

ARTICLE 21

Property Acquisition, Sale, and Disposition

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AS BUSINESS ENTITIES, counties and cities need to acquire and dispose of property. In acquiring property, local governments generally are no different than private persons or corporations, although some acquisition procedures are available only to governments. In disposing of property, counties and cities usually must follow detailed statutory procedures.

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Acquisition of Real Property

Counties and cities have broad statutory power to acquire the fee or any lesser interest (such as an easement) in real or personal property for their use or for the use of any of their departments, boards, commissions, or agencies. (Acquisition of personal property, which is generally subject to competitive-bidding requirements, is discussed in Article 20 of this volume.) Under the General Statutes and the common law, local governments may acquire property by the following methods:

1. gift: a voluntary transfer of property, without any cost to the government
2. purchase: a voluntary transfer of property, for a price
3. devise: a voluntary gift of property by a person's last will and testament, without any cost to the government
4. dedication: a voluntary setting aside of an interest in land, usually an easement, for public use, which is accepted on behalf of the public by the local government
5. exchange: a voluntary transfer of property for something of equivalent value
6. lease: a contract giving the government possession of a property for a determinate period
7. adverse possession or prescription: an involuntary transfer of property, without payment, because of long occupation of the property by the government
8. eminent domain: an involuntary transfer of property, on payment of just compensation

A city may acquire property as a sole owner or as a joint owner with another government.

Security Interests

When it does acquire property, a government may not, as a part of the transaction, give a mortgage or another security interest in the property¹ unless a statute specifically permits it to do so.² A variety of statutes do permit local governments to give security interests to secure money borrowed by the government. The most important of these is G.S. 160A-20, which allows a variety of local governments to give a security interest in limited circumstances:

1. to the seller of real or personal property to secure the purchase price when the local government is paying for the property in installments;
2. to the lender if the local government finances such a purchase; or
3. to a construction lender if the loan is structured as an installment purchase contract.

(This statute is discussed in detail in Article 14.) The other statutes that permit security interests are as follows:

1. G.S. 159-83(a)(5), which permits giving a security interest in real property financed with revenue bonds.
2. G.S. 159-111(b), which permits giving a security interest in real property financed with project development bonds.
3. G.S. 159G-18(a), which permits giving a security interest in real property financed with special obligation bonds.
4. G.S. 131A-6, which permits giving a security interest in health care facilities financed through bonds issued by the Medical Care Commission.
5. G.S. 143-64.17I, which permits giving a security interest in property improved through a guaranteed energy savings contract.

1. *Vaughan v. Commissioners of Forsyth County*, 188 N.C. 636, 125 S.E. 177 (1896).

2. *Brockenbrough v. Board of Water Comm'rs*, 134 N.C. 1, 46 S.E. 28 (1903).

Eminent Domain

The United States Constitution forbids government from taking private property “for public use without just compensation” or “without due process of law” (U.S. Constitution Amendment V). The North Carolina Constitution guarantees that no person may be deprived of property “but by the law of the land” (N.C. CONST. Art. I, § 19). The North Carolina Constitution does not expressly give government bodies a right to take private property, but the state’s courts have deemed such a power of eminent domain to be inherent in the power to govern and to be essential to the government’s ability to provide for the public welfare.

Whenever counties and cities exercise their powers of eminent domain, they must abide by the constitutional requirements of taking property only for public uses and benefits, and paying the owners just compensation for the property taken. No power of eminent domain exists unless the legislature has invoked the authority by legislation. The authority of counties and cities to take private property by eminent domain is expressed in North Carolina General Statutes Chapter 40A, which identifies the allowed public purposes for a taking and the procedure for exercising it (G.S. 40A-1). Other statutes describe additional public purposes and benefits for which certain districts, authorities, and organizations may take private property.

Compliance with the statutory requirements is important to avoid objections and complications, so any county or city that is taking property by eminent domain should review the current version of the statutes to confirm the existence of authority for the action and to ensure compliance with procedural requirements.

