

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**SENATE BILL 681
Judiciary I Committee Substitute Adopted 4/12/01**

Short Title: Judicial & Execution Sales/Revise Procedure.

(Public)

Sponsors:

Referred to:

March 26, 2001

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING JUDICIAL SALES AND EXECUTION SALES TO PROVIDE FOR A ROLLING UPSET BID PROCEDURE AND TO CONFORM THE TIME PERIODS FOR POSTING AND PUBLISHING NOTICE OF SALE TO THE LAW GOVERNING FORECLOSURE SALES UNDER A POWER OF SALE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. JUDICIAL SALES.

SECTION 1. G.S. 1-339.3(b) reads as rewritten:

"(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, and not inconsistently with G.S. 1-339.27(a) and G.S. 1-339.36 requiring that a resale be ordered when an upset bid is submitted property."

SECTION 2. G.S. 1-339.8 reads as rewritten:

"§ 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, issued has jurisdiction with respect to the resale of upset bids submitted for separate tracts of property situated in other counties as well as in the clerk's own county, and when county. When the public sale is by auction an upset bid may be filed only with that

1 clerk, ~~except in those cases where the judge retains resale jurisdiction pursuant to G.S.~~
2 ~~1-339.27.clerk.~~

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

6 (c) When the public sale is by auction, the sale ~~and each subsequent resale of~~
7 ~~each separate tract shall be subject to a separate upset bid; and to separate upset bids. To~~
8 ~~the extent deemed necessary by the judge or clerk of court of the county where the~~
9 ~~original order of sale was issued, the sale of each tract, after an upset bid thereon, tract~~
10 ~~shall be treated as a separate sale for the purpose of determining the procedure~~
11 ~~applicable thereto.sale.~~

12 (d) When real property is sold in a county other than the county where the
13 proceeding, in which the sale was ordered, is pending, the person authorized to hold the
14 sale shall cause a certified copy of the order of confirmation to be recorded in the office
15 of the register of deeds of the county where such property is situated, and it shall not be
16 necessary for the clerk of court to probate said certified copy of the order of
17 confirmation."

18 **SECTION 3.** G.S. 1-339.17 reads as rewritten:

19 **"§ 1-339.17. Public sale; posting and publishing notice of sale of real property.**

20 (a) ~~The Subject to subsection (d) of this section,~~ notice of public sale of real
21 property shall shall:

22 (1) Be posted, in the area designated by the clerk of superior court for the
23 posting of notices in the county in which the property is situated, for
24 ~~thirty at least 20~~ at least 20 days immediately preceding the ~~sale,~~ sale; and

25 (2) ~~And in addition thereto,~~ Be published once a week for at least two
26 successive weeks:

27 a. ~~If In~~ In a newspaper qualified for legal advertising is published in
28 the county, ~~the notice shall be published in such a newspaper~~
29 ~~once a week for at least four successive weeks, but~~ county; or

30 b. If no newspaper qualified for legal advertising is published in
31 the county, ~~then notice shall be published once a week for at~~
32 ~~least four successive weeks~~ in a newspaper having a general
33 circulation in the county.

34 (b) When the notice of public sale is published in a ~~newspaper,~~ newspaper:

35 (1) The period from the date of the first publication to the date of the last
36 publication, both dates inclusive, shall not be less than ~~twenty-two~~
37 seven days, including ~~Sundays,~~ Sundays; and

38 (2) The date of the last publication shall be not more than 10 days
39 preceding the date of the sale in a sale by ~~auCTION,~~ auCTION or the date
40 on which sealed bids are opened in a sale by sealed bid.

1 (c) When the real property to be sold is situated in more than one county, the
2 provisions of subsections (a) and (b) of this section shall be complied with in each
3 county in which any part of the property is situated.

