

ASSEMBLY, No. 26

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 14, 1949

By Mr. KATES

Referred to Committee on Constitution Law Revision

AN ACT concerning sales of real estate under statutes or judicial proceedings and the disposition of the proceeds of such sales, in certain cases, and amending sections 2:75-1, 2:75-7, 2:75-8, 2:75-11 and 2:75-17, supplementing chapter seventy-five of Title 2 and repealing sections 2:29-84, 2:29-85 and 2:29-86 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*  
2 *Jersey:*

1 1. Section 2:75-1 of the Revised Statutes is amended to read as follows:

2 2:75-1. In all cases whatsoever where any sheriff, coroner, master, ex-  
3 ceutor, administrator, guardian, commissioner, auditor or other officer or  
4 person is authorized or required by any public statute or the direction of  
5 any court of competent jurisdiction in this State to make sales of real estate,  
6 he shall, unless otherwise specially directed or authorized by law, before  
7 making such sale, give notice of the time and place of such sale by public  
8 advertisement, signed by himself, and set up in the office of the sheriff of  
9 the county or counties where such real estate is situate and at the premises  
10 to be sold at least three weeks next before the time appointed for such sale.  
11 Such notice need not be set up at any other place.

12 Such officer or person, shall also cause such notice to be published four  
13 times in two newspapers to be by him designated, and printed and published  
14 in the county wherein the real estate to be sold is situate, at least once a

15 week, during four consecutive calendar weeks. One of such newspapers  
 16 shall be either a newspaper printed and published at the county seat of such  
 17 county or a newspaper printed and published in the municipality in such  
 18 county having the largest population according to the latest census. The  
 19 first publication shall be at least twenty-one days prior and the last publica-  
 20 tion not more than eight days prior to the time appointed for the sale of  
 21 such real estate.

22 Whenever, in the opinion of any such officer or person the ends of  
 23 justice shall require it, or the sale so being conducted by him will be bene-  
 24 fited thereby, the notice of such sale may be published in three of such  
 25 newspapers instead of two as required by the second paragraph of this sec-  
 26 tion, if there be that number printed and published in the county wherein  
 27 the real estate to be sold is situate.

28 Where real estate is to be sold at public sale, the court, on motion  
 29 made on notice, may order the sheriff or other officer to publish with the  
 30 notice of the sale, a diagram of the premises, in lieu of the actual descrip-  
 31-32 tion, in accordance with the practice and procedure of the Superior Court.

33 The officer or person so advertising in the newspapers shall be entitled  
 34 therefor, in addition to his other fees, to the sum of one dollar and fifty cents  
 35 (\$1.50), except where it is otherwise specifically provided.

1 2. Section 2:75-7 of the Revised Statutes is amended to read as follows:

2 2:75-7. When a sheriff or other officer or auditor in attachment shall  
 3 make sale of real estate pursuant to a decree, judgment, execution or order  
 4 of any court, he shall make and sign an affidavit indorsed on or added to  
 5 the conveyance of the real estate sold, to the following effect:

6 "I, A. B., sheriff, et cetera, do solemnly swear that the real estate de-  
 7 scribed in this deed made to C. D., was by me sold by virtue of a good and  
 8 subsisting execution (or as the case may be) as is therein recited, that the  
 9 money ordered to be made has not been to my knowledge or belief paid or  
 10 satisfied, that the time and place of the sale of said real estate were by me

11 duly advertised as required by law, and that the same was cried off and sold  
12 to a bona fide purchaser for the best price that could be obtained.

13

A. B., Sheriff.

14 Sworn (or affirmed) before me, one of the, et cetera, on this .....  
15 day of ....., 19..... A. D., and I having examined the deed  
16 above mentioned do approve the same and order it to be recorded as a good  
17 and sufficient conveyance of the real estate therein described.

18

E. F. "

19 The affidavit shall be taken before **[the] a judge of the Superior Court**  
20 **or an attorney-at-law of this State [Chancellor, a justice of the Supreme**  
21 **Court or a Master in Chancery]**, for which taking the officer before whom  
22 the affidavit is taken shall be entitled to a fee of one dollar (\$1.00).