Public and Private Condemnors

The governing body of a county or city is a “public condemnor,” as are certain other authorities such as sanitary district boards, hospital and housing authorities, community college boards of trustees, and regional transportation authorities, among others [G.S. 40-A-3(b),(c)]. “Private condemnors” that have a statutory power of eminent domain include railroads, utilities, private educational institutions for water supply purposes, and union bus station companies [G.S. 40A-3(a)].

Authorized Public Uses and Benefits

The condemnation statute identifies a number of purposes for which public condemnors may use the power of eminent domain, including:

- roads, streets, alleys, and sidewalks
- systems for water supply and distribution, wastewater, septic, solid waste, and stormwater management; airports; parking; public transportation; cities may also take property for electric and gas power generation, transmission, and distribution under defined circumstances
- parks, playgrounds, and other recreational facilities
- storm sewer and drainage systems
- hospital facilities, cemeteries, and libraries
- city halls, fire stations, office buildings, jails, and other buildings for use by any department, board, commission, or agency
- drainage programs and programs to prevent obstruction to the natural flow of streams or to improve drainage facilities
- acquisition of designated historical properties
- public wharves
- certain coastal counties and cities may condemn property for beach erosion control and flood and hurricane protection and for public trust beaches and related parking areas. [G.S. 40A-3(b)]

Other recognized public purposes are identified in statutes creating public bodies or establishing public programs, such as exists for an urban redevelopment commission (G.S. 160A-515) or local boards of education (G.S. 115C-517).

Counties and cities may not condemn property owned by the State of North Carolina unless the state consents to the taking. The state’s consent is given by the Council of State or by the Secretary of Administration if the council delegates that authority to the secretary. When state property is taken, the only issue is the compensation to be paid (G.S. 40A-5).

Except as otherwise provided by statute, public condemners may take private condemners' property if the property is not in actual public use or is not necessary to the operation of the owner's business. Public condemners may condemn another public condemner's property if the property is not being used or held for future use for any governmental or proprietary purpose [G.S. 40A-5(b)].

Just Compensation

The owner is entitled to be paid "just compensation" for the property taken, which must reflect the property's fair market value as of the date immediately before the county or city files a complaint (G.S. 40A-63). Fair market value is based on the highest and best uses available for the property, not just the actual uses to which the property has been put. The analysis assumes a ready and able buyer who is willing but not compelled to buy (*Barnes v. Highway Commission*, 250 N.C. 378, 387-88, 109 S.E.2d 219, 227 (1958)). If only part of a tract is taken, the measure of compensation is the greater of two calculations. The first is diminution in value, which is the amount by which the fair market value of the entire tract immediately before the taking exceeded the fair market value of the remainder immediately after the taking. The second is the fair market value of the part of the property that was taken (G.S. 40A-64). The compensation will not include changes in value before the date of valuation that were caused by the proposed improvement or project for which the property is taken (G.S. 40A-65).

The condemner may allow the owner to remove timber, buildings, fixtures, and improvements that are not needed for the intended condemnation use. If the compensation award deducted the value of these materials and the owner does not remove them within a reasonable time, the removal and storage cost is chargeable to the owner and secured by a lien on any remaining part of the owner's property (G.S. 40A-9).

Condemnation Procedure

In many cases, the condemning authority and the property owner will be able to agree to the taking and the amount of compensation for it, usually based on appraisal reports. When such an agreement cannot be reached, any dispute about the legitimacy of the public purpose for which the property is being taken will be determined by a superior court, and disagreements about the amount of compensation will be determined by the court or commissioners appointed by the superior court clerk.

Negotiations and Right of Entry

The public condemner may negotiate with an owner about acquiring the property without impairing its power to take the property by eminent domain. The statute provides that the power to acquire property by condemnation does not depend on any prior effort to acquire the same property by gift or purchase, nor is the power to negotiate for the gift or the purchase of property impaired by initiation of a condemnation proceeding (G.S. 40A-4.) A condemner who seeks to acquire property by purchase or gift must give the owner a written notice of the owner's right to reimbursement of taxes allocable to the period before the taking (G.S. 40A-4; G.S. 40A-6).

