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SENATE BILL DRS15259-MQ-68

Short Title: Online Sales & Auctions for Judicial Sales. (Public)

Sponsors: Senator McInnis (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW THE USE OF REAL ESTATE BROKERS AND ONLINE SALES FOR
3 JUDICIAL SALES ORDERED BY A JUDGE OR CLERK OF COURT FOR REAL OR
4 PERSONAL PROPERTY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 29A of Chapter 1 of the General Statutes reads as rewritten:

7 "Article 29A.

8 "Judicial Sales.

9 "Part 1. General Provisions.

10 ...

11 "**§ 1-339.3A. Judge or clerk may order public or private sale; alternate sale methods.**

12 (a) The judge or clerk of court having jurisdiction has authority in ~~his~~ the judge's or clerk
13 of court's discretion to determine whether a sale of either real or personal property shall be a
14 public or private sale and whether a public sale of timber shall be by auction or by sealed bid.
15 Any private sale conducted under an order issued prior to July 1, 1955 by a judge or clerk of
16 court having jurisdiction is hereby validated as to the order that the sale be a private sale.

17 (b) The judge or clerk of court having jurisdiction may order that a sale of real or personal
18 property be conducted using a licensed real estate broker or a licensed auctioneer or that a sale
19 be conducted online. The order shall specify the terms of a sale ordered under this subsection,
20 including allowable commission and fee amounts, and shall direct the person designated to hold
21 the sale under G.S. 1-339.4 to facilitate the transaction. A notice of sale and any other listing for
22 a sale held pursuant to this subsection shall comply with G.S. 1-339.15. A sale held pursuant to
23 this subsection shall not be subject to the upset bid procedure provided in G.S. 1-339.25 or
24 G.S. 1-339.26.

25 "**§ 1-339.6. Place of public sale.**

26 (a) ~~Every~~ With the exception of a sale ordered under G.S. 1-339.3A(b), every public sale
27 of real property shall be held in the county where the property is situated unless the property
28 consists of a single tract situated in two or more counties.

29 (b) A public sale of a single tract of real property situated in two or more counties may
30 be held in any one of the counties in which any part of the tract is situated. For the purposes of
31 this section, a "single tract" means any tract which has a continuous boundary, regardless of
32 whether parts thereof may have been acquired at different times or from different persons, or
33 whether it may have been subdivided into separate units or lots or whether it is sold as a whole
34 or in parts.

35 (c) A public sale of personal property may be held at any place in the State designated in
36 the order.



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1 **"§ 1-339.7. Presence of personal property at public sale required.**

2 The person holding a public sale of personal property shall have the property present at the
3 place of sale unless the order of sale provides otherwise as authorized by G.S. 1-339.3A(b) or
4 G.S. 1-339.13(c).

5 **"§ 1-339.8. Public sale of separate tracts in different counties.**

6 (a) When an order of public sale directs the sales of separate tracts of real property
7 situated in different counties, exclusive jurisdiction over the sale remains in the superior or
8 district court of the county where the proceeding, in which the order of sale was issued, is
9 pending, but there shall be a separate advertisement, sale and report of sale with respect to the
10 property in each county. In any such sale proceeding, the clerk of the superior court of the county
11 where the original order of sale was issued has jurisdiction with respect to upset bids submitted
12 for separate tracts of property situated in other counties as well as in the clerk's own county.
13 When the public sale is by auction an upset bid may be filed only with that clerk.

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

17 (c) ~~When~~ Except for a sale ordered under G.S. 1-339.9A(b), when the public sale is by
18 auction, the sale of each separate tract shall be subject to separate upset bids. To the extent
19 deemed necessary by the judge or clerk of court of the county where the original order of sale
20 was issued, the sale of each tract shall be treated as a separate sale.

