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COURT-SIDE ORDERS: Court Ordered Sales and the Final Buzzer

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Presenters

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But first…future Hornets!

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COURT ORDERED SALES – WHAT AND WHY

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Overview of Court-Ordered Sales

- Sales of property made pursuant to an order of a judge or clerk in a court proceeding.
- Depending on the nature of the proceeding, various court-appointed officials carry out each process under the supervision of the court.

The Players Involved

1. Commissioner
2. Guardian
3. Executor/Personal Representative

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Appointed Roles in Court-Ordered Sales

Commissioner: Appointed by court to conduct judicial sale.

Guardian: Manages affairs of minor/incompetent adult (ward); must petition court to sell property.

Executor/PR: Personal representative of estate; petitions court to sell property.

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JUDICIAL SALES

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Key Provisions from Chapter 1 Article 29A

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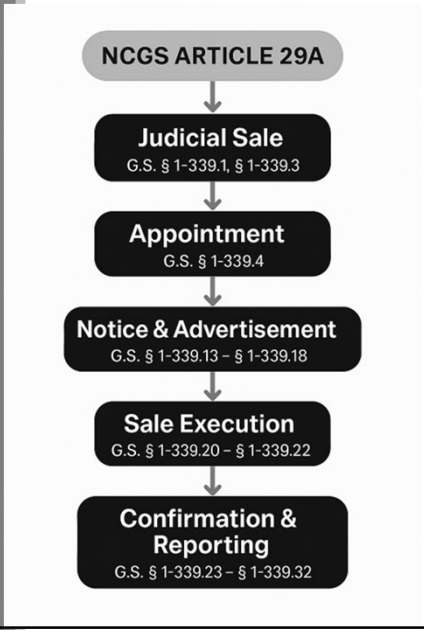
Definition and Exclusions
Article 29A defines judicial sales and excludes certain types like power-of-sale foreclosures and tax sales.

Authority and Procedure
Clerks and judges have authority to order sales and adjust procedures as necessary under the statute.

Sales Process Details
Statutes specify notice, upset bid rules, confirmation, and resale procedures for public and private sales.

Transparency and Logistics
Provisions ensure transparent sales with clear roles, timing, location, and reporting obligations.

Step-by-Step Process



1. **Appointment**: Commissioner, Guardian, or PR appointed by court –G.S. § 1-339.4
2. **Notice & Advertisement**: Public notice requirements for sale – G.S. § 1-339.13 to § 1-339.17
3. **Sale Execution**: Auction procedures, postponements, continuations – G.S. § 1-339.20 to § 1-339.22
4. **Confirmation & Reporting**: Upset bids, confirmation, resale, final report – G.S. § 1-339.23 to § 1-339.32

Notice & Advertisement- § 1-339.13 to § 1-339.17

Section	Requirement
§ 1-339.13	Court's Order of Sale must specify the official conducting sale, method, property description, location, terms, and cash deposit requirements.
§ 1-339.14	If sale involves a **minor or incompetent**, clerk's order must be **approved by a superior court judge** .
§ 1-339.15	Notice of Sale must include the time, place, property description, terms, and bidder deposit details.
§ 1-339.16	Advertisement must begin after order of sale has been issued, but before the sale date.
§ 1-339.17	For public sale of **real property**, notice must be posted and published in designated locations for required period.

Sale Execution § 1-339.20

- Commissioner conducts the sale at the time, place, and under the terms in the Order of Sale and Notice of Sale.
- Public judicial sales are conducted by auction to the highest bidder, and a cash deposit may be required.
- Failure to comply with the terms of sale authorizes the commissioner to obtain court approval to immediately resell the property.

Sale Execution II– G.S. § 1-339.20–§ 1-339.22

Postponement or Continuation

- Commissioner may postpone or continue a scheduled sale for good cause, including lack of bidders, weather conditions, or bidder non-compliance.
- A continuance may be announced publicly at the originally scheduled sale without issuing a new written notice.
- Any postponement must be reasonable in duration and consistent with the court's supervision.

Confirmation & Reporting

- All judicial sales are subject to court confirmation and remain open during the statutory upset-bid period.
- No deed may be delivered until the sale is confirmed and all upset-bid rights have expired.
- The court may confirm the sale or order a resale if statutory requirements are not satisfied prior to confirmation.

Confirmation & Reporting

- **Report of Sale Required**: The commissioner must file a report of sale within five (5) days identifying the authority for the sale, the property sold, the purchaser, and the highest bid.
- **Upset-Bid Period**: Real-property sales remain subject to a 10-day upset-bid period; each upset bid must exceed the prior bid by at least five percent (5%) or $750, whichever is greater.
- **No Confirmation Until Upset Period Expires**: No public sale of real property may be confirmed or consummated until all upset-bid rights have expired.

