

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-216
SENATE BILL 246

AN ACT TO CLARIFY AND REVISE THE PROCEDURES GOVERNING APPEALS OR TRANSFERS FROM CLERKS OF SUPERIOR COURT TO THE TRIAL COURTS AND TO MAKE CONFORMING AND CLARIFYING AMENDMENTS TO OTHER RELATED SECTIONS OF THE GENERAL STATUTES, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. APPEALS AND TRANSFERS FROM THE CLERK

Section 1. Subchapter IX of Chapter 1 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 27A.

"Appeals and Transfers From the Clerk.

"§ 1-301.1. Appeal of clerk's decision in civil actions.

(a) Applicability. – This section applies to orders or judgments entered by the clerk of superior court in civil actions in which the clerk exercises the judicial powers of that office. If this section conflicts with a specific provision of the General Statutes, that specific provision of the General Statutes controls.

(b) Appeal of Clerk's Order or Judgment. – A party aggrieved by an order or judgment entered by the clerk may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a trial or hearing de novo. The order or judgment of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. Notice of appeal shall be filed with the clerk in writing. Notwithstanding the service requirement of G.S. 1A-1, Rule 58, orders of the clerk shall be served on other parties only if otherwise required by law. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay.

(c) Duty of Judge on Appeal. – Upon appeal, the judge may hear and determine all matters in controversy in the civil action, unless it appears to the judge that any of the following apply:

- (1) The matter is one that involves an action that can be taken only by a clerk.
- (2) Justice would be more efficiently administered by the judge's disposing of only the matter appealed.

When either subdivision (1) or subdivision (2) of this subsection applies, the judge shall dispose of the matter appealed and remand the action to the clerk. When subdivision (1) of this subsection applies, the judge may order the clerk to take the action.

(d) Judge's Concurrent Authority Not Affected. – If both the judge and the clerk are authorized by law to enter an order or judgment in a matter in controversy, a party may seek to have the judge determine the matter in controversy initially.

"§ 1-301.2. Transfer or appeal of special proceedings; exceptions.

(a) Applicability. – This section applies to special proceedings heard by the clerk of superior court in the exercise of the judicial powers of that office. If this section conflicts with a specific provision of the General Statutes, that specific provision of the General Statutes controls.

(b) Transfer. – Except as provided in subsections (g) and (h) of this section, when an issue of fact, an equitable defense, or a request for equitable relief is raised in a pleading in a special proceeding or in a pleading or written motion in an adoption proceeding, the clerk shall transfer the proceeding to the appropriate court. In court, the proceeding is subject to the provisions in the General Statutes and to the rules that apply to actions initially filed in that court.

(c) Duty of Judge on Transfer. – Whenever a special proceeding is transferred to a court pursuant to subsection (b) of this section, the judge may hear and determine all matters in controversy in the special proceeding, unless it appears to the judge that justice would be more efficiently administered by the judge's disposing of only the matter leading to the transfer and remanding the special proceeding to the clerk.

(d) Clerk to Decide All Issues. – If a special proceeding is not transferred or is remanded to the clerk after an appeal or transfer, the clerk shall decide all matters in controversy to dispose of the proceeding.

(e) Appeal of Clerk's Decisions. – A party aggrieved by an order or judgment of a clerk that finally disposed of a special proceeding, may, within 10 days of entry of the order or judgment, appeal to the appropriate court for a hearing de novo. Notice of appeal shall be in writing and shall be filed with the clerk. The order or judgment of the clerk remains in effect until it is modified or replaced by an order or judgment of a judge. A judge of the court to which the appeal lies or the clerk may issue a stay of the order or judgment upon the appellant's posting of an appropriate bond set by the judge or clerk issuing the stay. Any matter previously transferred and determined by the court shall not be relitigated in a hearing de novo under this subsection.

(f) Service. – Notwithstanding the service requirement of G.S. 1A-1, Rule 58, orders of the clerk shall be served on other parties only if otherwise required by law.

(g) Exception for Incompetency and Foreclosure Proceedings. –

(1) Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Appeals from orders entered in these proceedings are governed by Chapter 35A to the extent that the provisions of that Chapter conflict with this section.

