

## Article 17.

### Sales, Leases or Mortgages of Real Property.

#### **§ 28A-17-1. Sales of real property.**

Pursuant to authority contained in G.S. 28A-15-1 the personal representative may, at any time, apply to the clerk of superior court of the county where the decedent's real property or some part thereof is situated, by petition, to sell such real property for the payment of debts and other claims against the decedent's estate. (1868-9, c. 113, s. 42; Code, s. 1436; Rev., s. 68, C.S., s. 74; 1923, c. 55; 1935, c. 43; 1937, c. 70; 1943, c. 637; 1949, c. 719, s. 2; 1955, c. 302, s. 1; 1959, c. 879, s. 7; 1963, c. 291, s. 1; 1973, c. 1329, s. 3.)

#### **§ 28A-17-2. Contents of petition for sale.**

The petition to sell real property shall include:

- (1) A description of the real property and interest therein sought to be sold;
- (2) The names, ages and addresses, if known, of the devisees and heirs of the decedent;
- (3) A statement that the personal representative has determined that it is in the best interest of the administration of the estate to sell the real property sought to be sold. (1868-9, c. 113, s. 43; Code, s. 1437; Rev., s. 77; C.S., s. 79; 1973, c. 1329, s. 3.)

#### **§ 28A-17-3. Petition for partition.**

When it is alleged that the real property of the decedent sought to be sold consists in whole or in part of an undivided interest in real property, the personal representative of the decedent may include, in the petition to sell the real property for the payment of debts and other claims against the decedent's estate, a request for partition of the lands sought to be sold. (1868-9, c. 113, s. 42; Code, s. 1436; Rev., s. 68; C.S., s. 74; 1923, c. 55; 1935, s. 43; 1937, c. 70; 1943, c. 637; 1949, c. 719, s. 2; 1955, c. 302, s. 1; 1959, c. 879, s. 7; 1963, c. 291, s. 1; 1973, c. 1329, s. 3.)

#### **§ 28A-17-4. Heirs and devisees necessary parties.**

No order to sell real property shall be granted until the heirs and devisees of the decedent have been made parties to the special proceeding by service of summons in the manner required by law, in accordance with G.S. 1A-1, Rule 4. Upon such service, the court shall appoint a guardian ad litem for heirs and devisees who are unknown or whose addresses are unknown, and summons shall issue to the guardian ad litem as such. The guardian ad litem shall file answer for such heirs and devisees and defend for them, and the guardian ad litem shall be paid such sum as the court may fix, to be paid as costs of the proceeding. (1868-9, c. 113, s. 44; Code, s. 1438; Rev., s. 74; C.S., s. 80; Ex. Sess. 1924, c. 3, s. 1; 1973, c. 1329, s. 3; 1975, c. 300, s. 7; 2011-344, s. 4.)

#### **§ 28A-17-5. Property subject to sale; conveyance by deceased in fraud of creditors.**

The real property subject to sale under this Article shall include real property recovered from a fraudulent alienee pursuant to G.S. 28A-15-10(b). (1868-9, c. 113, s. 51; Code, s. 1446; Rev., s. 72; C.S., s. 77; 1973, c. 1329, s. 3.)

#### **§ 28A-17-6. Adverse claimant to be heard; procedure.**

When the real property sought to be sold, or any interest therein, is claimed by another person, such claimant may be made a party to the proceeding, and in any event may become a party upon

the claimant's own motion. When an issue of law or fact is joined between the parties, the procedure shall be as prescribed for other special proceedings. (1868-9, c. 113, ss. 46, 47; Code, ss. 1440, 1441; Rev., ss. 76, 78; C.S., ss. 81, 82; 1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-17-7. Order granted if petition not denied; public or private sale; procedure for sale.**

If, by default or admission, the allegations in the petition are not controverted, the clerk of superior court may summarily order a sale. The procedure for the sale shall be as is provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales." If it is made to appear to the clerk by petition and by satisfactory proof that it will be for the best interest of the estate to sell by private sale, the clerk may authorize a private sale in accordance with the provisions of G.S. 1-339.33 through 1-339.40. (1868-9, c. 113, s. 48; Code, s. 1443; Rev., s. 79; C.S., s. 83; 1949, c. 719, s. 2; 1973, c. 1329, s. 3.)

