Chapter 1.

Civil Procedure.

SUBCHAPTER I. DEFINITIONS AND GENERAL PROVISIONS.

Article 1.

Definitions.

§ 1-1. Remedies.

Remedies in the courts of justice are divided into –

(1) Actions.

(2) Special proceedings. (C.C.P., s. 1; Code, s. 125; Rev., s. 346; C.S., s. 391.)

§ 1-2. Actions.

An action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment or prevention of a public offense. (C.C.P., s. 2; 1868-9, c. 277, s. 2; Code, s. 126; Rev., s. 347; C.S., s. 392.)

§ 1-3. Special proceedings.

Every other remedy is a special proceeding. (C.C.P., s. 3; Code, s. 127; Rev., s. 348; C.S., s. 393.)

§ 1-4. Kinds of actions.

Actions are of two kinds –

(1) Civil.

(2) Criminal. (C.C.P., s. 4; Code, s. 128; Rev., s. 349; C.S., s. 394.)

§ 1-5. Criminal action.

A criminal action is –

(1) An action prosecuted by the State as a party, against a person charged with a public offense, for the punishment thereof.

(2) An action prosecuted by the State, at the instance of an individual, to prevent an apprehended crime against his person or property. (Const., art. 4, s. 1; C.C.P., s. 5; Code, s. 129; Rev., s. 350; C.S., s. 395.)

§ 1-6. Civil action.

Every other is a civil action. (C.C.P., s. 6; Code, s. 130; Rev., s. 351; C.S., s. 396.)

§ 1-7. When court means clerk.

In the following sections which confer jurisdiction or power, or impose duties, where the words "superior court," or "court," in reference to a superior court are used, they mean the clerk of the superior court, unless otherwise specially stated, or unless reference is made to a regular session of the court, in which cases the judge of the court alone is meant. (C.C.P., s. 9; Code, s. 132; Rev., s. 352; C.S., s. 397; 1971, c. 381, s. 12.)

Article 2.

General Provisions.

§ 1-8. Remedies not merged.

Where the violation of a right admits both of a civil and a criminal remedy, the right to prosecute the one is not merged in the other. (C.C.P., s. 7; Code, s. 131; Rev., s. 353; C.S., s. 398.)

§ 1-9. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-10. Plaintiff and defendant.

In civil actions the party complaining is the plaintiff, and the adverse party the defendant. (C.C.P., s. 13; Code, s. 134; Rev., s. 355; C.S., s. 400.)

§ 1-11. How party may appear.

A party may appear either in person or by attorney in actions or proceedings in which he is interested. (C.C.P., s. 423; Code, s. 109; Rev., s. 356; C.S., s. 401.)

§ 1-12. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-13. Jurisdiction of clerk.

The clerk of the superior court has jurisdiction to hear and decide all questions of practice and procedure and all other matters over which jurisdiction is given to the superior court, unless the judge of the court or the court at a regular session is expressly referred to. (C.C.P., s. 108; Code, s. 251; Rev., s. 358; C.S., s. 403; 1971, c. 381, s. 12.)

SUBCHAPTER II. LIMITATIONS.

Article 3.

Limitations, General Provisions.

§ 1-14. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-15. Statute runs from accrual of action.

(a) Civil actions can only be commenced within the periods prescribed in this Chapter, after the cause of action has accrued, except where in special cases a different limitation is prescribed by statute.

(b) Repealed by Session Laws 1979, c. 654, s. 3.

(c) Except where otherwise provided by statute, a cause of action for malpractice arising out of the performance of or failure to perform professional services shall be deemed to accrue at the time of the occurrence of the last act of the defendant giving rise to the cause of action: Provided that whenever there is bodily injury to the person, economic or monetary loss, or a defect in or damage to property which originates under circumstances making the injury, loss, defect or damage not readily apparent to the claimant at the time of its origin, and the injury, loss, defect or damage is discovered or should reasonably be discovered by the claimant two or more years after the occurrence of the last act of the defendant giving rise to the cause of action, suit must be commenced within one year from the date discovery is made: Provided nothing herein shall be construed to reduce the statute of limitation in any such case below three years. Provided further, that in no event shall an action be commenced more than four years from the last act of the defendant giving rise to the cause of action: Provided further, that where damages are sought by

reason of a foreign object, which has no therapeutic or diagnostic purpose or effect, having been left in the body, a person seeking damages for malpractice may commence an action therefor within one year after discovery thereof as hereinabove provided, but in no event may the action be commenced more than 10 years from the last act of the defendant giving rise to the cause of action. (C.C.P., s. 17; Code, s. 138; Rev., s. 360; C.S., s. 405; 1967, c. 954, s. 3; 1971, c. 1157, s. 1; 1975, 2nd Sess., c. 977, ss. 1, 2; 1979, c. 654, s. 3.)

§ 1-15.1. Statutes of limitation and repose for civil actions seeking to recover damages arising out of a criminal act.

(a) Notwithstanding any other provision of law, if a defendant is convicted of a criminal offense and is ordered by the court to pay restitution or restitution is imposed as a condition of probation, special probation, work release, or parole, then all applicable statutes of limitation and statutes of repose, except as established herein, are tolled for the period set forth in this subsection for purposes of any civil action brought by an aggrieved party against that defendant for damages arising out of the offense for which the defendant was convicted. Any statute of limitation or repose applicable in the civil action shall be tolled from the time of entry of the court order

(1) Requiring that restitution be made,

(2) Making restitution a condition of probation or special probation, or

(3) Recommending that restitution be made a condition of work release or parole,

and until the defendant has paid in full the amount of restitution ordered or imposed. Except as provided in G.S. 15B-34, an action to recover damages arising out of the criminal offense shall not be commenced more than 10 years from the last act of the defendant giving rise to the cause of action.

(b) In any civil action brought by an aggrieved party against the defendant for damages arising out of the offense for which the defendant was convicted:

(1) The defendant has the right to contest the amount of damages;

(2) The amount of any restitution ordered or imposed shall not be admissible into evidence; and

(3) All restitution paid by the defendant to the aggrieved party shall be credited against any judgment rendered in the action against that defendant.

(c) This section shall not apply if the offense of which the defendant was convicted was an offense established in Chapter 20 of the General Statutes.

(d) A plea of no contest shall be considered the same as a conviction for purposes of this section. (1989, c. 535, s. 1; 2004-159, s. 3.)

§ 1-16. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-17. Disabilities.

(a) A person entitled to commence an action who is under a disability at the time the cause of action accrued may bring his or her action within the time limited in this Subchapter, after the disability is removed, except in an action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents and services out of the real property, when the person must commence his or her action, or make the entry, within three years next after the removal of the disability, and at no time thereafter.

For the purpose of this section, a person is under a disability if the person meets one or more of the following conditions:

(1) The person is within the age of 18 years.
(2) The person is insane.
(3) The person is incompetent as defined in G.S. 35A-1101(7) or (8).

(a1) For those persons under a disability on January 1, 1976, as a result of being imprisoned on a criminal charge, or in execution under sentence for a criminal offense, the statute of limitations shall commence to run and no longer be tolled from January 1, 1976.

(b) Notwithstanding the provisions of subsection (a) of this section, and except as otherwise provided in subsection (c) of this section, an action on behalf of a minor for malpractice arising out of the performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except that if those time limitations expire before the minor attains the full age of 19 years, the action may be brought before the minor attains the full age of 19 years.

(c) **(See editor's note for applicability)** Notwithstanding the provisions of subsection (a) and (b) of this section, an action on behalf of a minor for injuries alleged to have resulted from malpractice arising out of a health care provider's performance of or failure to perform professional services shall be commenced within the limitations of time specified in G.S. 1-15(c), except as follows:

(1) If the time limitations specified in G.S. 1-15(c) expire before the minor attains the full age of 10 years, the action may be brought any time before the minor attains the full age of 10 years.
(2) If the time limitations in G.S. 1-15(c) have expired and before a minor reaches the full age of 18 years a court has entered judgment or consent order under the provisions of Chapter 7B of the General Statutes finding that said minor is an abused or neglected juvenile as defined in G.S. 7B-101, the medical malpractice action shall be commenced within three years from the date of such judgment or consent order, or before the minor attains the full age of 10 years, whichever is later.
(3) If the time limitations in G.S. 1-15(c) have expired and a minor is in legal custody of the State, a county, or an approved child placing agency as defined in G.S. 131D-10.2, the medical malpractice action shall be commenced within one year after the minor is no longer in such legal custody, or before the minor attains the full age of 10 years, whichever is later.

(d) Notwithstanding the provisions of subsections (a), (b), (c), and (e) of this section, a plaintiff may file a civil action against a defendant for claims related to sexual abuse suffered while the plaintiff was under 18 years of age until the plaintiff attains 28 years of age.

(e) Notwithstanding the provisions of subsections (a), (b), (c), and (d) of this section, a plaintiff may file a civil action within two years of the date of a criminal conviction for a related felony sexual offense against a defendant for claims related to sexual abuse suffered while the plaintiff was under 18 years of age. (C.C.P., ss. 27, 142; Code, ss. 148, 163; 1899, c. 78; Rev., s. 362; C.S., s. 407; 1971, c. 1231, s. 1; 1975, c. 252, ss. 1, 3; 1975, 2nd Sess., c. 977, s. 3; 1987, c. 798; 2001-487, s. 1; 2011-400, s. 9; 2019-245, s. 4.1.)

§ 1-18. Disability of marriage.

In any action in which the defense of adverse possession is relied upon, the time computed as constituting such adverse possession shall not include any possession had against a feme covert during coverture prior to February 13, 1899. (1899, c. 78, ss. 2, 3; Rev., s. 363; C.S., s. 408.)

§ 1-19. Cumulative disabilities.

When two or more disabilities coexist at the time the right of action accrues, or when one disability supervenes an existing one, the limitation does not attach until they all are removed. (C.C.P., ss. 28, 49; Code, ss. 149, 170; Rev., s. 364; C.S., s. 409.)

§ 1-20. Disability must exist when right of action accrues.

No person may avail himself of a disability except as authorized in G.S. 1-19, unless it existed when his right of action accrued. (C.C.P., s. 48; Code, s. 169; Rev., s. 365; C.S., s. 410.)

§ 1-21. Defendant out of State; when action begun or judgment enforced.

If when the cause of action accrues or judgment is rendered or docketed against a person, he is out of the State, action may be commenced, or judgment enforced within the times herein limited after the return of the person into this State, and if, after such cause of action accrues or judgment is rendered or docketed, such person departs from and resides out of this State, or remains continuously absent therefrom for one year or more, the time of his absence shall not be a part of the time limited for the commencement of the action or the enforcement of the judgment. Provided, that where a cause of action arose outside of this State and is barred by the laws of the jurisdiction in which it arose, no action may be maintained in the courts of this State for the enforcement thereof, except where the cause of action originally accrued in favor of a resident of this State.

The provisions of this section shall not apply to the extent that a court of this State has or continues to have jurisdiction over the person under the provisions of G.S. 1-75.4. (C.C.P., s. 41; 1881, c. 258, ss. 1, 2; Code, s. 162; Rev., s. 366; C.S., s. 411; 1955, c. 544; 1979, c. 525, s. 1.)

§ 1-22. Death before limitation expires; action by or against personal representative or collector.

If a person entitled to bring an action dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced by his personal representative or collector after the expiration of that time, and within one year from his death. If a person against whom an action may be brought dies before the expiration of the time limited for the commencement thereof, and the cause of action survives, an action may be commenced against his personal representative or collector after the expiration of that time; provided, the action is brought or notice of the claim upon which the action is based is presented to the personal representative or collector within the time specified for the presentation of claims in G.S. 28A-19-3. If the claim upon which the cause of action is based is filed with the personal representative or collector within the time above specified, and its validity is admitted in writing by him, it is not necessary to bring an action upon such claim to prevent the bar, but no action shall be brought against the personal representative or collector upon such claim after his final settlement. (C.C.P., s. 43; 1881, c. 80; Code, s. 164; Rev., s. 367; C.S., s. 412; 1977, c. 446, s. 2.)

§ 1-23. Time of stay by injunction or prohibition.

When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action. (C.C.P., s. 46; Code, s. 167; Rev., s. 368; C.S., s. 413.)

§ 1-24. Time during controversy on probate of will or granting letters.

In reckoning time when pleaded as a bar to actions, that period shall not be counted which elapses during any controversy on the probate of a will or granting letters of administration, unless there is an administrator appointed during the pendency of the action, and it is provided that an action may be brought against him. (C.C.P., s. 47; Code, s. 168; Rev., s. 369; C.S., s. 414.)

§ 1-25. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-26. New promise must be in writing.

No acknowledgment or promise is evidence of a new or continuing contract, from which the statutes of limitations run, unless it is contained in some writing signed by the party to be charged thereby; but this section does not alter the effect of any payment of principal or interest. (C.C.P., s. 51; Code, s. 172; Rev., s. 371; C.S., s. 416.)

§ 1-27. Act, admission or acknowledgment by party to obligation, co-obligor or guarantor.

(a) After a cause of action has accrued on any obligation on which there is more than one obligor, any act, admission, or acknowledgment by any party to such obligation or guarantor thereof, which removes the bar of the statute of limitations or causes the statute to begin running anew, has such effect only as to the party doing such act or making such admission or acknowledgment, and shall not renew, extend or in any manner impose liability of any kind against other parties to such obligation who have not authorized or ratified the same.

(b) Nothing in this section shall be construed as applying to or affecting rights or obligations of partnerships or individual members thereof, due to acts, admissions or acknowledgments of any one partner but rights as between partners shall be governed by G.S. 59-39.1. (C.C.P., s. 50; Code, s. 171; Rev., s. 372; C.S., s. 417; 1953, c. 1076, s. 1.)

§ 1-28. Undisclosed partner.

The statutes of limitations apply to a civil action brought against an undisclosed partner only from the time the partnership became known to the plaintiff. (1893, c. 151; Rev., s. 373; C.S., s. 418.)

§ 1-29. Cotenants.

If in actions by tenants in common or joint tenants of personal property, to recover the same, or damages for its detention or injury, any of them are barred of their recovery by limitation of time, the rights of the others are not affected thereby, but they may recover according to their right and interest, notwithstanding such bar. (C.C.P., s. 52; Code, s. 173; Rev., s. 374; C.S., s. 419; 1921, c. 106.)

§ 1-30. Applicable to actions by State.

The limitations prescribed by law apply to civil actions brought in the name of the State, or for its benefit, in the same manner as to actions by or for the benefit of private parties. (C.C.P., s. 38; Code, s. 159; Rev., s. 375; C.S., s. 420.)

§ 1-31. Action upon a mutual, open and current account.

In an action brought to recover a balance due upon a mutual, open and current account, where there have been reciprocal demands between the parties, the cause of action accrues from the time

of the latest item proved in the account on either side. (C.C.P., s. 39; Code, s. 160; Rev., s. 376; C.S., s. 421; 1951, c. 837, s. 1.)

§ 1-32. Not applicable to bank bills.

The limitations prescribed by law do not affect actions to enforce the payment of bills, notes or other evidences of debt, issued or put in circulation as money by banking corporations incorporated under the laws of this State. (C.C.P., s. 53; 1874-5, c. 170; Code, s. 174; Rev., s. 377; C.S., s. 422.)

§ 1-33. Actions against bank directors or stockholders.

The limitations prescribed by law do not affect actions against directors or stockholders of any banking association incorporated under the laws of this State, to recover a penalty or forfeiture imposed, or to enforce a liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was created. (C.C.P., s. 54; Code, s. 175; Rev., s. 378; C.S., s. 423.)

§ 1-34. Aliens in time of war.

When a person is an alien subject, or a citizen of a country at war with the United States, the time of the continuance of the war is not a part of the period limited for the commencement of the action. (C.C.P., s. 44; Code, s. 165; Rev., s. 379; C.S., s. 424.)

Article 4.

Limitations, Real Property.

§ 1-35. Title against State.

The State will not sue any person for, or in respect of, any real property, or the issue or profits thereof, by reason of the right or title of the State to the same –

(1) When the person in possession thereof, or those under whom he claims, has been in the adverse possession thereof for thirty years, this possession having been ascertained and identified under known and visible lines or boundaries; which shall give a title in fee to the possessor.

(2) When the person in possession thereof, or those under whom he claims, has been in possession under color of title for twenty-one years, this possession having been ascertained and identified under known and visible lines or boundaries. (R.C., c. 65, s. 2; C.C.P., s. 18; Code, s. 139; Rev., s. 380; C.S., s. 425.)

§ 1-36. Title presumed out of State.

In all actions involving the title to real property title is conclusively deemed to be out of the State unless it is a party to the action, but this section does not apply to the trials of protested entries laid for the purpose of obtaining grants, nor to actions instituted prior to May 1, 1917. (1917, c. 195; C.S., s. 426.)

§ 1-37. Such possession valid against claimants under State.

All such possession as is described in G.S. 1-35, under such title as is therein described, is hereby ratified and confirmed, and declared to be good and legal bar against the entry or suit of any person, under the right or claim of the State. (C.C.P., s. 19; Code, s. 140; Rev., s. 381; C.S., s. 427.)

§ 1-38. Seven years' possession under color of title.

(a) When a person or those under whom he claims is and has been in possession of any real property, under known and visible lines and boundaries and under color of title, for seven years, no entry shall be made or action sustained against such possessor by a person having any right or title to the same, except during the seven years next after his right or title has descended or accrued, who in default of suing within that time shall be excluded from any claim thereafter made; and such possession, so held, is a perpetual bar against all persons not under disability: Provided, that commissioner's deeds in judicial sales and trustee's deeds under foreclosure shall also constitute color of title.

(b) If

(1) The marking of boundaries on the property by distinctive markings on trees or by the implacement of visible metal or concrete boundary markers in the boundary lines surrounding the property, such markings to be visible to a height of 18 inches above the ground, and

(2) The recording of a map prepared from an actual survey by a surveyor registered under the laws of North Carolina, in the book of maps in the office of the register of deeds in the county where the real property is located, with a certificate attached to said map by which the surveyor certifies that the boundaries as shown by the map are those described in the deed or other title instrument or proceeding from which the survey was made, the surveyor's certificate reciting the book and page or file number of the deed, other title instrument or proceeding from which the survey was made,

then the listing and paying of taxes on the real property marked and for which a survey and map have been certified and recorded as provided in subdivisions (1) and (2) above shall constitute prima facie evidence of possession of real property under known and visible lines and boundaries. Maps recorded prior to October 1, 1973 may be qualified under this statute by the recording of certificates prepared in accordance with subdivision (b)(2) above. Such certificates must contain the book and page number where the map is filed, in addition to the information required by subdivision (b)(2) above, and shall be recorded and indexed in the deed books. When a certificate is filed to qualify such a recorded map, the register of deeds shall make a marginal notation on the map in the following form: "Certificate filed pursuant to G.S. 1-38(b), book_____ (enter book where filed), page _____"

(c) Maps recorded prior to October 1, 1973 shall qualify as if they had been certified as herein provided if said maps can be proven to conform to the boundary lines on the ground and to conform to instruments of record conveying the land which is the subject matter of the map, to the person whose name is indicated on said recorded map as the owner thereof. Maps recorded after October 1, 1973 shall comply with the provisions for a certificate as hereinbefore set forth. (C.C.P., s. 20; Code, s. 141; Rev., s. 382; C.S., s. 428; 1963, c. 1132; 1973, c. 250; 1975, c. 207.)

§ 1-39. Seizin within twenty years necessary.

No action for the recovery or possession of real property shall be maintained, unless it appears that the plaintiff, or those under whom he claims, was seized or possessed of the premises in question within 20 years before the commencement of the action, unless he was under the disabilities prescribed by law. (C.C.P., s. 22; Code, s. 143; Rev., s. 383; C.S., s. 429.)

§ 1-40. Twenty years adverse possession.

No action for the recovery or possession of real property, or the issues and profits thereof, shall be maintained when the person in possession thereof, or defendant in the action, or those under whom he claims, has possessed the property under known and visible lines and boundaries adversely to all other persons for 20 years; and such possession so held gives a title in fee to the possessor, in such property, against all persons not under disability. (C.C.P., s. 23; Code, s. 144; Rev., s. 384; C.S., s. 430.)

§ 1-41. Action after entry.

No entry upon real estate shall be deemed sufficient or valid, as a claim, unless an action is commenced thereupon within one year after the making of the entry, and within the time prescribed in this Chapter. (C.C.P., s. 24; Code, s. 145; Rev., s. 385; C.S., s. 431.)

§ 1-42. Possession follows legal title; severance of surface and subsurface rights.

In every action for the recovery or possession of real property, or damages for a trespass on such possession, the person establishing a legal title to the premises is presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person is deemed to have been under, and in subordination to, the legal title, unless it appears that the premises have been held and possessed adversely to the legal title for the time prescribed by law before the commencement of the action. Provided that a record chain of title to the premises for a period of thirty years next preceding the commencement of the action, together with the identification of the lands described therein, shall be prima facie evidence of possession thereof within the time required by law.

In all controversies and litigation wherein it shall be made to appear from the public records that there has been at some previous time a separation or severance between the surface and the subsurface rights, title or properties of an area, no holder or claimant of the subsurface title or rights therein shall be entitled to evidence or prove any use of the surface, by himself or by his predecessors in title or of lessees or agents, as adverse possession against the holder of said surface rights or title; and likewise no holder or claimant of the surface rights shall be entitled to evidence or prove any use of the subsurface rights, by himself, or by his predecessors in title or of lessees or agents, as adverse possession against the holder of said subsurface rights, unless, in either case, at the time of beginning such allegedly adverse use and in each year of the same, said party or his predecessor in title so using shall have placed or caused to be placed upon the records of the register of deeds of the county wherein such property lies and in a book therein kept or provided for such purposes, a brief notice of intended use giving (i) the date of beginning or recommencing of the operation or use, (ii) a brief description of the property involved but sufficiently adequate to make said property readily locatable therefrom, (iii) the name and, if known, the address of the claimant of the right under which the operation or use is to be carried on or made and (iv) the deed or other instrument, if any, under which the right to conduct such operation or to make such use is claimed or to which it is to be attached. (C.C.P., s. 25; Code, s. 146; Rev., s. 386; C.S., s. 432; 1945, c. 869; 1959, c. 469; 1965, c. 1094.)

§ 1-42.1. Certain ancient mineral claims extinguished in certain counties.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, or that the record title holder of any such oil, gas or mineral

interests has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of ten (10) years prior to January 1, 1965, any person, having the legal capacity to own land in this State, who has on September 1, 1965 an unbroken chain of title of record to such surface estate of such area of land for fifty (50) years or more, and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate as provided in the succeeding subsections of this section, subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed.

(b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interests in such area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which was executed or recorded fifty (50) years or more prior to September 1, 1965, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any such fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two (2) years after September 1, 1965, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and page where recorded. Such notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) All oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership must be listed for ad valorem taxes and notice of such interest must be filed in writing in the manner provided by G.S. 1-42.1(b) and recorded in the local registry in the book provided by G.S. 1-42 within two years from September 1, 1967, to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina. The board of county commissioners shall publish a notice of this subsection in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to September 1, 1967.

The provisions of this subsection shall apply to the following counties: Anson, Buncombe, Durham, Franklin, Guilford, Hoke, Jackson, Montgomery, Person, Richmond, Swain, Transylvania, Union, Wake and Warren. (1965, c. 1072, s. 1; 1967, c. 905.)

§ 1-42.2. Certain additional ancient mineral claims extinguished; oil, gas and mineral interests to be recorded and listed for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, or that the record titleholder of any such oil, gas or mineral interests has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of 10 years prior to January 1, 1971, any person, having the legal capacity to own land in this State, who has on September 1, 1971, an unbroken chain of title of record to such surface estate of such area of land for at least 50 years and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate as provided in the succeeding subsections of this section, subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed.

(b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interests in such area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which was executed or recorded at least 50 but not more than 56 years prior to September 1, 1971, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any such fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two years after September 1, 1971, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and page where recorded. Such notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) Within two years from November 1, 1971, all oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership must be listed for ad valorem taxes and

notice of such interest must be filed in writing in the manner provided by G.S. 1-42.2(b) and recorded in the local registry in the book provided by G.S. 1-42, to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina. The board of county commissioners shall publish a notice of this subsection in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to November 1, 1971.

The provisions of this subsection shall apply to the following counties: Rowan, Anson, Buncombe, Catawba, Davidson, Durham, Franklin, Guilford, Haywood, Hoke, Iredell, Jackson, Madison, Montgomery, Moore, Person, Richmond, Robeson, Scotland, Swain, Transylvania, Union, Wake, Warren and Yancey. (1971, c. 235, s. 1; c. 855.)

§ 1-42.3. Additional ancient mineral claims extinguished in certain counties; oil, gas and mineral interests to be recorded and listed for taxation in such counties.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, or that the record titleholder of any such oil, gas or mineral interests has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of 10 years prior to January 1, 1974, any person having the legal capacity to own land in this State, who has on September 1, 1974, an unbroken chain of title of record to such surface estate of such area of land for at least 50 years and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate as provided in the succeeding subsections of this section, subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed.

(b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interest in such area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which was executed or recorded at least 50 years or more prior to September 1, 1974, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any such fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two years after September 1, 1974, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and page where recorded. Such notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability,

unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) Within two years from November 1, 1974, all oil, gas or mineral interest in lands severed or separated from the surface fee simple ownership must be listed for ad valorem taxes and notice of such interest must be filed in writing in the manner provided by G.S. 1-42.3(b) and recorded in the local registry in the book provided by G.S. 1-42, to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina. The board of county commissioners shall publish a notice of this subsection in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to November 1, 1974.

The provisions of this subsection shall apply to the following counties: Alleghany, Burke, Caldwell, Cherokee, Clay, Cleveland, Gaston, Gates, Graham, Halifax, Henderson, Macon, McDowell, Mitchell, Polk, Randolph, Stanly, Surry, Watauga, and Wilkes. (1973, c. 1435; 1981, c. 329, s. 2.)

§ 1-42.4. Additional ancient mineral claims extinguished in Ashe County; oil, gas and mineral interests to be recorded and listed for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interest in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, or that the record titleholder of any such oil, gas or mineral interest has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of 10 years prior to January 1, 1977, any person having the legal capacity to own land in this State, who has on September 1, 1977, an unbroken chain of title of record to such surface estate of such area of land for at least 50 years, and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate as provided in the succeeding subsections of this section, subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed.

(b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interests in such area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which was executed or recorded at least 50 years or more prior to September 1, 1977, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any such fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two years after September 1, 1977, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and

page where recorded. Such notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) Within two years from November 1, 1977, all oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership must be listed for ad valorem taxes and notice of such interests must be filed in writing in the manner provided by G.S. 1-42.4(b) and recorded in the local registry in the book provided by G.S. 1-42, to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina. The board of county commissioners shall publish a notice of this subsection in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to November 1, 1977. The provisions of this subsection shall apply to the following county: Ashe. (1977, c. 751.)

§ 1-42.5. Additional ancient mineral claims extinguished in Avery County; oil, gas and mineral interests to be recorded in such county.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interest in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, any person having legal capacity to own land in this State, who has an unbroken chain of title of record to such surface estate of such area of land for at least 30 years and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate as provided in the succeeding subsections of this section, subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed.

(b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interest in such area of land, the existence of which depends upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which was recorded prior to such 30-year period, and such oil, gas or mineral interests are hereby declared null and void and of no effect whatever at law or in equity: Provided, however, that any such fee simple oil, gas or mineral interest may be

preserved and kept effective by recording within such 30-year period, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and page where recorded. Such notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land, or any part thereof lies, and in the book thereof kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant, and the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinquishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) The board of county commissioners shall publish a notice of this section within 90 days after the ratification date, and within 90 days prior to June 30, 1982. Such notice shall be published once per week for four consecutive weeks in a newspaper published in the counties of Avery, Burke, Mitchell and Watauga, or a newspaper having general circulation in those counties.

The provisions of this section shall apply to the following county: Avery. (1981, c. 329, s. 1.)

§ 1-42.6. Additional ancient oil, gas or mineral interests extinguished in Alleghany County; recording interests; listing interests for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land and this interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, or that the record titleholder of any oil, gas or mineral interests has not listed the same for ad valorem tax purposes in the county in which it is located for a period of 10 years prior to February 1, 1981, any person having the legal capacity to own land in this State who has on July 1, 1981, an unbroken chain of title of record to the surface estate of the area of land for at least 50 years, and provided the surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to the surface estate as provided in the succeeding subsections of this section, subject to any interests and defects as are inherent in the provisions and limitations contained in the muniments that form the chain of record title.

(b) This marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all fee simple oil, gas or mineral interests in the area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple that was executed or recorded at least 50 years or more prior to July 1, 1981, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two years after July 1, 1981, a notice in

writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of the oil, gas or mineral interest and gives the book and page where recorded. This notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein the area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make the property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. The notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) Within two years from July 1, 1981, all oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership must be listed for ad valorem taxes and notice of such interest must be filed in writing in the manner provided by G.S. 1-42.3(b) and recorded in the local registry in the book provided by G.S. 1-42 to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina. The board of county commissioners shall publish a notice of this section within 180 days after May 6, 1981. Such notice shall be published once per week for four consecutive weeks in a newspaper published in the county, or a newspaper of general circulation in the county.

This section applies only to Alleghany County. (1981, c. 333, ss. 1, 2.)

§ 1-42.7. Additional amount mineral claims extinguished in Chatham County; oil, gas and mineral interests to be recorded and listed for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interest in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, or that the record titleholder of any such oil, gas or mineral interest has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of 10 years prior to January 1, 1979, any person having the legal capacity to own land in this State, who has on September 1, 1979, an unbroken chain of title of record to such surface estate of such area of land for at least 50 years, and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate as provided in the succeeding subsections of this section, subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed.

(b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interests in such area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which was executed or recorded at least 50 years or more prior to September 1, 1979, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any such fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two years after September 1, 1979, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and page where recorded. Such notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) Within two years from November 1, 1979, all oil, gas or mineral interests in land severed or separated from the surface fee simple ownership must be listed for ad valorem taxes and notice of such interests must be filed in writing in the manner provided by G.S. 1-42.5(b) and recorded in the local registry in the book provided by G.S. 1-42, to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina. The board of county commissioners shall publish a notice of this subsection in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to November 1, 1979.

This section shall apply to Chatham County only. (1979, c. 343, ss. 1, 2.)

§ 1-42.8. Ancient mineral claims extinguished in Rutherford County; oil, gas and mineral interests to be recorded and listed for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land, and this interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another; or that the record titleholder of any oil, gas or mineral interests has not listed the same for ad valorem tax purposes in the county in which it is located for a period of 10 years prior to February 1, 1982, any person having the legal capacity to own land in this State

who has on September 1, 1982, an unbroken chain of title of record to the surface estate of the area of land for at least 50 years, and provided the surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to the surface estate as provided in the succeeding subsections of this section, subject to any interests and defects as are inherent in the provisions and limitations contained in the muniments that form the chain of record title.

(b) This marketable title shall be held by such persons and shall be taken by his successors in interest free and clear of any and all fee simple, oil, gas or mineral interests in the area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple that was executed or recorded at least 50 years or more prior to September 1, 1982, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any fee simple oil, gas or mineral interest not already extinguished by existing laws may be preserved and kept effective by recording within two years after September 1, 1982, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of the oil, gas or mineral interest and gives the book and page where recorded. This notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein the area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner, and shall also contain either a sufficient description of the area of land involved as to make the property readily located or due incorporation by reference of the recorded instrument containing the reservation or exception of the oil, gas or mineral interest. The notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing the notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished include those of persons whether within or without the State, and whether natural or corporate, but do not include governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) Within two years from September 1, 1982, all oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership must be listed for ad valorem taxes, and notice of this interest must be filed in writing in the manner provided by G.S. 1-42.3(b) and recorded in the local registry in the book provided by G.S. 1-42 to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina.

(e) The board of county commissioners shall publish a notice of this section in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to September 1, 1982.

(f) This act applies only to Rutherford County. (1981 (Reg. Sess., 1982), c. 1391, s. 1.)

§ 1-42.9. Ancient mineral claims extinguished; oil, gas and mineral interests to be recorded and listed for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, and that the record titleholder of any such oil, gas or mineral interests has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of five years prior to January 1, 1986, any person, having the legal capacity to own land in this State, who has on January 1, 1986, an unbroken chain of title of record to the surface estate of the area of land for at least 30 years and provided the surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to the fee estate as provided in the succeeding subsections of this section, subject to the interests and defects as are inherent in the provisions and limitations contained in the muniments of which the chain of record is formed.

(b) This marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all fee simple oil, gas or mineral interests in the area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple that was executed or recorded at least 30 years or more prior to January 1, 1986, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity. Provided, however, that any fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two years after January 1, 1986, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of the oil, gas or mineral interest and gives the book and page where recorded. This notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein the area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make the property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. The notice may be made and recorded by the claimant, by any person authorized by the claimant to act on his behalf, or by any person acting on behalf of any claimant who is under a disability, unable to assert a claim on his own behalf, or one of a class whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral leases.

(d) Within two years from January 1, 1986, all oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership and forfeitable under the terms of G.S. 1-42.9(b) must be listed for ad valorem taxes, and notice of this interest must be filed in writing in the manner provided by G.S. 1-42.9(b) and recorded in the local registry in the book provided by G.S. 1-42 to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad

valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina.

(e) The board of county commissioners shall publish a notice of this section in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to January 1, 1986.

(f) This section applies to a county that failed to publish a notice as required by subsection (e) but that published a notice of this section in a newspaper having general circulation in the county once a week for four consecutive weeks prior to January 1, 1986. In applying this section to that county, however, the date "1984" shall be substituted for the date "1983" each time it appears in this section. (1983, c. 502; 1983 (Reg. Sess., 1984), c. 1096, ss. 1-3; 1985, c. 160; c. 573, s. 1.)

§ 1-43. Tenant's possession is landlord's.

When the relation of landlord and tenant has existed, the possession of the tenant is deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy; or where there has been no written lease, until the expiration of twenty years from the time of the last payment of rent, notwithstanding that the tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited. (C.C.P., s. 26; Code, s. 147; Rev., s. 387; C.S., s. 433.)

§ 1-44. No title by possession of right-of-way.

No railroad, plank road, turnpike or canal company may be barred of, or presumed to have conveyed, any real estate, right-of-way, easement, leasehold, or other interest in the soil which has been condemned, or otherwise obtained for its use, as a right-of-way, depot, station house or place of landing, by any statute of limitation or by occupation of the same by any person whatever. (R.C., c. 65, s. 23; C.C.P., s. 29; Code, s. 150; Rev., s. 388; C.S., s. 434.)

§ 1-44.1. Presumption of abandonment of railroad right-of-way.

Any railroad which has removed its tracks from a right-of-way and has not replaced them in whole or in part within a period of seven (7) years after such removal and which has not made any railroad use of any part of such right-of-way after such removal of tracks for a period of seven (7) years after such removal, shall be presumed to have abandoned the railroad right-of-way. (1955, c. 657.)

§ 1-44.2. Presumptive ownership of abandoned railroad easements.

(a) Whenever a railroad abandons a railroad easement, all right, title and interest in the strip, piece or parcel of land constituting the abandoned easement shall be presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to the abandoned easement, with the presumptive ownership of each adjacent landowner extending to the centerline of the abandoned easement. In cases where the railroad easement adjoins a public road right-of-way, the adjacent property owner's right, title and interest in the abandoned railroad easement shall extend to the nearest edge of the public road right-of-way.

The side boundaries of each parcel so presumptively vested in the adjacent property owner shall be determined by extending the side property lines of the adjacent parcels to the centerline of the abandoned easement, or as the case may be, the nearest edge of the public road right-of-way. In the event the side property lines of two adjacent property owners intersect before they meet the centerline or nearest edge of the public road right-of-way, as the case may be, such side property

lines shall join and run together from the point of intersection to the centerline of the easement or nearest edge of the public road right-of-way, as the case may be, perpendicular to said centerline or edge.

(b) The presumption established by this section is rebuttable by showing that a party has good and valid title to the land.

(c) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1071, s. 6. (1987, c. 433, s. 1; 1987 (Reg. Sess., 1988), c. 1071, s. 6; 2004-203, s. 14.)

§ 1-45. No title by possession of public ways.

No person or corporation shall ever acquire any exclusive right to any part of a public road, street, lane, alley, square or public way of any kind by reason of any occupancy thereof or by encroaching upon or obstructing the same in any way, and in all actions, whether civil or criminal, against any person or corporation on account of an encroachment upon or obstruction or occupancy of any public way it shall not be competent for a court to hold that such action is barred by any statute of limitations. (1891, c. 224; Rev., s. 389; C.S., s. 435.)

§ 1-45.1. No adverse possession of property subject to public trust rights.

Title to real property held by the State and subject to public trust rights may not be acquired by adverse possession. As used in this section, "public trust rights" means those rights held in trust by the State for the use and benefit of the people of the State in common. They are established by common law as interpreted by the courts of this State. They include, but are not limited to, the right to navigate, swim, hunt, fish, and enjoy all recreational activities in the watercourses of the State and the right to freely use and enjoy the State's ocean and estuarine beaches and public access to the beaches. (1985, c. 277, s. 1.)

Article 5.

Limitations, Other than Real Property.

§ 1-46. Periods prescribed.

The periods prescribed for the commencement of actions, other than for the recovery of real property, are as set forth in this Article. (C.C.P., s. 30; Code, s. 151; Rev., s. 390; C.S., s. 436.)

§ 1-46.1. Twelve years.

Within 12 years an action –

(1) No action for the recovery of damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than 12 years after the date of initial purchase for use or consumption.

(2) Reserved for future codification purposes. (2009-420, s. 2.)

§ 1-47. Ten years.

Within ten years an action -

(1) Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its entry. No such action may be brought more than once, or have the effect to continue the lien of the original judgment.

(1a) Upon a judgment rendered by a justice of the peace, from its date.

(2) Upon a sealed instrument or an instrument of conveyance of an interest in real property, against the principal thereto. Provided, however, that if action on an instrument is filed, the defendant or defendants in such action may file a counterclaim arising out of the same transaction or transactions as are the subject of plaintiff's claim, although a shorter statute of limitations would otherwise apply to defendant's counterclaim. Such counterclaim may be filed against such parties as provided in G.S. 1A-1, Rules of Civil Procedure.

(3) For the foreclosure of a mortgage, or deed in trust for creditors with a power of sale, of real property, where the mortgagor or grantor has been in possession of the property, within ten years after the forfeiture of the mortgage, or after the power of sale became absolute, or within ten years after the last payment on the same.

(4) For the redemption of a mortgage, where the mortgagee has been in possession, or for a residuary interest under a deed in trust for creditors, where the trustee or those holding under him has been in possession, within ten years after the right of action accrued.

(5) Repealed by Session Laws 1959, c. 879, s. 2.

(6) Repealed by Session Laws 2019-164, s. 1, effective July 26, 2019, and applicable to actions arising on or after that date. (C.C.P., ss. 14, 31; Code, s. 152; Rev., s. 391; C.S., s. 437; 1937, c. 368; 1959, c. 879, s. 2; 1961, c. 115, s. 2; 1969, c. 810, s. 1; 1991, c. 268, s. 2; 1995 (Reg. Sess., 1996), c. 742, s. 1(a); 1997-456, s. 27; 1999-221, s. 3; 2004-203, s. 15(a); 2019-164, s. 1.)

§ 1-48. Transferred to § 1-54, subdivision (6), by Session Laws 1951, c. 837, s. 2.

§ 1-49. Seven years.

Within seven years an action –

(1) Repealed by Session Laws 1961, c. 115, s. 1.

(2) By a creditor of a deceased person against his personal or real representative, within seven years next after the qualification of the executor or administrator and his making the advertisement required by law for creditors of the deceased to present their claims, where no personal service of such notice in writing is made upon the creditor. A creditor thus barred of a recovery against the representative of any principal debtor is also barred of a recovery against any surety to the debt.

(3) Against the owner of an interest in real property by a unit of local government for a violation of a land-use statute, ordinance, or permit or any other official action concerning land use carrying the effect of law. This subdivision does not limit the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety but does prescribe an outside limitation of seven years from the earlier of the occurrence of any of the following:

a. The violation is apparent from a public right-of-way.

b. The violation is in plain view from a place to which the public is invited. (C.C.P., s. 32; Code, s. 153; Rev., s. 392; C.S., s. 438; 1961, c. 115, s. 1; 2017-10, s. 2.15(b).)

§ 1-50. Six years.

(a) Within six years an action –

(1) Repealed by Session Laws 1997-297, s. 1.

(2) Against an executor, administrator, collector, or guardian on his official bond, within six years after the auditing of his final account by the proper officer, and the filing of the audited account as required by law.

(3) For injury to any incorporeal hereditament.

(4) Against a corporation, or the holder of a certificate or duplicate certificate of stock in the corporation, on account of any dividend, either a cash or stock dividend, paid or allotted by the corporation to the holder of the certificate or duplicate certificate of stock in the corporation.

(5) a. No action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement.

b. For purposes of this subdivision, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

1. Actions to recover damages for breach of a contract to construct or repair an improvement to real property;
2. Actions to recover damages for the negligent construction or repair of an improvement to real property;
3. Actions to recover damages for personal injury, death or damage to property;
4. Actions to recover damages for economic or monetary loss;
5. Actions in contract or in tort or otherwise;
6. Actions for contribution indemnification for damages sustained on account of an action described in this subdivision;
7. Actions against a surety or guarantor of a defendant described in this subdivision;
8. Actions brought against any current or prior owner of the real property or improvement, or against any other person having a current or prior interest therein;
9. Actions against any person furnishing materials, or against any person who develops real property or who performs or furnishes the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.

c. For purposes of this subdivision, "substantial completion" means that degree of completion of a project, improvement or specified area or portion thereof (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it was intended. The date of substantial completion may be established by written agreement.

d. The limitation prescribed by this subdivision shall not be asserted as a defense by any person in actual possession or control, as owner, tenant or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event such person in actual possession or control either knew, or ought reasonably to have known, of the defective or unsafe condition.

e. The limitation prescribed by this subdivision shall not be asserted as a defense by any person who shall have been guilty of fraud, or willful or wanton negligence in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property, or to a surety or guarantor of any of the foregoing persons, or to any person who shall wrongfully conceal any such fraud, or willful or wanton negligence.

f. This subdivision prescribes an outside limitation of six years from the later of the specific last act or omission or substantial completion, within which the limitations prescribed by G.S. 1-52 and 1-53 continue to run. For purposes of the three-year limitation prescribed by G.S. 1-52, a cause of action based upon or arising out of the defective or unsafe condition of an improvement to real property shall not accrue until the injury, loss, defect or damage becomes apparent or ought reasonably to have become apparent to the claimant. However, as provided in this subdivision, no action may be brought more than six years from the later of the specific last act or omission or substantial completion.

g. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).

(6) Repealed by Session Laws 2009-420, s. 1, effective October 1, 2009, and applicable to causes of action that accrue on or after that date.

(7) Recodified as G.S. 1-47(6) by Session Laws 1995 (Regular Session, 1996), c. 742, s. 1.

(b) This section applies to actions brought by a private party and to actions brought by the State or a political subdivision of the State. (C.C.P., s. 33; Code, s. 154; Rev., s. 393; C.S., s. 439; 1931, c. 169; 1963, c. 1030; 1979, c. 654, s. 2; 1981, c. 644, s. 1; 1991, c. 268, s. 2; 1995, c. 291, s. 1; 1995 (Reg. Sess., 1996), c. 742, s. 1(a); 1997-297, s. 1; 2009-420, s. 1.)

§ 1-51. Five years.

Within five years –

(1) No suit, action or proceeding shall be brought or maintained against a railroad company owning or operating a railroad for damages or compensation for right-of-way or use and occupancy of any lands by the company for use of its railroad unless the action or proceeding is commenced within five years after the lands have been entered upon for the purpose of constructing the road, or within two years after it is in operation.

(2) No suit, action or proceeding shall be brought or maintained against a railroad company for damages caused by the construction of the road, or the repairs thereto, unless such suit, action or proceeding is commenced within five years after the cause of action accrues, and the jury shall assess the entire amount of damages which the party aggrieved is entitled to recover by reason of the trespass on his property.

(3) No suit, action, or proceeding shall be brought or maintained against a terrorist for damages under G.S. 1-539.2D unless such suit, action, or proceeding is commenced within five years from the date of the injury.

(4) Notwithstanding G.S. 1-52(9) or any other provision of law, no suit, action, or proceeding shall be brought or maintained against a real estate appraiser, general real estate appraiser, or appraiser trainee who is licensed, certified, or registered pursuant to Chapter 93E of the General Statutes, unless the suit, action, or proceeding is commenced within (i) five years of the date the appraisal was performed or (ii) until the applicable time period for retention of the work file for the appraisal giving rise to the action as established by the Recordkeeping Rule of the Uniform Standards of Professional Appraisal Practice has expired, whichever is greater.

(5) Against the owner of an interest in real property by a unit of local government for a violation of a land-use statute, ordinance, or permit or any other official action concerning land use carrying the effect of law. This subdivision does not limit the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety. The claim for relief accrues upon the occurrence of the earlier of any of the following:

a. The facts constituting the violation are known to the governing body, an agent, or an employee of the unit of local government.

b. The violation can be determined from the public record of the unit of local government. (1893, c. 152; 1895, c. 224; 1897, c. 339; Rev., s. 394; C.S., s. 440; 2015-200, s. 1; 2015-215, s. 1.5; 2017-10, s. 2.15(a).)

§ 1-52. Three years.

Within three years an action -

(1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1).

(1a) Upon the official bond of a public officer.

(2) Upon a liability created by statute, either state or federal, unless some other time is mentioned in the statute creating it.

(3) For trespass upon real property. When the trespass is a continuing one, the action shall be commenced within three years from the original trespass, and not thereafter.

(4) For taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery.

(5) For criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereafter enumerated, except as provided by G.S. 1-17(d) and (e).

(6) Against the sureties of any executor, administrator, collector or guardian on the official bond of their principal; within three years after the breach thereof complained of.

(7) Against bail; within three years after judgment against the principal; but bail may discharge himself by a surrender of the principal, at any time before final judgment against the bail.

(8) For fees due to a clerk, sheriff or other officer, by the judgment of a court; within three years from the entry of the judgment, or the issuing of the last execution thereon.

(9) For relief on the ground of fraud or mistake; the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(10) Repealed by Session Laws 1977, c. 886, s. 1.

(11) For the recovery of any amount under and by virtue of the provisions of the Fair Labor Standards Act of 1938 and amendments thereto, said act being an act of Congress.

(12) Upon a claim for loss covered by an insurance policy that is subject to the three-year limitation contained in G.S. 58-44-16.

(13) Against a public officer, for a trespass, under color of his office.

(14) An action under Chapter 75B of the General Statutes, the action in regard to a continuing violation accrues at the time of the latest violation.

(15) For the recovery of taxes paid as provided in G.S. 105-381 or for the recovery of an unlawful fee, charge, or exaction collected by a county, municipality, or other unit of local government for water or sewer service or water and sewer service.

(16) Unless otherwise provided by law, for personal injury or physical damage to claimant's property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Except as provided in G.S. 130A-26.3 or G.S. 1-17(d) and (e), no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.

(17) Against a public utility, electric or telephone membership corporation, or a municipality for damages or for compensation for right-of-way or use of any lands for a utility service line or lines to serve one or more customers or members unless an inverse condemnation action or proceeding is commenced within three years after the utility service line has been constructed or by October 1, 1984, whichever is later.

(18) Against any professional land surveyor as defined in G.S. 89C-3(9) or any person acting under the surveyor's supervision and control for physical damage or economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting. A cause of action for physical damage under this subdivision shall be deemed to accrue at the time of the occurrence of the physical damage giving rise to the cause of action. All actions under this subdivision shall commence within seven years from the specific last act or omission of the professional land surveyor or any person acting under the

surveyor's supervision and control giving rise to the cause of action. For purposes of this subdivision, "surveying and platting" means boundary surveys, topographical surveys, surveys of property lines, and any other measurement or surveying of real property and the consequent graphic representation thereof.

(19) For assault, battery, or false imprisonment, except as provided by G.S. 1-17(d) and (e). Notwithstanding this subdivision, a plaintiff may file a civil action within two years of the date of a criminal conviction for a related felony sexual offense against a defendant for claims related to sexual abuse suffered while the plaintiff was under 18 years of age.

(20) Upon a liability for a civil penalty, civil assessment, or civil fine imposed pursuant to Chapter 20 of the General Statutes. (C.C.P., s. 34; Code, s. 155; 1889, cc. 218, 269; 1895, c. 165; 1899, c. 15, s. 71; 1901, c. 558, s. 23; Rev., s. 395; 1913, c. 147, s. 4; C.S., s. 441; 1945, c. 785; 1971, c. 939, s. 1; 1975, c. 252, ss. 2, 4; 1977, c. 886, s. 1; c. 916, s. 2; c. 946, s. 4; 1979, c. 654, s. 3; 1981, c. 702; c. 777, s. 4; 1991, c. 268, s. 1; 1995 (Reg. Sess., 1996), c. 742, s. 1(b); 1997-297, s. 2; 2001-175, s. 2; 2004-203, s. 15(b); 2007-491, s. 3; 2009-171, s. 5; 2010-129, s. 6; 2014-17, s. 2; 2014-44, s. 1(c); 2017-138, s. 10(a); 2019-164, s. 2; 2019-245, s. 4.2(a).)

§ 1-53. Two years.

Within two years -

(1) An action against a local unit of government upon a contract, obligation or liability arising out of a contract, express or implied. Unless otherwise provided by law, if the preceding sentence of this subsection would bar commencement of a cause of action arising out of a contract to improve real property: (i) such an action may be brought no later than 90 days after substantial completion, provided proper notice of the claim has been given if required by contract, or (ii) if prior to substantial completion the contract was terminated by either party, such an action may be brought no later than 90 days after the date of termination of the contract. As used in this subdivision, "substantial completion" has the same meaning as in G.S. 1-50(a)(5)c. This subdivision shall not apply to actions based upon bonds, notes and interest coupons or when a different period of limitation is prescribed by this Article.

(2) An action to recover the penalty for usury, including an action regarding the financing of usurious points, usurious fees, or other usurious charges; the two-year period shall accrue with each payment made and accepted on the loan.

(3) The forfeiture of all interest for usury.

(4) Actions for damages on account of the death of a person caused by the wrongful act, neglect or fault of another under G.S. 28A-18-2; the cause of action shall not accrue until the date of death. Provided that, whenever the decedent would have been barred, had he lived, from bringing an action for bodily harm because of the provisions of G.S. 1-15(c) or 1-52(16), no action for his death may be brought. (1874-5, c. 243; 1876-7, c. 91, s. 3; Code, ss. 756, 3836; 1895, c. 69; Rev., s. 396; C.S., s. 442; 1931, c. 231; 1937, c. 359; 1945, c. 774; 1951, c. 246, s. 2; 1979, c. 654, s. 3; 1981, c. 777, s. 3; 2007-351, s. 1; 2008-139, s. 1.)

§ 1-54. One year.

Within one year an action or proceeding -

(1) Repealed by Session Laws 1975, c. 252, s. 5.

(2) Upon a statute, for a penalty or forfeiture, where the action is given to the State alone, or in whole or in part to the party aggrieved, or to a common informer, except where the statute imposing it prescribes a different limitation.

(3) For libel and slander.

(4) Against a public officer, for the escape of a prisoner arrested or imprisoned on civil process.

(5) For the year's allowance of a surviving spouse or children.

(6) For a deficiency judgment on any debt, promissory note, bond or other evidence of indebtedness after the foreclosure of a mortgage or deed of trust on real estate securing such debt, promissory note, bond or other evidence of indebtedness, which period of limitation above prescribed commences with the date of the delivery of the deed pursuant to the foreclosure sale: Provided, however, that if an action on the debt, note, bond or other evidence of indebtedness secured would be earlier barred by the expiration of the remainder of any other period of limitation prescribed by this subchapter, that limitation shall govern.

(7) Repealed by Session Laws 1971, c. 939, s. 2.

(7a) For recovery of damages under Article 1A of Chapter 18B of the General Statutes.

(8) As provided in G.S. 105-377, to contest the validity of title to real property acquired in any tax foreclosure action or to reopen or set aside the judgment in any tax foreclosure action.

(9) As provided in Article 14 of Chapter 126 of the General Statutes, entitled "Protection for Reporting Improper Government Activities".

(10) Actions contesting the validity of any zoning or unified development ordinance or any provision thereof adopted under Chapter 160D of the General Statutes or other applicable law, other than an ordinance adopting or amending a zoning map. Such an action accrues when the party bringing such action first has standing to challenge the ordinance; provided that, a challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the ordinance.

(11) No suit, action, or proceeding under G.S. 14-190.5A(g) shall be brought or maintained against any person unless such suit, action, or proceeding is commenced within one year after the initial discovery of the disclosure, but in no event may the action be commenced more than seven years from the most recent disclosure of the private image.

(12) Repealed by Session Laws 2017-4, s. 1, effective March 30, 2017. (C.C.P., s. 35; Code, s. 156; 1885, c. 96; Rev., s. 397; C.S., s. 443; 1933, c. 529, s. 1; 1951, c. 837, s. 2; 1965, c. 9; 1969, c. 1001, s. 2; 1971, c. 12; c. 939, s. 2; 1975, c. 252, s. 5; 1977, c. 886, s. 3; 1983, c. 435, s. 38; 1989, c. 236, s. 4; 2001-175, s. 1; 2011-384, s. 1; 2015-250, s. 1.1; 2016-99, s. 2; 2017-4, s. 1; 2019-111, s. 2.5(a); 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

§ 1-54.1. Sixty days.

An action contesting the validity of any ordinance adopting or amending a zoning map or approving a conditional zoning district rezoning request shall be brought within 60 days of the adoption of the ordinance. (1981, c. 705, s. 1; c. 891, s. 4; 1991 (Reg. Sess., 1992), c. 1030, s. 1; 1995 (Reg. Sess., 1996), c. 746, s. 5; 2011-384, s. 2; 2019-111, s. 2.5(b); 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d); 2022-62, s. 54(a).)

§ 1-55. Six months.

Within six months an action –

(1) Upon a contract, transfer, assignment, power of attorney or other instrument transferring or affecting unearned salaries or wages, or future earnings, or any interest therein, whether said instrument be under seal or not under seal. The above period of limitations shall commence from the date of the execution of such instrument.

(2) For the wrongful conversion or sale of leaf tobacco in an auction tobacco warehouse during the regular season for auction sales of tobacco in such warehouse. This paragraph shall not apply to actions for the wrongful conversion or sale of leaf tobacco which was stolen from the lawful owner or possessor thereof.

(3) For wrongful discharge or demotion because of proceedings under the North Carolina Workers' Compensation Act as prohibited by G.S. 97-6.1. (C.C.P., s. 36; Code, s. 157; Rev., s. 398; C.S., s. 444; 1931, c. 168; 1943, c. 642, s. 2; 1969, c. 1001, s. 1; 1979, c. 738, s. 2; 1991, c. 636, s. 3.)

Article 5A.

Limitations, Actions Not Otherwise Limited.

§ 1-56. All other actions, 10 years.

(a) Except as provided by subsection (b) of this section, an action for relief not otherwise limited by this subchapter may not be commenced more than 10 years after the cause of action has accrued.

(b) A civil action for child sexual abuse is not subject to the limitation in this section. (C.C.P., s. 37; Code, s. 158; Rev., s. 399; C.S., s. 445; 1951, c. 837, s. 3; 2019-245, s. 4.3.)

§ 1-56.1. No limitation for certain actions.

Notwithstanding G.S. 1-56, an action to reform, terminate, or modify a trust, pursuant to G.S. 36C-4-410 through G.S. 36C-4-416, may be commenced at any time. (2019-113, s. 4.)

SUBCHAPTER III. PARTIES.

Article 6.

Parties.

§ 1-57. Real party in interest; grantees and assignees.

Every action must be prosecuted in the name of the real party in interest, except as otherwise provided; but this section does not authorize the assignment of a thing in action not arising out of contract. An action may be maintained by a grantee of real estate in his own name, when he or any grantor or other person through whom he derives title might maintain such action, notwithstanding the conveyance of the grantor is void, by reason of the actual possession of a person claiming under

a title adverse to that of the grantor, or other person, at the time of the delivery of the conveyance. In case of an assignment of a thing in action the action by the assignee is without prejudice to any setoff or other defense, existing at the time of, or before notice of, the assignment; but this does not apply to a negotiable promissory note or bill of exchange, transferred in good faith, upon good consideration, and before maturity. (C.C.P., s. 55; 1874-5, c. 256; Code, s. 177; Rev., s. 400; C.S., s. 446.)

§ 1-58. Suits for penalties.

Where a penalty is imposed by any law, and it is not provided to what person the penalty is given, it may be recovered, for his own use, by anyone who sues for it. When a penalty is allowed by statute, and it is not prescribed in whose name suit therefor may be commenced, suit must be brought in the name of the State. (R.C., c. 35, ss. 47, 48; Code, ss. 1212, 1213; Rev., ss. 401, 402; C.S., s. 447.)

§ 1-59. Suit for penalty, plaintiff may reply fraud to plea of release.

If an action be brought in good faith by any person to recover a penalty under a law of this State, or of the United States, and the defendant shall set up in bar thereto a former judgment recovered by or against him in a former action brought by any other person for the same cause, then the plaintiff in such action, brought in good faith, may reply that the said former judgment was obtained by covin; and if the collusion or covin so averred be found, the plaintiff in the action sued with good faith shall have recovery; and no release made by such party suing in covin, whether before action brought or after, shall be in anywise available or effectual. (4 Hen. VII, c. 20; R.C., c. 31, s. 100; Code, s. 932; Rev., s. 1521; C.S., s. 447(a); 1925, c. 21.)

§ 1-60. Suit on bonds; defendant may plead satisfaction.

When an action shall be brought on any single bill or on any judgment, if the defendant had paid the money due upon such bill or judgment before action brought, or where the defendant hath made satisfaction to the plaintiff of the money due on such bill or judgment in other manner than by payment thereof, such payment or satisfaction may be pleaded in bar of such action; and where only part of the money due on such single bill or judgment hath been paid by the defendant, or satisfied in other manner than by payment of money, such part payment or part satisfaction may be pleaded in bar of so much of the money due on such single bill or judgment, as the same may amount to; and where an action is brought on any bond which hath a condition or defeasance to make void the same upon the payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors or administrators have, before the action brought, paid to the obligee, his executor or administrator, the principal and interest due by the condition or defeasance of such bond, though such payments were not made strictly according to the condition or defeasance; or if such obligor, his heirs, executors or administrators have before action brought made satisfaction to the plaintiff of the principal and interest due by the condition or defeasance of such bond, in other manner than by payment thereof, yet the said payment or satisfaction may be pleaded in bar of such action, and shall be effectual as a bar thereof, in like manner as if the money had been paid at the day and place, according to the condition or defeasance, and so pleaded. (4 Hen. VII, c. 20; R.C., c. 31, s. 101; Code, s. 933; Rev., s. 1522; C.S., s. 147(b); 1925, c. 21.)

§ 1-61. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-62. Action by purchaser under judicial sale.

Anyone given possession under a judicial sale confirmed, where the title is retained as a security for the price, is the legal owner of the property for all purposes of bringing suits for injuries thereto, after the day of sale, by trespass or wrongful possession, in the same manner as if the title had been conveyed to him on day of sale, unless restrained by some order of the court directing the sale; and the suit brought is under the control of the court ordering the sale. (1858-9, c. 50; Code, s. 942; Rev., s. 403; C.S., s. 448.)

§§ 1-63 through 1-64. Repealed by Session Laws 1967, c. 954, s. 4.

§§ 1-65 through 1-65.4. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-65.5. Repealed by Session Laws 1969, c. 895, s. 19.

§§ 1-66 through 1-69. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-69.1. Unincorporated associations and partnerships; suit by or against.

(a) Except as provided in subsection (b) of this section:

(1) All unincorporated associations, organizations or societies, or general or limited partnerships, foreign or domestic, whether organized for profit or not, may sue or be sued under the name by which they are commonly known and called, or under which they are engaging in business, to the same extent as any other legal entity established by law and without naming any of the individual members composing it.

(2) Any judgments and executions against any such association, organization or society shall bind its real and personal property in like manner as if it were incorporated.

(3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege that it has filed an assumed business name certificate under Article 14A of Chapter 66 of the General Statutes.

(b) Unincorporated nonprofit associations are subject to Chapter 59B of the General Statutes and not this section. (1955, c. 545, s. 3; 1975, c. 393, ss. 1, 2; 2006-226, s. 3; 2016-100, ss. 3(a), (b); 2017-23, s. 3.)

§§ 1-70 through 1-71. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-72. Persons jointly liable.

In all cases of joint contracts of partners in trade or others, suit may be brought and prosecuted against all or any number of the persons making such contracts. (R.C., c. 31, s. 84; 1871-2, c. 24, s. 1; Code, s. 187; Rev., s. 413; C.S., s. 459.)

§ 1-72.1. Procedure to assert right of access.

(a) Any person asserting a right of access to a civil judicial proceeding or to a judicial record in that proceeding may file a motion in the proceeding for the limited purpose of determining the person's right of access. The motion shall not constitute a request to intervene

under the provisions of Rule 24 of the Rules of Civil Procedure and shall instead be governed by the procedure set forth in this statute. The movant shall not be considered a party to the action solely by virtue of filing a motion under this section or participating in proceedings on the motion. An order of the court granting a motion for access made pursuant to this section shall not make the movant a party to the action for any purpose.

(b) The movant shall serve a copy of its motion on all parties to the proceeding in any manner provided in Rule 5 of the Rules of Civil Procedure. Upon receipt of a motion filed pursuant to this section, the court shall establish the date and location of the hearing on the motion that shall be set at a time before conducting any further proceedings relative to the matter for which access is sought under the motion. The court shall cause notice of the hearing date and location to be posted at the courthouse where the hearing is scheduled. The movant shall serve a copy of the notice of the date, time, and location of the hearing on all parties to the proceeding in any manner provided in Rule 5 of the Rules of Civil Procedure.

(c) The court shall rule on the motion after consideration of such facts, legal authority, and argument as the movant and any other party to the action desire to present. The court shall issue a written ruling on the motion that shall contain a statement of reasons for the ruling sufficiently specific to permit appellate review. The order may also specify any conditions or limitations on the movant's right of access that the court determines to be warranted under the facts and applicable law.

(d) A party seeking to seal a document or testimony to be used in a court proceeding may submit the document or testimony to the court to be reviewed in camera. This subsection also applies to (i) any document or testimony that is the subject of a motion made under this section and that is submitted for review for the purposes of the court's consideration of the motion to seal, and (ii) to any document or testimony that is the subject of a motion made under this section and that was submitted under seal or offered in closed session prior to the filing of a motion under this section. Submission of the document or proffer of testimony to the court pursuant to this section shall not in itself result in the document or testimony thereby becoming a judicial record subject to constitutional, common law, or statutory rights of access unless the document or testimony is thereafter introduced into evidence after a motion to seal or to restrict access is denied.

(e) A ruling on a motion made pursuant to this section may be the subject of an immediate interlocutory appeal by the movant or any party to the proceeding. Notice of appeal must be given in writing, filed with the court, and served on all parties no later than 10 days after entry of the court's ruling. If notice of appeal is timely given and given before further proceedings are held in the court that might be affected by appellate review of the matter, the court, on its own motion or on the motion of the movant or any party, shall consider whether to stay any proceedings that could be affected by appellate review of the court's ruling on the motion. If notice of appeal is timely given but is given only after further proceedings in the trial court that could be affected by appellate review of the ruling on a motion made pursuant to this section, or if a request for stay of proceedings is made and is denied, then the sole relief that shall be available on any appeal in the event the appellate court determines that the ruling of the trial court was erroneous shall be reversal of the trial court's ruling on the motion and remand for rehearing or retrial. On appeal the court may determine that a ruling of the trial court sealing a document or restricting access to proceedings or refusing to unseal documents or open proceedings was erroneously entered, but it may not retroactively order the unsealing of documents or the opening of testimony that was sealed or closed by the trial court's order.

(f) This section is intended to establish a civil procedure for hearing and determining claims of access to documents and to testimony in civil judicial proceedings and shall not be deemed or construed to limit, expand, change, or otherwise preempt any provisions of substantive law that define or declare the rights and restrictions with respect to claims of access. Without in any way limiting the generality of the foregoing provision, this section shall not apply to juvenile proceedings or court records of juvenile proceedings conducted pursuant to Chapters 7A, 7B, 90, or any other Chapter of the General Statutes dealing with juvenile proceedings.

(g) Nothing in this section diminishes the rights of a movant or any party to seek appropriate relief at any time from the Supreme Court or Court of Appeals through the use of the prerogative writs of mandamus or supersedeas. (2001-516, s. 1.)

§ 1-72.2. Standing of legislative officers.

(a) It is the public policy of the State of North Carolina that in any action in any North Carolina State court in which the validity or constitutionality of an act of the General Assembly or a provision of the North Carolina Constitution is challenged, the General Assembly, jointly through the Speaker of the House of Representatives and the President Pro Tempore of the Senate, constitutes the legislative branch of the State of North Carolina and the Governor constitutes the executive branch of the State of North Carolina, and when the State of North Carolina is named as a defendant in such cases, both the General Assembly and the Governor constitute the State of North Carolina. It is the public policy of the State of North Carolina that in any action in any federal court in which the validity or constitutionality of an act of the General Assembly or a provision of the North Carolina Constitution is challenged, the General Assembly, jointly through the Speaker of the House of Representatives and the President Pro Tempore of the Senate, constitutes the legislative branch of the State of North Carolina; the Governor constitutes the executive branch of the State of North Carolina; that, when the State of North Carolina is named as a defendant in such cases, both the General Assembly and the Governor constitute the State of North Carolina; and that a federal court presiding over any such action where the State of North Carolina is a named party is requested to allow both the legislative branch and the executive branch of the State of North Carolina to participate in any such action as a party.

(b) The Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State, by and through counsel of their choice, including private counsel, shall jointly have standing to intervene on behalf of the General Assembly as a party in any judicial proceeding challenging a North Carolina statute or provision of the North Carolina Constitution. Intervention pursuant to this section shall be effected upon the filing of a notice of intervention of right in the trial or appellate court in which the matter is pending regardless of the stage of the proceeding. Notwithstanding any other provision of law to the contrary, the participation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate in any action, State or federal, as a party or otherwise, shall not constitute a waiver of legislative immunity or legislative privilege of any individual legislator or legislative officer or staff of the General Assembly. (2013-393, s. 3; 2014-115, s. 18; 2017-57, s. 6.7(i).)

§ 1-72.3. State a party to certain actions.

The State shall be a party whenever the validity or constitutionality of a local act of the General Assembly is the subject of an action in any court and, except as provided in G.S. 147-17, shall be represented by the Attorney General. This section shall not affect any authority under G.S. 1-72.2 or G.S. 120-32.6. (2016-109, s. 2(a).)

§§ 1-73 through 1-75. Repealed by Session Laws 1967, c. 954, s. 4.

SUBCHAPTER IIIA. JURISDICTION.

Article 6A.

Jurisdiction.

§ 1-75.1. Legislative intent.

This Article shall be liberally construed to the end that actions be speedily and finally determined on their merits. The rule that statutes in derogation of the common law must be strictly construed does not apply to this Article. (1967, c. 954, s. 2.)

§ 1-75.2. Definitions.

In this Article the following words have the designated meanings:

(1) "Person" means any natural person, partnership, corporation, body politic, and any unincorporated association, organization, or society which may sue or be sued under a common name.

(2) "Plaintiff" means the person named as plaintiff in a civil action, and where in this Article acts of the plaintiff are referred to, the reference includes the acts of his agent within the scope of the agent's authority.

(3) "Defendant" means the person named as defendant in a civil action, and where in this Article acts of the defendant are referred to, the reference includes any person's acts for which the defendant is legally responsible. In determining for jurisdictional purposes the defendant's legal responsibility for the acts of another, the substantive liability of the defendant to the plaintiff is irrelevant.

(4) Where jurisdiction of the person is drawn into question in respect to any claim asserted under Rule 14 of the Rules of Civil Procedure, the terms "Plaintiff" and "Defendant" as above defined shall include a third-party plaintiff and a third-party defendant respectively.

(5) "Solicitation" means a request or appeal of any kind, direct or indirect, by oral, written, visual, electronic, or other communication, whether or not the communication originates from outside the State. (1967, c. 954, s. 2; 1993, c. 338.)

§ 1-75.3. Jurisdictional requirements for judgments against persons, status and things.

(a) Jurisdiction of Subject Matter Not Affected by This Article. – Nothing in this Article shall be construed to confer, enlarge or diminish the subject matter jurisdiction of any court.

(b) Personal Jurisdiction. – A court of this State having jurisdiction of the subject matter may render a judgment against a party personally only if there exists one or more of the jurisdictional grounds set forth in G.S. 1-75.4 or G.S. 1-75.7 and in addition either:

(1) Personal service or substituted personal service of summons, or service of publication of a notice of service of process is made upon the defendant pursuant to Rule 4(j) or Rule 4(j1) of the Rules of Civil Procedure; or

(2) Service of a summons is dispensed with under the conditions in G.S. 1-75.7.

(c) Jurisdiction in Rem or Quasi in Rem. – A court of this State having jurisdiction of the subject matter may render a judgment in rem or quasi in rem upon a status or upon a property or other things pursuant to G.S. 1-75.8 and the judgment in such action may affect the interests in the

status, property or thing of all persons served pursuant to Rule 4(k) of the Rules of Civil Procedure. (1967, c. 954, s. 2; 1983, c. 231.)

§ 1-75.4. Personal jurisdiction, grounds for generally.

A court of this State having jurisdiction of the subject matter has jurisdiction over a person served in an action pursuant to Rule 4(j), Rule 4(j1), or Rule 4(j3) of the Rules of Civil Procedure under any of the following circumstances:

(1) Local Presence or Status. – In any action, whether the claim arises within or without this State, in which a claim is asserted against a party who when service of process is made upon such party:
   a. Is a natural person present within this State; or
   b. Is a natural person domiciled within this State; or
   c. Is a domestic corporation; or
   d. Is engaged in substantial activity within this State, whether such activity is wholly interstate, intrastate, or otherwise.

