

GENERAL ASSEMBLY OF NORTH CAROLINA
1997 SESSION

S.L. 1997-83
HOUSE BILL 197

AN ACT TO ESTABLISH A PROCEDURE FOR CONDUCTING JUDICIAL SALES
OF TIMBER BY SEALED BID, AS RECOMMENDED BY THE GENERAL
STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-339.3A reads as rewritten:

"§ 1-339.3A. Judge or clerk may order public or private sale.

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

Section 2. G.S. 1-339.8(a) reads as rewritten:

"(a) When an order of public sale directs the sales of separate tracts of real property situated in different counties, exclusive jurisdiction over ~~such~~ 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, has jurisdiction with respect to the resale of separate tracts of property situated in other counties as well as in the clerk's own county, and when the public sale is by auction an upset bid may be filed only with ~~such~~ that clerk, except in those cases where the judge retains resale jurisdiction pursuant to G.S. 1-339.27."

Section 3. G.S. 1-339.8(c) reads as rewritten:

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

Section 4. G.S. 1-339.13(a) reads as rewritten:

- "(a) Whenever a public sale is ordered, the order of sale shall
- (1) Designate the person authorized to hold the sale;

- (2) Direct that the property be sold at public auction to the highest bidder; bidder or, in the case of a sale of timber, direct that the timber be sold to the highest bidder and specify whether the sale is to be by public auction or by sealed bid;
- (3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it;
- (4) Describe personal property to be sold, by reference or otherwise, sufficiently to indicate its nature and quantity;
- (5) Designate, consistently with G.S. 1-339.6, the county and the place therein at which the sale is to be held; ~~and~~
- (6) Prescribe the terms of sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the sale; sale; and
- (7) If the sale is to be a sale of timber by sealed bid, specify:
 - a. The minimum number of bids that must be submitted, which shall not be less than three, and
 - b. The time at which any cash deposit required of the highest bidder must be made, which shall not be more than three business days after the date on which the sealed bids are opened."

Section 5. G.S. 1-339.13(b) reads as rewritten:

"(b) The order of public sale may also, but is not required to

- (1) State the method by which the property shall be sold, pursuant to G.S. 1-339.9;
- (2) Direct any posting of the notice of sale or any advertisement of the sale, in addition to that required by G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, which the judge or clerk of the superior court deems ~~advantageous~~; advantageous; and
- (3) Specify the number of appraisals to be obtained pursuant to G.S. 1-339.13A."

Section 6. Part 2 of Article 29A of Chapter 1 of the General Statutes is amended by adding a new section to read:

"§ 1-339.13A. Public sale of timber by sealed bid; appraisal; bid procedure.

(a) When a sale of timber by sealed bid is ordered, the person holding the sale, before giving notice of the sale, shall:

- (1) Obtain one or more appraisals of the timber to be sold;
- (2) Determine the place at which and the manner and form in which sealed bids should be submitted;
- (3) Determine the first date on which sealed bids will be accepted, which shall not be less than five days after the date on which the notice of sale is first published pursuant to G.S. 1-339.17; and
- (4) Determine the date, time, and place at which sealed bids will be opened.

(b) Each appraisal obtained pursuant to subsection (a) of this section shall be made by a registered professional forester or other person qualified by training and experience to appraise the timber to be sold. Copies of all appraisals obtained pursuant to this section shall be included in the report required under G.S. 1-339.24. A person conducting an appraisal pursuant to this section, including a partnership, corporation, company, or other business of the appraiser, may not submit a bid on the timber which is the subject of the appraisal. An appraisal conducted pursuant to this section shall remain confidential until the appraisal is filed with the report of sale pursuant to G.S. 1-339.24. The contents of the appraisal shall not be divulged by the appraiser to any person other than the person holding the sale nor may the appraiser conduct an appraisal of the timber for any other person until after the sale is confirmed.

(c) All sealed bids received on or after the first date set for submitting bids and, at or before the time set for opening the bids, shall be opened publicly at that time at the place set for doing so. If the minimum number of bids is received and there is only one highest bid, that bid shall be announced at that time; the highest bidder is the purchaser, and all bidders shall immediately be notified of that fact. If the minimum number of bids is not received, or if two or more bids in the same amount are the highest bids, that fact shall be announced at that time, and all bidders shall immediately be notified of that fact; the person holding the sale shall then obtain a new order of sale."

Section 7. G.S. 1-339.15 reads as rewritten:

"§ 1-339.15. Public sale; contents of notice of sale.

