

## **SUBCHAPTER XII. SPECIAL PROCEEDINGS.**

### **Article 33.**

#### **Special Proceedings.**

#### **§ 1-393. Chapter and Rules of Civil Procedure applicable to special proceedings.**

The Rules of Civil Procedure and the provisions of this Chapter on civil procedure are applicable to special proceedings, except as otherwise provided. (Code, s. 278; Rev., s. 710; C.S., s. 752; 1967, c. 954, s. 3.)

#### **§ 1-394. Contested special proceedings; commencement; summons.**

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint or petition of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint or petition, within the time specified, the plaintiff will apply to the court for the relief demanded in the complaint or petition. The summons must run in the name of the State, be dated and signed by the clerk, assistant clerk, or deputy clerk of the superior court having jurisdiction in the special proceeding, be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by G.S. 1A-1, Rule 4(a). The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service is as prescribed for summons in civil actions by G.S. 1A-1, Rule 4. In partition proceedings under Chapter 46A of the General Statutes or where the defendant is an agency of the federal government, an agency of the State, a local government, or an agency of a local government, the time for filing an answer or other pleading is within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer. (1868-9, c. 93, s. 4; Code, ss. 279, 287; Rev., ss. 711, 712; C.S., s. 753; 1927, c. 66, s. 5; 1929, c. 50; c. 237, s. 3; 1939, c. 49, s. 2; c. 143; 1951, c. 783; 1961, c. 363; 1967, c. 954, s. 3; 1971, c. 1093, s. 17; 2009-362, s. 2; 2020-23, ss. 5, 8.)

#### **§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.**

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge. (1999-367, s. 2.)

#### **§ 1-395. Return of summons.**

The person to whom the summons is delivered for service shall note on it the day of its delivery to him, and, if required by the plaintiff, shall execute it immediately. When executed, he shall immediately return the summons with the date and manner of its execution, by mail or otherwise, to the clerk of the court issuing it. (C.C.P., s. 75; Code, s. 280; Rev., s. 713; C.S., s. 754; 1967, c. 954, s. 3.)

#### **§ 1-396. When complaint filed.**

The complaint or petition of the plaintiff must be filed in the clerk's office at or before the time of the issuance of the summons, unless time for filing said complaint or petition is extended as

provided by G.S. 1-398. (C.C.P., s. 76; 1876-7, c. 241, s. 4; Code, s. 281; Rev., s. 714; C.S., s. 755; 1943, c. 543.)

**§ 1-397. Repealed by Session Laws 1943, c. 543.**

**§ 1-398. Filing time enlarged.**

The time for filing the complaint, petition, or any pleading may be enlarged by the court for good cause shown, but may not be enlarged by more than 10 additional days or 30 additional days for partitions, nor more than once, unless the default was occasioned by accident over which the party applying had no control, or by the fraud of the opposing party. (C.C.P., s. 79; Code, s. 283; Rev., s. 716; C.S., s. 757; 2010-97, s. 1.)

**§ 1-399. Repealed by Session Laws 1999-216, s.2.**

**§ 1-400. Ex parte; commenced by petition.**

If all the parties in interest join in the proceeding and ask the same relief, the commencement of the proceedings shall be by petition, setting forth the facts entitling the petitioners to relief, and the nature of the relief demanded. (1868-9, c. 93; Code, s. 284; Rev., s. 718, C.S., s. 759.)

**§ 1-401. Clerk acts summarily; signing by petitioners; authorization to attorney.**

In cases under G.S. 1-400, if all persons to be affected by the decree or their attorney have signed the petition and are of full age, the clerk of the superior court has power to hear and decide the petition summarily. All of the petitioners must sign the petition, or must sign written application to clerk of court to be made petitioners and file same with the clerk or must sign a written authorization to the attorney which authorization must be filed with the clerk before he may make any order or decree to prejudice their rights. (1868-9, c. 93, s. 2; Code, s. 285; Rev., s. 719; C.S., s. 760; 1953, c. 246.)

**§ 1-402. Judge approves when petitioner is infant.**

If any petitioner is an infant, or the guardian of an infant, acting for him, no final order or judgment of the clerk, affecting the merits of the case and capable of being prejudicial to the infant, is valid, unless submitted to and approved by the judge resident or holding court in the district. (C.C.P., s. 420; 1868-9, c. 93, s. 3; Code, s. 286; 1887, c. 61; Rev., s. 720; C.S., s. 761.)

**§ 1-403. Orders signed by judge.**

Every order or judgment in a special proceeding required to be made by a judge of the superior court, in or out of session, must be authenticated by his signature. (1868-9, c. 93, s. 5; 1872-3, c. 100; Code, s. 288; Rev., s. 722; C.S., s. 762; 1971, c. 381, s. 12.)