Confirmation & Reporting II

- **Court Confirmation Required**: Confirmation authority depends on who ordered the sale; sales involving minors or incompetents require confirmation by both the clerk and a superior court judge.
- **Failure to Comply Results in Resale**: If a bidder or upset bidder fails to comply with the terms of sale, the court may order a resale and hold the defaulting bidder liable for losses and costs.
- **Deed and Final Accounting**: After confirmation and compliance, a deed is delivered to the purchaser; commissioners and trustees must file final accountings, while other fiduciaries include sale proceeds in their next account or report.

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Confirmation & Reporting III

- After court confirmation and purchaser compliance, the commissioner executes and delivers a deed.
- Deed may recite statutory authority, preceding title, selling official, advertisement, sale date, highest bidder and bid, sale confirmation, sale term compliance, and authority to execute the deed.
- Court may issue an order for possession against parties remaining in possession.
- Possession orders are enforced by the sheriff under summary ejectment procedures.
- **Title Insurance Consideration**: Statutory deed recitals and recorded confirmation support insurability.

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ESTATE SALES

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Purpose and Context of Court-Ordered Estate Sales

Legal Framework and Oversight
Court-ordered estate sales in North Carolina are generally overseen by the Clerk of Superior Court under specific statutory provisions, ensuring legal compliance. The Clerk's authority is limited by statute and decisions are appealable for de novo review by Superior Court.

Purpose of Court-Ordered Sales
These sales seek to address insufficient liquid assets to pay debts, balancing heirs' rights and creditor claims through judicial intervention. **§28A-15-1** authorizes sale.

Procedural Safeguards
Statutory safeguards like notice, upset bids, and sale confirmation protect transparency and ensure marketable title during estate sales.

Importance of Compliance
Strict adherence to laws prevents sales from being voidable, avoiding litigation and delays in estate administration.

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Key Statutes Governing Estate Sales

STATUTE	PROVISION	PURPOSE
§28A-17-1	Authorizes petition to sell real property	Create funds for debts or benefit estate
§28A-17-2	Petition contents	Ensure detailed disclosure
§28A-17-4	Necessary Parties/Optional Parties	Protect ownership rights/creditors' rights
§28A-17-7	Public or private sale procedure	Follow judicial sale rules
Chapter 1, Art. 29A	Judicial sale requirements	Notice, upset bids, confirmation

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Filing and Notice Requirements

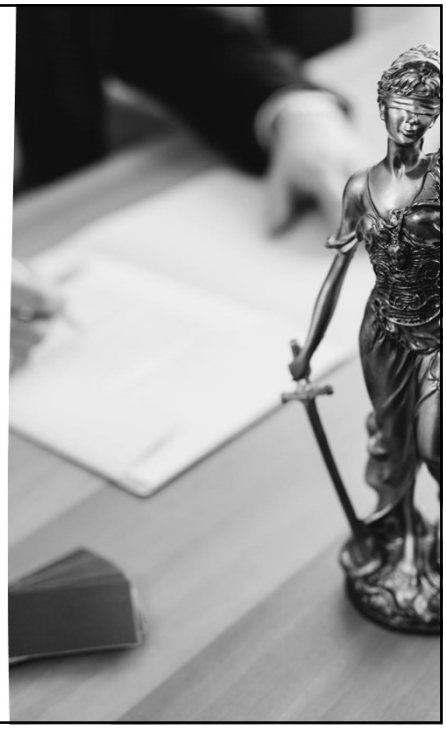
Petition Filing Process
Personal representative files a verified petition detailing property, heirs, and sale justification as per statute and that it is in the best interest of the estate. There is no distinction between personal and real property for making assets.

Service of Summons
Clerk issues summons to all heirs ensuring due process with guardian ad litem appointed for unknown parties. Judgment and lien creditors *may* be served – unless they can be paid in full out of closing, they should be served process. GAL for unknown heirs/devisees or unknown contact information after due diligence.

Order Review and Hearing
Clerk reviews petition; uncontested cases may be granted summary order, contested cases require hearings.

Sale and Confirmation
After sale and upset-bid periods, the Court's confirmation of the contract/sale allows deed execution ensuring transparency and fiduciary compliance.

Distribution of Proceeds
After Settlement of Transaction, Clerk holds distribution hearing to approve proposed payments to all entitled parties.



