfaction of judgment before sale completed.

If, prior to the time fixed for a sale, or prior to the expiration of the time allowed for submitting any upset bid, payment is made or tendered to the sheriff of the judgment and costs with respect to which the execution was issued, and the sheriff's fees, commissions and expenses which have accrued, together with any expenses incurred on account of the sale or proposed sale including costs incurred in caring for the property levied on, then any right to effect a sale pursuant to the execution ceases. (1949, c. 719, s. 1.)

§ 1-339.58. Postponement of sale.

(a) The sheriff may postpone the sale to a day certain not later than six days, exclusive of Sunday, after the original date for the sale:

- (1) When there are no bidders,
- (2) When, in the sheriff's judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty,
- (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 the sheriff's judgment, to hold the sale on that day,
- (4) When the sheriff 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 a sale, the sheriff shall:

- (1) At the time and place advertised for the sale, publicly announce the postponement of the sale; and
- (2) On the same day, attach to or enter on the original notice of sale or a copy of the notice, posted as provided by G.S. 1-339.52 in the case of real property or G.S. 1-339.53 in the case of personal property, a notice of the postponement.

(c) The posted notice of postponement shall:

- (1) State that the sale is postponed,
- (2) State the hour and date to which the sale is postponed,
- (3) State the reason for the postponement, and
- (4) Be signed by the sheriff.

(d) If a sale is not held at the time fixed for the sale and is not postponed as provided by this section, or if a postponed sale is not held at the time fixed for the sale, the sheriff shall report the facts with respect thereto to the clerk of the superior court, who shall thereupon make an order for the sale of the property to be held at such time and place and upon such notice to be given in the manner and for the length of time as the clerk of the superior court deems advisable, but nothing in this section relieves the sheriff of liability for the nonperformance of the sheriff's official duty. (1949, c. 719, s. 1; 2001-271, s. 13.)

§ 1-339.59. Procedure upon dissolution of order restraining or enjoining sale.

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

(b) When, after the date fixed for a sale, a judge dissolves an order restraining or enjoining the sale, he shall by order fix the time and place for the sale to be held upon notice to be given in such manner and for such length of time as he deems advisable. (1949, c. 719, s. 1.)

§ 1-339.60. Time of sale.

(a) A sale 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 sale shall commence before 10:00 o'clock A.M. or after 4:00 o'clock P.M.

(c) No sale 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.)

§ 1-339.61. Continuance of uncompleted sale.

A sale commenced but not completed within the time allowed by G.S. 1-339.60 shall be continued by the sheriff 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 such continuance becomes necessary, the sheriff shall publicly announce the time to which the sale is continued. (1949, c. 719, s. 1.)

§ 1-339.62. Delivery of personal property; bill of sale.

A sheriff holding a sale of personal property shall deliver the property to the purchaser immediately upon receipt of the purchase price. The sheriff may also 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 clerk of the superior court of the county where the property is sold. (1949, c. 719, s. 1.)

§ 1-339.63. Report of sale.

(a) The sheriff shall, within five days after the date of the sale, file a report thereof with the clerk of the superior court.

(b) The report shall be signed and shall show

(1) The title of the action or proceeding;

(2) The authority under which the sheriff acted;

(3) The date, hour and place of the sale;

(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;

(5) A description of personal property sold, sufficient to indicate the nature and quantity of the property sold to each purchaser;

(6) The name or names of the person or persons to whom the property was sold;

(7) The price at which the property, or each part thereof, was sold and that such price was the highest bid therefor; and

(8) The date of the report. (1949, c. 719, s. 1.)

§ 1-339.64. Upset bid on real property; compliance bond.

(a) An upset bid is an advanced, increased, or raised bid whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price or 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 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. 1-339.66A and G.S. 1-339.69, 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. 1-339.66A, 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. 1-339.69 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. 14, effective January 1, 2002. See editor's note for applicability.

(d) Repealed by Session Laws 2001-271, s. 14, effective January 1, 2002. See editor's note for applicability.

(e) 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.

(f) 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.

(g) 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.

(h) 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 a court order or the provisions of this Article.

(i) 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. (1949, c. 719, s. 1; 1967, c. 979, s. 2; 1997-119, s. 2; 2001-271, s. 14; 2002-28, s. 2; 2003-337, s. 7.)

§ 1-339.65. Separate upset bids when real property sold in parts; subsequent procedure.