(2) Foreclosure proceedings under Article 2A of Chapter 45 of the General Statutes shall not be transferred even if an issue of fact, an equitable defense, or a request for equitable relief is raised. Equitable issues may be raised only as provided in G.S. 45-21.34. Appeals from orders entered in these proceedings are governed by Article 2A of Chapter 45 to the extent that the provisions of that Article conflict with this section.

(h) Exception for Partition Proceedings. – Notwithstanding the provisions of subsection (b) of this section, the issue whether to order the actual partition or the sale in lieu of partition of real property that is the subject of a partition proceeding shall not be transferred and shall be determined by the clerk. The clerk's order determining this issue, though not a final order, may be appealed pursuant to subsection (e) of this section.

"§ 1-301.3. Appeal of estate matters determined by clerk.

(a) Applicability. – This section applies to matters arising in the administration of testamentary trusts and of estates of decedents, incompetents, and minors. G.S. 1-301.2 applies in the conduct of a special proceeding when a special proceeding is required in a matter relating to the administration of an estate.

(b) Clerk to Decide Estate Matters. – In matters covered by this section, the clerk shall determine all issues of fact and law. The clerk shall enter an order or judgment, as appropriate, containing findings of fact and conclusions of law supporting the order or judgment.

(c) Appeal to Superior Court. – A party aggrieved by an order or judgment of the clerk may appeal to the superior court by filing a written notice of the appeal with the clerk within 10 days of entry of the order or judgment. The notice of appeal shall specify the basis for the appeal. Unless otherwise provided by law, a judge of the superior court or the clerk may issue a stay of the order or judgment upon the appellant's posting an appropriate bond set by the judge or clerk issuing the stay. While the appeal is pending, the clerk retains authority to enter orders affecting the administration of the estate, subject to any order entered by a judge of the superior court limiting that authority.

(d) Duty of Judge on Appeal. – Upon appeal, the judge of the superior court shall review the order or judgment of the clerk for the purpose of determining only the following:

- (1) Whether the findings of fact are supported by the evidence.
- (2) Whether the conclusions of law are supported by the findings of facts.
- (3) Whether the order or judgment is consistent with the conclusions of law and applicable law.

It is not necessary for a party to object to the admission or exclusion of evidence before the clerk in order to preserve the right to assign error on appeal to its admission or exclusion. If the judge finds prejudicial error in the admission or exclusion of evidence, the judge, in the judge's discretion, shall either remand the matter to the clerk for a subsequent hearing or resolve the matter on the basis of the record. If the record is insufficient, the judge may receive additional evidence on the evidentiary issue in

question. The judge may continue the case if necessary to allow the parties time to prepare for a hearing to receive additional evidence.

(e) Remand After Disposition of Issue on Appeal. – The judge, upon determining the matter appealed from the clerk, shall remand the case to the clerk for such further action as is necessary to administer the estate.

(f) Recording of Estate Matters. – In the discretion of the clerk or upon request by a party, all hearings and other matters covered by this section shall be recorded by an electronic recording device. A transcript of the proceedings may be ordered by a party, by the clerk, or by the presiding judge. If a recordation is not made, the clerk shall submit to the superior court a summary of the evidence presented to the clerk."

Section 2. G.S. 1-174, 1-272, 1-273, 1-274, 1-275, 1-276, 1-399, and 36A-28 are repealed.

PART II. CONFORMING AND CLARIFYING AMENDMENTS

Section 3. G.S. 1-242 reads as rewritten:

"§ 1-242. Credits upon judgments.

~~Where a~~ If payment has been is made on a judgment docketed in the office of the clerk of the superior court, court and no entry is made on the judgment docket, or where any if a docketed judgment appealed from has been is reversed or modified on appeal and no entry is made on such the judgment docket, any interested person interested therein may move in the cause before the clerk, upon affidavit after notice to all persons interested, interested persons, to have such the credit, reversal reversal, or modification entered; and upon the hearing before the clerk he may hear affidavits, entered. A hearing on the motion before the clerk may be on affidavit, oral testimony, depositions deposition, and any other competent evidence, and evidence. The clerk shall render his judgment, from which any party may appeal in the same manner as in appeals in special proceedings. On the trial of any issue of fact on the appeal either On appeal, any party may demand a jury trial, which shall be had upon the evidence before the clerk, which he shall reduce to writing. trial of any issue of fact. On If a final judgment ordering any such orders the credit, reversal reversal, or modification, a transcript thereof of the final judgment shall be sent by the clerk of the superior court to each county in which the original judgment has been is docketed, and the clerk of such each county shall enter the same transcript on the judgment docket of his that county opposite such the original judgment and file the transcript. No final process shall may issue on any such the original judgment after affidavit filed in the cause until there is a final disposition of the motion for credit, reversal reversal, or modification has been finally disposed of. modification."