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Assets of the Estate: Paying Claims

- Must be in "best interest of the administration of the estate to sell, lease, or mortgage any real estate or interest therein to obtain money for the payment of debts and other claims against the decedent's estate"
  - Not liquidation for beneficiaries
  - Special Proceeding under Article 17 *unless* "authority" in Will or incorporation of powers under GS 32-27(2)
    - Under MONTGOMERY v. HINTON 45 N.C. App 271, 262 s.e. 2d 697 (1980) , GS 32-27(2) in and of itself is not enough to allow a PR to divest devisees under the will from their preferences as to assets – so it is not a workaround for court involvement.
- No distinction real or personal unless stated in Will

-GS 28A-15-1

Judgments Against Heirs

The judgments against heirs or devisees *do* attach to the inherited/devised property, as title passes at the time of the decedent's death.

A sale by a personal representative under a special proceeding to make assets or under partition *can* extinguish judgment lien on real estate and attach to judgment debtor's interest in proceeds, *if the creditor receives notice and opportunity to defend.*

Washburn v. Washburn,

- 234 N.C. 370, 67 S.E.2d 264 (1951)

Partition Involving Estates

§ 28A-17-3. Petition for partition.
When it is alleged that the real property of the decedent sought to be sold consists in whole or in part of an undivided interest in real property, the personal representative of the decedent may include in the petition to sell the real property for the payment of debts and other claims against the decedent's estate, a request for partition of the lands sought to be sold.

§ 46-3. Petition by cotenant or personal representative of cotenant.
One or more persons claiming real estate as joint tenants or tenants in common or the personal representative of a decedent joint tenant, or tenant in common, when sale of such decedent's real property to make assets is alleged and shown as required by G.S. 28A-17-3, may have partition by petition to the superior court.

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PARTITION SALES

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Partition in Kind vs Partition by Sale

METHOD	DESCRIPTION	STATUTORY BASIS
Partition in Kind	Physical division of property into parcels	G.S. 46A-75 et seq.
Partition by Sale	Sale of property and distribution of proceeds	G.S. 46A-80 et seq.

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Who Can File and Forms of Ownership

OWNERSHIP TYPE	KEY FEATURES	PARTITION RIGHTS
Tenancy in Common	No survivorship; interests pass to heirs	Any co-owner may file
Joint Tenancy	Includes survivorship unless severed	Any co-owner may file
Tenancy by Entirety	Married couples; survivorship and creditor protection. Joinder necessary if held T/E, not necessary if spouse owns full interest.	Requires consent of both spouses

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Statutory Framework

STATUTE	PROVISION
G.S. 46A-1	Partition classified as a special proceeding
G.S. 46A-2	Notice requirements in petition
G.S. 46A-3	Attorney fee allocation rules
G.S. 46A-75 et seq.	Partition in kind procedures
G.S. 46A-80 et seq.	Partition by sale procedures

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Statutory Framework, cont…

STATUTE	PROVISION
G.S. 46A-20	Venue – Where property lies. Lis Pendens required in other jurisdictions if split.
G.S. 46A-21	Necessary Parties / Optional Parties
G.S. 46A-22	Unknown Parties or Addresses. GAL
G.S. 46A-23	Judgment creditor may petition for actual partition
G.S. 46A-24	Mineral Rights Partition vs. Surface Rights Partition

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Process Overview and Commissioners' Role

STEP	DESCRIPTION
Petition Filed	Initiates partition action in Superior Court
Service of Summons	All co-owners notified per G.S. 46A-2
Appointment of Commissioners	Evaluate property and recommend division or sale
Report and Hearing	Court reviews commissioners' recommendations
Order Issued	Partition in kind or sale ordered
Sale and Distribution	Proceeds allocated after costs and liens

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Attorney Fees, Costs, and Common Disputes

COST CATEGORY	ALLOCATION BASIS
Attorney Fees	Common benefit fees shared per G.S. 46A-3
Sale Costs	Deducted from proceeds before distribution
Taxes and Liens	Paid from sale proceeds or adjusted among owners
Improvements	May warrant equitable reimbursement

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GUARDIANSHIP SALES

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Let's define the terms

Incompetent adult means an **adult** or **emancipated minor** who lacks sufficient capacity to:

- manage the adult's own affairs; or
- to make or communicate important decisions concerning the adult's person, family, or property due to some mental or physical condition.

Incompetent child refers to a minor who lacks sufficient capacity as mentioned above and is at least 17.5 years old.

- Age alone does not equal legal incompetency
- All minors are legally protected, but not all minors are legally incompetent.

Ward refers to an adjudicated incompetent or an adult or minor who has been appointed a legal guardian by the court.