The notice of public sale ~~shall~~ shall:

- (1) Refer to the order authorizing the sale;
- (2) ~~Designate~~ If the sale is to be by public auction, designate the date, hour and place of sale;
- (2a) If the sale is to be a sale of timber by sealed bid, specify:
 - a. The date on which sealed bids will first be accepted;
 - b. The place or address at which sealed bids are to be submitted;
 - c. The manner and form in which sealed bids are to be submitted;
 - d. The time and place at which any sealed bids received will be opened; and
 - e. The minimum number of bids required, as determined pursuant to G.S. 1-339.13(a)(7);
- (3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it, and may add ~~such~~ any further description as will acquaint bidders with the nature and location of the property;
- (4) Describe personal property to be sold sufficiently to indicate its nature and quantity, and may add ~~such~~ any further description as will acquaint bidders with the nature of the property;
- (5) State the terms of the sale, specifying the amount of the cash deposit, if any, to be made by the highest bidder at the sale; ~~and sale and, in the case of a sale by sealed bid, the date by which any deposit shall be made, as determined pursuant to G.S. 1-339.13(a)(7); and~~

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

Section 8. G.S. 1-339.17 reads as rewritten:

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

- (a) The notice of public sale of real property shall
- (1) Be posted, ~~at the courthouse door~~ in the area designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for thirty days immediately preceding the sale,
 - (2) And in addition thereto,
 - a. If a newspaper qualified for legal advertising is published in the county, the notice shall be published in such a newspaper once a week for at least four successive weeks, but
 - b. If no ~~such~~ newspaper qualified for legal advertising is published in the county, then notice shall be published once a week for at least four successive weeks in a newspaper having a general circulation in the county.
- (b) When the notice of public sale is published in a newspaper,
- (1) The period from the date of the first publication to the date of the last publication, both dates inclusive, shall not be less than twenty-two days, including Sundays, and
 - (2) The date of the last publication shall be not more than 10 days preceding the date of the sale. sale in a sale by auction, or the date on which sealed bids are opened in a sale by sealed bid.

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

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

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

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

Section 9. G.S. 1-339.18(a) reads as rewritten:

"(a) The notice of public sale of personal property, except in the case of perishable property as provided by G.S. 1-339.19, shall be posted, ~~at the courthouse door~~, in the area designated by the clerk of superior court for the posting of notices, in the county in which the sale is to be held, for ten days immediately preceding the date of sale."

Section 10. G.S. 1-339.20(a) reads as rewritten:

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

- (1) When there are no bidders, or
- (2) When, in his judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty, or
- (3) When there are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in his judgment, to hold the sale on that day, or
- (4) When he is unable to hold the sale because of illness or for other good reason, or
- (5) When other good cause exists."

Section 11. G.S. 1-339.20(b) reads as rewritten:

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

- (1) At the time and place advertised for the ~~sale, sale or for the opening of sealed bids~~, publicly announce the postponement ~~thereof, and thereof;~~
- (2) On the same day, attach to or enter on the original notice of sale or a copy thereof posted ~~at the courthouse door~~, as provided in G.S. 1-339.17 in the case of real property or G.S. 1-339.18 in the case of personal property, a notice of the ~~postponement-postponement; and~~
- (3) In the case of a public sale of timber by sealed bid, give notice of postponement to each person who submitted a bid."

Section 12. G.S. 1-339.20(c) reads as rewritten:

"(c) The ~~posted~~ notice of postponement ~~shall~~ shall:

- (1) State that the sale is postponed,
- (2) ~~State~~ In the case of a sale by public auction, state the hour and date to which the sale is postponed,
- (2a) In the case of a sale of timber by sealed bid, state the date, time, and place to which the opening of bids is postponed,
- (3) State the reason for the postponement, and
- (4) Be signed by the person authorized to hold the sale, or by his agent or attorney."

Section 13. G.S. 1-339.21 reads as rewritten:

"§ 1-339.21. Public ~~sale~~; sale by auction; time of sale.

(a) A public sale by auction shall begin at the time designated in the notice of sale or as soon thereafter as practicable, but not later than one hour after the time fixed therefor unless it is delayed by other sales held at the same place.

(b) No public sale by auction shall commence before 10:00 o'clock A.M. or after 4:00 o'clock P.M.

(c) No public sale by auction shall continue after 4:00 o'clock P.M., except that in cities or towns of more than 5,000 inhabitants, as shown by the most recent federal census, sales of personal property may continue until 10:00 o'clock P.M."

Section 14. G.S. 1-339.22 reads as rewritten:

"§ 1-339.22. Public sale; sale by auction; continuance of uncompleted sale.

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

Section 15. G.S. 1-339.24(a) reads as rewritten:

"(a) The person holding a public sale shall, within five days after the date of the ~~sale,~~ sale if the sale was by auction, or within five days after the date on which bids were opened if the sale was a sale of timber by sealed bid, file a report thereof with the clerk of the superior court of the county where the proceeding for the sale is pending."

Section 16. G.S. 1-339.24(b) reads as rewritten:

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

- (1) The title of the action or proceeding;
- (2) The authority under which the person making the sale acted;
- (3) ~~The~~ If the sale was by public auction, the date, hour and place of the sale;
- (3a) If the sale was a sale of timber by sealed bid, the date, time, and place at which the sealed bids were opened, the number of bids received, and the amount of each bid;
- (4) A description of real property sold, by reference or otherwise, sufficient to identify it, and, if sold in parts, a description of each part so sold; and
- (5) A description of personal property sold, sufficient to indicate the nature and quantity of the property sold to each purchaser;
- (6) The names of the purchasers;
- (7) The price at which the property, or each part thereof, was sold and that ~~such this~~ price was the highest bid therefor; and
- (8) The date of the report."