Section 4. G.S. 1-408 reads as rewritten:

"§ 1-408. Action in which clerk may allow fees of commissioners; fees taxed as costs.

~~In all civil actions and special proceedings instituted in the superior court in which a commissioner, or commissioners, are appointed under a judgment by the clerk of said court, said clerk shall have full power and authority and he is hereby authorized and empowered to fix and determine and allow to such commissioner or commissioners a~~

~~reasonable fee for their services performed under such order, decree or judgment, which fee shall be taxed as part of the costs in such action or proceeding, and any dissatisfied party shall have the right to appeal to the judge, who shall hear the same de novo. In a civil action or special proceeding commenced in the superior court in which a commissioner or commissioners are appointed under an order or judgment entered by the clerk of the superior court, the clerk may fix a reasonable fee for the services of the commissioner or commissioners performed under the order or judgment. The fee shall be taxed as part of the costs in the action or proceeding. Any aggrieved party has the right to appeal as provided in Article 27A of Chapter 1 of the General Statutes.~~"

Section 5. G.S. 1-408.1 reads as rewritten:

"§ 1-408.1. Clerk may order surveys in civil actions and special proceedings involving sale of land.

~~In all civil actions and special proceedings instituted commenced in the superior court before the clerk where real property is to be sold to make assets to pay debts, or to be sold for division, or to be partitioned, the clerk may, if, in his opinion, if all parties to the action or proceedings will benefit thereby, by a survey, order a survey of the land involved, appoint a surveyor for this purpose, and fix a reasonable fee for his services, which fee, along with other costs of the survey, the services of the surveyor. The fee and other costs of the survey shall be taxed as a part of the costs in such the action or proceedings. Any dissatisfied aggrieved party shall have has the right to appeal to the judge, who shall hear the same de novo. as provided in Article 27A of Chapter 1 of the General Statutes.~~"

Section 6. G.S. 1-474 reads as rewritten:

"§ 1-474. Order of seizure and delivery to plaintiff.

(a) Order. – The clerk of court may, upon notice and hearing as provided in ~~G.S. 1-474.1, G.S. 1-474.1~~ and upon the giving by the plaintiff of the undertaking prescribed in G.S. 1-475, require the sheriff of the county where the property claimed is located to take ~~said the~~ property from the defendant and deliver it to the plaintiff. The act of the clerk in issuing or refusing to issue the order to the sheriff is a judicial act and may be appealed pursuant to G.S. 1-301.1 to the judge of the district or superior court having jurisdiction of the principal action.

(b) Expiration of Certain Orders. – When delivery of property is claimed from a debtor who allegedly defaulted on his payments for personal property purchased under a conditional sale contract, a purchase money security agreement or on a loan secured by personal property, an order of seizure and delivery to the plaintiff for that property expires 60 days after it is issued."

Section 7. G.S. 32A-14.11 reads as rewritten:

"§ 32A-14.11. Appeal; stay effected by appeal.

Any party in interest may appeal from the decision of the clerk to the judge of the superior court. The procedure for appeal ~~shall be the same as the procedure for appeal in other special proceedings~~ is governed by ~~Article 33~~ Article 27A of Chapter 1 of the General Statutes. An appeal taken from the decision of the clerk ~~shall stay~~ stays the decision and order of the clerk until the cause is heard and determined by the judge upon the appeal taken."

Section 8. G.S. 36A-27 reads as rewritten:

"§ 36A-27. Appeal; stay effected by appeal.