4 (c1) When the public sale is a sale of timber by sealed bid, the notice shall also be
5 given in writing, not less than 21 days before the date on which bids are opened, to a
6 reasonable number of prospective timber buyers, which in all cases shall include the
7 timber buyers listed in the office of the Division of Forest Resources for the county or
8 counties in which the timber to be sold is located.

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

12 (e) If the sale is a sale of timber by sealed bid, the person holding the sale shall
13 include in the report required by G.S. 1-339.24 an affidavit showing that the
14 requirements of this section have been complied with and listing all the persons notified
15 pursuant to subsection (c1) of this section."

16 **SECTION 4.** G.S. 1-339.25 reads as rewritten:

17 "**§ 1-339.25. Public sale; upset bid on real property; compliance bond.**

18 (a) An upset bid is an advanced, ~~increased~~-increased, or raised bid in a public
19 sale by auction whereby a person offers to purchase real property theretofore sold for an
20 amount exceeding the reported sale price or the last upset bid by a minimum of five
21 percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty
22 dollars (\$750.00). ~~An~~ Subject to the provisions of subsection (b) of this section, an upset
23 bid shall be made by delivering to the clerk of superior court, with whom the report of
24 the sale or the last notice of upset bid was filed, a deposit in cash or by certified check
25 or cashier's check satisfactory to the clerk in an amount greater than or equal to five
26 percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty
27 dollars (\$750.00). The deposit required by this section shall be filed with the clerk of the
28 superior ~~court,~~ court with whom the report of sale or the last notice of upset bid was
29 filed, by the close of normal business hours on the tenth day after the filing of the report
30 of ~~sale,~~ sale or the last notice of upset bid, and if the tenth day ~~shall fall~~ falls upon a
31 Sunday or legal holiday or upon a day in which the office of the clerk is not open for the
32 regular dispatch of its business, the deposit may be made and the notice of upset bid
33 may be filed on the day following when the office is open for the regular dispatch of its
34 business. ~~An upset bid need not be in writing, and the timely deposit with the clerk of~~
35 ~~the required amount, together with an indication to the clerk as to the sale to which it is~~
36 ~~applicable, is sufficient to constitute the upset bid, subject to the provisions of~~
37 ~~subsection (b) of this section.~~ Except as provided in G.S. 1-339.27A and G.S. 1-339.30,
38 there shall be no resales; however, there may be successive upset bids, each of which
39 shall be followed by a period of 10 days for a further upset bid. If a timely motion for
40 resale is filed under G.S. 1-339.27A, no upset bids may be filed while the motion is
41 pending. If an upset bid or a motion for resale under G.S. 1-339.27A is not filed within

1 10 days following a sale, resale, or prior upset bid, the rights of the parties to the sale or
2 resale become fixed.

3 (b) ~~The clerk of the superior court may require a person submitting an upset bid~~
4 an upset bidder or the highest bidder at a resale held under G.S. 1-339.30 also to deposit
5 with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond,
6 approved by the clerk, conditioned on compliance with the upset bid. The amount of
7 such bond shall not exceed the amount of the upset bid less the amount of the required
8 deposit. ~~clerk. The compliance bond shall be in the amount the clerk deems adequate,~~
9 but in no case greater than the amount of the bid of the person being required to furnish
10 the bond, less the amount of any required deposit. The compliance bond shall be
11 payable to the State of North Carolina for the use of the parties in interest and shall be
12 conditioned on the principal obligor's compliance with the bid.

13 (c) ~~The clerk of the superior court may in the order of resale require the highest~~
14 ~~bidder at a resale had pursuant to an upset bid to deposit with the clerk a cash bond, or,~~
15 ~~in lieu thereof at the option of the bidder, a surety bond, approved by the clerk,~~
16 ~~conditioned on compliance with his bid. The bond shall be in such amount as the clerk~~
17 ~~deems adequate, but in no case greater than the amount of the bid of the person being~~
18 ~~required to furnish the bond.~~

19 (d) ~~A compliance bond, such as is provided for by subsections (b) and (c), shall~~
20 ~~be payable to the State of North Carolina for the use of the parties in interest and shall~~
21 ~~be conditioned on the principal obligor's compliance with his bid.~~

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

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

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

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

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

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

5 (e) The provisions of this section do not apply to public sales of timber by sealed
6 bid."