(2) Special Jurisdiction Statutes. – In any action which may be brought under statutes of this State that specifically confer grounds for personal jurisdiction.

(3) Local Act or Omission. – In any action claiming injury to person or property or for wrongful death within or without this State arising out of an act or omission within this State by the defendant.

(4) Local Injury; Foreign Act. – In any action for wrongful death occurring within this State or in any action claiming injury to person or property within this State arising out of an act or omission outside this State by the defendant, provided in addition that at or about the time of the injury either:
   a. Solicitation or services activities were carried on within this State by or on behalf of the defendant;
   b. Products, materials or thing processed, serviced or manufactured by the defendant were used or consumed, within this State in the ordinary course of trade; or
   c. Unsolicited bulk commercial electronic mail was sent into or within this State by the defendant using a computer, computer network, or the computer services of an electronic mail service provider in contravention of the authority granted by or in violation of the policies set by the electronic mail service provider. Transmission of commercial electronic mail from an organization to its members shall not be deemed to be unsolicited bulk commercial electronic mail.

(5) Local Services, Goods or Contracts. – In any action which:
   a. Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to perform services within this State or to pay for services to be performed in this State by the plaintiff; or
   b. Arises out of services actually performed for the plaintiff by the defendant within this State, or services actually performed for the defendant by the plaintiff within this State if such performance within this State was authorized or ratified by the defendant; or

c. Arises out of a promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to deliver or receive within this State, or to ship from this State goods, documents of title, or other things of value; or

d. Relates to goods, documents of title, or other things of value shipped from this State by the plaintiff to the defendant on his order or direction; or

e. Relates to goods, documents of title, or other things of value actually received by the plaintiff in this State from the defendant through a carrier without regard to where delivery to the carrier occurred.

(6) Local Property. – In any action which arises out of:

a. A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this State; or

b. A claim to recover for any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this State either at the time of the first use, ownership, control or possession or at the time the action is commenced; or

c. A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this State at the time the defendant acquired possession or control over it; or

d. A claim related to a loan made in this State or deemed to have been made in this State under G.S. 24-2.1, regardless of the situs of the lender, assignee, or other holder of the loan note and regardless of whether the loan payment or fee is received through a loan servicer, provided that: (i) the loan was made to a borrower who is a resident of this State, (ii) the loan is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust on real property situated in this State upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families.

(7) Deficiency Judgment on Local Foreclosure or Resale. – In any action to recover a deficiency judgment upon an obligation secured by a mortgage, deed of trust, conditional sale, or other security instrument executed by the defendant or his predecessor to whose obligation the defendant has succeeded and the deficiency is claimed either:

a. In an action in this State to foreclose such security instrument upon real property, tangible personal property, or an intangible represented by an indispensable instrument, situated in this State; or

b. Following sale of real or tangible personal property or an intangible represented by an indispensable instrument in this State under a power of sale contained in any security instrument.

(8) Director or Officer of a Domestic Corporation. – In any action against a defendant who is or was an officer or director of a domestic corporation where

the action arises out of the defendant's conduct as such officer or director or out of the activities of such corporation while the defendant held office as a director or officer.

(9) Taxes or Assessments. – In any action for the collection of taxes or assessments levied, assessed or otherwise imposed by a taxing authority of this State after the date of ratification of this act.

(10) Insurance or Insurers. – In any action which arises out of a contract of insurance as defined in G.S. 58-1-10 made anywhere between the plaintiff or some third party and the defendant and in addition either:

a. The plaintiff was a resident of this State when the event occurred out of which the claim arose; or

b. The event out of which the claim arose occurred within this State, regardless of where the plaintiff resided.

(11) Personal Representative. – In any action against a personal representative to enforce a claim against the deceased person represented, whether or not the action was commenced during the lifetime of the deceased, where one or more of the grounds stated in subdivisions (2) to (10) of this section would have furnished a basis for jurisdiction over the deceased had he been living.

(12) Marital Relationship. – In any action under Chapter 50 that arises out of the marital relationship within this State, notwithstanding subsequent departure from the State, if the other party to the marital relationship continues to reside in this State. (1967, c. 954, ss. 2, 10; 1969, c. 803; 1981, c. 815, s. 4; 1983, c. 231; 1995, c. 389, s. 1; 1999-212, s. 1; 2007-351, s. 2; 2008-187, s. 1.)

§ 1-75.5. Joinder of causes in the same action.

In any action brought in reliance upon jurisdictional grounds stated in subdivisions (2) to (10) of G.S. 1-75.4 there cannot be joined in the same action any other claim or cause against the defendant unless grounds exist under G.S. 1-75.4 for personal jurisdiction over the defendant as to the claim or cause to be joined. (1967, c. 954, s. 2.)

§ 1-75.6. Personal jurisdiction – Manner of exercising by service of process.

A court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4 may exercise personal jurisdiction over a defendant by service of process in accordance with the provisions of Rule 4(j) or Rule 4(j1) of the Rules of Civil Procedure. (1967, c. 954, s. 2; 1983, c. 231.)

§ 1-75.7. Personal jurisdiction – Grounds for without service of summons.

A court of this State having jurisdiction of the subject matter may, without serving a summons upon him, exercise jurisdiction in an action over a person:

(1) Who makes a general appearance in an action; provided, that obtaining an extension of time within which to answer or otherwise plead shall not be considered a general appearance; or

(2) With respect to any counterclaim asserted against that person in an action which he has commenced in the State. (1967, c. 954, s. 2; 1975, c. 76, s. 1.)

§ 1-75.8. Jurisdiction in rem or quasi in rem – Grounds for generally.

A court of this State having jurisdiction of the subject matter may exercise jurisdiction in rem or quasi in rem on the grounds stated in this section. A judgment in rem or quasi in rem may affect the interests of a defendant in a status, property or thing acted upon only if process has been served upon the defendant pursuant to Rule 4(k) of the Rules of Civil Procedure. Jurisdiction in rem or quasi in rem may be invoked in any of the following cases:

(1) When the subject of the action is real or personal property in this State and the defendant has or claims any lien or interest therein, or the relief demanded consists wholly or partially in excluding the defendant from any interest or lien therein. This subdivision shall apply whether any such defendant is known or unknown.

(2) When the action is to foreclose, redeem from or satisfy a deed of trust, mortgage, claim or lien upon real or personal property in this State.

(3) When the action is for a divorce or for annulment of marriage of a resident of this State.

(4) When the defendant has property within this State which has been attached or has a debtor within the State who has been garnished. Jurisdiction under this subdivision may be independent of or supplementary to jurisdiction acquired under subdivisions (1), (2) and (3) of this section.

(5) In any other action in which in rem or quasi in rem jurisdiction may be constitutionally exercised. (1967, c. 954, s. 2.)

§ 1-75.9. Jurisdiction in rem or quasi in rem – Manner of exercising.

A court of this State exercising jurisdiction in rem or quasi in rem pursuant to G.S. 1-75.8 may affect the interests of a defendant in such an action only if process has been served upon the defendant in accordance with the provisions of Rule 4(k) of the Rules of Civil Procedure, but nothing herein shall prevent the court from making interlocutory orders for the protection of the res while the action is pending. (1967, c. 954, s. 2.)

§ 1-75.10. Proof of service of summons, defendant appearing in action.

(a) Where the defendant appears in the action and challenges the service of the summons upon him, proof of the service of process shall be as follows:

(1) Personal Service or Substituted Personal Service. –

a. If served by the sheriff of the county or the lawful process officer in this State where the defendant was found, by the officer's certificate thereof, showing place, time and manner of service; or

b. If served by any other person, his affidavit thereof, showing place, time and manner of service; his qualifications to make service under Rule 4(a) or Rule 4(j3) of the Rules of Civil Procedure; that he knew the person served to be the party mentioned in the summons and delivered to and left with him a copy; and if the defendant was not personally served, he shall state in such affidavit when, where and with whom such copy was left. If such service is made outside this State, the proof thereof may in the alternative be made in accordance with the law of the place where such service is made.

(2) Service of Publication. – In the case of publication, by the affidavit of the publisher or printer, or his foreman or principal clerk, showing the same and

specifying the date of the first and last publication, and an affidavit of mailing of a copy of the complaint or notice, as the case may require, made by the person who mailed the same.

(3) Written Admission of Defendant. – The written admission of the defendant, whose signature or the subscription of whose name to such admission shall be presumptive evidence of genuineness.

(4) Service by Registered or Certified Mail. – In the case of service by registered or certified mail, by affidavit of the serving party averring:
   a. That a copy of the summons and complaint was deposited in the post office for mailing by registered or certified mail, return receipt requested;
   b. That it was in fact received as evidenced by the attached registry receipt or other evidence satisfactory to the court of delivery to the addressee; and
   c. That the genuine receipt or other evidence of delivery is attached.

(5) Service by Designated Delivery Service. – In the case of service by designated delivery service, by affidavit of the serving party averring all of the following:
   a. That a copy of the summons and complaint was deposited with a designated delivery service as authorized under G.S. 1A-1, Rule 4, delivery receipt requested.
   b. That it was in fact received as evidenced by the attached delivery receipt or other evidence satisfactory to the court of delivery to the addressee.
   c. That the delivery receipt or other evidence of delivery is attached.

(6) Service by Signature Confirmation. – In the case of service by signature confirmation as provided by the United States Postal Service, by affidavit of the serving party averring all of the following:
   a. That a copy of the summons and complaint was deposited in the post office for mailing by signature confirmation.
   b. That it was in fact received as evidenced by the attached proof of delivery obtained from the United States Postal Service, or other evidence satisfactory to the court of delivery to the addressee.
   c. That the copy of the signature confirmation or other evidence of delivery is attached.

(b) As used in subdivision (5) of subsection (a) of this section, "delivery receipt" includes a facsimile receipt and a printout of an electronic receipt. (1967, c. 954, s. 2; 1969, c. 895, s. 14; 1973, c. 643; 1979, c. 525, s. 2; 1981, c. 540, ss. 9, 10; 2001-379, s. 2.3; 2005-221, s. 3; 2008-36, s. 4.)

§ 1-75.11. Judgment against nonappearing defendant, proof of jurisdiction.

Where a defendant fails to appear in the action within apt time the court shall, before entering a judgment against such defendant, require proof of service of the summons in the manner required by G.S. 1-75.10 and, in addition, shall require further proof as follows:

(1) Where Personal Jurisdiction Is Claimed Over the Defendant. – Where a personal claim is made against the defendant, the court shall require proof by affidavit or other evidence, to be made and filed, of the existence of any fact not shown by verified complaint which is needed to establish grounds for personal

jurisdiction over the defendant. The court may require such additional proof as the interests of justice require.

(2) Where Jurisdiction Is in Rem or Quasi in Rem. – Where no personal claim is made against the defendant, the court shall require such proofs, by affidavit or otherwise, as are necessary to show that the court's jurisdiction has been invoked over the status, property or thing which is the subject of the action. The court may require such additional proof as the interests of justice require. (1967, c. 954, s. 2.)

§ 1-75.12. Stay of proceeding to permit trial in a foreign jurisdiction or filing of a bankruptcy trust claim.

(a) When Stay May be Granted. – If, in any action pending in any court of this State, the judge shall find that it would work substantial injustice for the action to be tried in a court of this State, the judge on motion of any party may enter an order to stay further proceedings in the action in this State. A moving party under this subsection must stipulate his consent to suit in another jurisdiction found by the judge to provide a convenient, reasonable and fair place of trial.

(a1) [Bankruptcy Trust Claims.] – In any civil action asserting personal injury claiming disease based upon exposure to asbestos, if a defendant has a reasonable belief that the plaintiff can file additional bankruptcy trust claims, the court on motion of the defendant may enter an order to stay the civil action until the plaintiff files the bankruptcy trust claim.

(b) Subsequent Modification of Order to Stay Proceedings. – In a proceeding in which a stay has been ordered under this section, jurisdiction of the court continues for a period of five years from the entry of the last order affecting the stay; and the court may, on motion and notice to the parties, modify the stay order and take such action as the interests of justice require. When jurisdiction of the court terminates by reason of the lapse of five years following the entry of the last order affecting the stay, the clerk shall without notice enter an order dismissing the action.

(c) Review of Rulings on Motion. – Whenever a motion for a stay made pursuant to subsection (a) above is granted, any nonmoving party shall have the right of immediate appeal. Whenever such a motion is denied, the movant may seek review by means of a writ of certiorari and failure to do so shall constitute a waiver of any error the judge may have committed in denying the motion. (1967, c. 954, s. 2; 2018-4, s. 3.)

SUBCHAPTER IV. VENUE.

Article 7.

Venue.

§ 1-76. Where subject of action situated.

Actions for the following causes must be tried in the county in which the subject of the action, or some part thereof, is situated, subject to the power of the court to change the place of trial in the cases provided by law:

(1) Recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest, and for injuries to real property.

(2) Partition of real property.

(3) Foreclosure of a mortgage of real property.

(4) Recovery of personal property when the recovery of the property itself is the sole or primary relief demanded. (C.C.P., s. 66; Code, s. 190; 1889, c. 219; Rev., s. 419; C.S., s. 463; 1951, c. 837, s. 4.)

§ 1-76.1. Where deficiency debtor resides or where loan was negotiated.

Subject to the power of the court to change the place of trial as provided by law, actions to recover a deficiency, which remains owing on a debt after secured personal property has been sold to partially satisfy the debt, must be brought in the county in which the debtor or debtor's agent resides or in the county where the loan was negotiated. (1977, c. 383, s. 1.)

§ 1-77. Where cause of action arose.

Actions for the following causes must be tried in the county where the cause, or some part thereof, arose, subject to the power of the court to change the place of trial, in the cases provided by law:

(1) Recovery of a penalty or forfeiture, imposed by statute; except that, when it is imposed for an offense committed on a sound, bay, river, or other body of water, situated in two or more counties, the action may be brought in any county bordering on such body of water, and opposite to the place where the offense was committed.

(2) Against a public officer or person especially appointed to execute his duties, for an act done by him by virtue of his office; or against a person who by his command or in his aid does anything touching the duties of such officer. (C.C.P., s. 67; Code, s. 191; Rev., s. 420; C.S., s. 464.)

§ 1-78. Official bonds, executors and administrators.

All actions against executors and administrators in their official capacity, except where otherwise provided by statute, and all actions upon official bonds must be instituted in the county where the bonds were given, if the principal or any surety on the bond is in the county; if not, then in the plaintiff's county. (1868-9, c. 258; Code, s. 193; Rev., s. 421; C.S., s. 465.)

§ 1-79. Domestic corporations, limited partnerships, limited liability companies, and registered limited liability partnerships.

(a) For the purpose of suing and being sued the residence of a domestic corporation, limited partnership, limited liability company, or registered limited liability partnership is as follows:

(1) Where the registered or principal office of the corporation, limited partnership, limited liability company, or registered limited liability partnership is located, or

(2) Where the corporation, limited partnership, limited liability company, or registered limited liability partnership maintains a place of business, or

(3) If no registered or principal office is in existence, and no place of business is currently maintained or can reasonably be found, the term "residence" shall include any place where the corporation, limited partnership, limited liability company, or registered limited liability partnership is regularly engaged in carrying on business.

(b) For purposes of this section, the term "domestic" when applied to an entity means:

(1) An entity formed under the laws of this State, or
(2) An entity that (i) is formed under the laws of any jurisdiction other than this State, and (ii) maintains a registered office in this State pursuant to a certificate of authority from the Secretary of State. (1903, c. 806; Rev., s. 422; C.S., s. 466; 1951, c. 837, s. 5; 1957, c. 492; 1973, c. 885; 1975, c. 111; 1999-362, s. 1.)

§ 1-80. Foreign corporations.

An action against a corporation created by or under the law of any other state or government may be brought in the appropriate trial court division of any county in which the cause of action arose, or in which the corporation usually did business, or has property, or in which the plaintiffs, or either of them, reside, in the following cases:

(1) By a resident of this State, for any cause of action.
(2) By a nonresident of this State in any county where he or they are regularly engaged in carrying on business.
(3) By a plaintiff, not a resident of this State, when the cause of action arose or the subject of the action is situated in this State. (C.C.P., s. 361; 1876-7, c. 170; Code, s. 194; Rev., s. 423; 1907, c. 460; C.S., s. 467; 1971, c. 268, s. 1.)

§ 1-81. Actions against railroads.

In all actions against railroads the action must be tried either in the county where the cause of action arose or where the plaintiff resided at that time or in some county adjoining that in which the cause of action arose, subject to the power of the court to change the place of trial as provided by statute. (Rev., s. 424; C.S., s. 468.)

§ 1-81.1. Venue in apportionment or redistricting cases; certain injunctive relief actions.

(a) Venue lies exclusively with the Wake County Superior Court in any action concerning any act of the General Assembly apportioning or redistricting State legislative or congressional districts.

(a1) Venue lies exclusively with the Wake County Superior Court with regard to any claim seeking an order or judgment of a court, either final or interlocutory, to restrain the enforcement, operation, or execution of an act of the General Assembly, in whole or in part, based upon an allegation that the act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law. Pursuant to G.S. 1-267.1(a1) and G.S. 1-1A, Rule 42(b)(4), claims described in this subsection that are filed or raised in courts other than Wake County Superior Court or that are filed in Wake County Superior Court shall be transferred to a three-judge panel of the Wake County Superior Court if, after all other questions of law in the action have been resolved, a determination as to the facial validity of an act of the General Assembly must be made in order to completely resolve any issues in the case.

(b) Any action brought concerning an act of the General Assembly apportioning or redistricting the State legislative or congressional districts shall be filed in the Superior Court of Wake County. (2003-434, 1st Ex. Sess., s. 11(a); 2014-100, s. 18B.16(b).)

§ 1-81.2. (Effective once contingency met – see note) Venue in complex business cases.

(a) To facilitate the effective administration in the State's statewide electronic filing system of mandatory complex business cases and those cases assigned to a business court judge, and subject to subsection (e) of this section, venue shall lie exclusively in Wake County in any action

designated by the Chief Justice of the Supreme Court of North Carolina as a mandatory complex business case pursuant to G.S. 7A-45.4 or otherwise assigned to a business court judge by the Chief Justice pursuant to the General Rules of Practice for the Superior and District Courts.

(b) When a Notice of Designation filed pursuant to G.S. 7A-45.4(c) is filed contemporaneously with the initiation of an action, the action shall be brought in Wake County. If the Chief Justice or the Chief Business Court Judge enters an order declining to designate an action filed pursuant to this subsection as a mandatory complex business case, that order shall direct the clerk of superior court to transfer the action to the county of origin identified in the Notice of Designation.

(c) When a Notice of Designation filed pursuant to G.S. 7A-45.4(c) is filed in an action instituted outside of Wake County, the clerk of superior court in the county of origin shall transfer the action to Wake County after the issuance of summons in accordance with G.S. 1A-1, Rule 4. If the Chief Justice or the Chief Business Court Judge subsequently enters an order declining to designate an action filed pursuant to this subsection as a mandatory complex business case or declines to otherwise assign the matter to a business court judge pursuant to the General Rules of Practice for the Superior and District Courts, the order shall direct the clerk of superior court to transfer the action to the county of origin identified in the Notice of Designation.

(d) No later than five days after an action is transferred to or from Wake County pursuant to subsection (b) or (c) of this section, the Wake County Clerk of Superior Court shall serve the party that filed the Notice of Designation with a notice of transfer. The notice shall be on a form promulgated by the Administrative Office of the Courts. No later than five days after being served with the notice of transfer, the party that filed the Notice of Designation shall serve a copy of the notice of transfer on all parties in the action not served by the Wake County Clerk of Superior Court.

(e) Notwithstanding the provisions of this Article or any other General Statute concerning venue, trials in mandatory complex business cases and cases assigned to a business court judge pursuant to the General Rules of Practice for Superior and District Courts shall be held in the county of origin identified in the Notice of Designation. The presiding business court judge may conduct trials outside the county of origin in any superior court or business court facility with the consent of the parties, or upon the motion of a party or the judge and an order finding that the convenience of witnesses and the ends of justice would be promoted by the change. The presiding business court judge may conduct trials remotely pursuant to G.S. 7A-49.6. The presiding business court judge may conduct pretrial proceedings outside the county of origin in any superior court or business court facility, or remotely pursuant to G.S. 7A-49.6, in the judge's discretion. (2024-33, s. 3(a).)

§ 1-82. Venue in all other cases.

In all other cases the action must be tried in the county in which the plaintiffs or the defendants, or any of them, reside at its commencement, or if none of the defendants reside in the State, then in the county in which the plaintiffs, or any of them, reside; and if none of the parties reside in the State, then the action may be tried in any county which the plaintiff designates in the plaintiff's summons and complaint, subject to the power of the court to change the place of trial, in the cases provided by statute; provided that any person who has resided on or been stationed in a United States Army, Navy, Marine Corps, Coast Guard, or Air Force installation or reservation within this State for a period of one (1) year or more next preceding the institution of an action shall be deemed a resident of the county within which such installation or reservation, or part thereof, is situated and

of any county adjacent to such county where such person stationed at such installation or reservation lives in such adjacent county, for the purposes of this section. The term person shall include military personnel and the spouses and dependents of such personnel. (C.C.P., s. 68; 1868-9, cc. 59, 277; Code, s. 192; 1905, c. 367; Rev., s. 424; C.S., s. 469; 1957, c. 1082; 2011-183, s. 1.)

§ 1-83. Change of venue.

If the county designated for that purpose in the summons and complaint is not the proper one, the action may, however, be tried therein, unless the defendant, before the time of answering expires, demands in writing that the trial be conducted in the proper county, and the place of trial is thereupon changed by consent of parties, or by order of the court.

The court may change the place of trial in the following cases:

(1) When the county designated for that purpose is not the proper one.

(2) When the convenience of witnesses and the ends of justice would be promoted by the change.

(3) When the judge has, at any time, been interested as party or counsel.

(4) When motion is made by the plaintiff and the action is for divorce and the defendant has not been personally served with summons. (R.C., c. 31, ss. 115, 118; C.C.P., s. 69; 1870-1, c. 20; Code, s. 195; Rev., s. 425; C.S., s. 470; 1945, c. 141.)

§ 1-84. Removal for fair trial.

In all civil actions in the superior and district courts, when it is suggested on oath or affirmation on behalf of the plaintiff or defendant, that there are probable grounds to believe that a fair and impartial trial cannot be obtained in the county in which the action is pending, the judge may order a copy of the record of the action removed for trial to any adjacent county, if he is of the opinion that a fair trial cannot be had in said county, after hearing all the testimony offered on either side by oral evidence or affidavits. (1806, c. 693, s. 12, P.R.; 1879, s. 45; Code, s. 196; 1899, cc. 104, 508; Rev., s. 426; 1917, c. 44; C.S., s. 471; 1957, c. 601; 1969, c. 44, s. 1; 1971, c. 268, s. 2; 1977, c. 12.)

§ 1-85. Affidavits on hearing for removal; when removal ordered.

No action, civil or criminal, shall be removed, unless the affidavit sets forth particularly and in detail the ground of the application. It is competent for the other side to controvert the allegations of fact in the application, and to offer counter affidavits to that end. The judge shall order the removal of the action, if he is satisfied after thorough examination of the evidence as aforesaid that the ends of justice demand it. (1879, c. 45; Code, s. 197; 1899, c. 104, s. 2; Rev., s. 427; C.S., s. 472.)

§ 1-86. Repealed by Session Laws 1967, c. 218, s. 4.

§ 1-87. Transcript of removal; subsequent proceedings; depositions.

(a) When a cause is directed to be removed, the clerk shall transmit to the court to which it is removed a transcript of the record of the case, with the prosecution bond, bail bond, and the depositions, and all other written evidences filed therein; and all other proceedings shall be had in the county to which the place of trial is changed, unless otherwise provided by the consent of the parties in writing duly filed, or by order of court.

(b) After a cause has been directed to be removed, and prior to the time that the transcript is deposited with the court to which the cause is removed, depositions may be taken in the cause, and subpoenas for the attendance of witnesses and commissions to take depositions may issue from either of the said courts, under the same rules as if the cause had been originally commenced in the court from which the subpoenas or commissions issued. (1806, c. 694, s. 12, P.R.; 1810, c. 787, P.R.; R.C., c. 31, s. 118; C.C.P., s. 69; Code, ss. 195, 198; Rev., s. 428; C.S., c. 474; 1967, c. 954, s. 3.)

§ 1-87.1. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-87.2: Reserved for future codification purposes.

§ 1-87.3: Reserved for future codification purposes.

§ 1-87.4: Reserved for future codification purposes.

§ 1-87.5: Reserved for future codification purposes.

§ 1-87.6: Reserved for future codification purposes.

§ 1-87.7: Reserved for future codification purposes.

§ 1-87.8: Reserved for future codification purposes.

§ 1-87.9: Reserved for future codification purposes.

§ 1-87.10: Reserved for future codification purposes.

§ 1-87.11: Reserved for future codification purposes.

Article 7A.

Application of Foreign Law.

§ 1-87.12. Definitions.

The following definitions apply in this Article:

(1) Foreign law. – A law, rule, resolution, legal code, legal system, or any component of a legal system established and used or applied in a foreign venue or forum.

(2) Foreign venue or forum. – A venue or forum operating under the authority of a government other than any of the following:

a. The United States.

b. A state, district, commonwealth, territory, or insular possession of the United States.

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the Full Faith and Credit Clause of the United States Constitution.

(3) Fundamental constitutional right. – A fundamental right of a natural person guaranteed by the United States Constitution or the North Carolina Constitution. (2013-416, s. 1.)

§ 1-87.13. Public policy.

In recognition that the United States Constitution and the Constitution of North Carolina constitute the supreme law of this State, the General Assembly hereby declares it to be the public policy of this State to protect its citizens from the application of foreign law that would result in the violation of a fundamental constitutional right of a natural person. The public policies expressed in this section shall apply only to actual or foreseeable violations of a fundamental constitutional right resulting from the application of the foreign law. (2013-416, s. 1.)

§ 1-87.14. Nonapplication of foreign law that would violate fundamental constitutional rights.

A court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law shall not apply a foreign law in any legal proceeding involving, or recognize a foreign judgment involving, a claim for absolute divorce, divorce from bed and board, child custody, child support, alimony, or equitable distribution if doing so would violate a fundamental constitutional right of one or more natural persons who are parties to the proceeding. (2013-416, s. 1.)

§ 1-87.15. Interpretation of contracts providing for choice of foreign law.

(a) In the interpretation or enforcement by a court, administrative agency, arbitrator, mediator, or other entity or person acting under the authority of State law of any contract or other agreement that provides for the choice of a foreign law to govern its interpretation or the resolution of any claim or dispute, the court or administrative agency shall preserve the fundamental constitutional rights of natural persons who are parties to the contract or other agreement.

(b) If enforcement of any provision in a contract or other agreement for the choice of foreign law would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, the agreement or contract shall be modified or amended to the extent necessary to preserve the fundamental constitutional rights of the natural persons. (2013-416, s. 1.)

§ 1-87.16. Interpretation of contracts providing for choice of foreign venue or forum.

If the enforcement of any provision in a contract or other agreement providing for a choice of a foreign venue or forum would result in a violation of a fundamental constitutional right of one or more of the natural persons who are parties to the contract or other agreement, that provision shall be modified or amended to the extent necessary to preserve the fundamental constitutional rights of the natural persons. (2013-416, s. 1.)

§ 1-87.17. Motions to transfer proceedings to a foreign venue or forum.

If a natural person subject to personal jurisdiction in this State seeks to maintain a litigation proceeding, arbitration proceeding, or other similarly binding proceeding in this State, and if a court of this State finds that granting a motion by another party to the proceeding to transfer the proceeding to a foreign venue or forum would likely lead to the violation of a fundamental

constitutional right of the natural person who is the nonmovant in the foreign forum with respect to the matter in dispute, the motion shall be denied. (2013-416, s. 1.)

§ 1-87.18. Contracts not capable of modification to preserve fundamental constitutional rights void.

Any provision in a contract or other agreement incapable of being modified or amended pursuant to this Article in order to preserve the fundamental constitutional rights of the natural persons who are parties to the contract or agreement shall be null and void. (2013-416, s. 1.)

§ 1-87.19. Strict construction of waivers of constitutional rights.

Nothing in this Article shall be interpreted to limit the right of natural persons voluntarily to restrict or limit their own constitutional rights by contract or specific waiver consistent with constitutional principles; however, any ambiguity in the language of any such contract or other waiver shall be strictly construed in favor of preserving the constitutional rights of natural persons in this State. (2013-416, s. 1.)

§ 1-87.20. Application.

The provisions in this act shall apply only to proceedings or matters under Chapter 50 and Chapter 50A of the General Statutes. (2013-416, s. 1.)

SUBCHAPTER V. COMMENCEMENT OF ACTIONS.

Article 8.

Summons.

§§ 1-88 through 1-91. Repealed by Session Laws 1967, c. 954, s. 4.

§§ 1-92 through 1-93. Repealed by Session Laws 1971, c. 268, s. 34.

§§ 1-94 through 1-98. Repealed by Session Laws 1967, c. 954, s. 4.

§§ 1-98.1 through 1-98.4. Repealed by Session Laws 1971, c. 1093, s. 19.

§ 1-99. Repealed by Session Laws 1967, c. 954, s. 4.

§§ 1-99.1 through 1-99.4. Repealed by Session Laws 1971, c. 1093, s. 19.

§§ 1-100 through 1-104. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-105. Service upon nonresident drivers of motor vehicles and upon the personal representatives of deceased nonresident drivers of motor vehicles.

(a) The acceptance by a nonresident of the rights and privileges conferred by the laws now or hereafter in force in this State permitting the operation of motor vehicles, as evidenced by the operation of a motor vehicle by the nonresident on the public highways of this State, or at any other place in this State, or the operation by the nonresident of a motor vehicle on the public highways of this State or at any other place in this State, other than as so permitted or regulated, shall be deemed equivalent to the appointment by the nonresident of the Commissioner of Motor Vehicles, or the Commissioner's successor in office, to be the nonresident's true and lawful attorney and the

attorney of the nonresident's executor or Administrator, upon whom may be served all summonses or other lawful process in any action or proceeding against the nonresident or the nonresident's executor or administrator, growing out of any accident or collision in which the nonresident may be involved by reason of the operation by the nonresident, for the nonresident, or under the nonresident's control or direction, express or implied, of a motor vehicle on the public highways of this State, or at any other place in this State, and said acceptance or operation shall be a signification of the nonresident's agreement that any such process against the nonresident or the nonresident's executor or administrator shall be of the same legal force and validity as if served on the nonresident personally, or on the nonresident's executor or administrator.

Service of such process shall be made in the following manner:

(1) By leaving a copy thereof, with a fee of twenty dollars ($20.00) in the hands of the Commissioner of Motor Vehicles, or in the Commissioner's office. Such service, upon compliance with the other provisions of this section, shall be sufficient service upon the said nonresident.

(2) Notice of such service of process and copy thereof must be forthwith sent by certified or registered mail by plaintiff or the Commissioner of Motor Vehicles to the defendant, and the entries on the defendant's return receipt shall be sufficient evidence of the date on which notice of service upon the Commissioner of Motor Vehicles and copy of process were delivered to the defendant, on which date service on said defendant shall be deemed completed. If the defendant refuses to accept the certified or registered letter, service on the defendant shall be deemed completed on the date of such refusal to accept as determined by notations by the postal authorities on the original envelope, and if such date cannot be so determined, then service shall be deemed completed on the date that the certified or registered letter is returned to the plaintiff or Commissioner of Motor Vehicles, as determined by postal marks on the original envelope. If the certified or registered letter is not delivered to the defendant because it is unclaimed, or because the defendant has removed himself or herself from the defendant's last known address and has left no forwarding address or is unknown at the defendant's last known address, service on the defendant shall be deemed completed on the date that the certified or registered letter is returned to the plaintiff or Commissioner of Motor Vehicles.

(3) The defendant's return receipt, or the original envelope bearing a notation by the postal authorities that receipt was refused, and an affidavit by the plaintiff that notice of mailing the registered letter and refusal to accept was forthwith sent to the defendant by ordinary mail, together with the plaintiff's affidavit of compliance with the provisions of this section, must be appended to the summons or other process and filed with said summons, complaint and other papers in the cause.

Provided, that where the nonresident motorist has died prior to the commencement of an action brought pursuant to this section, service of process shall be made on the executor or administrator of the nonresident motorist in the same manner and on the same notice as is provided in the case of a nonresident motorist.

The court in which the action is pending shall order such continuance as may be necessary to afford the defendant reasonable opportunity to defend the action.

(b) For service of process upon a defendant in a place not within the United States, the Commissioner of Motor Vehicles shall require a fee of one hundred dollars ($100.00) and delivery by private carrier with proof of actual delivery to the defendant is allowed for personal service. (1929, c. 75, s. 1; 1941, c. 36, s. 4; 1951, c. 646; 1953, c. 796; 1955, c. 1022; 1961, c. 1191; 1963, c. 491; 1967, c. 954, s. 4; 1971, c. 420, ss. 1, 2; 1975, c. 294; 1989, c. 645, s. 1; 2024-30, s. 10(a).)

§ 1-105.1. Service on residents who establish residence outside the State and on residents who depart from the State.

The provisions of G.S. 1-105 of this Chapter shall also apply to a resident of the State at the time of the accident or collision who establishes residence outside the State subsequent to the accident or collision and to a resident of the State at the time of the accident or collision who departs from the State subsequent to the accident or collision and remains absent therefrom for 60 days or more, continuously whether such absence is intended to be temporary or permanent. (1955, c. 232; 1967, c. 954, s. 4; 1971, c. 420, ss. 1, 2.)

§§ 1-106 through 1-107.3. Repealed by Session laws 1967, c. 954, s. 4.

§ 1-108. Defense after judgment set aside.

If a judgment is set aside pursuant to Rule 60(b) or (c) of the Rules of Civil Procedure and the judgment or any part thereof has been collected or otherwise enforced, such restitution may be compelled as the court directs. Title to property sold under such judgment to a purchaser in good faith is not thereby affected. No fiduciary officer or trustee who has made distribution of a fund under such judgment in good faith is personally liable if the judgment is changed by reason of such defense made after its rendition; nor in case the judgment was rendered for the partition of land, and any persons receiving any of the land in such partition sell it to a third person; the title of such third person is not affected if such defense is successful, but the redress of the person so defending after judgment shall be had by proper judgment against the parties to the original judgment and their heirs and personal representatives, and in no case affects persons who in good faith have dealt with such parties or their heirs or personal representatives on the basis of such judgment being permanent. (C.C.P., s. 85; Code, s. 220; Rev., s. 449; 1917, c. 68; C.S., s. 492; 1943, cc. 228, 543; 1947, c. 817, s. 2; 1949, c. 256; 1967, c. 954, s. 3.)

Article 9.

Prosecution Bonds.

§ 1-109. Bond required of plaintiff for costs.

At any time after the issuance of summons, the clerk or judge, upon motion of the defendant, may, upon a showing of good cause, require the plaintiff to do one of the following things and the failure to comply with such order within 30 days from the date thereof shall constitute grounds for dismissal of such civil action or special proceeding:

(1) Give an undertaking with sufficient surety in the sum of two hundred dollars, with the condition that it will be void if the plaintiff pays the defendant all costs which the latter recovers of him in the action.

(2) Deposit two hundred dollars ($200.00) with him as security to the defendant for these costs, in which event the clerk must give to the plaintiff and defendant all costs which the latter recovers of him in the action.

(3) File a copy of an order from a superior or district court judge or clerk of a superior court authorizing the plaintiff to sue as an indigent.

The requirements of this section shall not apply to the State of North Carolina or any of its agencies, commissions or institutions, or to counties, drainage districts, cities and towns; provided, further, that the State of North Carolina or any of its agencies, commissions or institutions, and counties, drainage districts, cities and towns may institute civil actions and special proceedings without being required to give a prosecution bond or make deposit in lieu of bond. (R.C., c. 31, s. 40; C.C.P., s. 71; Code, s. 209; Rev., s. 450; C.S., s. 493; 1935, c. 398; 1949, c. 53; 1955, c. 10, s. 1; 1957, c. 563; 1961, c. 989; 1971, c. 268, s. 3; 1993, c. 435, s. 4; 1999-106, s. 1.)

§ 1-110. Suit as an indigent; counsel; suits filed pro se by prison inmates.

(a) Subject to the provisions of subsection (b) of this section with respect to prison inmates, any superior or district court judge or clerk of the superior court may authorize a person to sue as an indigent in their respective courts when the person makes affidavit that he or she is unable to advance the required court costs. The clerk of superior court shall authorize a person to sue as an indigent if the person makes the required affidavit and meets one or more of the following criteria:

(1) Receives electronic food and nutrition benefits.
(2) Receives Work First Family Assistance.
(3) Receives Supplemental Security Income (SSI).
(4) Is represented by a legal services organization that has as its primary purpose the furnishing of legal services to indigent persons.
(5) Is represented by private counsel working on the behalf of or under the auspices of a legal services organization under subdivision (4) of this section.
(6) Repealed by Session Laws 2002-126, s. 29A.6(d), effective October 1, 2002.

A superior or district court judge or clerk of superior court may authorize a person who does not meet one or more of these criteria to sue as an indigent if the person is unable to advance the required court costs. The court to which the summons is returnable may dismiss the case and charge the court costs to the person suing as an indigent if the allegations contained in the affidavit are determined to be untrue or if the court is satisfied that the action is frivolous or malicious.

(b) Whenever a motion to proceed as an indigent is filed pro se by an inmate in the custody of the Division of Prisons of the Department of Adult Correction, the motion to proceed as an indigent and the proposed complaint shall be presented to any superior court judge of the judicial district. This judge shall determine whether the complaint is frivolous. In the discretion of the court, a frivolous case may be dismissed by order. The clerk of superior court shall serve a copy of the order of dismissal upon the prison inmate. If the judge determines that the inmate may proceed as an indigent, the clerk of superior court shall issue service of process nunc pro tunc to the date of filing upon the defendant. (C.C.P., s. 72; 1868-9, c. 96, s. 2; Code, ss. 210, 211; Rev., ss. 451, 452; C.S., s. 494; 1971, c. 268, s. 4; 1993, c. 435, s. 1; 1995, c. 102, s. 1; 1995 (Reg. Sess., 1996), c. 591, s. 4; 1997-443, s. 12.22; 2002-126, s. 29A.6(d); 2007-97, s. 1; 2011-145, s. 19.1(h); 2017-158, s. 19; 2017-186, s. 2(a); 2021-180, s. 19C.9(p).)

§ 1-111. Defendant's, for costs and damages in actions for land.

In all actions for the recovery or possession of real property, the defendant, before he is permitted to plead, must execute and file in the office of the clerk of the superior court of the county where the suit is pending an undertaking with sufficient surety, in an amount fixed by the court, not less than two hundred dollars ($200.00), to be void on condition that the defendant pays to the

plaintiff all costs and damages which the latter recovers in the action, including damages for the loss of rents and profits. (1869-70, c. 193; Code, s. 237; Rev., s. 453; C.S., s. 495.)

§ 1-112. Defense without bond.

(a) The undertaking prescribed in G.S. 1-111 is not necessary if an attorney practicing in the court where the action is pending certifies to the court in writing that he has examined the case of the defendant and is of the opinion that the plaintiff is not entitled to recover; and if the defendant also files an affidavit stating that he is unable to give and is not worth the amount of the undertaking in any property whatsoever.

(b) An undertaking shall not be required in any summary ejectment action brought pursuant to Articles 3 or 7 of Chapter 42 of the General Statutes. (1869-70, c. 193; Code, s. 237; Rev., s. 454; C.S., s. 496; 1997-473, s. 2.)

Article 10.

Joint and Several Debtors.

§ 1-113. Defendants jointly or severally liable.

Where the action is against two or more defendants, and the summons is served on one or more, but not on all of them, the plaintiff may proceed as follows:

(1) If the action is against defendants jointly indebted upon contract, he may proceed against the defendants served, unless the court otherwise directs, and if he recovers judgment it may be entered against all the defendants thus jointly indebted, so far only as that it may be enforced against the joint property of all and the separate property of the defendants served, and if they are subject to arrest, against the persons of the defendants served.

(2) If the action is against defendants severally liable, he may proceed against the defendants served, in the same manner as if they were the only defendants.

(3) If all the defendants have been served, judgment may be taken against any or either of them severally, when the plaintiff would be entitled to judgment against such defendant or defendants if the action has been against them or any of them alone.

(4) If the name of one or more partners has, for any cause, been omitted in an action in which judgment has been rendered against the defendants named in the summons, and the omission was not pleaded in action, the plaintiff, in case the judgment remains unsatisfied, may by action recover of such partner separately, upon proving his joint liability, notwithstanding he was not named in the original action; but the plaintiff may have satisfaction of only one judgment rendered for the same cause of action. (C.C.P., s. 87; Code, s. 222; Rev., s. 455; C.S., s. 497.)

§ 1-114. Summoned after judgment; defense.

When a judgment is recovered against one or more of several persons jointly indebted upon a contract in accordance with the preceding section [§ 1-113], those who were not originally summoned to answer the complaint may be summoned to show cause why they should not be bound by the judgment, in the same manner as if they had been originally summoned. A party so summoned may answer within the time specified denying the judgment, or setting up any defense thereto which has arisen subsequent to such judgment; and may make any defense which he might

have made to the action if the summons had been served on him originally. (C.C.P., ss. 318, 322; Code, ss. 223, 224; Rev., ss. 456, 457; C.S., s. 498.)

§ 1-115: Repealed by Session Laws 1969, c. 954, s. 4.

Article 11.

Lis Pendens.

§ 1-116. Filing of notice of suit.

(a) Any person desiring the benefit of constructive notice of pending litigation must file a separate, independent notice thereof, which notice shall be cross-indexed in accordance with G.S. 1-117, in all of the following cases:

(1) Actions affecting title to real property.

(2) Actions to foreclose any mortgage or deed of trust or to enforce any lien on real property.

(3) Actions in which any order of attachment is issued and real property is attached.

(4) Actions seeking injunctive relief under G.S. 113A-64.1 or G.S. 113A-65 regarding sedimentation and erosion control for any land-disturbing activity that is subject to the requirements of Article 4 of Chapter 113A of the General Statutes.

(5) Actions for asset freezing or seizure under G.S. 14-112.3.

(b) Notice of pending litigation shall contain:

(1) The name of the court in which the action has been commenced or is pending;

(2) The names of the parties to the action;

(3) The nature and purpose of the action; and

(4) A description of the property to be affected thereby.

(c) Notice of pending litigation may be filed:

(1) At or any time after the commencement of an action pursuant to Rule 3 of the Rules of Civil Procedure; or

(2) At or any time after real property has been attached; or

(3) At or any time after the filing of an answer or other pleading in which the pleading party states an affirmative claim for relief falling within the provisions of subsection (a) of this section.

(d) Notice of pending litigation must be filed with the clerk of the superior court of each county in which any part of the real estate is located, not excepting the county in which the action is pending, in order to be effective against bona fide purchasers or lien creditors with respect to the real property located in such county. (C.C.P., s. 90; Code, s. 229; Rev., s. 460; 1917, c. 106; C.S., s. 500; 1949, c. 260; 1959, c. 1163, s. 1; 1967, c. 954, s. 3; 2009-269, s. 1; 2015-182, s. 2.)

§ 1-116.1. Service of notice.

In all actions as defined in G.S. 1-116 in which notice of pendency of the action is filed, a copy of such notice shall be served on the other party or parties as follows:

(1) If filed by the plaintiff at or after service of summons but before the filing of the complaint, service shall be in the manner provided in Rule 4 of the Rules of Civil Procedure for service of summons.

(2) If filed by the plaintiff at or after the filing of the complaint, service shall be in the same manner as the complaint.

(3) All other such notices shall be served in the manner provided in Rule 5 of the Rules of Civil Procedure. (1949, c. 260; 1967, c. 954, s. 3.)

§ 1-117. Cross-index of lis pendens.

Every notice of pending litigation filed under this Article shall be cross-indexed by the clerk of the superior court in a record, called the "Record of Lis Pendens," to be kept by the clerk under G.S. 7A-109. (1903, c. 472; Rev., s. 464; 1919, c. 31; C.S., s. 501; 1959, c. 1163, s. 2; 2017-102, s. 1.)

§ 1-118. Effect on subsequent purchasers.

From the cross-indexing of the notice of lis pendens only is the pendency of the action constructive notice to a purchaser or incumbrancer of the property affected thereby; and every person whose conveyance or incumbrance is subsequently executed or subsequently registered is a subsequent purchaser or incumbrancer, and is bound by all proceedings taken after the cross-indexing of the notice to the same extent as if he were made a party to the action. For the purposes of this section an action is pending from the time of cross-indexing the notice. (C.C.P., s. 90; Code, s. 229; Rev., s. 462; 1919, c. 31; C.S., s. 502.)

§ 1-119. Notice void unless action prosecuted.

(a) The notice of lis pendens is of no avail unless it is followed by the first publication of notice of the summons or by an affidavit therefor pursuant to Rule 4 (j)(1)c of the Rules of Civil Procedure or by personal service on the defendant within 60 days after the cross-indexing.

(b) When an action is commenced by the issuance of summons and permission is granted to file the complaint within 20 days, pursuant to Rule 3 of the Rules of Civil Procedure, if the complaint is not filed within the time fixed by the order of the clerk, the notice of lis pendens shall become inoperative and of no effect. The clerk may on his own motion and shall on the ex parte application of any interested party cancel such notice of lis pendens by appropriate entry on the records, which entry shall recite the failure of the plaintiff to file his complaint within the time allowed. Such applications for cancellation, when made in a county other than that in which the action was instituted, shall include a certificate over the hand and seal of the clerk of the county in which the action was instituted that the plaintiff did not file his complaint within the time allowed. The fees of the clerk may be recovered against the plaintiff and his surety.

(c) Notwithstanding subsections (a) and (b) of this section, a notice of lis pendens filed pursuant to G.S. 1-116(a)(5) shall remain effective until the order to freeze or seize assets under G.S. 14-112.3(b1)(3) is terminated or an order directing the sale of real property under G.S. 14-112.3(e1)(1)c. is entered. Notice of lis pendens filed pursuant to G.S. 1-116(5) shall be exempt from filing fees. (C.C.P., s. 90; Code, s. 229; Rev., s. 461; 1919, c. 31; C.S., s. 503; 1967, c. 954, s. 3; 2015-182, s. 3.)

§ 1-120. Cancellation of notice.

The court in which the said action was commenced may, at any time after it is settled, discontinued or abated, on application of any person aggrieved, on good cause shown, and on such notice as is directed or approved by the court, order the notice authorized by this Article to be cancelled of record, by the clerk of any county in whose office the same has been filed or recorded; and this cancellation must be made by an endorsement to that effect on the margin of the record, which shall refer to the order. (C.C.P., s. 90; Code, s. 229; Rev., s. 463; C.S., s. 504.)

§ 1-120.1. Article applicable to suits in federal courts.

The provisions of this Article shall apply to suits affecting the title to real property in the federal courts. (1945, c. 857.)

§ 1-120.2. Filing of notice by cities and counties in certain cases.

The governing body of a city or county may, by ordinance under Article 11 of Chapter 160D of the General Statutes relating to building inspection, or Article 12 of Chapter 160D of the General Statutes relating to minimum housing standards, provide that upon the issuance of a complaint and notice of hearing or order pursuant to it, a notice of lis pendens, with a copy of the complaint and notice of hearing or order attached to it, may be filed in the office of the clerk of superior court of the county where the property is located. When a notice of lis pendens and a copy of the complaint and notice of hearing or order is filed with the clerk of superior court, it shall be indexed and cross-indexed in accordance with the indexing procedures of G.S. 1-117. From the date and time of indexing, the complaint and notice of hearing or order is binding upon the successors and assigns of the owners of and parties in interest in the building or dwelling. A copy of the notice of lis pendens shall be served upon the owners and parties in interest in the building or dwelling at the time of filing in accordance with G.S. 160D-1121 and G.S. 160D-1206. The notice of lis pendens remains in full force and effect until cancelled. The ordinance may authorize the cancellation of the notice of lis pendens under certain circumstances. Upon receipt of notice from the city, the clerk of superior court shall cancel the notice of lis pendens. (1995, c. 158, s. 1; 2021-88, s. 1(a).)

SUBCHAPTER VI. PLEADINGS.

Article 12.

Complaint.

§§ 1-121 through 1-123: Repealed by Session Laws 1967, c. 954, s. 4.

Article 13.

Defendant's Pleadings.

§§ 1-124 through 1-126. Repealed by Session Laws 1967, c. 954, s. 4.

Article 14.

Demurrer.

§§ 1-127 through 1-134. Repealed by Session Laws 1967, c. 954, s. 4.

Article 15.

Answer.

§§ 1-134.1 through 1-138. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-139. Burden of proof of contributory negligence.

A party asserting the defense of contributory negligence has the burden of proof of such defense. (1887, c. 33; Rev., s. 483; C.S., s. 523; 1967, c. 954, s. 3.)

Article 16.

Reply.

§§ 1-140 through 1-142. Repealed by Session Laws 1967, c. 954, s. 4.

Article 17.

Pleadings, General Provisions.

§§ 1-143 through 1-147. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-148. Verification before what officer.

Any officer competent to take the acknowledgment of deeds, and any judge or clerk of the General Court of Justice, notary public, in or out of the State, or magistrate, is competent to take affidavits for the verification of pleadings, in any court or county in the State, and for general purposes. (C.C.P., s. 117; 1868-9, c. 159, s. 7; Code, s. 258; 1891, c. 140; Rev., s. 492; C.S., s. 532; 1971, c. 268, s. 5.)

§ 1-149. When verification omitted; use in criminal prosecutions.

The verification may be omitted when an admission of the truth of the allegation might subject the party to prosecution for felony. No pleading can be used in a criminal prosecution against the party as proof of a fact admitted or alleged in it. (C.C.P., s. 117; 1868-9, c. 159, s. 7; Code, s. 258; Rev., s. 493; C.S., s. 533.)

§§ 1-150 through 1-160. Repealed by Session Laws 1967, c. 954, s. 4.

Article 18.

Amendments.

§§ 1-161 through 1-163. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-164. Amendment changing nature of action or relief; effect.

When the complaint is so amended as to change the nature of the action and the character of the relief demanded, the judgment rendered does not operate as an estoppel upon any person acquiring an interest in the property in controversy prior to the allowance of the amendment. (1901, c. 486; Rev., s. 508; C.S., s. 548.)

§ 1-165. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-166. Defendant sued in fictitious name; amendment.

When the plaintiff is ignorant of the name of a defendant the latter may be designated in a pleading or proceeding by any name; and when his true name is discovered, the pleading or proceeding may be amended accordingly. (C.C.P., s. 134; Code, s. 275; Rev., s. 510; C.S., s. 550.)

§§ 1-167 through 1-169. Repealed by Session Laws 1967, c. 954, s. 4.

SUBCHAPTER VII. PRETRIAL HEARINGS; TRIAL AND ITS INCIDENTS.

Article 18A.

Pretrial Hearings.

§§ 1-169.1 through 1-169.6. Repealed by Session Laws 1967, c. 954, s. 4.

Article 19.

Trial.

§§ 1-170 through 1-173. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-174: Repealed by Session Laws 1999-216, s.2.

§§ 1-175 through 1-179. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-180. Repealed by Session Laws 1977, c. 711, s. 33.

§ 1-180.1. Judge not to comment on verdict.

In criminal actions the presiding judge shall make no comment in open court in the presence or hearing of all, or any member or members, of the panel of jurors drawn or summoned for jury duty at any session of court, upon any verdict rendered at such session of court, and if any presiding judge shall make any comment as herein prohibited, or shall praise or criticize any jury on account of its verdict, whether such comment, praise or criticism be made inadvertently or intentionally, such praise, criticism or comment by the judge shall constitute valid grounds as a matter of right, for the continuance for the session of any action remaining to be tried during that week at such session of court, upon motion of a defendant or upon motion of the State. The provisions of this section shall not be applicable upon the hearing of motions for a new trial, motions to set aside the verdict of a jury, or a motion made in arrest of judgment. (1955, c. 200; 1967, c. 954, s. 3; 1971, c. 381, s. 12.)

§ 1-181. Requests for special instructions.

(a) Requests for special instructions to the jury must be –

(1) In writing,

(2) Entitled in the cause, and

(3) Signed by counsel submitting them.

(b) Such requests for special instructions must be submitted to the trial judge before the judge's charge to the jury is begun. However, the judge may, in his discretion, consider such requests regardless of the time they are made.

(c) Written requests for special instructions shall, after their submission to the judge, be filed as a part of the record of the same. (C.C.P., s. 239; Code, s. 415; Rev., s. 538; C.S., s. 565; 1951, c. 837, s. 6.)

§ 1-181.1. View by jury.

The judge presiding at the trial of any action or proceeding involving the exercise of the right of eminent domain, or the condemnation of real property may, in his discretion, permit the jury to view the property which is the subject of condemnation. (1965, c. 138.)

§ 1-181.2. Use of evidence by the jury.

(a) If the jury in a civil action after retiring for deliberation requests a review of certain testimony or other evidence, the jurors must be conducted to the courtroom. The court in its discretion, after notice to the parties and giving the parties an opportunity to be heard, may direct that requested parts of the testimony be read to the jury and may permit the jury to reexamine in open court the requested materials admitted into evidence. The court in its discretion may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

(b) Upon request by the jury, the court may in its discretion and after permitting the parties an opportunity to be heard permit the jury to take into the jury room admitted exhibits which have been passed to the jury, photographs admitted into evidence and shown to the jury and used by any witnesses in their testimony before the jury, and any illustrative exhibits admitted into evidence and used by any witnesses in their testimony before the jury. Summaries of testimony prepared in the courtroom by any party, lists made by any party in the courtroom and such similar documents shall not be sent to the jury room with the jury, even if admitted into evidence and requested by the jury. Depositions may be taken into the jury room upon request of the jury only with consent of the parties.

(c) Upon request by the jury, the court may permit the jury to take into the jury room any exhibit that all parties stipulate and agree may be taken into the jury room.

(d) In sending any exhibits to the jury, the court should ensure that the evidentiary integrity of the exhibit is preserved. (2007-407, s. 1.)

§ 1-182. Repealed by Session Laws 1977, c. 776.

§ 1-183. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-183.1. Effect on counterclaim of dismissal as to plaintiff's claim.

The granting of a motion by the defendant for judgment of dismissal as to the plaintiff's cause of action shall not amount to the taking of a voluntary dismissal on any counterclaim which the defendant was required or permitted to plead pursuant to G.S. 1A-1, Rule 13. (1959, c. 77; 1971, c. 1093, s. 3.)

§§ 1-184 through 1-185. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-186. Repealed by Session Laws 2023-54, s. 1, effective June 23, 2023.

§ 1-187. Repealed by Session Laws 1967, c. 954, s. 4.

Article 20.

Reference.

§§ 1-188 through 1-195. Repealed by Session Laws 1967, c. 954, s. 4.

Article 21.

Issues.

§§ 1-196 through 1-200. Repealed by Session Laws 1967, c. 954, s. 4.

Article 22.

Verdict and Exceptions.

§ 1-201. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-202. Special controls general.

Where a special finding of facts is inconsistent with the general verdict, the former controls, and the court shall give judgment accordingly. (C.C.P., s. 234; Code, s. 410; Rev., s. 552; C.S., s. 586.)

§§ 1-203 through 1-207. Repealed by Session Laws 1967, c. 954, s. 4.

SUBCHAPTER VIII. JUDGMENT.

Article 23.

Judgment.

§ 1-208. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-208.1. Judgment docket, judgment and docket book defined.

As used in this Chapter, unless the context clearly requires otherwise, the phrases "judgment docket", "judgment book", "docket book", and "judgment and docket book" include, without limitation, all records created or maintained by the clerk of superior court, pursuant to rules prescribed by the Director of the Administrative Office of the Courts pursuant to G.S. 7A-109, by the use of an electronic data entry system established by the Director pursuant to G.S. 7A-343. (1991, c. 167, s. 1.)

§ 1-209. Judgments authorized to be entered by clerk; sale of property; continuance pending sale; writs of assistance and possession.

The clerks of the superior courts are authorized to enter the following judgments:

(1) All judgments of voluntary nonsuit.

(2) All consent judgments.

(3) In all actions upon notes, bills, bonds, stated accounts, balances struck, and other evidences of indebtedness within the jurisdiction of the superior court.

(4) All judgments by default final and default and inquiry as are authorized by Rule 55 of the Rules of Civil Procedure, and in this section provided.

(5) In all cases where the clerks of the superior court enter judgment by default final upon any debt secured by mortgage, deed of trust, conditional sale contract or other conveyance of any kind, either real or personal property, or by a pledge of property, the said clerks of the superior court are authorized and empowered to order a foreclosure of such mortgage, deed of trust, conditional sale contract, or other conveyance, and order a sale of the property so conveyed or pledged upon such terms as appear to be just; and the said clerks of the superior court shall have all the power and authority now exercised by the judges of the superior court to appoint commissioners to make such sales, to receive the reports thereof, and to confirm the report of sale or to order a resale, and to that end they are authorized to continue such causes from time to time as may be required to complete the sale, and in the final judgment in said causes they shall order the

execution and delivery of all necessary deeds and make all necessary orders disbursing the funds arising from the sale, and may issue writs of assistance and possession upon ten days' notice to parties in possession. The commissioners appointed to make foreclosure sales, as herein authorized, may proceed to advertise such sales immediately after the date of entering judgment and order of foreclosure, unless otherwise provided in said judgment and order.

(6) All judgments on awards, or on Certificates of Accrued Arrearages, of the Industrial Commission in workers' compensation cases, as defined and provided for in G.S. 97-87.

In any tax foreclosure action pending on March 15, 1939 or thereafter brought under the provisions of G.S. 105-414 in which there is filed no answer which seeks to prevent entry of judgment of sale, the clerk of the superior court may render judgment of sale and make all necessary subsequent orders and judgments to the same extent as permitted by this section in actions brought to foreclose a mortgage. All such judgments and orders heretofore rendered or made by a clerk of the superior court in such tax foreclosure actions are hereby, as to the authority of the said clerk, ratified and confirmed. (1919, c. 156; C.S., s. 593; Ex. Sess., 1921, c. 92, s. 12; 1929, cc. 35, 49; 1939, c. 107; 1943, c. 301, s. 1; 1967, c. 954, s. 3; 2001-477, s. 2.)

§ 1-209.1. Petitioner who abandons condemnation proceeding taxed with fee for respondent's attorney.

In all condemnation proceedings authorized by G.S. 40A-3 or by any other statute, the clerks of the superior courts are authorized to fix and tax the petitioner with a reasonable fee for respondent's attorney in cases in which the petitioner takes or submits to a voluntary nonsuit or otherwise abandons the proceeding. (1957, c. 400, s. 1; 2001-487, s. 38(a).)

§ 1-209.2. Voluntary nonsuit by petitioner in condemnation proceeding.

The petitioner in all condemnation proceedings authorized by G.S. 40A-3 or by any other statute is authorized and allowed to take a voluntary nonsuit. (1957, c. 400, s. 2; 2001-487, s. 38(b).)

§ 1-210. Return of execution; order for disbursement of proceeds.

In all executions issued by the clerk of the superior court upon judgment before the clerk of the superior court, under G.S. 1-209, and execution issued thereon, the sheriff shall make his return to the clerk of the superior court, who shall make the final order directing the sheriff to disburse the proceeds received by him under said execution: Provided, that any interested party may appeal to the superior court, where the matter shall be heard de novo. (1925, c. 222, s. 1.)

§§ 1-211 through 1-215. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-215.1. Judgments or orders not rendered on Mondays validated.

In any case where, prior to the ratification of this section, any judgment or order, required to be rendered or signed on Monday, has been rendered or signed by any clerk of the superior court on any day other than Monday, such judgment or order is hereby declared to be valid and of the same force and effect as if the day on which it was signed or rendered had been a Monday; and any conveyance executed by any commissioner or other person authorized to make a conveyance in any action or special proceeding where the appointment of the commissioner or other person, the

order of sale, the order of resale, or the confirmation of sale was made on a day other than Monday, is hereby declared to be valid and to have the same force and effect as if the day on which such judgment or order was rendered had been a Monday. (1943, c. 301, s. 4.)

§ 1-215.2. Time within which judgments or orders signed on days other than Mondays may be attacked.

From and after the 30th day of September, 1951, no action shall be brought or no motion in the cause shall be made to attack any judgment or order of any clerk of the superior court by reason of such judgment or order having been signed by such clerk of the superior court on any day other than Monday. (1951, c. 895, s. 1.)

§ 1-215.3. Validation of conveyances pursuant to orders made on days other than Mondays.

From and after the 30th day of September, 1951, any conveyance executed by any commissioner or other person authorized to make a conveyance in any action or special proceeding where the appointment of the commissioner or other person, the order of sale, the order of resale, or the order or confirmation of sale was made on a day other than Monday is hereby declared to be valid and to have the same force and effect as if the day on which such judgment or order was rendered had been a Monday. (1951, c. 895, s. 2.)

§ 1-216. Repealed by Session Laws 1943, c. 301, s. 3.

§ 1-217. Certain default judgments validated.

In every case where, prior to the first day of January, one thousand nine hundred and twenty-seven, a judgment by default final has been entered by the clerk of the superior court of any county in this State on a day other than Monday, contrary to G.S. 1-215 and 1-216, such judgment shall be deemed to have been entered as of the first Monday immediately following the default and is hereby to all intents and purposes validated; provided, however, nothing in this section shall be construed to affect the rights of any interested party, as provided in G.S. 1-220 other than for irregularity as to date of entry of the judgment by the clerk of the court. (1927, c. 187.)

§ 1-217.1. Judgments based on summons erroneously designated alias or pluries validated.

In all civil actions and special proceedings where the defendants were served with summons and judgment thereafter entered, or any final decree made, and said judgments or decrees shall not be invalidated by reason of the fact that the summons, although designated an alias or pluries summons, was not actually such: Provided, that this section shall not apply where the first summons was issued more than five years preceding March 6, 1943. (1943, c. 532.)

§ 1-217.2. Judgments by default to remove cloud from title to real estate validated.

In every case where prior to the tenth day of October, 1969, a judgment by default final has been entered by the clerk of superior court of any county in this State in an action to remove cloud from title to real estate, the said judgment is hereby to all intents and purposes validated, and said judgment is hereby declared to be regular, proper and a lawful judgment in all respects according to the provisions of same. (1961, c. 628; 1971, c. 59; 1973, c. 1348, s. 1.)

§§ 1-218 through 1-222. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-223. Against married persons.

In an action brought by or against a married person, judgment may be given against such married person for costs or damages or both, to be levied and collected solely out of such married person's separate estate or property. (Rev., s. 563; C.S., s. 603; 1977, c. 545.)

§§ 1-224 through 1-227. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-228. Regarded as a deed and registered.

Every judgment, in which the transfer of title is so declared, shall be regarded as a deed of conveyance, executed in due form and by capable persons, notwithstanding the want of capacity in any person ordered to convey, and shall be registered in the proper county, under the rules and regulations prescribed for conveyances of similar property executed by the party. The party desiring registration of such judgment must produce to the register a copy thereof, certified by the clerk of the court in which it is enrolled, under the seal of the court, and the register shall record both the judgment and certificate. All laws which are passed for extending the time for registration of deeds include such judgments, provided the conveyance, if actually executed, would be so included. (1850, c. 107, ss. 2, 4; R.C., c. 32, ss. 25, 27; 1874-5, c. 17, ss. 2, 4; Code, ss. 427, 429; Rev., ss. 567, 568; C.S., s. 608.)

§ 1-229. Certified registered copy evidence.

In all legal proceedings, touching the right of parties derived under such judgment, a certified copy from the register's books is evidence of its existence and of the matters therein contained, as fully as if proved by a perfect transcript of the whole case. (1850, c. 107, s. 3; R.C., c. 32, s. 26; 1874-5, c. 17, s. 3; Code, s. 428; Rev., s. 569; C.S., s. 609.)

§ 1-230. In action for recovery of personal property.

In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or for the value thereof in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or for the value thereof in case a return cannot be had, and damages for taking and withholding the same. (C.C.P., s. 251; Code, s. 431; Rev., s. 570; C.S., s. 610.)

§ 1-231. What judge approves judgments.

In all cases where a judgment, decree or order of the superior court is required to be approved by a judge, it shall be approved by the judge having jurisdiction of receivers and injunctions. (1876-7, c. 223, s. 3; 1879, c. 63; 1881, c. 51; Code, s. 432; Rev., s. 571; C.S., s. 611.)

§ 1-232. Judgment roll.

Unless the party or his attorney furnishes a judgment roll or the documents referred to in this section are already on file, the clerk, immediately after entering the judgment, shall attach together and file the following papers which constitute the judgment roll:

(1) In case the complaint is not answered by any defendant, the summons and complaint, or copies thereof, proof of service, and that no answer has been received, the report, if any, and a copy of the judgment.

(2) In all other cases, the summons, pleadings, or copies thereof, and a copy of the judgment, with any verdict or report, the offer of the defendant, exceptions, case, and all orders and papers in any way involving the merits and necessarily affecting the judgment. (C.C.P., s. 253; Code, s. 434; Rev., s. 572; C.S., s. 612; 2003-59, s. 1.)

§ 1-233. Docketed and indexed.

Every judgment of the superior or district court, affecting title to real property, or requiring in whole or in part the payment of money, shall be indexed and recorded by the clerk of said superior court on the judgment docket of the court. The docket entry must contain the file number for the case in which the judgment was entered, the names of the parties, the address, if known, of each party and against whom judgment is rendered, the relief granted, the date, hour, and minute of the entry of judgment under G.S. 1A-1, Rule 58, and the date, hour, and minute of the indexing of the judgment. The clerk shall keep a cross-index of the whole, with the dates and file numbers thereof; however, error or omission in the entry of the address or addresses shall in no way affect the validity, finality or priority of the judgment docketed. (Sup. Ct. Rule VIII; C.C.P., s. 252; Code, s. 433; Rev., s. 573; 1909, c. 709; C.S., s. 613; 1929, c. 183; 1943, c. 301, s. 41/2; 1971, c. 268, s. 6; 1981, c. 745, s. 1; 2003-59, s. 2.)

§ 1-234. Where and how docketed; lien.

Upon the entry of a judgment under G.S. 1A-1, Rule 58, affecting the title of real property, or directing in whole or in part the payment of money, the clerk of superior court shall index and record the judgment on the judgment docket of the court of the county where the judgment was entered. The judgment may be docketed on the judgment docket of the court of any other county upon the filing with the clerk thereof of a transcript of the original docket. The judgment lien is effective as against third parties from and after the indexing of the judgment as provided in G.S. 1-233. The judgment is a lien on the real property in the county where the same is docketed of every person against whom any such judgment is rendered, and which he has at the time of the docketing thereof in the county in which such real property is situated, or which he acquires at any time thereafter, for 10 years from the date of the entry of the judgment under G.S. 1A-1, Rule 58, in the county where the judgment was originally entered. But the time during which the party recovering or owning such judgment shall be, or shall have been, restrained from proceeding thereon by an order of injunction, or other order, or by the operation of any appeal, or by a statutory prohibition, does not constitute any part of the 10 years aforesaid, as against the defendant in such judgment, or the party obtaining such orders or making such appeal, or any other person who is not a purchaser, creditor or mortgagee in good faith.

A judgment docketed pursuant to G.S. 15A-1340.38 shall constitute a lien against the property of a defendant as provided for under this section. (C.C.P., s. 254; Code, s. 435; Rev., s. 574; C.S., s. 614; 1971, c. 268, s. 7; 1998-212, s. 19.4(i); 2003-59, s. 3.)

§ 1-235. Of appellate division docketed in superior court; lien.

It is the duty of the appropriate clerk of the appellate division, on application of the party obtaining judgment in one of the courts of that division, directing in whole or in part the payment of money, or affecting the title to real estate, or on the like application of the attorney of record of said party, to certify under his hand and the seal of said court a transcript of the judgment, setting forth the title of the court, the names of the parties thereto, the relief granted, that the judgment was so

rendered by said court, the amount and date of the judgment, what part thereof bears interest and from what time; and said clerk shall send such certificate and transcript to the clerk of the superior court of such counties as he is directed; and the clerk of the superior court receiving the certificate and transcript shall docket them in like manner as judgment rolls of the superior court are docketed. And when so docketed, the lien of said judgment is the same in all respects, subject to the same restrictions and qualifications, and the time shall be reckoned as is provided and prescribed in the preceding sections for judgments of the superior court, so far as the same are applicable. The party desiring the certificate and transcript provided for in this section may obtain them at any time after such judgment has been rendered, unless the appellate court otherwise directs. (1881, c. 75, ss. 1, 4; Code, s. 436; Rev., s. 575; C.S., s. 615; 1969, c. 44, s. 2.)

§ 1-236. Repealed by Session Laws 1971, c. 268, s. 34.

§ 1-236.1. Transcripts of judgments certified by deputy clerks validated.

Each transcript of judgment from the original docket of the superior or district court of a county where the same was rendered and docketed, heretofore certified under the official seal of said court, by a deputy clerk thereof, in his own name as such deputy clerk, and docketed on the judgment docket of another county in the State, is hereby validated and declared of full force and effect in such county where docketed, from the date of docketing of the same, to the same extent and with the same effect as if said transcript of judgment had been certified in the name of the clerk of the superior court of said original county, and under his hand and official seal. (1943, c. 11; 1971, c. 268, s. 8.)

§ 1-237. Judgments of federal courts docketed; lien on property; recordation; conformity with federal law.

Judgments and decrees rendered in the district courts of the United States within this State may be docketed on the judgment dockets of the superior courts in the several counties of this State for the purpose of creating liens upon property in the county where docketed; and when a judgment or decree is registered, recorded, docketed and indexed in a county in like manner as is required of judgments and decrees of the courts of this State, it shall become a lien and shall have all the rights, force and effect of a judgment or decree of the superior court of said county. When a judgment roll of a district court is filed with the clerk of the superior court, the clerk shall docket it as judgments of the superior court are required to be docketed. It is the intent and purpose of this section to conform the State law to the requirements of the act of Congress entitled "An Act to Regulate the Liens on Judgments and Decrees of the Courts of the United States" being the act of August first, one thousand eight hundred and eighty-eight, Chapter seven hundred and twenty-nine. (1889, c. 439; Rev., s. 576; C.S., s. 616; 1943, c. 543.)

§ 1-238. Repealed by Session Laws 1943, c. 543.

