



General Statutes Commission

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MEMORANDUM

To: House Rules, Calendar, and Operations of the House
From: General Statutes Commission
Re: SB 196 (GSC Sale of Property Amend/Delay Prosec Split)
Date: June 30, 2021

General Comments

The first five parts of this proposed committee substitute (PCS) are recommended by the General Statutes Commission. Part I updates the mailing method of notice to a judgment debtor of an execution sale of real property, Part II clarifies the effects of a default bid in private judicial sales and public or private partition sales, Part III makes various amendments to the tax foreclosure statutes, Part IV makes various amendments relating to the validity of certain notarial acts and certain instruments, and Part V makes various amendments affecting real property.

Drafts of Parts I and III were circulated to the N.C. Association of County Commissioners, N.C. League of Municipalities, Department of Revenue, Department of Justice, N.C. Sheriffs' Association, N.C. Bar Association, UNC School of Government, and others. A draft of Part II was circulated to the Conference of Clerks of Superior Court, Administrative Office of the Courts, Bar Association, UNC School of Government, and others. Parts IV and V consist of amendments requested by the Real Property Section of the N.C. Bar Association and technical changes. During the drafting process, the General Statutes Commission published all its drafts online. The Commission is unaware of any opposition to the first five parts of this PCS.

For Part VI of the PCS, please see the bill summary.

Specific Comments

Part I of the PCS, which relates to execution sales, is as follows:

Section 1(a) allows a sheriff, when sending notice of an execution sale to a judgment debtor not found in the county, to send the notice by registered or certified mail, return receipt requested, to the judgment debtor's last known address. This mailing method mirrors North Carolina Rule of Civil Procedure 4, which allows service of a summons by registered or certified mail, return receipt requested. Under current law, the sheriff must use registered mail. This section also modernizes the format of a list and makes language gender-neutral.

Section 1(b) provides that this section becomes effective October 1, 2021, and applies to executions issued on or after that date.

Part II of the PCS, which relates to judicial sales and partition sales, is as follows:

Section 2(a) clarifies that subsections (e) and (f) of G.S. 1-339.30 apply to a defaulting bidder in a private judicial sale. Under current law, it is unclear whether these provisions that apply to public judicial sales also apply to private judicial sales. G.S. 1-339.30(e) provides that a defaulting bidder

is liable on the bid and that, if there is a resale, the defaulting bidder is liable to the extent that the final sale price is less than the bid and is liable for costs of the resale. It also provides that any deposit by the defaulting bidder shall secure payment of the amount of liability. G.S. 1-339.30(f) provides that nothing in that section deprives any person of any other remedy against the defaulting bidder.

Section 2(b) adds a new § 46A-84.5 to clarify that if a purchaser in a partition sale defaults on the purchaser's bid, a party to the partition proceeding or the commissioner who made the sale may petition the court to revoke its order confirming the sale. This section further provides that the parties and purchaser shall be served and that, if the court finds that the purchaser has defaulted and is unable to cure the default, the court shall revoke its order of confirmation and order a resale.

Section 2(c) shortens a phrase in the general petition for revocation statute (G.S. 46A-83) to conform to language in the new § 46A-84.5.

Section 2(d) provides that this section is effective when it becomes law and applies to actions or proceedings pending on or commenced on or after that date.

Part III of the PCS, which relates to tax foreclosure actions and proceedings, is as follows:

Section 3(a) amends G.S. 105-374 (Foreclosure of tax lien by action in nature of action to foreclose a mortgage) to make the following changes:

- In subsection (c), removes the requirement for a taxing unit to serve and join a prior owner of the property and a trustee in a deed of trust. This section also makes "summonses" singular for greater clarity, tabulates a list, makes stylistic changes for greater clarity, removes obsolete language relating to tax lien sales, fixes a relative pronoun, removes unnecessary language, and replaces legalese with plain English.
- In subsection (p), provides that a judgment of confirmation shall bear interest at the same rate as a judgment entered under G.S. 105-375 (In rem method of foreclosure). Current law does not address this issue of post-judgment interest. This section also makes language gender-neutral and replaces legalese with plain English.

This section also makes further changes to G.S. 105-374, which are technical:

- In subsection (a), reorganizes a sentence for greater clarity, removes unnecessary words, and replaces legalese with plain English.
- In subsection (b), adds a subsection catchline to conform to the rest of the section, removes obsolete language relating to tax lien sales, and removes duplicative language.
- In subsection (c1), removes a parenthetical phrase to conform to the removal of the requirement to serve and join a trustee in a deed of trust, removes unnecessary language, replaces legalese with plain English, fixes a relative pronoun, and makes certain words singular for greater clarity.
- In subsection (d), replaces legalese with plain English and fixes the format of an internal citation.
- In subsection (e), fixes relative pronouns, replaces legalese with plain English, removes unnecessary parentheses, and designates the last paragraph as a new subsection (e1).
- In newly designated subsection (e1), adds a subsection catchline to conform to the rest of the section, removes unnecessary parentheses, makes language gender-neutral, and fixes a relative pronoun.