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

26 **"§ 1-339.9. Sale as a whole or in parts.**

27 (a) When real property to be sold consists of separate lots or other units or when personal
28 property consists of more than one article, the judge or clerk of court having jurisdiction may
29 direct specifically that the property be sold by any of the following methods:

30 (1) ~~That it be sold as~~ As a whole, or whole.

31 (2) ~~That it be sold in~~ In designated parts, or parts.

32 (3) ~~That it be offered~~ Offered for sale by each method, in whole or in designated
33 parts and then sold by the method which produces the highest price.

34 (4) Using one of the alternate sale methods provided in G.S. 1-339.3A(b).

35 (b) When real property to be sold has not been subdivided but is of such nature that it
36 may be advantageously subdivided for sale, the judge or clerk having jurisdiction may authorize
37 the subdivision thereof and the dedication to the public of such portions thereof as are necessary
38 or advisable for public highways, streets, alleys, or other public purposes.

39 (c) When an order of sale of such real or personal property as is described in subsection
40 (a) of this section makes no specific provision for the sale of the property as a whole or in parts,
41 the person authorized to make the sale has authority in his discretion to sell the property by
42 whichever method described in subdivisions (1), (2), or (3) of subsection (a) of this section ~~he~~
43 the person authorized to make the sale deems most advantageous.

44 "Part 2. Procedure for Public Sales of Real and Personal Property.

45 **"§ 1-339.13. Public sale; order of sale.**

46 (a) Whenever a public sale or a sale under G.S. 1-339.3A(b) is ordered, the order of sale
47 shall

48 (1) Designate the person authorized to hold the sale;

49 (2) Direct that the property be sold at public auction to the highest ~~bidder~~ bidder
50 or by one of the methods described in G.S. 1-339.3A(b) or, in the case of a

- 1 sale of timber, direct that the timber be sold to the highest bidder and specify
2 whether the sale is to be by public auction or by sealed bid;
- 3 (3) Describe real property to be sold, by reference or otherwise, sufficiently to
4 identify it;
- 5 (4) Describe personal property to be sold, by reference or otherwise, sufficiently
6 to indicate its nature and quantity;
- 7 (5) Designate, consistently with G.S. 1-339.3A(b) and G.S. 1-339.6, the county
8 and the place therein at which the sale is to be held;
- 9 (6) Prescribe the terms of sale, specifying the amount of the cash deposit, if any,
10 to be made by the highest bidder at the sale; and
- 11 (7) If the sale is to be a sale of timber by sealed bid, specify:
- 12 a. The minimum number of bids that must be submitted, which shall not
13 be less than three, and
- 14 b. The time at which any cash deposit required of the highest bidder must
15 be made, which shall not be more than three business days after the
16 date on which the sealed bids are opened.
- 17 (b) The order of public sale may also, but is not required to
- 18 (1) State the method by which the property shall be sold, pursuant to G.S. 1-339.9;
- 19 (2) Direct any posting of the notice of sale or any advertisement of the sale, in
20 addition to that required by G.S. 1-339.17 in the case of real property or
21 G.S. 1-339.18 in the case of personal property, which the judge or clerk of the
22 superior court deems advantageous; and
- 23 (3) Specify the number of appraisals to be obtained pursuant to G.S. 1-339.13A.
- 24 (c) The order of public sale may provide that personal property need not be present at the
25 place of sale when the nature, condition or use of the property is such that the judge or clerk
26 ordering the sale deems it impractical or inadvisable to require the presence of the property at the
27 sale. In such event, the order shall provide that reasonable opportunity be afforded prospective
28 bidders to inspect the property prior to the sale, and that notice as to the time and place for
29 inspection shall be set out in the notice of sale.
- 30 **"§ 1-339.15. Public sale; contents of notice of sale.**
- 31 The notice of public sale shall:
- 32 (1) Refer to the order authorizing the sale;
- 33 (2) If the sale is to be by public auction, designate the date, hour and place of sale;
- 34 (2a) If the sale is to be a sale of timber by sealed bid, specify:
- 35 a. The date on which sealed bids will first be accepted;
- 36 b. The place or address at which sealed bids are to be submitted;
- 37 c. The manner and form in which sealed bids are to be submitted;
- 38 d. The time and place at which any sealed bids received will be opened;
39 and
- 40 e. The minimum number of bids required, as determined pursuant to
41 G.S. 1-339.13(a)(7);
- 42 (3) Describe real property to be sold, by reference or otherwise, sufficiently to
43 identify it, and may add any further description as will acquaint bidders with
44 the nature and location of the property;
- 45 (4) Describe personal property to be sold sufficiently to indicate its nature and
46 quantity, and may add any further description as will acquaint bidders with
47 the nature of the property;
- 48 (5) State the terms of the sale, specifying the amount of the cash deposit, if any,
49 to be made by the highest bidder at the sale and, in the case of a sale by sealed
50 bid, the date by which any deposit shall be made, as determined pursuant to
51 G.S. 1-339.13(a)(7); and