Any party in interest may appeal from the decision of the clerk to the judge at chambers, and in such event the procedure for appeal shall be the same as in other special proceedings as now provided by law. is governed by Article 27A of Chapter 1 of the General Statutes. If the clerk allows the ~~resignation,~~ resignation and an appeal is taken from ~~his decision, such~~ the decision of the clerk, the appeal ~~shall have the effect to stay~~ stays the judgment and order of the clerk until the cause is heard and determined by the judge upon the appeal taken."

Section 9. G.S. 36A-33 reads as rewritten:

"§ 36A-33. Appointment of successors to deceased or incapacitated trustees.

Upon the death or incapacity of a trustee, a new trustee may be appointed on application by any beneficiary, or other interested persons, by petition to the clerk of the superior court of the county in which the instrument under which the deceased or incapacitated trustee claimed is registered, making all necessary parties defendants. The clerk shall docket the cause as a special proceeding and issue summons for the defendants, and the procedure shall be the same as in other special proceedings. If any of the defendants be nonresidents, summons may be served by publication; and if any be infants, a guardian ad litem must be appointed. The beneficiaries, creditors, or any other persons interested in the trust estate shall have the right to answer the petition and to offer evidence why the prayer of the petition should not be granted. After hearing the matter, the clerk may appoint the person so named in the petition, or he may appoint some other fit and suitable person or corporation to act as the successor of the deceased or incapacitated trustee; and the clerk shall require the person so appointed to give bond as required in G.S. 36A-31; provided, that where by the terms of the instrument upon which the deceased or incapacitated trustee claimed, said trustee was not required to give bond and did not give bond and an intent is expressed in the creating instrument that a successor trustee shall serve without bond, or where the clerk upon due investigation, finds that bond is not necessary for the protection of the estate, the requirement of a bond for the successor trustee may be waived as provided in G.S. 36A-31. Any party in interest may appeal from the ~~decision order or judgment~~ of the clerk as provided in ~~G.S. 36A-27 and 36A-28.~~ Article 27A of Chapter 1 of the General Statutes.

Nothing in this section shall be construed to limit the authority of the clerk of superior court to appoint a successor trustee to a deceased or incapacitated trustee upon his own motion."

Section 10. G.S. 44A-4(b)(1) reads as rewritten:

- "(1) If the property upon which the lien is claimed is a motor vehicle that is required to be registered, the lienor following the expiration of the relevant time period provided by subsection (a) shall give notice to the Division of Motor Vehicles that a lien is asserted and sale is proposed and shall remit to the Division a fee of ten dollars (\$10.00). The Division of Motor Vehicles shall issue notice by registered or certified mail, return receipt requested, to the person having legal title to the property, if reasonably ascertainable, to the person with whom the

lienor dealt if different, and to each secured party and other person claiming an interest in the property who is actually known to the Division or who can be reasonably ascertained. The notice shall state that a lien has been asserted against specific property and shall identify the lienor, the date that the lien arose, the general nature of the services performed and materials used or sold for which the lien is asserted, the amount of the lien, and that the lienor intends to sell the property in satisfaction of the lien. The notice shall inform the recipient that the recipient has the right to a judicial hearing at which time a determination will be made as to the validity of the lien prior to a sale taking place. The notice shall further state that the recipient has a period of 10 days from the date of receipt in which to notify the Division by registered or certified mail, return receipt requested, that a hearing is desired and that if the recipient wishes to contest the sale of his property pursuant to such lien, the recipient should notify the Division that a hearing is desired. The notice shall state the required information in simplified terms and shall contain a form whereby the recipient may notify the Division that a hearing is desired by the return of such form to the Division. The Division shall notify the lienor whether such notice is timely received by the Division. In lieu of the notice by the lienor to the Division and the notices issued by the Division described above, the lienor may issue notice on a form approved by the Division pursuant to the notice requirements above. If notice is issued by the lienor, the recipient shall return the form requesting a hearing to the lienor, and not the Division, within 10 days from the date the recipient receives the notice if a judicial hearing is requested. Failure of the recipient to notify the Division or lienor, as specified in the notice, within 10 days of the receipt of such notice that a hearing is desired shall be deemed a waiver of the right to a hearing prior to the sale of the property against which the lien is asserted, and the lienor may proceed to enforce the lien by public or private sale as provided in this section and the Division shall transfer title to the property pursuant to such sale. If the Division or lienor, as specified in the notice, is notified within the 10-day period provided above that a hearing is desired prior to sale, the lien may be enforced by sale as provided in this section and the Division will transfer title only pursuant to the order of a court of competent jurisdiction.