§ 1-239. Paid to clerk; docket credited; transcript to other counties; notice to attorney for judgment creditor; judgment creditor to give notice of payment; entry of payment on docket; penalty for failure to give notice of payment.

(a) Payment of money judgment to clerk's office.

(1) The party against whom a judgment for the payment of money is rendered by any court of record may pay the whole, or any part thereof, in cash or by check,

to the clerk of the court in which the same was rendered, although no execution has issued on the judgment. With the approval of, and pursuant to procedures approved by, the Director of the Administrative Office of the Courts, the party against whom a judgment for payment of money is rendered may also pay the whole, or any part thereof, by credit card, debit card, or other electronic payment method to the clerk of the court in which the same was rendered, although no execution has issued on the judgment.

(2) The clerk shall give the party a receipt showing the date and amount of the payment and identifying the judgment, and shall note receipt of the payment on the judgment docket of the court. If the payment is made by check and the check is not finally paid by the drawee bank, the clerk shall cancel the notation of receipt and return the check to the party who tendered it.

(3) When a payment to the clerk is made in cash, by credit or debit card or other electronic payment method, or when a check is finally paid by the drawee bank, the clerk shall give the notice provided for in subsection (b). When the full amount of a judgment has been so paid, the clerk shall include the words "JUDGMENT PAID IN FULL" in the notice.

(4) When a judgment has been paid in part, but not in full, the clerk shall furnish a certificate of partial payment to the clerk of superior court of any county to which a transcript of a judgment has been sent, but only upon the request of that clerk or of the party who made the partial payment.

(5) When a judgment has been paid in full, and the party in whose favor the judgment was rendered has collected all payments made to the clerk, or when ten days have passed since notice of payment in full was sent pursuant to subsection (b) and the party has neither collected all payments made to the clerk nor notified the clerk that the party disputes payment of the full amount of the judgment, then the clerk shall immediately:
   a. Mark "PAID AND SATISFIED IN FULL" on the judgment docket, and
   b. Forward a certificate of payment in full to the clerk of superior court in each county to which a transcript of the judgment has been sent.

(6) If the party in whose favor a judgment has been rendered notifies the clerk that the party disputes payment in full of the judgment, the clerk shall proceed as provided in G.S. 1-242.

(7) Entries of payment or satisfaction on the judgment dockets in the office of the clerk of the superior court by any person other than the clerk shall be made in the presence of the clerk or his deputy, who shall witness the same.

(b) Upon receipt of any payment of money upon a judgment, the clerk of superior court shall within seven days after the receipt of such payment give notice thereof to the attorney of record for the party in whose favor the judgment was rendered, or if there is no attorney of record to the party. Any other official of any court who receives payment of money upon a judgment shall give notice in the same manner; provided, further, that no such moneys shall be paid by the clerk of the superior court until at least seven days after written notice by mail or in person has been given to the attorney of record in whose favor the judgment was rendered; provided further, that the attorney of record may waive said notice, and said moneys shall be paid by the clerk of superior court, by signing the judgment docket.

(c) Upon receipt by the judgment creditor of any payment of money upon a judgment, the judgment creditor shall within 60 days after receipt of the payment give satisfactory notice thereof to the clerk of the superior court in which the judgment was rendered, which notice shall specify the date and amount of the payment received. If the creditor provides to the clerk a single notice of multiple payments from the debtor, the notice shall specify the date of each individual payment and the amount received on each date. The clerk shall thereafter promptly enter any such payment on the judgment docket of the court, crediting each payment against the judgment as of the date received by the creditor. The clerk shall immediately forward a certificate thereof to the clerk of the superior court of each county to whom a transcript of the judgment has been sent, and the clerk of each superior court shall thereafter promptly enter the same on the judgment docket of the court and file the original with the judgment roll in the action. If the judgment creditor fails to file the notice required by this subsection within 30 days following written demand by the debtor, he may be required to pay a civil penalty of one hundred dollars ($100.00) in addition to attorneys' fees and any loss caused to the debtor by such failure. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(d) Payment of money judgment to clerk's office under execution.

(1) When proceeds are paid to the clerk as a result of levy and an execution sale pursuant to Article 29B of this Chapter, the proceeds shall be credited and applied to the judgment as of the date the proceeds are received by the clerk.

(2) When funds are paid to the clerk pursuant to the levy under execution without an execution sale, the funds shall be credited and applied to the judgment as of the date the funds are collected. (1823, c. 1212, P.R; R.C., c. 31, s. 127; Code, s. 438; Rev., s. 577; 1911, c. 76; C.S., s. 617; 1967, c. 1067; 1969, c. 18; 1981, c. 745, s. 2; 1987, c. 497; 1997-456, s.27; 1998-215, s. 94; 2021-47, s. 14(a); 2023-103, s. 1(a).)

§ 1-239.1. Records of cancellation, assignment, etc., of judgments recorded by photographic process.

In all cases where the governing authority of any county has caused the instruments or documents filed for record in the office of the clerk of the superior court of such county to be recorded by any system involving the use of microfilm or by the use of any microphotographic system or by any system of photographic recording, it shall be lawful for the clerk of the superior court to keep a record or docket book for the purpose of entering on same payment or payments, credit or satisfaction, assignments or releases in whole or in part of any judgment which has heretofore been recorded by any photographic process above mentioned. For this purpose, the form of such docket or record book shall be substantially as follows:

"_____ Superior Court Cancellation, Assignment, Transfer or Release of Judgments, etc.

I (We) _____do hereby certify that that certain judgment docketed in Judgment Docket_____, at page_____, filed _____ day of____, ____, Case No._____, wherein _____ is (are) Plaintiff(s) and _____ is (are) Defendant(s) has been fully satisfied, released and discharged together with all costs, and interest,

Signed in the presence of

Assistant-Deputy Clerk of
the Superior Court of
_____County"

Any entries of payment, credits or satisfaction made on such record or docket book, in substantially the form above mentioned, shall be good and valid payments, credits or satisfactions in all respects as if the same had been duly entered on the original judgment docket before the recording of same by the photographic process or system above mentioned. The clerk of the superior court shall have the authority to forward certificates to the clerk of the superior court of each county to whom a transcript of said judgment has been sent to the same extent and for all the purposes provided in G.S. 1-239, and all payments, credits or satisfactions entered in said docket book or record shall be valid to the same extent as if the same had been entered in the regular judgment docket in accordance with the provisions of G.S. 1-239. (1951, c. 774; 1999-456, s. 59.)

§ 1-240. Repealed by Session Laws 1967, c. 847, s. 2.

§ 1-241. Clerk to pay money to party entitled.

The clerk, to whom money is paid as aforesaid, shall pay it to the party entitled to receive it, under the same rules and penalties as if the money had been paid into his office by virtue of an execution. (1823, c. 1212, s. 2, P.R.; R.C., c. 31, s. 128; Code, s. 439; Rev., s. 578; C.S., s. 619.)

§ 1-242. Credits upon judgments.

If payment is made on a judgment docketed in the office of the clerk of the superior court and no entry is made on the judgment docket, or if a docketed judgment is reversed or modified on appeal and no entry is made on the judgment docket, any interested person may move in the cause before the clerk, upon affidavit after notice to all interested persons, to have the credit, reversal, or modification entered. A hearing on the motion before the clerk may be on affidavit, oral testimony, deposition, and any other competent evidence. The clerk shall render judgment, from which any party may appeal in the same manner as in appeals in civil actions, in accordance with G.S. 1-301.1. On appeal, any party may demand a jury trial of any issue of fact. If a final judgment orders the credit, reversal, or modification, a transcript of the final judgment shall be sent by the clerk of the superior court to each county in which the original judgment is docketed, and the clerk of each county shall enter the transcript on the judgment docket of that county opposite the original judgment and file the transcript. No final process may issue on the original judgment after affidavit filed in the cause until there is a final disposition of the motion for credit, reversal, or modification. (1903, c. 558; Rev., s. 579; C.S., s. 620; 1999-216, s. 3; 2010-96, s. 23.)

§ 1-243. For money due on judicial sale.

The Supreme and other courts ordering a judicial sale, or having possession of bonds taken on such sale, may, on motion, after ten days' notice thereof in writing, enter judgment as soon as the money becomes due against the debtors or any of them, unless for good cause shown the court directs some other mode of collection. (R.C., c. 31, s. 129; Code, s. 941; Rev., s. 1524; C.S., s. 621.)

§ 1-244. Repealed by Session Laws 1971, c. 268, s. 34.

§ 1-245. Cancellation of judgments discharged through bankruptcy proceedings.

When a referee in bankruptcy furnishes the clerk of the superior court of any county in this State a written statement or certificate to the effect that a bankrupt has been discharged, indicating in said certificate that the plaintiff or judgment creditor in whose favor judgments against the defendant bankrupt are docketed in the office of the clerk of the superior court have received due notice as provided by law from the said referee, and that said judgments have been discharged, it shall be the duty of the clerk of the superior court to file said certificate and enter a notation thereof on the margin of said judgments.

This section shall apply to judgments of this kind already docketed as well as to future judgments of the same kind. (1937, c. 234, ss. 1-4; 1971, c. 268, s. 8.1.)

§ 1-246. Assignment of judgment to be entered on judgment docket, signed and witnessed.

No assignment of judgment shall be valid at law to pass any property as against creditors or purchasers for a valuable consideration from the donor, bargainor, or assignor, but from the entry of such assignment on the margin of the judgment docket opposite the said judgment, signed by the owner of said judgment, or his attorney under power of attorney or his attorney of record, and witnessed by the clerk or the deputy clerk of the superior court of the county in which said judgment is docketed: Provided, that when an assignment of judgment is duly executed by the owner or owners of the judgment and recorded in the office of the clerk of the superior court of the county in which the judgment is docketed and a specific reference thereto is made on the margin of the judgment docket opposite the judgment to be assigned, it shall operate as a complete and valid transfer and assignment of the judgment. (1941, c. 61; 1945, c. 154.)

Article 24.

Confession of Judgment.

§§ 1-247 through 1-249. Repealed by Session Laws 1967, c. 954, s. 4.

Article 25.

Submission of Controversy Without Action.

§§ 1-250 through 1-252. Repealed by Session Laws 1967, c. 954, s. 4.

Article 26.

Declaratory Judgments.

§ 1-253. Courts of record permitted to enter declaratory judgments of rights, status and other legal relations.

Courts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree. (1931, c. 102, s. 1.)

§ 1-254. Courts given power of construction of all instruments.

Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity

arising under the instrument, statute, ordinance, contract, or franchise, and obtain a declaration of rights, status, or other legal relations thereunder. A contract may be construed either before or after there has been a breach thereof. (1931, c. 102, s. 2.)

§ 1-255. Who may apply for a declaration.

Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, a minor, an incompetent person, or an insolvent person, may have a declaration of rights or legal relations in respect thereto:

(1) To ascertain any class of creditors, devisees, heirs, next of kin or others; or

(2) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

(4) To determine the apportionment of the federal estate tax, interest and penalties under the provisions of Article 27 of Chapter 28A. (1931, c. 102, s. 3; 1985 (Reg. Sess., 1986), c. 878, s. 2; 2011-29, s. 1; 2011-284, s. 2.)

§ 1-256. Enumeration of declarations not exclusive.

The enumeration in G.S. 1-254 and 1-255 does not limit or restrict the exercise of the general powers conferred in G.S. 1-253 in any proceedings where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty. (1931, c. 102, s. 4.)

§ 1-257. Discretion of court.

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding; provided, however, that a controversy between insurance companies, arising either by direct action or by joinder or intervention, with respect to which of two or more of the insurers is liable under its particular policy and the insurers' respective liabilities and obligations, constitutes a justiciable issue and the court should, upon petition by one or more of the parties to the action, render a declaratory judgment as to the liabilities and obligations of the insurers. (1931, c. 102, s. 5; 1989, c. 183.)

§ 1-258. Review.

All orders, judgment and decrees under this Article may be reviewed as other orders, judgments and decrees. (1931, c. 102, s. 6.)

§ 1-259. Supplemental relief.

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith. (1931, c. 102, s. 7.)

§ 1-260. Parties.

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the State shall also be served with a copy of the proceeding and be entitled to be heard. (1931, c. 102, s. 8.)

§ 1-261. Jury trial.

When a proceeding under this Article involves the determination of an issue of fact, such issue may be determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending. (1931, c. 102, s. 9.)

§ 1-262. Hearing before judge where no issues of fact raised or jury trial waived; what judge may hear.

Proceedings under this Article shall be tried at a session of court, as in other civil actions. If no issues of fact are raised, or if such issues are raised and the parties waive a jury trial, by agreement of the parties the proceedings may be heard before any judge of the trial division in which the proceeding is pending. If the parties do not agree upon a judge for the hearing and the proceeding is in the Superior Court Division, then upon motion of the plaintiff, the proceeding may be heard by a resident superior court judge of the district, or a superior court judge holding the courts of the district, or by any judge holding a session of superior court within the district. If the parties do not agree upon a judge and the proceeding is in the District Court Division, then upon motion of the plaintiff, the proceeding may be heard by the chief district judge or by a district judge authorized by the chief judge to hear motions and enter interlocutory orders. Such motion shall be in writing, with 10 days' notice to the defendant, and the judge designated shall fix a time and place for the hearing and notify the parties. Upon notice given, the clerk of the court in which the action is pending shall forward the papers in the proceeding to the judge designated. The hearing by the judge shall be governed by the practice for hearings in other civil actions before a judge without a jury. References to judges of the superior court in this section include emergency and special judges. (1931, c. 102, s. 10; 1971, c. 268, s. 9.)

§ 1-263. Costs.

In any proceeding under this article the court may make such award of costs as may seem equitable and just. (1931, c. 102, s. 11.)

§ 1-264. Liberal construction and administration.

This Article is declared to be remedial, its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and it is to be liberally construed and administered. (1931, c. 102, s. 12.)

§ 1-265. Word "person" construed.

The word "person" wherever used in this Article, shall be construed to mean any person, State agency, partnership, joint-stock company, unincorporated association, or society, or municipal corporation or other corporation of any character whatsoever. (1931, c. 102, s. 13; 2001-192, s. 3.)

§ 1-266. Uniformity of interpretation.

This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees. (1931, c. 102, s. 15.)

§ 1-267. Short title.

This Article may be cited as the Uniform Declaratory Judgment Act. (1931, c. 102, s. 16.)

Article 26A.

Three-Judge Panel for Redistricting Challenges and for Certain Challenges to State Laws.

§ 1-267.1. Three-judge panel for actions challenging plans apportioning or redistricting State legislative or congressional districts; claims challenging the facial validity of an act of the General Assembly.

(a) Any action challenging the validity of any act of the General Assembly that apportions or redistricts State legislative or congressional districts shall be filed in the Superior Court of Wake County. Any action that is a facial challenge to the validity of an act of the General Assembly shall be, unless filed in the Superior Court of Wake County, transferred pursuant to G.S. 1A-1, Rule 42(b)(4), to the Superior Court of Wake County.

All actions referenced in this subsection shall be heard and determined by a three-judge panel of the Superior Court of Wake County organized as provided by subsection (b2) of this section.

(a1) Repealed by Session Laws 2023-134, s. 16.21(a), effective October 3, 2023.

(b) Repealed by Session Laws 2023-134, s. 16.21(a), effective October 3, 2023.

(b1) Repealed by Session Laws 2023-134, s. 16.21(a), effective October 3, 2023.

(b2) For each challenge referenced in subsection (a) of this section, the Chief Justice of the Supreme Court shall appoint three superior court judges to a three-judge panel of the Superior Court of Wake County to hear the challenge. The Chief Justice shall appoint a presiding judge of each three-judge panel. Should any member of a three-judge panel be disqualified or otherwise unable to serve on the three-judge panel or be removed from the panel at the discretion of the Chief Justice, the Chief Justice shall appoint as a replacement another superior court judge. No member of the panel on an action challenging the validity of any act of the General Assembly that apportions or redistricts State legislative or congressional districts may be a former member of the General Assembly.

(c) No order or judgment shall be entered affecting the validity of any act of the General Assembly that apportions or redistricts State legislative or congressional districts, or finds that an act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law, except by a three-judge panel of the Superior Court of Wake County organized as provided by subsection (b2) of this section. In the event of disagreement among the three superior court judges comprising a three-judge panel, then the opinion of the majority shall prevail.

(d) This section applies only to civil proceedings. Nothing in this section shall be deemed to apply to criminal proceedings, to proceedings under Chapter 15A of the General Statutes, to proceedings making a collateral attack on any judgment entered in a criminal proceeding, or to civil proceedings filed by a taxpayer pursuant to G.S. 105-241.17.

(e) For the purposes of this section, the position of superior court judge shall include regular, special, and emergency superior court judges. (2003-434, 1st Ex. Sess., s. 7(a); 2014-100, s. 18B.16(a); 2015-264, s. 1(a); 2018-145, s. 8(b); 2023-134, s. 16.21(a).)

Article 26B.

Distribution of Unpaid Residuals in Class Action Litigation.

§ 1-267.10. Distribution of unpaid residuals in class action litigation.

(a) It is the intent of the General Assembly to ensure that the unpaid residuals in class action litigation are distributed, to the extent possible, in a manner designed either to further the purposes of the underlying causes of action or to promote justice for all citizens of this State. The General Assembly finds that the use of funds collected by the State courts pursuant to this section for these purposes is in the public interest, is a proper use of the funds, and is consistent with essential public and governmental purposes.

(b) Prior to the entry of any judgment or order approving settlement in a class action established pursuant to Rule 23 of the Rules of Civil Procedure, the court shall determine the total amount that will be payable to all class members, if all class members are paid the amount to which they are entitled pursuant to the judgment or settlement. The court shall also set a date when the parties shall report to the court the total amount that was actually paid to the class members. After the report is received, the court, unless it orders otherwise consistent with its obligations under Rule 23 of the Rules of Civil Procedure, shall direct the defendant to pay the sum of the unpaid residue, to be divided and credited equally, to the Indigent Person's Attorney Fund and to the North Carolina State Bar for the provision of civil legal services for indigents. (2005-420, s. 1.)

SUBCHAPTER IX. APPEAL.

Article 27.

Appeal.

§ 1-268. Writs of error abolished.

Writs of error in civil actions are abolished, and the only mode of reviewing a judgment, or order, in a civil action, is that prescribed by this Chapter. (C.C.P., s. 296; Code, s. 544; Rev., s. 583; C.S., s. 629.)

§ 1-269. Certiorari, recordari, and supersedeas.

Writs of certiorari, recordari, and supersedeas are authorized as heretofore in use. The writs of certiorari and recordari, when used as substitutes for an appeal, may issue when ordered upon the applicant filing a written undertaking for the costs only; but the supersedeas, to suspend execution, shall not issue until an undertaking is filed or a deposit made to secure the judgment sought to be vacated, as in cases of appeal where execution is stayed. (1874-5, c. 109; Code, s. 545; Rev., s. 584; C.S., s. 630.)

§ 1-270. Appeal to appellate division; security on appeal; stay.

Cases shall be taken to the appellate division by appeal, as provided by law. All provisions in this Article as to the security to be given upon appeals and as to the stay of proceedings apply to appeals taken to the appellate division. (C.C.P., s. 312; Code, ss. 561, 946; Rev., ss. 595, 1540; C.S., s. 631; 1969, c. 444, s. 3.)

§ 1-271. Who may appeal.

Any party aggrieved may appeal or cross-appeal in the cases prescribed in this Chapter. The term "party aggrieved" includes a party challenging the grant or denial of a motion under the Rules

of Civil Procedure. (C.C.P., s. 298; Code, s. 547; Rev., s. 585; C.S., s. 632; 1969, c. 895, s. 15; 2023-54, s. 2.)

§§ 1-272 through 1-276: Repealed by Session Laws 1999-216, s. 2.

§ 1-277. Appeal from superior or district court judge.

(a) An appeal may be taken from every judicial order or determination of a judge of a superior or district court, upon or involving a matter of law or legal inference, whether made in or out of session, that affects a substantial right claimed in any action or proceeding; or that in effect determines the action and prevents a judgment from which an appeal might be taken; or discontinues the action or grants or refuses a new trial.

(b) Any interested party has the right of immediate appeal from an adverse ruling as to the jurisdiction of the court over the person or property of the defendant, or the party may preserve the party's objection for determination upon any subsequent appeal in the cause. (1818, c. 962, s. 4, P.R; C.C.P., s. 299; Code, s. 548; Rev., s. 587; C.S., s. 638; 1967, c. 954, s. 3; 1971, c. 268, s. 10; 2023-54, s. 3.)

§ 1-278. Interlocutory orders reviewed on appeal from judgment.

Upon an appeal from a judgment, the court may review any intermediate order involving the merits and necessarily affecting the judgment. (C.C.P., s. 313; Code, s. 562; Rev., s. 589; C.S., s. 640.)

§ 1-279. Repealed by Session Laws 1989, c.377, s. 1.

§ 1-279.1. Manner and time for giving notice of appeal to appellate division in civil actions and in special proceedings.

Any party entitled by law to appeal from a judgment or order rendered by a judge in superior or district court in a civil action or in a special proceeding may take appeal by giving notice of appeal within the time, in the manner, and with the effect provided in the rules of appellate procedure. (1989, c. 377, s. 2.)

§ 1-280. Repealed by Session Laws 1975, c. 391, s. 4.

§ 1-281. Appeals from judgments not in session.

When appeals are taken from judgments of the clerk or judge not made in session, the clerk is authorized to make any and all necessary orders for the perfecting of such appeals. (Ex. Sess. 1921, c. 92, s. 19a; C.S., s. 642(a); 1971, c. 381, s. 12.)

§ 1-282. Repealed by Session Laws 1975, c. 391, s. 7.

§ 1-283. Trial judge empowered to settle record on appeal; effect of leaving office or of disability.

Except as provided in this section, only the judge of superior court or of district court from whose order or judgment an appeal has been taken is empowered to settle the record on appeal when judicial settlement is required. A judge retains power to settle a record on appeal notwithstanding he has resigned or retired or his term of office has expired without reappointment

or reelection since entry of the judgment or order. Proceedings for judicial settlement when the judge empowered by this section to settle the record on appeal is unavailable for the purpose by reason of death, mental or physical incapacity, or absence from the State shall be as provided by the rules of appellate procedure. (C.C.P., s. 301; Code, s. 550; 1889, c. 161; Rev., s. 591; 1907, c. 312; C.S., s. 644; 1971, c. 381, s. 12; 1975, c. 391, s. 8.)

§ 1-284. Repealed by Session Laws 1975, c. 391, s. 9.

§ 1-285. Undertaking on appeal.

(a) To render an appeal effectual for any purpose in a civil cause or special proceeding, a written undertaking must be executed on the part of the appellant, with good and sufficient surety, in the sum of two hundred fifty dollars ($250.00), or any lesser sum as might be adjudged by the court, to the effect that the appellant will pay all costs awarded against him on the appeal, and this undertaking must be filed with the clerk with whom the judgment or order was filed; or such sum must be deposited with the appropriate clerk of the appellate division in compliance with the North Carolina Rules of Appellate Procedure.

(b) The provisions of this section do not apply to the State of North Carolina, a city or a county or a local board of education, an officer thereof in his official capacity, or an agency thereof. (C.C.P., ss. 303, 312; 1871-2, c. 31; Code, ss. 552, 561; 1889, c. 135, s. 2; Rev., ss. 593, 595; C.S., s. 646; 1969, c. 44, s. 5; 1975, c. 391, s. 1; 1985, c. 468; 1987, c. 462, s. 2; 1995 (Reg. Sess., 1996), c. 742, s. 42.3.)

§ 1-286. Justification of sureties.

Any written undertaking on appeal under G.S. 1-285 must be accompanied by an affidavit of one of the sureties that the surety is worth double the amount specified in the undertaking. The respondent may object to the sufficiency of the sureties within 10 days after the notice of appeal; and unless a surety justifies within 10 days after the objection, the appeal shall be regarded as if no undertaking had been given. The justification must be upon a notice of not less than five days. (C.C.P., s. 310; Code, s. 560; 1887, c. 121; Rev., s. 594; C.S., s. 647; 1995 (Reg. Sess., 1996), c. 742, s. 42.4; 2023-54, s. 4.)

§ 1-287. Repealed by Session Laws 1975, c. 391, s. 2.

§ 1-287.1. Repealed by Session Laws 1975, c. 391, s. 10.

§ 1-288. Appeals by indigents; clerk's fees.

When any party to a civil action tried and determined in the superior or district court at the time of trial or special proceeding desires an appeal from the judgment rendered in the action to the Appellate Division, and is unable, by reason of poverty, to make the deposit or to give the security required by law for the appeal, it shall be the duty of the judge or clerk of said court to make an order allowing the party to appeal from the judgment to the Appellate Division as in other cases of appeal, without giving security therefor. The party desiring to appeal from the judgment or order in a civil action or special proceeding shall, within 30 days after the entry of the judgment or order, make affidavit that he or she is unable by reason of poverty to give the security required by law. Nothing contained in this section deprives the clerk of the superior court of the right to demand the fees for the certificate and seal as now allowed by law in such cases. Provided, that where the judge

or the clerk has made an order allowing the appellant to appeal as an indigent and the appeal has been filed in the Appellate Division, and an error or omission has been made in the affidavit or certificate of counsel, and the error is called to the attention of the court before the hearing of the argument of the case, the court shall permit an amended affidavit or certificate to be filed correcting the error or omission. (1873-4, c. 60; Code, s. 553; 1889, c. 161; Rev., s. 597; 1907, c. 878; C.S., s. 649; 1937, c. 89; 1951, c. 837, s. 7; 1969, c. 44, s. 8; 1971, c. 268, s. 12; 1991, c. 563, s. 1; 1993, c. 435, s. 3; 1995, c. 536, s. 1.)

§ 1-289. Undertaking to stay execution on money judgment.

(a) If the appeal is from a judgment directing the payment of money, it does not stay the execution of the judgment unless a written undertaking is executed on the part of the appellant, by one or more sureties, as set forth in this section.

(a1) In an action where the judgment directs the payment of money, the court shall specify the amount of the undertaking required to stay execution of the judgment pending appeal as provided in subsection (a2) of this section. The undertaking shall be to the effect that if the judgment appealed from, or any part thereof, is affirmed, or the appeal is dismissed, the appellant will pay the amount directed to be paid by the judgment, or the part of such amount as to which the judgment shall be affirmed, if affirmed only in part, and all damages which shall be awarded against the appellant upon the appeal, except as provided in subsection (b) of this section. Whenever it is satisfactorily made to appear to the court that since the execution of the undertaking the sureties have become insolvent, the court may, by rule or order, require the appellant to execute, file and serve a new undertaking, as above. In case of neglect to execute such undertaking within twenty days after the service of a copy of the rule or order requiring it, the appeal may, on motion to the court, be dismissed with costs. Whenever it is necessary for a party to an action or proceeding to give a bond or an undertaking with surety or sureties, he may, in lieu thereof, deposit with the officer into court money to the amount of the bond or undertaking to be given. The court in which the action or proceeding is pending may direct what disposition shall be made of such money pending the action or proceeding. In a case where, by this section, the money is to be deposited with an officer, a judge of the court, upon the application of either party, may, at any time before the deposit is made, order the money deposited in court instead of with the officer; and a deposit made pursuant to such order is of the same effect as if made with the officer. The perfecting of an appeal by giving the undertaking mentioned in this section stays proceedings in the court below upon the judgment appealed from; except when the sale of perishable property is directed, the court below may order the property to be sold and the proceeds thereof to be deposited or invested, to abide the judgment of the appellate court.

(a2) The amount of the undertaking that shall be required by the court shall be an amount determined by the court after notice and hearing proper and reasonable for the security of the rights of the adverse party, considering relevant factors, including the following:

(1) The amount of the judgment.

(2) The amount of the limits of all applicable liability policies of the appellant judgment debtor.

(3) The aggregate net worth of the appellant judgment debtor.

(b) If the appellee in a civil action brought under any legal theory obtains a judgment directing the payment or expenditure of money in the amount of twenty five million dollars ($25,000,000) or more, and the appellant seeks a stay of execution of the judgment within the period of time during which the appellant has the right to pursue appellate review, including

discretionary review and certiorari, the amount of the undertaking that the appellant is required to execute to stay execution of the judgment during the entire period of the appeal shall be twenty five million dollars ($25,000,000).

(c) If the appellee proves by a preponderance of the evidence that the appellant for whom the undertaking has been limited under subsection (b) of this section is, for the purpose of evading the judgment, (i) dissipating its assets, (ii) secreting its assets, or (iii) diverting its assets outside the jurisdiction of the courts of North Carolina or the federal courts of the United States other than in the ordinary course of business, then the limitation in subsection (b) of this section shall not apply and the appellant shall be required to make an undertaking in the full amount otherwise required by this section. (C.C.P., ss. 304, 311; Code, s. 554; Rev., s. 598; C.S., s. 650; 2000, Ex. Sess., c. 1, s. 2; 2003-19, s. 3; 2011-400, s. 1.)

§ 1-290. How judgment for personal property stayed.

If the judgment appealed from directs the assignment or delivery of documents or personal property, the execution of the judgment is not stayed by appeal, unless the things required to be assigned or delivered are brought into court, or placed in the custody of such officer or receiver as the court appoints, or unless an undertaking be entered into on the part of the appellant, by at least two sureties, and in such amount as the court or a judge thereof directs, to the effect that the appellant will obey the order of the appellate court upon the appeal. (C.C.P., s. 305; Code, s. 555; Rev., s. 599; C.S., s. 651.)

§ 1-291. How judgment directing conveyance stayed.

If the judgment appealed from directs the execution of a conveyance or other instrument, the execution of the judgment is not stayed by the appeal until the instrument has been executed and deposited with the clerk with whom the judgment is entered, to abide the judgment of the appellate court. (C.C.P., s. 306; Code, s. 556; Rev., s. 600; C.S., s. 652.)

§ 1-292. How judgment for real property stayed.

If the judgment appealed from directs the sale or delivery of possession of real property, the execution is not stayed, unless a bond is executed on the part of the appellant, with one or more sureties, to the effect that, during his possession of such property, he will not commit, or suffer to be committed, any waste thereon, and that if the judgment is affirmed he will pay the value of the use and occupation of the property, from the time of the appeal until the delivery of possession thereof pursuant to the judgment, not exceeding a sum to be fixed by a judge of the court by which judgment was rendered and which must be specified in the undertaking. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising upon the sale, the undertaking must also provide for the payment of this deficiency. (C.C.P., s. 307; Code, s. 557; Rev., s. 601; C.S., s. 653.)

§ 1-293. Docket entry of stay.

When an appeal from a judgment is pending, and the undertaking requisite to stay execution on the judgment has been given, and the appeal perfected, the court in which the judgment was recovered may, on special motion, after notice to the person owning the judgment, on such terms as it sees fit, direct an entry to be made by the clerk on the docket of such judgment, that the same is secured on appeal, and no execution can issue upon such judgment during the pendency of the appeal. (C.C.P., s. 254; Code, s. 435; 1887, c. 192; Rev., s. 621; C.S., s. 654.)

§ 1-294. Scope of stay; security limited for fiduciaries.

When an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from. The court below may, in its discretion, dispense with or limit the security required, when the appellant is an executor, administrator, trustee, or other person acting in a fiduciary capacity. It may also limit such security to an amount not more than fifty thousand dollars ($50,000), where it would otherwise exceed that sum. (C.C.P., s. 308; Code, s. 558; Rev., s. 602; C.S., s. 655; 2015-25, s. 2.)

§ 1-295. Undertaking in one or more instruments; served on appellee.

The undertakings may be in one instrument or several, at the option of the appellant; and a copy, including the names and residences of the sureties, must be served on the adverse party, with the notice of appeal, unless the required deposit is made and notice thereof given. (C.C.P., s. 309; Code, s. 559; Rev., s. 603; C.S., s. 656.)

§ 1-296. Judgment not vacated by stay.

The stay of proceedings provided for in this Article shall not be construed to vacate the judgment appealed from, but in all cases such judgment remains in full force and effect, and its lien remains unimpaired, notwithstanding the giving of the undertaking or making the deposit required in this Chapter, until such judgment is reversed or modified by the appellate division. (1887, c. 192; Rev., s. 604; C.S., s. 657; 1969, c. 44, s. 9.)

§ 1-297. Judgment on appeal and on undertakings; restitution.

Upon an appeal from a judgment or order, the appellate court may reverse, affirm or modify the judgment or order appealed from, in the respect mentioned in the notice of appeal, and as to any or all of the parties, and may, if necessary or proper, order a new trial. When the judgment is reversed or modified, the appellate court may make complete restitution of all property and rights lost by the erroneous judgment. Undertakings for the prosecution of appeals and on writs of certiorari shall make a part of the record sent up to the appellate division on which judgment may be entered against the appellant or person prosecuting the writ of certiorari and his sureties, in all cases where judgment is rendered against the appellant or person prosecuting the writ. (1785, c. 233, s. 2, P.R.; 1810, c. 793, P.R.; 1831, c. 46, s. 2; R.C., c. 4, s. 10; C.C.P., s. 314; Code, s. 563; Rev., s. 605; C.S., s. 658; 1969, c. 44, s. 10.)

§ 1-298. Procedure after determination of appeal.

In civil cases, at the first session of the superior or district court after a certificate of the determination of an appeal is received, if the judgment is affirmed the court below shall direct the execution thereof to proceed, and if the judgment is modified, shall direct its modification and performance. If a new trial is ordered the cause stands in its regular order on the docket for trial at such first session after the receipt of the certificate from the Appellate Division. (1887, c. 192, s. 2; Rev., s. 1526; C.S., s. 659; 1969, c. 44, s. 11; 1971, c. 268, s. 13.)

§§ 1-299 through 1-301: Repealed by Session Laws 1971, c. 268, s. 34.

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. (Rev. s. 529; C.S., s. 558; 1971, c. 381, s. 12; 1999-216, s. 1.)

§ 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. Under G.S. 46A-85(a), however, a party may appeal an order confirming the partition sale of real property within 10 days of the order becoming final. 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 and Proceedings to Permit Sterilization for Medical Necessity. –

(1) Proceedings for adjudication of incompetency or restoration of competency under Chapter 35A of the General Statutes, or proceedings to determine whether a guardian may consent to the sterilization of a ward with a mental illness or intellectual disability under G.S. 35A-1245, 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 of the General Statutes 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 of the General Statutes 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. (C.C.P., c. 115; Code, s. 256; 1903, c. 566; Rev., ss. 588, 717; C.S., ss. 634, 758; 1971, c. 381, s. 12; 1995, c. 88, s. 2; 1999-216, s. 1; 2003-13, s. 2; 2009-362, s. 5; 2018-47, s. 1(a); 2020-23, s. 4.)

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

(a) Applicability. – This section applies to matters arising in the administration of 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

service of the order on that party. If a timely motion is made by any party for relief under Rule 52(b) or 59 of the Rules of Civil Procedure, the 10-day period for taking appeal is tolled as to all parties. Upon entry of an order disposing of the motion, the 10-day period then runs as to each party from its service upon that party. The notice of appeal shall contain a short and plain statement of 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 factual 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. If the judge retains jurisdiction and either excludes evidence that was considered by the clerk or considers new evidence that was not considered by the clerk, then the judge shall review issues of fact and law de novo based on the record from the hearing below, as modified by the court, and any new evidence heard by the court.

(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. (1999-216, s. 1; 2011-344, s. 1; 2021-53, s. 3.5.)

SUBCHAPTER X. EXECUTION.

Article 28.

Execution.

§ 1-302. Judgment enforced by execution.

Where a judgment requires the payment of money or the delivery of real or personal property it may be enforced in those respects by execution, as provided in this Article. Where it requires the performance of any other act a certified copy of the judgment may be served upon the party against whom it is given, or upon the person or officer who is required thereby or by law to obey the same, and his obedience thereto enforced. If he refuses, he may be punished by the court as for contempt. (C.C.P., s. 257; Code, s. 441; Rev., s. 615; C.S., s. 663.)

§ 1-303. Kinds of; signed by clerk; when sealed.

There are three kinds of execution: one against the property of the judgment debtor, another against his person, and the third for the delivery of the possession of real or personal property, or such delivery with damages for withholding the same. They shall be deemed the process of the court, and shall be subscribed by the clerk, and when to run out of his county, must be sealed with the seal of his court. (C.C.P., s. 258; Code, s. 442; Rev., s. 616; C.S., s. 664.)

§ 1-304. Against married woman.

An execution may issue against a married woman, and it must direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise. (C.C.P., s. 259; Code, s. 443; Rev., s. 617; C.S., s. 665.)

§ 1-305. Clerk to issue, in six weeks; limitations on issuance.

(a) Subject to the provisions of G.S. 1A-1 (Rule 62) and subsection (b) below, the clerk of superior court shall issue executions on all unsatisfied judgments entered in the clerk's court, which are in full force and effect, upon the request of any party or person entitled thereto and upon payment of the necessary fees; provided, however, that the clerks of the superior court shall issue executions on all judgments entered in their respective courts on forfeiture of bonds in criminal cases within six weeks of the entry of the judgment, without any request or any advance payment of fees. Every clerk who fails to comply with the requirements of this section is liable to be amerced in the sum of one hundred dollars ($100.00) for the benefit of the party aggrieved, under the same rules that are provided by law for amercing sheriffs.

(b) The clerk may not issue an execution unless

(1) The judgment debtor's exemptions have been designated, or

(2) The judgment debtor has waived his exemptions as provided in G.S. 1C-1601(c), or

(3) The clerk determines that the exemptions are inapplicable to the particular claim as authorized by G.S. 1C-1603(a)(3). (1850, c. 17, ss. 1, 2, 3; R.C., c. 45, s. 29; Code, s. 470; Rev., s. 618; C.S., s. 666; 1953, c. 470; 1959, c. 1295; 1973, c. 1070, s. 1; 1981 (Reg. Sess., 1982), c. 1224, s. 15; 2010-96, s. 24(a); 2024-33, s. 20.)

§ 1-306. Enforcement as of course.

The party in whose favor judgment is given, and in case of the party's death, the party's personal representatives duly appointed, may at any time after the entry of judgment proceed to enforce it by execution, as provided in this Article. However, no execution upon any judgment which requires the payment of money may be issued at any time after ten years from the date of the entry thereof; but this proviso shall not apply to any execution issued solely for the purpose of enforcing the lien of a judgment upon any homestead, which has or shall hereafter be allotted within the ten years from the date of entry of the judgment, or any judgment directing the payment of alimony. Further, no execution upon any judgment which requires the recovery of personal property may be issued at any time after 10 years from the date of the entry of the judgment. (C.C.P., s. 255; Code, s. 437; Rev., s. 619; C.S., s. 667; 1927, c. 24; 1935, c. 98; 2010-96, s. 24(b).)

§ 1-307. Issued from and returned to court of rendition.

Executions and other process for the enforcement of judgments can issue only from the court in which the judgment for the enforcement of the execution or other final process was rendered; and

the returns of executions or other final process shall be made to the court of the county from which it issued. In all cases prior to the first day of March, 1945, where a judgment has been rendered in the superior court of one county and the transcript thereof has been docketed in the office of the clerk of the superior court of some other county or counties, all executions heretofore issued on such docketed transcript of judgment and all homestead proceedings, execution sales, judicial sales and assignments related thereto and based thereon are hereby declared to be lawful, legal and binding upon all purchasers, judgment debtors, judgment creditors, assignors and assignees, and on all parties to the original action and on all parties to or affected by any proceedings related to or based upon such execution, and all such sales, purchases, proceedings and assignments are hereby validated. (1871-2, c. 74; 1881, c. 75; Code, s. 444; Rev., s. 623; C.S., s. 669; 1945, c. 773.)

§ 1-308. To what counties issued.

When the execution is against the property of the judgment debtor, it may be issued to the sheriff of any county where the judgment is docketed. No execution may issue from the superior court upon any judgment until such judgment shall be docketed in the county to which the execution is to be issued. When it requires the delivery of real or personal property, it must be issued to the sheriff of the county where the property, or some part thereof, is situated. Execution may be issued at the same time to different counties. (C.C.P., s. 259; 1871-2, c. 74; 1881, c. 75; Code, s. 443; 1905, c. 412; Rev., s. 622; C.S., s. 670; 1953, c. 884.)

§ 1-309. Sale of land under execution.

Real property adjudged to be sold must be sold in the county where it lies, by the sheriff of the county or by a referee appointed by the court for that purpose; and thereupon the sheriff or referee must execute a conveyance to the purchaser, which conveyance shall be effectual to pass the rights and interests of the parties adjudged to be sold. (C.C.P., s. 259; Code, s. 443; Rev., s. 622; C.S., s. 671.)

§ 1-310. When dated and returnable.

(a) Executions shall issue in accordance with G.S. 1A-1, Rule 62. In no case shall an execution against property issue until 10 days after entry of judgment. Executions shall be dated as of the day on which they were issued and are returnable to the court from which they were issued not more than 90 days from that date. If an execution sale is postponed pursuant to G.S. 1-339.58, the 90-day period to return the execution to the court is extended by the number of days the sale is postponed.

(b) The sheriff shall separately notate on the return of execution for a judgment requiring the payment of money (i) any amount collected without an execution sale and the date of collection and, if multiple payments to the sheriff are collected on different dates pursuant to a single writ of execution, the individual dates of collection and the amount collected on each date and (ii) the date of levy and description of property levied and sold through an execution sale pursuant to Article 29B of this Chapter. (1870-1, c. 42, s. 7; 1873-4, c. 7; Code, s. 449; 1903, c. 544; Rev., s. 624; C.S., s. 672; 1927, c. 110; 1931, c. 172; 1953, c. 697; 1971, c. 381, s. 12; 1973, c. 1070, s. 2; 1977, c. 74, s. 1; 2021-47, s. 14(b); 2022-60, s. 2(a).)

§ 1-311. Against the person.

If the action is one in which the defendant might have been arrested, an execution against the person of the judgment debtor may be issued to any county within the State, after the return of an

execution against his property wholly or partly unsatisfied. But no execution shall issue against the person of a judgment debtor, unless an order of arrest has been served, as provided in the Article Arrest and Bail, or unless the complaint contains a statement of facts showing one or more of the causes of arrest required by law, whether such statement of facts is necessary to the cause of action or not. Provided, that where the facts are found by a jury, the verdict shall contain a finding of facts establishing the right to execution against the person; and where jury trial is waived and the court finds the facts, the court shall find facts establishing the right to execution against the person. Such findings of fact shall include a finding that the defendant either (i) is about to flee the jurisdiction to avoid paying his creditors, (ii) has concealed or diverted assets in fraud of his creditors, or (iii) will do so unless immediately detained. If defendant appears at the hearing on the debt and the judge has reason to believe that the defendant is indigent, he shall inform the defendant that if he is an indigent person he is entitled to services of counsel under G.S. 7A-451, that he may petition for preliminary release on the basis of his indigency, that if he does so he will have an opportunity within 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and provisional release, and that the judge will thereupon immediately appoint counsel for him if it is adjudged that he is unable to pay a lawyer. If defendant appears at the hearing on the debt and the judge provisionally concludes he is indigent, counsel should be appointed immediately pursuant to rules adopted by the Office of Indigent Defense Services. (C.C.P., s. 260; Code, s. 447; 1891, c. 541, s. 2; Rev., s. 625; C.S., s. 673; 1947, c. 781; 1977, c. 649, s. 1; 2000-144, s. 14.)

§ 1-312. Rights against property of defendant dying in execution.

Parties at whose suit the body of a person is taken in execution for a judgment recovered, their executors or administrators, may after the death of the person so taken and dying in execution, have the same rights against the property of the person deceased, as they might have had if that person had never been in execution. (21 James I, s. 24; R.C., c. 45, s. 28; Code, s. 469; Rev., s. 626; C.S., s. 674.)

§ 1-313. Form of execution.

The execution must be directed to the sheriff, or to the coroner when the sheriff is a party to or interested in the action. In those counties where the office of coroner is abolished, or is vacant, and in which process is required to be executed on the sheriff, the authority to execute such process shall be vested in the clerk of court; however, the clerk of court is hereby empowered to designate and direct by appropriate order some person to act in the clerk of court's stead to execute the same. The execution must also be subscribed by the clerk of the court, and must refer to the judgment, stating the county where the judgment roll or transcript is filed, the names of the parties, the amount of the judgment, if it is for money, the amount actually due thereon, and the time of docketing in the county to which the execution is issued, and shall require the officer substantially as follows:

(1) Against Property – No Lien on Personal Property until Levy. – If it is against the property of the judgment debtor, it shall require the officer to satisfy the judgment out of his personal property; and if sufficient personal property cannot be found, out of the real property belonging to him on the day when the judgment was docketed in the county, or at any time thereafter; but no execution against the property of a judgment debtor is a lien on his personal property, as against any bona fide purchaser from him for value, or as against any other execution, except from the levy thereof.

(2) Against Property in Hands of Personal Representative. – If it is against real or personal property in the hands of personal representatives, heirs, devisees, tenants of real property or trustees it shall require the officer to satisfy the judgment out of such property.

(3) Against the Person. – If it is against the person of the judgment debtor, it shall require the officer to arrest him, and commit him to the jail of the county until he pays the judgment or is released or discharged according to law. The execution shall include a statement that if the defendant is an indigent person he is entitled to services of counsel, that he may petition for preliminary release on the basis of his indigency, that if he does so he will have an opportunity within 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and provisional release, and that the judge will thereupon immediately appoint counsel for him if it is adjudged that he is unable to pay a lawyer.

(4) For Delivery of Specific Property. – If it is for the delivery of the possession of real or personal property, it shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, rents, or profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, to be specified therein, if a delivery cannot be had; and if sufficient personal property cannot be found, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter, and in that respect is deemed an execution against property.

(5) For Purchase Money of Land. – If the answer in an action for recovery of a debt contracted for the purchase of land does not deny, or if the jury finds, that the debt was so contracted, it is the duty of the court to have embodied in the judgment that the debt sued on was contracted for the purchase money of the land, describing it briefly; and it is also the duty of the clerk to set forth in the execution that the said debt was contracted for the purchase of the land, the description of which must be set out briefly as in the complaint. (C.C.P., s. 261; 1868-9, c. 148; 1879, c. 217; Code, ss. 234-236, 448; Rev., s. 627; C.S., s. 675; 1971, c. 653, s. 2; 1977, c. 649, s. 2; 2011-284, s. 3.)

§ 1-314. Variance between judgment and execution.

When property has been sold by an officer by virtue of an execution or other process commanding sale, no variance between the execution and the judgment whereon it was issued, in the sum due, in the manner in which it is due, or in the time when it is due, invalidates or affects the title of the purchaser of such property. (1848, c. 53; R.C., c. 44, s. 13; Code, s. 1347; Rev., s. 628; C.S., s. 676.)

§ 1-315. Property liable to sale under execution; bill of sale.

(a) The following property of the judgment debtor, not exempted from sale under the Constitution and laws of this State, may be levied on and sold under execution:

(1) Goods, chattels, and real property belonging to him.

(2) Leasehold estates of three years duration or more owned by him.

(3) Equitable and legal rights of redemption in personal and real property pledged or mortgaged by him, or transferred to a trustee for security by him.
(4) Real property or goods and chattels of which any person is seized or possessed in trust for him.
(5) Choses in action represented by instruments which are indispensable to the chose in action.
(6) Choses in action represented by indispensable instruments, which are secured by any interest in property, together with the security interest in property.
(7) Interests as vendee under conditional sales contracts of personal property.

(b) Upon the sale under execution of any property or interest for which no provision is otherwise made under this article for the furnishing of a deed or other instrument of title, the officer holding the sale shall execute and deliver to the purchaser a bill of sale.

(c) No execution shall be levied on growing crops until they are matured. (5 Geo. II, c. 7, s. 4; 1777, c. 115, s. 29, P.R.; 1812, c. 830, ss. 1, 2, P.R.; 1822, c. 1172, P.R.; 1844, c. 35; R.C., c. 45, ss. 1-5, 11; Code, ss. 450, 453; Rev., ss. 629, 632; 1919, c. 30; C.S., s. 677; 1961, c. 81.)

§ 1-316. Sale of trust estates; purchaser's title.

Upon the sale under execution of trust estates whereof the judgment debtor is beneficiary the sheriff shall execute a deed to the purchaser, and the purchaser thereof shall hold and enjoy the same freed and discharged from all encumbrances of the trustee. (1812, c. 830, P.R.; R.C., c. 45, s. 4; Code, s. 452; Rev., s. 630; C.S., s. 678.)

§ 1-317. Sheriff's deed on sale of equity of redemption.

The sheriff selling equitable and legal rights of redemption shall set forth in the deed to the purchaser thereof that the said estates were under mortgage at the time of judgment, or levy in the case of personal property and sale. (1812, c. 830, s. 2, P.R.; 1822, c. 1172, P.R.; R.C., c. 45, s. 5; Code, s. 451; Rev., s. 631; C.S., s. 679.)

§ 1-318. Forthcoming bond for personal property.

If a sheriff or other officer who has levied an execution or other process upon personal property permits it to remain with the possessor, the officer may take a bond, attested by a credible witness, for the forthcoming thereof to answer the execution or process; but the officer remains, nevertheless, in all respects liable as heretofore to the plaintiff's claim. (1807, c. 731, s. 3, P.R.; 1828, c. 12, s. 2; R.C., c. 45, s. 21; Code, s. 463; Rev., s. 633; C.S., s. 680.)

§ 1-319. Procedure on giving bond; subsequent levies.

When the forthcoming bond is taken the officer must specify therein the property levied upon and furnished to the surety a list of the property in writing under his hand, attested by at least one credible witness, and stating therein the day of sale. The property levied upon is deemed in the custody of the surety, as the bailee of the officer. All other executions thereafter levied on this property create a lien on the same from and after the respective levies, and shall be satisfied accordingly out of the proceeds of the sale of the property; but the officer thereafter levying shall not take the property out of the custody of the surety. But in all such cases sales of chattels shall take place within thirty days after the first levy; and if sale is not made within that time any other officer who has levied upon the property may seize and sell it. (1844, c. 34; 1846, c. 50; R.C., c. 45, s. 22; Code, s. 464; Rev., s. 634; C.S., s. 682.)

§ 1-320. Summary remedy on forthcoming bond.

If the condition of such bond be broken, the sheriff or other officer, on giving 10 days' previous notice in writing to any obligor therein, may on motion have judgment against him in a summary manner, before the superior court or before the district court, as the case may be, of the county in which the officer resides, for all damages which the officer has sustained, or may be adjudged liable to sustain, not exceeding the penalty of the bond, to be ascertained by a jury, under the direction of the court. (1822, c. 1141, P.R.; R.C., c. 45, s. 23; Code, s. 465; Rev., s. 635; C.S., s. 681; 1971, c. 268, s. 14.)

§ 1-321. Entry of returns on judgment docket; penalty.

When an execution is returned, the return of the sheriff or other officer must be noted by the clerk on the judgment docket; and when it is returned wholly or partially satisfied, it is the duty of the clerk of the court to which it is returned to send a copy of such last-mentioned return, under his hand, to the clerk of the superior court of each county in which such judgment is docketed, who must note such copy in his judgment docket, opposite the judgment, and file the copy with the transcript of the docket of the judgment in his office. A clerk failing to send a copy of the payments on the execution or judgment to the clerks of the superior court of the counties wherein a transcript of the judgment has been docketed, and a clerk failing to note said payment on the judgment docket of his court, shall, on motion, be fined one hundred dollars ($100.00) nisi, and the judgment shall be made absolute upon notice to show cause at the succeeding session of the superior court of his county. (1871-2, c. 74, s. 2; 1881, c. 75; Code, s. 445; Rev., s. 636; C.S., s. 683; 1971, c. 381, s. 12.)

§ 1-322. Cost of keeping livestock; officer's account.

The court shall make a reasonable allowance to officers for keeping and maintaining horses, cattle, hogs, or sheep, and all other property taken into their custody under legal process, the keeping of which is chargeable to them; and this allowance may be retained by the officers out of the sales of the property, in preference to the satisfaction of the process under which the property was seized or sold. The officer must make out his account and, if required, give the debtor or his agent a copy of it, signed by his own hand, and must return the account with the execution or other process, under which the property has been seized or sold, to the court to whom the execution or process is returnable, and shall swear to the correctness of the several items set forth; otherwise he shall not be permitted to retain the allowance. (1807, c. 731, P.R.; R.C., c. 45, ss. 25, 26; Code, ss. 466, 467; Rev., ss. 637, 638; C.S., s. 684; 1971, c. 268, s. 15.)

§ 1-323. Purchaser of defective title; remedy against defendant.

Where real or personal property is sold on any execution or decree, by any officer authorized to make the sale, and the sale is made legally and in good faith, and the property did not belong to the person against whose estate the execution or decree was issued, by reason of which the purchaser has been deprived of the property, or been compelled to pay damages in lieu thereof to the owner, the purchaser, his executors or administrators, may sue the person against whom such execution or decree was issued, or the person legally representing him, in a civil action, and recover such sum as he may have paid for the property, with interest from the time of payment; but the property, if personal, must be present at the sale and actually delivered to the purchaser. (1807, c. 723, P.R.; R.C., c. 45, s. 27; Code, s. 468; Rev., s. 639; C.S., s. 685.)

§ 1-324. Repealed by Session Laws 1949, c. 719, s. 2.

§ 1-324.1. Judgment against corporation; property subject to execution.

If a judgment is rendered against a corporation, the plaintiff may sue out such executions against its property as is provided by law to be issued against the property of natural persons, which executions may be levied as well on the current money as on the goods, chattels, lands and tenements of such corporation. (1901, c. 2, s. 66; Rev., s. 1212; C.S., s. 1201; 1955, c. 1371, s. 2.)

§ 1-324.2. Agent must furnish information as to corporate officers and property.

Every agent or person having charge or control of any property of the corporation, on request of a public officer having for service a writ of execution against it, shall furnish to him the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due, so far as he has knowledge of the same. (1901, c. 2, s. 67; Rev., s. 1213; C.S., s. 1202; 1955, c. 1371, s. 2.)

§ 1-324.3. Shares subject to execution; agent must furnish information.

Any share or interest in any bank, insurance company, or other joint stock company, that is or may be incorporated under the authority of this State, or incorporated or established under the authority of the United States, belonging to the defendant in execution, may be taken and sold by virtue of such execution in the same manner as goods and chattels. The clerk, cashier, or other officer of such company who has at the time the custody of the books of the company shall, upon being shown the writ of execution, give to the officer having it a certificate of the number of shares or amount of the interest held by the defendant in the company; and if he neglects or refuses to do so, or if he willfully gives a false certificate, he shall be liable to the plaintiff for the amount due on the execution, with costs. (1901, c. 2, ss. 69, 70; Rev., ss. 1214, 1215; C.S., s. 1203; 1955, c. 1371, s. 2.)

§ 1-324.4. Debts due corporation subject to execution; duty, etc., of agent.

If an officer holding an execution is unable to find other property belonging to the corporation liable to execution, he or the judgment creditor may elect to satisfy such execution in whole or in part out of any debts due the corporation, and it is the duty of any agent or person having custody of any evidence of such debt to deliver it to the officer, for the use of the creditor and such delivery, with a transfer to the officer in writing, for the use of the creditor and notice to the debtor, shall be a valid assignment thereof, and the creditor may sue for and collect the same in the name of the corporation, subject to such equitable set-offs on the part of the debtor as in other assignments. Every agent or person who neglects or refuses to comply with the provisions of this section and G.S. 1-324.2 is liable to pay to the execution creditor the amount due on the execution, with costs. (1901, c. 2, s. 68; Rev., s. 1216; C.S., s. 1204; 1955, c. 1371, s. 2.)

§ 1-324.5. Violations of three preceding sections misdemeanor.

If any agent or person having charge or control of any property of a corporation, or any clerk, cashier, or other officer of a corporation, who has at the time the custody of the books of the company, or if any agent or person having custody of any evidence of debt due to a corporation, shall, on request of a public officer having in his hands for service an execution against the said corporation, willfully refuse to give to such officer the names of the directors and officers thereof, and a schedule of all its property, including debts due or to become due, or shall willfully refuse to

give to such officer a certificate of the number of shares, or amount of interest held by such corporation in any other corporation, or shall willfully refuse to deliver to such officer any evidence of indebtedness due or to become due to such corporation, he shall be guilty of a Class 1 misdemeanor. (1901, c. 2, ss. 67, 68, 70; Rev., s. 3690; C.S., s. 1205; 1955, c. 1371, s. 2; 1993, c. 539, s. 1; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 1-324.6. Proceedings when custodian of corporate books is a nonresident.

When the clerk, cashier, or other officer of any corporation incorporated under the laws of this State, who has the custody of the stock-registry books, is a nonresident of the State, it is the duty of the sheriff receiving a writ of execution issued out of any court of this State against the goods and chattels of a defendant in execution holding stock in such company to send by mail a notice in writing, directed to the nonresident clerk, cashier, or other officer at the post office nearest his reputed place of residence, stating in the notice that he, the sheriff, holds the writ of execution, and out of what court, at whose suit, for what amount, and against whose goods and chattels the writ has been issued, and that by virtue of such writ he seizes and levies upon all the shares of stock of the company held by the defendant in execution on the day of the date of such written notice. It is also the duty of the sheriff on the day of mailing the notice to affix and set upon any office or place of business of such company, within his county, a like notice in writing, and on the same day to serve like notice in writing upon the president and directors of the company, or upon such of them as reside in his county, either personally or by leaving the same at their respective places of abode. The sending, setting up, and serving of such notices in the manner aforesaid constitute a valid levy of the writ upon all shares of stock in such company held by the defendant in execution, which have not at the time of the receipt of the notice by the clerk, cashier, or other officer, who has custody of the stock-registry books, been actually transferred by the defendant, and thereafter any transfer or sale of such shares by the defendant in execution is void as against the plaintiff in the execution, or any purchaser of such stock at any sale thereunder. (1901, c. 2, s. 71; Rev., s. 1217; C.S., s. 1206; 1955, c. 1371, s. 2.)

§ 1-324.7. Duty and liability of nonresident custodian.

The nonresident clerk, cashier, or other officer in such corporation, to whom notice in writing is sent as prescribed in G.S. 1-324.6, shall send forthwith to the officer having the writ, a statement of the time when he received the notice and a certificate of the number of shares held by the defendant in the corporation at the time of the receipt, not actually transferred on the books of the corporation, and the sheriff, or other officer, on receipt by him of this certificate, shall insert the number of shares in the inventory attached to the writ. If the clerk, cashier, or other officer in such corporation neglects to send the certificate as aforesaid or willfully sends a false one, he is liable to the plaintiff for double the amount of damages occasioned by his neglect, or false certificate, to be recovered in an action against him, but the neglect to send, or miscarriage of the certificate, does not impair the validity of the levy upon the stock. (1901, c. 2, s. 72; Rev., s. 1218; C.S., s. 1207; 1955, c. 1371, s. 2.)

Article 29.

Execution and Judicial Sales.

§§ 1-325 through 1-328. Repealed by Session Laws 1949, c. 719, s. 2.

§ 1-329. Transferred to § 1-339.72 by Session Laws 1949, c. 719, s. 3.

§ 1-330. Repealed by Session Laws 1949, c. 719, s. 2.

§ 1-331. Transferred to § 1-339.73 by Session Laws 1949, c. 719, s. 3.

§ 1-332. Transferred to § 1-339.74 by Session Laws 1949, c. 719, s. 3.

§§ 1-333 through 1-334. Repealed by Session Laws 1949, c. 719, s. 2.

§ 1-335. Transferred to § 1-339.75 by Session Laws 1949, c. 719, s. 3.

§ 1-336. Repealed by Session Laws 1949, c. 719, s. 2.

§ 1-337. Transferred to § 1-339.49 by Session Laws 1949, c. 719, s. 2.

§ 1-338. Transferred to § 1-339.50 by Session Laws 1949, c. 719, s. 2.

§ 1-339. Repealed by Session Laws 1949, c. 719, s. 2.

Article 29A.

Judicial Sales.

Part 1. General Provisions.

§ 1-339.1. Definitions.

(a) A judicial sale is a sale of property made pursuant to an order of a judge or clerk in an action or proceeding in the superior or district court, including a sale pursuant to an order made in an action in court to foreclose a mortgage or deed of trust, but is not

(1) A sale made pursuant to a power of sale
   a. Contained in a mortgage, deed of trust, or conditional sale contract, or
   b. Granted by statute with respect to a mortgage, deed of trust, or conditional sale contract, or

(2) A resale ordered with respect to any sale described in subsection (a)(1), where such original sale was not held under a court order, or

(3) An execution sale, or

(4) A sale ordered in a criminal action, or

(5) A tax foreclosure sale, or

(6) A sale made pursuant to Article 15 of Chapter 35A of the General Statutes, relating to sales of estates held by the entireties when one or both spouses are mentally incompetent, or

(7) A sale made in the course of liquidation of a bank pursuant to Article 9 of Chapter 53C of the General Statutes, or

(8) A sale made in the course of liquidation of an insurance company pursuant to Article 30 of Chapter 58 of the General Statutes, or

(8a) A lease, sale, or exchange made pursuant to G.S. 35A-1251(17) or G.S. 35A-1252(14), unless any order thereunder requires, or

(9) Any other sale the procedure for which is specially provided by any statute other than this Article.

(b) As hereafter used in this Article, "sale" means a judicial sale. (1949, c. 719, s. 1; 1971, c. 268, s. 16; 1987, c. 550, s. 12; 1989, c. 473, s. 10; 2003-221, s. 4; 2012-56, s. 5.)

§ 1-339.2. Application of Part 1.

The provisions of Part 1 of this Article apply to both public and private sales except where otherwise indicated. (1949, c. 719, s. 1.)

§ 1-339.3. Application of Article to sale ordered by clerk; by judge; authority to fix procedural details.

(a) The procedure prescribed by this Article applies to all sales ordered by a clerk of the superior court.

(b) The procedure prescribed by this Article applies to all sales ordered by a judge of the superior or district court, except that the judge having jurisdiction may, upon a finding and a recital in the order of sale of the necessity or advisability thereof, vary the procedure from that herein prescribed, but not inconsistently with G.S. 1-339.6 restricting the place of sale of real property.

(c) The judge or clerk of court having jurisdiction has authority to fix and determine all necessary procedural details with respect to sales in all instances in which this Article fails to make definite provisions as to such procedure. (1949, c. 719, s. 1; 1971, c. 268, ss. 17, 18; 2001-271, s. 1.)

§ 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 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 the sale be a private sale. (1955, c. 74; 1971, c. 268, s. 18; 1997-83, s. 1.)

§ 1-339.4. Who may hold sale.

An order of sale may authorize the persons designated below to hold the sale:

(1) In any proceeding, a commissioner specially appointed therefor;
(2) In a proceeding to sell property of a decedent, the administrator, executor or collector of such decedent's estate;
(3) In a proceeding to sell property of a minor, the guardian of such minor's estate;
(4) In a proceeding to sell property of an incompetent, the guardian or trustee of such incompetent's estate;
(5) In a proceeding to sell property of an absent or missing person, the administrator, collector, conservator, or guardian of the estate of such absent or missing person;
(6) In a proceeding to foreclose a deed of trust, the trustee named in the deed of trust;
(7) In a receivership proceeding, the receiver;
(8) In a proceeding to sell property of a trust, the trustee.
(9) Repealed by Session Laws 1998-182, s. 13. (1949, c. 719, s. 1; 1993, c. 377, s. 2; 1997-379, s. 1.8; 1998-182, s. 13.)

§ 1-339.5. Days on which sale may be held.

A sale may be held on any day except Sunday. (1949, c. 719, s. 1.)

§ 1-339.6. Place of public sale.

(a) Every public sale of real property shall be held in the county where the property is situated unless the property consists of a single tract situated in two or more counties.

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

(c) A public sale of personal property may be held at any place in the State designated in the order. (1949, c. 719, s. 1.)

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

The person holding a public sale of personal property shall have the property present at the place of sale unless the order of sale provides otherwise as authorized by G.S. 1-339.13(c). (1949, c. 719, s. 1.)

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

(a) When an order of public sale directs the sales of separate tracts of real property situated in different counties, exclusive jurisdiction over 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 upset bids submitted for separate tracts of property situated in other counties as well as in the clerk's own county. When the public sale is by auction an upset bid may be filed only with that clerk.

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

(c) When the public sale is by auction, the sale of each separate tract shall be subject to separate upset bids. 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 shall be treated as a separate sale.

(d) When real property is sold in a county other than the county where the proceeding, in which the sale was ordered, is pending, the person authorized to hold the sale shall cause a certified copy of the order of confirmation to be recorded in the office of the register of deeds of the county where such property is situated, and it shall not be necessary for the clerk of court to probate said certified copy of the order of confirmation. (1949, c. 719, s. 1; 1965, c. 805; 1971, c. 268, ss. 18, 19; 1997-83, ss. 2, 3; 2001-271, s. 2.)

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

(a) When real property to be sold consists of separate lots or other units or when personal property consists of more than one article, the judge or clerk of court having jurisdiction may direct specifically

(1) That it be sold as a whole, or

(2) That it be sold in designated parts, or

(3) That it be offered for sale by each method, and then sold by the method which produces the highest price.

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

(c) When an order of sale of such real or personal property as is described in subsection (a) of this section makes no specific provision for the sale of the property as a whole or in parts, the person authorized to make the sale has authority in his discretion to sell the property by whichever method described in subsection (a) of this section he deems most advantageous. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

§ 1-339.10. Bond of person holding sale.

(a) Whenever a commissioner specially appointed or a trustee in a deed of trust is ordered to sell property, the judge or clerk of court having jurisdiction

(1) May in any case require the commissioner or trustee, before receiving the proceeds of the sale, to furnish bond to cover such proceeds, and

(2) Shall require the commissioner or trustee to furnish such bond when the commissioner or trustee is to hold the proceeds of the sale other than for immediate disbursement upon confirmation of the sale.

(b) Whenever any administrator or collector of a decedent's estate, or guardian or trustee of a minor's or incompetent's estate, or administrator, collector, conservator or guardian of an absent or missing person's estate, is ordered to sell property, the judge or clerk having jurisdiction shall require such fiduciary, before receiving the proceeds of the sale, to furnish bond or to increase his then existing bond, to cover such proceeds.

(c) Whenever an executor or trustee of a testamentary trust is ordered to sell real property, the judge or clerk having jurisdiction shall require such executor or trustee of a testamentary trust, before receiving the proceeds of the sale, to furnish bond to cover such proceeds, unless the will provides otherwise, in which case the judge or clerk may require such bond.

(d) Whenever a receiver is ordered to sell real property, the judge having jurisdiction may, when he deems it advisable, require the receiver to furnish bond, or to increase his then existing bond, to cover such proceeds.

(e) The bond required by this section need not be furnished when the property is to be sold by a duly authorized trust company acting as commissioner or fiduciary.

(f) The bond shall be executed by one or more sureties and shall be subject to the approval of the judge or clerk having jurisdiction.

(g) If the bond is to be executed by personal sureties, the amount of the bond shall be double the amount of the proceeds of the sale to be received by the commissioner or fiduciary, if such amount can be determined in advance, and, if not, such amount as the judge or clerk may determine to be approximately double the amount of the proceeds to be received. If the bond is to be executed by a duly authorized surety company, the amount of the bond shall be one and one-fourth times the amount of the proceeds determined as set out in this subsection.

(h) The bonds shall be payable to the State of North Carolina for the use of the parties in interest. A bond furnished by a commissioner or by a trustee in a deed of trust shall be conditioned that the principal in the bond shall comply with the orders of the court made in the proceeding with respect to the funds received and shall properly account for the proceeds of the sale received by

him. A bond furnished by any other fiduciary shall be conditioned as required by law for the original bond required, or which might have been required, of such fiduciary at the time of his qualification.

(i) The premium on any bond furnished pursuant to this section is a part of the costs of the proceeding, to be paid out of the proceeds of the sale. (1949, c. 719, s. 1; 1971, c. 268, s. 18; 1993, c. 377, s. 3.)

§ 1-339.11. Compensation of person holding sale.

(a) If the person holding a sale is a commissioner specially appointed or a trustee in a deed of trust, the judge or clerk of court having jurisdiction shall fix the amount of his compensation and order the payment thereof out of the proceeds of the sale.

(b) If the person holding a sale is any other person, the judge or clerk may, but is not required to, fix his compensation and order the payment thereof out of the proceeds of the sale; when compensation is not fixed in this manner, compensation may be fixed and paid in the usual manner provided with respect to such fiduciary for receiving and disbursing funds. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

§ 1-339.12. Clerk's authority to compel report or accounting; contempt proceeding.

Whenever any person fails to file any report or account, as provided by this Article, or files an incorrect or incomplete report or account, the clerk of the superior court, having jurisdiction, on his own motion or on motion of any interested party, may issue an order directing such person to file a correct and complete report or account within twenty days after service of the order on him. If such person fails to comply with the order, the clerk may issue an attachment against him for contempt, and may commit him to jail until he files such correct and complete report or account. (1949, c. 719, s. 1.)

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

§ 1-339.13. Public sale; order of sale.

(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 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;

(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; 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.

(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; and

(3) Specify the number of appraisals to be obtained pursuant to G.S. 1-339.13A.

(c) The order of public sale may provide that personal property need not be present at the place of sale when the nature, condition or use of the property is such that the judge or clerk ordering the sale deems it impractical or inadvisable to require the presence of the property at the sale. In such event, the order shall provide that reasonable opportunity be afforded prospective bidders to inspect the property prior to the sale, and that notice as to the time and place for inspection shall be set out in the notice of sale. (1949, c. 719, s. 1; 1997-83, ss. 4, 5.)

§ 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. (1997-83, s. 6.)

§ 1-339.14. Public sale; judge's approval of clerk's order of sale.

An order of public sale of personal property in which a minor or incompetent has an interest, which is made by a clerk of the superior court, shall not be effective, except in the case of perishable property as provided by G.S. 1-339.19, unless and until such order is approved by the resident judge or the judge regularly holding the courts of the district. (1949, c. 719, s. 1.)

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

The notice of public sale shall:

(1) Refer to the order authorizing the sale;

(2) 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 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 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, 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. (1949, c. 719, s. 1; 1997-83, s. 7.)

§ 1-339.16. Public sale; time for beginning advertisement.

An order of sale may provide for the beginning of the advertisement of sale at any time after the order is issued. If the order does not specify such time, the advertisement may be begun at any time after the order is issued. (1949, c. 719, s. 1.)