With thirty days' advance notice to the landowner, a condemner may enter on private land, but not structures, to make surveys, borings, examinations, or appraisals without filing a complaint, making a deposit, or taking any other formal action. The condemner must reimburse the owner for any damages resulting from these activities (G.S. 40A-11).

Notice

At least thirty days before filing a complaint for condemnation, the condemner must give written notice to the owner of the condemner's intent to institute such an action (G.S. 40A-40). This notice must include information prescribed by G.S. 40A-40, including a description of the property to be taken and the condemner's estimate of the "just compensation," the purpose for which the property is being taken, and the date the condemner intends to file a complaint [G.S. 40A-40(a)]. Additional notice requirements apply to condemnation actions in which title will vest upon the filing of the complaint and deposit, the so-called quick take procedure described below [G.S. 40A-40(b)].

Complaint, Registry Memorandum, and Deposit

A public condemner institutes an eminent domain action by filing a complaint in the superior court of the county in which the land is located, with a declaration of taking. The complaint must include a statement of the authority under which the taking is occurring, a description of the property, the purpose of the condemnation, information about the owner's identity, the estimated just compensation, a statement about whether any improvements may be removed by the owner, a description of any known liens, and a request for a determination of just compensation (G.S. 40A-41). The condemner must deposit the amount of estimated compensation with the court when the

complaint is filed (G.S. 40A-41). At the same time the condemnor also must record a memorandum of action with the register of deeds in any county where involved land is located, which gives third parties constructive notice of the pending condemnation (G.S. 40A-43).

The summons, together with a copy of the complaint and a notice of the deposit, is served on the named parties (G.S. 40A-41).

If an owner's property is taken by a county or city that did not commence a condemnation proceeding, the owner may begin an action for compensation within twenty-four months of the date of the taking or the completion of the public project, whichever occurs later. The procedure in such cases is similar to cases in which the action is begun by the condemnor (G.S. 40A-51).

Disbursement of Deposit

When there is no dispute about title, the persons named in the complaint may apply to the court for disbursement of all or part of the deposit, without prejudice to the owner's challenge to the sufficiency of the compensation. The condemnor is not entitled to notice of a hearing on the owner's request for disbursement of the deposit (G.S. 40A-44).

Transfer of Title

The point at which the condemnor becomes owner of the property depends on the condemnation's purpose. When a county or city condemns property for certain listed purposes, the title to the property and the right to immediate possession vest when the complaint is filed and the deposit is made. This is known as the "quick take" procedure. It applies to such uses as roads, water and wastewater systems, solid waste collection and disposal, and city systems for electricity, gas, cable, storm sewer and drainage, and to certain beachfront communities for beach erosion control and flood and hurricane protection and for public trust beaches and related parking areas. It does not apply to property to be taken for public transportation systems, off-street parking facilities, airports, and certain other purposes [G.S. 40A-42(a)].

When title does not transfer upon the filing of the complaint, the timing of the transfer depends on the course of the condemnation proceeding. If the owner does not dispute the taking but only the amount of compensation, title vests when the owner files the answer stating this to be so. If the owner fails to file an answer within 120 days, title vests when the deadline passes. Title also vests upon disbursement of the deposit at the owner's request. The owner may seek an injunction to prevent title from vesting (G.S. 40A-42).

Answer and Reply

The owner has 120 days to file an answer admitting or denying the allegations of the complaint and stating any affirmative defenses. No answer is filed to the declaration of taking and notice of deposit. The condemnor may file a reply within thirty days of receipt of the answer (G.S. 40A-45; G.S. 40A-46). If an owner does not file an answer as required, the owner is deemed to have admitted that the amount deposited is just compensation. In such a case the judge enters final judgment and orders disbursement of the deposited money (G.S. 40A-46).