7 **SECTION 5.** G.S. 1-339.26 reads as rewritten:

8 **"§ 1-339.26. Public sale by auction; separate upset bids when real property sold in**
9 **parts; subsequent procedure.**

10 When real property is sold at public sale by auction in parts, as provided by G.S.
11 1-339.9, the sale, and each subsequent resale, sale of any part shall be subject to a
12 separate upset bid; and, to the extent the judge or clerk of court having jurisdiction
13 deems advisable, the sale of each part shall thereafter be treated as a separate sale for
14 the purpose of determining the ~~procedure applicable thereto.~~ applicable procedure."

15 **SECTION 6.** G.S. 1-339.27 is repealed.

16 **SECTION 7.** Article 29A of Chapter 1 of the General Statutes is amended
17 by adding a new section to read:

18 **"§ 1-339.27A. Ordering resale of real property after sale or upset bid.**

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

28 **SECTION 8.** G.S. 1-339.30 reads as rewritten:

29 **"§ 1-339.30. Public sale; failure of bidder to make cash deposit or to comply with**
30 **bid; resale.**

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

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

40 (b) When the highest bidder at a public sale of personal property not required to
41 be confirmed fails to make the cash payment, if any, required by the terms of the sale,
42 the person holding the sale shall at the same time and place again offer the property for

1 sale. In the event no other bid is received, a new sale may be advertised in the regular
2 manner provided by this Article for an original sale.

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

9 (d) When the highest bidder at a public sale or resale of real property by auction
10 or any upset bidder fails to comply with ~~his~~the bid within ~~ten~~10 days after the tender to
11 ~~him~~the bidder of a deed for the property or after a bona fide attempt to tender the deed,
12 the judge or clerk having jurisdiction may order a resale. The procedure for a resale of
13 real property is the same in every respect as is provided by this Article in the case of an
14 original public sale of real property ~~except that the provisions of G.S. 1-339.27 (c), (d)~~
15 ~~and (e) apply with respect to the posting and publishing of the notice of the~~
16 ~~resale property.~~

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

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

29 (f) Nothing in this section deprives any person of any other remedy against the
30 defaulting bidder."

31 **SECTION 9.** G.S. 1-339.36(b) reads as rewritten:

32 "(b) When an upset bid is made for property sold at private sale, subsequent
33 procedure with respect ~~thereto shall be to the upset bid~~ is the same as for ~~the public sale~~
34 ~~of real property for which an upset bid has been submitted, except that the notice of~~
35 ~~resale of personal property need not be published in a newspaper, but shall be posted as~~
36 ~~provided by G.S. 1-339.17.~~upset bids submitted in connection with real property sold at
37 public sale."

38 **SECTION 10.** G.S. 1-339.37 reads as rewritten:

39 **"§ 1-339.37. Private sale; confirmation.**

40 If no upset bid for property sold at private sale is submitted within ~~ten~~10 days after
41 the report of sale or the last notice of upset bid is filed, the sale may then be confirmed,
42 and the provisions of G.S. 1-339.28(a) and (b) are applicable to such confirmation

1 whether the property sold is real or personal. Unless otherwise provided in the order of
2 sale, no confirmation is required of any sale held as provided by G.S. 1-339.34."