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

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

(1) Be posted, 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 at least 20 days immediately preceding the sale; and

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

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

b. If no newspaper qualified for legal advertising is published in the county, in a newspaper having 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 seven days, including Sundays; and

(2) The date of the last publication shall be not more than 10 days preceding the date of the 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 North Carolina Forest Service of the Department of Agriculture and Consumer Services for the county or counties in which the timber to be sold is located.

(d) In addition to the other requirements of this section, the notice of public sale shall be posted or the sale shall be 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. (1949, c. 719, s. 1; 1965, c. 41; 1967, c. 979, s. 1; 1997-83, s. 8; 2001-271, s. 3; 2011-145, s. 13.25(kk); 2013-155, s. 1.)

§ 1-339.18. Public sale; posting notice of sale of personal property.

(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, 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.

(b) In addition to the foregoing, the notice of public sale shall be otherwise advertised as may be required by the judge or clerk of court pursuant to the provisions of G.S. 1-339.13(b)(2). (1949, c. 719, s. 1; 1971, c. 268, s. 18; 1997-83, s. 9.)

§ 1-339.19. Public sale; exception; perishable property.

If personal property to be sold at public sale is determined by the judge or clerk of court having jurisdiction to be perishable property because subject to rapid deterioration, he may order the sale thereof to be held at such time and place and upon such notice to be given in such manner and for such length of time as he deems advisable. The order of sale of such perishable property of a minor or incompetent when made by the clerk need not be approved by the judge. Confirmation of any sale of such perishable property is not necessary unless required by the order of sale. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

§ 1-339.20. Public sale; postponement of sale.

(a) A person authorized to hold a public sale by auction may postpone the sale to a day certain not later than 90 days after the original date for the 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 90 days after the original date for the opening of bids if any of the following occurs:

(1) There are no bidders.

(2) In the person's judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty.

(3) There are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in the person's judgment, to hold the sale on that day.

(4) The person is unable to hold the sale because of illness or for other good reason.

(5) Other good cause exists.

The person authorized to hold the sale may postpone the sale more than once whenever any of these conditions are met, so long as the sale is held not later than 90 days after the original date for the sale, as computed pursuant to G.S. 1A-1, Rule 6.

(b) Upon each postponement of public sale the person authorized to hold the sale shall personally, or through the person's agent or attorney, do all of the following:

(1) At the time and place advertised for the sale or for the opening of sealed bids, publicly announce the postponement.

(2) On the same day, attach to or enter on the notice of sale, 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.

(2a) Give written or oral notice of postponement to each party previously served pursuant to G.S. 1A-1, Rule 4(j). Written notice of postponement shall be served in any manner provided in G.S. 1A-1, Rule 5(b).

(3) In the case of a public sale of timber by sealed bid, give notice of postponement to each person that submitted a bid.

(c) The notice of postponement shall be signed by the person authorized to hold the sale, or by the person's agent or attorney, and shall state the following:

(1) That the sale is postponed.

(2) In the case of a sale by public auction, the hour and date to which the sale is postponed.

(2a) In the case of a sale of timber by sealed bid, the date, time, and place to which the opening of bids is postponed.

(3) The reason for the postponement.

(4) Repealed by Session Laws 2022-60, s. 1, effective October 1, 2022, and applicable to sales noticed on or after that date.

(d) If a public sale is not held at the time fixed for the sale and is not postponed as provided by this section, the person authorized to make the sale shall report these facts to the judge or clerk of court having jurisdiction, who shall order the time and place of the public sale of the property and the manner and length of time for the notice of the sale. (1949, c. 719, s. 1; 1971, c. 268, s. 18; 1997-83, ss. 10-12; 2022-60, s. 1.)

§ 1-339.21. Public 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. (1949, c. 719, s. 1; 1997-83, s. 13.)

§ 1-339.22. Public 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 a continuance becomes necessary, the person holding the sale shall publicly announce the time to which the sale is continued. (1949, c. 719, s. 1; 1997-83, s. 14.)

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

(a) When any person interested as a creditor, devisee, distributee, or otherwise, in the proceeds of a public sale of personal property, objects at the sale to the completion of the sale of any article of property on account of the insufficiency of the amount bid, title to such property shall not pass and possession of the property shall not be delivered until the sale of such property is reported and is confirmed by the judge or clerk of court having jurisdiction; but such objection to the completion of the sale of any article of property shall not prevent the completion of the sales of articles of property to which no objection is made where the same have been separately sold. When a judge or clerk having jurisdiction fails or refuses to confirm a sale of property which has thus been objected to, the procedure for a new sale of such property, including a new order of sale, shall be the same as if no such attempted sale has been held. This subsection shall not apply to perishable property sold pursuant to G.S. 1-339.19.

(b) Except as provided in subsection (a), the person holding a public sale of personal property shall deliver the property to the purchaser immediately upon compliance by the purchaser with the terms of the sale.

(c) The person holding a public sale may execute and deliver a bill of sale or other muniment of title for any personal property sold, and, upon application of the purchaser, shall do so when required by the judge or clerk of court having jurisdiction. (1949, c. 719, s. 1; 1971, c. 268, s. 18; 2011-284, s. 4.)

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

(a) The person holding a public sale shall, within five days after the date of the 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.

(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) 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 this price was the highest bid therefor; and

(8) The date of the report.

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

(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). (1949, c. 719, s. 1; 1997-83, ss. 15-17.)

§ 1-339.25. Public sale; upset bid on real property; compliance bond.

(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 or the last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of the sale or the last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court with whom the report of sale or the last notice of upset bid was filed, by the close of normal business hours on the tenth day after the filing of the report of sale or the last notice of upset bid, and if the tenth day falls upon a Sunday or legal holiday when the courthouse is closed for transactions, 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 and the notice of upset bid may be filed on the day following when the office is open for the regular dispatch of its business. Except as provided in G.S. 1-339.27A and G.S. 1-339.30, there shall be no resales; however, there may be successive upset bids, each of which shall be followed by a period of 10 days for a further upset bid. If a timely motion for resale is filed under G.S. 1-339.27A, no upset bids may be filed while the motion is pending.

(b) The clerk of the superior court may require an upset bidder or the highest bidder at a resale held under G.S. 1-339.30 also to deposit with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond, approved by the clerk. The compliance bond shall be in the amount the clerk deems adequate, but in no case greater than the amount of the bid of the person being required to furnish the bond, less the amount of any required deposit. The compliance bond shall be payable to the State of North Carolina for the use of the parties in interest and shall be conditioned on the principal obligor's compliance with the bid.

(c) Repealed by Session Laws 2001-271, s. 4, effective January 1, 2002. See editor's note for applicability.

(d) Repealed by Session Laws 2001-271, s. 4, effective January 1, 2002. See editor's note for applicability.

(d1) At the time that an upset bid on real property is submitted to the court as provided in subsection (a) of this section, together with a compliance bond if one is required, the upset bidder shall file with the clerk a notice of upset bid. The notice of upset bid shall:

(1) State the name, address, and telephone number of the upset bidder;

(2) Specify the amount of the upset bid;

(3) Provide that the sale shall remain open for a period of 10 days after the date on which the notice of upset bid is filed for the filing of additional upset bids as permitted by law; and

(4) Be signed by the upset bidder or the attorney or the agent of the upset bidder.

(d2) When an upset bid is made as provided in this section, the clerk shall notify the person holding the sale who shall thereafter mail a written notice of upset bid by first-class mail to the last known address of the last prior bidder and the current record owners of the property.

(d3) When an upset bid is made as provided in this section, the last prior bidder, regardless of how the bid was made, is released from any further obligation on account of the bid, and any deposit or bond provided by the last prior bidder shall be released.

(d4) Any person offering to purchase real property by upset bid as permitted in this Article is subject to and bound by the terms of the original notice of sale except as modified by court order or the provisions of this Article.

(d5) The clerk of superior court shall make all orders as may be just and necessary to safeguard the interests of all parties and may fix and determine all necessary procedural details with respect to upset bids in all instances in which this Article fails to make definite provisions as to that procedure.

(e) The provisions of this section do not apply to public sales of timber by sealed bid. (1949, c. 719, s. 1; 1963, c. 858; 1967, c. 979, s. 1; 1997-83, ss. 18, 19; 1997-119, s. 1; 1997-456, s. 28; 2001-271, s. 4; 2002-28, s. 1; 2003-337, s. 8.)

§ 1-339.26. Public 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 of any 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 part shall thereafter be treated as a separate sale for the purpose of determining the applicable procedure. (1949, c. 719, s. 1; 1971, c. 268, s. 18; 1997-83, s. 20; 2001-271, s. 5.)

§ 1-339.27: Repealed by Session Laws 2001-271, s. 6.

§ 1-339.27A. Ordering resale of real property after sale or upset bid.

Upon motion of an interested person filed within 10 days after a sale or upset bid and for good cause, the judge or clerk having jurisdiction may order a resale of real property. If the motion is granted based on the inadequacy of the last bid, the procedure for the resale is the same in every respect as is provided by this Article in the case of an original public sale, and the last bidder is released from the bidder's obligations under the bid. If the motion is granted for any other reason,

the last bid becomes the opening bid at resale, and if there is no bid at resale other than the last bid, the person who made the last bid is the highest bidder at resale. If the motion is denied, the 10-day period for subsequent upset bids begins upon the entry of the order. (2001-271, s. 7.)

§ 1-339.28. Public sale; confirmation of sale.

(a) No public sale of real property may be consummated until confirmed as follows:

(1) If a public sale is ordered by a judge of the Superior Court Division, it may thereafter be confirmed by a resident superior court judge of the district or a superior court judge regularly holding the courts of the district.

(2) If a public sale is ordered by a judge of the District Court Division, it may thereafter be confirmed by the judge so ordering, the chief district judge, or any district judge authorized by the chief judge to hear motions and enter interlocutory orders.

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

(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 a resident superior court judge of, or a judge regularly holding the courts of, the district or set of districts as defined in G.S. 7A-41.1(a).

(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.

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

(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. (1949, c. 719, s. 1; 1971, c. 268, s. 20; 1997-83, ss. 26-28.)

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

(a) Upon confirmation of a public sale of real property, the person authorized to hold the sale, or such other person as may be designated by the judge or clerk of court having jurisdiction, shall prepare and tender to the purchaser a duly executed deed for the property sold and, upon compliance by the purchaser with the terms of sale, shall deliver the deed to the purchaser.

(b) A person executing a deed to real property being conveyed pursuant to a public sale may recite in the deed, in addition to the usual provisions, substantially as follows

(1) The authority for making the sale,

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

(3) The name of the person authorized to make the sale,
(4) The fact that the sale was duly advertised,
(5) The date of the sale,
(6) The name of the highest bidder and the price bid,
(7) That the sale has been confirmed,
(8) That the terms of the sale have been complied with, and
(9) That the person executing the deed has been authorized to execute it.

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

(d) An order for possession granted pursuant to the preceding subsection shall be directed to the sheriff, shall authorize him to remove the party or parties in possession, and their personal property, from the premises and to put the purchaser in possession, and shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2. (1949, c. 719, s. 1; 1971, c. 268, s. 18; 1987, c. 627, s. 1.)

§ 1-339.30. Public sale; failure of bidder to make cash deposit or to comply with bid; resale.

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

(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.

(b) When the highest bidder at a public sale of personal property not required to be confirmed fails to make the cash payment, if any, required by the terms of the sale, the person holding the sale shall at the same time and place again offer the property for sale. In the event no other bid is received, a new sale may be advertised in the regular manner provided by this Article for an original sale.

(c) When the highest bidder at a public sale of personal property required to be confirmed fails to comply with his bid within 10 days after notice given by the person holding the sale or after a bona fide attempt to give such notice that the sale has been confirmed, the judge or clerk having jurisdiction may order a resale. The procedure for the resale is the same in every respect as is provided by this Article in the case of an original public sale of personal property.

(d) When the highest bidder at a public sale or resale of real property by auction or any upset bidder fails to comply with the bid within 10 days after the tender to the bidder of a deed for the property or after a bona fide attempt to tender the deed, the judge or clerk having jurisdiction may order a resale. The procedure for 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.

(d1) When the highest bidder at a public sale or resale of timber by sealed bid fails to comply with the bid within 10 days after the tender to the bidder 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.

(e) A defaulting bidder at any sale or resale or any defaulting upset bidder is liable on the bid, and in case a resale is had because of the default, the defaulting bidder remains liable to the extent that the final sale price is less than the bid, and for all costs of the resale or resales. Any deposit or compliance bond made by the defaulting bidder shall secure payment of the amount, if any, for which the defaulting bidder remains liable under this section.

(f) Nothing in this section deprives any person of any other remedy against the defaulting bidder. (1949, c. 719, s. 1; 1997-83, ss. 29-33; 2001-271, s. 8.)

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

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

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

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

(3) When the commissioner or trustee is required to collect deferred payments,

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

b. If the period of time during which he is required to collect deferred payments extends over more than one year, he shall file an annual report of his receipts and disbursements, and

c. After collecting all deferred payments, he shall file a final report.

(b) The clerk shall audit and record the reports and accounts required to be filed pursuant to this section. (1949, c. 719, s. 1.)

§ 1-339.32. Public sale; final report of person, other than commissioner or trustee in deed of trust.

An administrator, executor or collector of a decedent's estate, or a receiver, or a guardian or trustee of a minor's or incompetent's estate, or an administrator, collector, conservator or guardian of an absent or missing person's estate, is not required to file a special account of his receipts and disbursements for property sold at public sale pursuant to this Article unless so directed by the judge or clerk of court having jurisdiction of the sale proceeding, but shall include in his next following account or report, either annual or final, an account of such receipts and disbursements. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

Part 3. Procedure for Private Sales of Real and Personal Property.

§ 1-339.33. Private sale; order of sale.

Whenever a private sale is ordered, the order of sale shall

(1) Designate the person authorized to make the sale;

(2) Describe real property to be sold, by reference or otherwise, sufficiently to identify it;

(3) Describe personal property to be sold, by reference or otherwise, sufficiently to indicate its nature and quantity; and
(4) Prescribe such terms of sale as the judge or clerk of court ordering the sale deems advisable. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

§ 1-339.34. Private sale; exception; certain personal property.

(a) Notwithstanding any provisions of this Article, property described below may be sold at private sale at the current market price after first obtaining an order of sale:
(1) Property consisting of stocks, bonds or other securities the current market value of which is established by sales on any stock or securities exchange supervised or regulated by the United States government or any other of its agencies or departments, or
(2) Property consisting of stocks, bonds or other securities which are not sold on any stock or securities exchange supervised or regulated by the United States government or any other of its agencies or departments, but which are found by the judge or clerk having jurisdiction to have a known or readily ascertainable market value, or
(3) Property consisting of cattle, hogs, or other livestock, or cotton, corn, tobacco, peanuts or other farm commodities or produce, found by the judge or clerk having jurisdiction to have a known or readily ascertainable market value.

(b) Property determined by the judge or clerk having jurisdiction to be perishable property because subject to rapid deterioration may be sold at private sale after first obtaining an order of sale.

(c) Any sale made pursuant to this section is not subject to an upset bid, and is not required to be confirmed, but such sale is final. (1949, c. 719, s. 1.)

§ 1-339.35. Private sale; report of sale.

(a) The person holding a private sale shall, within five days after the date of the sale, file a report with the clerk of the superior court of the county where the proceeding for the sale is pending.

(b) The report shall be signed and shall show
(1) The title of the action or proceeding;
(2) The authority under which the person making the sale acted;
(3) 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;
(4) A description of personal property sold, sufficient to indicate the nature and quantity of the property sold to each purchaser;
(5) The name or names of the person or persons to whom the property was sold;
(6) The price at which the property, or each part thereof, was sold, and the terms of the sale; and
(7) The date of the report. (1947, c. 719, s. 1.)

§ 1-339.36. Private sale; upset bid; subsequent procedure; defaulting bidder.

(a) Every private sale of real or personal property, except a sale of personal property as provided by G.S. 1-339.34, is subject to an upset bid on the same conditions and in the same manner as is provided by G.S. 1-339.25.

(b) When an upset bid is made for property sold at private sale, subsequent procedure with respect to the upset bid is the same as for upset bids submitted in connection with real property sold at public sale, except that the notice of any resale of personal property held pursuant to an order granted under G.S. 1-339.27A need not be published in a newspaper but shall be posted as provided by G.S. 1-339.17.

(c) Subsections (e) and (f) of G.S. 1-339.30 apply to a defaulting bidder in a private sale. (1949, c. 719, s. 1; 2001-271, s. 9; 2021-91, s. 2(a).)

§ 1-339.37. Private sale; confirmation.

If no upset bid for property sold at private sale is submitted within 10 days after the report of sale or the last notice of upset bid is filed, the sale may then be confirmed, and the provisions of G.S. 1-339.28(a) and (b) are applicable to such confirmation whether the property sold is real or personal. Unless otherwise provided in the order of sale, no confirmation is required of any sale held as provided by G.S. 1-339.34. (1949, c. 719, s. 1; 2001-271, s. 10.)

§ 1-339.38. Private sale; real property; deed; order for possession.

(a) Upon confirmation of a private sale of real property, the person authorized to hold the sale, or such other person as may be designated by the judge or clerk of court having jurisdiction, shall prepare and tender to the purchaser a duly executed deed for the property sold and, upon compliance by the purchaser with the terms of the sale, shall deliver the deed to the purchaser.

(b) The judge or clerk of court having jurisdiction of the proceeding in which the property is sold may grant an order for possession of real property so sold and conveyed, as against all persons in possession who are parties to the proceeding. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

§ 1-339.39. Private sale; personal property; delivery; bill of sale.

Upon compliance by the purchaser with the terms of a private sale of personal property, and upon confirmation of the sale when confirmation is required by G.S. 1-339.37, the person authorized to hold the sale, or such other person as may be designated by the judge or clerk of court having jurisdiction, shall deliver the property to the purchaser, and may execute and deliver a bill of sale or other muniment of title, and, upon application of the purchaser, shall do so when required by the judge or clerk having jurisdiction. (1949, c. 719, s. 1; 1971, c. 268, s. 18.)

§ 1-339.40. Private sale; final report.

(a) A commissioner or a trustee in a deed of trust authorized pursuant to G.S. 1-339.4 to hold a private sale of property shall make such a final report as is specified in G.S. 1-339.31.

(b) Any other person authorized pursuant to G.S. 1-339.4 to hold a private sale of property shall make such a final report as is specified in G.S. 1-339.32. (1949, c. 719, s. 1.)

Article 29B.

Execution Sales.

Part 1. General Provisions.

§ 1-339.41. Definitions.

(a) An execution sale is a sale of property by a sheriff or other officer made pursuant to an execution.

(b) As used in this article,

(1) "Sale" means an execution sale;

(2) "Sheriff" means a sheriff or any officer authorized to hold an execution sale. (1949, c. 719, s. 1.)

§ 1-339.42. Clerk's authority to fix procedural details.

The clerk of the superior court who issues an execution has authority to fix and determine all necessary procedural details with respect to sales in all instances in which this Article fails to make definite provisions as to such procedure. (1949, c. 719, s. 1.)

§ 1-339.43. Days on which sale may be held.

A sale may be held on any day except Sunday. (1949, c. 719, s. 1.)

§ 1-339.44. Place of sale.

(a) Every sale of real property shall be held at the courthouse door in the county where the property is situated unless the property consists of a single tract situated in two or more counties.

(b) A sale of a single tract of real property situated in two or more counties may be held at the courthouse door in any one of the counties in which any part of the tract is situated, but no sheriff shall hold any sale outside his own county. As used in this section, a "single tract" means any tract which has a continuous boundary, regardless of whether parts thereof may have been acquired at different times or from different persons or whether it may have been subdivided into other units or lots, or whether it is sold as a whole or in parts.

(c) A sale of personal property may be held at any place in his county designated by the sheriff in the notice of sale. (1949, c. 719, s. 1.)

§ 1-339.45. Presence of personal property at sale required.

A sheriff holding a sale of personal property shall have the property present at the place of sale. (1949, c. 719, s. 1.)

§ 1-339.46. Sale as a whole or in parts.

When real property to be sold consists of separate lots or other units or when personal property consists of more than one article, the sheriff may sell such real or personal property as a whole or in designated parts, or may offer the property for sale by each method, and then sell the property by the method which produces the highest price; but regardless of which method is followed, the sheriff shall not sell more property than is reasonably necessary to satisfy the judgment together with the costs of the execution and the sale. (1949, c. 719, s. 1.)

§ 1-339.47. Sale to be made for cash.

Every sale shall be made for cash. (1949, c. 719, s. 1.)

§ 1-339.48. Life of execution.

If an execution is issued on a judgment, within the time provided by G.S. 1-306, and a sale, by authority of that execution, is commenced within the time provided by G.S. 1-310, the sale, including any resale, may be had and completed even though such sales, resales or other procedure are had after the time when the execution is required to be returned by G.S. 1-310, or after the time within which an execution could be issued with respect to such judgment pursuant to the provisions of G.S. 1-306. For the purpose of this section, a sale is commenced when the notice of sale is first

published in the case of real property as required by G.S. 1-339.52, or first posted in the case of personal property as required by G.S. 1-339.53. (1949, c. 719, s. 1.)

§ 1-339.49. Penalty for selling contrary to law.

A sheriff or other officer who makes any sale contrary to the true intent and meaning of this Article shall forfeit two hundred dollars to any person suing for it, one half for his own use and the other half to the use of the county where the offense is committed. (1820, c. 1066, s. 2, P.R.; 1822, c. 1153, s. 3, P.R.; R.C., c. 45, s. 18; Code, s. 461; Rev., s. 649; C.S., s. 696; 1949, c. 719, s. 2.)

§ 1-339.50. Officer's return of no sale for want of bidders; penalty.

When a sheriff or other officer returns upon an execution that he has made no sale for want of bidders, he must state in his return the several places he has advertised and offered for sale the property levied on; and an officer failing to make such statement is on motion subject to a fine of forty dollars, for the use and benefit of the plaintiff in the execution; for which, on motion of the plaintiff, judgment shall be granted by the court to which, or by justice to whom, the execution shall be returned. Nothing in, nor any recovery under, this section is a bar to any action for a false return against the sheriff or other officer. (1815, c. 887, P.R.; R.C., c. 45, s. 19; Code, s. 462; Rev., s. 650; C.S., s. 697; 1949, c. 719, s. 2; 1995, c. 379, s. 14(a).)

Part 2. Procedure for Sale.

§ 1-339.51. Contents of notice of sale.

The notice of sale shall

(1) Refer to the execution authorizing the sale;
(2) Designate the date, hour and place of sale;
(3) Describe real property to be sold, by reference or otherwise, sufficiently to identify it, and may add such 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 further description as will acquaint bidders with the nature of the property; and
(5) State that the sale will be made to the highest bidder for cash. (1949, c. 719, s. 1.)

§ 1-339.52. Posting and publishing notice of sale of real property.

(a) The notice of sale of real property shall:
  (1) Be posted, 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 at least 20 days immediately preceding the sale; and
  (2) Be published once a week for at least two successive weeks:
    a. In a newspaper qualified for legal advertising published in the county; or
    b. If no newspaper qualified for legal advertising is published in the county, in a newspaper having general circulation in the county.

(b) When the notice of 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 seven days, including Sundays; and

(2) The date of the last publication shall be not more than 10 days preceding the date of the sale.

(c) When the real property to be sold is situated in more than one county, the provisions of subsections (a) and (b) shall be complied with in each county in which any part of the property is situated. (1949, c. 719, s. 1; 1967, c. 979, s. 2; 2001-271, s. 11.)

§ 1-339.53. Posting notice of sale of personal property.

The notice of sale of personal property, except in the case of perishable property as specified in G.S. 1-339.56, shall be posted, 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 10 days immediately preceding the date of sale. (1949, c. 719, s. 1; 2001-271, s. 12.)

§ 1-339.54. Notice to judgment debtor of sale of real property.

In addition to complying with G.S. 1-339.52, relating to posting and publishing the notice of sale, the sheriff shall, at least ten days before the sale of real property, take the following action:

(1) If the judgment debtor is found in the county, serve a copy of the notice of sale on the judgment debtor personally.

(2) If the judgment debtor is not found in the county, send and serve notice as follows:

a. Send a copy of the notice of sale by registered or certified mail, return receipt requested, to the judgment debtor at the judgment debtor's last address known to the sheriff.

b. Serve a copy of the notice of sale on the judgment debtor's agent, if there is in the county a person known to the sheriff to be an agent who has custody or management of, or who exercises control over, any property in the county belonging to the judgment debtor. (1949, c. 719, s. 1; 2021-91, s. 1(a).)

§ 1-339.55. Notification of Governor and Attorney General.

When the State is a stockholder in any corporation whose property is to be sold under execution, notice in writing shall be given by the sheriff by registered mail to the Governor and the Attorney General at least thirty days before the sale, stating the time and place of the sale and including a copy of the process under the authority of which such sale is to be made. Any sale held without complying with the provisions of this section is invalid with respect to the State. (1949, c. 719, s. 1.)

§ 1-339.56. Exception; perishable property.

If, in the opinion of the sheriff, any personal property levied on under execution is perishable because subject to rapid deterioration, he shall forthwith report such levy, together with a description of the property, to the clerk of the superior court, and request instructions as to the sale of such property. If the clerk then determines that the property is such perishable property, he shall thereupon order a sale thereof to be held at such time and place and upon such notice to be given in such manner and for such length of time as he deems advisable. If the clerk determines that the property is not perishable, he shall order it to be sold in the same manner as other nonperishable property. (1949, c. 719, s. 1.)

§ 1-339.57. Satisfaction of judgment before sale completed.

If, prior to the time fixed for a sale, or prior to the expiration of the time allowed for submitting any upset bid, payment is made or tendered to the sheriff of the judgment and costs with respect to which the execution was issued, and the sheriff's fees, commissions and expenses which have accrued, together with any expenses incurred on account of the sale or proposed sale including costs incurred in caring for the property levied on, then any right to effect a sale pursuant to the execution ceases. (1949, c. 719, s. 1.)

§ 1-339.58. Postponement of sale.

(a) The sheriff may postpone the sale to a day certain not later than 90 days after the original date for the sale if any of the following occurs:

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

The sheriff may postpone the sale more than once whenever any of these conditions are met, so long as the sale is held not later than 90 days after the original date for the sale, as computed pursuant to G.S. 1A-1, Rule 6.

(b) Upon each postponement of the sale, the sheriff shall do all of the following:

(1) At the time and place advertised for the sale, publicly announce the postponement of the sale.
(2) On the same day, attach to or enter on the notice of sale, posted as provided by G.S. 1-339.52 in the case of real property or G.S. 1-339.53 in the case of personal property, a notice of the postponement.
(3) Give written or oral notice of postponement to the judgment debtor. Written notice of postponement shall be served in any manner provided in G.S. 1A-1, Rule 5(b).

(c) The posted notice of postponement shall be signed by the sheriff and shall state the following:

(1) That the sale is postponed.
(2) The hour and date to which the sale is postponed.
(3) The reason for the postponement.
(4) Repealed by Session Laws 2022-60, s. 2(b), effective October 1, 2022, and applicable to sales noticed on or after that date.

(d) If a sale is not held at the time fixed for the sale and is not postponed as provided by this section, the sheriff shall report these facts to the clerk of the superior court, who shall order the time and place of the sale of the property and the manner and length of time for the notice of the sale. Nothing in this section relieves the sheriff of liability for the nonperformance of the sheriff's official duty. (1949, c. 719, s. 1; 2001-271, s. 13; 2022-60, s. 2(b).)

§ 1-339.59. Procedure upon dissolution of order restraining or enjoining sale.

(a) When, before the date fixed for a sale, a judge dissolves an order restraining or enjoining the sale, he may, if the required notice of sale has been given, provide by order that the sale shall be held without additional notice at the time and place originally fixed therefor, or he may, in his discretion, make an order with respect thereto as provided in subsection (b).

(b) When, after the date fixed for a sale, a judge dissolves an order restraining or enjoining the sale, he shall by order fix the time and place for the sale to be held upon notice to be given in such manner and for such length of time as he deems advisable. (1949, c. 719, s. 1.)

§ 1-339.60. Time of sale.

(a) A sale 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 sale shall commence before 10:00 o'clock A.M. or after 4:00 o'clock P.M.

(c) No sale 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. (1949, c. 719, s. 1.)

§ 1-339.61. Continuance of uncompleted sale.

A sale commenced but not completed within the time allowed by G.S. 1-339.60 shall be continued by the sheriff 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 continuance becomes necessary, the sheriff shall publicly announce the time to which the sale is continued. (1949, c. 719, s. 1.)

§ 1-339.62. Delivery of personal property; bill of sale.

A sheriff holding a sale of personal property shall deliver the property to the purchaser immediately upon receipt of the purchase price. The sheriff may also execute and deliver a bill of sale or other muniment of title for any personal property sold, and, upon application of the purchaser, shall do so when required by the clerk of the superior court of the county where the property is sold. (1949, c. 719, s. 1.)

§ 1-339.63. Report of sale.

(a) The sheriff shall, within five days after the date of the sale, file a report thereof with the clerk of the superior court.

(b) The report shall be signed and shall show

(1) The title of the action or proceeding;

(2) The authority under which the sheriff acted;

(3) The date, hour and place of the sale;

(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;

(5) A description of personal property sold, sufficient to indicate the nature and quantity of the property sold to each purchaser;

(6) The name or names of the person or persons to whom the property was sold;

(7) The price at which the property, or each part thereof, was sold and that such price was the highest bid therefor; and

(8) The date of the report. (1949, c. 719, s. 1.)

§ 1-339.64. Upset bid on real property; compliance bond.

(a) An upset bid is an advanced, increased, or raised bid whereby a person offers to purchase real property theretofore sold for an amount exceeding the reported sale price or last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale or the last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of sale or the last notice of upset bid was filed, by the close of normal business hours on the tenth day after the filing of the report of sale or the last notice of upset bid and if the tenth day falls upon a Sunday or legal holiday when the courthouse is closed for transactions, 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 and the notice of upset bid may be filed on the day following when the office is open for the regular dispatch of its business. Except as provided in G.S. 1-339.66A and G.S. 1-339.69, there shall be no resales; however, there may be successive upset bids, each of which shall be followed by a period of 10 days for a further upset bid. If a timely motion for resale is filed under G.S. 1-339.66A, no upset bids may be filed while the motion is pending.

(b) The clerk of the superior court may require an upset bidder or the highest bidder at a resale held under G.S. 1-339.69 also to deposit with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond, approved by the clerk. The compliance bond shall be in the amount the clerk deems adequate, but in no case greater than the amount of the bid of the person being required to furnish the bond, less the amount of any required deposit. The compliance bond shall be payable to the State of North Carolina for the use of the parties in interest and shall be conditioned on the principal obligor's compliance with the bid.

(c) Repealed by Session Laws 2001-271, s. 14, effective January 1, 2002. See editor's note for applicability.

(d) Repealed by Session Laws 2001-271, s. 14, effective January 1, 2002. See editor's note for applicability.

(e) At the time that an upset bid on real property is submitted to the court as provided in subsection (a) of this section, together with a compliance bond if one is required, the upset bidder shall file with the clerk a notice of upset bid. The notice of upset bid shall:

(1) State the name, address, and telephone number of the upset bidder;

(2) Specify the amount of the upset bid;

(3) Provide that the sale shall remain open for a period of 10 days after the date on which the notice of upset bid is filed for the filing of additional upset bids as permitted by law; and

(4) Be signed by the upset bidder or the attorney or the agent of the upset bidder.

(f) When an upset bid is made as provided in this section, the clerk shall notify the person holding the sale who shall thereafter mail a written notice of upset bid by first-class mail to the last known address of the last prior bidder and the current record owners of the property.

(g) When an upset bid is made as provided in this section, the last prior bidder, regardless of how the bid was made, is released from any further obligation on account of the bid, and any deposit or bond provided by the last prior bidder shall be released.

(h) Any person offering to purchase real property by upset bid as permitted in this Article is subject to and bound by the terms of the original notice of sale except as modified by a court order or the provisions of this Article.

(i) The clerk of superior court shall make all orders as may be just and necessary to safeguard the interests of all parties and may fix and determine all necessary procedural details with respect to upset bids in all instances in which this Article fails to make definite provisions as to that procedure. (1949, c. 719, s. 1; 1967, c. 979, s. 2; 1997-119, s. 2; 2001-271, s. 14; 2002-28, s. 2; 2003-337, s. 7.)

§ 1-339.65. Separate upset bids when real property sold in parts; subsequent procedure.

When real property is sold in parts, as provided by G.S. 1-339.46, the sale of any part shall be subject to a separate upset bid; and to the extent the clerk of the superior court having jurisdiction deems advisable, the sale of each part shall thereafter be treated as a separate sale for the purpose of determining the applicable procedure. (1949, c. 719, s. 1; 2001-271, s. 15.)

§ 1-339.66: Repealed by Session Laws 2001-271, s. 16.

§ 1-339.66A. Ordering resale of real property after upset bid.

Upon motion of an interested person filed within 10 days after a sale or upset bid and for good cause, the clerk of superior court may order a resale of real property when an upset bid is submitted as provided in G.S. 1-339.64. If the motion is granted based on the inadequacy of the last bid, the procedure for the resale is the same in every respect as is provided by this Article in the case of an original public sale, and the last bidder is released from the bidder's obligations under the bid. If the motion is granted for any other reason, the last bid becomes the opening bid at resale, and if there is no bid at resale other than the last bid, the person who made the last bid is the highest bidder at resale. If the motion is denied, the 10-day period for subsequent upset bids begins upon the entry of the order. (2001-271, s. 17.)

§ 1-339.67. Confirmation of sale of real property.

No sale of real property may be consummated until the sale is confirmed by the clerk of the superior court. No order of confirmation may be made until the time for submitting an upset bid, pursuant to G.S. 1-339.64, has expired. (1949, c. 719, s. 1; 1967, c. 979, s. 2.)

§ 1-339.68. Deed for real property sold; property subject to liens; orders for possession.

(a) Upon confirmation of a sale of real property, the sheriff, upon order of the clerk of the superior court, shall prepare and tender to the purchaser a duly executed deed for the property sold and, upon compliance by the purchaser with the terms of the sale, shall deliver the deed to the purchaser.

(b) Any real property sold under execution remains subject to all liens which became effective prior to the lien of the judgment pursuant to which the sale is held, in the same manner and to the same extent as if no such sale had been held.

(c) Orders for possession of real property sold pursuant to this Article, in favor of the purchaser and against any party or parties in possession at the time of the sale who remain in possession at the time of application therefor, may be issued by the clerk of the superior court of the county in which such property is sold, when:

(1) The purchaser is entitled to possession, and
(2) The purchase price has been paid, and
(3) The sale or resale has been confirmed, and
(4) Ten days' notice has been given to the party or parties in possession at the time of the sale or resale who remain in possession at the time application is made, and
(5) Application is made to such clerk by the purchaser of the property.

(d) An order for possession issued pursuant to the preceding subsection shall be directed to the sheriff, shall authorize him to remove the party or parties in possession, and their personal property, from the premises and to put the purchaser in possession, and shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2. (1949, c. 719, s. 1; 1967, c. 979, s. 2; 1987, c. 627, s. 2.)

§ 1-339.69. Failure of bidder to comply with bid; resale.

(a) When the highest bidder at a sale of personal property fails to pay the amount of the bid, the sheriff shall at the same time and place immediately resell the property. In the event no other bid is received, a new sale may be advertised in the regular manner provided by this Article for an original sale.

(b) When the highest bidder at a sale or resale of real property or any upset bidder fails to comply with the bid within 10 days after the tender to the bidder of a deed for the property or after a bona fide attempt to tender such deed, the clerk of the superior court who issued the execution may order a resale. The procedure for such resale is the same in every respect as is provided by this Article in the case of an original sale of real property.

(c) A defaulting bidder at any sale or resale or any defaulting upset bidder is liable on the bid, and in case a resale is had because of the default, the defaulting bidder remains liable to the extent that the final sale price is less than the bid plus all costs of the resale or resales. Any deposit or compliance bond made by the defaulting bidder shall secure payment of the amount, if any, for which the defaulting bidder remains liable under this section.

(d) Nothing in this section deprives any person of any other remedy against the defaulting bidder. (1949, c. 719, s. 1; 2001-271, s. 18.)

§ 1-339.70. Disposition of proceeds of sale.

(a) After deducting all sums due him on account of the sale, including the expenses incurred in caring for the property so long as his responsibility for such care continued, the sheriff shall pay the proceeds of the sale to the clerk of the superior court who issued the execution, and the clerk shall furnish the sheriff a receipt therefor.

(a1) Proceeds paid by the sheriff to the clerk resulting from an execution sale shall be credited and applied to the judgment as of the date the proceeds are received by the clerk.

(b) The clerk shall apply the proceeds of the sale so received to the payment of the judgment upon which the execution was issued.

(c) Any surplus shall be paid by the clerk to the person legally entitled thereto if the clerk knows who such person is. If the clerk is in doubt as to who is entitled to the surplus, or if adverse claims are asserted thereto, the clerk shall hold such surplus until rights thereto are established in a special proceeding pursuant to G.S. 1-339.71. (1949, c. 719, s. 1; 2021-47, s. 14(c).)

§ 1-339.71. Special proceeding to determine ownership of surplus.

(a) A special proceeding may be instituted before the clerk of the superior court by any person claiming any money, or part thereof, paid into the clerk's office under G.S. 1-339.70 or G.S. 105-374(q)(6), to determine who is entitled thereto.

(b) All other persons who have filed with the clerk notice of their claim to the money or any part thereof, or who, as far as the petitioner or petitioners know, assert any claim to the money or any part thereof, shall be made defendants in the proceeding.

(c) If any answer is filed raising issues of fact as to the ownership of the money, the proceedings shall be transferred to the civil issue docket of the superior court for trial. When a proceeding is so transferred, the clerk may require any party to the proceeding who asserts a claim to the fund by petition or answer to furnish a bond for costs in the amount of $200.00, or otherwise comply with the provisions of G.S. 1-109.

(d) The court may, in its discretion, allow a reasonable attorney's fee for any attorney appearing in behalf of the party or parties who prevail, to be paid out of the funds in controversy, and shall tax all costs against the losing party or parties who asserted a claim to the fund by petition or answer. (1949, c. 719, s. 1; 1967, c. 705, s. 2; 1973, c. 1446, s. 19.)

Article 29C.

Validating Sections.

§ 1-339.72. Validation of certain sales.

All sales of real property under execution, deed of trust, mortgage or other contracts made since February 21, 1929, where notice of the original sale was published for four successive weeks, and notice of any resale was published for two successive weeks, shall be and the same are in all respects validated as to publication of notice. (1933, c. 96, s. 3; 1949, c. 719, s. 3; 1955, c. 1286; 1965, c. 786.)

§ 1-339.73. Ratification of certain sales held on days other than the day required by statute.

All sales made prior to March 2, 1939, under execution or by order of court on any day other than the first Monday in any month, or the first three days of a term of the superior court of said county are hereby validated, ratified and confirmed.

All sales or resales of real property made prior to March 30, 1939, under order of court on the premises or at the courthouse door in the county in which all, or any part of the property, is situated, on any day other than Monday in any month, are hereby validated, ratified and confirmed. (1876-7, c. 216, ss. 2, 3; 1883, c. 94, ss. 1, 2; Code, s. 454; Rev., s. 643; C.S., s. 690; 1931, c. 23; 1937, c. 26; 1939, cc. 71, 256; 1949, c. 719, s. 3.)

§ 1-339.74. Sales on other days validated.

All sales of real or personal property made prior to February 27, 1933, by a sheriff of any county in North Carolina, in the manner provided by law for sale of real or personal property under execution, on any day other than the day now provided by law are hereby validated.

All sales of real and personal property made prior to February 14,1939, by a sheriff under execution, or by commissioner under order of court, in the manner provided by law for sale of real or personal property, on any day other than the days now provided by law are hereby validated.

All sales of real or personal property made prior to March 10, 1939, by a sheriff of any county in North Carolina, in the manner provided by law for sale of real or personal property under execution, on any day other than the day now provided by law, are hereby validated. (1933, c. 79; 1939, cc. 24, 94; 1949, c. 719, s. 3.)

§ 1-339.75. Certain sales validated.

All sales of realty made under executions issued prior to March the fifteenth, one thousand nine hundred and one, on judgments regularly obtained in courts of competent jurisdiction, are hereby validated, whether such sales were continued from day to day or for a longer period, not exceeding ten days: Provided, that such executions and sales are in all other respects regular: Provided further, that purchasers and their assigns shall have held continuous and adverse possession under a sheriff's deed for three years: Provided further, that the rights of minors and married women shall in nowise be prejudiced hereby. (1901, c. 742; Rev., s. 646; C.S., s. 693; 1949, c. 719, s. 3.)

§ 1-339.76. Validation of sales when payment deferred more than two years.

All sales of land conducted prior to February 10, 1927, under authority of G.S. 28-93, in which the deferred payments were extended over a period longer than two years, are hereby validated. (1917, c. 127, s. 2; C.S., s. 86; 1927, c. 16; 1949, c. 719, s. 3.)

§ 1-339.77. Validation of certain sales confirmed prior to time prescribed by law.

From and after June 1, 1953 no action shall be brought to contest the validity of a decree filed on or before December 31, 1950, confirming the sale of real or personal property in any special proceeding on the grounds that the decree of confirmation was entered prior to the expiration of the period of time as required by law following the report of sale. (1953, c. 1089.)

Article 30.

Betterments.

§ 1-340. Petition by claimant; execution suspended; issues found.

A defendant against whom a judgment is rendered for land may, at any time before execution, present a petition to the court rendering the judgment, stating that he, or those under whom he claims, while holding the premises under a color of title believed to be good, have made permanent improvements thereon, and praying that he may be allowed for the improvements, over and above the value of the use and occupation of the land. The court may, if satisfied of the probable truth of the allegation, suspend the execution of the judgment and impanel a jury to assess the damages of the plaintiff and the allowance to the defendant for the improvements. In any such action this inquiry and assessment may be made upon the trial of the cause. (1871-2, c. 147; Code, s. 473; Rev., s. 652; C.S., s. 699.)

§ 1-341. Annual value of land and waste charged against defendant.

The jury, in assessing the damages, shall estimate against the defendant the clear annual value of the premises during the time he was in possession, exclusive of the use of the improvements thereon made by himself or those under whom he claims, and also the damages for waste or other injury to the premises committed by the defendant. The defendant is not liable for the annual value or for damages for waste or other injury for any longer time than three years before the suit, unless he claims for improvements. (1871-2, c. 147, ss. 2-3; Code, ss. 474, 475; Rev., ss. 653, 654; C.S., s. 700.)

§ 1-342. Value of improvements estimated.

If the jury is satisfied that the defendant, or those under whom he claims, made on the premises, at a time when there was reason to believe the title good under which he or they were holding the

premises, permanent and valuable improvements, they shall estimate in his favor the value of the improvements made before notice, in writing, of the title under which the plaintiff claims, not exceeding the amount actually expended in making them and not exceeding the amount to which the value of the premises is actually increased thereby at the time of the assessment. (1871-2, c. 147, s. 4; Code, s. 476; Rev., s. 655; C.S., s. 701.)

§ 1-343. Improvements to balance rents.

If the sum estimated for the improvements exceeds the damages estimated against the defendant as aforesaid, the jury shall then estimate against him for any time before the said three years the rents and profits accrued against or damages for waste or other injury done by him, or those under whom he claims, so far as is necessary to balance his claim for improvements; but the defendant in such case shall not be liable for the excess, if any, of such rents, profits, or damages beyond the value of improvements. (1871-2, c. 147, s. 5; Code, s. 477; Rev., s. 656; C.S., s. 702.)

§ 1-344. Verdict, judgment, and lien.

After offsetting the damages assessed for the plaintiff, and the allowances to the defendant for any improvements, the jury shall find a verdict for the balance for the plaintiff or defendant, as the case may be, and judgment shall be entered therefor according to the verdict. Any such balance due to the defendant is a lien upon the land recovered by the plaintiff until it is paid. (1871-2, c. 147, ss. 6, 7; Code, ss. 478, 479; Rev., ss. 657, 658; C.S., s. 703.)

§ 1-345. Life tenant recovers from remainderman.

If the plaintiff claims only an estate for life in the land recovered and pays any sum allowed to the defendant for improvements, he or his personal representative may recover at the determination of his estate from the remainderman or reversioner, the value of the said improvements as they then exist, not exceeding the amount as paid by him, and he has a lien therefor on the premises as if they had been mortgaged for the payment thereof, and may keep possession of said premises until it is paid. (1871-2, c. 147, s. 8; Code, s. 480; Rev., s. 659; C.S., s. 704.)

§ 1-346. Value of premises without improvements.

When the defendant claims allowance for improvements, the plaintiff may by entry on the record require that the value of his estate in the premises without the improvements shall also be ascertained. The value of the premises in such cases shall be estimated as it would have been at the time of the inquiry, if no such improvements had been made by the tenant or any person under whom he claims, and shall be ascertained in the manner hereinbefore provided for estimating the value of improvements. (1871-2, c. 147, ss. 10-11; Code, ss. 482, 483; Rev., ss. 661, 662; C.S., s. 705.)

§ 1-347. Plaintiff's election that defendant take premises.

The plaintiff in such case, if judgment is rendered for him, may, at any time during the same term, or before judgment is rendered on the assessment of the value of the improvements, in person or by his attorney in the cause, enter on the record his election to relinquish his estate in the premises to the defendant at the value as ascertained, and the defendant shall thenceforth hold all the estate that the plaintiff had therein at the commencement of the suit, if he pays therefor the said value with interest in the manner ordered by the court. (1871-2, c. 147, s. 12; Code, s. 484; Rev., s. 663; C.S., s. 706.)

§ 1-348. Payment made to court; land sold on default.

The payment must be made to the plaintiff, or into court for his use, and the land is bound therefor, and if the defendant fails to make the payment within or at the times limited therefor, the court may order the land sold and the proceeds applied to the payment of said value and interest, and any surplus to be paid to the defendant; but if the net proceeds are insufficient to satisfy the said value and interest, the defendant is not bound for the deficiency. (1871-2, c. 147, s. 13; Code, s. 485; Rev., s. 664; C.S., s. 707.)

§ 1-349. Procedure where plaintiff is under disability.

If the party by or for whom the land is claimed in the suit is a minor or insane person, such value is deemed to be real estate, and shall be disposed of as the court considers proper for the benefit of the persons interested therein. (1871-2, c. 147, s. 14; Code, s. 486; Rev., s. 665; C.S., s. 708; 1995 (Reg. Sess., 1996), c. 742, s. 2.)

§ 1-350. Defendant evicted, may recover from plaintiff.

If the defendant, his heirs or assigns, after the premises are so relinquished to him, is evicted by force of a better title than that of the original plaintiff, the person so evicted may recover from the plaintiff or his representatives the amount paid for the premises, as so much money had and received by the plaintiff in his lifetime for the use of such person, with lawful interest thereon from the time of the payment. (1871-2, c. 147, s. 15; Code, s. 487; Rev., s. 666; C.S., s. 709.)

§ 1-351. Not applicable to suit by mortgagee.

Nothing in this Article applies to any suit brought by a mortgagee or his heirs or assigns against a mortgagor or his heirs or assigns for the recovery of the mortgaged premises. (1871-2, c. 147, s. 9; Code, s. 481; Rev., s. 660; C.S., s. 710.)

Article 31.

Supplemental Proceedings.

§ 1-352. Execution unsatisfied, debtor ordered to answer.

When an execution against property of a judgment debtor, or any one of several debtors in the same judgment, issued to the sheriff of the county where he resides or has a place of business, or if he does not reside in the State, to the sheriff of the county where a judgment roll or a transcript of a judgment is filed, is returned wholly or partially unsatisfied, the judgment creditor at any time after the return, and within three years from the time of issuing the execution, is entitled to an order from the court to which the execution is returned or from the judge thereof, requiring such debtor to appear and answer concerning his property before such court or judge, at a time and place specified in the order, within the county to which the execution was issued. (C.C.P., s. 264; 1868-9, c. 95, s. 2; Code, s. 488, subsec. 1; Rev., s. 667; C.S., s. 711; 1971, c. 268, s. 21.)

§ 1-352.1. Interrogatories to discover assets.

As an additional method of discovering assets of a judgment debtor, the judgment creditor may prepare and serve on the judgment debtor written interrogatories concerning his property, at any time the judgment remains unsatisfied, and within three years from the time of issuing an execution. Such written interrogatories shall be fully answered under oath by the judgment debtor within 30 days of service on the judgment debtor, and the answer shall be filed by the judgment

debtor with the clerk of the superior court wherein the original judgment is docketed. Copy of said answer shall be served upon the party submitting said written interrogatories, in the manner provided by the Rules of Civil Procedure.

Interrogatories may relate to any matters which can be inquired into under G.S. 1-352, and the debtor may object to any interrogatories that are deemed improper, but the making of objections shall not delay the answering of interrogatories to which objection is not made. If the objections are overruled, the court shall fix the time for answering the interrogatories. The number of interrogatories or sets of interrogatories to be served is not limited except as justice requires to protect the party from annoyance, expense, embarrassment or oppression.

Upon failure of the judgment debtor to answer fully the written interrogatories, the judgment creditor may petition the court for an order requiring the judgment debtor to answer fully, which order shall be served upon the judgment debtor in the same manner as a summons is served pursuant to the Rules of Civil Procedure, fixing the time within which the judgment debtor can answer the interrogatives. In addition, the order shall provide, as an alternative, that the judgment debtor may mail the judgment creditor, by certified mail, within five days of the date of service of the order, a specific request for a hearing before a court or judge to answer oral questions concerning his property rather than answering the written interrogatories. Upon timely receipt of this request, the judgment creditor shall request the court to calendar the hearing.

Any person who disobeys an order of the court may be punished by the judge as for a contempt under the provisions of G.S. 1-368. (1971, c. 529, s. 1; 1979, c. 648.)

§ 1-352.2. Additional method of discovering assets.

In addition to the other provisions of this Article and as an additional method of discovering assets of a judgment debtor the clerk of the court or a judge of the court in the county wherein the original judgment is docketed, at any time the judgment remains unsatisfied, and within three years from the time of issuing an execution, upon motion of the judgment creditor showing good cause therefor, may:

(1) Order the judgment debtor, his agent or anyone having possession or control of property or records of or pertaining to the judgment debtor, to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, all tax records, letters, objects or tangible things, not privileged, constituting property, or being evidence of property, of the judgment debtor and which are in his possession and custody, or subject to his control; or

(2) Order the judgment debtor or anyone acting for or on his behalf to permit entry upon designated land or other property, real or personal, in his possession or control or subject to his control for the purpose of inspecting, measuring, surveying, appraising, copying, or photographing the property of the judgment debtor.

(3) Prior notice of the motion, together with a copy thereof, shall be served on the judgment debtor as provided by the Rules of Civil Procedure. Upon the hearing, the order entered shall specify the time, place, and manner for compliance therewith and may prescribe such terms and conditions as are just.

(4) Any person who shall fail to comply with an order entered pursuant to this section may be punished as for a contempt under the provisions of G.S. 1-368. (1971, c. 711, s. 1.)

§ 1-353. Property withheld from execution; proceedings.

After the issuing of an execution against property, and upon proof by affidavit of a party, his agent or attorney, to the satisfaction of the court or a judge thereof, that any judgment debtor residing in the district court district as defined in G.S. 7A-133 or superior court district as defined in G.S. 7A-41.1, as the case may be, where such judge or sheriff resides has property which he unjustly refuses to apply toward the satisfaction of the judgment, such court or judge may, by order, require the judgment debtor to appear at a specified time and place, to answer concerning the same; and proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as provided upon the return of an execution, and the judgment creditor is entitled to the order of examination under this section and G.S. 1-352 although the judgment debtor has an equitable estate in land subject to the lien of the judgment, or choses in action, or other things of value unaffected by the lien of the judgment and incapable of levy. (C.C.P., s. 264; 1868-9, c. 95, s. 2; Code, s. 488, subsec. 2; Rev., s. 688; C.S., s. 712; 1987 (Reg. Sess., 1988), c. 1037, s. 39.)

§ 1-354. Proceedings against joint debtors.

Proceedings supplemental to execution may be taken upon the return of an execution unsatisfied, issued upon a judgment recovered in an action against joint debtors, in which some of the defendants have not been served with the summons by which the action was commenced, so far as relates to the joint property of such debtors; and all actions by creditors to obtain satisfaction of judgments out of the property of joint debtors are maintainable in like manner and to the like effect. These provisions apply to all proceedings and actions pending and to those terminated by final decree or judgment. (C.C.P., s. 266; 1869-70, c. 79, s. 2; 1870-1, c. 245; Code, s. 490; Rev., s. 669; C.S., s. 713.)

§ 1-355. Debtor leaving State, or concealing himself, arrested; bond.

Instead of the order requiring the attendance of the judgment debtor, the court or judge may, upon proof by affidavit or otherwise to his satisfaction that there is danger of the debtor leaving the State or concealing himself, and that there is reason to believe that he has property which he unjustly refuses to apply to the judgment, issue a warrant requiring the sheriff of any county where such debtor is to arrest him and bring him before the court or judge. Upon being brought before the court or judge, the debtor may be examined on oath, and, if it appears that there is danger of his leaving the State, and that he has property which he has unjustly refused to apply to the judgment, he shall be ordered to enter into an undertaking, with one or more sureties, that he will, from time to time, attend before the court or judge as directed, and that he will not, during the pendency of the proceedings, dispose of any property not exempt from execution. In default of entering into such undertaking, he may be committed to prison by warrant of the court or judge, as for contempt. (1868-9, c. 148, s. 4; c. 277, s. 8; Code, s. 488, subsec. 4; Rev., s. 671; C.S., s. 714.)

§ 1-356. Examination of parties and witnesses.

On examination under this Article either party may examine witnesses in his behalf, and the judgment debtor may be examined in the same manner as a witness; and the party or witnesses may be required to appear before the court or judge, or a referee appointed by either, and testify on any proceedings under this Article in the same manner as upon the trial of an issue. If before a referee, the examination shall be taken by the referee, and certified to the court or judge. All examinations

and answers before a court or judge or referee under this Article must be on oath, except that when a corporation answers, the answer shall be on the oath of an officer thereof. (C.C.P., ss. 264, 267, 268; 1868-9, c. 95, s. 2; 1871-2, c. 245; Code, ss. 488 [subsec. 2], 491, 492; Rev., ss. 670, 676; C.S., s. 715.)

§ 1-357. Incriminating answers not privileged; not used in criminal proceedings.

No person, on examination pursuant to this Article, is excused from answering any question on the ground that it will tend to convict him of the commission of a crime or that he has, before the examination, executed any conveyance, assignment or transfer of his property for any purpose, but his answer shall not be used as evidence against him in any criminal proceeding or prosecution. (C.C.P., s. 264; 1868-9, c. 95, s. 2; Code, s. 488, subsec. 5; Rev., s. 672; C.S., s. 716.)

§ 1-358. Disposition of property forbidden.

The court or judge may, by order, forbid a transfer or other disposition of, or any interference with, the property of the judgment debtor not exempt from execution. (C.C.P., s. 264; 1868-9, c. 95, s. 2; Code, ss. 488 [subsec. 6], 494; Rev., s. 673; C.S., s. 717.)

§ 1-359. Debtors of judgment debtor may satisfy execution.

(a) After the issuing of an execution against property, all persons indebted to the judgment debtor, or to any one of several debtors in the same judgment, may pay to the sheriff the amount of their debt, or as much thereof as is necessary to satisfy the execution; and the sheriff's receipt is a sufficient discharge for the amount paid.

(b) When the Division of Employment Security of the Department of Commerce prevails in a civil action against an employer to collect unpaid employment taxes under G.S. 96-10(b), the Division may attach or garnish the employer's credit card receipts or other third-party payments in payment of the unpaid taxes in the manner provided by subsection (a) of this section. Direct receipt by the Division is a sufficient discharge for the amount paid by a credit card company, clearinghouse, or third-party payment processor.

(c) When the State Health Plan for Teachers and State Employees prevails in a civil action against a provider to collect an overpayment, the State Health Plan may attach or garnish the provider's credit card receipts or other third-party payments in payment of the amount owed in the manner provided by subsection (a) of this section. Direct receipt by the State Health Plan is a sufficient discharge for the amount paid by a credit card company, clearinghouse, or third-party payment processor.

(d) In addition to the intercept authority under G.S. 135-8(f) and G.S. 128-30(g), when the Teachers' and State Employees' Retirement System of North Carolina, the Disability Income Plan of North Carolina, or the North Carolina Local Government Employees' Retirement System prevails in a civil action against a participating employer, as defined under G.S. 135-1 or G.S. 128-21, to collect monies owed, the Teachers' and State Employees' Retirement System of North Carolina, the Disability Income Plan of North Carolina, or the North Carolina Local Government Employees' Retirement System may attach or garnish the employer's credit card receipts or other third-party payments in payment of the amount owed in the manner provided by subsection (a) of this section. Direct receipt by the Teachers' and State Employees' Retirement System of North Carolina, the Disability Income Plan of North Carolina, or the North Carolina Local Government Employees' Retirement System is a sufficient discharge for the amount paid by

a credit card company, clearinghouse, or third-party payment processor. (C.C.P., s. 265; Code, s. 489; Rev., s. 674; C.S., s. 718; 2015-238, s. 2.5(a); 2018-52, s. 4; 2020-48, s. 1.19.)

§ 1-360. Debtors of judgment debtor may be summoned.

Upon the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon affidavit that any person or corporation has property of said judgment debtor, or is indebted to him in an amount exceeding ten dollars ($10.00), the court or judge may, by order, require such person or corporation, or any officer or members thereof, to appear at a specified time and place, and answer concerning the same; provided, however, that such inquiries may, in the discretion of the court, be answered by such person or corporation, or any officers or members thereof, by verified answers to interrogatories. The court or judge may also, in its or his discretion, require notice of the proceeding to be given to any party to the action, in such manner as seems proper. (C.C.P., s. 266; 1869-70, c. 79, s. 2; 1870-1, c. 245; Code, s. 490; Rev., s. 675; C.S., s. 719; 1989, c. 683; 1991, c. 426, s. 1; 1995, c. 257, s. 1.)

§ 1-360.1. Execution on the property of debtors of judgment debtor.

After the clerk of superior court determines to the clerk's satisfaction that the debtor of the judgment debtor acknowledged at a proceeding conducted pursuant to G.S. 1-360 that he is in possession of unencumbered property of such judgment debtor or is indebted to him in an amount exceeding ten dollars ($10.00), an execution shall issue against the property or debt of the judgment debtor that the debtor of the judgment debtor acknowledged he holds. (1991, c. 426, s. 2; 1995, c. 257, s. 2.)

§ 1-361. Where proceedings instituted and defendant examined.

Proceedings supplemental to execution must be instituted in the county in which the judgment was entered; but the place designated where the defendant must appear and answer must be within the county where he resides. (Rev., s. 677; C.S., s. 720; 2010-96, s. 24(c).)

§ 1-362. Debtor's property ordered sold.

The court or judge may order any property, whether subject or not to be sold under execution (except the homestead and personal property exemptions of the judgment debtor), in the hands of the judgment debtor or of any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; except that the earnings of the debtor for his personal services, at any time within 60 days next preceding the order, cannot be so applied when it appears, by the debtor's affidavit or otherwise, that these earnings are necessary for the use of a family supported wholly or partly by his labor. (C.C.P., s. 269; 1870-1, c. 245; Code, s. 493; Rev., s. 678; C.S., s. 721.)

§ 1-363. Receiver appointed.

The court or judge having jurisdiction over the appointment of receivers may also by order in like manner, and with like authority, appoint a receiver in proceedings under this Article of the property of the judgment debtor, whether subject or not to be sold under execution, except the homestead and personal property exemptions. But before the appointment of the receiver, the court or judge shall ascertain if practicable, by the oath of the party or otherwise, whether any other supplementary proceedings are pending against the judgment debtor, and if so, the plaintiff therein shall have notice to appear before him, and shall likewise have notice of all subsequent proceedings

in relation to the receivership. No more than one receiver of the property of a judgment debtor shall be appointed. The title of the receiver relates back to the service of the restraining order, herein provided for. (C.C.P., s. 270; 1870-1, c. 245; 1876-7, c. 223; 1879, c. 63; 1881, c. 51; Code, s. 494; Rev., s. 679; C.S., s. 722.)

§ 1-364. Filing and record of appointment; property vests in receiver.

When the court or a judge grants an order for the appointment of a receiver of the property of the judgment debtor, it shall be filed in the office of the clerk of the superior court of the county where the judgment roll in the action or transcript of judgment, upon which the proceedings are taken, is filed; and the clerk shall record the order in a book to be kept for that purpose in his office, to be called Book of Orders Appointing Receivers of Judgment Debtors, and shall note the time of its filing therein. A certified copy of the order shall be delivered to the receiver named therein, and he is vested with the property and effects of the judgment debtor from the time of the service of the restraining order, if such restraining order has been made, and if not, from the time of the filing and recording of the order for the appointment of a receiver. The receiver of the judgment debtor is subject to the direction and control of the court in which the judgment was obtained upon which the proceedings are founded. (C.C.P., s. 270; 1870-1, c. 245; Code, s. 495; Rev., s. 680; C.S., s. 723; 1971, c. 268, s. 22.)

§ 1-365. Where order of appointment recorded.

Before the receiver is vested with any real property of the judgment debtor, a certified copy of the order of appointment must be filed and recorded on the execution docket, in the office of the clerk of the superior court of the county in which any real estate of the judgment debtor is situated, and also in the office of the clerk of the superior court of the county in which the debtor resides. (C.C.P., s. 270; Code, s. 496; Rev., s. 681; C.S., s. 724.)

§ 1-366. Receiver to sue debtors of judgment debtor.

If it appears that a person or corporation alleged to have property of the judgment debtor, or indebted to him, claims an interest in the property adverse to him, or denies the debt, such interest or debt is recoverable only in an action against such person or corporation by the receiver; but the court or judge may, by order, forbid a transfer or other disposition of such property or interest till a sufficient opportunity is given to the receiver to commence and prosecute the action to judgment and execution, but such order may at any time be modified or dissolved by the court or judge having jurisdiction on such security as he directs. (C.C.P., s. 271; 1870-1, c. 245; Code, s. 497; Rev., s. 682; C.S., s. 725.)

§ 1-367. Reference.

The court or judge may, in his discretion, order a reference to the referee agreed upon by the parties, or appointed by him, to report the evidence or the facts. The appointment of the referee may be made in the first order or at any time. (C.C.P., s. 272; Code, s. 498; Rev., s. 683; C.S., s. 726.)

§ 1-368. Disobedience of orders punished as for contempt.

Any person, party or witness, who disobeys an order of the court or judge or referee, duly served, may be punished by the judge as for a contempt. In all cases of commitment under this Article the person committed may, in case of inability to perform the act required, or to endure the imprisonment, be discharged from imprisonment by the judge committing him, or the judge having

jurisdiction, on such terms as are just. (C.C.P., s. 274; 1869-70, c. 79, s. 3; Code, s. 500; Rev., s. 684; C.S., s. 727.)

SUBCHAPTER XI. HOMESTEAD AND EXEMPTIONS.

Article 32.

Property Exempt from Execution.

§§ 1-369 through 1-392: Repealed by Session Laws 1981, c.490.

SUBCHAPTER XII. SPECIAL PROCEEDINGS.

Article 33.

Special Proceedings.

§ 1-393. Chapter and Rules of Civil Procedure applicable to special proceedings.

The Rules of Civil Procedure and the provisions of this Chapter on civil procedure are applicable to special proceedings, except as otherwise provided. (Code, s. 278; Rev., s. 710; C.S., s. 752; 1967, c. 954, s. 3.)

§ 1-394. Contested special proceedings; commencement; summons.

Special proceedings against adverse parties shall be commenced as is prescribed for civil actions. The summons shall notify the defendant or defendants to appear and answer the complaint or petition of the plaintiff within 10 days after its service upon the defendant or defendants, and must contain a notice stating in substance that if the defendant or defendants fail to answer the complaint or petition, within the time specified, the plaintiff will apply to the court for the relief demanded in the complaint or petition. The summons must run in the name of the State, be dated and signed by the clerk, assistant clerk, or deputy clerk of the superior court having jurisdiction in the special proceeding, be directed to the defendant or defendants, and be delivered for service to some proper person, as defined by G.S. 1A-1, Rule 4(a). The clerk shall indicate on the summons by appropriate words that the summons is issued in a special proceeding and not in a civil action. The manner of service is as prescribed for summons in civil actions by G.S. 1A-1, Rule 4. In partition proceedings under Chapter 46A of the General Statutes or where the defendant is an agency of the federal government, an agency of the State, a local government, or an agency of a local government, the time for filing an answer or other pleading is within 30 days after the date of service of summons or after the final determination of any motion required to be made prior to the filing of an answer. (1868-9, c. 93, s. 4; Code, ss. 279, 287; Rev., ss. 711, 712; C.S., s. 753; 1927, c. 66, s. 5; 1929, c. 50; c. 237, s. 3; 1939, c. 49, s. 2; c. 143; 1951, c. 783; 1961, c. 363; 1967, c. 954, s. 3; 1971, c. 1093, s. 17; 2009-362, s. 2; 2020-23, ss. 5, 8.)

§ 1-394.1. Special proceedings to determine authority to transfer structured settlement payment rights.

When a special proceeding is commenced to obtain authorization for the transfer of structured settlement payment rights pursuant to Article 44B of this Chapter, the provisions of this Article apply except that the interested parties shall have 30 days to appear and answer the petition, and all hearings on such petitions must be conducted before a superior court judge and all final orders on such petitions must be entered by a superior court judge. (1999-367, s. 2.)

§ 1-395. Return of summons.

The person to whom the summons is delivered for service shall note on it the day of its delivery to him, and, if required by the plaintiff, shall execute it immediately. When executed, he shall immediately return the summons with the date and manner of its execution, by mail or otherwise, to the clerk of the court issuing it. (C.C.P., s. 75; Code, s. 280; Rev., s. 713; C.S., s. 754; 1967, c. 954, s. 3.)

§ 1-396. When complaint filed.

The complaint or petition of the plaintiff must be filed in the clerk's office at or before the time of the issuance of the summons, unless time for filing said complaint or petition is extended as provided by G.S. 1-398. (C.C.P., s. 76; 1876-7, c. 241, s. 4; Code, s. 281; Rev., s. 714; C.S., s. 755; 1943, c. 543.)

§ 1-397. Repealed by Session Laws 1943, c. 543.

§ 1-398. Filing time enlarged.

The time for filing the complaint, petition, or any pleading may be enlarged by the court for good cause shown, but may not be enlarged by more than 10 additional days or 30 additional days for partitions, nor more than once, unless the default was occasioned by accident over which the party applying had no control, or by the fraud of the opposing party. (C.C.P., s. 79; Code, s. 283; Rev., s. 716; C.S., s. 757; 2010-97, s. 1.)

§ 1-399. Repealed by Session Laws 1999-216, s.2.

§ 1-400. Ex parte; commenced by petition.

If all the parties in interest join in the proceeding and ask the same relief, the commencement of the proceedings shall be by petition, setting forth the facts entitling the petitioners to relief, and the nature of the relief demanded. (1868-9, c. 93; Code, s. 284; Rev., s. 718, C.S., s. 759.)

§ 1-401. Clerk acts summarily; signing by petitioners; authorization to attorney.

In cases under G.S. 1-400, if all persons to be affected by the decree or their attorney have signed the petition and are of full age, the clerk of the superior court has power to hear and decide the petition summarily. All of the petitioners must sign the petition, or must sign written application to clerk of court to be made petitioners and file same with the clerk or must sign a written authorization to the attorney which authorization must be filed with the clerk before he may make any order or decree to prejudice their rights. (1868-9, c. 93, s. 2; Code, s. 285; Rev., s. 719; C.S., s. 760; 1953, c. 246.)

§ 1-402. Judge approves when petitioner is infant.

If any petitioner is an infant, or the guardian of an infant, acting for him, no final order or judgment of the clerk, affecting the merits of the case and capable of being prejudicial to the infant, is valid, unless submitted to and approved by the judge resident or holding court in the district. (C.C.P., s. 420; 1868-9, c. 93, s. 3; Code, s. 286; 1887, c. 61; Rev., s. 720; C.S., s. 761.)

§ 1-403. Orders signed by judge.

Every order or judgment in a special proceeding required to be made by a judge of the superior court, in or out of session, must be authenticated by his signature. (1868-9, c. 93, s. 5; 1872-3, c. 100; Code, s. 288; Rev., s. 722; C.S., s. 762; 1971, c. 381, s. 12.)

§ 1-404. Reports of commissioners and jurors.

Every order or judgment in a special proceeding imposing a duty on commissioners or jurors must prescribe the time within which the duty must be performed, except in cases where the time is prescribed by statute. The commissioners or jurors shall within 20 days after the performance of the duty file their report with the clerk of the superior court, and if no exception is filed to it within 10 days, the court may proceed to confirm the same on motion of any party and without special notice to the other parties. (1893, c. 209; Rev., s. 723; C.S., s. 763; 1945, c. 778.)

§ 1-405. No report set aside for trivial defect.

No report or return made by any commissioners may be set aside and sent back to them or others for a new report because of any defect or omission not affecting the substantial rights of the parties, but the defect or omission may be amended by the court, or by the commissioners with permission of the court. (1868-9, c. 93, s. 7; Code, s. 289; Rev., s. 724; C.S., s. 764.)

§ 1-406. Commissioner of sale to account in sixty days.

In all actions or special proceedings when a person is appointed commissioner to sell real or personal property, he shall, within 60 days after the maturity of the note or bond for the balance of the purchase money of said property, or the payment of the amount of the bid when the sale is for cash, file with the clerk of the superior court a final account of his receipts and disbursements on account of the sale; and the clerk must audit the account and record it in the book in which the final settlements of executors and administrators are recorded. If any commissioner appointed in any action or special proceedings before the clerk fails, refuses or omits to file a final account as prescribed in this section, or renders an insufficient or unsatisfactory account, the clerk of the superior court shall forthwith order such commissioner to render a full and true account, as required by law, within 20 days after service of the order. Upon return of the order, duly served, if such commissioner shall fail to appear or refuse to exhibit such account, the clerk of the superior court may issue an attachment against said commissioner for a contempt and commit him till he exhibits such account, or files a bond for the amount held or unaccounted for as is prescribed by law for administrators, the premium for which is to be deducted from the commissioner's fee, earned by said commissioner in said action or special proceeding. (1901, c. 614, ss. 1, 2; Rev., s. 725; C.S., s. 765; 1933, c. 98.)