Within ninety days after receipt of the answer, but no sooner than six months after filing the complaint, the condemnor must file a plat of the property taken and of such other areas as are necessary for a determination of the compensation, and this plat is mailed to the parties or counsel [G.S. 40A-45(c)].

The court will appoint an attorney to represent any party in interest who is unknown or cannot be found, as may occur when the current holder of an interest in property cannot be determined based on the available public records. In addition, the court will appoint a guardian ad litem to represent those who do not have the legal capacity to defend themselves, such as children or those under a legal disability (G.S. 40A-50).

Challenge to Taking

Challenges to the sufficiency of the public purpose for the taking, the condemnor's authority, the area taken, the presence of necessary parties, or any other matters besides the amount of just compensation, will be heard and decided by a judge. Either party may raise these issues by motion to the court with ten-days' notice (G.S. 40A-47).

Appointment and Duties of Commissioners

If the owner disputes the condemnor's just compensation amount, either the owner or the condemnor may, within sixty days after the answer has been filed, request the clerk of superior court to appoint commissioners. The clerk then appoints three competent, disinterested persons who reside in the county to serve as commissioners. The commissioners have the power to inspect the property, hold hearings, swear witnesses, and take evidence as they deem necessary. When they have completed these tasks, they must file with the court a report on a statutorily prescribed form reciting the formalities of the process and stating the amount of compensation. The clerk mails a copy to the parties or their counsel (G.S. 40A-48).

If no request is made for commissioners, the case is placed on the court's civil docket for trial to determine the amount of compensation (G.S. 40A-49).

Challenge to the Commissioners' Determination

Either party has thirty days after the commissioners' report is mailed to challenge the commissioners' determination and demand a trial on the issue of compensation. The trial will be by jury unless both parties waive the right. The issue of compensation is newly determined by the jury or court based on evidence presented at the trial; the amount of the deposit and the commissioners' determination are not considered. If no exception is filed, the judge still reviews the commissioner's award to determine if it is just, and if it is so determined, the award is entered as a final judgment. If the judge decides the award is not just, the amount is set aside and the matter is set for a trial [G.S. 40A-48(d)].

Costs and Interest

An owner is entitled to interest on the award at the rate of 6 percent from the date of taking to the date of judgment, but not on the deposit amount for the period after it was made (G.S. 40A-53). The court has the power to order a condemnor to pay an owner's court costs (G.S. 40A-13). The court has discretion to order the condemnor to pay the owner's costs of appraisers, engineers, and plats used as evidence in the procedure [G.S. 40A-8(a)]. If the condemnor abandons the condemnation after filing a complaint, or is determined not to have had authority for the taking, the court may award the owner compensation for costs, disbursements, expenses, and loss suffered as a result of not being able to transfer title during the proceeding [G.S. 40A-8(b)]. Owners are also entitled to such compensation if they were forced to bring an action to recover compensation for a taking not instituted by the condemnor [G.S. 40A-8(c)].

Sale or Disposition of Local Government Property

County and city governments generally dispose of property in accordance with the procedures set forth in G.S. Chapter 160A, Article 12 (G.S. 160A-265 through -279), although there are a few other disposition procedures set out in other statutes, applicable to special situations. These various statutes authorize several methods for selling or disposing of property and set forth the procedures for each one. Before examining these methods, it is useful to discuss one introductory matter: the need for consideration when disposing of local government property.

