

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 261

Short Title: Private Execution Sales.

(Public)

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Sponsors: Senator Block.

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Referred to: Judiciary I.

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March 25, 1991

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE EXECUTION OF JUDGMENTS BY PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-339.1 reads as rewritten:

**"§ 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 unless the clerk of superior court has ordered execution by private 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

- 1 (7) A sale made in the course of liquidation of a bank pursuant to G.S. 53-  
2 20, or  
3 (8) A sale made in the course of liquidation of an insurance company  
4 pursuant to Article 30 of Chapter 58 of the General Statutes, or  
5 (8a) A lease, sale, or exchange made pursuant to G.S. 35A-1251(17) or  
6 G.S. 35A-1252(14), unless any order thereunder requires, or  
7 (9) Any other sale the procedure for which is specially provided by any  
8 statute other than this Article.

9 (b) As hereafter used in this Article, 'sale' means a judicial sale."

10 Sec. 2. G.S. 1-339.4 reads as rewritten:

11 **"§ 1-339.4. Who may hold sale.**

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

- 13 (1) In any proceeding, a commissioner specially appointed therefor; or  
14 (2) In a proceeding to sell property of a decedent, the administrator,  
15 executor or collector of such decedent's estate;  
16 (3) In a proceeding to sell property of a minor, the guardian of such  
17 minor's estate;  
18 (4) In a proceeding to sell property of an incompetent, the guardian or  
19 trustee of such incompetent's estate;  
20 (5) In a proceeding to sell property of an absent or missing person, the  
21 administrator, collector, conservator, or guardian of the estate of such  
22 absent or missing person;  
23 (6) In a proceeding to foreclose a deed of trust, the trustee named in the  
24 deed of trust;  
25 (7) In a receivership proceeding, the ~~receiver~~-receiver;  
26 (8) In an execution sale, the sheriff, or the coroner when the sheriff is a  
27 party to or interested in the action."

28 Sec. 3. G.S. 1-339.42 reads as rewritten:

29 **"§ 1-339.42. Clerk's authority to fix procedural details.**

30 ~~The clerk of the superior court who issues an execution has authority to fix and~~  
31 ~~determine all necessary procedural details with respect to sales in all instances in which~~  
32 ~~this Article fails to make definite provisions as to such procedure.~~

33 The clerk of superior court who issues an execution may fix and determine all  
34 necessary procedural details with respect to sales in all instances in which this Article  
35 fails to make provisions as to such procedures. The clerk of superior court who issues an  
36 execution may order the sheriff to perform the execution by private sale in accordance  
37 with the provisions of Article 29A of this Chapter."

38 Sec. 4. This act is effective upon ratification.