§ 1-407. Commissioner holding proceeds of land sold for reinvestment to give bond.

Whenever in any cause of special proceeding there is a sale of real estate for the purpose of a reinvestment of the money arising from such sale, and the proceeds of such sale are held by a commissioner or other officer designated by the court to receive such money for purposes of reinvestment, the commissioner or officer so receiving same shall execute a good and sufficient bond, to be approved by the court, in an amount at least equal to the corpus of the fund, and payable to the State of North Carolina for the protection of the fund and the parties interested therein, and conditioned that such custodian of the money shall faithfully comply with all the orders of the court made or to be thereafter made concerning the handling and reinvestment of said funds and for the

faithful and final accounting of the same to the parties interested. (1919, c. 259; C.S., s. 766; 1935, c. 45; 1957, c. 80.)

§ 1-407.1. Bond required to protect interest of infant or incompetent.

In the case of any sale of real estate, the court may, in its discretion, require a good and sufficient bond to protect the interests of any infant or incompetent. (1957, c. 80.)

§ 1-407.2. When court may waive bond; premium paid from fund protected.

The court, in its discretion, may waive the requirement of such bond in those cases in which the court requires the funds or proceeds from such sale to be paid by the purchaser or purchasers directly to the court. The premium for any such bond shall be paid from the corpus of the fund intended to be thereby protected. (1957, c. 80.)

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

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. (1923, c. 66; s. 1; C.S., s. 766(a); 1999-216, s. 4.)

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

In civil actions and special proceedings 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 all parties to the action or proceedings will benefit by a survey, order a survey of the land involved, appoint a surveyor for this purpose, and fix a reasonable fee for the services of the surveyor. The fee and other costs of the survey shall be taxed as a part of the costs in the action or proceedings. Any aggrieved party has the right to appeal as provided in Article 27A of Chapter 1 of the General Statutes. (1955, c. 373; 1999-216, s. 5.)

SUBCHAPTER XIII. PROVISIONAL REMEDIES.

Article 34.

Arrest and Bail.

§ 1-409. Arrest only as herein prescribed.

No person may be arrested in a civil action except as prescribed by this Article, but this provision shall not apply to proceedings for contempt. (C.C.P., s. 148; Code, s. 290; Rev., s. 726; C.S., s. 767.)

§ 1-410. In what cases arrest allowed.

The defendant may be arrested, as hereinafter prescribed, in the following cases:

(1) In an action for the recovery of damages on a cause of action not arising out of contract where the action is for willful, wanton, or malicious injury to person or character or for willfully, wantonly or maliciously injuring, taking, detaining, or converting real or personal property.

(2) In an action for a fine or penalty, for seduction, for money received, for property embezzled or fraudulently misapplied by a public officer, attorney, solicitor, or officer or agent of a corporation or banking association in the course of his employment, or by any factor, agent, broker or other person in a fiduciary capacity, or for any misconduct or neglect in office, or in a professional employment.

(3) In an action to recover the possession of personal property, unjustly detained, where all or any part of the property has been concealed, removed, or disposed of, so that it cannot be found or taken by the sheriff and with the intent that it should not be so found or taken, or with the intent to deprive the plaintiff of the benefit thereof.

(4) When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought, in concealing or disposing of the property for the taking, detention or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit.

(5) When the defendant has removed, or disposed of his property, or is about to do so, with intent to defraud his creditors. The term "creditors" shall include, but not by way of limitation, a dependent spouse who claims alimony. The term "creditors" shall include, but not by way of limitation, a minor child entitled to an order for support. (1777, c. 118, s. 6, P.R.; R.C., c. 31, s. 54; C.C.P., s. 149; 1869-70, c. 79; Code, s. 291; 1891, c. 541; Rev., s. 737; C.S., s. 768; 1943, c. 543; 1961, c. 82; 1967, c. 1153, ss. 4, 6.)

§ 1-411. Order and affidavit.

An order for the arrest of the defendant must be obtained from the court in which the action is brought or a judge thereof, and may be made where it appears to the court or judge, by affidavit of the plaintiff or of any other person, that a sufficient cause of action exists and that the case is one of those provided for in this Article. (C.C.P., ss. 150, 151; Code, ss. 292, 293; Rev., ss. 728, 729; C.S., s. 769.)

§ 1-412. Undertaking before order.

Before making the order the court or judge shall require a written undertaking on the part of the plaintiff of at least one hundred dollars ($100.00), with sufficient surety, payable to the defendant, to the effect that if the defendant recovers judgment the plaintiff will pay all damages which he sustains by reason of the arrest, not exceeding the sum specified in the undertaking. (C.C.P., s. 152; 1868-9, c. 277, s. 7; Code, s. 294; Rev., s. 730; C.S., s. 770.)

§ 1-413. Issuance and form of order.

The order may be made to accompany the summons, or to issue at any time afterwards, before judgment. It shall require the sheriff of the county where the defendant may be found forthwith to arrest him and hold him to bail in a specified sum, and to return the order at a place and time therein mentioned to the clerk of the court in which the action is brought. Notice of the return must be served on the plaintiff or his attorney as prescribed by law for the service of other notices. The order shall include a statement that if the person arrested is an indigent person he is entitled to services of counsel under G.S. 7A-451, that he may petition for preliminary release on the basis of

his indigency, that if he does so he will have an opportunity within 72 hours to suggest to a judge his indigency for purposes of appointment of counsel and preliminary release, and that the judge will thereupon immediately appoint counsel for him if it is adjudged that he is unable to pay a lawyer. Appointment of counsel shall be in accordance with rules adopted by the Office of Indigent Defense Services. (C.C.P., s. 153; Code, s. 295; Rev., s. 731; C.S., s. 771; 1977, c. 649, s. 3; 2000-144, s. 15.)

§ 1-414. Copies of affidavit and order to defendant.

The affidavit and order of arrest shall be delivered to the sheriff, who, upon arresting the defendant, shall deliver him a copy thereof. (C.C.P., s. 154; Code, s. 296; Rev., s. 732; C.S., s. 772.)

§ 1-415. Execution of order.

The sheriff shall execute the order by arresting the defendant and keeping him in custody until discharged by law. The sheriff may call the power of the county to his aid in the execution of the arrest. (C.C.P., s. 155; Code, s. 297; Rev., s. 733; C.S., s. 773.)

§ 1-416. Vacation of order for failure to serve.

The order of arrest is of no avail, and shall be vacated or set aside on motion, unless it is served upon the defendant, as provided by law, before the docketing of any judgment in the action. (C.C.P., s. 153; Code, s. 295; Rev., s. 734; C.S., s. 774.)

§ 1-417. Motion to vacate order; jury trial.

A defendant arrested may at any time before judgment apply on motion to vacate the order of arrest or to reduce the amount of bail. He may deny upon oath the facts alleged in the affidavit of the plaintiff on which the order of arrest was granted, and demand that the issue so raised by the plaintiff's affidavit and the defendant's denial be submitted to the jury and tried in the same manner as other issues. If the issues are found by the jury in favor of the defendant, judgment shall be rendered discharging him from arrest and vacating the order of arrest, and he shall recover of the plaintiff all costs of the proceeding in such arrest incurred by him in defending the action. (C.C.P., s. 174; Code, s. 316; 1889, c. 497; Rev., s. 735; C.S., s. 775.)

§ 1-418. Counter affidavits by plaintiff.

If the motion is made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits, or other proof, in addition to those on which the order of arrest was made. (C.C.P., s. 175; Code, s. 317; Rev., s. 736; C.S., s. 776.)

§ 1-419. How defendant discharged.

The defendant, at any time before execution, shall be discharged from the arrest, either upon giving bail or upon depositing the amount mentioned in the order of arrest, as provided in this article. (C.C.P., s. 156; Code, s. 298; Rev., s. 737; C.S., s. 777.)

§ 1-420. Defendant's undertaking.

The defendant may give bail by causing a written undertaking, payable to the plaintiff, to be executed by sufficient surety to the effect that the defendant shall at all times render himself amendable to the process of the court, during the pendency of the action, and to such as may be issued to enforce the judgment therein, or if he is arrested in an action to recover the possession of

personal property unjustly claimed, an undertaking to the same effect as that provided by law to be given by defendant for the retention of property, under the Article entitled Claim and Delivery. (C.C.P., s. 157; Code, s. 299; Rev., s. 738; C.S., s. 778.)

§ 1-421. Defendant's undertaking delivered to clerk; exception.

Within the time limited for that purpose, the sheriff shall deliver the order of arrest to the clerk of the court in which the suit is brought, with his return endorsed, and a certified copy of the undertaking of the bail, and notify the plaintiff or his attorney thereof. The plaintiff, within 10 days thereafter, may serve upon the sheriff a notice that he does not accept the bail, or he is deemed to have accepted it and the sheriff is exonerated from the liability. (C.C.P., s. 162; Code, s. 304; Rev., s. 739; C.S., s. 779.)

§ 1-422. Notice of justification; new bail.

On the receipt of notice of exception to the bail, the sheriff or defendant may, within 10 days thereafter, give to the plaintiff or his attorney notice of the justification of the same or other bondsmen (specifying the places of residence and occupation of the latter) before the court or judge, at a specified time and place; the time to be not less than five nor more than 10 days thereafter. In case other bondsmen are given, there must be a new bond, in the form hereinbefore prescribed. (C.C.P., s. 163; Code, s. 305; Rev., s. 741; C.S., s. 780; 1971, c. 268, s. 26.)

§ 1-423. Qualifications of bail.

The qualifications of bail must be as follows:

(1) Each of them must be a resident and freeholder within the State

(2) They must each be worth the amount specified in the order of arrest, exclusive of property exempt from execution; but the judge, on justification, may allow more than two bail to justify severally in amounts less than that expressed in the order, if the whole justification is equivalent to that of two sufficient bail. (C.C.P., s. 164; Code, s. 306; Rev., s. 740; C.S., s. 781.)

§ 1-424. Justification of bail.

For the purpose of justification, each of the bail shall attend before the court or judge, at the time and place mentioned in the notice, and may be examined on oath, on the part of the plaintiff, touching his sufficiency, in such manner as the court, or judge, in his discretion, may think proper. The examination must be reduced to writing and subscribed by the bail, if required by the plaintiff. (C.C.P., s. 165; Code, s. 307; Rev., s. 742; C.S., s. 782; 1971, c. 268, s. 27.)

§ 1-425. Allowance of bail.

If the court or judge finds the bail sufficient, he shall annex the examination to the undertaking, endorse his allowance thereon, and cause them to be filed with the clerk. The sheriff is then exonerated from liability. (C.C.P., s. 166; Code, s. 308; Rev., s. 743; C.S., s. 783; 1971, c. 268, s. 28.)

§ 1-426. Deposit in lieu of bail.

The defendant may, at the time of his arrest, instead of giving bail, deposit with the sheriff the amount mentioned in the order. The sheriff shall then give a certificate of the deposit to the

defendant, who shall be discharged from custody. (C.C.P., s. 167; Code, s. 309; Rev., s. 744; C.S., s. 784.)

§ 1-427. Deposit paid into court; liability on sheriff's bond.

Within four days after the deposit the sheriff must pay it into court, and take from the officer receiving it two certificates of such payment, one of which he must deliver to the plaintiff, and the other to the defendant. For any default in making such payment, the same proceedings may be had on the official bond of the sheriff, to collect the sum deposited, as in other cases of delinquency. (C.C.P., s. 168; Code, s. 310; Rev., s. 745; C.S., s. 785.)

§ 1-428. Bail substituted for deposit.

If money is deposited, as provided in G.S. 1-426 and 1-427, bail may be given and justified upon notice according to law at any time before judgment. Thereupon the court or judge shall direct, in the order of allowance, that the money deposited be refunded by the sheriff or other officer to the defendant, and it shall be refunded accordingly. (C.C.P., s. 169; Code, s. 311; Rev., s. 746; C.S., s. 786; 1971, c. 268, s. 29.)

§ 1-429. Deposit applied to plaintiff's judgment.

When money has been deposited, and remains on deposit at the time of an order or judgment for the payment of money to the plaintiff, the clerk or other officer shall, under the direction of the court, apply the same in satisfaction thereof, and after satisfying the judgment shall refund any surplus to the defendant. If the judgment is in favor of the defendant the clerk or other officer shall refund to him the whole sum deposited and remaining unapplied. (C.C.P., s. 170; Code, s. 312; Rev., s. 747; C.S., s. 787.)

§ 1-430. Defendant in jail, sheriff may take bail.

If a person for want of bail is lawfully committed to jail, at any time before final judgment, the sheriff, or other officer having him in custody, may take bail and discharge him; and the bail bond shall be regarded in every respect as other bail bonds, and shall be returned and sued on in like manner; and the officer taking it shall make special return thereof, with the bond, at the first court which is held after it is taken. (R.C., c. 11; s. 8; Code, s. 318; Rev., s. 748; C.S., s. 788.)

§ 1-431. When sheriff liable as bail.

If, after arrest, the defendant escapes, or is rescued, or bail is not given or justified, or a deposit is not made instead thereof, the sheriff is himself liable as bail. But he may discharge himself from such liability by the giving and justification of bail at any time before process against the person of the defendant to enforce an order or judgment in the action. (C.C.P., s. 171; Code, s. 313; Rev., s. 749; C.S., s. 789.)

§ 1-432. Action on sheriff's bond.

If a judgment is recovered against the sheriff, upon his liability as bail, and an execution thereon is returned wholly or partly unsatisfied, the same proceedings may be had on the official bond of the sheriff, to collect the deficiency, as in other cases of delinquency. (C.C.P., s. 172; Code, s. 314; Rev., s. 750; C.S., s. 790.)

§ 1-433. Bail exonerated.

At any time before final judgment against them, the bail may be exonerated, either by the death of the defendant or his imprisonment in a State prison, or by his legal discharge from the obligation to render himself amenable to the process, or by his surrender to the sheriff of the county where he was arrested, in execution of the judgment. (C.C.P., s. 161; Code, s. 303; Rev., s. 751; C.S., s. 791.)

§ 1-434. Surrender of defendant.

At any time before final judgment against them, the bail may surrender the defendant in their exoneration, or he may surrender himself to the sheriff of the county where he was arrested, in the following manner:

(1) A certified copy of the undertaking of the bail shall be delivered to the sheriff, who shall detain the defendant in his custody thereon, as upon an order of arrest, and acknowledge the surrender by a certificate in writing.

(2) Upon the production of a copy of the undertaking and sheriff's certificate, the court or judge may, upon a notice to the plaintiff of ten days, with a copy of the certificate, order that the bail be exonerated, and on filing the order and papers used on said application they shall be exonerated accordingly. But this section does not apply to an arrest in an action to recover the possession of personal property unjustly detained, so as to discharge the bail from an undertaking given to the effect provided by law to be given by defendant for the retention of property, under the Article entitled Claim and Delivery. (C.C.P., s. 158; Code, s. 300; Rev., s. 752; C.S., s. 792.)

§ 1-435. Bail may arrest defendant.

For the purpose of surrendering the defendant, the bail, at any time or place, before they are finally charged, may themselves arrest him, or by a written authority endorsed on a certified copy of the undertaking may empower any person over 21 years of age to do so. (C.C.P., s. 159; Code, s. 301; Rev., s. 753; C.S., s. 793.)

§ 1-436. Proceedings against bail by motion.

In case of failure to comply with the undertaking the bail may be proceeded against by motion in the cause on 10 days' notice to them. (C.C.P., s. 160; Code, s. 302; Rev., s. 754; C.S., s. 794.)

§ 1-437. Liability of bail to sheriff.

The bail taken upon the arrest are, unless they justify, or other bail are given or justified, liable to the sheriff by action for damages which he may sustain by reason of such omission. (C.C.P., s. 173; Code, s. 315; Rev., s. 755; C.S., s. 795.)

§ 1-438. When bail to pay costs.

When a notice issues against a person, as the bail of another, and the bail, at or before the term of the court at which he is bound to appear, or ought to plead, is not discharged from his liability by the death or surrender of his principal or otherwise, he is liable for all costs which accrue on said notice, notwithstanding he may be afterwards discharged, by the death or surrender of the principal, or otherwise. (R.C., c. 11, s. 10; Code, s. 319; Rev., s. 756; C.S., s. 796.)

§ 1-439. Bail not discharged by amendment.

No amendment of process or pleading discharges the bail of the party arrested thereon, unless it enlarges the sum demanded beyond the sum expressed in the bail bond. (R.C., c. 11, s. 11; Code, s. 320; Rev., s. 757; C.S., s. 797.)

Article 35.

Attachment.

Part 1. General Provisions.

§ 1-440. Superseded by Session Laws 1947, c. 693, codified as § 1-440.1 et seq.

§ 1-440.1. Nature of attachment.

(a) Attachment is a proceeding ancillary to a pending principal action, is in the nature of a preliminary execution against property, and is intended to bring property of a defendant within the legal custody of the court in order that it may subsequently be applied to the satisfaction of any judgment for money which may be rendered against the defendant in the principal action.

(b) No personal judgment, even for costs, may be rendered against a defendant unless personal jurisdiction has been acquired as provided in G.S. 1-75.3.

(c) Although there is no personal service on the defendant, or on an agent for him, and although he does not make a general appearance, judgment may be rendered in an action in which property of the defendant has been attached which judgment shall provide for the application of the attached property, by the method set out in G.S. 1-440.46, to the satisfaction of the plaintiff's claim as established in the principal action. If plaintiff's claim is not thereby satisfied in full, subsequent actions for the unsatisfied balance are not barred. (1947, c. 693, s. 1; 1967, c. 954, s. 3.)

§ 1-440.2. Actions in which attachment may be had.

Attachment may be had in any action the purpose of which, in whole or in part, or in the alternative, is to secure a judgment for money, or in any action for alimony or for maintenance and support, or an action for the support of a minor child, but not in any other action. (1947, c. 693, s. 1; 1967, c. 1152, s. 4; c. 1153, s. 3.)

§ 1-440.3. Grounds for attachment.

In those actions in which attachment may be had under the provisions of G.S. 1-440.2, an order of attachment may be issued when the defendant is

(1) A nonresident, or
(2) A foreign corporation, or
(3) A domestic corporation, whose president, vice-president, secretary or treasurer cannot be found in the State after due diligence, or
(4) A resident of the State who, with intent to defraud his creditors or to avoid service of summons,
    a. Has departed, or is about to depart, from the State, or
    b. Keeps himself concealed therein, or
(5) A person or domestic corporation which, with intent to defraud his or its creditors,
    a. Has removed, or is about to remove, property from this State, or
    b. Has assigned, disposed of, or secreted, or is about to assign, dispose of, or secrete, property. (1947, c. 693, s. 1.)

§ 1-440.4. Property subject to attachment.

All of a defendant's property within this State which is subject to levy under execution, or which in supplemental proceedings in aid of execution is subject to the satisfaction of a judgment for money, is subject to attachment under the conditions prescribed by this Article. (1947, c. 693, s. 1.)

§ 1-440.5. By whom order issued; when and where; filing of bond and affidavit.

(a) An order of attachment may be issued by

(1) The clerk of the court in which the action has been, or is being, commenced, or by

(2) A judge of the appropriate trial division, as authorized in subsection (b) of this section.

(b) An order of attachment issued by a judge may be issued as follows:

(1) If the action has been or is being commenced in the Superior Court Division, a resident superior court judge of the district, or a judge regularly holding the superior courts of the district, may issue the order in open court or in chambers, in session or in vacation, and within or without the district. Any other judge holding a session of superior court in the county may issue the order in open court.

(2) If the action has been or is being commenced in the District Court Division, the presiding judge, the chief district judge, or any district judge authorized by the chief to hear motions and enter interlocutory orders may issue the order in open court or in chambers in session or in vacation.

(c) In those cases where the order of attachment is issued by the judge, such judge shall cause the bond required by G.S. 1-440.10 and the affidavit required by G.S. 1-440.11 to be filed promptly with the clerk of the court of the county in which the action is pending. (1947, c. 693, s. 1; 1971, c. 268, s. 30.)

§ 1-440.6. Time of issuance with reference to summons or service by publication.

(a) The order of attachment may be issued at the time the summons is issued or at any time thereafter.

(b) No order of attachment may be issued in any action after judgment in the principal action is had in the superior court. (1947, c. 693, s. 1; 1967, c. 954, s. 3.)

§ 1-440.7. Time within which service of summons or service by publication must be had.

(a) When an order of attachment is issued before the summons is served.

(1) If personal service within the State is to be had, such personal service must be had within 30 days after the issuance of the order of attachment;

(2) If such personal service within the State is not to be had,

a. Service of the summons outside the State, in the manner provided by Rule 4(j)(9)a or b of the Rules of Civil Procedure, must be had within 30 days after the issuance of the order of attachment, or

b. Service by publication must be commenced not later than the thirty-first day after the issuance of the order of attachment. If publication is commenced, such publication must be completed as provided by Rule

4(j)(9)c of the Rules of Civil Procedure unless the defendant appears in the action or unless personal service is had on him within the State.

(b) Upon failure of compliance with the applicable provisions of subsection (a) of this section, either the clerk or the judge shall, upon the motion of the defendant or any other interested party, make an order dissolving the attachment, and the defendant shall have all the rights that would accrue to him under the provisions of G.S. 1-440.45, the same as if the principal action had been prosecuted to judgment and the defendant had prevailed therein. (1947, c. 693, s. 1; 1967, c. 954, s. 3; 1971, c. 1093, ss. 14, 15.)

§ 1-440.8. General provisions relative to bonds.

(a) Any bond given pursuant to the provisions of this Article shall be executed by the party required to furnish the bond and by

(1) A surety company authorized to do business in this State, as provided by G.S. 58-73-5, or by

(2) One or more individual sureties, as may be required by the court.

(b) Each individual surety shall execute an affidavit, to be attached to the bond, stating that he is a resident of the State and that he is worth the amount specified in the bond exclusive of property exempt from execution and over and above all his liabilities.

(c) Any bond given pursuant to any provisions of this Article shall be subject to the approval of the court.

(d) It is not a defense in an action on any bond given pursuant to this Article that

(1) The court had no jurisdiction to require or accept bond, or

(2) The order of attachment was improperly granted, or

(3) There was any other irregularity in the attachment proceeding. (1947, c. 693, s. 1.)

§ 1-440.9. Authority of court to fix procedural details.

The court of proper jurisdiction, before which any matter is pending under the provisions of this Article, shall have authority to fix and determine all necessary procedural details in all instances in which the statute fails to make definite provision as to such procedure. (1947, c. 693, s. 1.)

Part 2. Procedure to Secure Attachment.

§ 1-440.10. Bond for attachment.

Before the court issues an order of attachment, the plaintiff must furnish a bond as follows:

(1) The amount of the bond shall be such as may be fixed by the court issuing the order of attachment and shall be such as may be deemed necessary by the court in order to afford reasonable protection to the defendant, but shall not be less than two hundred dollars ($200.00);

(2) The condition of the bond shall be that

a. If the order of attachment is dissolved, dismissed or set aside by the court, or

b. If the plaintiff fails to obtain judgment against the defendant, the plaintiff will pay all costs that may be awarded to the defendant and all damages that the defendant may sustain by reason of the attachment, the

surety's liability, however, to be limited to the amount of the bond. (1947, c. 693, s. 1.)

§ 1-440.11. Affidavit for attachment; amendment.

(a) To secure an order of attachment, the plaintiff, or his agent or attorney in his behalf, must state by affidavit

(1) In every case:
  a. The plaintiff has commenced or is about to commence an action, the purpose of which, in whole or in part, or in the alternative, is to secure a judgment for money, and the amount thereof,
  b. The nature of such action, and
  c. The ground or grounds for attachment (one or more of those stated in G.S. 1-440.3); and

(2) In those cases described below, the additional facts indicated:
  a. If the action is based on breach of contract, that the plaintiff is entitled to recover the amount for which judgment is sought over and above all counterclaims known to him;
  b. If it is alleged as a ground for attachment that the defendant has done, or is about to do, any act with intent to defraud his creditors, the facts and circumstances supporting such allegation.

(b) A verified complaint may be used as the affidavit required by this section.

(c) The court, in its discretion, at any time before judgment in the principal action, may allow any such affidavit to be amended even though the original affidavit is wholly insufficient.

(d) An amendment of an insufficient affidavit of attachment relates to the beginning of the attachment proceeding, and no rights based on such irregularity can be required by any third party by any subsequent attachment intervening between the original affidavit and the amendment. (1947, c. 693, s. 1.)

§ 1-440.12. Order of attachment; form and contents.

(a) If the matters required by G.S. 1-440.11(a) are shown by affidavit to the satisfaction of the court and if the bond required by G.S. 1-440.10 is furnished, the court shall issue an order of attachment which shall

(1) Show the venue, the court in which the action has been, or is being, commenced, and the title of the action;
(2) Run in the name of the State and be directed to the sheriff of a designated county;
(3) State that an affidavit for the attachment of the defendant's property has been filed with the court in the action, that the required attachment bond has been executed and delivered to the court and that it has been made to appear to the satisfaction of the court that the allegations of the plaintiff's affidavit for attachment are true;
(4) Direct the sheriff to attach and safely keep all of the property of the defendant within the sheriff's county which is subject to attachment, or so much thereof as is sufficient to satisfy the plaintiff's demand, together with costs and expenses;
(5) Direct that the order of attachment be returned to the clerk of the court in which the action is pending;

(6) Show the date of issuance; and

(7) Be signed by clerk or the judge issuing the order.

(b) The order of attachment shall not contain a return date, but shall be returned to the clerk as provided by G.S. 1-440.16. (1947, c. 693, s. 1.)

§ 1-440.13. Additional orders of attachment at time of original order; alias and pluries orders.

(a) At the time the original order of attachment is issued, or thereafter, one or more additional orders, at the request of the plaintiff, may be issued, and any such additional order may be directed to the sheriff of any county in which the defendant may have property.

(b) After the original order or orders have been returned, if no property or, in the opinion of the plaintiff, insufficient property has been attached thereunder, alias or pluries orders may be issued prior to judgment, at the request of the plaintiff, and such alias or pluries orders may be directed to the sheriff of any county in which the defendant may have property. (1947, c. 693, s. 1.)

§ 1-440.14. Notice of issuance of order of attachment when no personal service.

(a) When service of process by publication is made subsequent to the original order of attachment, the published and mailed notice of service of process shall include notice of the issuance of the order of attachment.

(b) When the original order of attachment is issued after publication is begun, a notice of the issuance of the order of attachment shall be published once a week for four successive weeks in some newspaper published in the county in which the action is pending, such publication to be commenced within 30 days after the issuance of the order of attachment. Such notice shall show

(1) The county and the court in which the action is pending,

(2) The names of the parties,

(3) The purpose of the action, and

(4) The fact that on a date specified an order was issued to attach the defendant's property.

(c) If no newspaper is published in the county in which the action is pending, the notice

(1) Shall be published once a week for four successive weeks in some newspaper published in the same district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be, or

(2) Shall be posted at the courthouse door in the county for 30 days. (1947, c. 693, s. 1; 1967, c. 954, s. 3; 1987 (Reg. Sess., 1988), c. 1037, s. 40.)

Part 3. Execution of Order of Attachment; Garnishment.

§ 1-440.15. Method of execution.

(a) The sheriff to whom the order of attachment is directed shall note thereon the date of its delivery to him and shall promptly execute it by levying on the defendant's property as follows:

(1) The levy on real property shall be made as provided by G.S. 1-440.17;

(2) The levy on stock in a corporation shall be made as provided by G.S. 1-440.19;

(3) The levy on goods stored in a warehouse shall be made as provided by G.S. 1-440.20;

(4) The levy on tangible personal property in the possession of the defendant shall, except as provided in G.S. 1-440.19, be made as provided by G.S. 1-440.18;

(5) The levy on tangible personal property belonging to the defendant but not in his possession, or on any indebtedness to the defendant, or on any other intangible personal property belonging to the defendant, shall, except as provided by G.S. 1-440.19 and 1-440.20, be made as provided by G.S. 1-440.25 relating to garnishment.

(b) The sheriff is not required to levy upon personal property before levying upon real property.

(c) In order for the sheriff to make any levy, it is not necessary for him to deliver to the defendant or any other person any copy of the order of attachment or any other process except in the case of garnishment as provided by G.S. 1-440.25. (1947, c. 693, s. 1.)

§ 1-440.16. Sheriff's return.

(a) After the sheriff has executed an order of attachment, he shall promptly make a written return showing all property levied upon by him and the date of such levy. In such return, he shall describe the property levied upon in sufficient detail to identify the property clearly. The sheriff forthwith shall deliver the order of attachment, together with his return, to the court in which the action is pending.

(b) If garnishment process is issued, as provided by G.S. 1-440.23 and 1-440.24, the sheriff shall include in his return a report of his proceedings with respect to such garnishment and shall return to the court the original process issued to the garnishee.

(c) If the sheriff makes no levy within 10 days after the issuance of the order of attachment, he forthwith shall deliver to the court, in which the action is pending, the order, and any other process relating thereto, together with his return showing that no levy has been made and the reason therefor. (1947, c. 693, s. 1.)

§ 1-440.17. Levy on real property.

(a) In order to make a levy on real property, the sheriff need not go upon the land or take control over it, but he

(1) Shall make an endorsement upon the order of attachment or shall attach thereto a statement showing that he thereby levies upon the defendant's interest in the real property described in such endorsement or statement, describing the real property in sufficient detail to identify it clearly, and

(2) Shall, as promptly as practicable, certify such levy, and the names of the parties to the action, to the clerk of the superior court of the county in which the land lies.

(b) Upon receipt of the sheriff's certificate, the clerk shall docket the levy, as provided by G.S. 1-440.33. (1947, c. 693, s. 1.)

§ 1-440.18. Levy on tangible personal property in defendant's possession.

The sheriff shall levy on tangible personal property in the possession of the defendant by seizing and taking into his possession so much thereof as will be sufficient to satisfy the plaintiff's demands. (1947, c. 693, s. 1.)

§ 1-440.19. Levy on stock in corporation.

(a) The sheriff may levy, as on tangible property, on a share of stock in a corporation by seizing the certificate of stock

(1) When the certificate is in the possession of the defendant, and
(2) When, by the law of the state in which the corporation is incorporated, the property interest of the stockholder is embodied in the certificate of stock, as is provided by the Uniform Stock Transfer Act or similar legislation.

(b) The sheriff may levy on a share of stock in a corporation by delivery of copies of the garnishment process to the proper officer or agent of such corporation, as set out in G.S. 1-440.26,

(1) When, by the law of the state in which the corporation is incorporated, the property interest of the stockholder is not embodied in the certificate of stock, or
(2) When, by the law of the state in which the corporation is incorporated, the property interest of the stockholder is embodied in the certificate of the stock, as is provided by the Uniform Stock Transfer Act or similar legislation, and
    a. Such certificate has been surrendered to the corporation which issued it, or
    b. The transfer of such certificate by the holder thereof has been restrained or enjoined.

(c) A restraining order or injunction against the transfer of a certificate of stock, when proper in an attachment proceeding, may be granted by the clerk or judge pursuant to a motion in the cause to which the attachment is ancillary. (1947, c. 693, s. 1.)

§ 1-440.20. Levy on goods in warehouses.

(a) The sheriff may levy on goods delivered to a warehouseman for storage, by delivering copies of the garnishment process to the warehouseman, or to the proper officer or agent for the corporate warehouseman, as set out in G.S. 1-440.26,

(1) If a negotiable warehouse receipt has not been issued with respect thereto, or
(2) If a negotiable warehouse receipt has been issued with respect thereto, and
    a. Such receipt is seized, or
    b. Such receipt is surrendered to the warehouseman who issued it, or
    c. The transfer of such receipt by the holder thereof is restrained or enjoined.

(b) A restraining order or injunction against the transfer of a negotiable warehouse receipt, when proper in an attachment proceeding, may be granted by the clerk or judge pursuant to a motion in the cause to which the attachment is ancillary. (1947, c. 693, s. 1.)

§ 1-440.21. Nature of garnishment.

(a) Garnishment is not an independent action but is a proceeding ancillary to attachment and is the remedy for discovering and subjecting to attachment

(1) Tangible personal property belonging to the defendant but not in his possession, and
(2) Any indebtedness to the defendant and any other intangible personal property belonging to him.

(b) A garnishee is a person, firm, association, or corporation to which such a summons as specified by G.S. 1-440.23 is issued. (1947, c. 693, s. 1.)

§ 1-440.22. Issuance of summons to garnishee.

(a) A summons to garnishee may be issued

(1) At the time of the issuance of the original order of attachment, by the court making such order, or

(2) At any time thereafter prior to judgment in the principal action, by the court in which the action is pending.

(b) At the request of the plaintiff, such summons to garnishee shall, at either such time, be issued to each person designated by the plaintiff as a garnishee. (1947, c. 693, s. 1.)

§ 1-440.23. Form of summons to garnishee.

The summons to garnishee shall be substantially in the following form:

State of North Carolina — In the Superior Court

_____County

_____,
Plaintiff,
vs.
_____,
Defendant,
and
_____,
Garnishee.

Summons to Garnishee

To_____, Garnishee:

You are hereby summoned, as a garnishee of the defendant, _____, and required, within twenty days after the service of this summons upon you, to file a verified answer in the Office of the Clerk of the Superior Court of the above named county, at_____, North Carolina, showing –

(1) Whether, at the time of the service of this summons upon you, or at any time since then until the date of your answer, you were indebted to the defendant or had any property of his in your possession and, if so, the amount and nature thereof; and

(2) Whether, according to your knowledge, information or belief, any other person is indebted to the defendant or has any property of the defendant in his possession and, if so, the name of each such person.

In case of your failure to file such answer a conditional judgment will be rendered against you for the full amount for which the plaintiff has prayed judgment against the defendant, together with such amount as will be sufficient to cover the plaintiff's costs.

This the _____day of_____, _____

_____
(Here designate Clerk Superior Court or Judge.)

(1947, c. 693, s. 1; 1999-456, s. 59.)

§ 1-440.24. Form of notice of levy in garnishment proceeding.

The notice of levy to be served on the garnishee shall be substantially in the following form:

State of North Carolina — In the Superior Court

_____ County

_____,
Plaintiff,
vs.

_____, Notice to Levy
Defendant,
and
_____,
Garnishee.

To _____ Garnishee:

By virtue of the authority contained in an order of attachment issued by the Superior Court of _____ County and directed to me, I hereby levy upon any and all property that you have or hold in your possession for the account, use, or benefit of the defendant, and upon all debts owed by you to the defendant.

You are notified that a lien is hereby created on all the tangible property of the defendant in your possession, and that if you surrender the possession of, or transfer to anyone, any property belonging to the defendant, or if you pay any debt you owe the defendant, unless the same is delivered or paid to me or to the court for such proper disposition as the court may determine, you will be subject to punishment as for contempt, and that judgment may be rendered against you for the value of such property not exceeding the full amount of plaintiff's claim and costs of the action.

This the ____ day of _____, ___

_____
Sheriff of _____ County.

(1947, c. 693, s. 1; 1999-456, s. 59.)

§ 1-440.25. Levy upon debt owed by, or property in possession of, the garnishee.

The levy in all cases of garnishment shall be made by delivering to the garnishee, or a process agent authorized by him or expressly or impliedly authorized by law, or some representative of a corporate garnishee designated by G.S. 1-440.26, a copy of each of the following:

(1) The order of attachment,
(2) The summons to garnishee, and
(3) The notice of levy. (1947, c. 693, s. 1.)

§ 1-440.26. To whom garnishment process may be delivered when garnishee is corporation.

(a) When the garnishee is a domestic corporation, the copies of the process listed in G.S. 1-440.25 may be delivered to the president or other head, secretary, cashier, treasurer, director, managing agent or local agent of the corporation.

(b) When the garnishee is a foreign corporation, the copies of the process listed in G.S. 1-440.25 may be delivered only to the president, treasurer or secretary thereof personally and while such officer is within the State, except that

(1) If the corporation has property within this State, or
(2) If the cause of action arose in this State, or
(3) If the plaintiff resides in this State,

the copies of the process may be delivered to any of the persons designated in subsection (a) of this section.

(c) A person receiving or collecting money within this State on behalf of a corporation is deemed to be a local agent of the corporation for the purpose of this section. (1947, c. 693, s. 1.)

§ 1-440.27. Failure of garnishee to appear.

(a) When a garnishee, after being duly summoned, fails to file a verified answer as required, the clerk of the court shall enter a conditional judgment for the plaintiff against the garnishee for the full amount for which the plaintiff shall have prayed judgment against the defendant, together with such amount as in the opinion of the clerk will be sufficient to cover the plaintiff's costs.

(b) The clerk shall thereupon issue a notice to the garnishee requiring him to appear not later than 10 days after the date of service of the notice, and show cause why the conditional judgment shall not be made final. If, after service of such notice, the garnishee fails to appear within the time named and file a verified answer to the summons to the garnishee, or if such notice cannot be served upon the garnishee because he cannot be found within the county where the original summons to such garnishee was served, then in either such event, the clerk shall make the conditional judgment final. (1947, c. 693, s. 1.)

§ 1-440.28. Admission by garnishee; setoff; lien.

(a) When a garnishee admits in his answer that he is indebted to the defendant, or was indebted to the defendant at the time of service of garnishment process upon him or at some date subsequent thereto, the clerk of the court shall enter judgment against the garnishee for the smaller of the two following amounts:

(1) The amount which the garnishee admits that he owes the defendant or has owed the defendant at any time from the date of the service of the garnishment process to the date of answer by the garnishee, or

(2) The full amount for which the plaintiff has prayed judgment against the defendant, together with such amount as in the opinion of the clerk will be sufficient to cover the plaintiff's costs.

(b) When a garnishee admits in his answer that he has in his possession personal property belonging to the defendant, with respect to which the garnishee does not claim a lien or other interest, the clerk of the court shall enter judgment against the garnishee requiring him to deliver such property to the sheriff, and upon such delivery the garnishee shall be exonerated as to the property so delivered.

(c) When a garnishee admits in his answer that, at or subsequent to the date of the service of the garnishment process upon him, he had in his possession property belonging to the defendant, with respect to which the garnishee does not claim a lien or other interest, but that he does not have such property at the time of his answer, the clerk of the court shall at a hearing for that purpose determine, upon affidavit filed, the value of such property, unless the plaintiff, the defendant and the garnishee agree as to the value thereof, or unless, prior to the hearing, a jury trial thereon is demanded by one of the parties. The clerk shall give the parties such notice of the hearing as he may deem reasonable and by such means as he may deem best.

(d) When the value of the property has been determined as provided in subsection (c) of this section the court shall enter judgment against the garnishee for the smaller of the two following amounts:

(1) An amount equal to the value of the property in question, or

(2) The full amount for which the plaintiff has prayed judgment against the defendant, together with such amount as in the opinion of the clerk will be sufficient to cover the plaintiff's costs.

(e) When a garnishee alleges in his answer that the debt or the personal property due to be delivered by him to the defendant will become payable or deliverable at a future date, and the

plaintiff, within 20 days thereafter, files a reply denying such allegation, the issue thereby raised shall be submitted to and determined by a jury. If it is not denied that the debt owed or the personal property due to be delivered to the defendant will become payable or deliverable at a future date, or if is so found upon the trial, judgment shall be given against the garnishee which shall require the garnishee at the due date of the indebtedness to pay the plaintiff such an amount as is specified in subsection (a) of this section, or at the deliverable date of the personal property to deliver such property to the sheriff in order that it may be sold to satisfy the plaintiff's claim.

(f) In answer to a summons to garnishee, a garnishee may assert any right of setoff which he may have with respect to the defendant in the principal action.

(g) With respect to any property of the defendant which the garnishee has in his possession, a garnishee, in answer to a summons to garnishee, may assert any lien or other valid claim amounting to an interest therein. No garnishee shall be compelled to surrender the possession of any property of the defendant upon which the garnishee establishes a lien or other valid claim amounting to an interest therein, which lien or interest attached or was acquired prior to service of the summons to garnishee, and such property only may be sold subject to the garnishee's lien or interest. (1947, c. 693, s. 1.)

§ 1-440.29. Denial of claim by garnishee; issues of fact.

(a) In addition to any other instances when issues of fact arise in a garnishment proceeding, issues of fact arise

(1) When a garnishee files an answer such that the court cannot determine therefrom whether the garnishee intends to admit or deny that he is indebted to, or has in his possession any property of, the defendant, or

(2) When a garnishee files an answer denying that he is indebted to, or has in his possession any property of, the defendant, or was indebted to, or had in his possession any property of, the defendant at the time of the service of the summons upon him or at any time since then, and the plaintiff, within 20 days thereafter, files a reply alleging the contrary.

(b) When a jury finds that the garnishee owes the defendant a specific sum of money or has in his possession property of the defendant of a specific value, or owed the defendant a specific sum of money or had in his possession property of the defendant of a specific value at the time of the service of the summons upon him or at any time since then, the court shall enter judgment against the garnishee for the smaller of the two following amounts:

(1) The amount specified in the jury's verdict, or

(2) The full amount for which the plaintiff has prayed judgment against the defendant, together with such amount as in the opinion of the clerk will be sufficient to cover the plaintiff's costs. (1947, c. 693, s. 1.)

§ 1-440.30. Time of jury trial.

All issues arising under G.S. 1-440.28 or G.S. 1-440.29 shall, when a jury trial is demanded by any party, be submitted to and determined by a jury at the same time the principal action is tried, unless the judge, on motion of any party for good cause shown, orders an earlier trial or a separate trial. (1947, c. 693, s. 1.)

§ 1-440.31. Payment to defendant by garnishee.

Any garnishee who shall pay to the defendant any debt owed the defendant or deliver to the defendant any property belonging to the defendant, after being served with garnishment process, and while the garnishment proceeding is pending, shall not thereby relieve himself of liability to the plaintiff. (1947, c. 693, s. 1.)

§ 1-440.32. Execution against garnishee.

(a) Pursuant to a judgment against a garnishee, execution may be issued against such garnishee prior to judgment against the defendant in the principal action. The court may issue such execution without notice or hearing. All property seized pursuant to such execution shall be held subject to the order of the court pending judgment in the principal action.

(b) The court, pending judgment in the principal action, may permit the property to remain in the garnishee's possession upon the garnishee's giving a bond in the same manner and on the same conditions as is provided by G.S. 1-440.39 with respect to the discharge of an attachment by the defendant. (1947, c. 693, s. 1.)

Part 4. Relating to Attached Property.

§ 1-440.33. When lien of attachment begins; priority of liens.

(a) Upon securing the issuance of an order of attachment, a plaintiff may cause notice of the issuance of the order to be filed with the clerk of the court of any county in which the plaintiff believes that the defendant has real property which is subject to levy pursuant to such order of attachment. Upon receipt of such notice the clerk shall promptly docket the same on the lis pendens docket.

(b) When the clerk receives from the sheriff a certificate of levy on real property as provided by G.S. 1-440.17, the clerk shall promptly note the levy on his judgment docket and index the same. When the levy is thus docketed and indexed,

(1) The lien attaches and relates back to the time of the filing of the notice of lis pendens if the plaintiff has prior to the levy caused notice of the issuance of the order of attachment to be properly entered on the lis pendens docket of the county in which the land lies, as provided by subsection (a) of this section.

(2) The lien attaches only from the time of the docketing of the certificate of levy if no entry of the issuance of the order of attachment has been made prior to the levy on the lis pendens docket of the county in which the land lies.

(c) A levy on tangible personal property of the defendant in the hands of the garnishee, when made in the manner provided by G.S. 1-440.25, creates a lien on the property thus levied on from the time of such levy.

(d) If more than one order of attachment is served with respect to property in possession of the defendant or is served upon a garnishee, the priority of the order of the liens is the same as the order in which the attachments were levied, subject to the provisions of subsection (b) of this section, relating to the time when a lien of attachment begins with respect to real property.

(e) If two or more orders of attachment are served simultaneously, liens attach simultaneously, subject to the provisions of subsection (b) of this section, relating to the time when a lien of attachment begins with respect to real property.

(f) If the funds derived from the attachment of property on which liens become effective simultaneously are insufficient to pay the judgments in full of the simultaneously attaching creditors who have liens which begin simultaneously, such funds are prorated among such

creditors according to the amount of the indebtedness of the defendant to each of them, respectively, as established upon the trial.

(g) If more than one order of attachment is served on a garnishee, the court from which the first order of attachment was issued shall, upon motion of the garnishee or of any of the attaching creditors, make parties to the action all of the attaching creditors, who are not already parties thereto in order that any questions of priority among the attaching creditors may be determined in that action and in that court. (1947, c. 693, § 1.)

§ 1-440.34. Effect of defendant's death after levy.

(a) In case of the death of the defendant, after the issuance of an order of attachment and after a levy is made thereunder but before service of summons is had or before an appearance is entered in the principal action, the levy shall remain in force

(1) If the cause of action set forth by the plaintiff in the principal action is one which survives, and

(2) If service is completed on the personal representative of the defendant within three months from the date of his qualification.

(b) If a levy has been made upon real property and the defendant dies before such real property is sold pursuant to the attachment, the lien of the attachment shall continue but the judgment may be enforced only through the defendant's personal representative in the regular course of administration. (1947, c. 693, s. 1.)

§ 1-440.35. Sheriff's liability for care of attached property; expense of care.

The sheriff is liable for the care and custody of personal property levied upon pursuant to an order of attachment just as if he had seized it under execution. Upon demand of the sheriff, the plaintiff shall advance to the sheriff from time to time such amount as may be required to provide the necessary care and to maintain the custody of the attached property. The expense so incurred in caring for and maintaining custody of attached property shall be taxed as part of the costs of the action. (1947, c. 693, s. 1.)

Part 5. Miscellaneous Procedure Pending Final Judgment.

§ 1-440.36. Dissolution of the order of attachment.

(a) At any time before judgment in the principal action, a defendant whose property has been attached may specially or generally appear and move, either before the clerk or the judge, to dissolve the order of attachment.

(b) When the defect alleged as grounds for the motion appears upon the face of the record, no issues of fact arise, and the motion is heard and determined upon the record.

(c) When the defect alleged does not appear upon the face of the record, the motion is heard and determined upon the affidavits filed by the plaintiff and the defendant, unless, prior to the actual commencement of the hearing, a jury trial is demanded in writing by the plaintiff or the defendant. Either the clerk or the judge hearing and determining the motion to dissolve the order of attachment shall find the facts upon which his ruling thereon is based. If a jury trial is demanded by either party, the issues involved shall be submitted and determined at the same time the principal action is tried, unless the judge, on motion of any party for good cause shown, orders an earlier trial or a separate trial. (1947, c. 693, s. 1.)

§ 1-440.37. Modification of the order of attachment.

At any time before judgment in the principal action, the defendant may apply to the clerk or the judge for an order modifying the order of attachment. Such motion shall be heard upon affidavits. If the order is modified, the court making the order of modification shall make such provisions with respect to bonds and other incidental matters as may be necessary to protect the rights of the parties. (1947, c. 693, s. 1.)

§ 1-440.38. Stay of order dissolving or modifying an order of attachment.

Whenever a plaintiff appeals from an order dissolving or modifying an order of attachment, such order shall be stayed and the attachment lien with respect to all property theretofore attached shall remain in effect until the appeal is finally disposed of. In order to protect the defendant in the event that an order dissolving or modifying an order of attachment is affirmed on appeal, the court from whose order the appeal is taken may, in its discretion, require the plaintiff to execute and deposit with the clerk an additional bond with sufficient surety and in an amount deemed adequate by the court to indemnify the defendant against all losses which he may suffer on account of the continuation of the lien of the attachment pending the determination of the appeal. (1947, c. 693, s. 1.)

§ 1-440.39. Discharge of attachment upon giving bond.

(a) Any defendant whose property has been attached may move, either before the clerk or the judge, to discharge the attachment upon his giving bond for the property attached. If no prior general appearance has been made by such defendant, such motion shall constitute a general appearance.

(b) The court hearing such motion shall make an order discharging such attachment upon such defendant's filing a bond as follows:

(1) If it is made to appear to the satisfaction of the court by affidavit that the property attached is of a greater value than the amount claimed by the plaintiff, the court shall require a bond in double the amount of the judgment prayed for by the plaintiff, and the condition of such bond shall be that if judgment is rendered against the defendant, the defendant will pay to the plaintiff the amount of the judgment and all costs that the defendant may be ordered to pay, the surety's liability, however, to be limited to the amount of the bond.

(2) If it is made to appear to the satisfaction of the court by affidavit that the property attached is of less value than the amount claimed by the plaintiff, the court shall, upon affidavits filed, determine the value thereof and shall require a bond in double the amount of such value, and the condition of the bond shall be that if judgment is rendered against the defendant, the defendant will pay to the plaintiff an amount equal to the value of such property.

(c) If a bond is filed as provided in subsection (b) of this section, all property of such defendant then remaining in the possession of the sheriff pursuant to such attachment, including, but not by way of limitation, money collected and the proceeds of sales, shall be delivered to the defendant and shall thereafter be free from the attachment.

(d) The discharge of an attachment as provided by this section does not bar the defendant from exercising any right provided by G.S. 1-440.36, 1-440.37 or 1-440.40. (1947, c. 693, s. 1.)

§ 1-440.40. Defendant's objection to bond or surety.

(a) At any time before judgment in the principal action, on motion of the defendant, the clerk or judge may, if he deems it necessary in order to provide adequate protection, require an increase in the amount of the bond previously given by or required of the plaintiff.

(b) At any time before judgment in the principal action the defendant may except to any surety upon any bond given by the plaintiff pursuant to the provisions of this Article, in which case the surety shall be required to justify, and the procedure with respect thereto shall be as is prescribed for the justification of bail in arrest and bail proceedings. (1947, c. 693, s. 1.)

§ 1-440.41. Defendant's remedies not exclusive.

The exercise by the defendant of any one or more rights provided by G.S. 1-440.36 through 1-440.40 does not bar the defendant from exercising any other rights provided by those sections. (1947, c. 693, s. 1.)

§ 1-440.42. Plaintiff's objection to bond or surety; failure to comply with order to furnish increased or new bond.

(a) At any time before judgment in the principal action, on motion of the plaintiff, the clerk or judge may, if he deems it necessary in order to provide adequate protection, require an increase in the amount of the bond previously given by or required of any defendant, garnishee or intervenor.

(b) At any time before judgment in the principal action the plaintiff may except to any surety upon any bond given by any defendant, garnishee or intervenor pursuant to the provisions of this Article, in which case the surety shall be required to justify, and the procedure with respect thereto shall be as is prescribed for the justification of bail in arrest and bail proceedings.

(c) Upon failure of a defendant, garnishee or intervenor to comply with an order requiring an increase in the amount of a bond previously given, or upon failure to comply with an order requiring a new bond when the surety on the previous bond is unsatisfactory, the court may, in addition to any other action with respect thereto, issue an order of attachment directing the sheriff to seize and take into his possession property released upon the giving of the previous bond, if the person failing to comply with the order still has possession of the same. Such property when retaken into his possession by the sheriff shall be subject to all the provisions of this Article relating to attached property. (1947, c. 693, s. 1.)

§ 1-440.43. Remedies of third person claiming attached property or interest therein.

Any person other than the defendant who claims property which has been attached, or any person who has acquired a lien upon or an interest in such property, whether such lien or interest is acquired prior to or subsequent to the attachment, may

(1) Apply to the court to have the attachment order dissolved or modified, or to have the bond increased, upon the same conditions and by the same methods as are available to the defendant, or

(2) Intervene and secure possession of the property in the same manner and under the same conditions as is provided for intervention in claim and delivery proceedings. (1947, c. 693, s. 1.)

§ 1-440.44. When attached property to be sold before judgment.

(a) The sheriff shall apply to the clerk or to the judge for authority to sell property, or any share or interest therein, seized pursuant to an order of attachment,

(1) If the property is perishable, or
(2) If the property is not perishable, but
a. Will materially deteriorate in value pending litigation, or
b. Will likely cost more than one fifth of its value to keep pending a final determination of the action, and
c. Is not discharged from the attachment lien in the manner provided by G.S. 1-440.39 within ten days after the seizure thereof.

(b) If the court so orders, the property described in subsection (a) of this section shall thereupon be sold under the direction of the court unless the discharge of the same is secured by the defendant or other person interested therein, in the manner provided by G.S. 1-440.39, prior to such sale. The proceeds of such sale shall be liable for any judgment obtained in the principal action and shall be retained by the sheriff to await such judgment. (1947, c. 693, s. 1.)

Part 6. Procedure after Judgment.

§ 1-440.45. When defendant prevails in principal action.

(a) If the defendant prevails in the principal action, or if the order of attachment is for any reason dissolved, dismissed or set aside, or if service is not had on the defendant as provided by G.S. 1-440.7,

(1) The defendant shall be entitled to have delivered to him
a. All bonds taken for his benefit whether filed in the proceedings or taken by an officer, and
b. The proceeds of any sales and all money collected, and
c. All attached property remaining in the officer's hands, and
(2) Any garnishee shall be entitled to have vacated any judgment theretofore taken against him.

(b) Either the clerk or the judge shall have authority, upon motion of the defendant or any garnishee, to make any such order as may be necessary or proper to carry out the provisions of subsection (a) of this section.

(c) Upon judgment in his favor in the principal action, the defendant may thereafter, by motion in the cause, recover on any bond taken for his benefit therein, or he may maintain an independent action thereon. (1947, c. 693, s. 1; 1951, c. 837, s. 8.)

§ 1-440.46. When plaintiff prevails in principal action.

(a) If judgment is entered for the plaintiff in the principal action, the sheriff shall satisfy such judgment out of money collected by him or paid to him in the attachment proceeding or out of property attached by him as follows:

(1) After paying the costs of the action, he shall apply on the judgment as much of the balance of the money in his hands as may be necessary to satisfy the judgment.
(2) If the money so applied is not sufficient to pay the judgment in full, the sheriff shall, upon the issuance of an execution on the judgment, sell sufficient attached property, except debts and evidences of indebtedness to satisfy the judgment.
(3) While the judgment remains unsatisfied, and notwithstanding the pendency of the sale of any personal or real property as provided by subdivision (2) of this subsection, the sheriff shall collect and apply on the judgment any debts or evidences of indebtedness attached by him.

(4) If, after the expiration of six months from the docketing of the judgment, the judgment is not fully satisfied, the sheriff shall, when ordered by the clerk or judge, as provided in subsection (b) of this section, sell all debts and notes and other evidences of indebtedness remaining unpaid in his hands, and shall apply the net proceeds thereof, or as much thereof as may be necessary, to the satisfaction of the judgment. To forestall the running of the statute of limitations, earlier sale may be ordered in the discretion of the court.

(b) In order to secure the sale of the remaining debts and evidences of indebtedness as provided in subsection (a)(4) of this section, the plaintiff may move therefor, either before the clerk or the judge, and shall submit with his motion

(1) His affidavit setting forth fully the proceedings had by the sheriff since the service of the attachment, listing or describing the property attached, and showing the disposition thereof, and

(2) The affidavit of the sheriff that he has endeavored to collect the debts or evidences of indebtedness and that there remains uncollected some part thereof.

Upon the filing of such motion, the court to which the motion is made shall give the defendant or his attorney such notice of the hearing thereon as the court may deem reasonable, and by such means as the court may deem best. Upon the hearing, the court may order the sheriff to sell the debts and other evidences of indebtedness remaining in his hands, or may make such other order with respect thereto as the court may deem proper.

(c) In case of the sale of a share of stock of a corporation or of property in a warehouse for which a negotiable warehouse receipt has been issued, the sheriff shall execute and deliver to the purchaser a certificate of sale therefor, and the purchaser shall have all the rights with respect thereto which the defendant had.

(d) Upon judgment in his favor in the principal action, the plaintiff is entitled to judgment on any bond taken for his benefit therein.

(e) When the judgment and all costs of the proceedings have been paid, the sheriff, upon demand of the defendant, shall deliver to the defendant the residue of the attached property or the proceeds thereof. (1947, c. 693, s. 1; 1951, c. 837, s. 9.)

Part 7. Attachments in Justice of the Peace Courts.

§§ 1-440.47 through 1-440.56: Repealed by Session Laws 1971, c. 268, s. 34.

Part 8. Attachment in Other Inferior Courts.

§ 1-440.57: Repealed by Session Laws 1971, c. 268, s. 34.

Part 9. Superseded Sections.

§§ 1-441 through 1-471: Superseded by Session Laws 1947, c. 693, codified as §§ 1-440.1 through 1-440.57.

Article 36.

Claim and Delivery.

§ 1-472. Claim for delivery of personal property.

The plaintiff in an action to recover the possession of personal property may claim the immediate delivery of the property as provided in this Article at any time before the judgment in the principal action. (C.C.P., s. 176; Code, s. 321; Rev., s. 790; C.S., s. 830; 1977, c. 753.)

§ 1-473. Affidavit and requisites.

Where a delivery is claimed, an affidavit must be made before the clerk of the court in which the action is required to be tried or before some person competent to administer oaths, by the plaintiff, or someone in his behalf, showing –

(1) That the plaintiff is the owner of the property claimed (particularly describing it), or is lawfully entitled to its possession by virtue of a special property therein, the facts in respect to which must be set forth.

(2) That the property is wrongfully detained by the defendant.

(3) The alleged cause of the detention, according to his best knowledge, information and belief.

(4) That the property has not been taken for tax, assessment or fine, pursuant to a statute; or seized under an execution or attachment against the property of the plaintiff; or, if so seized, that it is, by statute, exempt from such seizure; and,

(5) The actual value of the property. (C.C.P., s. 177; 1881, c. 134; Code, s. 322; Rev., s. 791; C.S., s. 831.)

§ 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 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 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.

(c) Fee Deposit. – Upon issuance of the order described in subsection (a) of this section, a fee deposit shall be collected by the sheriff from the plaintiff to offset the reasonable and necessary fees and expenses for taking and storing the property seized pursuant to this Article. (C.C.P., s. 178; Code, s. 323; Rev., s. 792; C.S., s. 832; 1973, c. 472, s. 1; 1985, c. 736; 1999-216, s. 6; 2015-55, s. 3(a).)

§ 1-474.1. Notice of hearing; waiver; permissible form of notice and waiver.

(a) The clerk of court, upon the request of the plaintiff, shall issue a notice to the defendant setting a time and place for a hearing before the clerk which shall not be less than 10 days from the date of service of said notice upon the defendant. The notice shall be served on the defendant in any manner provided by the Rules of Civil Procedure for the service of summons. Upon the request of the plaintiff the notice shall contain an order enjoining the defendant from willfully disposing of the property in any manner, from removing or permitting the removal of the property from the State of North Carolina, or from causing or permitting willful damage or destruction of the property. If in a trial on the merits it is determined that the plaintiff was entitled to the possession of the property, and the defendant after service of notice of the hearing shall have willfully disposed of the property, removed or permitted the removal of the property from the State of North Carolina, or

caused or permitted its willful damage or destruction, the defendant may be found in contempt of court and may be fined or imprisoned by the court as provided by law.

(b) Waiver of the rights to notice and hearing shall not be permitted except as set forth herein. At any time subsequent to service of the notice of hearing provided in subsection (a), the clerk of court, upon the request of the plaintiff, shall mail to the defendant at his last known address a form by which the defendant may waive his right to the hearing. Upon the return of the form to the clerk of court, bearing the signature of the defendant and that of a witness to the defendant's signature (which witness shall not be a party to the action or an agent or employee of a party to the action), the clerk in his discretion may dispense with the necessity of a hearing and may proceed to issue the order of seizure prescribed by G.S. 1-474.

(c) In addition to any other forms substantially complying with the requirements of the preceding subsections, form (1) below may be used to give the notice provided for in subsection (a) above and form (2) below may be used to waive the hearing as provided in subsection (b) above:

(1) READ THIS NOTICE.

WARNING: DO NOT WILLFULLY DISPOSE OF, REMOVE OR PERMIT THE REMOVAL FROM THE STATE OF NORTH CAROLINA, OR CAUSE OR PERMIT WILLFUL DAMAGE OR DESTRUCTION OF THE PROPERTY DESCRIBED BELOW BECAUSE YOU MAY BE HELD IN CONTEMPT OF COURT AND MAY BE FINED AND IMPRISONED.

To: _____(Defendant).

If you want to present reasons why you should not have the property described below taken from you, then you should appear at a hearing to be held before the undersigned clerk of court at _____ o'clock ____ .M. on the _____ day of_____, ____, at the _____ County Courthouse because _____ (Plaintiff) has sworn that you wrongfully hold the following property and that he is entitled to it:

(DESCRIPTION OF PROPERTY)

_____

_____

_____

_____

At the hearing the plaintiff will present evidence, and you are allowed to present evidence. You may bring an attorney to this hearing. Upon the basis of the evidence presented, the clerk will decide whether or not to issue an order directing the sheriff to take the property until a trial on the merits is held. You are hereby ORDERED:

a. Not to willfully dispose of the property;

b. Not to remove or permit its removal from the State of North Carolina; and

c. Not to cause or permit its damage or destruction.

If you fail to comply with this order, and it is finally determined that the plaintiff is entitled to the possession of the property, you may be guilty of contempt of court and may be fined or imprisoned as provided by law.

If you have any questions about the hearing, you may contact an attorney or the clerk of court prior to the hearing.

(CERTIFICATE OF SERVICE)

(2) VOLUNTARY WAIVER OF HEARING.

To _____ (Defendant).

You have been served with a notice that a hearing will be held before the undersigned clerk of court at _____ o'clock ____ .M. on the _____ day of_____, ____, at the _____ County Courthouse to determine if _____ (Plaintiff) is entitled to the possession of the following described property until a trial on the merits is held

(DESCRIPTION OF PROPERTY)

_____

_____

_____

_____

If you do not wish to object to the plaintiff's right to the possession of this property until a trial on the merits is held, you may waive your right to the hearing by signing the statement below, having your signature witnessed by any person who is not a party or an agent or employee of a party to this action and returning it to the undersigned clerk of court by mail or in person prior to the date set for the hearing.

_____

Clerk of Superior Court

I, _____, do hereby voluntarily waive and relinquish my right to the hearing described above.

_____

Defendant

Witness:

(Name)

_____

(Address)

_____

(1973, c. 472, s. 2; 1999-456, s. 59.)

§ 1-475. Plaintiff's undertaking.

The plaintiff must give a written undertaking payable to the defendant, executed by one or more sufficient sureties, approved by the sheriff, to the effect that they are bound in double the value of the property, as stated in the affidavit for the prosecution of the action, for the return of the property to the defendant, with damages for its deterioration and detention if return can be had, and if for any cause return cannot be had, for the payment to him of such sum as may be recovered against the plaintiff for the value of the property at the time of the seizure, with interest thereon as damages for such seizure and detention. (C.C.P., s. 179; Code, s. 324; 1885, c. 50; Rev., s. 793; C.S., s. 833.)

§ 1-476. Sheriff's duties.

Upon the receipt of the order from the clerk with the plaintiff's undertaking and the fee deposit described in G.S. 1-474(c), the sheriff shall forthwith take the property described in the affidavit, if it is in the possession of the defendant or his agent, and retain it in his custody. He shall also, without delay, serve on the defendant a copy of the affidavit, notice, and undertaking, by delivering the same to him personally, if he can be found, or to his agent, from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either, with some person of suitable age and discretion. (C.C.P., s. 179; Code, s. 324; 1885, c. 50; Rev., s. 793; C.S., s. 834; 2015-55, s. 3(b).)

§ 1-477. Exceptions to undertaking; liability of sheriff.

The defendant may, within three days after the service of a copy of the affidavit and undertaking, notify the sheriff personally, or by leaving a copy at his office in the county seat of the county, that he excepts to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objection to them. When the defendant excepts, the sureties must justify on notice, in like manner as upon bail on arrest. The sheriff is responsible for the sufficiency of the sureties until the objection to them is either waived as above provided, or until they justify, or until new sureties are substituted and justify. If the defendant excepts to the sureties he cannot reclaim the property as provided in the succeeding section [G.S. 1-478]. (C.C.P., s. 180; Code, s. 325; Rev., s. 794; C.S., s. 835.)

§ 1-478. Defendant's undertaking for replevy.

At any time before the delivery of the property to the plaintiff, the defendant may, if he does not except to the sureties of the plaintiff, require the return thereof, upon giving to the sheriff a written undertaking, payable to the plaintiff, executed by one or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit of the plaintiff, for the delivery thereof to the plaintiff, with damages, not less than the difference in value of the property at the time of the execution of the undertaking and the value of the property at the time of its delivery to the plaintiff, together with damages for detention and the costs, if delivery can be had, and if delivery cannot be had, for the payment to him of such sum as may be recovered against the defendant for the value of the property at the time of the wrongful taking or detention, with interest thereon, as damages for such taking and detention, together with the costs of the action. If a return of the property is not so required, within three days after the taking and service of notice to the defendant, it must be delivered to the plaintiff, unless it is claimed by an interpleader.

The defendant's undertaking shall include liability for costs, as provided in this section, only where the undertaking is given in actions instituted in the superior court. (C.C.P., s. 181; Code, s. 326; 1885, c. 50, s. 2; Rev., s. 795; 1911, c. 17; C.S., s. 836; 1961, c. 462.)

§ 1-479. Qualification and justification of defendant's sureties.

The qualification of the defendant's sureties, and their justification, is as prescribed in respect to bail upon an order of arrest. The defendant's sureties, upon notice to the plaintiff of not less than two nor more than six days, shall justify before the court or judge, and upon this justification the sheriff must deliver the property to the defendant. The sheriff is responsible for the defendant's sureties until justification is completed or expressly waived, and he may retain the property until that time; but if they, or others in their place, fail to justify at the time and place appointed, he must deliver the property to the plaintiff. (C.C.P., ss. 182, 183; Code, ss. 327, 328; Rev., ss. 796, 797; C.S., s. 837; 1971, c. 268, s. 30.1.)

§ 1-480. Property concealed in buildings.

If the property, or any part of it, is concealed in a building or enclosure, the sheriff shall publicly demand its delivery. If it is not delivered he must cause the building or enclosure to be broken open, and take the property into his possession. If necessary, he may call to his aid the power of his county, and if the property is upon the person the sheriff or other officer may seize the person, and search for and take it. (C.C.P., s. 184; Code, s. 329; Rev., s. 798; C.S., s. 838.)

§ 1-481. Care and delivery of seized property.

When the sheriff has taken property, as provided in this Article, he must keep it in a secure place, and deliver it to the party entitled thereto, upon receiving his lawful fees for taking and his necessary expenses for keeping the property, minus any amount received pursuant to G.S. 1-474(c). If the amount due under this section is less than the amount received pursuant to G.S. 1-474(c), then the sheriff shall return the excess amount to the depositor. In the event that a third party intervener is entitled to possession of the property, any amount received pursuant to G.S. 1-474(c) shall be returned to the depositor. (C.C.P., s. 185; Code, s. 330; Rev., s. 799; C.S., s. 839; 2015-55, s. 3(c).)

§ 1-482. Property claimed by third person; proceedings.

When the property taken by the sheriff is claimed by any person other than the plaintiff or defendant the claimant may intervene upon filing an affidavit of his title and right to the possession of the property, stating the grounds of such right and title, and upon his delivering to the sheriff an undertaking in an amount double the value of the property specified in his affidavit, for the delivery of the property to the person entitled to it, and for the payment of all such costs and damages as may be awarded against him, this undertaking to be executed by one or more sufficient sureties, accompanied by their affidavits that they are each worth double the value of the property. A copy of this undertaking and accompanying affidavit shall be served by the sheriff on the plaintiff and defendant at least 10 days before the return day of the summons in the action, when the court trying it shall order a jury to be impaneled to inquire in whom is the right to the property specified in plaintiff's complaint. The finding of the jury is conclusive as to the parties then in court, and the court shall adjudge accordingly, unless it is reversed upon appeal. However, this section shall not be construed to prevent any such intervener or third person from intervening and asserting his claim to the property, or any part thereof, without giving bond as herein required, where such intervener or other third person does not ask for possession of the property pending the trial of the issue. (1793, c. 389, s. 3, P.R.; R.C., c. 7, s. 10; C.C.P., s. 186; Code, s. 331; Rev., s. 800; 1913, c. 188; C.S., s. 840; 1933, c. 131; 1971, c. 268, s. 30.2.)

§ 1-483. Delivery of property to intervener.

Upon the filing by the claimant of the undertaking set forth in G.S. 1-482, the sheriff is not bound to keep the property, or to deliver it to the plaintiff; but may deliver it to the claimant, unless the plaintiff executes and delivers to him a similar undertaking to that required of claimant; and notwithstanding such claim, when so made, the sheriff may retain the property a reasonable time to demand such indemnity. (1793, c. 389, s. 3, P.R.; R.C., c. 7, s. 10; Code, s. 332; Rev., s. 801; C.S., s. 841.)

§ 1-484. Sheriff to return papers in 10 days.

The sheriff must return the undertaking, notice and affidavit, with his proceedings thereon, to the court in which the action is pending within 10 days after taking the property mentioned therein. (C.C.P., s. 187; Code, s. 133; Rev., s. 802; C.S., s. 842.)

§ 1-484.1. Remedy not exclusive.

The provisions of this Article shall not be construed to preclude the use of attachment or any other ancillary remedy (upon the terms and subject to the conditions provided by law for the exercise thereof) simultaneously with the remedy of claim and delivery. (1973, c. 472, s. 2.1.)

Article 37.

Injunction.

§ 1-485. When preliminary injunction issued.

A preliminary injunction may be issued by order in accordance with the provisions of this Article. The order may be made by any judge of the superior court or any judge of the district court authorized to hear in-chambers matters in the following cases, and shall be issued by the clerk of the court in which the action is required to be tried:

(1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and this relief, or any part thereof, consists in restraining the commission or continuance of some act the commission or continuance of which, during the litigation, would produce injury to the plaintiff; or,

(2) When, during the litigation, it appears by affidavit that a party thereto is doing or threatens or is about to do, or is procuring or suffering some act to be done in violation of the rights of another party to the litigation respecting the subject of the action, and tending to render the judgment ineffectual; or,

(3) When, during the pendency of an action, it appears by affidavit of any person that the defendant threatens or is about to remove or dispose of his property, with intent to defraud the plaintiff. (C.C.P., ss. 188, 189; Code, ss. 334, 338; Rev., s. 806; C.S., s. 843; 1967, c. 954, s. 3; 1973, c. 66, s. 1.)

§ 1-486. When solvent defendant restrained.