- In subsection (f), removes unnecessary parentheses and unnecessary language and replaces legalese with plain English.
- In subsection (h), replaces legalese with plain English, adds a phrase to clarify language, fixes the format of an internal citation, and removes unnecessary parentheses.
- In subsection (i), fixes the format of internal citations, replaces legalese with plain English, makes language gender-neutral, makes stylistic changes for greater clarity, and removes unnecessary words.
- In subsection (j), replaces legalese with plain English.
- In subsection (k), removes unnecessary parentheses and replaces legalese with plain English, adds little Roman numerals for greater clarity, and fixes punctuation.
- In subsection (l), removes unnecessary language and fixes punctuation.
- In subsection (m), removes unnecessary parentheses and designates the last paragraph as subsection (m1).
- In newly designated subsection (m1), adds a subsection catchline to conform to the rest of the section, makes language gender-neutral, splits up a sentence for greater clarity, replaces legalese with plain English, and removes unnecessary parentheses.
- In subsection (n), fixes punctuation and replaces legalese with plain English.
- In subsection (o), makes language gender-neutral, fixes punctuation, reorganizes language for greater clarity, replaces legalese with plain English, and removes unnecessary language.
- In subsection (q), splits up a sentence for greater clarity, replaces legalese with plain English, modernizes the format of a list, fixes relative pronouns, and removes unnecessary parentheses.

Section 3(b) amends G.S. 105-375 (In rem method of foreclosure) to make the following changes:

- In subsection (c), adds a reference to G.S. 105-374 to provide that a tax collector shall send notice of the tax lien foreclosure to all lienholders of record that would have been required to be served under that statute. This section also clarifies that if notice is unsuccessful as to the taxpayer or a lienholder of record, the tax collector shall make additional efforts to notify that person but does not need to make additional efforts to notify persons that have already been notified. The current language could be read as requiring the tax collector to notify persons that have already been notified. In addition, this section makes a citation referencing a definition less specific (since definitions are listed in alphabetical order), fixes punctuation, makes stylistic changes for greater clarity, and removes unnecessary language.
- In subsection (i), adds that a sheriff shall send notice of an execution sale to all lienholders of record and makes a stylistic change for greater clarity. This section also clarifies that if notice is unsuccessful as to the taxpayer or a lienholder of record, the sheriff shall make additional efforts to notify that person but does not need to make additional efforts to notify persons that have already been notified. The current language could be read as requiring the sheriff to notify persons that have already been notified. In addition, this section fixes the format of an internal citation, adds a word to clarify language and replaces legalese with plain English.

This section also makes further changes to G.S. 105-375, which are technical:

- In subsection (a), replaces legalese with plain English and fixes punctuation.
- In subsection (b), fixes punctuation, makes a citation referencing a definition less specific (since definitions are listed in alphabetical order), and replaces legalese with plain English.

- In subsection (d), fixes the format of an internal citation and replaces legalese with plain English.
- In subsections (e) and (g), replaces legalese with plain English.
- In subsection (h), fixes the format of an internal citation.
- In subsections (i1) and (m), replaces legalese with plain English.

Section 3(c) amends G.S. 105-373 as follows:

- In subdivision (a)(1), makes language gender-neutral, modernizes the format of a list, removes unnecessary parentheses and unnecessary language, and replaces legalese with plain English.
- In subdivision (a)(2), fixes the format of an internal citation, removes unnecessary parentheses, fixes relative pronouns, and makes language gender-neutral.
- In subdivision (a)(3), makes language gender-neutral, adds language to introduce a list, modernizes the format of lists, fixes the format of an internal citation, removes unnecessary parentheses, and replaces legalese with plain English.
- In subdivision (a)(4), fixes the format of an internal citation and modernizes the format of a list.
- In subsection (b), fixes the format of an internal citation and replaces legalese with plain English.
- In subsection (c), makes language gender-neutral, replaces legalese with plain English, removes unnecessary parentheses, and removes obsolete language relating to tax lien sales.
- In subsection (d), makes language-gender neutral, removes unnecessary parentheses, fixes the format of an internal citation, replaces legalese with plain English, removes an unnecessary reference, and removes obsolete language relating to tax lien sales.
- In subsection (e), makes language gender-neutral.
- In subsection (f), makes language gender-neutral and replaces legalese with plain English.
- In subsection (g), replaces legalese with plain English.
- In subsection (h), fixes punctuation and updates a reference to G.S. 105-330.3 to conform to the current organization of that section.