Consideration

Under the North Carolina Constitution it is generally unconstitutional for a local government to dispose of property for less than its fair market value.³ A gift of property or a sale at well below market value constitutes the granting of an "exclusive privilege or emolument" to the person receiving the property, which is prohibited by Article 1, Section 32, of the constitution. Most of the procedures by which a local government is permitted to sell or otherwise dispose of property are competitive, and the North Carolina Supreme Court has indicated that the price resulting from an open and competitive procedure will be accepted as the market value.⁴ If a sale is privately negotiated, the price will normally be considered appropriate unless strong evidence indicates that it is so significantly below market value as to show an abuse of discretion.⁵

It is not always constitutionally necessary that a local government receive *monetary* consideration when it conveys property. If the party receiving the property agrees to put it to some public use, that promise constitutes sufficient consideration for the conveyance.⁶ (The receiver in this case is often, but not always, another government.) The General Statutes expressly permit several such conveyances: to governments (G.S. 160A-274), to volunteer fire departments and rescue squads (G.S. 160A-277), to nonprofit preservation or conservation organizations [G.S. 160A-266(b)], and to nonprofit agencies to which the county or city is authorized to appropriate money (G.S. 160A-279).

3. Cf. *Redevelopment Comm'n v. Security Nat'l Bank*, 252 N.C. 595, 114 S.E.2d 668 (1960).

4. *Id.*

5. *Painter v. Wake County Bd. of Educ.*, 288 N.C. 165, 217 S.E.2d 650 (1975).

6. *Brumley v. Baxter*, 225 N.C. 691, 36 S.E.2d 281 (1945).

Disposition Procedures

G.S. Chapter 160A, Article 12, sets out three competitive methods of sale, each of which is appropriate in any circumstance: sealed bid, negotiated offer and upset bid, and public auction. Article 12 also permits privately negotiated exchanges of property in any circumstance (as long as equal value changes hands) and privately negotiated sales or other dispositions of property in a number of limited circumstances. In addition, a few other statutes permit privately negotiated sales or other dispositions of property, again in limited circumstances. These various methods of disposition are summarized in the following sections. In undertaking any of them a local government must remember that the statutory procedure must be exactly followed or the transaction may be invalidated by a court.⁷

Sealed Bids

A local government may sell any real or personal property by sealed bid (G.S. 160A-268).

Procedure. The procedure is based on that set forth in G.S. 143-129 for purchasing property, with one modification for real property. An advertisement for sealed bids must be published in a newspaper that has general circulation in the county (for a county government) or in the county in which the city is located (for a city government). Publication must occur seven full days (not counting the day of publication or the day of opening) before the bids are opened if personal property is being sold and thirty days before the bids are opened if real property is being sold. The advertisement should generally describe the property; tell where it can be examined and when and where the bids will be opened; state whether bid deposit is required, how much it is, and the circumstances under which it will be retained; and reserve the governing board's right to reject any and all bids. Bids must be opened in public, and the award is made to the highest bidder.

Comment. This procedure appears to be designed to obtain wide competition by providing public notice and good opportunity for bidders to examine the property. Invitations to bid may be mailed to prospective buyers, just as they are typically sent to prospective sellers in the formal purchasing procedures for personal property. This procedure is essentially the one used by the Division of Purchase and Contract in disposing of almost all surplus personal property owned by the state.

Negotiated Offer and Upset Bid

A local government may sell any real or personal property by negotiated offer and upset bid (G.S. 160A-269).

Procedure. The procedure begins when the local government receives and proposes to accept an offer to purchase specified government property. (The offer may be either solicited from the offeror or made directly by it on its own initiative.) The governing board then requires the offeror to deposit a 5 percent bid deposit with its clerk and causes a notice of the offer to be published. The notice must describe the property; specify the amount and the terms of the offer; and give notice that the bid may be raised by not less than 10 percent of the first \$1,000 originally bid, plus 5 percent of any amount above \$1,000 of the original bid. Upset bids must also be accompanied by a 5 percent bid deposit. Prospective bidders have ten days from the date on which the notice is published to offer an upset bid. This procedure is repeated until ten days have elapsed without the local government receiving an upset bid. After that time the board may sell the property to the final offeror. At any time in the process, it may reject any and all offers and decide not to sell the property.

Public Auction

A local government may sell any real or personal property by public auction (G.S. 160A-270).