1 (6) Include any other provisions required by the order of sale to be included
2 therein.

3 **"§ 1-339.17. Public sale; posting and publishing notice of sale of real property.**

4 (a) Subject to subsection (d) of this section, notice of public sale of real property shall:

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

8 (2) Be published once a week for at least two successive weeks:

9 a. In a newspaper qualified for legal advertising published in the county;
10 or

11 b. If no newspaper qualified for legal advertising is published in the
12 county, in a newspaper having general circulation in the county.

13 (b) When the notice of public sale is published in a newspaper:

14 (1) The period from the date of the first publication to the date of the last
15 publication, both dates inclusive, shall not be less than seven days, including
16 Sundays; and

17 (2) The date of the last publication shall be not more than 10 days preceding the
18 date of the sale in a sale by auction or the date on which sealed bids are opened
19 in a sale by sealed bid.

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

23 (c1) When the public sale is a sale of timber by sealed bid, the notice shall also be given
24 in writing, not less than 21 days before the date on which bids are opened, to a reasonable number
25 of prospective timber buyers, which in all cases shall include the timber buyers listed in the office
26 of the North Carolina Forest Service of the Department of Agriculture and Consumer Services
27 for the county or counties in which the timber to be sold is located.

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

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

35 **"§ 1-339.20. Public sale; postponement of sale.**

36 (a) A person authorized to hold a public sale by auction may postpone the sale to a day
37 certain not later than six days, exclusive of Sunday, after the original date for the sale, and a
38 person authorized to hold a public sale of timber by sealed bid may postpone the time for
39 submitting and opening bids to a date, time, and place certain not later than six days, exclusive
40 of Sunday, after the original date for the opening of bids:

41 (1) When there are no bidders, or

42 (2) When, in his judgment, the number of prospective bidders at the sale is
43 substantially decreased by inclement weather or by any casualty, or

44 (3) When there are so many other sales advertised to be held at the same time and
45 place as to make it inexpedient and impracticable, in his judgment, to hold the
46 sale on that day, or

47 (4) When he is unable to hold the sale because of illness or for other good reason,
48 or

49 (5) When other good cause exists.

50 (b) Upon postponement of public sale the person authorized to hold the sale shall
51 personally, or through his agent or attorney