Section 3(d) amends G.S. 105-378 as follows:

- In subsection (a), replaces "No . . . may" with "No . . . shall" to conform to this State's drafting conventions, removes unnecessary parentheses, and removes obsolete language relating to tax lien sales.
- In subsection (b), fixes the format an internal citation, removes unnecessary language, and replaces legalese with plain English.
- In subsection (d), replaces "may not" with "shall not" to conform to this State's drafting conventions.

Section 3(e) provides that this section becomes effective October 1, 2021, and that subsections (a) and (b) of this section apply to tax foreclosure actions or proceedings commenced on or after that date.

Part IV of the PCS, which consists of Sections 4 through 7, relates to the validity of certain notarial acts and certain instruments. **Section 4** amends various statutes curing certain notarial acts taken or instruments executed, recorded, or acknowledged before a certain date by updating the curative

date and making technical changes. Except for the first date change, all these date changes replace April 1, 2013, with April 1, 2021. The amendments are as follows:

Section 4(a) amends G.S. 10B-65 as follows:

- In subsection (d), validates all notary acknowledgments bearing a notarial seal, regardless of the type of potential error, performed before July 1, 2013, updating the date from December 1, 2005. In this subsection, the PCS also removes unnecessary language.
- In subsection (e), validates notarial acts performed on or before April 1, 2021, despite certain errors or grounds for objection in (i) the qualifications of the notary public, (ii) the document, with regard to the notary's seal, signature, or stated expiration date of commission, or (iii) the year indicated in the date of acknowledgement, verification of proof, or oath or affirmation. It also validates deeds of trust as of April 1, 2021, when the notary was named as a trustee only.
- In subsection (a), removes unnecessary language.
- In subsection (b), fixes a relative pronoun.

Section 4(b) amends G.S. 10B-69 as follows:

- In subsection (a), validates notarial certificates contained in a form issued by a State agency prior to April 1, 2021, as long as the certificate complied with the law at the time the form was issued. In this subsection, the PCS also makes a stylistic change to conform to this State's drafting conventions.
- In subsection (b), replaces legalese with plain English.

Section 4(c) amends G.S. 10B-71 to validate instruments notarized before April 1, 2021, when a recommissioned notary failed to again take the oath as a notary public. In this section, the PCS also removes unnecessary language and replaces legalese with plain English.

Section 4(d) amends G.S. 47-48 to validate instruments recorded prior to April 1, 2021, when all certificates related to the instrument were not mentioned in the certifying officer's order but the instrument was admitted for recordation. In this section, the PCS also replaces legalese with plain English, removes unnecessary punctuation, makes language gender-neutral, removes unnecessary language, and adds an Oxford comma.

Section 4(e) amends G.S. 47-51 to provide that deeds executed prior to April 1, 2021, where the officer authorized to execute the deed omitted a seal after the officer's signature, are not invalid on account of this omission. In this section, the PCS also makes language gender-neutral and replaces legalese with plain English.

Section 4(f) amends G.S. 47-53 to validate recorded instruments acknowledged prior to April 1, 2021, when certain information related to the name or seal of the official taking the acknowledgment was omitted. In this section, the PCS also removes unnecessary language and replaces legalese with plain English.

Section 4(g) amends G.S. 47-53.1 to validate recorded instruments acknowledged prior to April 1, 2021, when the official taking the acknowledgment failed to affix his or her seal. In this section, the PCS also makes stylistic changes for greater clarity, fixes punctuation, and removes unnecessary language.

Section 4(h) amends G.S. 47-72 to validate deeds prior to April 1, 2021, when executed by a corporation, signed by appropriate individuals, and registered, but the corporate name was not affixed to the deed. In this section, the PCS also replaces legalese with plain English and removes unnecessary language.

Section 4(i) amends G.S. 47-97 to validate registered deeds executed prior to April 1, 2021, when there is an error in the name of an officer. In this section, the PCS also replaces legalese with plain English.

Section 4(j) amends G.S. 47-97.1 to validate recorded deeds executed and filed for registration prior to April 1, 2021, when there is error in the name and title of an officer named in the deed. In this section, the PCS also fixes punctuation, replaces legalese with plain English, and removes unnecessary language.

Section 4(k) amends G.S. 47-108.6 to validate deeds prior to April 1, 2021, when a dissolved foreign corporation conveyed real property and the deed was recorded but failed to (i) identify the officers signing and (ii) recite that authority was given to act on behalf of the corporation. In this section, the PCS also replaces legalese with plain English.