Procedure. The statute sets out separate procedures for real and personal property sold at public auction; there is also provision for electronic auctions. For real property the governing board must adopt a resolution that authorizes the sale; describes the property; specifies the date, the time, the place, and the terms of the sale; and states that the board must accept and confirm the successful bid. The board may require a bid deposit. A notice containing the information set out in the resolution must be published at least once and not less than thirty days before the auction. The highest bid is reported to the governing board, which then has thirty days in which to accept or reject it.

For personal property the same procedure is followed except that (1) the board may in the resolution authorize an appropriate official to complete the sale at the auction and (2) the notice must be published not less than ten days before the auction.

7. *Bagwell v. Town of Brevard*, 267 N.C. 604, 148 S.E.2d 635 (1966). Some government boards routinely declare as surplus any property that is to be sold. No statute requires such a declaration, however, and it does not appear to be necessary. A city or county evidences its conclusion that property is surplus by selling it.

G.S. 160A-270(c) permits a local government to sell either real or personal property electronically. The governing board must follow the same procedures as set out above, but in addition the notice must specify the electronic address where information about the property to be sold can be found and the electronic address at which electronic bids may be posted.

Comment. Public auction is a traditional method of selling both real and personal property. Open competitive bidding may under some circumstances encourage the offering of higher prices. The possibility of immediately acquiring possession of personal property makes this approach attractive to many buyers.

Exchange of Property

A local government may exchange any real or personal property for other real or personal property if it receives full and fair consideration for the property (G.S. 160A-271).

Procedure. After the terms of the exchange agreement are developed by private negotiations, the governing board authorizes the exchange at a *regular* meeting. A notice of intent to make the exchange must be published at least ten days before it occurs. The notice must describe the properties involved, give the value of each as well as the value of other consideration changing hands, and cite the date of the regular meeting at which the board proposes to confirm the exchange.

Comment. The exchange procedure is probably most useful in connection with a trade of real property when boundaries must be adjusted or when an individual owns land needed by the county or city and wants some other tract of government land. G.S. 143-129.7 permits local governments to convey surplus property as a “trade-in” when the government is purchasing apparatus or equipment; such an exchange need not comply with the procedures of G.S. 160A-271.

Private Negotiation and Sale: Personal Property

A local government may use private negotiation and sale to dispose of personal property valued at less than \$30,000 for any one item or any group of similar items (G.S. 160A-266, -267).

Procedure. At a *regular* meeting, the governing board by resolution authorizes an appropriate official to dispose of identified property at private sale. The board may set a minimum price but is not required to do so. The resolution must be published at least ten days before the sale.

Alternatively, G.S. 160A-266(c) authorizes a governing board to establish procedures under which county or city officials may dispose of personal property valued at less than \$30,000 for any item or any group of similar items without further board action. The procedures may permit one or more officials to declare qualifying property to be surplus, to set its market value, and to sell it by public or private sale. The board may require the official to use one of the statutory methods, including an electronic auction, or may permit other sorts of procedures, such as a consignment agent or a surplus property warehouse. The statute requires the selling official to maintain a record of property sold under any such procedures.

Private Negotiation and Conveyance to Other Governments

G.S. 160A-274 authorizes any governmental unit in the state, on terms and conditions determined by the unit, to sell to, purchase from, exchange with, lease to, or lease from any other governmental unit any interest in real or personal property that one or the other unit may own. *Governmental unit* is defined to include cities, counties, the state, school units, and other state and local agencies. The single limitation on this broad authority is that before a county or city board of education may lease real property that it owns, it must determine that the property is unnecessary or undesirable for school purposes; and it may not lease the property for less than \$1 per year.⁸ Bids or published notices are not required. Thus, when reaching agreements on property with another governmental unit, a unit’s governing board has full discretion concerning procedure.

Other Negotiated Conveyances: Real and Personal Property

A city or county may, in limited circumstances, convey real property and sometimes without monetary consideration.