- 1 (1) At the time and place advertised for the sale or for the opening of sealed bids,
2 publicly announce the postponement thereof;
- 3 (2) On the same day, attach to or enter on the original notice of sale or a copy
4 thereof posted, as provided in G.S. 1-339.17 in the case of real property or
5 G.S. 1-339.18 in the case of personal property, a notice of the postponement;
6 and
- 7 (3) In the case of a public sale of timber by sealed bid, give notice of
8 postponement to each person who submitted a bid.
- 9 (c) The notice of postponement shall:
- 10 (1) State that the sale is postponed,
- 11 (2) In the case of a sale by public auction, state the hour and date to which the
12 sale is postponed,
- 13 (2a) In the case of a sale of timber by sealed bid, state the date, time, and place to
14 which the opening of bids is postponed,
- 15 (3) State the reason for the postponement, and
- 16 (4) Be signed by the person authorized to hold the sale, or by his agent or attorney.
- 17 (d) If a public sale is not held at the time fixed therefor and is not postponed as provided
18 by this section, or if a postponed sale is not held at the time fixed therefor, or if a sale ordered
19 under G.S. 1-339.3A(b) has not been completed prior to the date provided in the order, the person
20 authorized to make the sale shall report the facts with respect thereto to the judge or clerk of court
21 having jurisdiction, who shall thereupon make an order for the public sale of the property to be
22 held at such time and place and upon such notice to be given in such manner and for such length
23 of time as ~~he~~ the judge or clerk of court deems advisable.

24 **"§ 1-339.21. Public sale by ~~auction~~; auction or online; time of sale.**

25 (a) A public sale by ~~auction~~ auction, or online under G.S. 1-339.3A(b), shall begin at the
26 time designated in the notice of sale or as soon thereafter as practicable, but not later than one
27 hour after the time fixed therefor unless it is delayed by other sales held at the same place.

28 (b) No public sale by ~~auction~~ auction, or online under G.S. 1-339.3A(b), shall commence
29 before 10:00 o'clock A.M. or after 4:00 o'clock P.M.

30 (c) No public sale by ~~auction~~ auction, or online under G.S. 1-339.3A(b), shall continue
31 after 4:00 o'clock P.M., except that in cities or towns of more than 5,000 inhabitants, as shown
32 by the most recent federal census, sales of personal property may continue until 10:00 o'clock
33 P.M.

34 **"§ 1-339.22. Public sale by auction; ~~continuance of uncompleted sale~~; online sales.**

35 (a) A public sale by auction commenced but not completed within the time allowed by
36 G.S. 1-339.21 shall be continued by the person holding the sale to a designated time between
37 10:00 o'clock A.M. and 4:00 o'clock P.M. the next following day, other than Sunday. In case a
38 continuance becomes necessary, the person holding the sale shall publicly announce the time to
39 which the sale is continued.

40 (b) Unless otherwise provided by order of the judge or clerk of court, an online sale
41 ordered under G.S. 1-339.3A(b) shall not be restricted as to date and time.

42 **"§ 1-339.23. Public sale; when confirmation of sale of personal property necessary; delivery
43 of property; bill of sale.**

44 (a) When any person interested as a creditor, devisee, distributee, or otherwise, in the
45 proceeds of a public ~~sale~~ sale, or online under G.S. 1-339.3A(b), of personal property, objects at
46 the sale to the completion of the sale of any article of property on account of the insufficiency of
47 the amount bid, title to such property shall not pass and possession of the property shall not be
48 delivered until the sale of such property is reported and is confirmed by the judge or clerk of
49 court having jurisdiction; but such objection to the completion of the sale of any article of
50 property shall not prevent the completion of the sales of articles of property to which no objection
51 is made where the same have been separately sold. When a judge or clerk having jurisdiction

1 fails or refuses to confirm a sale of property which has thus been objected to, the procedure for a
2 new sale of such property, including a new order of sale, shall be the same as if no such attempted
3 sale has been held. This subsection shall not apply to perishable property sold pursuant to
4 G.S. 1-339.19.

5 (b) Except as provided in subsection (a), the person holding a public ~~sale~~ sale, or online
6 under G.S. 1-339.3A(b), of personal property shall deliver the property to the purchaser
7 immediately upon compliance by the purchaser with the terms of the sale.

8 (c) The person holding a public ~~sale~~ sale, or online under G.S. 1-339.3A(b), may execute
9 and deliver a bill of sale or other muniment of title for any personal property sold, and, upon
10 application of the purchaser, shall do so when required by the judge or clerk of court having
11 jurisdiction.