In an application for an injunction to enjoin a trespass on land it is not necessary to allege the insolvency of the defendant when the trespass complained of is continuous in its nature, or is the cutting or destruction of timber trees. (1885, c. 401; Rev., s. 807; C.S., s. 844.)

§ 1-487. Timberlands, trial of title to.

In all actions to try title to timberlands, and for trespass thereon for cutting timber trees, when the court finds as a fact that there is a bona fide contention on both sides based upon evidence constituting a prima facie title, no order shall be made pending such action, permitting either party to cut said timber trees, except by consent, until the title to said land or timber trees is finally determined in the action. In all cases where the title to any timber or trees, or the right to cut and remove the same during a term of years, is claimed by any party to such action, and the fee of the soil or other estate in the land by another, whether party to the action or not, the time within which such timber or trees may be cut or removed by the party claiming the same, and all other rights acquired in connection therewith, shall not be affected or abridged, but the running of the term is suspended during the pendency of the action. (1901, c. 666, s. 1; 1903, c. 642; Rev., s. 808; C.S., s. 845.)

§ 1-488. When timber may be cut.

In any action specified in G.S. 1-487, when the judge finds as a fact that the contention of either party is not in good faith and is not based upon evidence constituting a prima facie title, upon motion of the other party, who may satisfy the court of the bona fides of his contention and who may produce evidence showing a prima facie title, the court may allow such party to cut the timber trees by giving bond as required by law. Nothing in this section affects the right of appeal, and when any party to such action has been enjoined, a sufficient bond must be required to cover all damages that may accrue to the party enjoined by reason of the injunction as now required by law. (1901, c. 666, ss. 2, 3; Rev., s. 809; C.S., s. 846.)

§§ 1-489 through 1-492. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-493. What judges have jurisdiction.

All judges of the superior court and judges of the district court authorized to hear in-chambers matters have jurisdiction to grant injunctions and issue restraining orders in all civil actions and proceedings pending in their respective divisions. (1876-7, c. 223, ss. 1, 2; 1879, c. 63, ss. 1, 3; Code, s. 335; Rev., s. 814; C.S., s. 851; 1971, c. 381, s. 12; 1973, c. 66, s. 2.)

§ 1-494. Before what judge returnable.

All restraining orders and injunctions granted by any of the judges of the superior court shall be made returnable before the resident judge of the district, a special judge residing in the district, or any superior court judge assigned to hold court in the district where the civil action or special proceeding is pending, within 20 days from date of order. If a judge before whom the matter is returned fails, for any reason, to hear the motion and application, on the date set or within 10 days thereafter, any regular or special judge resident in, or assigned to hold the courts of, some adjoining district may hear and determine the said motion and application, after giving 10 days' notice to the parties interested in the application or motion. This removal continues in force the motion and application or motion. This removal continues in force the motion and application theretofore granted till they can be heard and determined by the judge having jurisdiction.

All restraining orders and injunctions granted by any judge of the district court shall be made returnable before the judge granting such order or injunction or before the chief district judge or a district judge authorized to hear in-chambers matters in the district where the civil action is pending, within 20 days from the date of the order. If the judge before whom the matter is returned fails, for any reason, to hear the motion and application on the date set, or within 10 days thereafter, any district judge of the district authorized to hear in-chambers matters may hear and determine the said motion and application, after giving 10 days' notice to the parties interested in the application or motion. (1876, c. 223, s. 2; 1879, c. 63, ss. 2, 3; 1881, c. 51; Code, s. 336; Rev., s. 815; C.S., s. 852; 1963, c. 1143; 1973, c. 66, s. 3.)

§ 1-495. Stipulation as to judge to hear.

By a stipulation in writing, signed by all the parties to an application for an injunction order, or their attorneys, to the effect that the matter may be heard before a judge of the appropriate trial division designated in the stipulation, the judge before whom the restraining order is returnable by law, or who is by law the judge to hear the motion for an injunction order, shall, upon receipt of the stipulation forward it and all the papers to the judge designated, whose duty it then is to hear and

decide the matter, and return all the papers to the court out of which they issued. (1883, c. 33; Code, s. 337; Rev., s. 816; C.S., s. 853; 1973, c. 66, s. 4.)

§§ 1-496 through 1-497. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-498. Application to extend, modify, or vacate; before whom heard.

Applications to extend, modify, or vacate temporary restraining orders and preliminary injunctions issued in the superior court division may be heard by the judge having jurisdiction if he is within the district or in an adjoining district, but if out of the district and not in an adjoining district, then before any judge who is at the time in the district, and if there is no judge in the district, before any judge in an adjoining district.

Applications to extend, modify, or vacate temporary restraining orders and preliminary injunctions issued in the district court division may be heard by the district judge who made the original order or by the chief district judge or by a district judge of the district authorized to hear in-chambers matters. (C.C.P., s. 195; Code, s. 344; 1905, c. 26; Rev., s. 819; C.S., s. 856; 1967, c. 954, s. 3; 1973, c. 66, s. 5.)

§ 1-499. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-500. Restraining orders and injunctions in effect pending appeal; indemnifying bond.

Whenever a plaintiff shall appeal from a judgment rendered at chambers, or in session, either vacating a restraining order theretofore granted, or denying a perpetual injunction in any case where such injunction is the principal relief sought by the plaintiff, and where it shall appear that vacating said restraining order or denying said injunction will enable the defendant to consummate the threatened act, sought to be enjoined, before such appeal can be heard, so that the plaintiff will thereby be deprived of the benefits of any judgment of the appellate division, reversing the judgment of the lower court, then in such case the original restraining order granted in the case shall in the discretion of the trial judge be and remain in full force and effect until said appeal shall be finally disposed of: Provided, the plaintiff shall forthwith execute and deposit with the clerk a written undertaking with sufficient surety, approved by the clerk or judge, in an amount to be fixed by the judge to indemnify the party enjoined against all loss, not exceeding an amount to be specified, which he may suffer on account of continuing such restraining order as aforesaid, in the event that the judgment of the lower court is affirmed by the appellate division. (1921, c. 58; C.S., s. 858(a); 1969, c. 44, s. 12; 1971, c. 381, s. 12.)

Article 38.

Receivers.

Part 1. Receivers Generally.

§ 1-501. What judge appoints.

Any judge of the superior or district court with authority to grant restraining orders and injunctions has like jurisdiction in appointing receivers, and all motions to show cause are returnable as is provided for injunctions, except only a judge of the Superior Court Division has jurisdiction to appoint receivers of corporations. Any resident judge of the Superior Court Division or any nonresident judge of the Superior Court Division assigned to a district who appoints receivers pursuant to the authority granted hereby while holding court in that district may, in his discretion, retain jurisdiction and supervision of the original action, of the receivers appointed

therefor and of any other civil actions pending in the same district involving the receivers, following his rotation out of the district. (C.C.P., s. 215; 1876-7, c. 223; 1879, c. 63; 1881, c. 51; Code, s. 379; Rev., s. 846; C.S., s. 859; 1971, c. 268, s. 31; 1979, c. 525, s. 13.)

§ 1-502. In what cases appointed.

A receiver may be appointed in any of the following cases:

(1) Before judgment, on the application of either party, when the party establishes an apparent right to property that is the subject of the action and in the possession of an adverse party, and the property or its rents and profits are in danger of being lost or materially injured or impaired; a receiver, however, shall not be appointed in cases where judgment upon failure to answer may be had on application to the court.

(2) After judgment, to carry the judgment into effect.

(3) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply the property in satisfaction of the judgment.

(4) Repealed by Session Laws 2021-93, s. 2, effective July 22, 2021.

(5) In cases where restitution is sought for violations of G.S. 75-1.1.

(6) In cases involving partition of real property, pursuant to G.S. 46A-28. (C.C.P., s. 215; 1876-7, c. 223; 1879, c. 63; 1881, c. 51; Code, s. 379; Rev., s. 847; C.S., s. 860; 1955, c. 1371, s. 3; 1973, c. 614, s. 3; 1981, c. 584, s. 2; 2020-23, ss. 6, 9; 2021-93, s. 2.)

§ 1-502.1. Applicant for receiver to furnish bond to adverse party.

Before a judge may appoint a receiver, the judge shall require the party making application for the appointment to furnish a bond payable to the adverse party in a form and amount approved by the judge. The bond shall secure payment by the applicant of all damages, including reasonable attorney fees, sustained by the adverse party by the appointment and acts of the receiver if the appointment is vacated or otherwise set aside. The judge may require that the amount of bond be increased for this purpose any time after the appointment of a receiver. (1983 (Reg. Sess., 1984), c. 994, s. 1.)

§ 1-503. Appointment refused on bond being given.

In all cases where there is an application for the appointment of a receiver, upon the ground that the property or its rents and profits are in danger of being lost, or materially injured or impaired, or that a corporation defendant is insolvent or in imminent danger of insolvency, and the subject of the action is the recovery of a money demand, the judge before whom the application is made or pending shall have the discretionary power to refuse the appointment of a receiver if the party against whom such relief is asked, whether a person, partnership or corporation, tenders to the court an undertaking payable to the adverse party in an amount double the sum demanded by the plaintiff, with at least two sufficient and duly justified sureties, conditioned for the payment of such amount as may be recovered in the action, and summary judgment may be taken upon the undertaking. In the progress of the action the court may in its discretion require additional sureties on such undertaking. (1885, c. 94; Rev., s. 848; C.S., s. 861.)

§ 1-504. Receiver's bond.

A receiver appointed in an action or special proceeding must, before entering upon his duties, execute and file with the clerk of the court in which the action is pending an undertaking payable to the adverse party with at least two sufficient sureties in a penalty fixed by the judge making the appointment, conditioned for the faithful discharge of his duties as receiver. And the judge having jurisdiction thereof may at any time remove the receiver, or direct him to give a new undertaking, with new sureties, and on the like condition. This section does not apply to a case where special provision is made by law for the security to be given by a receiver, or for increasing the same, or for removing a receiver. (Code, s. 383; Rev., s. 849; C.S., s. 862.)

§ 1-505. Sale of property in hands of receiver.

In a case pending in the Superior Court Division in which a receiver has been appointed, the resident superior court judge or a superior court judge regularly holding the courts of the district shall have power and authority to order a sale of any property, real or personal, in the hands of a receiver duly and regularly appointed. In a case pending in the District Court Division in which a receiver has been appointed, the chief district judge or a district judge designated by the chief district judge to hear motions and enter interlocutory orders shall have the power and authority to order a sale of any property, real or personal, in the hands of a duly appointed receiver. Sales of property authorized by this section shall be upon such terms as appear to be to the best interests of the creditors affected by the receivership. The procedure for such sales shall be as provided in Article 29A of Chapter 1 of the General Statutes. (1931, c. 123, s. 1; 1949, c. 719, s. 2; 1955, c. 399, s. 1; 1971, c. 268, s. 32.)

§ 1-506. Repealed by Session Laws 1955, c. 399, s. 2.

§ 1-507. Validation of sales made outside county of action.

All receiver's sales made prior to March 16, 1931, where orders were made and confirmation decreed or where either orders were made or confirmation decreed outside the county in which said actions were pending by a resident judge or the judge assigned to hold the courts of the district are hereby validated, ratified and confirmed. (1931, c. 123, s. 3.)

Part 2. Receivers of Corporations.

§§ 1-507.1 through 1-507.11: Repealed by Session Laws 2020-75, s. 2(b), effective January 1, 2021.

§ 1-507.12: Reserved for future codification purposes.

§ 1-507.13: Reserved for future codification purposes.

§ 1-507.14: Reserved for future codification purposes.

§ 1-507.15: Reserved for future codification purposes.

§ 1-507.16: Reserved for future codification purposes.

§ 1-507.17: Reserved for future codification purposes.

§ 1-507.18: Reserved for future codification purposes.

§ 1-507.19: Reserved for future codification purposes.

Article 38A.

North Carolina Commercial Receivership Act.

§ 1-507.20. Short title; definitions.

(a) Short Title. – This Article may be cited as the North Carolina Commercial Receivership Act.

(b) Definitions. – The following definitions apply throughout this Article:

(1) Affiliate. – As defined in G.S. 39-23.1(1).

(2) Business trust. – As defined in G.S. 39-44.

(3) Collateral. – The property subject to a lien.

(4) Consumer Debt. – Debt incurred by an individual primarily for a personal, family, or household purpose.

(5) Court. – The superior or district court in which the receivership is pending, except that in the case of a receiver appointed to partition real property pursuant to G.S. 46A-28, the term shall mean the clerk of superior court that has jurisdiction over the receiver and the receivership.

(6) Debtor. – The person over whose property the receiver is appointed.

(7) Entity. – A person other than an individual.

(8) Executory contract. – A contract that is part of the receivership property, including a lease, where the obligations of both the debtor and the other party to the contract are unperformed to the extent that the failure of either party to complete performance of its obligations would constitute a material breach of the contract, thereby excusing the other party's performance of its obligations under the contract.

(9) Foreign jurisdiction. – Any state or federal jurisdiction other than that of this State.

(10) Foreign receiver. – A receiver appointed in any foreign jurisdiction.

(11) General receiver. – The receiver appointed in a general receivership.

(12) General receivership. – A receivership over all or substantially all of the nonexempt property of a debtor for the purpose of liquidation and distribution to creditors and other parties in interest, including a receivership under the provisions of Chapters 55, 55A, 55B, 57D, or 59 of the General Statutes.

(13) Good faith. – Honesty in fact and the observance of reasonable commercial standards of fair dealing.

(14) Individual. – A natural person.

(15) Individual business debtor. – An individual owing consumer debt, on the date of the filing of the pleading seeking the appointment of a receiver under this Article for such individual, in an amount that is less than fifty percent (50%) of the individual's total debt.

(16) Insider. – As to any person, includes the following:

a. If the person is an individual, then any of the following:

1. A relative of the person or of a general partner of the person.

2. A partnership in which the person is a general partner.
3. A general partner in the partnership in which the person is a general partner.
4. A corporation or limited liability company of which the person is a director, officer, manager, managing member, or other person in control.

b. If the person is a corporation or limited liability company, then any of the following:
1. An officer, director, manager, or managing member of the person.
2. A person in control of the person.
3. A partnership in which the person is a general partner.
4. A general partner in a partnership in which the person is a general partner.
5. A relative of a general partner, officer, director, manager, managing member, or person in control of the person.

c. If the person is a partnership, then any of the following:
1. A general partner in the person.
2. A relative of a general partner in, general partner of, or person in control of the person.
3. Another partnership in which the person is a general partner.
4. A general partner in a partnership in which the debtor is a general partner.
5. A person in control of the person.

d. An affiliate, or insider of an affiliate, as if the affiliate were the person.

e. A managing agent of the person.

(17) Insolvent. – With respect to a debtor, the sum of the debtor's debts is greater than all of the debtor's property, at a fair valuation, exclusive of (i) property transferred, concealed, or removed with intent to hinder, delay, or defraud the debtor's creditors, or that has been transferred in a manner making transfer voidable under Article 3A of Chapter 39 of the General Statutes, and (ii) property that may be exempt from receivership property under Chapter 1C of the General Statutes.

(18) Lien. – A charge against or interest in property to secure payment of a debt or the performance of an obligation.

(19) Limited receiver. – The receiver appointed in a limited receivership.

(20) Limited receivership. – A receivership other than a general receivership, including a receivership instituted as a supplemental proceeding to collect on a judgment pursuant to G.S. 1-363.

(21) Party. – A person who is a party within the meaning of the North Carolina Rules of Civil Procedure in the action in which a receiver is appointed.

(22) Party in interest. – Includes the debtor, an insider, any equity security holder in the debtor, any person with an ownership interest in or lien on receivership property, and, in a general receivership, any creditor of the debtor.

(23) Person. – Includes both individuals and entities such as corporations, limited liability companies, partnerships, and other entities recognized under the laws of this State.

(24) Property. – All of the debtor's right, title, and interest, both legal and equitable, in real and personal property, regardless of the manner by which any of it was or is acquired. The term includes any proceeds, products, offspring, rents, or profits of or from the property. The term does not include (i) any power that the debtor may exercise solely for the benefit of another person, (ii) a power of withdrawal exercisable by the debtor over property of a trust for which the debtor is not the settlor, to the extent that the power is not subject to the claims of the debtor's creditors pursuant to G.S. 36C-5-505(b), or (iii) if the debtor is an individual, any real property owned jointly by the debtor and the debtor's spouse that is held by them as a tenancy by the entireties, unless the debtor's spouse is also a debtor in the receivership and there is a joint debt owed to one or more creditors.

(25) Receiver. – A person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, control, and, if authorized by this Article or order of the court, dispose of receivership property.

(26) Receivership. – The case in which the receiver is appointed, and, as the context requires, the proceeding in which the receiver takes possession of, manages, or disposes of the debtor's property.

(27) Receivership property. – In the case of a general receivership, all or substantially all of the nonexempt property of the debtor, or in the case of a limited receivership, the property of the debtor identified in the order appointing the receiver, or in any subsequent order, and, in each case, except for the debtor's property that is wholly exempt from the enforcement of claims of creditors pursuant to applicable law, including without limitation, pursuant to G.S. 1-362, 1C-1601(a), 1C-1602, 25C-4, 30-15, 30-17, 131E-91(d)(5), and 135-9. Receivership property in a general receivership of an individual business debtor, however, does not include (i) the principal residence of the individual business debtor if the value of the principal residence is less than the combined amount of all liens and all rights of redemption and allowed claims of exemption in the principal residence and (ii) any consumer good if the value of the consumer good is less than the combined amount of all liens and all rights of redemption and allowed claims of exemption in the consumer good.

(28) Record. – When used as a noun, means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

(29) Secured obligation. – An obligation the payment or performance of which is secured by a security interest or a lien.

(30) Secured party. – A person entitled to enforce a secured obligation. The term includes a mortgagee under a mortgage and a beneficiary under a deed of trust.

(31) Security agreement. – An agreement that creates or provides for a lien. The term includes a mortgage and a deed of trust.

(32) Sign. – With present intent to authenticate or adopt a record, (i) to execute or adopt a tangible symbol or (ii) to attach to or logically associate with the record an electronic sound, symbol, or process.

(33) State agent and State agency. – Any office, department, division, bureau, board, commission, or other agency of this State or of any subdivision thereof, or any individual acting in an official capacity on behalf of any State agent or State agency.

(34) Time of appointment. – The date and time specified in the order of appointment of a receiver or, if the date and time are not specified in the order of appointment, the date and time that the court ruled on the application for the appointment of a receiver. The term does not mean any subsequent date or time, including the execution of a written order, the filing or docketing of a written order, or the posting of a bond.

(35) Timeshare interest. – An interest having a duration of more than three years which grants its holder the right to use and occupy an accommodation, facility, or recreational site, whether improved or not, for a specific period less than a full year during any given year.

(36) Utility. – A person providing any service regulated by the North Carolina Utilities Commission.

(37) Voidable transaction. – A transfer of an interest in property that is voidable under Article 3A of Chapter 39 of the General Statutes. (2020-75, s. 1; 2021-93, s. 3.)

§ 1-507.21. Applicability of Article and of common law.

(a) Application of Article. – Except as provided in subsection (b) of this section, this Article applies to receiverships pursuant to any provision of the General Statutes, as well as any receiverships instituted under common law and the equitable power of the courts, in each case in which the debtor is an entity or an individual business debtor.

(b) Exclusions. – This Article does not apply to any receivership in which (i) the receiver is a State agency or in which the receiver is appointed, controlled, or regulated by a State agency unless otherwise provided by law or (ii) the receiver is appointed for a ward or a ward's estate pursuant to G.S. 35A-1294. No trust other than a business trust, no estate of a deceased individual, missing person, or absentee in military service, and no individual other than an individual business debtor may be a debtor in a receivership under this Article, and this Article shall not apply to receiverships of such persons. Nothing in this Article shall be construed in a manner that permits a receiver to seize an interest of the debtor in property that is not receivership property.

(c) Article Supplemental. – Unless explicitly displaced by a particular provision of this Article, the provisions of other statutory law and the principles of common law and equity remain in full force and effect and supplement the provisions of this Article.

(d) This Article shall not deny the right of an individual business debtor or an entity for which a limited receiver has been appointed pursuant to this Article to file a case under Title 11 of the United States Code. (2020-75, s. 1.)

§ 1-507.22. Powers of the court.

The court that appoints a receiver under this Article has the exclusive authority to direct the receiver and determine all controversies relating to the receivership or receivership property,

wherever located, including, without limitation, authority to determine all controversies relating to the collection, preservation, improvement, disposition, and distribution of receivership property, and all matters otherwise arising in or relating to the receivership, the receivership property, the exercise of the receiver's powers, or the performance of the receiver's duties. (2020-75, s. 1.)

§ 1-507.23. Types of receiverships.

A receivership may be either a limited receivership or a general receivership. Any receivership which is based upon the foreclosure or enforcement of a security agreement, judgment lien, mechanic's lien, or other lien pursuant to which the debtor or any holder of a lien would have a statutory right of redemption, shall be a limited receivership. If the order appointing the receiver does not specify whether the receivership is a limited receivership or a general receivership, the receivership shall be a limited receivership unless and until the court by later order designates the receivership as a general receivership, notwithstanding that pursuant to G.S. 1-507.24(i), a receiver may otherwise have control over all the property of the debtor. At any time, the court may order a general receivership to be converted to a limited receivership and a limited receivership to be converted to a general receivership. (2020-75, s. 1.)

§ 1-507.24. Appointment of receivers; receivership not a trust.

(a) Action in Which Receivers Appointed. – A receiver may be appointed under this Article by the filing of a civil action by a creditor or other party in interest in which the sole relief requested is the appointment of a receiver or is combined with, or is ancillary to, a civil action that seeks a money judgment or other relief, or in the case of a limited receivership, is part of a power of sale or judicial foreclosure proceeding. However, in the case of an individual business debtor, a creditor to whom only consumer debt is owing shall not file a civil action or motion to appoint a receiver for the individual business debtor. If the debtor files the complaint commencing a civil action in which the sole relief requested is the appointment of a receiver, then no summons under Rule 4 of the North Carolina Civil Rules of Procedure shall be necessary and the title of the action required by Rule 10 of the North Carolina Civil Rules of Procedure shall be:
"In re: _____ [name of debtor]".

The filing of a civil action under this subsection by a creditor or other party in interest in which the sole relief requested is the appointment of a receiver does not waive or limit any rights or remedies the creditor or other party in interest has against the debtor or the debtor's property.

(b) Appointment by Judge. – Either a judge of the Superior Court Division or the District Court Division may appoint a receiver for a debtor that is an individual business debtor. Only a judge of the Superior Court Division may appoint a receiver for an entity. Once a receiver is appointed, the following provisions apply:

(1) If a receiver is appointed for an individual business debtor or if a limited receiver is appointed for an entity, the clerk shall provide a copy of the order appointing the receiver to the senior resident superior court judge or the chief district court judge for the court in which the receivership is pending. If the receivership is pending in the Superior Court Division, the senior resident superior court judge for the court in which the receivership is pending shall designate either one of the resident judges for the court in which the receivership is pending, or one of the nonresident judges of the Superior Court Division then assigned to the district in which the receivership is pending, to be the presiding judge over the receiver and the receivership. The presiding judge

shall retain jurisdiction and supervision of the receiver and the receivership until the receivership is terminated and the receiver discharged pursuant to G.S. 1-507.37, or until the senior resident superior court judge enters an order transferring jurisdiction and supervision of the receiver to another superior court judge. The judge of the Superior Court Division so designated shall retain jurisdiction and supervision notwithstanding the judge's rotation out of the district. If the receivership is pending in the District Court Division, the chief district court judge for the court in which the receivership is pending shall designate one of the judges of the District Court Division to retain jurisdiction and supervision of the receiver and the receivership until the receivership is terminated and the receiver is discharged pursuant to G.S. 1-507.37, or until the chief district court judge enters an order transferring jurisdiction and supervision of the receiver to another district court judge.

(2) If a general receiver is appointed for an entity, the senior resident superior court judge shall promptly provide a copy of the order appointing the general receiver to the Chief Justice through the Administrative Office of the Courts and include special areas of expertise needed by the judge to be assigned and may include a list of recommended judges. The Chief Justice shall designate the receivership as an exceptional civil case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts unless the case is designated as a mandatory complex business case under G.S. 7A-45.4(b)(4). The judge of the Superior Court Division who appoints the general receiver shall retain jurisdiction and supervision of the receivership until the Chief Justice assigns the case to a judge pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.

This subsection does not apply to the appointment of a receiver in a pending action to partition real property pursuant to G.S. 46A-28.

(c) Appointment Before Judgment. – A limited receiver may be appointed before judgment to protect a party that demonstrates an apparent right, title, or interest in property that is the subject of the action, if the property or its rents and profits is being subjected to or is in danger of waste, loss, dissipation, or impairment, or has been or is about to be the subject of a voidable transaction.

(d) Appointment After Judgment. – A limited or general receiver may be appointed after judgment to carry the judgment into effect, or to dispose of property according to the judgment, or to preserve the property pending an appeal, or when an execution has been returned unsatisfied and the debtor refuses to apply the property in satisfaction of the judgment.

(e) Receiver for Entities and Individual Business Debtors. – In addition to those situations specifically provided for by law, a limited or general receiver may be appointed when an entity or an individual business debtor meets any of the following criteria:

(1) The person is insolvent.
(2) The person is not paying its debts as they become due unless such debts are the subject of a bona fide dispute.
(3) The person is unable to pay its debts as they become due.
(4) The person is in imminent danger of insolvency.
(5) The person suspends its business for want of funds.
(6) The person has forfeited or has suspended its legal existence.
(7) The person had its legal existence expire by limitation.

(8) The person is the subject of an action to dissolve the person.

A limited receiver may also be appointed, in like cases, of the property located within this State of foreign persons.

(f) Foreclosure or Enforcement of Security Agreement. – In connection with a power of sale or judicial foreclosure proceeding or other enforcement of a security agreement, the court may appoint a limited receiver in any of the following circumstances:

(1) The appointment is necessary to protect the property from waste, loss, spoilage, transfer, concealment, dissipation, or impairment.
(2) The debtor agreed in a signed record to the appointment of a receiver on default.
(3) The debtor agreed, after default and in a signed record, to the appointment of a receiver.
(4) The property and any other collateral held by the secured party are not sufficient to satisfy the secured obligation.
(5) The debtor fails to turn over to the secured party the collateral or proceeds of collateral, including rents, the secured party was entitled to collect.
(6) The holder of a subordinate lien obtains the appointment of a receiver for the same collateral held by the secured party.

(g) Other Cases. – A receiver may be appointed in other cases as provided by law and equity.

(h) Motion for Appointment of Receiver. – The court may appoint a receiver in an action described in subsection (a) of this section with 10 days' notice to the debtor, all other parties to the action, any judgment creditor who is seeking the appointment of a receiver in any other action, and other parties in interest and other persons as the court may require. The court may appoint a receiver ex parte or on shortened notice on a temporary basis, pending further order of the court, if it is clearly shown that an emergency exists requiring the immediate appointment of a receiver and that a receiver is needed to avoid irreparable harm. In that event, the court shall set a hearing as soon as practicable and at the subsequent hearing, the burden of proof shall be as would be applicable to a motion made on notice that is not expedited.

(i) Description of Receivership Property. – The order appointing the receiver or subsequent order shall describe the receivership property with particularity appropriate to the circumstances. If the order does not so describe the receivership property, until further order of the court, the receiver shall have control over all of the debtor's nonexempt property.

(j) Receivership Not a Trust. – The order appointing the receiver does not create a trust.

(k) Bad Faith Filing. – If the court denies a motion to appoint a receiver for an individual business debtor other than on consent of the party or parties seeking the appointment of the receiver and the debtor, and if the debtor does not waive the right to judgment under this subsection, the court may grant judgment against the party or parties seeking the appointment of the receiver for any damages proximately caused by the filing, including costs and reasonable attorneys' fees, and punitive damages, if the court determines, after notice and hearing, that the motion was filed in bad faith. (2020-75, s. 1; 2021-93, s. 4.)

§ 1-507.25. Eligibility of receiver.

(a) Who May Serve as Receiver. – Unless otherwise prohibited by law or prior order, any person, whether or not a resident of this State, may serve as a receiver, provided that the court, in its order appointing the receiver, makes written conclusions based in the record that the person proposed as receiver meets the following criteria:

(1) The proposed receiver is qualified to serve as receiver and as an officer of the court.

(2) The proposed receiver is independent as to any party in interest and the underlying dispute.

(b) Considerations Regarding Qualifications. – In determining whether a proposed receiver is qualified to serve as receiver and as an officer of the court, the court shall consider any relevant information, including all of the following:

(1) The proposed receiver has knowledge and experience sufficient to perform the duties of receiver.

(2) The proposed receiver has the financial ability to post the bond required by G.S. 1-507.26.

(3) The proposed receiver or any insider of the proposed receiver has been previously disqualified from serving as receiver and the reasons for disqualification.

(4) The proposed receiver or any insider of the proposed receiver has been convicted of a felony or other crime involving moral turpitude.

(5) The proposed receiver or any insider of the proposed receiver has been found liable in a civil court for fraud, breach of fiduciary duty, civil theft, or similar misconduct.

(c) Considerations Regarding Independence. – In determining whether a proposed receiver is independent as to any party in interest and the underlying dispute, the court shall consider any relevant information, including all of the following:

(1) The nature and extent of any relationship that the proposed receiver has to any party in interest and the property proposed as receivership property.

(2) Whether the proposed receiver has any interest materially adverse to the interests of any party in interest.

(3) Whether the proposed receiver has any material financial or pecuniary interest, other than receiver compensation, regardless of its source, as allowed by court order, in the outcome of the underlying dispute, including any proposed contingent or success fee compensation arrangement.

(4) Whether the proposed receiver is a debtor, secured or unsecured creditor, lienor of, or holder of any equity interest in, any party in interest or of receivership property.

(5) Whether the proposed receiver has participated in any action that constitutes a violation of G.S. 23-46.

In evaluating all information, the court may exercise its discretion and need not consider any single item of information to be determinative of independence. The proposed receiver shall not be disqualified solely because the proposed receiver was appointed receiver in other unrelated matters involving any of the parties to the action in which the appointment is sought, or the proposed receiver has been engaged by any of the parties to the action or any other party in interest in matters unrelated to the underlying action. A person seeking appointment of a receiver may nominate a person to serve as receiver, but the court is not bound by the nomination.

(d) Information Provided to Court. – The proposed receiver, the parties, and prospective parties in interest may provide any information relevant to the qualifications, independence, and the selection of the receiver. (2020-75, s. 1.)

§ 1-507.26. Bond.

(a) Receiver's Bond. – After appointment, a receiver shall give a bond in the sum, nature, and with the conditions that the court shall order in its discretion. Unless otherwise ordered by the court, the receiver's bond shall be conditioned on the receiver's faithful discharge of its duties in accordance with the orders of the court and the laws of this State. The bond may be a cash bond deposited with the clerk, a bond issued by a surety licensed to issue surety bonds, or a bond issued by a surety which the court otherwise deems sufficient.

(b) Receiver Actions Before Bond. – The court may authorize a receiver to act before the receiver posts the bond required by this section. (2020-75, s. 1.)

§ 1-507.27. Defenses and immunities; discovery.

(a) A receiver shall be entitled to all defenses and immunities provided by the laws of this State for an act or omission within the scope of the receiver's appointment.

(b) A receiver may not be sued personally for an act or omission in administering receivership property without approval of the judge appointed to preside over the receivership pursuant to G.S. 1-507.24(b).

(c) A party or party in interest may conduct discovery of the receiver concerning any matter relating to the receiver's administration of the receivership property after obtaining an order authorizing the discovery. (2020-75, s. 1.)

§ 1-507.28. Powers and duties of receivers.

(a) Powers; Generally. – Except as otherwise provided in subsection (d) of this section, a receiver, whether general or limited, shall have the following powers in addition to those specifically conferred by this Article or otherwise by statute, rule, or order of the court:

(1) The power to take possession of, collect, control, manage, conserve, and protect receivership property, including any books and records related thereto with or without the assistance of the sheriff of the county in which the receivership property is located as reasonably necessary.

(2) The power to incur and pay expenses incidental to the receiver's exercise of the powers or otherwise in the performance of the receiver's duties.

(3) The power to assert rights, claims, causes of action, or defenses that relate to receivership property.

(4) The power to seek and obtain instruction from the court with respect to any matter relating to the receivership property, the exercise of the receiver's powers, or the performance of the receiver's duties.

(5) In the case of any item of receivership property that because of an applicable exemption is not totally receivership property, the power to take possession of, use, control, manage, or transfer such property pursuant to G.S. 1-507.46.

(b) Additional Powers of a General Receiver. – In addition to the powers provided in subsection (a) of this section, a general receiver shall have the following additional powers:

(1) The power to assert any rights, claims, causes of action, or defenses of the debtor to the extent any rights, claims, causes of action, or defenses are receivership property, including the right to sue for and collect all debts, demands, and rents constituting receivership property.

(2) The power to maintain in the receiver's name or in the name of the debtor any action to enforce any right, claim, cause of action, or defense.

(3) The power to intervene in actions in which the debtor is a party for the purpose of exercising the powers under this clause or requesting transfer of venue of the action to the receivership.

(4) The power to pursue any claim or remedy that may be asserted by a creditor of the debtor under Article 3A of Chapter 39 of the General Statutes.

(5) The power to compel any person, including the debtor and any party in interest, by subpoena pursuant to Rule 45 of the North Carolina Rules of Civil Procedure, to give testimony or to produce and permit inspection and copying of designated books, documents, electronically stored information, electronic data, passwords, access codes, or tangible or intangible things with respect to any receivership property or any other matter that may affect the administration of the receivership.

(6) The power to manage and operate any business constituting receivership property in the ordinary course of business, including the use, sale, lease, license, exchange, collection, and disposition of property of the business or otherwise constituting receivership property, and the incurring and payment of expenses of the business or other receivership property.

(7) The power to, if authorized by an order of the court following notice and a hearing, compromise or settle claims involving receivership property.

(8) The power to enter into such contracts as are necessary for the management, security, insuring, or liquidation of receivership property, and to employ, discharge and fix the compensation and conditions for such agents, contractors, and employees as are necessary to assist the receiver in managing, securing, and liquidating receivership property.

(9) In the case of a general receiver for an entity, the power to file a bankruptcy case under the United States Code, Title 11, and to take all other action in the name of the entity without the necessity of any approval or consent of the members, managers, directors, officers, partners, trustees, or other persons that pursuant to the governance documents of the entity or applicable law would be legally required in the absence of the receiver's appointment to approve or consent to such action.

(10) The power to exercise all of the powers and authority provided by this section.

(c) Duties. – A receiver, whether general or limited, shall have the duties specifically conferred by this Article or otherwise by statute, rule, or order of the court, including the following duties:

(1) To act in conformity with the laws of this State and the rules and orders of the court.

(2) To avoid conflicts of interest.

(3) To not directly or indirectly pay or accept anything of value from receivership property that has not been disclosed and approved by the court.

(4) To not directly or indirectly purchase, acquire, or accept any interest in receivership property without full disclosure and approval by the court.

(5) To otherwise act in the best interests of the receivership and the receivership property.

(d) Limitation and Modification of Receiver's Powers and Duties. – Except as otherwise provided in this Article, the court may limit or expand the powers and duties of a receiver that are

otherwise provided by this Article, including, in the case of a general receiver for an individual, limiting the general receiver's powers and authority to such part of the debtor's receivership property that the court determines will, upon the general receiver's disposition, result in sufficient proceeds to pay allowed claims in full. (2020-75, s. 1.)

§ 1-507.29. Receiver as lien creditor; real estate recording; subsequent sales of real estate.

(a) Receiver as Lien Creditor. – As of the time of appointment, the receiver shall have the powers and priority as if it were a creditor that obtained a judicial lien at the time of appointment on all of the receivership property, subject to satisfying the recording requirements as to real property described in subsection (b) of this section. This power and priority shall be in addition to any vested interest in real property a receiver for property of a judgment debtor may obtain as a result of filing the receivership order in accordance with G.S. 1-364.

(b) Real Estate Recording. – If any interest in real estate is included in the receivership property, the receiver shall record a lis pendens as soon as practicable with the register of deeds of the county or counties in which the real property is situated. The priority of the receiver as lien creditor against real property shall be from the time of recording of the lis pendens, except in the case of another lien creditor that, before the recording of the lis pendens, obtains actual knowledge of the receiver's appointment demand, as to whom priority shall be from the time the lien creditor obtains actual knowledge.

(c) Subsequent Sales of Real Estate. – The recording of the notice of lis pendens in the office of the register of deeds of the county or counties in which the real property is situated, the order of the court authorizing the receiver to sell the real property, and the deed for the sale of the real property, duly executed by the receiver, shall be conclusive evidence of the authority of the receiver to sell and convey the real property described in the deed. (2020-75, s. 1.)

§ 1-507.30. Duties of debtor.

(a) Duties. – In addition to those duties conferred by statute or order of the court, the debtor has the following duties:

(1) To assist and cooperate fully with the receiver in the administration of the receivership and the receivership property and the discharge of the receiver's duties and to comply with all rules and orders of the court.

(2) To deliver to the receiver, immediately upon the receiver's appointment and demand, all of the receivership property in the debtor's possession, custody, or control, including all books and records, electronic data, passwords, access codes, statements of accounts, deeds, titles or other evidence of ownership, financial statements, financial and lien information, bank account statements, and all other papers and documents related to the receivership property.

(3) To supply to the receiver information as requested relating to the administration of the receivership and the receivership property, including information necessary to complete any reports or other documents that the receiver may be required to file.

(4) To remain responsible for the filing of all tax returns, including those returns applicable to periods which include those in which the receivership is in effect, except as otherwise ordered by the court.

(b) Debtor Not Individual. – If the debtor is not an individual, this section applies to each officer, director, manager, member, partner, trustee, or other person exercising or having the power

to exercise control over the affairs of the debtor immediately before the appointment of the receiver.

(c) Enforcement. – If a person knowingly fails to perform a duty imposed by this section, the court may (i) compel the person to comply with that duty, (ii) award the receiver actual damages caused by the person's failure and reasonable attorneys' fees and costs, and (iii) sanction the person for civil contempt. (2020-75, s. 1; 2021-93, s. 5.)

§ 1-507.31. Employment and compensation of professionals.

(a) Employment. – To represent or assist the receiver in carrying out the receiver's duties, the receiver may employ attorneys, accountants, appraisers, brokers, agents, auctioneers, or other professionals that do not hold or represent an interest adverse to the receivership.

A person is not disqualified for employment under this subsection solely because of the person's employment by, representation of, or other relationship with the receiver, the debtor, a creditor, or other party in interest. Nothing in this Article shall prevent the receiver from serving in the receivership as a professional to the receiver, whether as attorney, accountant, broker, agent, auctioneer, or otherwise, if the receiver has the necessary licenses to lawfully perform such professional services.

Nothing in this subsection shall require prior court approval of the receiver's retention of professionals; provided, however, promptly after the receiver's engagement of any professional, the receiver shall file with the court and give notice to all parties in interest of a notice of the retention and of the proposed compensation. Any party in interest may file a motion for disapproval of any retention within 14 days after the receiver's filing of the notice on the sole grounds that the proposed professional holds or represents an interest adverse to the receivership. Upon the filing of a motion for disapproval, the court shall promptly schedule a hearing and determine the issue.

(b) Compensation. – The receiver and any professional retained by the receiver shall be paid reasonable compensation for their services rendered from the receivership property in the same manner as other expenses of administration and without the necessity of separate orders, but shall be subject to any procedures, safeguards, and reporting that the court may order.

Except to the extent compensation to the receiver or the receiver's professionals has been approved by the court, or as to parties in interest that are deemed to have waived the right to object, any interim payments of compensation to the receiver or the receiver's professionals are subject to approval in connection with the receiver's final report pursuant to G.S. 1-507.37.

In determining reasonable compensation to be paid to the receiver under this subsection, the court shall not be limited to considering any fixed percentage of the receiver's receipts or disbursements, but may consider all relevant facts and circumstances, including the following:

(1) The amount or basis of compensation to which the receiver or the receiver's professional agree, as set forth in the order appointing the receiver or the receiver's professional.
(2) The value of the debtor's assets.
(3) The number and amount of the debtor's creditors.
(4) The time and labor expended, and the billing rates charged, by the receiver or the receiver's professional.
(5) The novelty and complexity of the receivership.
(6) The skill and time required to perform properly the duties and responsibilities of the receiver or the receiver's professionals.

(7) The amount of the receiver's receipts and disbursements.
(8) The amount of any distributions made to creditors on unsecured claims.
(9) The compensation awarded to the receivers and receivers' professionals in other receiverships. (2020-75, s. 1.)

§ 1-507.32. Schedules of property and claims.

(a) The court shall order the debtor or a general receiver to file under oath within 60 days from the time of appointment, or at such earlier or later time as the court shall direct, the following:

(1) A schedule of all receivership property and exempt property of the debtor, describing, as of the time of appointment: (i) the location of the property and, if real property, a legal description thereof; (ii) a description of all liens to which the property is subject; and (iii) an estimated value of the property.
(2) A schedule of all creditors and taxing authorities and regulatory authorities, their mailing addresses, the amount and nature of their claims, whether the claims are secured by liens of any kind, and whether the claims are disputed, contingent, or unliquidated.

(b) Each schedule filed by (i) the debtor shall be filed under oath and under penalty of perjury as true and correct and (ii) the receiver shall be filed under oath and under penalty of perjury as true and correct to the best of the receiver's knowledge.

(c) The court may order inventories and appraisals if appropriate to the receivership. (2020-75, s. 1.)

§ 1-507.33. Notice.

In a general receivership, unless the court orders otherwise, the receiver shall give notice of the receivership to all creditors and other parties in interest actually known to the receiver by first-class mail within 30 days after the time of appointment or in such other manner and within such earlier or later time as the court may order. The notice of the receivership shall include the time of appointment and the names and addresses of the debtor, the receiver, and the receiver's attorney, if any. (2020-75, s. 1.)

§ 1-507.34. Notices; motions; orders.

(a) Notice of Appearance. – Any party in interest may make an appearance in a receivership by filing a written notice of appearance, including the name, mailing address, e-mail address, and telephone number of the party in interest and its attorney, if any, and by serving a copy on the receiver and the receiver's attorney, if any. It is not necessary for a party in interest to be joined as a party to be heard in the receivership. A proof of claim does not constitute a written notice of appearance.

(b) Master Service List. – In a general receivership within 30 days after the filing of the schedule described in G.S. 1-507.32, or such later time as the court may order, the general receiver shall file an initial master service list consisting of the names, mailing addresses, and, where available, e-mail addresses of the debtor, the receiver, all persons joined as parties in the receivership, all creditors and other parties in interest known by the receiver to have any kind of claim against or interest in any part of the receivership property, all persons who have filed a notice of appearance in accordance with this section, and their attorneys, if any. In a limited receivership within 30 days after the appointment of the limited receiver pursuant to G.S. 1-507.24, or such later time as the court may order, the limited receiver shall file an initial master service list consisting of

the names, mailing addresses, and, where available, e-mail addresses of the debtor, the receiver, all persons joined as parties in the receivership, all creditors and other parties in interest known by the receiver to have any kind of claim against or interest in any part of the receivership property, and all persons who have filed a notice of appearance in accordance with this section, and their attorneys, if any. After the filing of the initial master service list, the receiver shall file from time to time an updated master service list when there has been a substantial number of additions or other changes thereto or when ordered by the court.

(c) Motions. – Except as otherwise provided in this Article, an order shall be sought by a motion brought in compliance with the North Carolina Rules of Civil Procedure.

(d) Persons Served and Manner of Service. – Except as otherwise provided in this Article, a motion and all other pleadings filed in the receivership subsequent to the filing of the original complaint that are required to be served shall be served as provided in Rule 5 of the North Carolina Rules of Civil Procedure, unless the court orders otherwise, on all persons on the master service list, all persons who are identified in the motion or other pleading as directly affected by the relief requested, and other persons as the court may direct.

(e) Service on State Agency. – Any request for relief against a State agency shall be served as provided in the North Carolina Rules of Civil Procedure, unless the court orders otherwise, on the specific State agency and on the Office of the Attorney General.

(f) Order Without Hearing. – Where a provision in this Article, an order issued in the receivership, or a court rule requires an objection or other response to a motion or application within a specific time, and no objection or other response is timely filed with the court, the court may grant the relief requested without a hearing.

(g) Order Upon Application. – Where a provision of this Article permits, as to administrative matters, or where it otherwise appears that no party in interest would be materially prejudiced, the court may issue an order ex parte or based on an application without a motion, notice, or hearing.

(h) Persons Bound by Orders. – Except as to persons entitled to be served pursuant to subsection (d) of this section and who were not served, an order of the court binds parties in interest and all persons who file notices of appearance, submit proofs of claim, receive written notice of the receivership, receive notice of any motion in the receivership, or who have actual knowledge of the receivership whether they are joined as parties or received notice of the specific motion or order. (2020-75, s. 1.)

§ 1-507.35. Records; interim reports; status hearings.

(a) Preparation and Retention of Records. – The receiver shall prepare and retain appropriate business records, including records of all cash receipts, disbursements and dispositions of receivership property. After due consideration of issues of confidentiality, the records may be provided by the receiver to parties in interest or shall be provided as ordered by the court.

(b) Interim Reports. – The court may order the receiver to prepare and file interim reports addressing the following:

(1) The activities of the receiver since appointment or the last report.

(2) Any receipts and disbursements, including payments made to professionals retained by the receiver.

(3) Any distributions of money and property of the receivership estate.

(4) Any fees and expenses of the receiver and, if not filed separately, a request for approval of payment of the fees and expenses.

(5) Any other information required by the court.

The order may provide for the delivery of the receiver's interim reports to persons on the master service list and to other persons and may provide a procedure for objection to the interim reports, and may also provide that the failure to object constitutes a waiver of objection to matters addressed in the interim reports.

(c) Status Hearings. – From time to time, upon motion of the receiver or any party in interest, or at such time or times as the court may deem appropriate, the court shall schedule status hearings to review the status of the receivership. Upon the scheduling of a status hearing, the receiver shall give notice thereof to all persons on the most current master service list. (2020-75, s. 1.)

§ 1-507.36. Removal of receivers.

(a) Removal of Receiver. – The court may remove the receiver if: (i) the receiver fails to execute and file the bond required by G.S. 1-507.26; (ii) the receiver dies, resigns, refuses, or fails to serve for any reason; or (iii) for other good cause.

(b) Successor Receiver. – Upon removal of the receiver, if the court determines that further administration of the receivership is required, the court shall appoint a successor receiver. Upon executing and filing a bond under G.S. 1-507.26, the successor receiver shall immediately succeed the removed receiver and shall assume the duties of receiver.

(c) Report and Discharge of Removed Receiver. – Within 30 days after removal, the removed receiver shall file with the court and serve a report pursuant to G.S. 1-507.35, for matters up to the date of the removal. Upon approval of the report, the court may enter an order pursuant to G.S. 1-507.37 discharging the removed receiver. (2020-75, s. 1.)

§ 1-507.37. Termination of receiverships; final report.

(a) Termination of Receivership. – The court may discharge a receiver and terminate the receivership by order entered in the proceeding if the court finds that the appointment of the receiver was improvident or that the circumstances no longer warrant continuation of the receivership and upon approval by the court. In the case of a receivership of an individual business debtor, the court shall discharge a receiver and terminate the receivership if the court finds, after notice and hearing, that the individual did not qualify to be a debtor under this Article because the individual was not an individual business debtor on the date of the filing of the pleading seeking the appointment of the receiver. If the court finds that the appointment of the receiver was sought wrongfully or in bad faith, the court may assess against the person that sought the receiver's appointment: (i) all of the fees and expenses of the receivership, including reasonable attorneys' fees and costs and (ii) actual damages caused by the appointment, including reasonable attorneys' fees and costs.

(b) Final Report and Discharge of Receiver. – Upon distribution or disposition of all receivership property, or the completion of the receiver's duties, the receiver shall file a final report and shall request that the court approve the final report and discharge the receiver.

(c) Contents of Final Report. – The final report, which may incorporate by reference interim reports, shall include, in addition to any matters required by the court in the receivership all of the following:

(1) A description of the activities of the receiver in the conduct of the receivership.

(2) A schedule of all receivership property at the commencement of the receivership and any receivership property received during the receivership.

(3) A list of expenditures, including all payments to professionals retained by the receiver.
(4) A list of any unpaid expenses incurred during the receivership.
(5) A list of all dispositions of receivership property.
(6) A list of all distributions made or proposed to be made from the receivership for creditor claims.
(7) If not done separately, a motion or application for approval of the payment of fees and expenses of the receiver.
(8) Any other information required by the court.

(d) Notice of Final Report. – The receiver shall give notice of the filing of the final report and request for discharge to all persons on the most current master service list. If there is no objection within 14 days of the mailing of the notice, the court may enter an order approving the final report and discharging the receiver without the necessity of a hearing.

(e) Effect of Discharge of Receiver. – A discharge under subsection (b) of this section removes all authority of the receiver, excuses the receiver from further performance of any duties, and cancels any lis pendens recorded by the receiver.

(f) Discharge and Return of Bond. – Unless otherwise provided in the order discharging the receiver, any surety bond posted by the receiver pursuant to G.S. 1-507.26 shall be discharged and the clerk is authorized to return to the receiver any cash bond deposited with the clerk. (2020-75, s. 1.)

§ 1-507.38. Actions by or against receiver; actions relating to receivership property.

(a) Actions By or Against Receiver. – The receiver may sue in the receiver's capacity and, subject to other sections of this Article and all immunities provided at common law, may be sued in that capacity.

(b) Venue. – Unless the court orders otherwise, an action by or against the receiver or relating to the receivership or receivership property shall be commenced in the court in which the receivership is pending.

(c) Joinder. – Subject to G.S. 1-507.42, a limited or general receiver may be joined or substituted as a party in any action or other proceeding that relates to receivership property that was pending at the time of appointment. Subject to G.S. 1-507.42, a general receiver may be joined or substituted as a party in any action or other proceeding that was pending at the time of appointment in which the debtor is a party. Actions or proceedings pending at the time of appointment may be transferred to the court in which the receivership is pending upon the receiver's or any party's motion for change of venue made in the court in which the action or proceeding is pending, provided that such motion is filed no later than 90 days after the time of appointment.

(d) Effect of Judgments. – A judgment entered subsequent to the time of appointment against a receiver or the debtor shall not constitute a lien on receivership property, nor shall any execution issue thereon. A judgment against a limited receiver shall have the same effect as a judgment against the debtor, except that the judgment shall be enforceable against receivership property only to the extent ordered by the court. Nothing in this section shall validate a judgment that is entered in violation of the stay or stays provided for in G.S. 1-507.42. (2020-75, s. 1.)

§ 1-507.39. Procedure for determining individual business debtor's exempt property.

If the debtor is an individual business debtor, the provisions of G.S. 1C-1603 for designating the debtor's exempt property shall apply, except to the extent that any of the provisions of

G.S. 1C-1603 conflict with or are inconsistent with the provisions of this Article, and except that the following provisions shall instead apply:

(1) If before the appointment of the receiver for the individual business debtor there has been no entry of an order designating the individual business debtor's exemptions under G.S. 1C-1603 for setting aside the individual business debtor's exempt property, the receiver shall serve the notice advising the individual business debtor of the individual business debtor's rights, accompanied by the form for the statement by the individual business debtor under subsection (c1) of G.S. 1C-1603, within 30 days of the receiver's appointment or such later time as the court may order. The notice shall be served on the individual business debtor as provided under G.S. 1A-1, Rule 4(j)(1), or if the individual business debtor cannot be served as provided under G.S. 1A-1, Rule 4(j)(1), the notice may be served by mailing a copy thereof to the individual business debtor at the individual business debtor's last known address. Proof of service by certified or registered mail or personal service is as provided in G.S. 1A-1, Rule 4. The receiver may prove service by mailing to last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service.

(2) No later than 20 days after service of the notice of rights, or such later time as the court may order, the individual business debtor shall file with the court and serve upon the receiver the statement under subsection (c1) of G.S. 1C-1603 or a request for a hearing before the court. No later than 10 days after receipt of the individual business debtor's statement or request for hearing, or such later time as the court may order, the receiver shall send a copy of the individual business debtor's statement or hearing request to all persons on the most current master service list.

(3) No later than 10 days after service of the individual business debtor's statement upon all persons on the most current master service list, or such later time as the court may order, the receiver or any party in interest may file an objection to all or any part of the individual business debtor's statement. If an objection is timely filed to the individual business debtor's statement, or if the individual business debtor had requested a hearing without filing a statement, the court shall schedule a hearing and the receiver shall send notice of the scheduled hearing to all persons on the most current master service list. At the hearing, the individual business debtor may claim the debtor's exemptions. The court shall determine the issues and enter an order designating the individual business debtor's exempt property allowed by law.

(4) The forms used shall be the same forms provided by the Administrative Office of the Courts and used under G.S. 1C-1603, and the procedure for setting aside exempt property shall be the same as set forth in G.S. 1C-1603(c), except that (i) all references in the forms or in G.S. 1C-1603(c) to "judgment debtor" shall be to the individual business debtor and all references to "judgment creditor" shall be to the receiver, (ii) all hearings concerning the designation of the individual business debtor's exempt property shall be before, and the order designating the property allowed by law and scheduled by the individual

business debtor as exempt property shall be entered by, the judge appointed to supervise the receiver and the receivership pursuant to G.S. 1-507.24(b), and not the district court judge unless the district court judge is the judge appointed to supervise the receiver and the receivership under G.S. 1-507.24(b), and (iii) all valuations of property shall be made by the judge appointed to supervise the receiver and the receivership pursuant to G.S. 1-507.24(b) and the judge, upon motion of the individual business debtor, the receiver, or any party in interest may appoint a qualified person to examine the property and report its value to the court. Compensation of that person must be advanced by the person requesting the valuation and is a claim having priority under G.S. 1-507.51(a)(2).

(5) Any appeal from the judge's order designating the individual business debtor's property as exempt shall be in the same manner as an appeal as any other order of the court, and G.S. 1C-1603(e)(12) shall not apply.

(6) Any designation of the individual business debtor's exemption before the appointment of the receiver for the individual business debtor shall remain enforceable in accordance with its terms, but may be modified pursuant to G.S. 1C-1603(g) upon the motion of the receiver or any other person who did not receive notice or participate in the original exemption proceeding, or upon motion of the individual business debtor, the receiver or any party in interest upon a change in circumstances.

(7) The individual business debtor may within 60 days after acquiring property subsequent to the designation of the individual business debtor's exemption move to amend the designation of the individual business debtor's exemption to assert an exemption applicable to the after acquired property.

(8) In the case of a limited receivership, the provisions of this section shall only apply if the individual business debtor claims or has the right to claim an exemption in all or any part of the receivership property. (2020-75, s. 1.)

§ 1-507.40. Turnover of receivership property.

(a) Demand by Receiver. – Except as expressly provided in this section, and unless otherwise ordered by the court, upon demand by a receiver: (i) subject to subsection (b) of this section, any person shall turn over to the receiver any receivership property that is within the possession, custody, or control of that person and (ii) any person that owes a debt that is receivership property and is matured or payable on demand or on order shall pay the debt to or on the order of the receiver, except to the extent that the debt is subject to setoff or recoupment.

(b) Adequate Protection. – If a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on or interest in the property depends on the creditor's possession, custody, or control, the creditor may retain possession, custody, or control until the court orders adequate protection of the creditor's lien.

(c) Turnover Motion by Receiver. – A receiver may seek to compel turnover of receivership property required by clause (i) of subsection (a) of this section by motion in the receivership. If there exists a bona fide dispute with respect to the existence or nature of the receiver's or the debtor's interest in the receivership property, turnover shall be sought by means of an action under G.S. 1-507.38. Unless a bona fide dispute exists about a receiver's right to

possession, custody, or control of receivership property, the court may sanction as civil contempt a person's failure to turn over the property when required by this section.

(d) Payment Only to Receiver. – A person that has notice of the appointment of a receiver and owes a debt that is receivership property shall not satisfy the debt by payment to the debtor. (2020-75, s. 1; 2021-93, s. 6.)

§ 1-507.41. Ancillary receiverships.

(a) Ancillary Receiverships in Foreign Jurisdictions. – A receiver appointed by a court of this State may, without first seeking approval of the court, apply in any foreign jurisdiction for appointment as receiver with respect to any receivership property which is located within the foreign jurisdiction.

(b) Ancillary Receiverships in This State. – A foreign receiver may obtain appointment by a court of this State as a receiver in an ancillary receivership with respect to any property subject to the foreign receivership that is located in this State or subject to the jurisdiction of the court for which a receiver could be appointed under this Article if (i) the foreign receiver would be eligible to serve as receiver under G.S. 1-507.25 and (ii) the appointment is in furtherance of the foreign receiver's possession, control, or disposition of property subject to the foreign receivership and in accordance with orders of the foreign jurisdiction.

The courts of this State may enter any order necessary to effectuate orders entered by the foreign jurisdiction's receivership proceeding. Unless the court orders otherwise, a receiver appointed in an ancillary receivership in this State shall have the powers and duties of a limited receiver as set forth in this Article and shall otherwise comply with the provisions of this Article applicable to limited receivers. (2020-75, s. 1.)

§ 1-507.42. Stays.

(a) Control of Property. – All receivership property shall be under the control and supervision of the court appointing the receiver.

(b) Stay by Court Order. – In addition to any stay provided in this section, the court may order a stay or stays to protect receivership property and to facilitate the administration of the receivership.

(c) Automatic Stay. – Except as otherwise set forth in subsection (f) of this section or ordered by the court, the entry of an order appointing a receiver shall operate as a stay, applicable to all persons, of an act, action, or proceeding: (i) to obtain possession of receivership property, or to interfere with or exercise control over receivership property, or enforce a judgment against receivership property, other than the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property and (ii) any act to create or perfect any lien against receivership property, except by exercise of a right of setoff, to the extent that the lien secures a claim that arose before the time of appointment.

(d) Limited Additional Automatic Stay in General Receiverships. – Except as otherwise ordered by the court, in addition to the stay provided in subsection (c) of this section, the entry of an order appointing a general receiver shall operate as a stay, applicable to all persons, of: (i) the commencement or continuation of a judicial, administrative, or other action or proceeding, including the issuance or use of process, against the debtor or the receiver that was or could have been commenced before the time of appointment, or to recover a claim against the debtor that arose before the time of appointment and (ii) the commencement or continuation of a judicial,

administrative, or other action or proceeding, including the issuance or use of process, to enforce any lien having priority over the rights of the receiver in receivership property.

Stays obtained for the acts specified in this subsection shall expire 60 days after the time of appointment unless, before the expiration of the 60-day period, the receiver or other party in interest files a motion seeking an order of the court extending the stay and before the expiration of an additional 30 days following the 60-day period, the court orders the stay extended.

(e) Modification of Stay. – The court may modify for cause any stay provided in this section upon the motion of any party in interest affected by the stay.

(f) Inapplicability of Stay. – The entry of an order appointing a receiver does not operate as a stay of any of the following:

(1) The commencement or continuation of a criminal proceeding against the debtor.

(2) The commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory power.

(3) The enforcement of a judgment, other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce its police or regulatory power, or with respect to any licensure of the debtor.

(4) The establishment by a governmental unit of any tax liability and any appeal thereof.

(5) The commencement or continuation of an action or proceeding to establish paternity, to establish or modify an order for alimony, maintenance, or support, or to collect alimony, maintenance, or support under any order of a court.

(6) The exercise of a right of setoff.

(7) Any act to maintain or continue the perfection of a lien on, or otherwise preserve or protect rights in, receivership property, but only to the extent that the act was necessary to continue the perfection of the lien or to preserve or protect the lien or other rights as they existed as of the time of the appointment. If the act would require seizure of receivership property or commencement of an action prohibited by a stay, the continued perfection shall instead be accomplished by filing a notice in the court before which the receivership is pending and by serving the notice upon the receiver and receiver's attorney, if any, within the time fixed by law for seizure or commencement of the action.

(8) The commencement of a bankruptcy case under federal bankruptcy laws.

(9) Any other exception as provided in United States Code, Title 11, § 362(b), as to the automatic stay in federal bankruptcy cases in effect from time to time.

(g) Action Voidable. – The court may void an act that violates a stay under this section.

(h) Enforcement. – If a person knowingly violates a stay under this section, the court may award actual damages caused by the violation, reasonable attorneys' fees, and costs and may sanction the violation as civil contempt. (2020-75, s. 1; 2021-93, s. 7.)

§ 1-507.43. Utility service.

(a) No Discontinuance of Utility Service. – Except as provided in subsection (b) of this section, a utility providing service to receivership property that has received written notice from the receiver of the appointment of the receiver may not alter, refuse, or discontinue service to the receivership property.

(b) Adequate Assurance of Payment. – A utility providing service to receivership property that has received written notice from the receiver of the appointment of the receiver may alter, refuse, or discontinue service to the receivership property if neither the receiver nor the debtor, within 30 days after the time of appointment, furnishes adequate assurance of payment, in the form of a cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of utility consumption, or other security mutually agreed on between the utility and the receiver or the debtor, for service after such time. On motion by a party in interest and after notice and a hearing, the court may order reasonable modification of the amount or form of the adequate assurance of payment. (2020-75, s. 1.)

§ 1-507.44. Receivership financing.

(a) Unsecured Financing. – Without necessity of a court order, the receiver may obtain unsecured credit and incur unsecured debt on behalf of the receivership.

(b) Secured Financing. – On motion by the receiver and after notice and a hearing, the court may authorize the receiver to obtain secured credit or incur secured indebtedness, and the court may authorize the receiver to mortgage, pledge, hypothecate, or otherwise encumber receivership property as security for the repayment of such indebtedness.

(c) Expenses of Receivership. – Any financing incurred by the receiver pursuant to this section shall be allowable as expenses of the receivership under G.S. 1-507.51(a)(2). (2020-75, s. 1.)

§ 1-507.45. Executory contracts.

(a) Adoption or Rejection of Executory Contract. – Except as otherwise provided in subsection (g) of this section, with court approval, a receiver may adopt or reject an executory contract of the debtor that is part of the receivership property. The court may condition the receiver's adoption and continued performance of the executory contract on terms appropriate under the circumstances. If the receiver does not request court approval to adopt or reject the executory contract within 90 days after the time of appointment, or such longer or shorter period as the court upon motion of the receiver or a party in interest filed during such period may order, the receiver is deemed to have rejected the executory contract.

(b) Performance Not Adoption. – A receiver's performance of an executory contract before court approval of its adoption or rejection under subsection (a) of this section is not an adoption of the executory contract and does not preclude the receiver from seeking approval to reject the executory contract.

(c) Ipso Facto Clauses. – A provision in an executory contract which requires or permits a forfeiture, modification, or termination of the executory contract because of the appointment of the receiver or the financial condition of the debtor does not affect a receiver's power under subsection (a) of this section to adopt the executory contract.

(d) Termination of Executory Contract. – A receiver's right to possess or use receivership property pursuant to an executory contract terminates on rejection of the executory contract under subsection (a) of this section. Rejection is a breach of the executory contract effective immediately before the time of appointment. A claim for damages for rejection of the executory contract must be submitted by the later of (i) the time set for submitting a claim in the receivership or (ii) 30 days after the court approves the rejection.

(e) Assignment of Executory Contract. – If, at the time a receiver is appointed, the debtor has the right to assign the executory contract relating to receivership property under the laws of this State, the receiver may assign the executory contract with court approval.

(f) Rejection of Executory Contract for Sale of Real Property. – If a receiver rejects an executory contract under subsection (a) of this section for the sale of receivership property that is real property in possession of the purchaser or a real property timeshare interest, the purchaser may (i) treat the rejection as a termination of the executory contract, in which case the purchaser has a lien on the real property for the recovery of any part of the purchase price the purchaser paid or (ii) retain the purchaser's right to possession under the executory contract, in which case the purchaser shall continue to perform all obligations arising under the executory contract and may offset any damages caused by nonperformance of an obligation of the debtor after the date of the rejection; however, the purchaser has no right or claim against other receivership property or the receiver on account of the damages.

(g) Rejection of Unexpired Lease of Real Property. – A receiver may not reject an unexpired lease of real property under which the debtor is the landlord under any of the following circumstances:

(1) The tenant occupies the leased premises as the tenant's primary residence, unless (i) the tenant is the child, spouse, partner, or parent of the debtor; (ii) the tenant does not have a written lease; (iii) the lease is terminable at will; (iv) the rent paid by the tenant is substantially less than the fair market rental value for the property, provided the rent has not been reduced or subsidized due to a federal or State subsidy; or (v) the receiver sells the property to a purchaser who will occupy the premises as a primary residence, in which case the tenant shall be required to vacate the property within 90 days of the sale of the property.

(2) The receiver was appointed at the request of a person other than the mortgagee under a mortgage or the beneficiary of a deed of trust encumbering the real property.

(3) The receiver was appointed at the request of a mortgagee under a mortgage or a beneficiary of a deed of trust encumbering the real property and (i) the lease is superior in priority to the lien of the mortgage or the deed of trust; (ii) the tenant has an enforceable agreement with the mortgagee or beneficiary or holder of a senior lien on the real property under which the tenant's occupancy will not be disturbed as long as the tenant performs its obligations under the lease; (iii) the mortgagee or beneficiary has consented to the lease, either in a signed record or by its failure to object that the lease violated the mortgage or deed of trust; or (iv) the terms of the lease were commercially reasonable at the time the lease was agreed to, and the tenant did not know or have reason to know that the lease violated the mortgage or deed of trust. (2020-75, s. 1.)

§ 1-507.46. Use or transfer of receivership property not in ordinary course.

(a) Use Not in Ordinary Course. – With court approval, a receiver may use receivership property other than in the ordinary course of business.

(b) Transfer Not in Ordinary Course. – On motion by the receiver and after notice and a hearing, the court may authorize the receiver to transfer receivership property other than in the ordinary course of business by sale, lease, license, exchange, or other disposition.

(c) Sale of Receivership Property. – The court may order that the receiver's sale of receivership property is free and clear of all liens and all rights of redemption and claims of exemption of the debtor, regardless of whether the sale will generate proceeds sufficient to satisfy fully all liens and claims of exemption on the receivership property, unless all of the following criteria are met:

(1) A secured party's lien or the debtor's claim of exemption in the receivership property to be sold will not be paid in full from the proceeds of the proposed sale and the secured party or the debtor files a timely objection to the receiver's motion to sell the receivership property.

(2) A timely objection is filed and the court, after notice and hearing, determines that the amount likely to be received by the objecting person from the proceeds of the receiver's sale is less than the amount the objecting person would likely receive within a reasonable time in the absence of the receiver's sale.

A secured party holding a lien and a debtor claiming an exemption in the receivership property to be sold that will not be paid in full from the proceeds of the proposed sale must file an objection to the receiver's motion within 14 days after the receiver delivers a copy of the motion to the secured party and the debtor as provided in G.S. 1A-1, Rule 4(j)(1) or within such earlier or later time as the court shall direct.

The receiver shall have the burden of proof to establish that the amount likely to be received by the objecting person is equal to or more than the amount the objecting person would likely receive within a reasonable time in the absence of the receiver's sale. The court may also require that any transfer of receivership property be subject to confirmation by the court.

(d) Transfer of Lien to Proceeds. – A lien on receivership property which is extinguished by a transfer under subsection (b) of this section attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had on the receivership property immediately before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the lien.

(e) Manner of Transfer. – A transfer under subsection (c) of this section may occur by means other than a public auction sale. A creditor holding a valid lien on the receivership property to be transferred may purchase the property and offset against the purchase price part or all of the allowed amount secured by the lien if the creditor tenders funds sufficient to satisfy in full the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by the transfer.

(f) Co-Owned Property. – If any receivership property includes an interest as a co-owner of property, the receiver shall have the rights and powers of the debtor afforded by applicable law, including any rights of partition, but may not sell the property free and clear of the co-owner's interest in the receivership property.

(g) Reversal or Modification of Transfer Order. – A reversal or modification of an order approving a transfer under subsection (b) of this section does not affect the validity of the transfer to a person that acquired the receivership property in good faith or revive against the person any lien extinguished by the transfer, whether the person knew before the transfer of the request for reversal or modification, unless the court stayed the order before the transfer. (2020-75, s. 1.)

§ 1-507.47. Abandonment of property.

With court approval, the receiver may abandon any receivership property that is burdensome or is not of material value to the receivership. Property that is abandoned is no longer receivership property and not subject to the provisions of this Article. (2020-75, s. 1.)

§ 1-507.48. Liens against after-acquired property.

Except as otherwise provided for by laws of this State, property that becomes receivership property after the time of appointment is subject to a lien to the same extent as it would have been in the absence of the receivership. (2020-75, s. 1.)

§ 1-507.49. Claims process.

(a) Recommendation of Receiver. – In a general receivership, and in a limited receivership if the circumstances require, the receiver shall submit to the court a recommendation concerning a claims process appropriate to the particular receivership.

(b) Order Establishing Process. – In a general receivership and, if the court orders, in a limited receivership, the court shall establish the claims process to be followed in the receivership addressing whether proofs of claim must be submitted, the form of any proofs of claim, the place where the proofs of claim must be filed, the deadline or deadlines for filing the proofs of claim, and other matters bearing on the claims process.

(c) Alternative Procedures. – The court may authorize proofs of claim to be filed with the receiver rather than the court. The court may authorize the receiver to treat claims as allowed claims based on the amounts established in the books and records of the debtor or the schedule of claims filed pursuant to G.S. 1-507.32, without the necessity of the filing of proofs of claim. (2020-75, s. 1.)

§ 1-507.50. Objection to and allowance of claims.

(a) Objections and Allowance. – The receiver or any party in interest may file an objection to a claim stating the grounds for the objection. The court may order that a copy of the objection be served on the persons on the master service list at least 14 days prior to the hearing. Claims allowed by court order, and claims properly submitted or scheduled and not disallowed by the court, shall be allowed claims and shall be entitled to share in distributions of receivership property in accordance with the priorities provided by this Article or otherwise by law.

(b) Estimation of Claims. – For the purpose of allowance of claims, the court may estimate (i) any contingent or unliquidated claim, the fixing or liquidation of which would unduly delay the administration of the receivership or (ii) any right to payment arising from a right to an equitable remedy. (2020-75, s. 1.)

§ 1-507.51. Priority of claims.