If the registered or certified mail notice has been returned as undeliverable, or if the name of the person having legal title to the vehicle cannot reasonably be ascertained and the fair market value of the vehicle is less than eight hundred dollars (\$800.00), the lienor may institute a special proceeding in the county where the vehicle is being held, for authorization to sell that vehicle. Market value shall be

determined by the schedule of values adopted by the Commissioner under G.S. 105-187.3.

In such a proceeding a lienor may include more than one vehicle, but the proceeds of the sale of each shall be subject only to valid claims against that vehicle, and any excess proceeds of the sale shall escheat to the State and be paid immediately to the treasurer for disposition pursuant to Chapter 116B of the General Statutes. A vehicle owner or possessor claiming an interest in such proceeds shall have a right of action under G.S. 116B-38.

The application to the clerk in such a special proceeding shall contain the notice of sale information set out in subsection (f) hereof. If the application is in proper form the clerk shall enter an order authorizing the sale on a date not less than 14 days therefrom, and the lienor shall cause the application and order to be sent immediately by first-class mail pursuant to G.S. 1A-1, Rule 5, to each person to whom notice was mailed pursuant to this subsection. Following the authorized sale the lienor shall file with the clerk a report in the form of an affidavit, stating that the lienor has complied with the public or private sale provisions of G.S. 44A-4, the name, address, and bid of the high bidder or person buying at a private sale, and a statement of the disposition of the sale proceeds. The clerk then shall enter an order directing the Division to transfer title accordingly.

If prior to the sale the owner or legal possessor contests the sale or lien in a writing filed with the clerk, the proceeding shall be handled in accordance with ~~G.S. 1-399~~. G.S. 1-301.2."

Section 11. G.S. 46-19 reads as rewritten:

"§ 46-19. Confirmation and impeachment of report.

(a) If no exception to the report of the commissioners is filed within 10 days, the same shall be confirmed. Any party after confirmation may impeach the proceedings and decrees for mistake, fraud or collusion by petition in the cause: Provided, innocent purchasers for full value and without notice shall not be affected thereby.

(b) If an exception to the report of commissioners is filed, the clerk shall do one of the following:

- (1) Confirm the report;
- (2) Recommit the report for correction or further consideration;
- (3) Vacate the report and direct a reappraisal by the same commissioners;
or
- (4) Vacate the report, discharge the commissioners, and appoint new commissioners to view the premises and make a partition of them.

(c) Appeal from the clerk to superior court of an order of confirmation of the report of commissioners is governed by G.S. 1-301.2 except that the judge may take only the actions specified in subsection (b) of this section and may not adjudge a partition of the land different from that made by the commissioners."

Section 11.1. G.S. 48-2-607(b) reads as rewritten:

~~"(b) A party to an adoption proceeding may appeal a final decree of adoption by giving notice of appeal as provided in G.S. 1-272 and G.S. 1-279.1. A party to an adoption proceeding may appeal a final decree of adoption entered by a clerk of superior court to district court by giving notice of appeal as provided in G.S. 1-301.2. A party to an adoption proceeding may appeal a judgment or order entered by a judge of district court by giving notice of appeal as provided in G.S. 1-279.1."~~

Section 12. G.S. 65-75(a) reads as rewritten:

"(a) If the consent of the landowner cannot be obtained, any person listed in G.S. 65-74(1), (2), or (3) may commence a special proceeding by petitioning the clerk of superior court of the county in which ~~he the petitioner~~ has reasonable grounds to believe the deceased is buried, or in the case of an abandoned public cemetery, in the county in which the abandoned public cemetery is ~~located~~ located, for an order allowing ~~him the petitioner~~ to enter the property to discover, restore, maintain, or visit the grave or abandoned public cemetery. The petition shall be verified. ~~This~~ The special proceeding shall be in accordance with the provisions of ~~Article~~ Articles 27A and 33 of Chapter 1 of the General Statutes. The clerk shall issue an order allowing the petitioner to enter the property if ~~he finds that~~ the clerk finds all of the following:

- (1) There are reasonable grounds to believe that the grave or abandoned public cemetery is located on the property or that it is reasonably necessary to enter or cross the landowner's property to reach the grave or abandoned public ~~cemetery~~; cemetery.
- (2) The petitioner, or his designee, is a descendant of the deceased, or that the petitioner has a special interest in the grave or abandoned public ~~cemetery~~; and cemetery.
- (3) The entry on the property would not unreasonably interfere with the enjoyment of the property by the landowner."

Section 13. G.S. 101-2 reads as rewritten:

"§ 101-2. Procedure for changing name; petition; notice.

A person who wishes, for good cause shown, to change his or her name must file ~~his~~ an application before the clerk of the superior court of the county in which ~~he the person~~ lives, ~~having first given after giving~~ 10 days' notice of the application by publication at the courthouse door.

~~Applications~~ An application to change the name of ~~minor children~~ a minor child may be filed by ~~their the child's parent or parents or guardian or parents, guardian, or next friend of such minor children, guardian ad litem, and such applications~~ this application may be joined in the application for a change of name filed by ~~their the~~ parent or ~~parents~~; Provided nothing herein parents. Nothing in this section shall be construed to permit one parent to make ~~such an~~ application on behalf of a minor child without the consent of the other parent ~~of such minor child~~ if both parents ~~be living, are~~ living; except that a minor who has reached the age of 16 years, upon proper application to the ~~clerk~~ clerk, may change his or her ~~name, name~~ with the consent of the parent who has custody of the minor and has supported the minor, without the necessity of obtaining the consent of the other parent, when the clerk of court is satisfied that the other parent has abandoned the minor. ~~Provided, further, that a~~ A change of parentage

or the addition of information relating to parentage on the birth certificate of any person shall be made pursuant to is governed by G.S. 130A-118.

~~Notwithstanding any other provisions of this section, the~~ The consent of a parent who has abandoned a minor child shall ~~not be~~ is not required if ~~there is filed with the clerk~~ a copy of an order of a court of competent jurisdiction adjudicating that such parent has abandoned such parent's abandonment of the minor child. if filed with the clerk. ~~In the event that~~ If a court of competent jurisdiction has not ~~therefore~~ declared the minor child ~~to be an abandoned child, then the clerk, on 10 days' written notice by registered or certified mail, directed to the last known address of the~~ of not less than 10 days to the parent alleged to have abandoned the child, by registered or certified mail directed to such parent's last known address, the clerk of superior court is hereby authorized to may determine whether ~~an abandonment has taken place. the parent has abandoned the child. If said the parent denies that an abandonment has taken place, the parent abandoned the child,~~ this issue of fact shall be transferred and determined as provided in ~~G.S. 1-273, G.S. 1-301.2. and if~~ If abandonment is determined, ~~then the consent of said the parent shall not be~~ is not required. Upon final determination of this issue of fact the proceeding shall be transferred back to the special proceedings docket for further action by the clerk."

Section 14. G.S. 105-374(h) reads as rewritten:

"(h) Joint Foreclosure by Two or More Taxing Units. – Liens of different taxing units on the same parcel of real property, representing taxes in the hands of the same tax collector, shall be foreclosed in one action. Liens of different taxing units on the same parcel of real property, representing taxes in the hands of different tax collectors, may be foreclosed in one action in the discretion of the governing bodies of the taxing units.

The lien of any taxing unit made a party defendant in any foreclosure action shall be alleged in an answer filed by the taxing unit, and the tax collector of each answering unit shall, prior to judgment ordering sale, file a certificate of subsequent taxes similar to that filed by the tax collector of the plaintiff unit, and the taxes of each answering unit shall be of equal dignity with the taxes of the plaintiff unit. Any answering unit may, in case of payment of the plaintiff unit's taxes, continue the foreclosure action until all taxes due to it have been paid, and it shall not be necessary for any answering unit to file a separate foreclosure action or to proceed under G.S. 105-375 with respect to any such taxes.