12 **"§ 1-339.24. Public sale; report of sale; when final as to personal property.**

13 (a) The person holding a public sale or a sale ordered under G.S. 1-339.3A(b) shall,
14 within five days after the date of the sale if the sale was by ~~auction~~, auction or online under
15 G.S. 1-339.3A(b), or within five days after the date on which bids were opened if the sale was a
16 sale of timber by sealed bid, file a report thereof with the clerk of the superior court of the county
17 where the proceeding for the sale is pending.

18 (b) The report shall be signed by the person authorized to hold the sale, or by his agent
19 or attorney and shall show

- 20 (1) The title of the action or proceeding;
- 21 (2) The authority under which the person making the sale acted;
- 22 (3) If the sale was by public auction, or online under G.S. 1-339.3A(b), the date,
23 hour and place of the sale;
- 24 (3a) If the sale was a sale of timber by sealed bid, the date, time, and place at which
25 the sealed bids were opened, the number of bids received, and the amount of
26 each bid;
- 27 (4) A description of real property sold, by reference or otherwise, sufficient to
28 identify it, and, if sold in parts, a description of each part so sold; and
- 29 (5) A description of personal property sold, sufficient to indicate the nature and
30 quantity of the property sold to each purchaser;
- 31 (6) The names of the purchasers;
- 32 (7) The price at which the property, or each part thereof, was sold and that this
33 price was the highest bid therefor; and
- 34 (8) The date of the report.

35 (c) The report of sale of personal property, when confirmation of the sale is not required,
36 may include such additional information as is required by G.S. 1-339.31 or G.S. 1-339.32,
37 whichever is applicable, and when such additional information is included, the report shall
38 constitute the final report of sale of personal property. If the report does not include the additional
39 information required by G.S. 1-339.31 or G.S. 1-339.32, the final report required by those
40 sections shall be subsequently filed.

41 (d) The report of a sale of timber by sealed bid shall include the information required by
42 G.S. 1-339.13A(b) and G.S. 1-339.17(c1).

43 **"§ 1-339.28. Public sale; confirmation of sale.**

44 (a) No public sale or sale ordered under G.S. 1-339.3A(b) of real property may be
45 consummated until confirmed as follows:

- 46 (1) If a ~~public sale is~~ ordered by a judge of the Superior Court Division, it may
47 thereafter be confirmed by a resident superior court judge of the district or a
48 superior court judge regularly holding the courts of the district.
- 49 (2) If a ~~public sale is~~ ordered by a judge of the District Court Division, it may
50 thereafter be confirmed by the judge so ordering, the chief district judge, or

1 any district judge authorized by the chief judge to hear motions and enter
2 interlocutory orders.

3 (3) If a ~~public sale is~~ ordered by a clerk of court, it may thereafter be confirmed
4 by the clerk of court so ordering.

5 (b) No public sale or sale ordered under G.S. 1-339 of real property of a minor or
6 incompetent originally ordered by a clerk may be consummated until confirmed both by the clerk
7 and by a resident superior court judge of, or a judge regularly holding the courts of, the district
8 or set of districts as defined in G.S. 7A-41.1(a).

9 (c) No public sale of real property sold at public auction may be confirmed until the time
10 for submitting an upset bid, pursuant to G.S. 1-339.25, has expired.

11 (d) Confirmation of the public sale of personal property is necessary only in the case set
12 out in G.S. 1-339.23(a), or when the order of sale provides for such confirmation.

13 (e) No public sale of timber sold by sealed bid shall be confirmed until the court
14 determines that the highest bid is an adequate price for the timber sold and that sale to the highest
15 bidder is in the best interest of the person or estate for whom the timber is being sold. In so doing,
16 the court may consider any of the following factors:

17 (1) The appraisals obtained by the person who conducted the sale;

18 (2) The number and amounts of the other bids received;

19 (3) Comparable sales of similar timber within the relevant time period;

20 (4) Short-term market factors that depressed the price at the time of the sale;

21 (5) The likelihood of significantly increasing the price through another sale;

22 (6) The additional cost of conducting another sale;

23 (7) The effect on the person or estate for whom the timber is being sold of the
24 delay that would result from conducting another sale; and

25 (8) Any other factors in evidence that the court considers relevant.