3 **PART II. EXECUTION SALES.**

4 **SECTION 11.** G.S. 1-339.52 reads as rewritten:

5 **"§ 1-339.52. Posting and publishing notice of sale of real property.**

6 (a) The notice of sale of real property ~~shall~~shall:

7 (1) Be posted, ~~at the courthouse door in the area designated by the clerk of~~
8 superior court for the posting of notices in the county in which the
9 property is situated, for ~~thirty~~at least 20 days immediately preceding
10 the ~~sale,~~sale; and

11 (2) ~~And in addition thereto,~~Be published once a week for at least two
12 successive weeks:

13 a. ~~If~~In a newspaper qualified for legal advertising is published in
14 the ~~county, the notice shall be published in such a newspaper~~
15 ~~once a week for at least four successive weeks; but~~county; or

16 b. If no ~~such~~newspaper qualified for legal advertising is published
17 in the county, ~~then notice shall be published once a week for at~~
18 ~~least four successive weeks~~ in a newspaper having general
19 circulation in the county.

20 (b) When the notice of sale is published in a ~~newspaper,~~newspaper:

21 (1) The period from the date of the first publication to the date of the last
22 publication, both dates inclusive, shall not be less than ~~twenty-two~~
23 seven days, including ~~Sundays,~~Sundays; and

24 (2) The date of the last publication shall be not more than 10 days
25 preceding the date of the sale.

26 (c) When the real property to be sold is situated in more than one county, the
27 provisions of subsections (a) and (b) shall be complied with in each county in which any
28 part of the property is situated."

29 **SECTION 12.** G.S. 1-339.53 reads as rewritten:

30 **"§ 1-339.53. Posting notice of sale of personal property.**

31 The notice of sale of personal property, except in the case of perishable property as
32 specified in G.S. 1-339.56, shall be posted, ~~at the courthouse door in the area designated~~
33 by the clerk of superior court for the posting of notices in the county in which the sale is
34 to be held, for ~~ten~~10 days immediately preceding the date of sale."

35 **SECTION 13.** G.S. 1-339.58 reads as rewritten:

36 **"§ 1-339.58. Postponement of sale.**

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

39 (1) When there are no bidders, ~~or~~

40 (2) When, in ~~his~~the sheriff's judgment, the number of prospective bidders
41 at the sale is substantially decreased by inclement weather or by any
42 casualty, ~~or~~

- 1 (3) When there are so many other sales advertised to be held at the same
2 time and place as to make it inexpedient and impracticable, in ~~his~~the
3 sheriff's judgment, to hold the sale on that day, ~~or~~
4 (4) When ~~he~~the sheriff is unable to hold the sale because of illness or for
5 other good reason, or
6 (5) When other good cause exists.
7 (b) Upon postponement of a sale, the sheriff ~~shall~~ shall:
8 (1) At the time and place advertised for the sale, publicly announce the
9 postponement ~~thereof, and of the sale; and~~
10 (2) On the same day, attach to or enter on the original notice of sale or a
11 copy ~~thereof, of the notice, posted at the courthouse door,~~ as provided
12 by G.S. 1-339.52 in the case of real property or G.S. 1-339.53 in the
13 case of personal property, a notice of the postponement.
14 (c) The posted notice of postponement ~~shall~~ shall:
15 (1) State that the sale is postponed,
16 (2) State the hour and date to which the sale is postponed,
17 (3) State the reason for the postponement, and
18 (4) Be signed by the sheriff.
19 (d) If a sale is not held at the time fixed ~~therefor~~ for the sale and is not postponed
20 as provided by this section, or if a postponed sale is not held at the time fixed ~~therefor,~~
21 for the sale, the sheriff shall report the facts with respect thereto to the clerk of the
22 superior court, who shall thereupon make an order for the sale of the property to be held
23 at such time and place and upon such notice to be given in ~~such~~ the manner and for ~~such~~
24 the length of time as ~~he~~ the clerk of the superior court deems advisable, but nothing
25 ~~herein contained shall be deemed to relieve in this section relieves~~ the sheriff of liability
26 for the nonperformance of ~~his~~ the sheriff's official duty."