8. Although in general, local governments may transfer property among themselves without monetary consideration, the North Carolina Supreme Court has held that a local school board must receive fair consideration whenever it conveys property for some nonschool use, including some other governmental use. *Boney v. Board of Trustees*, 229 N.C. 136, 48 S.E.2d 56 (1948). The \$1 requirement for leases of school property presumably is a legislative determination that this amount is adequate consideration when title to the property remains with the school administrative unit.

Economic Development. G.S. 158-7.1(d) permits a county or city to convey interests in property suitable for economic development by private sale. Before making such a conveyance, the governing board must hold a public hearing, with at least ten days' published notice of the hearing. The notice must describe the interest to be conveyed; the value of the interest; the proposed consideration the government will receive; and the board's intention to approve the conveyance. In addition, before making the conveyance the board must determine the probable average wage that will be paid to workers at the business to be located on the property.

The statute requires the governing board to determine the fair market value of the property and prohibits the board from conveying the property for less than that value. In arriving at the amount of consideration the government receives, however, it may count the prospective tax revenues for the next ten years from improvements added to the property after the conveyance, prospective sales tax revenues generated by the business during that period, and any other income coming to the government during the ten years as a result of the conveyance.

Community Development. G.S. 160A-457 permits a city (but not a county or any other sort of local government) to convey interests in property by private sale when those properties are within a community development project area. The property must be sold subject to covenants that restrict its eventual use to those consistent with the community development plan for the project area. The statute requires that the property be appraised before it is sold and prohibits the city from selling for less than the appraised value.

Once a city has reached agreement on a conveyance pursuant to this statute, it must publish notice of a public hearing on the transaction for the two weeks before the hearing. The notice should describe the property, disclose the terms of the transaction, and give notice of the city's intention to convey the property. At the hearing itself the city must disclose the appraised value of the property.

Nonprofit Agencies. G.S. 160A-279 permits a county or city to convey real or personal property to any nonprofit agency to which it is authorized by law to appropriate funds. (Property acquired through condemnation may not be so conveyed.) The same procedures must be followed as required by G.S. 160A-267 for other private sales. In making a conveyance under this statute, a county or city may accept as consideration the nonprofit agency's promise to put the property to some public use.

Property for Affordable Housing. Both counties and cities enjoy authority to convey property by private sale in order to provide affordable housing (housing, that is, for persons of low or moderate income), but they do so under separate statutes that have somewhat different provisions. G.S. 153A-378 includes two provisions that permit a *county* to make two sorts of conveyances. First, a county may convey residential property directly to persons of low or moderate income. If it does so, it must follow the same procedures required by G.S. 160A-267 for other private sales. Second, a county may convey property to a public or private entity that provides affordable housing for others. The statute imposes no procedural requirements for such a conveyance.

A complicated series of statutes permits *cities* to convey property to nonprofit entities that will construct affordable housing. First, G.S. 160A-456(b) permits a city council to exercise any power granted by law to a housing authority. Second, G.S. 157-9 authorizes a housing authority to provide housing projects, a term defined in G.S. 157-3 to include programs that assist developers and owners of affordable housing. Third, G.S. 160A-20.1 permits a city to appropriate money to a private organization to do anything a city could do, which includes providing affordable housing. And fourth, G.S. 160A-279, summarized just above, authorizes a city to convey property to any nonprofit agency to which it may appropriate money.

Fire or Rescue Services. G.S. 160A-277 permits counties and cities to lease or convey *land* to volunteer fire departments or rescue squads that is to be used for constructing or expanding their facilities. The governing board must approve the transaction by adoption of a resolution at a regular meeting, on ten days' published notice. The notice should describe the property, state its value, set out the proposed monetary consideration or the lack thereof, and declare the board's intention to approve the transaction. (Almost all fire or rescue organizations are nonprofit in nature, so a local government may also use G.S. 160A-279 to convey property to them.)