23 If there has been a new sheriff elected and qualified, or where the  
24 sheriff may have been incapacitated by death, resignation or otherwise,  
25 after a sale made by the former or incapacitated sheriff, the affidavit re-  
26 quired by this section may be made by such former or incapacitated sheriff  
27 or by the deputy of such former or incapacitated sheriff.

1 3. Section 2:75-8 of the Revised Statutes is amended to read as follows:

2 2:75-8. Any conveyance mentioned in section 2:75-7 of this Title, with  
3 the affidavit required by said section 2:75-7 indorsed thereon or added  
4 thereto, may, when approved by **[the] a judge of the Superior Court or an**  
5 **attorney-at-law of this State [Chancellor, a justice of the Supreme Court or**  
6 **a Master in Chancery]**, be recorded as if duly acknowledged; and such con-  
7 veyance or the record thereof, or a certified copy of such record, shall be evi-  
8 dence of a good and valid sale and conveyance of the real estate conveyed  
9 thereby, as if the same had been reported to and approved by the court in  
10 pursuance of whose decree, judgment, execution or order the same was made

1 4. Section 2:75-11 of the Revised Statutes is amended to read as fol-  
2 lows:

3 2:75-11. The provisions of section 2:75-10 of this Title shall apply to  
4 all deeds, declarations of sale and conveyance, duly acknowledged or provided,

5 heretofore or hereafter made by or under the authority of any public or mu-  
6 nicipal authority, authorized or empowered by any law of this State to make  
7 and execute or to direct the making and execution of any deed, declaration  
8 of sale or conveyance; and the proceedings upon which such deeds, declara-  
9 tions of sale and conveyances are founded shall not be subject to be ques-  
10 tioned collaterally, but may be, at any time, reviewed by [certiorari] a pro-  
11 ceeding in lieu of the prerogative writs or other proper proceeding.

1 5. Section 2:75-17 of the Revised Statutes is amended to read as fol-  
2 lows:

3 2:75-17. Whenever any real estate has heretofore been or shall hereafter  
4 be sold or taken upon compensation pursuant to any competent judicial  
5 authority or any law of this State, and the proceeds of such sale or the com-  
6 pensation for such taking have been or shall be paid into any court of this  
7 State other than the Superior Court [of Chancery], pursuant to such au-  
8 thority or law, and it shall appear to the court wherein the same have been  
9 or shall be paid that the interests of any person or persons entitled thereto,  
10 or any part thereof, require or will be substantially promoted by the pay-  
11 ment into the Superior Court [of Chancery] of so much or such proportion  
12 of such proceeds or compensation as the court wherein such money is paid  
13 may determine belong to or should be reserved for the benefit of such person,  
14 it shall be lawful for such court to order the same paid into the Superior  
15 Court [of Chancery], to be thence disposed of as ordered and directed by the  
16 Superior Court [of Chancery].

17 Upon filing such order in the Superior Court [of Chancery] and pay-  
18 ment of such money thereunder, such person or persons shall, so far as re-  
19 lates to such property or money and its income, be considered a ward of the  
20 Superior Court [of Chancery].

21 [The Court of Chancery and all other courts of this State may make  
22 such rules, regulations and orders, and establish such form of practice as  
23 shall be necessary and proper to fully carry this section into effect.]

1 6. Whenever, by virtue of any order or judgment of the Superior Court,  
2 any officer or other person, except a sheriff or coroner, sells any real estate  
3 or interest therein, he shall, within five days thereafter, report such sale to  
4 the court in the manner prescribed by the Rules Governing Civil Practice in  
5 the Superior Court, and the court shall, if it approves the sale, confirm the  
6 same as valid and effectual in law, and shall, by order, direct the officer or  
7 other person to execute good and sufficient conveyance in law to the pur-  
8 chaser or purchasers for the real estate or interest therein sold; but no such  
9 sale shall be confirmed unless and until the provisions of said Rules, appli-  
10 cable thereto, have been fully complied with. Any such sale and the con-  
11 firmation thereof shall be subject to such orders in respect thereto as the court  
12 may, at any time, make.