Section 17. G.S. 1-339.24 is amended by adding a new subsection to read:

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

Section 18. G.S. 1-339.25(a) reads as rewritten:

"(a) An upset bid is an advanced, increased or raised bid in a public sale by auction whereby a person offers to purchase real property theretofore sold, for an amount exceeding the reported sale price by ten percent (10%) of the first \$1000 thereof plus five percent (5%) of any excess above \$1000, but in any event with a minimum increase of \$25, ~~such the~~ increase being deposited in cash, or by certified check or cashier's check satisfactory to the said clerk, with the clerk of the superior court, with

whom the report of the sale was filed, within ten days after the filing of ~~such~~the report; ~~such~~the deposit to be made with the clerk of superior court before the expiration of the tenth day, and if the tenth day shall fall upon a Sunday or holiday, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made on the day following when said office is open for the regular dispatch of its business. An upset bid need not be in writing, and the timely deposit with the clerk of the required amount, together with an indication to the clerk as to the sale to which it is applicable, is sufficient to constitute the upset bid, subject to the provisions of subsection ~~(b)~~(b) of this section."

Section 19. G.S. 1-339.25 is amended by adding a new subsection to read:

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

Section 20. G.S. 1-339.26 reads as rewritten:

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

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

Section 21. The catch line of G.S. 1-339.27 reads as rewritten:

"§ 1-339.27. Public sale; sale by auction; resale of real property; jurisdiction; procedure."

Section 22. G.S. 1-339.27(a) reads as rewritten:

"(a) When in a public sale by auction an upset bid is submitted to the clerk of the superior court, together with a compliance bond if one is required, a resale shall be ordered."

Section 23. G.S. 1-339.27(b) reads as rewritten:

"(b) In any case in which a judge has jurisdiction of the original ~~sale~~public sale by auction, he may provide by order that jurisdiction is retained for resale purposes, and in ~~such that~~ case when an upset bid is submitted, the judge having jurisdiction shall make the order of resale. In all cases where the judge does not retain jurisdiction of a public sale by auction for resale purposes, and in all cases where a public sale by auction is originally ordered by a clerk, the clerk shall make the order of resale and shall have jurisdiction of the proceeding for resale purposes. Whenever the original order of public sale by auction is made by the judge, the terms of any resale ordered by the clerk shall be consistent with terms of the original order, and the final order of confirmation shall be made by the judge having jurisdiction of the proceeding."

Section 24. G.S. 1-339.27(c) reads as rewritten:

"(c) Notice of any resale to be held because of an upset bid ~~shall~~shall:

- (1) Be posted, ~~at the courthouse door in the area~~ designated by the clerk of superior court for the posting of notices in the county in which the property is situated, for fifteen days immediately preceding the sale,
- (2) And in addition thereto,

- a. If a newspaper qualified for legal advertising is published in the county, the notice shall be published in such a newspaper once a week for at least two successive weeks, but
- b. If no ~~such~~ newspaper qualified for legal advertising is published in the county, the notice shall be posted at three other public places in the county for fifteen days immediately preceding the sale."

Section 25. G.S. 1-339.27 is amended by adding a new subsection to read:

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

Section 26. G.S. 1-339.28(b) reads as rewritten:

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

Section 27. G.S. 1-339.28(c) reads as rewritten:

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

Section 28. G.S. 1-339.28 is amended by adding a new subsection to read:

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

- (1) The appraisals obtained by the person who conducted the sale;
- (2) The number and amounts of the other bids received;
- (3) Comparable sales of similar timber within the relevant time period;
- (4) Short-term market factors that depressed the price at the time of the sale;
- (5) The likelihood of significantly increasing the price through another sale;
- (6) The additional cost of conducting another sale;
- (7) The effect on the person or estate for whom the timber is being sold of the delay that would result from conducting another sale; and
- (8) Any other factors in evidence that the court considers relevant."

Section 29. G.S. 1-339.30(a) reads as rewritten:

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

Section 30. G.S. 1-339.30 is amended by adding a new subsection to read:

"(a1) If an order of public sale of timber by sealed bid requires the highest bidder to make a cash deposit and the bidder fails to make the required deposit within the time specified in the order, the judge or clerk having jurisdiction may direct that the timber be sold to the person who submitted the next highest bid or may order a resale. The

procedure for a resale is the same in every respect as is provided by this Article in the case of an original public sale."

Section 31. G.S. 1-339.30(d) reads as rewritten:

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

Section 32. G.S. 1-339.30 is amended by adding a new subsection to read:

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

Section 33. G.S. 1-339.30(e) reads as rewritten:

"(e) A defaulting bidder at any sale or resale is liable on his bid, and in case a resale is had because of ~~such his~~ default, he shall remain liable to the extent that the final sale price is less than his ~~bid plus bid, and for all~~ costs of ~~such the~~ resale or resales."

Section 34. This act becomes effective December 1, 1997, and applies to all judicial sales ordered on or after that date.

In the General Assembly read three times and ratified this the 15th day of May, 1997.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 5:50 p.m. this 22nd day of May, 1997