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Terms II

- **General Guardian-** A guardian of both the estate and the person.
- **Guardian of the Estate-** A guardian appointed solely for the purpose of managing the property, estate, and business affairs of a ward.
- **Guardian ad Litem-** A guardian of minors and incompetent individuals in their personal care and financial matters.
- **Guardian of the Person-** Appointed solely for the purpose of performing duties relating to the care, custody, and control of a ward. Have no power over real estate.

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Guardian Qualifications – G.S. § 35A-1213

Authorized Guardian Types
Guardians may be adult individuals, qualified corporations, or disinterested public agents appointed by the court.

Public Agent Disclosure
Disinterested public agents must disclose conflicts and serve by virtue of their employment or office.

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Appointment Priorities – G.S. § 35A-1214

Priority Order for Guardians
Guardians are appointed following a specific priority order defined by law to ensure proper selection.

- Nominated via a POA, probated will of a parent of non-married child, etc.

Role of the Clerk
The clerk must consider nominations and recommendations carefully to appoint the best guardian.

Best Interest of the Ward
Appointment decisions must focus on the ward's best interests and guardian suitability.

Public Agent Appointment
Public agents are only appointed after thorough efforts to find suitable agents are unsuccessful.

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Clerk's Order and Letters – G.S. § 35A-1215

Clerk's Guardianship Order
The clerk issues an order specifying guardianship nature, guardian's name, and assigned duties.

Defined Powers and Duties
Guardians' powers are outlined in Articles 8 and 9 of Chapter 35A for guardians of the person and guardians of the estate.

Limited Guardianship Provisions
Limited guardianship allows the ward to retain some rights, predicated on the extent of ward's incompetence.

Letters of Appointment
Letters of appointment formalize guardian's authority and responsibilities per G.S. § 35A-1206.

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NCGS § 35A-1301 – Article 14: Sale, Mortgage, Exchange or Lease of Ward's Estate

Key statutory provisions governing ward real estate transactions

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SCOPE & PETITION – G.S. § 35A-1301(A)-(B)

Authority Scope

- Guardians can sell, mortgage, exchange, or lease ward's real estate for over three years via a special proceeding.

Petition Requirements

- A verified petition detailing transaction facts must be filed with the superior court clerk for approval.

Protection of Ward's Interests

- Next of kin or heirs may be involved as parties to the proceeding to protect estate interests.

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Clerk's Authority – G.S. § 35A-1301(b)

Clerk's Approval Authority

The clerk can approve real estate transactions involving wards under specific legal conditions.

Conditions for Clerk Approval

1. Ward's interest is materially promoted
2. Insufficient personal estate to support the ward
3. Necessity for ward's maintenance
4. Ward's estate needed for public purposes, or
5. To satisfy a debt against ward's estate.

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Order & Limitations – G.S. § 35A-1301(b)-(c)

Order Requirements

Orders must specify property and transaction terms and be recorded in court records.

Mortgage Duration Limits

Mortgage terms are limited to durations fixed by the court.

Safeguards for Minor Wards

No transactions involving minors occur **without superior court judge approval and confirmation**. The possession and application of proceeds from these sales will be determined by the judge.

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Venue, Procedure & Historical Validation – G.S. § 35A-1301(d)-(g)

Venue for Petitions
Petitions must be filed in the county where the real estate is located.

Sale Procedure Compliance
Sales must follow Article 29A of Chapter 1 General Statutes for procedural consistency.

Court's Authority for Private Sales
Court retains authority to order private sales when appropriate, e.g., to maximize efficiency and market value.

Historical Sale Validation
Validates pre-June 1973 sales by guardians, preventing challenges solely based on procedure.

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Single protective order- N.C. Gen. Stat. § 35A-1121

1. A single protective arrangement may be available for a minor/incompetent to sell, mortgage, lease, or gift property.
   - Same procedural and reporting guidelines that apply to a General Guardian or Guardian of the Estate, but easier appointment process.
   - May be useful when the ward only has a small interest, there is minimal equity, or a minor is reaching majority age. *See* 1 N.C. Real Estate § 17:13 (3rd ed.).
   - Authority terminates at the completion of the transaction.

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Guardian ad Litem Roles: Estate Sales vs Guardianship Sales

	Estate Sales	Guardianship Sales
Statutory Basis	G.S. § 28A-17-4	G.S. § 35A-1301
When Appointed	If heirs/devisees are unknown or cannot be located during petition to sell estate property	Included in proceedings to sell, mortgage, exchange, or lease ward's property
Primary Role	Represent unknown or unlocatable heirs to ensure due process and protect their interests	Act as party to the proceeding; may initiate or respond under court supervision
Authority	Clerk of Superior Court oversees and confirms sale process	Clerk of Superior Court approves petition; Superior Court Judge confirms for minors

EXECUTION SALES

Definition and Purpose of Execution Sales

Execution Sale Overview
Execution sales allow sheriffs to sell debtor property to satisfy court judgments under writs of execution.