1 7. When a sale of real estate is ordered by the Superior Court in any  
2 civil action, wherein the order or judgment under which such sale is ordered,  
3 is founded upon a cause of action of an equitable nature, except mortgage  
4 foreclosure sales, the officer or person authorized or directed to make the sale  
5 may, in his discretion, make the same at public or private sale and on such  
6 terms as he may deem to be most advantageous to the parties concerned  
7 therein. A private sale shall not be valid until it is confirmed by the court  
8 upon a report of the terms thereof by the officer or person making the sale.

1 8. In all civil actions in the Superior Court, in the nature of a proceed-  
2 ing in equity, for the sale of real estate, the court may, when the personal  
3 estate of the ancestor from whom the real estate descended is insufficient to  
4 pay his just debts, direct such real estate to be sold free from the lien of such  
5 debts, and to make such order touching the disposition of the proceeds of the  
6 sale as may be necessary for the ascertainment and payment of such deficiency  
7 thereout before the distribution of the fund.

1 9. Whenever there shall be a surplus from the sale of real estate sold by  
2 virtue of any order or judgment, and such surplus shall be deposited in the  
3 court ordering the sale or in which the judgment was entered, and any per-  
4 son shall hold a judgment in any of the courts of this State against the

5 owner of such real estate or any other person who shall be entitled to such  
6 surplus, or any part thereof, the court shall, upon affidavit filed by or in  
7 behalf of such judgment creditor, and notice given as prescribed by the Rules  
8 Governing Civil Practice in the Superior Court, and upon proof made to the  
9 satisfaction of the court that the residence of the person entitled to such sur-  
9A plus is unknown and cannot be ascertained, order and direct such sur-  
10 plus to be applied upon such judgment, although such creditor was not made  
11 defendant in such cause, in which case it shall not be necessary that the  
12 judgment creditor be admitted as a party defendant in such cause, but such  
13 affidavit shall be entitled in the cause out of which such surplus was realized.  
14 The proof required by this section may be made by affidavit, or otherwise, as  
15 the court shall direct.

1     10. Sections 2:29-84, 2:29-85 and 2:29-86 of the Revised Statutes are  
2 repealed.

1     11. This act shall take effect July first, one thousand nine hundred and  
2 forty-nine, but its enactment shall not in any manner affect any action, suit  
3 or proceeding commenced prior to its effective date.

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#### STATEMENT

This bill was drawn by the Law Revision and Bill Drafting Commission for the purpose of making the statutes affected conform to the civil practice in the Superior Court.

[OFFICIAL COPY REPRINT]

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1 BE IT ENACTED by the Senate and General Assembly of the State of New  
2 Jersey:

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3 ecutor, administrator, guardian, commissioner or other officer or per-  
4 son is authorized or required by any public statute or the direction of  
5 any court of competent jurisdiction in this State to make sales of real estate,  
6 he shall, unless otherwise specially directed or authorized by law, before  
7 making such sale, give notice of the time and place of such sale by public  
8 advertisement, signed by himself, and set up in the office of the sheriff of  
9 the county or counties where such real estate is situate and at the premises  
10 to be sold at least three weeks next before the time appointed for such sale.  
11 Such notice need not be set up at any other place.

12 Such officer or person, shall also cause such notice to be published four  
13 times in two newspapers to be by him designated, and printed and published  
14 in the county wherein the real estate to be sold is situate, at least once a

15 week, during four consecutive calendar weeks. One of such newspapers  
 16 shall be either a newspaper printed and published at the county seat of such  
 17 county or a newspaper printed and published in the municipality in such  
 18 county having the largest population according to the latest census. The  
 19 first publication shall be at least twenty-one days prior and the last publica-  
 20 tion not more than eight days prior to the time appointed for the sale of  
 21 such real estate.