If a taxing unit properly served as a party defendant in a foreclosure action fails to answer and file the certificate provided for in the preceding paragraph, all of its taxes shall be barred by the judgment of sale except to the extent that the purchase price at the foreclosure sale (after payment of costs and of the liens of all taxing units whose liens are properly alleged by complaint or answer and certificates) may be sufficient to pay such taxes. However, if a defendant taxing unit is plaintiff in another foreclosure action pending against the same property, or if it has begun a proceeding under G.S. 105-375, its answer may allege that fact in lieu of alleging its liens, and the court, in its discretion, may order consolidation of such actions or such other disposition thereof (and such disposition of the costs therein) as it may deem advisable. Any such order may be made

by the clerk of the superior court, subject to appeal ~~in the same manner as appeals are taken from other orders of the clerk, as provided in G.S. 1-301.1.~~"

Section 15. G.S. 105-374(k) reads as rewritten:

"(k) Judgment of Sale. – Any judgment in favor of the plaintiff or any defendant taxing unit in an action brought under this section shall order the sale of the real property or ~~so much thereof~~ as much as may be necessary for the satisfaction ~~of~~ of all of the following:

- (1) Taxes adjudged to be liens in favor of the plaintiff (other than taxes the amount of which has not been definitely determined) together with penalties, interest, and costs ~~thereon; and thereon.~~
- (2) Taxes adjudged to be liens in favor of other taxing units (other than taxes the amount of which has not yet been definitely determined) if those taxes have been alleged in answers filed by the other taxing units, together with penalties, interest, and costs thereon.

The judgment shall appoint a commissioner to conduct the sale and shall order that the property be sold in fee simple, free and clear of all interests, rights, claims, and liens whatever except that the sale shall be subject to taxes the amount of which cannot be definitely determined at the time of the judgment, taxes and special assessments of taxing units which are not parties to the action, and, in the discretion of the court, taxes alleged in other tax foreclosure actions or proceedings pending against the same real property.

In all cases in which no answer is filed within the time allowed by law, and in cases in which answers filed do not seek to prevent sale of said property, the clerk of the superior court may ~~render~~ enter the judgment, subject to appeal ~~in the same manner as appeals are taken from other judgments of the clerk, as provided in G.S. 1-301.1.~~"

Section 16. G.S. 105-374(p) reads as rewritten:

"§ 105-374. Foreclosure of tax lien by action in nature of action to foreclose a mortgage.

(p) Judgment of Confirmation. – At any time after the expiration of 10 days from the time the commissioner files his report, if no exception or increased bid has been filed, the commissioner may apply for judgment of confirmation, and in like manner he may apply for such a judgment after the court has passed upon exceptions filed, or after any necessary resales have been held and reported and 10 days have elapsed. The judgment of confirmation shall direct the commissioner to deliver the deed upon payment of the purchase price. This judgment may be ~~rendered~~ entered by the clerk of superior court subject to appeal ~~in the same manner as appeals are taken from other judgments of the clerk, as provided in G.S. 1-301.1.~~"

Section 17. G.S. 156-29 reads as rewritten:

"§ 156-29. Report filed; appeal and jury trial.

A report signed by two of the persons appointed as viewers shall be entered by the clerk as the report of the ~~viewers, and from the report any viewers.~~ Any landowner affected thereby by the report, and the person, firm, or corporation digging or cutting such drainway shall have the drainway, has the right of appeal and the right to have any issue arising upon the report tried by a jury, provided exceptions shall be filed to the

report within 20 days after the filing of the report with the clerk, in which exceptions so filed may be a demand for a jury trial. If a jury trial ~~be is~~ demanded, the clerk shall transfer the proceedings to the civil-issue ~~docket~~ docket, and it shall be heard as other civil actions. If no jury trial ~~be is~~ demanded, the clerk shall hear the parties upon the exceptions filed, and appeal may be had as in special ~~proceedings~~, proceedings except as modified by this section, but no jury trial ~~shall may~~ be had unless demanded as ~~herein provided for~~ provided in this section."

Section 18. G.S. 156-30 reads as rewritten:

"§ 156-30. Confirmation of report.