27 **SECTION 14.** G.S. 1-339.64 reads as rewritten:

28 "**§ 1-339.64. Upset bid on real property; compliance bond.**

- 29 (a) An upset bid is an advanced, ~~increased~~ increased, or raised bid whereby a
30 person offers to purchase real property theretofore sold for an amount exceeding the
31 reported sale price or last upset bid by a minimum of five percent (5%) thereof, but in
32 any event with a minimum increase of seven hundred fifty dollars (\$750.00). ~~An~~
33 Subject to the provisions of subsection (b) of this section, an upset bid shall be made by
34 delivering to the clerk of superior court, with whom the report of sale or the last notice
35 of upset bid was filed, a deposit in cash or by certified check or cashier's check
36 satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the
37 amount of the upset bid but in no event less than seven hundred fifty dollars (\$750.00).
38 The deposit required by this section shall be filed with the clerk of the superior court,
39 with whom the report of sale or the last notice of upset bid was filed, by the close of
40 normal business hours on the tenth day after the filing of the report of ~~sale, sale or the~~
41 last notice of upset bid and if the tenth day ~~shall fall~~ falls upon a Sunday or legal holiday
42 or upon a day in which the office of the clerk is not open for the regular dispatch of its

1 business, the deposit may be made and the notice of upset bid may be filed on the day
2 following when ~~said~~ the office is open for the regular dispatch of its business. ~~An upset~~
3 ~~bid need not be in writing, and the timely deposit with the clerk of the required amount,~~
4 ~~together with an indication to the clerk as to the sale to which it is applicable, is~~
5 ~~sufficient to constitute the upset bid, subject to the provisions of subsection (b).~~ Except
6 as provided in G.S. 1-339.66A and G.S. 1-339.69, there shall be no resales; however,
7 there may be successive upset bids, each of which shall be followed by a period of 10
8 days for a further upset bid. If a timely motion for resale is filed under G.S. 1-339.66A,
9 no upset bids may be filed while the motion is pending. If an upset bid or a motion for
10 resale under G.S. 1-339.66A is not filed within 10 days following a sale, resale, or prior
11 upset bid, the rights of the parties to the sale or resale become fixed.

12 (b) The clerk of the superior court may require ~~the person submitting an upset bid~~
13 an upset bidder or the highest bidder at a resale held under G.S. 1-339.69 also to deposit
14 with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond,
15 approved by the clerk, conditioned on compliance with the upset bid. The amount of
16 such bond shall not exceed the amount of the upset bid less the amount of the required
17 deposit. The compliance bond shall be in the amount the clerk deems adequate,
18 but in no case greater than the amount of the bid of the person being required to furnish
19 the bond, less the amount of any required deposit. The compliance bond shall be
20 payable to the State of North Carolina for the use of the parties in interest and shall be
21 conditioned on the principal obligor's compliance with the bid.

22 (c) ~~The clerk of the superior court may in the order of resale require the highest~~
23 ~~bidder at a resale had pursuant to an upset bid to deposit with the clerk a cash bond, or,~~
24 ~~in lieu thereof at the option of the bidder, a surety bond, approved by the clerk,~~
25 ~~conditioned on compliance with his bid. The bond shall be in such amount as the clerk~~
26 ~~deems adequate but in no case greater than the amount of the bid of the person being~~
27 ~~required to furnish the bond.~~

28 (d) ~~A compliance bond, such as is provided for by subsections (b) and (c), shall~~
29 ~~be payable to the State of North Carolina for the use of the parties in interest and shall~~
30 ~~be conditioned on the principal obligor's compliance with his bid.~~

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

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

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

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

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

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

15 **SECTION 15.** G.S. 1-339.65 reads as rewritten:

16 **"§ 1-339.65. Separate upset bids when real property sold in parts; subsequent**
17 **procedure.**

18 When real property is sold in parts, as provided by G.S. 1- 339.46, ~~the sale, and each~~
19 ~~subsequent resale, sale~~ of any such part shall be subject to a separate upset bid; and to
20 the extent the clerk of the superior court having jurisdiction deems advisable, the sale of
21 each such part shall thereafter be treated as a separate sale for the purpose of
22 determining the ~~procedure applicable thereto.~~ applicable procedure."