22 Whenever, in the opinion of any such officer or person the ends of  
 23 justice shall require it, or the sale so being conducted by him will be bene-  
 24 fited thereby, the notice of such sale may be published in three of such  
 25 newspapers instead of two as required by the second paragraph of this sec-  
 26 tion, if there be that number printed and published in the county wherein  
 27 the real estate to be sold is situate.

28 Where real estate is to be sold at public sale, the court, on motion  
 29 made on notice, may order the sheriff or other officer to publish with the  
 30 notice of the sale, a diagram of the premises, in lieu of the actual descrip-  
 31-32 tion, in accordance with the practice and procedure of the Superior Court.

33 The officer or person so advertising in the newspapers shall be entitled  
 34 therefor, in addition to his other fees, to the sum of one dollar and fifty cents  
 35 (\$1.50), except where it is otherwise specifically provided.

1 2. Section 2:75-7 of the Revised Statutes is amended to read as follows:

2 2:75-7. When a sheriff or other officer shall make sale of real estate  
 3 pursuant to a decree, judgment, execution or order of any court, he shall  
 4 make and sign an affidavit indorsed on or added to the conveyance of the  
 5 real estate sold, to the following effect:

6 "I, A. B., sheriff, et cetera, do solemnly swear that the real estate de-  
 7 scribed in this deed made to C. D., was by me sold by virtue of a good and  
 8 subsisting execution (or as the case may be) as is therein recited, that the  
 9 money ordered to be made has not been to my knowledge or belief paid or  
 10 satisfied, that the time and place of the sale of said real estate were by me

11 duly advertised as required by law, and that the same was cried off and sold  
12 to a bona fide purchaser for the best price that could be obtained.

13 A. B., Sheriff.

14 Sworn (or affirmed) before me, one of the, et cetera, on this .....  
15 day of ....., 19..... A. D., and I having examined the deed  
16 above mentioned do approve the same and order it to be recorded as a good  
17 and sufficient conveyance of the real estate therein described.

18 E. F."

19 The affidavit shall be taken before a judge of the Superior Court or an  
20 attorney-at-law of this State, for which taking the officer before whom the  
21-22 affidavit is taken shall be entitled to a fee of one dollar (\$1.00).

23 If there has been a new sheriff elected and qualified, or where the  
24 sheriff may have been incapacitated by death, resignation or otherwise,  
25 after a sale made by the former or incapacitated sheriff, the affidavit re-  
26 quired by this section may be made by such former or incapacitated sheriff  
27 or by the deputy of such former or incapacitated sheriff.

1 3. Section 2:75-8 of the Revised Statutes is amended to read as follows:

2 2:75-8. Any conveyance mentioned in section 2:75-7 of this Title, with  
3 the affidavit required by said section 2:75-7 indorsed thereon or added  
4 thereto, may, when approved by a judge of the Superior Court or an at-  
5-6 torney-at-law of this State, be recorded as if duly acknowledged; and such  
7 conveyance or the record thereof, or a certified copy of such record; shall be  
8 evidence of a good and valid sale and conveyance of the real estate conveyed  
9 thereby, as if the same had been reported to and approved by the court in  
10 pursuance of whose decree, judgment, execution or order the same was made.

1 4. Section 2:75-11 of the Revised Statutes is amended to read as fol-  
2 lows:

3 2:75-11. The provisions of section 2:75-10 of this Title shall apply to  
4 all deeds, declarations of sale and conveyance, duly acknowledged or proved,  
5 heretofore or hereafter made by or under the authority of any public or mu-  
6 nicipal authority, authorized or empowered by any law of this State to make

7 and execute or to direct the making and execution of any deed, declaration  
8 of sale or conveyance; and the proceedings upon which such deeds, declara-  
9 tions of sale and conveyances are founded shall not be subject to be ques-  
10 tioned collaterally, but may be, at any time, reviewed by a proceeding in  
11 lieu of the prerogative writs or other proper proceeding.