**§ 1-404. Reports of commissioners and jurors.**

Every order or judgment in a special proceeding imposing a duty on commissioners or jurors must prescribe the time within which the duty must be performed, except in cases where the time is prescribed by statute. The commissioners or jurors shall within 20 days after the performance of the duty file their report with the clerk of the superior court, and if no exception is filed to it within 10 days, the court may proceed to confirm the same on motion of any party and without special notice to the other parties. (1893, c. 209; Rev., s. 723; C.S., s. 763; 1945, c. 778.)

**§ 1-405. No report set aside for trivial defect.**

No report or return made by any commissioners may be set aside and sent back to them or others for a new report because of any defect or omission not affecting the substantial rights of the parties, but the defect or omission may be amended by the court, or by the commissioners with permission of the court. (1868-9, c. 93, s. 7; Code, s. 289; Rev., s. 724; C.S., s. 764.)

**§ 1-406. Commissioner of sale to account in sixty days.**

In all actions or special proceedings when a person is appointed commissioner to sell real or personal property, he shall, within 60 days after the maturity of the note or bond for the balance of the purchase money of said property, or the payment of the amount of the bid when the sale is for cash, file with the clerk of the superior court a final account of his receipts and disbursements on account of the sale; and the clerk must audit the account and record it in the book in which the final settlements of executors and administrators are recorded. If any commissioner appointed in any action or special proceedings before the clerk fails, refuses or omits to file a final account as prescribed in this section, or renders an insufficient or unsatisfactory account, the clerk of the superior court shall forthwith order such commissioner to render a full and true account, as required by law, within 20 days after service of the order. Upon return of the order, duly served, if such commissioner shall fail to appear or refuse to exhibit such account, the clerk of the superior court may issue an attachment against said commissioner for a contempt and commit him till he exhibits such account, or files a bond for the amount held or unaccounted for as is prescribed by law for administrators, the premium for which is to be deducted from the commissioner's fee, earned by said commissioner in said action or special proceeding. (1901, c. 614, ss. 1, 2; Rev., s. 725; C.S., s. 765; 1933, c. 98.)

**§ 1-407. Commissioner holding proceeds of land sold for reinvestment to give bond.**

Whenever in any cause of special proceeding there is a sale of real estate for the purpose of a reinvestment of the money arising from such sale, and the proceeds of such sale are held by a commissioner or other officer designated by the court to receive such money for purposes of reinvestment, the commissioner or officer so receiving same shall execute a good and sufficient bond, to be approved by the court, in an amount at least equal to the corpus of the fund, and payable to the State of North Carolina for the protection of the fund and the parties interested therein, and conditioned that such custodian of the money shall faithfully comply with all the orders of the court made or to be thereafter made concerning the handling and reinvestment of said funds and for the faithful and final accounting of the same to the parties interested. (1919, c. 259; C.S., s. 766; 1935, c. 45; 1957, c. 80.)

**§ 1-407.1. Bond required to protect interest of infant or incompetent.**

In the case of any sale of real estate, the court may, in its discretion, require a good and sufficient bond to protect the interests of any infant or incompetent. (1957, c. 80.)

**§ 1-407.2. When court may waive bond; premium paid from fund protected.**

The court, in its discretion, may waive the requirement of such bond in those cases in which the court requires the funds or proceeds from such sale to be paid by the purchaser or purchasers directly to the court. The premium for any such bond shall be paid from the corpus of the fund intended to be thereby protected. (1957, c. 80.)

**§ 1-408. Action in which clerk may allow fees of commissioners; fees taxed as costs.**

In a civil action or special proceeding commenced in the superior court in which a commissioner or commissioners are appointed under an order or judgment entered by the clerk of the superior court, the clerk may fix a reasonable fee for the services of the commissioner or commissioners performed under the order or judgment. The fee shall be taxed as part of the costs in the action or proceeding. Any aggrieved party has the right to appeal as provided in Article 27A of Chapter 1 of the General Statutes. (1923, c. 66; s. 1; C.S., s. 766(a); 1999-216, s. 4.)

**§ 1-408.1. Clerk may order surveys in civil actions and special proceedings involving sale of land.**

In civil actions and special proceedings commenced in the superior court before the clerk where real property is to be sold to make assets to pay debts, or to be sold for division, or to be partitioned, the clerk may, if all parties to the action or proceedings will benefit by a survey, order a survey of the land involved, appoint a surveyor for this purpose, and fix a reasonable fee for the services of the surveyor. The fee and other costs of the survey shall be taxed as a part of the costs in the action or proceedings. Any aggrieved party has the right to appeal as provided in Article 27A of Chapter 1 of the General Statutes. (1955, c. 373; 1999-216, s. 5.)