23 **SECTION 16.** G.S. 1-339.66 is repealed.

24 **SECTION 17.** Article 29B of Chapter 1 of the General Statutes is amended
25 by adding a new section to read:

26 **"§ 1-339.66A. Ordering resale of real property after upset bid.**

27 Upon motion of an interested person filed within 10 days after a sale or upset bid
28 and for good cause, the clerk of superior court may order a resale of real property when
29 an upset bid is submitted as provided in G.S. 1-339.64. If the motion is granted based on
30 the inadequacy of the last bid, the procedure for the resale is the same in every respect
31 as is provided by this Article in the case of an original public sale, and the last bidder is
32 released from the bidder's obligations under the bid. If the motion is granted for any
33 other reason, the last bid becomes the opening bid at resale, and if there is no bid at
34 resale other than the last bid, the person who made the last bid is the highest bidder at
35 resale. If the motion is denied, the 10-day period for subsequent upset bids begins upon
36 the entry of the order."

37 **SECTION 18.** G.S. 1-339.69 reads as rewritten:

38 **"§ 1-339.69. Failure of bidder to comply with bid; resale.**

39 (a) When the highest bidder at a sale of personal property fails to pay the amount
40 of ~~his~~ the bid, the sheriff shall at the same time and place immediately resell the
41 property. In the event no other bid is received, a new sale may be advertised in the
42 regular manner provided by this Article for an original sale.

1 (b) When the highest bidder at a sale or resale of real property or any upset
2 bidder fails to comply with ~~his-the~~ bid within ~~ten-10~~ days after the tender to ~~him-the~~
3 bidder of a deed for the property or after a bona fide attempt to tender such deed, the
4 clerk of the superior court who issued the execution may order a resale. The procedure
5 for such resale is the same in every respect as is provided by this Article in the case of
6 an original sale of real ~~property except that the provisions of G.S. 1-339.66(b), (e) and~~
7 ~~(d) apply with respect to the posting and publishing of the notice of such~~
8 ~~resale-property.~~

9 (c) A defaulting bidder at any sale or resale or any defaulting upset bidder is
10 liable on ~~his-the~~ bid, and in case a resale is had because of ~~such-the~~ default, ~~he shall~~
11 ~~remain-the~~ defaulting bidder remains liable to the extent that the final sale price is less
12 than ~~his-the~~ bid plus all costs of ~~such-the~~ resale or resales. Any deposit or compliance
13 bond made by the defaulting bidder shall secure payment of the amount, if any, for
14 which the defaulting bidder remains liable under this section.

15 (d) Nothing in this section deprives any person of any other remedy against the
16 defaulting bidder."

17 **PART III. CONFORMING AMENDMENTS TO OTHER SECTIONS OF THE** 18 **GENERAL STATUTES.**

19 **SECTION 19.** G.S. 46-28.1(e) reads as rewritten:

20 "(e) If the court revokes its order of confirmation under this section, the court
21 shall order a ~~resale pursuant to the provisions of G.S. 1-339.27-~~ resale. The procedure
22 for a resale is the same as is provided for an original public sale under Article 29A of
23 Chapter 1 of the General Statutes."

24 **PART IV. EFFECTIVE DATE AND APPLICABILITY.**

25 **SECTION 20.** This act becomes effective January 1, 2002, and applies to
26 judicial sales when the original order of sale is issued on or after that date and to
27 execution sales when the execution is originally issued on or after that date. This act
28 does not apply to any judicial sale when the original order of sale is issued prior to the
29 effective date of this act or to any execution sale held pursuant to any execution
30 originally issued prior to the effective date of this act.