Legal Framework
North Carolina statutes detail procedures including levies, auctions, and proceeds distribution for execution sales.

Creditor and Debtor Protections
Execution sales balance creditor rights with debtor exemptions to ensure fair enforcement and due process.

Distinctive Features
Execution sales differ from foreclosure and involve court-supervised procedures especially in probate cases.

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Key Provisions of Article 29B

STATUTE	PROVISION
G.S. 1-339.41	Defines execution sale and sheriff's authority
G.S. 1-339.44	Specifies courthouse location for real property sales
G.S. 1-339.51-55	Notice requirements for sale
G.S. 1-339.63-64	Report of Sale and Upset bid procedure
G.S. 1-339.67-68	Confirmation of sale and deed issuance
G.S. 1-339.70	Disposition of sale proceeds

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Execution Process and Notice Obligations

Initiation of Execution Process
Execution begins after obtaining a writ of execution following the statutory waiting period post-judgment entry.

Notice and Publication Requirements
Sheriff must post sale notice at courthouse and publish in local newspapers for two consecutive weeks.

Sale
Property sold for cash to highest bidder at courthouse in county where property or part of property sits.

Report of Sale
The Sheriff is required to report the completion of the sale and relevant information within 5 days after the date of sale. Upon Report, Upset Bid Period begins.

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Sale and Post-Sale Process

Confirmation of Sale
Only upon end of upset bid period and Clerk Order confirming the sale, may the sale be completed.

Deeding and Liens
Sheriff prepares deed, subject to all liens attaching to prior to Execution Order.

Order for Possession
Upon consummation of sale, Clerk may then grant purchaser an order of possession.

Distribution of Proceeds
After deducting costs of sale, Sheriff pays proceeds to Clerk to disburses first to pay judgment(s), then to others legally entitled thereto. Clerk may hold disbursement hearing upon motion.

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MidFirst Bank v. Brown and Equitable Subrogation

Equitable Subrogation Principle
Equitable subrogation permits a lender who pays off a prior lien to assume its priority if no negligence occurs.

Case Background and Dispute
The case arose from enforcement of a South Carolina judgment leading to execution sale and refinancing disputes.

Due Diligence Importance
The court highlighted the need for thorough title searches and credit reviews before refinancing to manage risks.

Impact on Lenders and Purchasers
This case affects lenders, title insurers, and buyers by emphasizing risk management in execution sales and priority conflicts.

Best Practices for Compliance and Risk Mitigation

Statutory Compliance
Strictly follow Article 29B requirements including notice, upset bids, and confirmation processes to ensure legal compliance.

Title Searches and Exemptions
Conduct thorough title searches to detect liens and advise clients on exemption laws protecting certain property interests.

Creditor and Purchaser Procedures
Verify writ issuance, coordinate with sheriffs, and review court confirmations to avoid defects in execution sales.

TRICKS, TIPS AND TITLE INSURANCE

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Title Insurance Considerations

1. To ensure that the Guardian has been appointed on ward's behalf to represent the ward in real estate transactions.
2. The Guardian has authority to enter any specific transaction on ward's behalf via court order and confirmation.
3. The court order and sale process must comply with NC statutes.

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Title Insurance Considerations II

1. A deed executed by a minor is voidable, not void. *See Weeks v. Wilkins*, 139 N.C. 215, 51 S.E. 909 (1905).

2. If a person is deemed incompetent (without restoration of competence) prior to a conveyance, that conveyance is void. *See Tomlins v. Cranford*, 227 N.C. 323, 42 S.E.2d 100 (1947).

3. If a deed in the chain of title is from a Guardian and is older than seven years, less scrutiny of the related special proceeding file may be acceptable for insurability. *See* 1 N.C. Real Estate § 17:7 (3rd ed.).

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TITLE INSURANCE CONSIDERATIONS AND CONCLUSIONS – TIPS, TRICKS AND TITLE INSURANCE

1. A confluence of actions – weird pairings.
2. Clerk Actions are Appealable
3. Liens Attached to Properties Sold
4. Risk Analysis is more in depth on Court Ordered Sales – more parties, more statutory requirements, more fun
5. Sales in Chain vs. Sale in Current Transaction
6. ORDERS!

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Thanks for joining us.

Please submit your questions or comments to:

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