

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 164
PROPOSED COMMITTEE SUBSTITUTE H164-PCS50293-RO-6

Short Title: Release of Upset Bid Deposit.

(Public)

Sponsors:

Referred to:

February 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE RELEASE OF FUNDS DEPOSITED BY AN UPSET
BIDDER OR A HIGH BIDDER IN A FORECLOSURE PROCEEDING WHEN A
BANKRUPTCY PETITION IS FILED.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-21.22 reads as rewritten:

"§ 45-21.22. **Procedure upon dissolution of order restraining or enjoining sale, or upon lifting of automatic debtor's bankruptcy stay, before completion of 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.

(c) When, after the entry of any authorization or order by the clerk of superior court pursuant to G.S. 45-21.16 and before the expiration of the 10-day upset bid period, the foreclosure sale is stayed by the debtor filing a bankruptcy petition pursuant to 11 U.S.C. § 105 or 362, and thereafter the stay is lifted, terminated, or dissolved, the trustee or mortgagee shall not be required to comply with the provisions of G.S. 45-21.16, but shall advertise and hold the sale in accordance with the provisions of G.S. 45-21.16A, 45-21.17, and 45-21.17A.

(d) In the event that completion of the foreclosure sale is stayed pursuant to 11 U.S.C. § 105 or 362, before the expiration of the 10-day upset bid period:

- (1) The clerk of superior court who received a deposit from an upset bidder shall release any deposits held on behalf of the upset bidder to the upset bidder upon receipt of a certified copy of an order or notice from the bankruptcy court indicating that the debtor has filed a bankruptcy petition; or
- (2) The trustee or mortgagee who received a cash deposit from the high bidder at the foreclosure sale, upon notification of the bankruptcy stay, shall release any deposits held on behalf of the high bidder to the high bidder."

SECTION 2. This act becomes effective October 1, 2011.

