



# General Statutes Commission

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## MEMORANDUM

**To:** Senate Judiciary  
**From:** General Statutes Commission  
**Re:** SB 196 (GSC Sale of Property Amendments)  
**Date:** March 29, 2021

### General Comments

This bill, recommended by the General Statutes Commission, consists of three parts. 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, and Part III provides that in a tax foreclosure action a commissioner's fee shall not be included in the amount necessary to redeem the real property prior to a judgment confirming the tax foreclosure sale. Part III also removes the requirement for a taxing unit to serve and join a prior owner of the property and makes technical changes.

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. During the drafting process, the General Statutes Commission published all its drafts online.

### Specific Comments

**Part I** of the bill, 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. 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 bill, 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. 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 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 bill, which relates to tax foreclosure actions, is as follows:

**Section 3(a)** amends G.S. 105-374 as follows:

- In subsection (i), provides that in a tax foreclosure action a commissioner's fee shall not be included in the amount necessary to redeem the real property prior to a judgment confirming the tax foreclosure sale. In this subsection, this bill also 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 (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 duplicative language.
- In subsection (c), removes the requirement for a taxing unit to serve and join a prior owner of the property, 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 (c1), 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 (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 (p), makes language gender-neutral and replaces legalese with plain English.
- 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. 105-373 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(c)** 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(d)** provides that this section becomes effective October 1, 2021, and that subsection (a) of this section applies to tax foreclosure actions commenced on or after that date.

**Part IV** of the bill consists of **Section 4**, which provides that except as otherwise provided, this act is effective when it becomes law.