(a) Priorities. – Allowed claims shall receive distribution under this Article in the following order of priority and, except as set forth in subsection (a)(1) of this section, on a pro rata basis:

(1) Subject to subsection (b) of this section, claims secured by liens on receivership property, which liens are valid and perfected before the time of appointment, to the extent of the proceeds from the disposition of the collateral in accordance with their respective priorities under otherwise applicable law.

(2) Actual, necessary costs and expenses incurred by the receiver during the receivership, other than those expenses allowable elsewhere in this subsection, including allowed fees and expenses of the receiver and professionals employed by the receiver under G.S. 1-507.31, and any compensation advanced for the valuation of an individual debtor's property pursuant to G.S. 1-507.39(d).

(3) Claims for domestic support obligations within the meaning of United States Code, Title 11, § 101, that are owing as of the time of appointment.

(4) Claims for wages, salaries, or commissions, including vacation, severance, and sick leave pay, or contributions to an employee benefit plan, earned by the claimant within 180 days before the time of appointment or the cessation of the debtor's business, whichever occurs first, but only to the extent of the dollar amount in effect from time to time in United States Code, Title 11, §§ 507(a)(4) and (5).

(5) Allowed unsecured claims, to the extent of the dollar amount in effect from time to time in United States Code, Title 11, § 507(a)(7), for each individual, arising from the deposit with the debtor, before the time of appointment of the receiver, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individual, that were not delivered or provided.

(6) Unsecured claims of governmental units for taxes that accrued before the time of appointment.

(7) All other unsecured claims, in each case calculated as of the time of appointment, including the deficiency balance owing to a holder of an secured claim to the extent not otherwise satisfied under subdivision (1) of subsection (a) of this section, but only if no interest or costs and expenses of collection, including attorneys' fees and expenses, that accrue or are incurred for any period after the time of appointment is included in the calculation of such deficiency balance.

(8) Interest pursuant to G.S. 1-507.52.

(b) Surcharge of Collateral. – In the event that the funds available for distribution by the receiver pursuant to this section are insufficient to pay in full all of the receiver's reasonable and necessary costs and expenses of preserving, protecting, or disposing of collateral securing a valid claim of a secured party, including the reasonable and necessary fees and expenses of the receiver and its professionals that are directly attributable to the preservation, protection, or disposition of such collateral, then, on motion by the receiver, and after notice and hearing, the court may order that the receiver recover such costs and expenses from the collateral or its proceeds to the extent that the secured party holding a lien in such collateral receives a direct and quantifiable benefit from the receiver's actions.

(c) Payments to Debtor. – If all of the amounts payable under subsections (a) and (b) of this section have been paid in full, including interest that may be payable under G.S. 1-507.52, any remaining receivership property shall be returned to the debtor.

(d) Distribution of Proceeds of Property Owned as Tenants by the Entireties. – In the determination of the unsecured claims on account of which a distribution of proceeds from the disposition of receivership property that is owned by the debtor and the debtor's spouse as tenants by the entireties should be made pursuant to subsections (a)(6) and (7) of this section, such proceeds may only be distributed to holders of unsecured claims owed jointly by the debtor and the debtor's spouse. (2020-75, s. 1.)

§ 1-507.52. Interest on unsecured claims.

To the extent that funds are available to pay in full the allowed unsecured claims under G.S. 1-507.51(a)(7), the holder of each allowed unsecured claim shall also be entitled to receive

interest, calculated from the time of appointment on the amount of its allowed unsecured claim at the legal rate set forth in G.S. 24-1. If there are not sufficient funds in the receivership to pay in full the interest owed to all the holders of allowed unsecured claims, then the interest shall be paid pro rata. (2020-75, s. 1.)

§ 1-507.53. Distributions.

(a) Proposed Distributions. – Before any interim or final distribution is made, the receiver shall file a distribution schedule listing the proposed distributions. The distribution schedule may be filed at any time during the receivership or may be included in the final report.

(b) Notice. – The receiver shall give notice of the filing of the distribution schedule to all persons on the master mailing list or that have filed claims. If there is no objection within 30 days after the notice, the court may enter an order authorizing the receiver to make the distributions described in the distribution schedule without the necessity of a hearing.

(c) Other Distributions. – In the order appointing the receiver or in subsequent orders, the court may authorize distributions of receivership property to persons with ownership interests or liens. (2020-75, s. 1.)

§ 1-507.54. Effect of enforcement by secured party.

A request by a secured party for the appointment of a receiver, the appointment of a receiver, or application by a secured party of receivership property to the secured obligation does not do any of the following:

(1) Make the secured party a mortgagee in possession of real property.
(2) Impose any duty on the secured party under G.S. 25-9-207.
(3) Make the secured party an agent or fiduciary of the debtor.
(4) Constitute an election of remedies that precludes a later action to enforce the secured obligation.
(5) Make the secured obligation unenforceable.
(6) Limit any right available to the secured party with respect to the secured obligation. (2020-75, s. 1.)

Article 39.

Deposit or Delivery of Money or Other Property.

§ 1-508. Ordered paid into court.

When it is admitted by the pleading or examination of a party that he has in his possession or under his control any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee for another party, or which belongs or is due to another party, the judge may order it deposited in court, or delivered to such party with or without security, subject to the further direction of the judge. (C.C.P., s. 215; Code, s. 380; Rev., s. 850; C.S., s. 863.)

§ 1-509. Ordered seized by sheriff.

When, in the exercise of his authority, a judge has ordered the deposit, delivery or conveyance of money or other property, and the order is disobeyed, the judge, besides punishing the disobedience as for contempt, may make an order requiring the sheriff to take the money or property, and deposit, deliver, or convey it, in conformity with the direction of the judge. (C.C.P., s. 215; Code, s. 381; Rev., s. 851; C.S., s. 864.)

§ 1-510. Defendant ordered to satisfy admitted sum.

When the answer of the defendant expressly, or by not denying, admits part of the plaintiff's claim to be just, the judge, on motion, may order the defendant to satisfy that part of the claim, and may enforce the order as it enforces a judgment or provisional remedy. (C.C.P., s. 215; Code, s. 382; Rev., s. 852; C.S., s. 865.)

SUBCHAPTER XIV. ACTIONS IN PARTICULAR CASES.

Article 40.

Mandamus.

§§ 1-511 through 1-513. Repealed by Session Laws 1967, c. 954, s. 4.

Article 41.

Quo Warranto.

§ 1-514. Writs of sci. fa. and quo warranto abolished.

The writs of scire facias and of quo warranto, and proceedings by information in the nature of quo warranto, are abolished; and the remedies obtainable in those forms may be obtained by civil actions under this Article. To the extent that rules of procedure are not provided for in this Article, the Rules of Civil Procedure shall apply. (R.C., c. 26, ss. 5, 25; C.C.P., s. 362; Code, s. 603; Rev., s. 286; C.S., s. 869; 1967, c. 954, s. 3.)

§ 1-515. Action by Attorney General.

An action may be brought by the Attorney General in the name of the State, upon his own information or upon the complaint of a private party, against the party offending, in the following cases:

(1) When a person usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this State, or any office in a corporation created by the authority of this State; or,

(2) When a public officer, civil or military, has done or suffered an act which, by law, makes a forfeiture of his office.

(3) When any person, natural or corporate, has or claims to have or hold any rights or franchises by reason of a grant or otherwise, in violation of the provisions of G.S. 146-39. (C.C.P., s. 366; Code, s. 607; Rev., s. 827; 1911, cc. 195, 201; C.S., s. 870; 1983, c. 768, s. 1.)

§ 1-516. Action by private person with leave.

When application is made to the Attorney General by a private relator to bring such an action, he shall grant leave that it may be brought in the name of the State, upon the relation of such applicant, upon the applicant tendering to the Attorney General satisfactory security to indemnify the State against all costs and expenses which may accrue in consequence of the action. (1874-5, c. 76; 1881, c. 330; Code, s. 608; Rev., s. 828; C.S., s. 871.)

§ 1-517. Solvent sureties required.

The Attorney General, before granting leave to a private relator to bring a suit to try the title to an office, may require two sureties to the bond required by law to be filed to indemnify the State against costs and expenses, and require such sureties to justify, and may require such proof and

evidence of the solvency of the sureties as is satisfactory to him. (1901, c. 595, s. 2; Rev., s. 829; C.S., s. 872.)

§ 1-518. Leave withdrawn and action dismissed for insufficient bond.

When the Attorney General has granted leave to a private relator to bring an action in the name of the State to try the title to an office, and it afterwards is shown to the satisfaction of the Attorney General that the bond filed by the private relator is insufficient, or that the sureties are insolvent, the Attorney General may recall and revoke such leave, and upon a certificate of the withdrawal and revocation by the Attorney General to the clerk of the court of the county where the action is pending, it is the duty of the presiding judge, upon motion of the defendant, to dismiss the action. (1891, c. 595; Rev., s. 830; C.S., s. 873.)

§ 1-519. Arrest and bail of defendant usurping office.

When action is brought against a person for usurping an office, the Attorney General, in addition to the statement of the cause of action, may set forth in the complaint the name of the person rightfully entitled to the office, with a statement of his right thereto; and in such case, upon proof by affidavit that the defendant has received fees or emoluments belonging to and by means of his usurpation of the office, an order shall be granted by a judge of the superior court for the arrest of the defendant, and holding him to bail; and thereupon he shall be arrested and held to bail in the same manner, and with the same effect, and subject to the same rights and liabilities, as in other civil actions where the defendant is subject to arrest. (C.C.P., s. 369; 1883, c. 102; Code, s. 609; Rev., s. 831; C.S., s. 874.)

§ 1-520. Several claims tried in one action.

Where several persons claim to be entitled to the same office or franchise, one action may be brought against all of them, in order to try their respective rights to the office or franchise. (C.C.P., s. 374; Code, s. 614; Rev., s. 832; C.S., s. 875.)

§ 1-521. Trials expedited.

All actions to try the title or right to any State, county or municipal office shall stand for trial at the next session of court after the summons and complaint have been served for 30 days, regardless of whether issues were joined more than 10 days before the session; and it is the duty of the judge to expedite the trial of these actions and to give them precedence over all others, civil or criminal. It is unlawful to appropriate any public funds to the payment of counsel fees in any such action. (1874-5, c. 173; Code, s. 616; 1901, c. 42; Rev., s. 833; C.S., s. 876; 1947, c. 781; 1971, c. 381, s. 12.)

§ 1-522. Time for bringing action.

All actions brought by a private relator, upon the leave of the Attorney General, to try the title to an office must be brought, and a copy of the complaint served on the defendant, within ninety days after his induction into the office to which the title is to be tried; and when it appears from the papers in the cause, or is otherwise shown to the satisfaction of the court, that the summons and complaint have not been served within ninety days, it is the duty of the judge upon motion of defendant to dismiss the action at any time before the trial, at the cost of the plaintiff. (1901, c. 519; 1903, c. 556; Rev., s. 834; C.S., s. 877.)

§ 1-523. Defendant's undertaking before answer.

Before the defendant may answer or demur to the complaint he must execute and file in the superior court clerk's office of the county wherein the suit is pending, an undertaking, with good and sufficient surety, in the sum of two hundred dollars ($200.00), which may be increased from time to time in the discretion of the judge, to be void upon condition that the defendant pays to the plaintiff all such costs and damages, including damages for the loss of such fees and emoluments as may or ought to have come into the hands of the defendant, as the plaintiff may recover. (1895, c. 105; Rev., s. 835; C.S., s. 878.)

§ 1-524. Possession of office not disturbed pending trial.

(a) In any civil action pending in any of the courts of this State in which the title to an office is involved, the defendant being in the possession of the office and discharging the duties thereof shall continue therein pending the action, and no judge shall make a restraining order interfering with or enjoining such officer in the premises. The officer shall, notwithstanding any such order, continue to exercise the duties of the office pending the litigation, and receive the emoluments thereof.

(b) This section shall not apply to any person subject to Article 31B of Chapter 7A of the General Statutes. (1899, c. 33; Rev., s. 836; C.S., s. 879; 2007-104, s. 2.)

§ 1-525. Judgment by default and inquiry on failure of defendant to give bond.

At any time after a duly verified complaint is filed alleging facts sufficient to entitle plaintiff to the office, whether this complaint is filed at the beginning of the action or later, the plaintiff may, upon ten days' notice to the defendant or his attorney of record, move before the judge resident in or riding the district, at chambers, to require the defendant to give the undertaking specified in G.S. 1-523. It is the duty of the judge to require the defendant to give the undertaking within ten days, and if it is not so given, the judge shall render judgment in favor of plaintiff and against defendant for the recovery of the office and the costs, and a judgment by default and inquiry to be executed at a term for damages, including loss of fees and salary. Upon the filing of the judgment for the recovery of such office with the clerk, it is his duty to issue and the sheriff's duty to serve the necessary process to put the plaintiff into possession of the office. If the defendant shall give the undertaking, the court, if judgment is rendered for plaintiff, shall render judgment against the defendant and his sureties for costs and damages, including loss of fees and salary. Nothing herein prevents the judge's extending, for cause, the time in which to give the undertaking. (1895, c. 105, s. 2; 1899, c. 49; Rev., s. 837; C.S., s. 880.)

§ 1-526. Service of summons and complaint.

The service of the summons and complaint as hereinbefore provided may be made by leaving a copy at the last residence or business office of the defendant or defendants, and service so made shall be deemed a legal service. (1899, c. 126; Rev., s. 838; C.S., s. 881.)

§ 1-527. Judgment in such actions.

In every such case judgment shall be rendered upon the right of the defendant, and also upon the right of the party alleged to be entitled, or only upon the right of the defendant, as justice requires. When the defendant, whether a natural person or corporation, against whom the action has been brought, is adjudged guilty of usurping or intruding into, or unlawfully holding or exercising any office, franchise or privilege, judgment shall be rendered that the defendant be

excluded from such office, franchise or privilege, and also that the plaintiff recover costs against him. The court may also, in its discretion, fine the defendant a sum not exceeding two thousand dollars ($2000). The clear proceeds of the fine shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (Const., Art. IX, s. 5; R.C., c. 95; C.C.P., ss. 370, 375; Code, ss. 610, 615; Rev., ss. 839, 840; C.S., s. 882; 1998-215, s. 95.)

§ 1-528. Mandamus to aid relator.

In any civil action brought to try the title or right to hold any office, when the judgment of the court is in favor of the relator in the action, it is the duty of the court to issue a writ of mandamus or such other process as is necessary and proper to carry the judgment into effect, and to induct the party entitled into office. (1885, c. 406, s. 1; Rev., s. 841; C.S., s. 883.)

§ 1-529. Appeal; bonds of parties.

No appeal by the defendant to the appellate division from the judgment of the superior court in such action shall stay the execution of the judgment, unless a justified undertaking is executed on the part of the appellant by one or more sureties, in a sum to be fixed by the court, conditioned that the appellant will pay to the party entitled to the same the salary, fees, emoluments and all moneys whatsoever received by the appellant by virtue or under color of the office. In no event shall the judgment be executed pending appeal, unless a justified undertaking is executed on the part of the appellee by one or more persons in a sum to be fixed by the court, conditioned that the appellee will pay to the party entitled to the same the salary, fees, emoluments and all moneys whatsoever received by the appellee by virtue or under color of office during his occupancy thereof. (1885, c. 406, s. 2; Rev., s. 842; C.S., s. 884; 1969, c. 44, s. 13.)

§ 1-530. Relator inducted into office; duty.

If the judgment is rendered in favor of the person alleged to be entitled, he shall be entitled, after taking the oath of office and executing such official bond as may be required by law, to take upon himself the execution of the office. It is his duty, immediately thereafter, to demand of the defendant in the action all the books and papers in his custody, or within his power, belonging to the office from which he has been excluded. (C.C.P., ss. 371, 373; Code, ss. 611, 613; Rev., ss. 843, 844; C.S., s. 885.)

§ 1-531. Refusal to surrender official papers misdemeanor.

If a person against whom a judgment has been rendered in an action brought to recover a public office shall fail or refuse to turn over, on demand, to the person adjudged to be entitled to such office, all papers, documents and books belonging to such office, he shall be guilty of a Class 1 misdemeanor. (C.C.P., s. 372; Code, s. 612; Rev., s. 3601; C.S., s. 886; 1993, c. 539, s. 2; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 1-532. Action to recover property forfeited to State.

When any property, real or personal, is forfeited to the State, or to any officer for its use, an action for the recovery of such property, alleging the grounds of the forfeiture, may be brought by the proper officer in any superior court. (C.C.P., s. 381; Code, s. 621; Rev., s. 845; C.S., s. 887.)

Article 42.

Waste.

§ 1-533. Remedy and judgment.

Wrongs, remediable by the old action of waste, are subjects of action as other wrongs; and the judgment may be for damages, forfeiture of the estate of the party offending, and eviction from the premises. (C.C.P., s. 383; Code, s. 624; Rev., s. 853; C.S., s. 888.)

§ 1-534. For and against whom action lies.

In all cases of waste, an action lies in the appropriate trial division of the General Court of Justice at the instance of him in whom the right is, against all persons committing the waste, as well tenant for term of life as tenant for term of years and guardians. (52 Hen. III, c. 23; 6 Edw. I, c. 5; 20 Edw. I, st. 2; 11 Hen. VI, c. 5; R.C., c. 116, s. 1; Code, s. 625; Rev., s. 854; C.S., s. 889; 1971, c. 268, s. 33.)

§ 1-535. Tenant in possession liable.

Where a tenant for life or years grants his estate to another, and still continues in the possession of the lands, tenements, or hereditaments, an action lies against the said tenant for life or years. (11 Hen. VI, c. 5; R.C., c. 116, s. 2; Code, s. 626; Rev., s. 855; C.S., s. 890.)

§ 1-536. Action by tenant against cotenant.

Where a joint tenant or a tenant in common commits waste, an action lies against him at the instance of his cotenant or joint tenant. (13 Edw. I, c. 22; R.C., c. 116, s. 4; Code, s. 627; Rev., s. 856; C.S., s. 891.)

§ 1-537. Action by heirs.

Every heir may bring action for waste committed on lands, tenements, or hereditaments of his own inheritance, as well in the time of his ancestor as in his own. (6 Edw. I, c. 5; 20 Edw. I, st. 2; 11 Hen. VI, c. 5; R.C., c. 116, s. 5; Code, s. 628; Rev., s. 857; C.S., s. 892.)

§ 1-538. Judgment for treble damages and possession.

In all cases of waste, when judgment is against the defendant, the court may give judgment for treble the amount of the damages assessed by the jury, and also that the plaintiff recover the place wasted, if the damages are not paid on or before a day to be named in the judgment. (6 Edw. I, c. 5; 20 Edw. I, st. 2; R.C., c. 116, s. 3; Code, s. 629; Rev., s. 858; C.S., s. 893.)

Article 43.

Nuisance and Other Wrongs.

§ 1-538.1. Strict liability for damage to person or property by minors.

Any person or other legal entity shall be entitled to recover actual damages suffered in an amount not to exceed a total of two thousand dollars ($2,000) from the parent or parents of any minor who shall maliciously or willfully injure such person or destroy the real or personal property of such person. Parents whose custody and control have been removed by court order or by contract prior to the act complained of shall not be liable under this act. This act shall not preclude or limit recovery of damages from parents under common law remedies available in this State. (1961, c. 1101; 1981, c. 414, s. 1; 1993, c. 540, s. 1.)

§ 1-538.2. Civil liability for larceny, shoplifting, theft by employee, organized retail theft, embezzlement, obtaining property by false pretense, and other offenses.

(a) Any person, other than an unemancipated minor, who commits an act that is punishable under G.S. 14-72, 14-72.1, 14-72.11, 14-74, 14-86.6, 14-86.7, 14-90, or 14-100 is liable for civil damages to the owner of the property. In any action brought by the owner of the property, the owner is entitled to recover the value of the goods or merchandise, if the goods or merchandise have been destroyed, or any loss of value to the goods or merchandise, if the goods or merchandise were recovered, or the amount of any money lost by reason of the theft or embezzlement or fraud of an employee. The owner of the property is also entitled to recover for loss to real or personal property caused in the commission of the act. In addition to the above, the owner of the property is entitled to recover any consequential damages, and punitive damages, together with reasonable attorneys' fees. The total consequential damages awarded to a plaintiff against a defendant under this section shall not be less than one hundred fifty dollars ($150.00) and shall not exceed three thousand dollars ($3,000) except an act punishable under G.S. 14-74, 14-86.6, 14-86.7, or 14-90 shall have no maximum limit under this section.

(b) The parent or legal guardian, having the care, custody and control of an unemancipated minor who commits an act punishable under G.S. 14-72, 14-72.1, 14-72.11, 14-74, 14-86.6, 14-86.7, 14-90, or 14-100, is civilly liable to the owner of the property obtained by the act if such parent or legal guardian knew or should have known of the propensity of the child to commit such an act; and had the opportunity and ability to control the child, and made no reasonable effort to correct or restrain the child. In an action brought against the parent or legal guardian by the owner, the owner is entitled to recover the amounts specified in subsection (a) except punitive damages. The total consequential damages awarded to a plaintiff against the parent or legal guardian shall not be less than one hundred fifty dollars ($150.00) and shall not exceed three thousand dollars ($3,000).

(c) An action may be brought under this section regardless of whether a criminal action is brought or a criminal conviction is obtained for the act alleged in the civil action.

(c1) For the purposes of this section, consequential damages shall include, but shall not be limited to:

(1) The salary paid to any employee for investigation, reporting, testifying, or any other time related to the investigation or prosecution for any violation under subsection (a) of this section; and

(2) Any costs, such as mileage, postage, stationery, or telephone expenses that were incurred as a result of the violation.

(c2) Repealed by Session Laws 2022-30, s. 5, effective December 1, 2022, and applicable to offenses committed on or after that date.

(c3) Repealed by Session Laws 2022-30, s. 5, effective December 1, 2022, and applicable to offenses committed on or after that date.

(c4) Repealed by Session Laws 2022-30, s. 5, effective December 1, 2022, and applicable to offenses committed on or after that date.

(d) Nothing contained in this act shall prohibit recovery upon any other theory in the law. (1987, c. 519, s. 1; 1987 (Reg. Sess., 1988), c. 1081, s. 4.1; 1995, c. 185, s. 1; 1995 (Reg. Sess., 1996), c. 742, s. 3; 2022-30, s. 5.)

§ 1-538.3. Negligent supervision of minor.

(a) The parent or individual legal guardian who has the care, custody, and control of an unemancipated minor may be held civilly liable to an educational entity for the negligent

supervision of that minor if the educational entity proves by clear, cogent, and convincing evidence that:

(1) The minor:
   a. Violated the provisions of G.S. 14-49, 14-49.1, 14-50, 14-69.1(c), 14-69.2(c), 14-269.2(b1), 14-269.2(c1), or committed a felony offense involving injury to persons or property through use of a gun, rifle, pistol, or other firearm of any kind as defined in G.S. 14-269.2(b); and
   b. The offense occurred on educational property; and

(2) The parent or individual legal guardian who has the care, custody, and control of the minor:
   a. Knew or reasonably should have known of the minor's likelihood to commit such an act;
   b. Had the opportunity and ability to control the minor; and
   c. Made no reasonable effort to correct, restrain, or properly supervise the minor.

(b) In an action brought against the parent or legal guardian under this section for a false report, hoax, or possession of a bomb or other explosive device on educational property, the educational entity is entitled to recover the actual compensatory and consequential damages resulting from the disruption or dismissal of school or the school-sponsored activity arising from the false report, the hoax, the bringing or possession of a bomb or other explosive device onto educational property or to a school-sponsored activity. The total amount of compensatory and consequential damages awarded to a plaintiff against the parent or legal guardian pursuant to this subsection shall not exceed twenty-five thousand dollars ($25,000).

(c) In an action brought against the parent or legal guardian under this section, the educational entity is entitled to recover the actual compensatory and consequential damages to educational property that is the result of the discharge of the firearm or the detonation or explosion of the bomb or other explosive device. The total amount of compensatory and consequential damages awarded to a plaintiff against the parent or legal guardian pursuant to this subsection shall not exceed fifty thousand dollars ($50,000).

(d) For purposes of this section, the term "educational property" has the same definition as in G.S. 14-269.2(a)(1), and the term "educational entity" means the board of education or other entity that administers and controls the educational property or the school-sponsored activity.

(e) Nothing contained in this section shall prohibit recovery upon any other theory in the law. (1999-257, s. 5.)

§ 1-539. Remedy for nuisance.

Injuries remediable by the old writ of nuisance are subjects of action as other injuries; and in such action there may be judgment for damages, or for the removal of the nuisance, or both. (C.C.P., s. 387; Code, s. 630; Rev., s. 825; C.S., 894.)

§ 1-539.1. Damages for unlawful cutting, removal or burning of timber; misrepresentation of property lines.

(a) Any person, firm or corporation not being the bona fide owner thereof or agent of the owner who shall without the consent and permission of the bona fide owner enter upon the land of another and injure, cut or remove any valuable wood, timber, shrub or tree therefrom, shall be

liable to the owner of said land for triple the value of such wood, timber, shrubs or trees so injured, cut or removed.

(b) If any person, firm or corporation shall willfully and intentionally set on fire, or cause to be set on fire, in any manner whatever, any valuable wood, timber or trees on the lands of another, such person, firm or corporation shall be liable to the owner of said lands for triple the value of such wood, timber or trees damaged or destroyed thereby.

(c) Any person, firm or corporation cutting timber under contract and incurring damages as provided in subsection (a) of this section as a result of a misrepresentation of property lines by the party letting the contract shall be entitled to reimbursement from the party letting the contract for damages incurred. (1945, c. 837; 1955, c. 594; 1971, c. 119; 1977, c. 859; 2021-78, s. 5(b).)

§ 1-539.2. Dismantling portion of building.

When one person owns a portion of a building and another or other persons own the remainder of said building, neither of said owners shall dismantle his portion of said building without making secure the portions of said building belonging to other persons. Any person violating the provisions of this section shall be responsible in damages to the owners of other portions of such building. (1955, c. 1359.)

§ 1-539.2A. Damages for computer trespass.

(a) Any person whose property or person is injured by reason of a violation of G.S. 14-458 may sue for and recover any damages sustained and the costs of the suit. Without limiting the general of the term, "damages" shall include loss of profits. If the injury arises from the transmission of unsolicited bulk commercial electronic mail, the injured person, other than an electronic mail service provider, may also recover attorneys' fees and may elect, in lieu of actual damages, to recover the lesser of ten dollars ($10.00) for each and every unsolicited bulk commercial electronic mail message transmitted in violation of this section, or twenty-five thousand dollars ($25,000) per day. The injured person shall not have a cause of action against the electronic mail service provider which merely transmits the unsolicited bulk commercial electronic mail over its computer network. If the injury arises from the transmission of unsolicited bulk commercial electronic mail, an injured electronic mail service provider may also recover attorneys' fees and costs and may elect, in lieu of actual damages, to recover the greater of ten dollars ($10.00) for each and every unsolicited bulk commercial electronic mail message transmitted in violation of this section, or twenty-five thousand dollars ($25,000) per day.

(b) A civil action under this section shall be commenced before expiration of the time period prescribed in G.S. 1-54. In actions alleging injury arising from the transmission of unsolicited bulk commercial electronic mail, personal jurisdiction may be exercised pursuant to G.S. 1-75.4. (1999-212, s. 4; 1999-456, s. 8.)

§ 1-539.2B. Triple damages for injury to agricultural commodities or production systems; define value of agricultural commodities grown for educational, testing, or research purposes.

(a) Any person who unlawfully and willfully injures or destroys any other person's agricultural commodities or production system is liable to the owner for triple the value of the commodities or production system injured or destroyed.

(b) For purposes of this section, the value of agricultural commodities that are grown for educational, testing, or research purposes includes all of the following:

(1) The diminution in market value of the commodities when the commodities were grown for sale and the plaintiff is the entity who sold the commodities or would have sold the commodities but for their injury or destruction.
(2) Costs to the plaintiff for research and development of the injured or destroyed commodities.
(3) Other incidental and consequential damages proven to have been incurred by the plaintiff.

(c) For the purpose of this section, the following definitions apply:
(1) "Agricultural commodities" means:
a. Commodities produced for individual and public use, consumption, and marketing from one of the following:
1. The cultivation of soil or hydroponics or any other method of production for crops, including fruits, vegetables, flowers, and ornamental plants.
2. The planting and production of trees, timber, forests, or forest products.
3. The raising of livestock, poultry, and eggs.
4. Aquaculture as defined in G.S. 106-758.
b. Seed, genetic material, tissue cultures, and any research and development materials, information, and records related to items included in subdivision (1)a. of this subsection developed or used for educational, testing, or research purposes.
(2) "Production systems" means land, buildings, and equipment used in the production of agricultural commodities, including aquaculture facilities as defined in G.S. 106-758. (2001-290, s. 1; 2021-78, s. 5(c).)

§ 1-539.2C. Damages for identity theft.

(a) Any person whose property or person is injured by reason of an act made unlawful by Article 19C of Chapter 14 of the General Statutes, or a violation of G.S. 75-66, may sue for civil damages. For each unlawful act, or each violation of G.S. 75-66, damages may be
(1) In an amount of up to five thousand dollars ($5,000), but no less than five hundred dollars ($500.00), or
(2) Three times the amount of actual damages,
whichever amount is greater. A person seeking damages as set forth in this section may also institute a civil action to enjoin and restrain future acts that would constitute a violation of this section. The court, in an action brought under this section, may award reasonable attorneys' fees to the prevailing party.

(b) If the identifying information of a deceased person is used in a manner made unlawful by Article 19C of Chapter 14 of the General Statutes, or by a violation of G.S. 75-66, the deceased person's estate shall have the right to recover damages pursuant to subsection (a) of this section.

(c) The venue for any civil action brought under this section shall be the county in which the plaintiff resides or any county in which any part of the alleged violation of G.S. 75-66, G.S. 14-113.20 or G.S. 14-113.20A took place, regardless of whether the defendant was ever actually present in that county. Civil actions under this section must be brought within three years from the date on which the identity of the wrongdoer was discovered or reasonably should have been discovered.

(d) Civil action under this section does not depend on whether or not a criminal prosecution has been or will be instituted under Article 19C of Chapter 14 of the General Statutes for the acts which are the subject of the civil action. The rights and remedies provided by this section are in addition to any other rights and remedies provided by law. (2002-175, s. 8; 2005-414, s. 9; 2007-534, s. 3.)

§ 1-539.2D. Civil liability for acts of terror.

(a) The following definitions apply in this section:

(1) Act of terror. – An activity with all of the following characteristics:

a. Involves violent acts or acts dangerous to human life that violate federal or State law.

b. Appears to be intended (i) to intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

c. Occurs primarily within this State.

(2) Terrorist. – A person who commits an act of terror, including a person who acts as an accessory before or after the fact, aids or abets, solicits, or conspires to commit an act of terror or who lends material support to an act of terror.

(b) Any person whose property or person is injured by a terrorist may sue for and recover damages from the terrorist.

(c) Any person who files an action under this section is entitled to recover three times the actual damages sustained or fifty thousand dollars ($50,000), whichever is greater, as well as court costs and attorneys' fees in the trial and appellate courts if the person prevails in the claim.

(d) The rights and remedies provided by this section are in addition to any other rights and remedies provided by law. (2015-215, s. 1.)

Article 43A.

Adjudication of Small Claims in Superior Court.

§§ 1-539.3 through 1-539.8: Repealed by Session Laws 1971, c. 268, s. 34.

Article 43B.

Defense of Charitable Immunity Abolished; and Qualified Immunity for Volunteers.

§ 1-539.9. Defense abolished as to actions arising after September 1, 1967.

The common-law defense of charitable immunity is abolished and shall not constitute a valid defense to any action or cause of action arising subsequent to September 1, 1967. (1967, c. 856.)

§ 1-539.10. Immunity from civil liability for volunteers.

(a) A volunteer who performs services for a charitable organization or a volunteer engaged in providing emergency services is not liable in civil damages for any acts or omissions resulting in any injury, death, or loss to person or property arising from the volunteer services rendered if:

(1) The volunteer was acting in good faith and the services rendered were reasonable under the circumstances; and

(2) The acts or omissions do not amount to gross negligence, wanton conduct, or intentional wrongdoing.

(3) The acts or omissions did not occur while the volunteer was operating or responsible for the operation of a motor vehicle.

(b) To the extent that any charitable organization or volunteer has liability insurance, that charitable organization or volunteer shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance for the negligence by any volunteer.

(c) Nothing herein shall be construed to alter the standard of care requirement or liability of persons rendering professional services. (1987, c. 505, s. 1(2); 2005-273, s. 1.)

§ 1-539.11. Definitions.

As used in this Article:

(1) "Charitable Organization" means an organization that has humane and philanthropic objectives, whose activities benefit humanity or a significant rather than limited segment of the community without expectation of pecuniary profit or reward and is exempt from taxation under either G.S. 105-130.11(a)(3) or G.S. 105-130.11(a)(5) or Section 501(c)(3) of the Internal Revenue Code of 1954.

(1a) "Emergency services" means the preparation for and the carrying out of functions to prevent, minimize, and repair injury and damage resulting from natural or man-made disasters and all other activities necessary or incidental to the preparation for and carrying out of these functions. These functions include firefighting services, police services, medical and health services, rescue services, engineering services, land surveying services, warning services and communications, radiological, chemical and other special weapons defense services, evacuation of persons from stricken areas, emergency welfare services, including providing emergency shelter, emergency transportation, and emergency resource management services, existing or properly assigned plant protection services, temporary restoration of public utility services, services performed as a function of a Medical Reserve Corps (MRC) unit or a Community Emergency Response Team (CERT), and other functions related to civilian protection, including the administration of approved State and federal disaster recovery and assistance programs.

(2) "Volunteer" means an individual, serving as a direct service volunteer performing services for a charitable, nonprofit organization, who does not receive compensation, or anything of value in lieu of compensation, for the services, other than reimbursement for expenses actually incurred or any person providing emergency services without any financial gain. (1987, c. 505, s. 1(2); 2005-273, s. 2.)

§ 1-539.12. Immunity from civil liability for employers disclosing information.

(a) An employer who discloses information about a current or former employee's job history or job performance to a prospective employer of the current or former employee upon request of the prospective employer or upon request of the current or former employee is immune from civil liability and is not liable in civil damages for the disclosure or any consequences of the disclosure. This immunity shall not apply when a claimant shows by a preponderance of the evidence both of the following:

(1) The information disclosed by the current or former employer was false.

(2) The employer providing the information knew or reasonably should have known that the information was false.

(b) For purposes of this section, "job performance" includes:

(1) The suitability of the employee for re-employment;

(2) The employee's skills, abilities, and traits as they may relate to suitability for future employment; and

(3) In the case of a former employee, the reason for the employee's separation.

(c) The provisions of this section apply to any employee, agent, or other representative of the current or former employer who is authorized to provide and who provides information in accordance with the provisions of this section. For the purposes of this section, "employer" also includes a job placement service but does not include a private personnel service as defined in G.S. 95-47.1 except as provided hereinafter. The provisions of this section apply to a private personnel service as defined in G.S. 95-47.1 only to the extent that the service conveys information derived from credit reports, court records, educational records, and information furnished to it by the employee or prior employers and the service identifies the source of the information.

(d) This section does not affect any privileges or immunities from civil liability established by another section of the General Statutes or available at common law. (1997-478, s. 1; 2021-82, s. 4(b).)

§ 1-539.13: Reserved for future codification purposes.

§ 1-539.14: Reserved for future codification purposes.

Article 43C.

Actions Pertaining to Local Units of Government.

§ 1-539.15: Repealed by Session Laws 1981, c. 777, s. 1.

§ 1-539.16. Notice of claims against local units of government.

No local act, including city charters, shall require a notice to a local unit of government of any claim against it and prohibit suit against the local unit if notice is not given or limit the period during which an action may be brought on such a claim after notice has been given. (1981, c. 777, s. 2.)

§ 1-539.17. Reserved for future codification purposes.

§ 1-539.18. Reserved for future codification purposes.

§ 1-539.19. Reserved for future codification purposes.

§ 1-539.20. Reserved for future codification purposes.

Article 43D.

Abolition of Parent-Child Immunity in Motor Vehicle Cases.

§ 1-539.21. Abolition of parent-child immunity in motor vehicle cases.

The relationship of parent and child shall not bar the right of action by a person or his estate against his parent or child for wrongful death, personal injury, or property damage arising out of operation of a motor vehicle owned or operated by the parent or child. (1975, c. 685, s. 1; 1985, c. 201; 1989, c. 782, s. 2.)

§ 1-539.22. Reserved for future codification purposes.

§ 1-539.23. Reserved for future codification purposes.

§ 1-539.24. Reserved for future codification purposes.

Article 43E.

Affirmative Defense Based on Year 2000 Failure.

§ 1-539.25. Expired October 1, 2000 (see previous document versions for former law).

§ 1-539.26. Expired October 1, 2000. (see previous document versions for former law)

Article 43F.

Immunity for Damage to Vehicle.

§ 1-539.27. Immunity from civil liability for damage to railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft necessary for assistance.

Any person who enters or attempts to enter any railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind shall not be liable in civil damages for any damage to the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind if one or more of the following circumstances exist:

(1) The person acts in good faith to access a person inside the railroad car, motor vehicle, trailer, aircraft, boat, or watercraft of any kind in order to provide first aid or emergency health care treatment or because the person inside is, or is in imminent danger of becoming unconscious, ill, or injured.

(2) It is reasonably apparent that the circumstances require prompt decisions and actions in medical care, other health care, or other assistance.

(3) The necessity of immediate health care treatment or removal of the person from the railroad car, motor vehicle, trailer, aircraft, boat, or other watercraft of any kind is so reasonably apparent that any delay in the rendering of treatment or removal would seriously worsen the physical condition or endanger the life of the person.

This section shall not apply to any acts of gross negligence, wanton conduct, or intentional wrongdoing. (2015-286, s. 3.4(a).)

SUBCHAPTER XV. INCIDENTAL PROCEDURE IN CIVIL ACTIONS.

Article 44.

Compromise.

§ 1-540. By agreement receipt of less sum is discharge.

In all claims, or money demands, of whatever kind, and howsoever due, where an agreement is made and accepted for a less amount than that demanded or claimed to be due, in satisfaction thereof, the payment of the less amount according to such agreement in compromise of the whole is a full and complete discharge of the same. (1874-5, c. 178; Code, s. 574; Rev., s. 859; C.S., s. 895.)

§ 1-540.1. Effect of release of original wrongdoer on liability of physicians and surgeons for malpractice.

The compromise settlement or release of a cause of action against a person responsible for a personal injury to another shall not operate as a bar to an action by the injured party against a physician or surgeon or other professional practitioner treating such injury for the negligent treatment thereof, unless the express terms of the compromise, settlement or release agreement given by the injured party to the person responsible for the initial injury provide otherwise. (1961, c. 212.)

§ 1-540.2. Settlement of property damage claims arising from motor vehicle collisions or accidents; same not to constitute admission of liability, nor bar party seeking damages for bodily injury or death.

In any claim, civil action, or potential civil action which arises out of a motor vehicle collision or accident, settlement of any property damage claim arising from such collision or accident, whether such settlement be made by an individual, a self-insurer, or by an insurance carrier under a policy of insurance, shall not constitute an admission of liability on the part of the person, self-insurer or insurance carrier making such settlement, which arises out of the same motor vehicle collision or accident. It shall be incompetent for any claimant or party plaintiff in the said civil action to offer into evidence, either by oral testimony or paper writing, the fact that a settlement of the property damage claim arising from such collision or accident has been made; provided further, that settlement made of such property damage claim arising out of a motor vehicle collision or accident shall not in and of itself act as a bar, release, accord and satisfaction, or discharge of any claims other than the property damage claim, unless by the written terms of a properly executed settlement agreement it is specifically stated that the acceptance of said settlement constitutes full settlement of all claims and causes of action arising out of the said motor vehicle collision or accident. (1967, c. 662, s. 1.)

§ 1-540.3. Advance payments.

(a) In any claim, potential civil action or action in which any person claims to have sustained bodily injuries, advance or partial payment or payments to any such person claiming to have sustained bodily injuries or to the personal representative of any person claimed to have sustained fatal injuries may be made to such person or such personal representative by the person or party against whom such claim is made or by the insurance carrier for the person, party, corporation, association or entity which is or may be liable for such injuries or death. Such advance or partial payment or payments shall not constitute an admission of liability on the part of the person, party, corporation, association or entity on whose behalf the payment or payments are made or by the insurance carrier making the payments. It shall be incompetent for any party in a civil action to offer into evidence, through any witness either by oral testimony or paper writing, the fact of the advance or partial payment or payments made by or on behalf of the opposing party. The receipt of the advance or partial payment or payments shall not in and of itself act as a bar, release, accord and satisfaction, or a discharge of any claims of the person or representative

receiving the advance or partial payment or payments, unless by the terms of a properly executed settlement agreement it is specifically stated that the acceptance of said payment or payments constitutes full settlement of all claims and causes of action for personal injuries or wrongful death, as applicable.

(b) In any civil action for personal injuries or wrongful death the person or party against whom claim is made for such injuries or death and by or on whose behalf advance or partial payment or payments have been made to the party asserting the claim shall file with the Court and serve upon opposing counsel a motion setting out the date and amount of payment or payments and praying that said sums be credited upon any judgment recovered by the opposing party against the party on whose behalf the payment or payments were made. Prior to the entry of judgment, the trial judge shall conduct a hearing and may consider affidavits, oral testimony, depositions, and any other competent evidence, and shall enter his findings of fact and conclusions of law as to whether the advance or partial payment or payments were made by or on behalf of the person or party claiming to have made such payment(s) to the party asserting the claim for injuries or wrongful death. Upon a finding that the advance or partial payment or payments were made by or on behalf of the person or party claiming to have made such payment(s), all such payments shall be credited by the trial judge upon any judgment rendered in favor of the person or representative who received the payment or payments. Advance payments made by one joint tort-feasor shall not inure to the benefit or credit of any joint tort-feasor not making such payments.

No claim for reimbursement may be made or allowed by or on behalf of the person or party making such advance payment or payments against the person or party to whom such payment or payments are made except a claim based on fraud.

The making of any advance payment shall not affect in any way whatsoever the running of the statute of limitations. (1971, c. 854.)

§§ 1-541 through 1-543. Repealed by Session Laws 1967, c. 954, s. 4.

Article 44A.

Tender.

§ 1-543.1. Service of order of tender; return.

In all matters in which it is proper or necessary to make or serve a tender, the clerk of the superior court in the county in which the tender is to be made shall, upon request of the tendering party, direct the sheriff of said county to serve an order of tender, together with the property to be tendered, upon the party or parties upon whom said tender is to be made. In the event said property is incapable of being manually tendered, said order of tender shall so state and service of said order tendering same shall have the same legal effect as if the property had been manually tendered. Within five days after receipt of the order, the sheriff shall make his return thereon, showing upon whom the same was served, the date and hour of service, the property tendered, and whether or not said tender was accepted, or that, after due diligence, the party or parties upon whom service was to be made could not be found within the county. He shall then return said order of tender to the clerk who issued it, and this shall constitute proper tender. Nothing in this section shall be construed to prevent other methods of tender or tender by any party to an action in open court upon any other party to said action. (1965, c. 699.)

§ 1-543.2. Reserved for future codification purposes.

§ 1-543.3. Reserved for future codification purposes.

§ 1-543.4. Reserved for future codification purposes.

§ 1-543.5. Reserved for future codification purposes.

§ 1-543.6. Reserved for future codification purposes.

§ 1-543.7. Reserved for future codification purposes.

§ 1-543.8. Reserved for future codification purposes.

§ 1-543.9. Reserved for future codification purposes.

Article 44B.

Structured Settlement Protection Act.

§ 1-543.10. Title.

This Article may be cited as the North Carolina Structured Settlement Protection Act. (1999-367, s. 1.)

§ 1-543.11. Definitions.

For purposes of this Article:

(1) "Annuity issuer" means an insurer that has issued an annuity or insurance contract used to fund periodic payments under a structured settlement;

(2) "Discounted present value" means the fair present value of future payments, as determined by discounting such payments to the present utilizing the tables adopted in Article 5 of Chapter 8 of the General Statutes;

(3) "Independent professional advice" means advice of an attorney, certified public accountant, actuary, or other licensed or registered professional or financial adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax, and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur;

(4) "Interested parties" means, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the terms of the structured settlement;

(5) "Payee" means an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(6) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the Internal Revenue Code, United States Code Title 26, as amended from time to time;
(7) "Responsible administrative authority" means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;
(8) "Settled claim" means the original tort claim resolved by a structured settlement;
(9) "Structured settlement" means an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim;
(10) "Structured settlement agreement" means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;
(11) "Structured settlement obligor" means, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;
(12) "Structured settlement payment rights" means rights to receive periodic payments (including lump-sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:
a. The payee is domiciled in this State;
b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or
c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;
(13) "Terms of the structured settlement" include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement; and
(14) "Transfer" means any sale, assignment, pledge, hypothecation, or other form of alienation or encumbrance made by a payee for consideration;
(15) "Transfer agreement" means the agreement providing for transfer of structured settlement payment rights from a payee to a transferee. (1999-367, s. 1.)

§ 1-543.12. Structured settlement payment rights.

No direct or indirect transfer of structured settlement payment rights shall be effective, and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or a responsible administrative authority based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this Article [of] law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 point setting forth:
   a. The amounts and due dates of the structured settlement payments to be transferred;
   b. The aggregate amount of such payments;
   c. The discounted present value of such payments;
   d. The gross amount payable to the payee in exchange for such payments;
   e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;
   f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses, and charges described in sub-subdivision e. of this subdivision;
   g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments;
   h. The discount rate used by the transferee to determine the net amount payable to the payee for the structured settlement payments to be transferred; and
   i. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transfer is in the best interest of the payee;

(4) The payee has received independent professional advice regarding the legal, tax, and financial implications of the transfer;

(5) The transferee has given written notice of the transferee's name, address, and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority;

(6) The discount rate used in determining the net amount payable to the payee, as provided in subdivision (2) of this section, does not exceed an annual percentage rate of prime plus five percentage points calculated as if the net amount payable to the payee, as provided in sub-subdivision (2)f. of this section, was the principal of a consumer loan made by the transferee to the payee, and if the structured settlement payments to be transferred to the transferee were the payee's payments of principal plus interest on such loan. For purposes of this subdivision, the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the month in which the transfer agreement is signed by both the payee and the transferee, except when the transfer agreement is signed prior to the first Monday of that month then the prime rate shall be as reported by the Federal Reserve Statistical Release H.15 on the first Monday of the preceding month;

(7) Any brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, notary fees and other

commissions, fees, costs, expenses, and charges payable by the payee or deductible from the gross amount otherwise payable to the payee do not exceed two percent (2%) of the net amount payable to the payee;

(8) The transfer of structured settlement payment rights is fair and reasonable; and

(9) Notwithstanding a provision of the structured settlement agreement prohibiting an assignment by the payee, the court may order a transfer of periodic payment rights provided that the court finds that the provisions of this Article are satisfied.

If the court or responsible administrative authority authorizes the transfer pursuant to this section, the court or responsible administrative authority shall order the structured settlement obligor to execute an acknowledgment of assignment letter on behalf of the transferee for the amount of the structured settlement payment rights to be transferred; provided, however, structured settlement payment rights arising from a claim pursuant to Chapter 97 shall not be authorized. (1999-367, s. 1; 1999-456, s. 67.)

§ 1-543.13. Jurisdiction.

(a) Where the structured settlement agreement was entered into after commencement of litigation or administrative proceedings in this State, the court or administrative agency where the action was pending shall have exclusive jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation outside this State, the Superior Court Division of the General Court of Justice shall have nonexclusive original jurisdiction over any application for authorization under this Article of a transfer of structured settlement payment rights. (1999-367, s. 1.)

§ 1-543.14. Procedure for approval of transfers.

(a) Where the structured settlement agreement was entered into after the commencement of litigation or administrative proceedings in this State, the application for authorization of a transfer of structured settlement rights shall be filed with the court or administrative agency where the settled claim was pending as a motion in the cause.

(b) Where the structured settlement agreement was entered into prior to the commencement of litigation or administrative proceedings, or after the commencement of litigation or administrative proceedings outside this State, the application for authorization of a transfer of structured settlement payment rights shall be filed in the superior court with proper venue pursuant to Article 7 of this Chapter. The nature of the action shall be a special proceeding governed by the provisions of Article 33 of this Chapter.

(c) Not less than 30 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under this Article, the transferee shall file with the proper court or responsible administrative authority and serve on any other government authority which previously approved the structured settlement, on all interested parties as defined in G.S. 1-543.11(4), and on the Attorney General, a notice of the proposed transfer and the application for its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under G.S. 1-543.12(a)(2);

(4) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed in order to be considered by the court or responsible administrative authority.

(d) The Attorney General shall have standing to raise, appear, and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this Article. (1999-367, s. 1.)

§ 1-543.15. No waiver; penalties.

(a) The provisions of this Article may not be waived.

(b) Any payee who has transferred structured settlement payment rights to a transferee without complying with this Article may bring an action against the transferee to recover actual monetary loss or for damages up to five thousand dollars ($5,000) for the violation by the transferee, or bring actions for both. The payee is entitled to attorneys' fees and costs incurred to enforce this Article. In addition, all unpaid structured settlement payment rights transferred in violation of this Article by any transferee shall be reconveyed to the payee.

(c) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of this Article. (1999-367, s. 1.)

Article 45.

Arbitration and Award.

§§ 1-544 through 1-567. Repealed by Session Laws 1973, c. 676, s. 1.

Article 45A.

Arbitration and Award.

§§ 1-567.1 through 1-567.20: Repealed by Session Laws 2003-345, s. 1, effective January 1, 2004, and applicable to agreements to arbitrate made on or after that date.

§ 1-567.21. Reserved for future codification purposes.

§ 1-567.22. Reserved for future codification purposes.

§ 1-567.23. Reserved for future codification purposes.

§ 1-567.24. Reserved for future codification purposes.

§ 1-567.25. Reserved for future codification purposes.

§ 1-567.26. Reserved for future codification purposes.

§ 1-567.27. Reserved for future codification purposes.

§ 1-567.28. Reserved for future codification purposes.

§ 1-567.29. Reserved for future codification purposes.

Article 45B.

International Commercial Arbitration and Conciliation.

Part 1. General Provisions.

§ 1-567.30. Preamble and short title.

It is the policy of the State of North Carolina to promote and facilitate international trade and commerce, and to provide a forum for the resolution of disputes that may arise from participation therein. Pursuant to this policy, the purpose of this Article is to encourage the use of arbitration or conciliation as a means of resolving such disputes, to provide rules for the conduct of arbitration or conciliation proceedings, and to assure access to the courts of this State for legal proceedings ancillary to such arbitration or conciliation. This Article shall be known as the North Carolina International Commercial Arbitration and Conciliation Act. (1991, c. 292, s. 1; 1997-368, ss. 1, 2, 5.)

§ 1-567.31. Scope of application.

(a) This Article applies to international commercial arbitration and conciliation, subject to any applicable international agreement in force between the United States of America and any other nation or nations, and any federal law.

(b) The provisions of this Article, except G.S. 1-567.38, 1-567.39, and 1-567.65, apply only if the place of arbitration is in this State.

(c) An arbitration or conciliation is international if any of the following are true:

(1) The parties to the arbitration or conciliation agreement have their places of business in different nations when the agreement is concluded.

(2) One or more of the following places is situated outside the nations in which the parties have their places of business:

a. The place of arbitration or conciliation if determined pursuant to the arbitration agreement.

b. Any place where a substantial part of the obligations of the commercial relationship is to be performed.

c. The place with which the subject matter of the dispute is most closely connected.

(3) The parties have expressly agreed in a record that the subject matter of the arbitration or conciliation agreement relates to more than one nation.

(d) For the purposes of subsection (c) of this section:

(1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration or conciliation agreement.

(2) If a party does not have a place of business, reference is to be made to the party's domicile.

(e) An arbitration or conciliation, respectively, is deemed commercial for the purposes of this Article if it arises out of a relationship of a commercial nature, including, but not limited to any of the following:

(1) A transaction for the exchange of goods or services.
(2) A distribution agreement.
(3) A commercial representation or agency.
(4) An exploitation agreement or concession.
(5) A joint venture or other related form of industrial or business cooperation.
(6) The carriage of goods or passengers by air, sea, water, land, or road.
(7) A contract or agreement relating to construction, insurance, licensing, factoring, leasing, consulting, engineering, financing, or banking.
(8) The transfer of data or technology.
(9) The use or transfer of intellectual or industrial property, including trade secrets, trademarks, trade names, patents, copyrights, plant variety protection, and software programs.
(10) A contract for the provision of any type of professional service, whether provided by an employee or an independent contractor.

(f) This Article shall not affect any other law in force by virtue of which certain disputes may not be submitted to arbitration, conciliation, or mediation, or may be submitted to arbitration, conciliation, or mediation only according to provisions other than those of this Article.

(g) This Article shall not apply to any agreement providing explicitly that it shall not be subject to the North Carolina International Commercial Arbitration and Conciliation Act. This Article shall not apply to any agreement executed prior to June 13, 1991.

(h) This Article does not govern arbitrations under Article 1H of Chapter 90 of the General Statutes. (1991, c. 292, s. 1; 1997-141, s. 1; 1997-368, s. 6; 2017-171, s. 1.)

§ 1-567.32. Definitions and rules of interpretation.

(a) The following definitions apply in this Article:

(1) Arbitral award. – Any decision of an arbitral tribunal on the substance of a dispute submitted to it, and includes an interlocutory or partial award.
(2) Arbitral tribunal. – A sole arbitrator or a panel of arbitrators.
(3) Arbitration. – Any arbitration, whether or not administered by a permanent arbitral institution.
(3a) Court. – A court of competent jurisdiction in this State.
(4) Party. – A party to an arbitration agreement.
(5) Repealed by Session Laws 2017-171, s. 1, effective October 1, 2017, and applicable to agreements entered into, renewed, or modified on or after that date.
(6) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form.

(b) Where a provision of this Article, except G.S. 1-567.58, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

(c) Where a provision of this Article refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement.

(d) Where a provision of this Article, other than in G.S. 1-567.55(1) and G.S. 1-567.62(b)(1), refers to a claim, it also applies to a counterclaim or setoff, and where it refers to a defense, it also applies to a defense to a counterclaim or setoff. (1991, c. 292, s. 1; 2017-171, s. 1.)

§ 1-567.33. Receipt of written communications or submissions.

(a) Unless otherwise agreed in a record by the parties, any written communication or submission is deemed to have been received if it is delivered to the addressee personally or if it is delivered at the addressee's place of business, domicile, or mailing address, and the communication or submission is deemed to have been received on the day it is delivered. Unless otherwise agreed in a record by the parties, delivery by facsimile transmission or electronic transmission, if in a record, shall constitute valid receipt if the communication or submission is in fact received, and the receipt is in a record.

(b) If none of the places referred to in subsection (a) can be found after making reasonable inquiry, a written communication or submission is deemed to have been received if it is sent to the addressee's last known place of business, domicile, or mailing address by registered mail, certified mail, or any other means that provide a record of the attempt to deliver it.

(c) The provisions of this Article do not apply to a written communication or submission relating to a court, administrative, or special proceeding. (1991, c. 292, s. 1; 2017-171, s. 1.)

§ 1-567.33A. Severability.

In the event any provision of this act is held to be invalid, the court's holding as to that provision shall not affect the validity or operation of other provisions of the act; and to that end the provisions of the act are severable. (1991, c. 292, s. 1; 1997-368, s. 3.)

Part 2. International Commercial Arbitration.

§ 1-567.34. Waiver of right to object.

A party who knows that any provision of this Article or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating an objection to such noncompliance without undue delay or, if a time limit is provided therefor, within that period of time, shall be deemed to have waived any right to object. (1991, c. 292.)

§ 1-567.35. Extent of court intervention.

In matters governed by this Article, no court shall intervene except where so provided in this Article or applicable federal law or any applicable international agreement in force between the United States of America and any other nation or nations. (1991, c. 292.)

§ 1-567.36. Venue and jurisdiction of courts.

(a) The functions referred to in G.S. 1-567.41(c) and (d), 1-567.44(b), 1-567.46(c), and 1-567.57 shall be performed by the court in the following county:

(1) The county where the arbitration agreement is to be performed or was made.

(2) If the arbitration agreement does not specify a county where the agreement is to be performed and the agreement was not made in any county in North Carolina, the county where any party to the court proceeding resides or has a place of business.

(3) In any case not covered by subdivision (1) or (2) of this subsection, in any county in North Carolina.

(b) All other functions assigned by this Article to the court shall be performed by the court of the county in which the place of arbitration is located. (1991, c. 292, s. 1; 2017-171, s. 1; 2023-46, s. 1.)

§ 1-567.37. Definition and form of arbitration agreement.

(a) An "arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether or not contractual. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(b) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams, facsimile transmission, or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

(c) Such arbitration agreement shall be valid, enforceable and irrevocable, except with the consent of all the parties, without regard to the justiciable character of the controversy. (1991, c. 292.)

§ 1-567.38. Arbitration agreement and substantive claim before court.

(a) When a party to an international commercial arbitration agreement commences judicial proceedings seeking relief with respect to a matter covered by the agreement to arbitrate, any other party to the agreement may apply to the court for an order to stay the proceedings and compel arbitration.

(b) Arbitration proceedings may begin or continue, and an award may be made, while an action described in subsection (a) is pending before the court. (1991, c. 292, s. 1; 2017-171, s. 1.)

§ 1-567.39. Interim relief and the enforcement of interim measures.

(a) In the case of an arbitration where the arbitrator or arbitrators have not been appointed, or where the arbitrator or arbitrators are unavailable, a party may seek interim relief directly from the court as provided in subsection (c). Enforcement shall be granted as provided by the law applicable to the type of interim relief sought.

(b) In all other cases, a party shall seek interim relief under G.S. 1-567.47.

(c) In connection with an agreement to arbitrate or a pending arbitration, the court may grant, pursuant to subsection (a) of this section, any of the following:

(1) An order of attachment or garnishment.
(2) A temporary restraining order or preliminary injunction.
(3) An order for claim and delivery.
(4) The appointment of a receiver.
(5) Delivery of money or other property into court.
(6) Any other order that may be necessary to ensure the preservation or availability either of assets or of documents, the destruction or absence of which would be likely to prejudice the conduct or effectiveness of the arbitration.

(d) In considering a request for interim relief or the enforcement of interim measures, the court shall give preclusive effect to any finding of fact of the arbitral tribunal in the proceeding, including the probable validity of the claim that is the subject of the interim relief sought or the interim measures granted.

(e) Where the arbitral tribunal has not ruled on an objection to its jurisdiction, the court shall not grant preclusive effect to the tribunal's findings until the court has made an independent finding as to the jurisdiction of the arbitral tribunal. If the court rules that the arbitral tribunal did not have jurisdiction, the application for interim relief or the enforcement of interim measures shall be denied. Such a ruling by the court that the arbitral tribunal lacks jurisdiction is not binding on the arbitral tribunal or subsequent judicial proceedings.

(f) The availability of interim relief under this section may be limited by prior written agreement of the parties in a record. (1991, c. 292, s. 1; 2017-171, s. 1.)

§ 1-567.40. Number of arbitrators.

There shall be one arbitrator unless the parties agree on a greater number of arbitrators. (1991, c. 292.)

§ 1-567.41. Appointment of arbitrators.

(a) A person of any nationality may be an arbitrator.

(b) The parties may agree on a procedure of appointing the arbitral tribunal subject to the provisions of subsections (d) and (e) of this section.

(c) (1) If an agreement is not made under subsection (b) of this section, in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the court.

(2) In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, a sole arbitrator shall be appointed, upon request of a party, by the court.

(3) In an arbitration involving more than two parties, if no agreement is reached under subsection (b) of this section, the court, on request of a party, shall appoint one or more arbitrators, as provided in G.S. 1-567.40.

(d) The court, on request of any party, may take the necessary measures, unless the agreement on the appointment procedure provides other means for securing the appointment, if, under an appointment procedure agreed upon by the parties, any of the following events occur:

(1) A party fails to act as required under the procedure.

(2) The parties, or two arbitrators, are unable to reach an agreement expected of them under the procedure.

(3) A third party, including an institution, fails to perform any function entrusted to it under the procedure.

(e) A decision of the court on a matter entrusted by subsection (c) or (d) of this section shall be final and not subject to appeal.

(f) The court, in appointing an arbitrator, shall consider all of the following:

(1) Any qualifications required of the arbitrator by the agreement of the parties.

(2) Such other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(3) In the case of a sole or third arbitrator, the advisability of appointing an arbitrator of a nationality other than those of the parties.

(g) The parties may agree to employ an established arbitration institution to conduct the arbitration. If they do not so agree, the court may in its discretion designate an established arbitration institution to conduct the arbitration.

(h) Unless otherwise agreed, an arbitrator is entitled to compensation at an hourly or daily rate that reflects the size and complexity of the case, and the experience of the arbitrator. If the parties are unable to agree on a rate, the rate shall be determined by the arbitral institution chosen pursuant to subsection (g) of this section or by the arbitral tribunal, in either case subject to the review of the court upon the motion of any dissenting party. (1991, c. 292, s. 1; 1993, c. 553, s. 6; 2017-171, s. 1.)

§ 1-567.42: Repealed by Session Laws 2017-171, s. 1, effective October 1, 2017, and applicable to agreements entered into, renewed, or modified on or after that date.

§ 1-567.43: Repealed by Session Laws 2017-171, s. 1, effective October 1, 2017, and applicable to agreements entered into, renewed, or modified on or after that date.

§ 1-567.43A. Disclosure by arbitrator.

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including the following:

(1) A financial or personal interest in the outcome of the arbitration proceeding.

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or to the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and to the arbitration and to any other arbitrators any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed, and a party makes a timely objection to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under G.S. 1-567.64 for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court under G.S. 1-567.64 may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under G.S. 1-567.64.

(f) If the parties to an arbitration proceeding agree to the procedures of an institution or any other procedures for challenges to arbitrators before an award is made, substantial compliance with

those procedures is a condition precedent to a motion to vacate an award on that ground under G.S. 1-567.64. (2017-171, s. 1.)

§ 1-567.44. Failure or impossibility to act.

(a) The mandate of an arbitrator terminates on any of the following grounds:

(1) The arbitrator becomes unable to perform the arbitrator's functions or for other reasons fails to act without undue delay.

(2) The arbitrator withdraws.

(3) The parties agree to the termination.

(b) If a controversy remains concerning any of the grounds referred to in subsection (a) of this section, a party may request the court to decide on the termination of the mandate. The decision of the court is final and not subject to appeal.

(c) If an arbitrator withdraws or otherwise agrees to the termination of the arbitrator's mandate, no acceptance of the validity of any ground referred to in this section is implied in consequence of the action. (1991, c. 292, s. 1; 2017-171, s. 1; 2023-46, s. 2.)

§ 1-567.45. Appointment of substitute arbitrator.

(a) Where the mandate of an arbitrator terminates for any reason, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(b) Unless otherwise agreed by the parties:

(1) Where the number of arbitrators is less than three and an arbitrator is replaced, any hearings previously held shall be repeated;

(2) Where the presiding arbitrator is replaced, any hearings previously held shall be repeated;

(3) Where the number of arbitrators is three or more and an arbitrator other than the presiding arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(c) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section is not invalid because there has been a change in the composition of the tribunal. (1991, c. 292.)

§ 1-567.46. Competence of arbitral tribunal to rule on its jurisdiction.

(a) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms a part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause, unless the arbitral tribunal finds that the arbitration clause was obtained by fraud, whether in the inducement or in the factum.

(b) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. However, a party is not precluded from raising such a plea by the fact that the party has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. In either case, the arbitral tribunal may admit a later plea if it considers the delay justified.

(c) The arbitral tribunal may rule on a plea referred to in subsection (b) of this section either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, after having received notice of that ruling, any party may request the court to decide the matter. The decision of the court shall be final and not subject to appeal. While the request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award. (1991, c. 292, s. 1; 2017-171, s. 1.)

§ 1-567.47. Power of arbitral tribunal to order interim measures.

(a) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute, including an interim measure analogous to any type of interim relief specified in G.S. 1-567.39(c). The arbitral tribunal may require any party to provide appropriate security, including security for costs as provided in G.S. 1-567.61(h)(2), in connection with the measure.

(b) A court has the same power to issue an interim measure in an arbitration proceeding, irrespective of whether the arbitration proceeding is in the territory of this State, as it has in a court proceeding. The court shall exercise this power in accordance with its own procedures in consideration of the specific features of international arbitration. (1991, c. 292, s. 1; 2017-171, s. 1.)

§ 1-567.48. Equal treatment of parties; representation by attorney.

(a) The parties shall be treated with equality and each party shall be given a full opportunity to present its case.

(b) A party has the right to be represented by an attorney at any proceeding or hearing under this Article. A waiver of this right prior to the proceeding or hearing is ineffective. (1991, c. 292, s. 1; 1997-141, s. 2.)

§ 1-567.49. Determination of rules of procedure.

(a) Subject to the provisions of this Article, the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(b) If there is no agreement under subsection (a) of this section, subject to the provisions of this Article, the tribunal shall select the rules for conducting the arbitration after hearing all the parties and taking particular reference to model rules developed by arbitration institutions or similar sources. If the tribunal is unable to decide on rules for conducting the arbitration, upon application by a party, the court may order use of rules for conducting the arbitration, taking particular reference to model rules developed by arbitration institutions or similar sources. In other matters not covered by rules, the tribunal shall conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to order such discovery as it deems necessary and to determine the admissibility, relevance, materiality, and weight of any evidence. Evidence need not be limited by the rules of evidence applicable in judicial proceedings, except as to immunities and privilege. Each party shall have the burden of proving the facts relied on to support its claim, counterclaim, setoff, or defense. (1991, c. 292, s. 1; 2017-171, s. 1.)

§ 1-567.50. Place of arbitration.

(a) The parties may agree on the place of arbitration. If the parties do not agree, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(b) Notwithstanding the provisions of subsection (a) of this section, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property, or documents. (1991, c. 292.)

§ 1-567.50A. Consolidation.

(a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an arbitration agreement or to an arbitral proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if all of the following are true:

(1) There are separate arbitration agreements or separate arbitral proceedings between the same parties or one of the parties is a party to a separate agreement to arbitrate or a separate arbitration with a third person.

(2) The claims subject to the arbitration agreements arise in substantial part from the same transaction or series of related transactions.

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitral proceedings.

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitral proceedings as to some claims and allow other claims to be resolved in separate arbitral proceedings.

(c) The court shall not order consolidation of the claims of a party to an arbitration agreement if the agreement prohibits consolidation. (2017-171, s. 1.)

§ 1-567.51. Commencement of arbitral proceedings.

Unless otherwise agreed by the parties or otherwise provided in the rules and procedures upon which the parties have agreed, the arbitral proceedings in respect of a particular dispute shall commence on the date on which a request for that dispute to be referred to arbitration is received by a party as provided in G.S. 1-567.33. (1991, c. 292, s. 1; 2017-171, s. 1.)

§ 1-567.52. Language.

(a) The parties may agree on the language or languages to be used in the arbitral proceedings. If the parties do not agree, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision, or other communication by the arbitral tribunal.

(b) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

(c) The arbitral tribunal may employ one or more translators at the expense of the parties. (1991, c. 292.)

§ 1-567.53. Statements of claim and defense.

(a) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting its claim, the points at issue and the relief or remedy sought, and the respondent shall state its defenses, counterclaims, or setoffs in respect of these particulars, unless the parties have otherwise agreed as to the required elements of these statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence the party will submit.

(b) Unless otherwise agreed by the parties, either party may amend or supplement a claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment, having regard to the delay in making it.

(c) If there are more than two parties to the arbitration, each party shall state its claims, defenses, counterclaims, or setoffs, as provided in subsection (a) of this section. (1991, c. 292, s. 1; 2017-171, s. 1.)

§ 1-567.54. Hearings and written proceedings.

(a) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(b) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property, or documents.

(c) All statements, documents, or other information supplied to the arbitral tribunal by one party shall be served on the other party and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be served on the parties. The arbitral tribunal shall direct the timing of such service to protect the parties from undue surprise.

(d) Unless otherwise agreed by the parties, all oral hearings and meetings in arbitral proceedings shall be held in camera. Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by the arbitrator or arbitrators. Unless otherwise agreed by the parties, or required by applicable law, the arbitral tribunal and the parties shall keep confidential all matters relating to the arbitration and the award.

(e) The parties may agree on:

(1) The attendance of a court reporter,

(2) The creation of a transcript of proceedings, or

(3) The making of an audio or video record of proceedings, at the expense of the parties.

Any party may provide for any of the actions specified in subdivisions (1) through (3) of this subsection at that party's own expense.

(f) After asking the parties if they have any further testimony or evidentiary submissions and upon receiving negative replies or being satisfied that the record is complete, the arbitral tribunal may declare the hearings closed. The arbitral tribunal may reopen the hearings, upon terms it considers just, at any time before the award is made. (1991, c. 292.)

§ 1-567.55. Default of a party.

Unless otherwise agreed by the parties, where, without showing sufficient cause:

(1) The claimant fails to submit a statement of claim in accordance with G.S. 1-567.53(a), the arbitral tribunal shall terminate the proceedings;

(2) The respondent fails to submit a statement of defense in accordance with G.S. 1-567.53(c), the arbitral tribunal shall continue to conduct the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(3) Any party fails to appear at a hearing or to produce documentary evidence as directed by the arbitral tribunal, the arbitral tribunal may continue to conduct the proceedings and make the award on the evidence before it. (1991, c. 292.)

§ 1-567.56. Expert appointed by arbitral tribunal.

(a) Unless otherwise agreed by the parties, the arbitral tribunal:

(1) May appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(2) May require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods, or other property for the expert's inspection.

(b) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to question the expert and to present expert witnesses on the points at issue. (1991, c. 292.)

§ 1-567.57. Court assistance in obtaining discovery and taking evidence.

(a) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the court assistance in obtaining discovery and taking evidence. The court may execute the request within its competence and according to its rules on discovery and taking evidence, and may impose sanctions for failure to comply with its orders. A subpoena may be issued as provided by G.S. 8-59, in which case the witness compensation provisions of G.S. 6-51, 6-53, and 7A-314 shall apply.

(b) Repealed by Session Laws 2017-171, s. 1, effective October 1, 2017, and applicable to agreements entered into, renewed, or modified on or after that date. (1991, c. 292, s. 1; 1999-185, s. 2; 2017-171, s. 1.)