1     5. Section 2:75-17 of the Revised Statutes is amended to read as fol-  
2 lows:

3     2:75-17. Whenever any real estate has heretofore been or shall hereafter  
4 be sold or taken upon compensation pursuant to any competent, judicial  
5 authority or any law of this State, and the proceeds of such sale or the com-  
6 pensation for such taking have been or shall be paid into any court of this  
7 State other than the Superior Court, pursuant to such authority  
8 or law, and it shall appear to the court wherein the same have been  
9 or shall be paid that the interests of any person or persons entitled thereto,  
10 or any part thereof, require or will be substantially promoted by the pay-  
11 ment into the Superior Court of so much or such proportion of such pro-  
12 ceeds or compensation as the court wherein such money is paid may de-  
13 termine belong to or should be reserved for the benefit of such person, it  
14 shall be lawful for such court to order the same paid into the Superior  
15 Court, to be thence disposed of as ordered and directed by the Superior  
16 Court.

17     Upon filing such order in the Superior Court and payment of such  
18 money thereunder, such person or persons shall, so far as relates to such  
19 property or money and its income, be considered a ward of the Superior  
20 Court.

1     6. Whenever, by virtue of any order or judgment of the Superior Court,  
2 any officer or other person sells any real estate or interest therein, he shall  
3 report such sale to the court in accordance with the practice and procedure  
4 of the Superior Court, and the court shall, if confirmation thereof is re-

5 quired under said practice and procedure and if it approves the sale, confirm  
6 the same as valid and effectual in law, and shall, by order, direct the officer or  
7 other person to execute good and sufficient conveyance in law to the pur-  
8 chaser or purchasers for the real estate or interest therein sold; but no such  
9 sale shall be confirmed unless and until the requirements of the practice and  
10 procedure of the Superior Court applicable thereto, have been fully com-  
11 plied with. Any such sale and the confirmation thereof shall be subject to  
12 such orders in respect thereto as the court may, at any time, make.

1 7. When a sale of real estate is ordered by the Superior Court in any  
2 civil action, wherein the order or judgment under which such sale is ordered,  
3 is founded upon a cause of action of an equitable nature, except mortgage  
4 foreclosure sales, the officer or person authorized or directed to make the sale  
5 may, in his discretion, make the same at public or private sale and on such  
6 terms as he may deem to be most advantageous to the parties concerned  
7 therein. A private sale shall not be valid until it is confirmed by the court  
8 upon a report of the terms thereof by the officer or person making the sale.

1 8. In all civil actions in the Superior Court, in the nature of a proceed-  
2 ing in equity, for the sale of real estate, the court may, when the personal  
3 estate of the ancestor from whom the real estate descended is insufficient to  
4 pay his just debts, direct such real estate to be sold free from the lien of such  
5 debts, and to make such order touching the disposition of the proceeds of the  
6 sale as may be necessary for the ascertainment and payment of such deficiency  
7 thereout before the distribution of the fund.

1 9. Whenever there shall be a surplus from the sale of real estate sold by  
2 virtue of any order or judgment, and such surplus shall be deposited in the  
3 court ordering the sale or in which the judgment was entered, and any per-  
4 son shall hold a judgment in any of the courts of this State against the  
5 owner of such real estate or any other person who shall be entitled to such  
6 surplus, or any part thereof, the court shall, upon affidavit filed by or in  
7 behalf of such judgment creditor, and notice given as required under the  
8 practice and procedure of the Superior Court, and upon proof made to the

9 satisfaction of the court that the residence of the person entitled to such sur-  
9A plus is unknown and cannot be ascertained, order and direct such sur-  
10 plus to be applied upon such judgment, although such creditor was not made  
11 defendant in such cause, in which case it shall not be necessary that the  
12 judgment creditor be admitted as a party defendant in such cause, but such  
13 affidavit shall be entitled in the action out of which such surplus was realized.  
14 The proof required by this section may be made by affidavit, or otherwise, as  
15 the court shall direct.

1 10. Sections 2:29-84, 2:29-85 and 2:29-86 of the Revised Statutes are  
2 repealed.

1 11. This act shall take effect July first, one thousand nine hundred and  
2 forty-nine, but its enactment shall not in any manner affect any action, suit  
3 or proceeding commenced prior to its effective date.