When real property is sold in parts, as provided by G.S. 1-339.46, the sale of any part shall be subject to a separate upset bid; and to the extent the clerk of the superior 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; 2001-271, s. 15.)

§ 1-339.66: Repealed by Session Laws 2001-271, s. 16.

§ 1-339.66A. Ordering resale of real property after upset bid.

Upon motion of an interested person filed within 10 days after a sale or upset bid and for good cause, the clerk of superior court may order a resale of real property when an upset bid is submitted as provided in G.S. 1-339.64. 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. 17.)

§ 1-339.67. Confirmation of sale of real property.

No sale of real property may be consummated until the sale is confirmed by the clerk of the superior court. No order of confirmation may be made until the time for submitting an upset bid, pursuant to G.S. 1-339.64, has expired. (1949, c. 719, s. 1; 1967, c. 979, s. 2.)

§ 1-339.68. Deed for real property sold; property subject to liens; orders for possession.

(a) Upon confirmation of a sale of real property, the sheriff, upon order of the clerk of the superior court, 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) Any real property sold under execution remains subject to all liens which became effective prior to the lien of the judgment pursuant to which the sale is held, in the same manner and to the same extent as if no such sale had been held.

(c) Orders for possession of real property sold pursuant to this Article, in favor of the purchaser and against any party or parties in possession at the time of the sale who remain in possession at the time of application therefor, may be issued by the clerk of the superior court of the county in which such property is sold, when:

- (1) The purchaser is entitled to possession, and
- (2) The purchase price has been paid, and
- (3) The sale or resale has been confirmed, and
- (4) Ten days' notice has been given to the party or parties in possession at the time of the sale or resale who remain in possession at the time application is made, and
- (5) Application is made to such clerk by the purchaser of the property.

(d) An order for possession issued 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 ejection proceeding under G.S. 42-36.2. (1949, c. 719, s. 1; 1967, c. 979, s. 2; 1987, c. 627, s. 2.)

§ 1-339.69. Failure of bidder to comply with bid; resale.

(a) When the highest bidder at a sale of personal property fails to pay the amount of the bid, the sheriff shall at the same time and place immediately resell the property. 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.

(b) When the highest bidder at a sale or resale of real property 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 such deed, the clerk of the superior court who issued the execution may order a resale. The procedure for such resale is the same in every respect as is provided by this Article in the case of an original sale of real property.

(c) 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 plus 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.

(d) Nothing in this section deprives any person of any other remedy against the defaulting bidder. (1949, c. 719, s. 1; 2001-271, s. 18.)

§ 1-339.70. Disposition of proceeds of sale.

(a) After deducting all sums due him on account of the sale, including the expenses incurred in caring for the property so long as his responsibility for such care continued, the sheriff shall pay the proceeds of the sale to the clerk of the superior court who issued the execution, and the clerk shall furnish the sheriff a receipt therefor.

(b) The clerk shall apply the proceeds of the sale so received to the payment of the judgment upon which the execution was issued.

(c) Any surplus shall be paid by the clerk to the person legally entitled thereto if the clerk knows who such person is. If the clerk is in doubt as to who is entitled to the surplus, or if adverse claims are asserted thereto, the clerk shall hold such surplus until rights thereto are established in a special proceeding pursuant to G.S. 1-339.71. (1949, c. 719, s. 1.)

§ 1-339.71. Special proceeding to determine ownership of surplus.

(a) A special proceeding may be instituted before the clerk of the superior court by any person claiming any money, or part thereof, paid into the clerk's office under G.S. 1-339.70 or G.S. 105-374(q)(6), to determine who is entitled thereto.

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

(c) If any answer is filed raising issues of fact as to the ownership of the money, the proceedings shall be transferred to the civil issue docket of the superior court for trial. When a proceeding is so transferred, the clerk may require any party to the proceeding who asserts a claim to the fund by petition or answer to furnish a bond for costs in the amount of \$200.00, or otherwise comply with the provisions of G.S. 1-109.

(d) The court may, in its discretion, allow a reasonable attorney's fee for any attorney appearing in behalf of the party or parties who prevail, to be paid out of the funds in controversy, and shall tax all costs against the losing party or parties who asserted a claim to the fund by petition or answer. (1949, c. 719, s. 1; 1967, c. 705, s. 2; 1973, c. 1446, s. 19.)