Architectural and Cultural Property. G.S. 160A-266(b) permits a county or city to convey, after private negotiation, real or personal property that is significant for its archaeological, architectural, artistic, cultural, or historic associations; for its association with such property; or for its natural, scenic, or open condition. The conveyance must be to a nonprofit corporation or trust whose purposes include the preservation or the conservation of such property, and the deed must include covenants and other restrictions securing and promoting the property's protection. A local government making a conveyance under this provision must follow the same procedures as noted earlier for the private sale of personal property.

Open Space. G.S. 160A-403 permits a local government to conserve open space by acquiring title to property, then conveying it back to the original owner or to a new owner, in each case subject to covenants that require the property to be maintained as open space. If the conveyance is back to the original owner, the statute permits it to be made

by private sale. If the conveyance is to an appropriate entity, it may be made by private sale pursuant to G.S. 160A-266(b), discussed in a preceding paragraph. Otherwise, however, the government must use one of the competitive sale methods.

Other Private Conveyances. A number of other statutes permit private sales of property in narrow circumstances; only one of these statutes includes any required procedures.

1. G.S. 160A-321 permits the private sale of any entire city enterprise. Unless the enterprise is conveyed to another government, however, the statute requires the city's voters to approve the conveyance for the following kinds of enterprises: electric power distribution; water supply and distribution; wastewater collection, treatment, and disposal; natural gas distribution; public transportation; cable television; and stormwater management.
2. G.S. 105-376(c) permits a government that has acquired property through a tax foreclosure to convey the property back to the original owner or to any other person or entity that had an interest in the property (such as a deed of trust).
3. G.S. 153A-163 permits a government that has acquired property through a loan foreclosure to sell the property by private sale as long as it receives at least as much as it paid for the property.
4. G.S. 153A-176 permits a government that has been given property for a specified purpose to give the property back to the donor if it will not use the property for the specified purpose.
5. G.S. 40A-70 permits a government that has acquired property through eminent domain, which it no longer needs, to convey the property back to the condemnee, as long as the government receives in return its original purchase price, the cost of any improvements, and interest.
6. G.S. 160A-342 permits a city that operates a cemetery to convey it to a private operator of cemeteries.

Lease of Property

A county or city may lease any property that it owns that the governing board finds will not be needed during the term of the lease (G.S. 160A-272). The procedure to be followed depends on the length of the lease. The board may, by resolution at any meeting, make leases for one year or less. It may also authorize the manager or some other administrative officer to take similar action concerning government property for the same period.

The governing board may lease government-owned property for periods longer than one year and up to ten years by a resolution adopted at a regular meeting, after ten days' published notice of its intention to do so. The notice must also specify the annual lease payment and give the date of the meeting at which the board proposes to approve the action.

A lease for longer than ten years must be treated, for procedural purposes, as if it were a sale of property. It may be executed by following any procedure authorized for selling real property.

Grant of Easements

A county or city may grant easements over, through, under, or across any of its property (G.S. 160A-273). The authorization should be by resolution of the governing board at a regular meeting. No special published notice is required, nor is the grant subject to competition.

Sale of Stocks, Bonds, and Other Securities

A county or city that owns stocks, bonds, or other securities that are traded on the stock exchanges or over the counter by brokers and securities dealers may sell them in the same way and under the same conditions as a private owner would (G.S. 160A-276).

Warranty Deeds

G.S. 160A-275 authorizes a city council or board of county commissioners to execute and deliver deeds to any governmentally owned real property with full covenants of warranty when the board determines that it is in the unit's best interest to do so. Board members are relieved of any personal liability arising from the issuance of warranty deeds if their actions are in good faith.

Additional Resources

Lawrence, David M. *Local Government Property Transactions in North Carolina*. Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill, 1987.

Loeb, Ben F. Jr. *Eminent Domain Procedure for North Carolina Local Governments*. Chapel Hill, N.C.: Institute of Government, University of North Carolina at Chapel Hill, 1984.

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