26 **"§ 1-339.29. Public sale; real property; deed; order for possession.**

27 (a) Upon confirmation of a public sale or a sale ordered under G.S. 1-339.3A(b) of real
28 property, the person authorized to hold the sale, or such other person as may be designated by
29 the judge or clerk of court having jurisdiction, shall prepare and tender to the purchaser a duly
30 executed deed for the property sold and, upon compliance by the purchaser with the terms of
31 sale, shall deliver the deed to the purchaser.

32 (b) A person executing a deed to real property being conveyed pursuant to a public sale
33 or a sale ordered under G.S. 1-339.3A(b) may recite in the deed, in addition to the usual
34 provisions, substantially as ~~follows~~follows, if applicable:

35 (1) The authority for making the ~~sale,~~sale.

36 (2) The title of the action or proceeding in which the sale was ~~had,~~had.

37 (3) The name of the person authorized to make the ~~sale,~~sale.

38 (4) The fact that the sale was duly ~~advertised,~~advertised.

39 (5) The date of the ~~sale,~~sale.

40 (6) The name of the highest bidder and the price ~~bid,~~bid.

41 (7) That the sale has been ~~confirmed,~~confirmed.

42 (8) That the terms of the sale have been complied ~~with,~~and with.

43 (9) That the person executing the deed has been authorized to execute it.

44 (c) The judge or clerk of court having jurisdiction of the proceeding in which the property
45 is sold may grant an order for possession of real property so sold and conveyed, as against all
46 persons in possession who are parties to the proceeding.

47 (d) An order for possession granted pursuant to the preceding subsection shall be directed
48 to the sheriff, shall authorize him to remove the party or parties in possession, and their personal
49 property, from the premises and to put the purchaser in possession, and shall be executed in
50 accordance with the procedure for executing a writ or order for possession in a summary
51 ejectment proceeding under G.S. 42-36.2.

1 "§ 1-339.31. Public sale; report of commissioner or trustee in deed of trust.

2 (a) A commissioner or a trustee in a deed of trust, authorized pursuant to G.S. 1-339.4 to
3 hold a public sale or a sale ordered under G.S. 1-339.3A(b) of property, shall, in addition to all
4 other reports required by this Article, file with the clerk of the superior court an account of his
5 receipts and disbursements as follows:

6 (1) When the sale is for cash, a final report shall be filed within thirty days after
7 receipt of the proceeds of the ~~sale;~~sale.

8 (2) When the sale is wholly or partly on time and the commissioner or trustee is
9 not required to collect deferred payments, a final report shall be filed within
10 thirty days after receipt of the cash payment, if any is required, and the receipt
11 of all securities for the purchase ~~price;~~price.

12 (3) When the commissioner or trustee is required to collect deferred
13 ~~payments,~~payments then the commissioner or trustee shall do the following:

14 a. ~~He shall file~~File a preliminary report within thirty days after receipt of
15 the cash payment, if any is required, and the receipt of all securities
16 for the purchase ~~price,~~and price.

17 b. If the period of time during which ~~he~~the commissioner or trustee is
18 required to collect deferred payments extends over more than one year,
19 ~~he~~the commissioner or trustee shall file an annual report of ~~his~~all
20 receipts and ~~disbursements,~~and disbursements.

21 c. After collecting all deferred payments, ~~he~~the commissioner or trustee
22 shall file a final report.

23 (b) The clerk shall audit and record the reports and accounts required to be filed pursuant
24 to this section."

25 **SECTION 2.** This act becomes effective January 1, 2020, and applies to orders
26 entered on or after that date.