Section 4(l) amends G.S. 47-108.11 to validate instruments recorded prior to April 1, 2021, when the seal or certain language referencing the seal was omitted. In this section, the PCS also fixes punctuation, replaces legalese with plain English, makes a stylistic change for greater clarity, fixes a relative pronoun, and removes unnecessary language.

Section 4(m) amends G.S. 47-108.20 to validate certain correcting instruments recorded before April 1, 2021, that were not reexecuted and reacknowledged. In this section, the PCS also removes unnecessary language.

Section 5 repeals G.S. 10B-72 as obsolete, since it is duplicative of G.S. 10B-71 and applies to a time period (August 28, 2010 to January 12, 2012) that is already covered by that statute. When G.S. 10B-72 was enacted, it contained the same language as G.S. 10B-71 but applied to a later time period; however, when S.L. 2013-204, s. 1.9, extended the date in G.S. 10B-71, G.S. 10B-72 became obsolete.

Section 6 amends G.S. 47-2.2 as follows:

- Subsection (a) currently provides that if the proof or acknowledgement of an instrument by an out-of-state notary lacks (i) a seal or stamp, (ii) the expiration date of the notary's commission along with evidence showing that a seal or stamp is not required, and (iii) a statement that the notary's commission does not expire, the proof or acknowledgment must be accompanied by a certificate by an official of the other state. This PCS adds that to avoid this requirement the statement that the notary's commission does not expire must be part of the proof or acknowledgment or part of the notary's seal. In this subsection, the PCS also makes a stylistic change for greater clarity, replaces legalese with plain English, makes language gender-neutral, and removes unnecessary language.
- In subsection (b), fixes relative pronouns, replaces "may not" with "shall not" to conform to this State's drafting conventions, removes unnecessary language, and replaces legalese with plain English.

Section 7 amends G.S. 47-37.1 as follows:

- In subsection (a), adds that a notarial certificate that complies with the Electronic Notary Act (Article 2 of Chapter 10B of the General Statutes) is a sufficient form of probate or acknowledgement.
- In subsection (b), modernizes the format of a list and removes unnecessary language.
- In subsection (d), repeals the subsection as unnecessary.

Part V of the PCS, which consists of Sections 8 through 12 and relates to real property, is as follows:

Section 8 amends G.S. 41-56 as follows:

- In subsection (b), clarifies that a conveyance of real property from a grantor to the grantor and his or her spouse vests the property in them as tenants by the entirety, unless a contrary intention is expressed in the conveyance. The current language is unclear as to whether this subsection is discussing a conveyance from a grantor to a separate individual and his or her spouse, a situation which is addressed in subsection (a) of the statute. In this subsection, the PCS also fixes an incorrect cross-reference by replacing "G.S. 52-11" with "G.S. 52-10.1." G.S. 52-11 provides that a spouse is not liable for the other spouse's antenuptial contracts and torts, whereas G.S. 52-10.1 discusses separation agreements between spouses and is the relevant statute.
- In subsection (a), replaces legalese with plain English.
- In subsection (c), fixes incorrect punctuation.
- In subsection (d), replaces legalese with plain English and makes stylistic changes for greater clarity.

Section 9 amends G.S. 41-75 to fix typographical errors in two cross-references. The statutes currently being referenced (G.S. 42-2.1 and G.S. 42-2.2) do not exist.

Section 10 amends G.S. 47-18 to add that an option to purchase, right of first refusal, or right of first offer is not valid until registered in the county where the land lies. In this section, the PCS also adds Oxford commas, removes unnecessary words, replaces legalese with plain English, and modernizes the format of a list.

Section 11 amends G.S. 93A-12 as follows:

- In subsection (f), creates a definition of "escrow agent" in order to add that a title insurance company or title insurance agent, in addition to a real estate broker or attorney, may deposit certain disputed monies with the clerk of court. Throughout this section, the PCS makes conforming changes to this new definition.
- In subsection (a), makes stylistic changes for greater clarity.
- In subsections (b) and (c), removes unnecessary language.

Section 12 amends Section 5 of Session Law 2017-110 to clarify that that session law applies to instruments, rather than just curative affidavits. This change conforms to the substance of that session law, since Section 3 of the session law enacted a curative statute that applies to instruments generally.

For **Part VI** of the PCS, please see the bill summary.

Part VII of the PCS, consisting of **Section 14**, provides that Parts IV and V of the act become effective October 1, 2021, and that except as otherwise provided, the remainder of the act is effective when it becomes law.