§ 1-567.58. Rules applicable to substance of dispute.

(a) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given country or political subdivision thereof shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country or political subdivision and not to its conflict of laws rules.

(b) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(c) The arbitral tribunal shall decide ex aequo et bono (on the basis of fundamental fairness), or as amiable compositeur (as an "amicable compounder"), only if the parties have expressly authorized it to do so.

(d) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction. (1991, c. 292, c. 761, s. 1.)

§ 1-567.59. Decision making by panel of arbitrators.

Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if authorized by the parties or all members of the arbitral tribunal. (1991, c. 292, s. 1.)

§ 1-567.60. Settlement.

(a) An arbitral tribunal may encourage settlement of the dispute and, with the agreement of the parties, may use mediation, conciliation, or other procedures at any time during the arbitral proceedings to encourage settlement.

(b) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(c) An award on agreed terms shall be made in accordance with the provisions of G.S. 1-567.61 and shall state that it is an arbitral award. Such an award shall have the same status and effect as any other award on the substance of the dispute. (1991, c. 292.)

§ 1-567.61. Form and contents of award.

(a) The award shall be made in writing in a record and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated in the record of the award.

(a1) An award shall be made within the time specified by the agreement to arbitrate or the arbitration institution, or, if not so specified, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. A party waives any objection that an award was not timely made unless that party gives notice of the objection to the arbitral tribunal before receiving notice of the award.

(b) The award shall not state the reasons upon which it is based, unless the parties have agreed that reasons are to be given.

(c) The award shall state its date and the place of arbitration as determined in accordance with G.S. 1-567.50. The award shall be considered to have been made at that place.

(d) After the award is made, a copy signed by the arbitrator or arbitrators in accordance with subsection (a) of this section shall be delivered to each party.

(e) The award may be denominated in foreign currency, by agreement of the parties or in the discretion of the arbitral tribunal if the parties are unable to agree.

(f) Unless otherwise agreed by the parties, the arbitral tribunal may award interest.

(g) The arbitral tribunal may award specific performance in its discretion to a party requesting an award of specific performance.

(h) (1) Unless otherwise agreed by the parties, the awarding of costs of an arbitration shall be at the discretion of the arbitral tribunal.

(2) In making an order for costs, the arbitral tribunal may include any of the following as costs:

a. The fees and expenses of the arbitrator or arbitrators, expert witnesses, and translators.

b. Fees and expenses of counsel and of the institution supervising the arbitration, if any.

c. Any other expenses incurred in connection with the arbitral proceedings.

(3) In making an order for costs, the arbitral tribunal may specify any of the following:

a. The party entitled to costs.

b. The party who shall pay the costs.

c. The amount of costs or method of determining that amount.

d. The manner in which the costs shall be paid.

(i) The arbitral tribunal may award punitive damages or other exemplary relief if all of the following are true:

(1) The arbitration agreement provides for an award of punitive damages or exemplary relief.

(2) An award for punitive damages or other exemplary relief is authorized by law in a civil action involving the same claim.

(3) The evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(j) If the arbitral tribunal awards punitive damages or other exemplary relief under subsection (i) of this section, the arbitral tribunal shall specify in the award the basis in fact justifying and the basis in law authorizing the award and shall state separately the amount of the punitive damages or other exemplary relief. (1991, c. 292, s. 1; 2017-171, s. 1.)

§ 1-567.62. Termination of proceedings.

(a) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with subsection (b) of this section.

(b) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings if:

(1) The claimant withdraws the claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a final settlement of the dispute;

(2) The parties agree on the termination of the proceedings; or

(3) The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(c) Subject to the provisions of G.S. 1-567.63, the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings. (1991, c. 292.)

§ 1-567.63. Correction and interpretation of awards; additional awards.

(a) Within 30 days of receipt of the award, unless another period of time has been agreed upon by the parties:

(1) A party may request the arbitral tribunal to correct in the award any computation, clerical or typographical errors or other errors of a similar nature;

(2) A party may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers such request to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request. Such correction or interpretation shall become part of the award.

(b) The arbitral tribunal may correct any error of the type referred to in subsection (a) on its own initiative within 30 days of the date of the award.

(c) Unless otherwise agreed by the parties, within 30 days of receipt of the award, a party may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days after the date of receipt of the request.

(d) The arbitral tribunal may extend, if necessary, the period within which it shall make a correction, interpretation, or an additional award under subsection (a) or (c).

(e) The provisions of G.S. 1-567.61 shall apply to a correction or interpretation of the award or to an additional award made under this section. (1991, c. 292.)

§ 1-567.64. Modifying or vacating of awards.

Subject to the relevant provisions of federal law and any applicable international agreement in force between the United States of America and any other nation or nations, an arbitral award may be vacated by a court only upon a showing that the award is tainted by illegality, or substantial unfairness in the conduct of the arbitral proceedings. In determining whether an award is tainted, the court shall consider the provisions of this Article, but shall not engage in de novo review of the subject matter of the dispute giving rise to the arbitration proceedings. (1991, c. 292, s. 1; 2003-345, s. 3; 2017-171, s. 1.)

§ 1-567.65. Confirmation and enforcement of awards.

(a) Subject to the relevant provisions of federal law and any applicable international agreement in force between the United States of America and any other nation or nations, upon application of a party, the court shall confirm an arbitral award, unless it finds grounds for modifying or vacating the award under G.S. 1-567.64. An award shall not be confirmed unless the time for correction and interpretation of awards prescribed by G.S. 1-567.63 has expired or has been waived by all the parties. Upon the granting of an order confirming, modifying, or correcting an award, a judgment or decree shall be entered in conformity therewith and enforced as any other judgment or decree. The court may award costs of the application and of the subsequent proceedings.

(b) Notwithstanding G.S. 7A-109, 7A-276.1, 132-1, or any other provision of law, the court may seal or redact, in whole or in part, an order, judgment, or arbitral award issued under this Article. Upon good cause shown, the court may do any of the following:

(1) Open a sealed or redacted order, judgment, or arbitral award.

(2) Seal or redact an opened order, judgment, or arbitral award. (1991, c. 292, s. 1; 2017-171, s. 1.)

§ 1-567.66. Applications to court.

Except as otherwise provided, an application to the court under this Article shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in a civil action. (1991, c. 292, s. 1; 2017-171, s. 1.)

§ 1-567.67. Appeals.

(a) An appeal may be taken from:

(1) An order denying an application to compel arbitration made under G.S. 1-567.38;
(2) An order granting an application to stay arbitration made under G.S. 1-567.38;
(3) An order confirming or denying confirmation of an award;
(4) An order modifying or correcting an award;
(5) An order vacating an award without directing a rehearing; or
(6) A judgment or decree entered pursuant to the provisions of this Article.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (1991, c. 292, s. 1.)

§ 1-567.68: Recodified as § 1-567.33A by Session Laws 1997-368, s. 3.

§ 1-567.69. Reserved for future codification purposes.

§ 1-567.70. Reserved for future codification purposes.

§ 1-567.71. Reserved for future codification purposes.

§ 1-567.72. Reserved for future codification purposes.

§ 1-567.73. Reserved for future codification purposes.

§ 1-567.74. Reserved for future codification purposes.

§ 1-567.75. Reserved for future codification purposes.

§ 1-567.76. Reserved for future codification purposes.

§ 1-567.77. Reserved for future codification purposes.

Part 3. International Commercial Conciliation.

§ 1-567.78. Appointment of conciliators.

(a) The parties may select or permit an arbitral tribunal or other third party to select one or more persons to serve as the conciliators.

(b) The conciliator shall assist the parties in an independent and impartial manner in the parties' attempt to reach an amicable settlement of their dispute. The conciliator shall be guided by principles of objectivity, fairness, and justice and shall give consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned, and the circumstances surrounding the dispute, including any previous practices between the parties.

(c) The conciliator may conduct the conciliation proceedings in a manner that the conciliator considers appropriate, considering the circumstances of the case, the wishes of the parties, and the desirability of a prompt settlement of the dispute. Except as otherwise provided by this Article, other provisions of the law of this State governing procedural matters do not apply to conciliation proceedings brought under this Part. (1997-368, s. 7.)

§ 1-567.79. Representation.

The parties may appear in person or be represented or assisted by any person of their choice. (1997-368, s. 7.)

§ 1-567.80. Report of conciliators.

(a) At any time during the proceedings, a conciliator may prepare a draft conciliation agreement and send copies to the parties, specifying the time within which the parties must signify their approval. The draft conciliation agreement may include the assessment and apportionment of costs between the parties.

(b) A party is not required to accept a settlement proposed by the conciliator. (1997-368, s. 7.)

§ 1-567.81. Confidentiality.

(a) Evidence of anything said or of an admission made in the course of a conciliation is not admissible, and disclosure of that evidence shall not be compelled in any arbitration or civil action in which, under law, testimony may be compelled to be given. This subsection does not limit the admissibility of evidence when all parties participating in conciliation consent to its disclosure.

(b) If evidence is offered in violation of this section, the arbitral tribunal or the court shall make any order it considers appropriate to deal with the matter, including an order restricting the introduction of evidence or dismissing the case.

(c) Unless the document otherwise provides, a document prepared for the purpose of, in the course of, or pursuant to the conciliation, or a copy of such document, is not admissible in evidence, and disclosure of the document shall not be compelled in any arbitration or civil action in which, under law, testimony may be compelled. (1997-368, s. 7.)

§ 1-567.82. Stay of arbitration; resort to other proceedings.

(a) The agreement of the parties to submit a dispute to conciliation is considered an agreement between or among those parties to stay all judicial or arbitral proceedings from the beginning of conciliation until the termination of conciliation proceedings.

(b) All applicable limitation periods, including periods of prescription, are tolled or extended on the beginning of conciliation proceedings under this Part as to all parties to the conciliation proceedings until the tenth day following the date of termination of the proceedings. For purposes of this section, conciliation proceedings are considered to have begun when the parties have all agreed to participate in the conciliation proceedings. (1997-368, s. 7.)

§ 1-567.83. Termination of conciliation.

(a) A conciliation proceeding may be terminated as to all parties by any one of the following means:

(1) On the date of the declaration, a written declaration of the conciliators that further efforts at conciliation are no longer justified.

(2) On the date of the declaration, a written declaration of the parties addressed to the conciliators that the conciliation proceedings are terminated.

(3) On the date of the agreement, a conciliation agreement signed by all of the parties.

(4) On the date of the order, order of the court when the matter submitted to conciliation is in litigation in the courts of this State.

(b) A conciliation proceeding may be terminated as to particular parties by any one of the following means:

(1) On the date of the declaration, a written declaration of the particular party to the other parties and the conciliators that the conciliation proceedings are to be terminated as to that party.

(2) On the date of the agreement, a conciliation agreement signed by some of the parties.

(3) On the date of the order, order of the court when the matter submitted to conciliation is in litigation in the courts of this State. (1997-368, s. 7.)

§ 1-567.84. Enforceability of decree.

If the conciliation proceeding settles the dispute and the result of the conciliation is in writing and signed by the conciliators and the parties or their representatives, the written agreement shall be treated as an arbitral award rendered by an arbitral tribunal under this Article and has the same force and effect as a final award in arbitration. (1997-368, s. 7.)

§ 1-567.85. Costs.

(a) On termination of the conciliation proceeding, the conciliators shall set the costs of the conciliation and give written notice of the costs to the parties. For purposes of this section, "costs" includes all of the following:

(1) A reasonable fee to be paid to the conciliators.

(2) Travel and other reasonable expenses of the conciliators.

(3) Travel and other reasonable expenses of witnesses requested by the conciliators, with the consent of the parties.

(4) The cost of any expert advice requested by the conciliators, with the consent of the parties.

(5) The cost of any court.

(b) Costs shall be borne equally by the parties unless a conciliation agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party. (1997-368, s. 7.)

§ 1-567.86. Effect on jurisdiction.

Requesting conciliation, consenting to participate in the conciliation proceedings, participating in conciliation proceedings, or entering into a conciliation agreement does not constitute consenting to the jurisdiction of any court in this State if conciliation fails. (1997-368, s. 7.)

§ 1-567.87. Immunity of conciliators and parties.

(a) A conciliator, party, or representative of a conciliator or party, while present in this State for the purpose of arranging for or participating in conciliation under this Part, is not subject to service of process on any civil matter related to the conciliation.

(b) A person who serves as a conciliator shall have the same immunity as judges from civil liability for their official conduct in any proceeding subject to this Part. This qualified immunity does not apply to acts or omissions which occur with respect to the operation of a motor vehicle. (1997-368, s. 7.)

§ 1-567.88. Uniformity of application and construction.

In applying and construing this Article, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states of the United States that have enacted the Revised Uniform Arbitration Act, and particular consideration shall be given to the Revised Uniform Arbitration Act as enacted in this State. (2017-171, s. 1.)

§ 1-567.89. Relationship to federal Electronic Signatures in Global and National Commerce Act.

The provisions of this Article governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of these records or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., or as otherwise authorized by federal or State law governing these electronic records or electronic signatures. (2017-171, s. 1.)

§ 1-568: Repealed by Session Laws 1951, c. 760, s. 2.

§§ 1-568.1 through 1-568.27. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-569. Repealed by Session Laws 1951, c. 760, s. 2.

Article 45C.

Revised Uniform Arbitration Act.

§ 1-569.1. Definitions.

The following definitions apply in this Article:

(1) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

(2) "Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

(3) "Court" means a court of competent jurisdiction in this State.

(4) "Knowledge" means actual knowledge.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(6) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. (2003-345, s. 2)

§ 1-569.2. Notice.

(a) Except as otherwise provided in this Article, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in the ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business or at another location held out by the person as a place of delivery of communications. (2003-345, s. 2.)

§ 1-569.3. When Article applies.

(a) This Article governs an agreement to arbitrate made on or after January 1, 2004.

(b) This Article governs an agreement to arbitrate made before January 1, 2004, if all parties to the agreement or to the arbitration proceeding agree in a record that this Article applies.

(c) This Article does not govern arbitrations under Article 1H of Chapter 90 of the General Statutes. (1973, c. 676, s. 1; 2003-345, s. 2; 2007-541, s. 2.)

§ 1-569.4. Effect of agreement to arbitrate; nonwaivable provisions.

(a) Except as otherwise provided in subsections (b) and (c) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this Article to the extent provided by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of G.S. 1-569.5(a), 1-569.6(a), 1-569.8, 1-569.17(a), 1-569.17(b), 1-569.26, or 1-569.28;

(2) Agree to unreasonably restrict the right under G.S. 1-569.9 to notice of the initiation of an arbitration proceeding;

(3) Agree to unreasonably restrict the right under G.S. 1-569.12 to disclosure of any facts by a neutral arbitrator; or

(4) Waive the right under G.S. 1-569.16 of a party to an agreement to arbitrate to be represented by an attorney at any proceeding or hearing under this Article, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or to an arbitration proceeding may not waive, or the parties shall not vary the effect of, the requirements of this section or G.S. 1-569.3(a), 1-569.7, 1-569.14, 1-569.18, 1-569.20(d), 1-569.20(e), 1-569.22, 1-569.23, 1-569.24, 1-569.25(a), 1-569.25(b), 1-569.29, 1-569.30, 1-569.31. Any waiver contrary to this section shall not be effective but shall not have the effect of voiding the agreement to arbitrate. (2003-345, s. 2.)

§ 1-569.5. Application for judicial relief.

(a) Except as otherwise provided in G.S. 1-569.28, an application for judicial relief under this Article shall be made by motion to the court and heard in the manner provided by law or rule of court for making and hearing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this Article shall be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion shall be given in the manner prescribed by law or rule of court for serving motions in pending cases. (1927, c. 94, s. 5; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.6. Validity of agreement to arbitrate.

(a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable, and irrevocable except upon a ground that exists at law or in equity for revoking a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders. (1927, c. 94, s. 1; 1973, c. 676, s. 1; 1975, c. 19, s. 1; 2003-345, s. 2.)

§ 1-569.7. Motion to compel or stay arbitration.

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appeal or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement to arbitrate, it shall not, pursuant to subsection (a) or (b) of this section, order the parties to arbitrate.

(d) The court shall not refuse to order arbitration because the claim subject to arbitration lacks merit or because grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in a court, a motion under this section shall be made in that court. Otherwise a motion under this section may be made in any court as provided in G.S. 1-569.27.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim. (1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.8. Provisional remedies.

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy if the matter is urgent and the arbitrator is not able to act in a timely manner or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive the right to arbitrate by making a motion under subsection (a) or (b) of this section. (2003-345, s. 2.)

§ 1-569.9. Initiation of arbitration.

(a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested, and obtained, or by service as authorized for the commencement of a civil action. The notice shall describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to lack or insufficiency of notice. (2003-345, s. 2.)

§ 1-569.10. Consolidation of separate arbitration proceedings.

(a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration with a third person;

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court shall not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation. (2003-345, s. 2.)

§ 1-569.11. Appointment of arbitrator; service as a neutral arbitrator.

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method shall be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party shall not serve as an arbitrator required by an agreement to be neutral. (1927, c. 94, s. 4; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.12. Disclosure by arbitrator.

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding; and

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or to the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and to the arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under G.S. 1-569.23(a)(2) for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court under G.S. 1-569.23(a)(2) may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality under G.S. 1-569.23(a)(2).

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under G.S. 1-569.23(a)(2). (2003-345, s. 2.)

§ 1-569.13. Action by majority.

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under G.S. 1-569.15(c). (1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.14. Immunity of arbitrator; competency to testify; attorneys' fees and costs.

(a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this State acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by G.S. 1-569.12 shall not cause any loss of immunity under this section.

(d) In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify and shall not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding to the

same extent as a judge of a court of this State acting in a judicial capacity. This subsection shall not apply:

(1) To the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) To a hearing on a motion to vacate an award under G.S. 1-569.23(a)(1) or (a)(2) if the movant makes a prima facie showing that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative, or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorneys' fees, costs, and other reasonable expenses of litigation.

(f) Immunity under this section shall not apply to acts or omissions that occur with respect to the operation of a motor vehicle. (2003-345, s. 2.)

§ 1-569.15. Arbitration process.

(a) An arbitrator may conduct an arbitration in the manner the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding objects to the lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but shall not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified did not appear. The court, upon request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding may be heard, present evidence material to the controversy, and cross-examine witnesses appearing at the hearing.

(e) If an arbitrator ceases to or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with G.S. 1-569.11 to continue the proceeding and to resolve the controversy.

(f) The rules of evidence shall not apply in arbitration proceedings, except as to matters of privilege or immunities. (1927, c. 94, ss. 6, 7; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.16. Representation by lawyer.

A party to an arbitration proceeding may be represented by an attorney or attorneys. (1927, c. 94, s. 9; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.17. Witnesses; subpoenas; depositions; discovery.

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit any discovery the arbitrator decides is appropriate under the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this State.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this State.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this State.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this State and for the protection of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost-effective. A subpoena or discovery-related order issued by an arbitrator in another state shall be served in the manner provided by law for service of subpoenas in a civil action in this State and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this State.

(h) An arbitrator shall not have the authority to hold a party in contempt of any order the arbitrator makes under this section. A court may hold parties in contempt for failure to obey an

arbitrator's order, or an order made by the court, pursuant to this section, among other sanctions imposed by the arbitrator or the court. (1927, c. 94, ss. 10, 11; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.18. Judicial enforcement of preaward ruling by arbitrator.

(a) If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under G.S. 1-569.19. A prevailing party may make a motion to the court for an expedited order to confirm the award under G.S. 1-569.22, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award under G.S. 1-569.23 or G.S. 1-569.24.

(b) An arbitrator's ruling under subsection (a) of this section that denies a request for a preaward ruling is not subject to trial court review. A party whose request under subsection (a) of this section for a preaward ruling has been denied by an arbitrator may seek relief under G.S. 1-569.20 and G.S. 1-569.21 from any final award the arbitrator renders.

(c) There is no right of appeal from trial court orders and judgments on preaward rulings by an arbitrator after a trial court award under this section, G.S. 1-569.19, and G.S. 1-569.28. (2003-345, s. 2.)

§ 1-569.19. Award.

(a) An arbitrator shall make a record of an award. The record shall be signed or otherwise authenticated as authorized by federal or State law by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may extend the time within or after the time specified or ordered. A party waives any objection that an award was not timely made unless that party gives notice of the objection to the arbitrator before receiving notice of the award. (1927, c. 94, ss. 8, 14; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.20. Change of award by arbitrator.

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in G.S. 1-569.24(a)(1) or (a)(3);

(2) Because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(b) A motion under subsection (a) of this section shall be made and notice given to all parties within 20 days after the moving party receives notice of the award.

(c) A party to the arbitration proceeding shall give notice of any objection to the motion within 10 days after receipt of the notice.

(d) If a motion to the court is pending under G.S. 1-569.22, 1-569.23, or 1-569.24, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in G.S. 1-569.24(a)(1) or (a)(3);

(2) Because the arbitrator had not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to G.S. 1-569.19(a), 1-569.22, 1-569.23, and 1-569.24. (1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.21. Remedies; fees and expenses of arbitration proceeding.

(a) An arbitrator may award punitive damages or other exemplary relief if:

(1) The arbitration agreement provides for an award of punitive damages or exemplary relief;

(2) An award for punitive damages or other exemplary relief is authorized by law in a civil action involving the same claim; and

(3) The evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable expenses of arbitration if an award of expenses is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding. An arbitrator may award reasonable attorneys' fees if:

(1) The arbitration agreement provides for an award of attorneys' fees; and

(2) An award of attorneys' fees is authorized by law in a civil action involving the same claim.

(c) As to all remedies other than those authorized by subsections (a) and (b) of this section, an arbitrator may order any remedies the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under G.S. 1-569.22 or for vacating an award under G.S. 1-569.23.

(d) An arbitrator's expenses and fees, together with other expenses, shall be paid as provided in the award.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief. (1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.22. Confirmation of award.

After a party to an arbitration receives notice of an award, the party may make a motion to the court for an order confirming the award. Upon motion of a party for an order confirming the award, the court shall issue a confirming order unless the award is modified or corrected pursuant to G.S. 1-569.20 or G.S. 1-569.24 or is vacated pursuant to G.S. 1-569.23. (1927, c. 94, s. 15; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.23. Vacating award.

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) There was:

a. Evident partiality by an arbitrator appointed as a neutral arbitrator;

b. Corruption by an arbitrator; or

c. Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon a showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to G.S. 1-569.15 so as to prejudice substantially the rights of a party to the arbitration proceeding;
(4) An arbitrator exceeded the arbitrator's powers;
(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under G.S. 1-569.15(c) no later than the beginning of the arbitration hearing; or
(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in G.S. 1-569.9 so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section shall be filed within 90 days after the moving party receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, unless the moving party alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within 90 days after the ground is known, or by the exercise of reasonable care would have been known, by the moving party.

(c) If the court vacates an award on a ground other than that set forth in subdivision (a)(5) of this section, it may order a rehearing. If the award is vacated on a ground stated in subdivision (1) or (2) of subsection (a) of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in subdivision (3), (4), or (6) of subsection (a) of this section, the rehearing may be held before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as the time provided in G.S. 1-569.19(b) for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award pursuant to G.S. 1-569.24 is pending. (1927, c. 94, s. 16; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.24. Modification or correction of award.

(a) Upon motion made within 90 days after the moving party receives notice of the award pursuant to G.S. 1-569.19 or within 90 days after the moving party receives notice of a modified or corrected award pursuant to G.S. 1-569.20, the court shall modify or correct the award if:
(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;
(2) The arbitrator has made an award on a claim not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the claims submitted; or
(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award. (1927, c. 94, s. 17; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.25. Judgment on award; attorneys' fees and litigation expenses.

(a) Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity with the order. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On motion of a prevailing party to a contested judicial proceeding under G.S. 1-569.22, 1-569.23, or 1-569.24, the court may award reasonable attorneys' fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award. (1927, c. 94, ss. 19, 21; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.26. Jurisdiction.

(a) A court of this State having jurisdiction over the controversy and the parties to an agreement to arbitrate may enforce the agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this State confers exclusive jurisdiction on the court to enter judgment on an award under this Article. (1927, c. 94, s. 3; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.27. Venue.

A motion pursuant to G.S. 1-569.5 shall be made in the court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this State, in the court of any county in this State. All subsequent motions shall be made in the court hearing the initial motion unless the court otherwise directs. (2003-345, s. 2.)

§ 1-569.28. Appeals.

(a) An appeal may be taken from:

(1) An order denying a motion to compel arbitration;

(2) An order granting a motion to stay arbitration;

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A final judgment entered pursuant to this Article.

(b) An appeal under this section shall be taken as from an order or a judgment in a civil action. (1927, c. 94, s. 22; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.29. Uniformity of application and construction.

In applying and construing this Article, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (1927, c. 94, s. 23; 1973, c. 676, s. 1; 2003-345, s. 2.)

§ 1-569.30. Relationship to federal Electronic Signatures in Global and National Commerce Act.

The provisions of this Article governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of these records

or signatures, conform to the requirements of section 102 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., or as otherwise authorized by federal or State law governing these electronic records or electronic signatures. (2003-345, s. 2.)

§ 1-569.31. Short title.

This Article may be cited as the Revised Uniform Arbitration Act. (2003-345, s. 2.)

Article 46

Examination Before Trial.

§ 1-570: Repealed.

§ 1-571: Repealed.

§ 1-572: Repealed.

§ 1-573: Repealed.

§ 1-574: Repealed.

§ 1-575: Repealed.

§ 1-576: Repealed.

Article 47.

Motions and Orders.

§§ 1-577 through 1-584. Repealed by Session Laws 1967, c. 954, s. 4.

Article 48.

Notices.

§§ 1-585 through 1-589. Repealed by Session Laws 1967, c. 954, s. 4.

§ 1-589.1. Withholding information necessary for service on law-enforcement officer prohibited.

When service of subpoena, or any other court process, is sought upon any law-enforcement officer of the State or of any political subdivision thereof pursuant to the provisions of G.S. 1-589, or of any other statute, it shall be unlawful for any officer or employee of the agency by whom the officer sought to be served is employed willfully to withhold the address or telephone number of the officer sought to be served with subpoena or other process. (1967, c. 456.)

§§ 1-590 through 1-592. Repealed by Session Laws 1967, c. 954, s. 4.

Article 49.

Time.

§ 1-593. How computed.

The time within which an act is to be done, as provided by law, shall be computed in the manner prescribed by Rule 6(a) of the Rules of Civil Procedure. (C.C.P., s. 348; Code, s. 596; Rev., s. 887; C.S., s. 922; 1957, c. 141; 1967, c. 954, s. 3.)

§ 1-594. Computation in publication.

Except as otherwise expressly provided, the time for publication of legal notices shall be computed in the manner prescribed by Rule 6 of the North Carolina Rules of Civil Procedure. (C.C.P., s. 359; Code, s. 602; Rev., s. 888; C.S., s. 923; 1979, c. 579, s. 2.)

Article 50.

General Provisions as to Legal Advertising.

§ 1-595. Advertisement of public sales.

When a statute or written instrument stipulates that an advertisement of a sale shall be made for any certain number of weeks, a publication once a week for the number of weeks so indicated is a sufficient compliance with the requirement, unless contrary provision is expressly made by the terms of the instrument. (1909, cc. 794, 875; C.S., s. 924.)

§ 1-596. Charges for legal advertising.

The publication of all advertising required by law to be made in newspapers in this State shall be paid for at not to exceed the local commercial rate of the newspapers selected. Any public or municipal officer or board created by or existing under the laws of this State that is now or may hereafter be authorized by law to enter into contracts for the publication of legal advertisements is hereby authorized to pay therefor prices not exceeding said rates.

No newspaper in this State shall accept or print any legal advertising until said newspaper shall have first filed with the clerk of the superior court of the county in which it is published a sworn statement of its current commercial rate for the several classes of advertising regularly carried by said publication, and any owner or manager of a newspaper violating the provisions of this section shall be guilty of a Class 1 misdemeanor. (1919, c. 45, ss. 1, 2; C.S., s. 2586; 1945, c. 635; 1949, c. 205, s. 1 1/2; 1993, c. 539, s. 3; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 1-597. Regulations for newspaper publication of legal notices, advertisements, etc.

(a) Whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper, such publication, advertisement or notice shall be of no force and effect unless it shall be published in a newspaper with a general circulation to actual paid subscribers which newspaper at the time of such publication, advertisement or notice, shall have been admitted to the United States mails in the Periodicals class in the county or political subdivision where such publication, advertisement or notice is required to be published, and which shall have been regularly and continuously issued in the county in which the publication, advertisement or notice is authorized or required to be published, at least one day in each calendar week for at least 25 of the 26 consecutive weeks immediately preceding the date of the first publication of such advertisement, publication or notice; provided that in the event that a newspaper otherwise meeting the qualifications and having the characteristics prescribed by G.S. 1-597 to 1-599, should fail for a period not exceeding four weeks in any calendar year to

publish one or more of its issues such newspaper shall nevertheless be deemed to have complied with the requirements of regularity and continuity of publication prescribed herein. Provided further, that where any city or town is located in two or more adjoining counties, any newspaper published in such city or town shall, for the purposes of G.S. 1-597 to 1-599, be deemed to be admitted to the mails, issued and published in all such counties in which such town or city of publication is located, and every publication, advertisement or notice required to be published in any such city or town or in any of the counties where such city or town is located shall be valid if published in a newspaper published, issued and admitted to the mails anywhere within any such city or town, regardless of whether the newspaper's plant or the post office where the newspaper is admitted to the mails is in such county or not, if the newspaper otherwise meets the qualifications and requirements of G.S. 1-597 to 1-599. This provision shall be retroactive to May 1, 1940, and all publications, advertisements and notices published in accordance with this provision since May 1, 1940, are hereby validated.

(b) Notwithstanding the provisions of G.S. 1-599, whenever a notice or any other paper, document or legal advertisement of any kind or description shall be authorized or required by any of the laws of the State of North Carolina, heretofore or hereafter enacted, or by any order or judgment of any court of this State to be published or advertised in a newspaper qualified for legal advertising in a county and there is no newspaper qualified for legal advertising as defined in this section in such county, then it shall be deemed sufficient compliance with such laws, order or judgment by publication of such notice or any other such paper, document or legal advertisement of any kind or description in a newspaper published in an adjoining county or in a county within the same district court district as defined in G.S. 7A-133 or superior court district or set of districts as defined in G.S. 7A-41.1, as the case may be; provided, if the clerk of the superior court finds as a fact that such newspaper otherwise meets the requirements of this section and has a general circulation in such county where no newspaper is published meeting the requirements of this section.

(c) Whenever a notice or any other paper, document, or legal advertisement of any kind or description is required to be published in a jurisdiction outside of North Carolina where legal notices are customarily published in specialized legal publications, any form of publication which meets the requirements for legal notices under the law of the locality where it is published shall be deemed sufficient under this section. (1939, c. 170, s. 1; 1941, c. 96; 1959, c. 350; 1985, c. 689, s. 1; 1987 (Reg. Sess., 1988), c. 1037, s. 41; 1997-9, s. 1; 2019-172, s. 10.)

§ 1-598. Sworn statement prima facie evidence of qualifications; affidavit of publication.

Whenever any owner, partner, publisher, or other authorized officer or employee of any newspaper which has published a notice or any other paper, document or legal advertisement within the meaning of G.S. 1-597 has made a written statement under oath taken before any notary public or other officer or person authorized by law to administer oaths, stating that the newspaper in which such notice, paper, document, or legal advertisement was published, was, at the time of such publication, a newspaper meeting all of the requirements and qualifications prescribed by G.S. 1-597, such sworn written statement shall be received in all courts in this State as prima facie evidence that such newspaper was at the time stated therein a newspaper meeting the requirements and qualifications of G.S. 1-597. When filed in the office of the clerk of the superior court of any county in which the publication of such notice, paper, document or legal advertisement was required or authorized, any such sworn statement shall be deemed to be a record of the court, and such record or a copy thereof duly certified by the clerk shall be prima facie evidence that the

newspaper named was at the time stated therein a qualified newspaper within the meaning of G.S. 1-597. Nothing in this section shall preclude proof that a newspaper was or is a qualified newspaper within the meaning of G.S. 1-597 by any other competent evidence. Any such sworn written statement shall be prima facie evidence of the qualifications on any newspaper at the time of any publication of any notice, paper, document, or legal advertisement published in such newspaper at any time from and after the first day of May, 1940.

The owner, a partner, publisher or other authorized officer or employee of any newspaper in which such notice, paper, document or legal advertisement is published, when such newspaper is a qualified newspaper within the meaning of G.S. 1-597, shall include in the affidavit of publication of such notice, paper, document or legal advertisement a statement that at the time of such publication such newspaper was a qualified newspaper within the meaning of G.S. 1-597. (1939, c. 170, s. 1 1/2; 1947, c. 213, ss. 1, 2.)

§ 1-599. Application of two preceding sections.

The provisions of G.S. 1-597 and G.S. 1-598 shall not apply in counties wherein only one newspaper is published, although it may not be a newspaper having the qualifications prescribed by G.S. 1-597; nor shall the provisions of G.S. 1-597 and G.S. 1-598 apply in any county wherein none of the newspapers published in such county has the qualifications and characteristics prescribed in G.S. 1-597. (1939, c. 170, ss. 2, 4 1/2; 1941, c. 49; 1985, c. 609, s. 1.)

§ 1-600. Proof of publication of notice in newspaper; prima facie evidence.

(a) Publication of any notice permitted or required by law to be published in a newspaper may be proved by a printed copy of the notice together with an affidavit made before some person authorized to administer oaths, of the publisher, proprietor, editor, managing editor, business or circulation manager, advertising, classified advertising or any other advertising manager or foreman of the newspaper, showing that the notice has been printed therein and the date or dates of publication. If the newspaper is published by a corporation, the affidavit may be made by one of the persons hereinbefore designated or by the president, vice president, secretary, assistant secretary, treasurer, or assistant treasurer of the corporation.

(b) Such affidavit and copy of the notice shall constitute prima facie evidence of the facts stated therein concerning publication of such notice.

(c) The method of proof of publication of a notice provided for in this section is not exclusive, and the facts concerning such publication may be proved by any competent evidence. (1951, c. 1005, s. 2; 1957, c. 204.)

§ 1-601. Certain legal advertisements validated.

Legal advertisements published prior to June 1, 1983, by a newspaper that met every requirement for publication of legal notices and advertisements under G.S. 1-597 when the advertisement was published except that the newspaper had a second class United States mail permit in a county adjacent to the county in which the advertisement was published instead of the county in which it was published may not be held to be invalid because of the lack of a second class United States mail permit in the proper county. (1983, c. 582, s. 2.)

§ 1-602. Reserved for future codification purposes.

§ 1-603. Reserved for future codification purposes.

§ 1-604. Reserved for future codification purposes.

Article 51.

False Claims Act.

§ 1-605. Short title; purpose.

(a) This Article shall be known and may be cited as the False Claims Act.

(b) The purpose of this Article is to deter persons from knowingly causing or assisting in causing the State to pay claims that are false or fraudulent and to provide remedies in the form of treble damages and civil penalties when money is obtained from the State by reason of a false or fraudulent claim. (2009-554, s. 1.)

§ 1-606. Definitions.

The following words and phrases when used in this act have the following meanings, unless the context clearly indicates otherwise:

(1) "Attorney General." – The Attorney General of North Carolina, or any deputy, assistant, or associate attorney general.

(2) "Claim." – Any request or demand, whether under a contract or otherwise, for money or property and whether or not the State has title to the money or property that (i) is presented to an officer, employee, or agent of the State or (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the State's behalf or to advance a State program or interest and if the State government:

a. Provides or has provided any portion of the money or property that is requested or demanded; or

b. Will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

A claim does not include requests or demands for money or property that the State has paid to an individual as compensation for State employment or as an income subsidy with no restrictions on that individual's use of the money or property.

(3) "Judiciary." – A justice or judge of the General Court of Justice or clerk of court.

(4) "Knowing" and "knowingly." – Whenever a person, with respect to information, does any of the following:

a. Has actual knowledge of the information.

b. Acts in deliberate ignorance of the truth or falsity of the information.

c. Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required.

(5) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(6) "Obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.

(7) Repealed by Session Laws 2018-41, s. 1, effective June 22, 2018, and applicable to actions brought on or after that date.

(8) "Senior executive branch official." – The Governor, Lieutenant Governor, member of the Council of State, or head of department as defined in G.S. 143B-3. (2009-554, s. 1; 2018-41, s. 1.)

§ 1-607. False claims; acts subjecting persons to liability for treble damages; costs and civil penalties; exceptions.

(a) Liability. – Any person who commits any of the following acts shall be liable to the State for three times the amount of damages that the State sustains because of the act of that person. A person who commits any of the following acts also shall be liable to the State for the costs of a civil action brought to recover any of those penalties or damages and shall be liable to the State for a civil penalty of not less than five thousand five hundred dollars ($5,500) and not more than eleven thousand dollars ($11,000), as may be adjusted by Section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, P.L. 101-410, as amended, for each violation:

(1) Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval.

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim.

(3) Conspires to commit a violation of subdivision (1), (2), (4), (5), (6), or (7) of this section.

(4) Has possession, custody, or control of property or money used or to be used by the State and knowingly delivers or causes to be delivered less than all of that money or property.

(5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true.

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the State who lawfully may not sell or pledge the property.

(7) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State.

(b) Damages Limitation. – Notwithstanding the provisions of subsection (a) of this section, the court may limit the damages assessed under subsection (a) of this section to not less than two times the amount of damages that the State sustains because of the act of the person described in that subsection and may assess no civil penalty if the court finds all of the following:

(1) The person committing the violation furnished officials of the State who are responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information.

(2) The person fully cooperated with any investigation of the violation by the State.

(3) At the time the person furnished the State with information about the violation, no criminal prosecution, civil action, or administrative action has commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Exclusion. – This section does not apply to claims, records, or statements made under Chapter 105 of the General Statutes. (2009-554, s. 1; 2018-41, s. 2.)

§ 1-608. Civil actions for false claims.

(a) Responsibilities of the Attorney General. – The Attorney General diligently shall investigate a violation under G.S. 1-607. If the Attorney General finds that a person has violated or is violating G.S. 1-607, the Attorney General may bring a civil action under this section against that person.

(b) Actions by Private Persons. – A person may bring a civil action for a violation of G.S. 1-607 for the person and for the State, as follows:

(1) The action shall be brought in the name of the State, and the person bringing the action shall be referred to as the qui tam plaintiff. The action may be dismissed only if the court and Attorney General have given written consent to the dismissal and the reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General pursuant to applicable rules of the North Carolina Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least 120 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.

(3) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 30 days after the complaint is unsealed and served upon the defendant pursuant to the North Carolina Rules of Civil Procedure.

(4) Before the expiration of the 120-day period or any extensions obtained under subdivision (3) of this subsection, the State shall:

a. Proceed with the action, in which case the action shall be conducted by the State; or

b. Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) Repealed by Session Laws 2018-41, s. 3, effective June 22, 2018, and applicable to actions brought on or after that date.

When a person brings an action under this subsection, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

(c) The Attorney General may retain a portion of the damages recovered for a State agency out of the proceeds of the action or settlement under this Article as reimbursement for costs incurred by the Attorney General in investigating and bringing a civil action under this Article, including reasonable attorneys' fees and investigative costs. Retained funds shall be used by the Attorney General to carry out the provisions of this Article. (2009-554, s. 1; 2010-96, s. 25(a); 2018-41, s. 3.)

§ 1-609. Rights of the parties to qui tam actions.

(a) If the State proceeds with an action under G.S. 1-608(b), it shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the qui tam plaintiff. The qui tam plaintiff shall have the right to continue as a party to the action, subject to the limitations set forth in subsections (b) through (e) of this section.

(b) The State may dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the State of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity for a hearing on the motion.

(c) The State may settle the action with the defendant, notwithstanding the objections of the qui tam plaintiff, if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, the hearing may be heard in camera.

(d) Upon a showing by the State that the qui tam plaintiff's unrestricted participation during the course of the litigation would interfere with or unduly delay the State's prosecution of the case or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as any of the following:

(1) Limiting the number of witnesses the qui tam plaintiff may call.

(2) Limiting the length of the testimony of those witnesses.

(3) Limiting the qui tam plaintiff's cross-examination of witnesses.

(4) Otherwise limiting the participation by the qui tam plaintiff in the litigation.

(e) Upon a showing by the defendant that the qui tam plaintiff's unrestricted participation during the course of the litigation would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the qui tam plaintiff in the litigation.

(f) If the State elects not to proceed with the action, the qui tam plaintiff shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a qui tam plaintiff proceeds with the action, the court, without limiting the status and rights of the qui tam plaintiff, may permit the State to intervene at a later date upon a showing of good cause.

(g) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the qui tam plaintiff would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 120 days. Such a showing shall be conducted in camera. The court may extend the 120-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigations or proceedings.

(h) Notwithstanding the provisions of G.S. 1-608(b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the qui tam plaintiff shall have the same rights in that proceeding as the qui tam plaintiff would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State, if all time for filing such an appeal with

respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review. (2009-554, s. 1.)

§ 1-610. Award to qui tam plaintiff.

(a) Except as otherwise provided in this section, if the State proceeds with an action brought by a qui tam plaintiff under G.S. 1-608(b), the qui tam plaintiff shall receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action.

(b) Where the action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the qui tam plaintiff, relating to allegations or transactions (i) in a State criminal, civil, or administrative hearing, (ii) in a State legislative, Office of the State Auditor, or other State report, hearing, audit, or investigation, or (iii) from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the qui tam plaintiff in advancing the case to litigation.

(c) Any payment to a qui tam plaintiff under subsection (a) or (b) of this section shall be made from the proceeds.

(d) The qui tam plaintiff also shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(e) If the State does not proceed with an action under this Article, the qui tam plaintiff shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall not be less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of the proceeds. The qui tam plaintiff also shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(f) Whether or not the State proceeds with the action, if the court finds that the qui tam plaintiff planned and initiated the violation of G.S. 1-607 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the qui tam plaintiff would otherwise receive under subsection (a), (b), or (e) of this section, taking into account the role of the qui tam plaintiff in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the qui tam plaintiff is convicted of criminal conduct arising from his or her role in the violation of G.S. 1-607, the qui tam plaintiff shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such a dismissal shall not prejudice the right of the State to continue the action.

(g) If the State does not proceed with the action and the qui tam plaintiff conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment. (2009-554, s. 1; 2018-41, s. 4.)

§ 1-611. Certain actions barred.

(a) No court shall have jurisdiction over an action brought under G.S. 1-608(b) against a member of the General Assembly, a member of the judiciary, or a senior executive branch official

acting in their official capacity if the action is based on evidence or information known to the State when the action was brought.

(b) In no event may a person bring an action under G.S. 1-608(b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

(c), (d) Repealed by Session Laws 2018-41, s. 5, effective June 22, 2018, and applicable to actions brought on or after that date.

(e) Unless opposed by the State, the court shall dismiss an action or claim under this Article if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed by any of the following:

(1) A State criminal, civil, or administrative hearing in which the State or its agent is a party.

(2) A State legislative, Office of the State Auditor, or other State report, hearing, audit, or investigation.

(3) The news media.

This subsection shall not apply to any action brought by the Attorney General or when the person bringing the action is an original source of the information.

(f) For the purposes of this section, the term "original source" means an individual who meets one of the following descriptions:

(1) Prior to public disclosure under subsection (e) of this section, the individual has voluntarily disclosed to the State the information on which allegations or transactions in a claim are based.

(2) The individual (i) has knowledge that is independent of, and materially adds to, the publicly disclosed allegations or transactions and (ii) has voluntarily provided the information to the State before filing an action under this Article. (2009-554, s. 1; 2010-96, s. 25(b); 2018-41, s. 5.)

§ 1-612. State not liable for certain expenses.

The State is not liable for expenses that a person incurs in bringing an action under G.S. 1-608(b). (2009-554, s. 1.)

§ 1-613. Private action for retaliation action.

Any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under this Article or other efforts to stop one or more violations of G.S. 1-607 shall be entitled to all relief necessary to make the employee, contractor, or agent whole. Such relief shall include reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action may be brought in North Carolina superior court for the relief provided in this section. A civil action under this section may not be brought more than three years after the date when the retaliation occurred. (2009-554, s. 1; 2018-41, s. 6.)

§ 1-614. Civil investigative demand.

(a) A civil investigative demand is an administrative subpoena. Whenever the Attorney General has reason to believe that a person has information or is in possession, custody, or control of any document or other object relevant to an investigation or that would lead to the discovery of relevant information in an investigation of a violation of G.S. 1-607, the Attorney General may issue in writing and cause to be served upon the person, before bringing or intervening or making an election in an action under G.S. 1-608 or other false claims law, a civil investigative demand requiring the person to produce any documents or objects for their inspection and copying.

(b) The civil investigative demand shall comply with all of the following:

(1) Be served upon the person in the manner required for service of process in civil actions and may be served by the Attorney General or investigator assigned to the North Carolina Department of Justice.

(2) Describe the nature of the conduct constituting the violation under investigation.

(3) Describe the class or classes of any documents or objects to be produced with sufficient definiteness to permit them to be fairly identified.

(4) Prescribe a reasonable date and time at which the person shall produce any document or object.

(5) Advise the person that objections to or reasons for not complying with the demand may be filed with the Attorney General on or before that date and time.

(6) Designate a person to whom any document or object shall be produced.

(7) Contain a copy of subsections (b) and (c) of this section.

(c) The date within which any document or object must be produced shall be more than 30 days after the civil investigative demand has been served upon the person.

(d) A civil investigative demand may include an express demand for any product of discovery. A product of discovery includes the original or duplicate of any deposition, interrogatory, document, thing, examination, or admission, that is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature, and any digest, compilation, and index of any product of discovery. Whenever a civil investigative demand is an express demand for any product of discovery, a copy of the demand shall be served on the person from whom the discovery was obtained, and the Attorney General shall notify the person to whom the demand is issued of the date on which the copy was served. A demand for a product of discovery shall not be returned or returnable until 30 days after a copy of the demand has been served on the person from whom the discovery was obtained. Within 30 days after service of the demand, the person from whom the discovery was obtained or the person on whom the demand was served will serve on the Attorney General a copy of any protective order that prevents or restrains disclosure of the product of discovery to the Attorney General. The Attorney General may petition the court that issued the protective order to modify the order to allow compliance with the demand. Disclosure of any product of discovery pursuant to any express demand does not constitute a waiver of any right or privilege that the person making the disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(e) The production of documents and objects in response to a civil investigative demand served under this section shall be made under a sworn certificate by the person to whom the demand is directed, or in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to the production and authorized to act on behalf of the person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has

been produced and made available. Upon written agreement between the person served with the civil investigative demand and the Attorney General, the person may substitute copies for originals of all or any part of the documents requested.

(f) If a person objects to or otherwise fails to comply with a civil investigative demand served upon the person under subsection (a) of this section, the Attorney General may file an action in superior court for an order to enforce the demand. Venue for the action to enforce the demand shall be in either Wake County or the county in which the person resides, is found, or transacts business. Notice of a hearing on the action to enforce the demand and a copy of the action shall be served upon the person in the same manner as prescribed in the Rules of Civil Procedure. If the court finds that the demand is proper, that there is reasonable cause to believe that there may have been a violation of G.S. 1-607, and that the information sought or document or object demanded is relevant to the violation, the court shall order the person to comply with the demand, subject to modifications the court may prescribe.

(g) If the person fails to comply with an order entered pursuant to subsection (f) of this section, the court may do any of the following:

(1) Adjudge the person to be in contempt of court.

(2) Grant injunctive relief against the person to whom the demand is issued to restrain the conduct which is the subject of the investigation.

(3) Grant any other relief as the court may deem proper.

(h) A petition for an order of the court to modify or set aside a civil investigative demand issued under this section may be filed by any person who has received a civil investigative demand or in the case of an express demand for any product of discovery, the person on whom the discovery was obtained. The petition may be filed in superior court in either Wake County or the county in which the person resides, is found, or transacts business, or, in the case of a petition to modify an express demand for any product of discovery, the petition shall be filed in the court in which the proceeding was pending when the product of discovery was obtained. Any petition under this subsection must be filed within 30 days after the date of service of the civil investigative demand or before the return date specified in the demand, whichever date is earlier, or within a longer period as may be prescribed in writing by the investigator identified in the demand. The petition shall specify each ground upon which the petitioner relies in seeking relief and may be based upon any failure to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(i) Any documents and objects produced pursuant to this section may be used in connection with any civil action brought under G.S. 1-608 and for any use that is consistent with the law, and the regulations and policies of the Attorney General, including use in connection with internal Attorney General memoranda and reports; communications between the Attorney General and a federal, State, or local governmental agency, or a contractor of a federal, State, or local governmental agency, undertaken in furtherance of an Attorney General investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding applications, motions, memoranda, and briefs submitted to a court or other tribunal; and communications with government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case, or

proceeding. Any documents and objects obtained by the Attorney General under this section may be shared with any qui tam relator if the Attorney General determines it is necessary as part of any false claims act investigation. Before using or sharing documents and objects obtained by the Attorney General under this section with any person, the Attorney General may require that the person agree to an order of the court protecting the documents or objects, or any information contained in the documents or objects, from disclosure by that person. In the case of documents or objects the producing party has designated as a trade secret or other confidential research, development, or commercial information, the Attorney General shall either (i) require that the person with whom documents or objects are shared be prohibited from disclosing the documents or objects, or any information contained in the documents or objects, or (ii) petition the court for an order directing the producing party to either appear and support the designation or withdraw the designation.

(j) The Attorney General may designate an employee of the North Carolina Department of Justice to serve as a custodian of documents and objects.

(k) Except as otherwise provided in this section, no documents or objects, or copies thereof, while in the possession of the North Carolina Department of Justice, shall be available for examination by any person other than an employee of the North Carolina Department of Justice. The prohibition in the preceding sentence on the availability of documents or objects shall not apply if consent is given by the person who produced the documents or objects, or, in the case of any product of discovery produced pursuant to an express demand, consent is given by the person from whom the discovery was obtained, or prevent disclosure to any other federal or State agency for use by that agency in furtherance of its statutory responsibilities upon application made by the Attorney General to the superior court showing substantial need for the use of the documents or objects by any agency in furtherance of its statutory responsibilities.

(l) While in the possession of the custodian and under reasonable terms and conditions as the Attorney General shall prescribe, documents or objects shall be available for examination by the person who produced the documents or objects, or by a representative of that person authorized by that person to examine the documents or objects.

(m) If any documents or objects have been produced by any person in the course of any investigation pursuant to a civil investigative demand under this section, and any case or proceeding before any court arising out of the investigation, or any proceeding before any agency involving the documents or objects, has been completed, or no case or proceeding in which the documents or objects may be used has been commenced within a reasonable time after completion of the investigation, the custodian shall, upon written request of the person who produced the documents or objects, return to the person any documents or objects that have not passed into the control of any court or agency.

(n) The North Carolina Rules of Civil Procedure shall apply to this section to the extent that the rules are not inconsistent with the provisions of this section. (2009-554, s. 1.)

§ 1-615. False claims procedure.

(a) Statute of Limitations. – A civil action under G.S. 1-608 may not be brought (i) more than six years after the date on which the violation of G.S. 1-607 was committed or (ii) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State of North Carolina charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(b) If the Attorney General elects to intervene and proceed with an action brought under G.S. 1-608(b), the State may file its own complaint or amend the complaint of a person who has brought an action under G.S. 1-608(b) to clarify or add detail to the claims with respect to which the State is intervening and to add any additional claims with respect to which the State contends it is entitled to relief. For statute of limitations purposes, any such State pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the State arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(c) Burden of Proof. – In any action brought under G.S. 1-608, the State or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Estoppel. – Notwithstanding any other provision of law, a final judgment rendered in favor of the State in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and which is brought under G.S. 1-608.

(e) Venue. – Venue for any action brought pursuant to G.S. 1-608 shall be in either Wake County or in any county in which a claim originated, or in which any statement or record was made, or acts done, or services or property rendered in connection with any act constituting part of the violation of this Article.

(f) Service on Federal, State, or Local Authorities. – With respect to the United States or any State or local government that is named as a co-plaintiff in an action brought under G.S. 1-608, a seal on the action ordered by the court under G.S. 1-608(b) shall not preclude the State or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of the co-plaintiff government to investigate and prosecute such actions on behalf of that co-plaintiff government, except that the seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

(g) A civil action may not be brought under both this Article and Part 7 of Article 2 of Chapter 108A of the General Statutes. (2009-554, s. 1.)

§ 1-616. Remedies under other laws; severability of provisions; liberality of legislative construction; adoption of legislative history.

(a) Remedies Under Other Laws. – The provisions of this Article are not exclusive, and the remedies provided for in this Article shall be in addition to any other remedies provided for in any other law or available under common law. No criminal or administrative action need be brought against any person as a condition for establishing civil liability under this section.

(b) If any provision of this Article or the application of this Article to any person or circumstance is held to be unconstitutional, the remainder of this Article and the application of the provision to other persons or circumstances shall not be affected by that holding.

(c) This Article shall be interpreted and construed so as to be consistent with the federal False Claims Act, 31 U.S.C. § 3729, et seq., and any subsequent amendments to that act. (2009-554, s. 1.)

§ 1-617. Reporting.

(a) In reporting on the terms and disbursements set forth in any settlement agreement or final order or judgment in a case filed under this Article as required by G.S. 114-2.5, the report shall include the percentage of the proceeds and the amount paid to any qui tam plaintiff under G.S. 1-610.

(b) On or before February 1 of each year, the Attorney General shall submit to the Joint Legislative Commission on Governmental Operations and the Chairs of the Appropriations Subcommittees on Justice and Public Safety of the House of Representatives and the Senate a report on the number of qui tam cases under this Article pending in the State and the number of qui tam cases pending in other jurisdictions involving the State, the number of qui tam cases under this Article that were settled, the number of qui tam cases in which judgment was entered, and the amount of proceeds paid to qui tam plaintiffs during the previous calendar year. (2009-554, s. 1.)

§ 1-618. Rules.

The Attorney General may adopt rules necessary to carry out the purposes set forth in this Article. (2009-554, s. 1.)

§ 1-619: Reserved for future codification purposes.

§ 1-620: Reserved for future codification purposes.

§ 1-621: Reserved for future codification purposes.

§ 1-622: Reserved for future codification purposes.

§ 1-623: Reserved for future codification purposes.

§ 1-624: Reserved for future codification purposes.

§ 1-625: Reserved for future codification purposes.

§ 1-626: Reserved for future codification purposes.

§ 1-627: Reserved for future codification purposes.

§ 1-628: Reserved for future codification purposes.

§ 1-629: Reserved for future codification purposes.

Article 52.

Limited Civil Liability of Domestic Violence Shelters and Persons Associated With the Shelters.

§ 1-630. Definitions.

As used in this Article, the following terms mean:

(1) Client. – A person who is the victim of domestic violence, as defined in Chapter 50B of the General Statutes, or of nonconsensual sexual conduct or stalking, as defined in Chapter 50C of the General Statutes, and is using services or facilities of a shelter.

(2) Conduct. – One or more actions or omissions.
(3) Harm. – Injury, death, or loss to person or property.
(4) Perpetrator. – A person who has committed domestic violence and who bears one of the personal relationships specified in G.S. 50B-1(b) to the victim of domestic violence, or a person who has committed nonconsensual sexual conduct or stalking as defined in Chapter 50C of the General Statutes.
(5) Person associated with the shelter. – A person who is a director, owner, trustee, officer, employee, victim advocate, or volunteer connected with the shelter.
(6) Shelter. – A facility that meets the criteria set forth in G.S. 50B-9 and is funded through the Domestic Violence Center Fund providing shelter to victims of domestic violence, nonconsensual sexual conduct, or stalking.
(7) Victim advocate. – A person from a crime victim service organization who provides support and assistance for a victim of a crime during court proceedings and recovery efforts related to the crime.
(8) Volunteer. – An individual who provides any service at a shelter without expectation of receiving and without receiving any compensation or other form of remuneration, directly or indirectly, for the provision of the service. (2010-5, s. 2.)

§ 1-631. Immunity of a domestic violence shelter and any person associated with the shelter concerning torts committed on the shelter's premises.

(a) Except as provided in subsection (b) of this section, no shelter and no person associated with the shelter is liable in damages in a tort action for any harm that a client or other person who is on the premises of the shelter sustains as a result of tortious conduct of a perpetrator that is committed on the premises of the shelter if the perpetrator is not a person associated with the shelter.

(b) The immunity established by this section does not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. (2010-5, s. 2.)

§ 1-632: Reserved for future codification purposes.

§ 1-633: Reserved for future codification purposes.

§ 1-634: Reserved for future codification purposes.

§ 1-635: Reserved for future codification purposes.

§ 1-636: Reserved for future codification purposes.

§ 1-637: Reserved for future codification purposes.

§ 1-638: Reserved for future codification purposes.

§ 1-639: Reserved for future codification purposes.

§ 1-640: Reserved for future codification purposes.

Article 53.

Uniform Collaborative Law Act.

§ 1-641. Short title.

This Article may be cited as the Uniform Collaborative Law Act. (2020-65, s. 1.)

§ 1-642. Definitions.

The following definitions apply in this Article:

(1) Collaborative law communication. – A statement, whether oral or in a record, or verbal or nonverbal, that does all of the following:
   a. Is made to conduct, participate in, continue, or reconvene a collaborative law process.
   b. Occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

(2) Collaborative law participation agreement. – An agreement by persons to participate in a collaborative law process under this Article.

(3) Collaborative law process. – A procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons do all of the following:
   a. Sign a collaborative law participation agreement.
   b. Are represented by collaborative lawyers.

(4) Collaborative lawyer. – A lawyer who represents a party in a collaborative law process.

(5) Collaborative matter. – A dispute, transaction, claim, problem, or issue for resolution, including a dispute, claim, or issue in a proceeding, which is described in a collaborative law participation agreement.

(6) Law firm. – Any of the following:
   a. Lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association.
   b. Lawyers employed in a legal services organization, or the legal department of a corporation or other organization, or the legal department of a government or governmental subdivision, agency, or instrumentality.

(7) Nonparty participant. – A person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.

(8) Party. – A person that signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

(9) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(10) Proceeding. – Any of the following:
   a. A judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery.

b. A legislative hearing or similar process.

(11) Prospective party. – A person that discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

(12) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) Related to the collaborative matter. – Involving the same transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

(14) Sign. – With present intent to authenticate or adopt a record to do any of the following:

a. Execute or adopt a tangible symbol.

b. Attach to or logically associate with the record an electronic symbol, sound, or process.

(15) Tribunal. – Any of the following:

a. A court, arbitrator, administrative agency, or other body acting in an adjudicative capacity which, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interests in a matter.

b. A legislative body conducting a hearing or similar process. (2020-65, s. 1.)

§ 1-643. Applicability; restrictions.

(a) Except as provided in subsection (b) of this section, this Article applies to a collaborative law participation agreement that meets the requirements of G.S. 1-644 signed on or after the effective date of this act.

(b) This Article does not apply to any claim or proceeding arising under Chapter 35A, 35B, or 50 of the General Statutes.

(c) Minors, unborn individuals, and individuals who are incompetent shall not be parties to a collaborative law process. (2020-65, s. 1.)

§ 1-644. Collaborative law participation agreement; requirements.

(a) A collaborative law participation agreement must meet all of the following requirements:

(1) Be in a record.

(2) Be signed by the parties and their collaborative lawyers.

(3) State the parties' intention to resolve a collaborative matter through a collaborative law process under this Article.

(4) Describe the nature and scope of the collaborative matter.

(5) Identify the collaborative lawyer who represents each party in the collaborative law process.

(6) Contain a statement by each collaborative lawyer confirming the collaborative lawyer's representation of a party in the collaborative law process.

(7) State that the collaborative lawyers are disqualified from representing their respective parties in a proceeding before a tribunal related to the collaborative matter, except as provided in G.S. 1-647, 1-649(c), 1-650, or 1-651.

(8) Provide an address for each party where any notice required under this Article may be sent.

(b) Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this Article. (2020-65, s. 1.)

§ 1-645. Beginning and concluding collaborative law process; tolling of time periods.

(a) Participation in a collaborative law process is voluntary. A collaborative law process begins when the parties sign a collaborative law participation agreement.

(b) A tribunal shall not order a person to participate in a collaborative law process over that person's objection.

(c) A collaborative law process is concluded by any of the following:

(1) Resolution of a collaborative matter as evidenced by a signed record.

(2) Resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the collaborative matter will not be resolved in the collaborative law process.

(3) Termination of the process.

(d) A collaborative law process terminates upon the occurrence of any of the following:

(1) When a party or collaborative lawyer gives notice to all other parties in a record that the collaborative law process is ended.

(2) When a party does any of the following:

a. Begins a proceeding related to the collaborative matter without the agreement of all parties, except as provided in G.S. 1-647.

b. In a pending proceeding related to the collaborative matter, does any of the following:

1. Without the agreement of all parties, initiates a pleading, motion, order to show cause, or request for a conference with the tribunal, except as provided in G.S. 1-647.

2. Requests that the proceeding be put on the tribunal's active calendar.

(3) Except as otherwise provided in subsection (g) of this section, when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(e) A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.

(f) A party may terminate a collaborative law process with or without cause.

(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues, if not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection (e) of this section is sent to the parties, all of the following occur:

(1) The unrepresented party engages a successor collaborative lawyer.

(2) In a signed record, all of the following occur:

a. The parties consent to continue the collaborative law process by reaffirming the collaborative law participation agreement.

b. The collaborative law participation agreement is amended to identify the successor collaborative lawyer.

c. The successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative law process and adherence to the collaborative law participation agreement.

(h) A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part thereof as evidenced by a signed record.

(i) A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

(j) A collaborative law participation agreement tolls all legal time periods applicable to legal rights and issues under law between the parties from the time the parties sign a collaborative law participation agreement until terminated as set forth in this subsection. This subsection applies to any applicable statutes of limitations, statutes of repose, filing deadlines, or other time limitations imposed by law, court rule, or court order. The tolling period continues until terminated by any party delivering notice to all other parties of an intent to terminate the tolling period. The notice shall be delivered by hand delivery or by certified mail, return receipt requested, to all other parties, and the tolling period terminates 30 days after receipt by the last party to receive the notice. (2020-65, s. 1.)

§ 1-646. Proceedings pending before tribunal; status report.

(a) Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the collaborative law participation agreement after it is signed. Subject to subsection (c) of this section and G.S. 1-647 and G.S. 1-648, the filing operates as a stay of the proceeding as to the parties in the collaborative law process as long as the parties are in that process.

(b) The parties shall file promptly with the tribunal notice in a record when a collaborative law process concludes. The stay of the proceeding under subsection (a) of this section is lifted when the notice is filed. The notice shall not specify any reason for termination of the collaborative law process.

(c) A tribunal in which a proceeding is stayed under subsection (a) of this section may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the collaborative law process is ongoing or concluded. It shall not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative matter.

(d) A tribunal shall not consider a communication made in violation of subsection (c) of this section.

(e) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative law process is filed based on delay or failure to prosecute. (2020-65, s. 1.)

§ 1-647. Emergency order.

During a collaborative law process, a party may begin a proceeding and a tribunal may issue emergency orders upon motion of a party in that or an already pending proceeding to protect the health, safety, welfare, or interest of a party or otherwise preserve the status quo. (2020-65, s. 1.)

§ 1-648. Approval of agreement by tribunal.

A tribunal may approve an agreement resulting from a collaborative law process. (2020-65, s. 1.)

§ 1-649. Disqualification of collaborative lawyer and lawyers in associated law firm.

(a) Except as otherwise provided in subsection (c) of this section and G.S. 1-647, a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

(b) Except as otherwise provided in subsection (c) of this section and G.S. 1-647, 1-650, and 1-651, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection (a) of this section.

(c) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party to do any of the following:

(1) To ask a tribunal to approve an agreement resulting from the collaborative law process.

(2) To seek or defend an emergency order in either a pending or newly filed proceeding to protect the health, safety, welfare, or interest of a party, or otherwise preserve the status quo.

(d) If subdivision (c)(2) of this section applies, a collaborative lawyer, or lawyer in a law firm with which the collaborative lawyer is associated, may continue to represent a party:

(1) Until the party is represented by a successor lawyer or for no more than 30 days after the date any action is taken under subdivision (c)(2) of this section, whichever occurs first; or

(2) If the parties consent to continue the collaborative law process subject to any emergency order which may have been entered, in which event, any proceeding as referenced in subdivision (c)(2) of this section shall be stayed as provided in G.S. 1-646. (2020-65, s. 1.)

§ 1-650. Low-income parties.

(a) The disqualification under G.S. 1-649(a) applies to a collaborative lawyer representing a party with or without fee.

(b) After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under G.S. 1-649(a) is associated may represent a party without fee in the collaborative matter or a matter related to the collaborative matter if all of the following apply:

(1) The party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation.

(2) The collaborative law participation agreement so provides.

(3) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation. (2020-65, s. 1.)

§ 1-651. Governmental entity as party.

(a) The disqualification under G.S. 1-649(a) applies to a collaborative lawyer representing a party that is a government or governmental subdivision, agency, or instrumentality.

(b) After a collaborative law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a government or governmental subdivision, agency, or instrumentality in the collaborative matter or a matter related to the collaborative matter if all of the following apply:

(1) The collaborative law participation agreement so provides.

(2) The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm which are reasonably calculated to isolate the collaborative lawyer from such participation. (2020-65, s. 1.)

§ 1-652. Disclosure of information.

(a) Except as provided by subsection (b) of this section or by law other than this Article, during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of all relevant information related to the collaborative matter without formal discovery. A party also shall update promptly previously disclosed information that has materially changed.

(b) The parties may define the scope and terms of the disclosure during the collaborative law process. (2020-65, s. 1.)

§ 1-653. Standards of professional responsibility not affected.

This Article does not affect the professional responsibility, obligations, and standards applicable to a lawyer or other licensed professional, including rules governing the confidentiality of information acquired by a lawyer during the professional relationship with a client. (2020-65, s. 1.)

§ 1-654. Informed consent.

Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall do all of the following:

(1) Assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter.

(2) Provide the prospective party with information that the lawyer reasonably believes is sufficient for the prospective party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation. The information provided shall include the respective rules regarding privilege and confidentiality that apply to each of the alternative means of resolving disputes.

(3) Advise the prospective party that:

a. After signing a collaborative law participation agreement, if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates, except as provided in G.S. 1-647.

b. Participation in a collaborative law process is voluntary and any party has the right to terminate unilaterally a collaborative law process with or without cause.

c. The collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated shall not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by G.S. 1-647, 1-649(c), 1-650(b), or 1-651(b). (2020-65, s. 1.)

§ 1-655. No liability for decision to participate.

No person incurs liability, either individually or in any fiduciary, official, or other capacity, with regard to the person's decision to participate or not to participate in a collaborative law process. (2020-65, s. 1.)

§ 1-656. Confidentiality of collaborative law communication.

A collaborative law communication shall not be disclosed to anyone other than a party, a party's collaborative lawyer, or a nonparty participant except to the extent agreed by the parties in a signed record or as provided by law of this State other than this Article. (2020-65, s. 1.)

§ 1-657. Privilege against disclosure for collaborative law communication; admissibility; discovery.

(a) Subject to G.S. 1-658 and G.S. 1-659, a collaborative law communication is privileged under subsection (b) of this section, is not subject to discovery, and is not admissible in evidence.

(b) In a proceeding, the following privileges apply:

(1) A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.

(2) A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process. (2020-65, s. 1.)

§ 1-658. Waiver and preclusion of privilege.

(a) A privilege under G.S. 1-657 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by the nonparty participant.

(b) A person that makes a disclosure or representation about a collaborative law communication which prejudices another person in a proceeding shall not assert a privilege under G.S. 1-657, but this preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation. (2020-65, s. 1.)

§ 1-659. Limits of privilege.

(a) There is no privilege under G.S. 1-657 for a collaborative law communication that is any of the following:

(1) Available to the public under Chapter 132 of the General Statutes or made during a session of a collaborative law process that is open, or is required by law to be open, to the public.
(2) A threat or statement of a plan to inflict bodily injury or commit a crime of violence.
(3) Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity.
(4) In an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(b) The privileges under G.S. 1-657 for a collaborative law communication do not apply to the extent that a collaborative law communication is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process.

(c) There is no privilege under G.S. 1-657 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in any of the following:

(1) A criminal action involving the prosecution of a felony.
(2) A proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(d) If a collaborative law communication is subject to an exception under subsection (b) or (c) of this section, only the part of the collaborative law communication necessary for the application of the exception may be disclosed or admitted.

(e) Disclosure or admission of evidence excepted from the privilege under subsection (b) or (c) of this section does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(f) The privileges under G.S. 1-657 do not apply if the parties agree in advance in a signed record or, if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the collaborative law communication was made. (2020-65, s. 1.)

§ 1-660. Authority of tribunal in case of noncompliance.

(a) If an agreement fails to meet the requirements of G.S. 1-644 or a lawyer fails to comply with G.S. 1-654, a tribunal may nonetheless find that the parties intended to enter into a collaborative law participation agreement if they did both of the following:

(1) Signed a record indicating an intention to enter into a collaborative law participation agreement.
(2) Reasonably believed they were participating in a collaborative law process.

(b) If a tribunal makes the findings specified in subsection (a) of this section and the interests of justice require, the tribunal may do all of the following:

(1) Enforce an agreement evidenced by a record resulting from the collaborative law process in which the parties participated.

(2) Apply the disqualification provisions in G.S. 1-645, 1-646, 1-647, 1-649, 1-650, and 1-651.
(3) Apply a privilege under G.S. 1-657. (2020-65, s. 1.)

§ 1-661. Alternative dispute resolution permitted.

Nothing in this Article prohibits the parties from using, by mutual agreement, other forms of nonadversarial alternate dispute resolution, including mediation, to reach a settlement on any of the issues included in the collaborative law participation agreement. The parties' collaborative lawyers may also serve as counsel for any form of nonadversarial alternate dispute resolution pursued as part of the collaborative law participation agreement so long as it is not a proceeding as that term is defined in G.S. 1-642(10). (2020-65, s. 1.)

§ 1-662. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. (2020-65, s. 1.)

§ 1-663. Relation to Electronic Signatures in Global and National Commerce Act.

This Article modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. § 7003(b). (2020-65, s. 1.)