**§ 28A-17-8. Under power in will, sales public or private.**

Sales of real property made pursuant to authority given by will may be either public or private, unless the will otherwise directs, and may be on such terms as in the opinion of the personal representative are most advantageous to those interested in the decedent's estate. (1868-9, c. 113, s. 75; Code, s. 1503; Rev., s. 84; C.S., s. 89; 1973, c. 1329, s. 3.)

**§ 28A-17-9. Death of vendor under contract; representative to convey.**

When any decedent has contracted to sell any real property and has given bond or other enforceable written contract to the purchaser to convey the same, the decedent's personal representative may execute and deliver a deed to such real property and such deed shall convey the title as fully as if it had been executed and delivered by the decedent. No deed shall be made unless the purchaser complies with the terms of the bond or other written contract. If the contract for conveyance requires the giving of a warranty deed, the deed given by the personal representative shall contain such warranties as required by the contract and the warranties shall be binding on the estate and not on the personal representative personally. (1868-9, c. 113, s. 65; 1874-5, c. 251; Code, s. 1492; Rev., s. 83; C.S., s. 91; 1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-17-10. Title in personal representative for estate; he or successor to convey.**

When real property is conveyed to a personal representative for the benefit of the estate the personal representative represents, the personal representative or any successor personal representative may sell and convey it upon such terms as the personal representative may deem just and for the advantage of the estate. The procedure shall be as is provided in Article 29A of Chapter 1 of the General Statutes, entitled "Judicial Sales." If it is made to appear to the clerk of superior court by petition and by satisfactory proof that it will be for the best interest of the estate to sell by private sale, the clerk may authorize a private sale in accordance with the provisions of G.S. 1-339.33 through 1-339.40. (1905, c. 342; Rev., s. 71; C.S., s. 92; 1949, c. 719, s. 2; 1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-17-11. Personal representative may lease or mortgage.**

In lieu of asking for an order of sale of real property, the personal representative may request the clerk of superior court to issue to the personal representative an order to lease or to mortgage real property of the decedent. The clerk of superior court is authorized to issue an order to lease or

mortgage on such terms as the clerk deems to be in the best interest of the estate. (1913, c. 49, s. 1; C.S., s.75; 1927, c. 222, s. 1; 1973, c. 1329, s. 3; 2011-344, s. 4.)

**§ 28A-17-12. Sale, lease or mortgage of real property by heirs or devisees.**

(a) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 occurs within two years after the death of the decedent:

- (1) All sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent made after the death of the decedent and before the first publication or posting of the general notice to creditors are void as to creditors and personal representatives; and
- (2) All sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent made after such first publication or posting and before approval of the final account shall be void as to creditors and personal representatives unless the personal representative joins in the sale, lease or mortgage.

(b) If the first publication or posting of the general notice to creditors as provided for in G.S. 28A-14-1 does not occur within two years after the death of the decedent, all sales, leases or mortgages of real property by heirs or devisees of any resident or nonresident decedent shall be valid as to creditors and personal representatives of the decedent. (1973, c. 1329, s. 3; 1979, 2nd Sess., c. 1246, s. 1.)

**§ 28A-17-13. Prior validating acts.**

Chapter 70 of the Public Laws of 1923, Chapter 48 of the Public Laws of 1925, Chapter 146 of the Public Laws of 1931, and Chapters 31 and 381 of the Public Laws of 1935, all validating certain prior sales of real property by executors or administrators and heretofore codified as G.S. 28-100 through 28-104, shall remain in full force and effect, though no longer carried forward as part of the General Statutes. (1973, c. 1329, s. 3.)