~~Unless an appeal shall be taken by any person affected by the report, or by the person, firm, or corporation cutting or digging the drainway, and a jury trial demanded within 20 days after the report shall be filed with the clerk, in all of which appeals exceptions shall be filed, the clerk of the superior court shall confirm the report of the jury; if exceptions shall be filed and no demand for a jury trial shall be made, the clerk shall hear the exceptions as in other cases of special proceedings, and judgment entered accordingly. If the report of the viewers be confirmed by the clerk because no exceptions or demand for a jury trial were filed within 20 days, the judgment of confirmation shall be the judgment of the court, and any judgment herein entered against the person, firm, or corporation cutting or digging the drainway shall be a judgment against the person, firm, or corporation and the surety on its bond given as hereinabove provided. Unless an appeal is taken, the clerk of superior court shall confirm the report of the viewers. If exceptions are filed and no jury trial is demanded, the clerk shall hear the exceptions and enter judgment as in other special proceedings. If the report is confirmed by the clerk because no exceptions or demand for a jury trial is filed, the judgment of confirmation is the judgment of the court. Any judgment entered against the person, firm, or corporation cutting or digging the drainway is a judgment against the person, firm, or corporation and against the surety on the bond required by G.S. 156-26.~~"

Section 19. G.S. 156-55 reads as rewritten:

"§ 156-55. Venue; special proceedings.

~~When the lands proposed to be drained and created into a drainage district are located in two or more counties, the clerk of the superior court of either county shall have and exercise the jurisdiction herein conferred, has the jurisdiction conferred by this Subchapter, and the venue shall be~~ Venue is in that county in which the petition is first filed. The law and the rules regulating special proceedings shall be applicable apply in this the proceeding, so far as may be practicable; except as modified by this Subchapter. and the ~~The proceedings hereunder may be ex parte or adversary.~~"

Section 20. G.S. 156-75 reads as rewritten:

"§ 156-75. Appeal from final hearing.

~~Any landowner, party petitioner~~ petitioner, or the drainage district may, within 10 days after the ~~ruling or adjudication~~ entry of an order or judgment by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. ~~Such appeal shall be taken and prosecuted~~ The procedures for taking appeal are as provided in special proceedings. ~~Article 27A of Chapter 1 of the General Statutes,~~

~~except as provided otherwise by this Subchapter. Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal. In any an appeal to the superior court in session or in chamber taken under this section or any other section or provision of the drainage laws of the State, general or local, the same shall have appeal has precedence in consideration and trial by the court. If other issues also have precedence in the superior court under existing law, the court, in its discretion, determines the order in which the same shall be heard shall be determined by the court in the exercise of a sound discretion. they are heard."~~

Section 21. G.S. 156-93.2(10) reads as rewritten:

"(10) Any landowner, party ~~petitioner~~ petitioner, or the drainage district may, within 10 days after the ~~ruling or adjudication entry of the order or judgment~~ by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. ~~Such appeal shall be taken and prosecuted as provided in The procedures for taking appeal in special proceedings. under Article 27A of Chapter 1 of the General Statutes apply, except as provided otherwise by this Subchapter. Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.~~ All of the terms and provisions of G.S. 156-75 shall apply to the appeal."

Section 22. G.S. 156-93.3(15) reads as rewritten:

"(15) Any landowner, party ~~petitioner~~ petitioner, or the drainage district may, within 10 days after the ~~ruling or adjudication entry of an order or judgment~~ by the clerk upon the report of the board of viewers, appeal to the superior court in session time or in chambers. ~~Such appeal shall be taken and prosecuted as provided The procedures for taking appeal in special proceedings. under Article 27A of Chapter 1 of the General Statutes apply, except as provided otherwise by this Subchapter. Such appeal shall be based and heard only upon the exceptions filed thereto in writing by the appealing party, either as to issues of law or fact, and no additional exceptions shall be considered by the court upon the hearing of the appeal.~~ All of the terms and provisions of G.S. 156-75 shall apply to the appeal."

PART III. EFFECTIVE DATE

Section 23. This act becomes effective January 1, 2000, and applies to all orders or judgments subject to this act that are entered on or after that date.

In the General Assembly read three times and ratified this the 16th day of June, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 11:23 a.m. this 25th day of June, 1999