

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 407  
PROPOSED COMMITTEE SUBSTITUTE H407-PCS90089-TG-21

Short Title: Trustee-Atty Fee/Foreclosures/Clerk Approval.

(Public)

Sponsors:

Referred to:

March 25, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO AUTHORIZE CLERKS OF SUPERIOR COURT TO DETERMINE THE  
3 REASONABLENESS OF COUNSEL FEES PAID TO AN ATTORNEY SERVING AS A  
4 TRUSTEE IN A POWER OF SALE FORECLOSURE PROCEEDING.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 45-21.31 reads as rewritten:

7 "§ 45-21.31. Disposition of proceeds of sale; payment of surplus to clerk.

8 (a) The proceeds of any sale shall be applied by the person making the sale, in the  
9 following order, to the payment of –

- 10 (1) Costs and expenses of the sale, including the trustee's commission, if any,  
11 and a reasonable auctioneer's fee if such expense has been ~~incurred~~; incurred,  
12 and reasonable counsel fees for an attorney serving as a trustee if allowed  
13 pursuant to subsection (a1) of this section;  
14 (2) Taxes due and unpaid on the property sold, as provided by G.S. 105-385,  
15 unless the notice of sale provided that the property be sold subject to taxes  
16 thereon and the property was so sold;  
17 (3) Special assessments, or any installments thereof, against the property sold,  
18 which are due and unpaid, as provided by G.S. 105-385, unless the notice of  
19 sale provided that the property be sold subject to special assessments thereon  
20 and the property was so sold;  
21 (4) The obligation secured by the mortgage, deed of trust or conditional sale  
22 contract.

23 (a1) The clerk of the superior court of the county where the sale was had may exercise  
24 discretion to allow reasonable counsel fees to an attorney serving as a trustee (in addition to the  
25 compensation allowed to the attorney as a trustee) where the attorney, on behalf of the trustee,  
26 renders professional services as an attorney that are different from the services normally  
27 performed by a trustee and of a type which would reasonably justify the retention of legal  
28 counsel by a trustee who is not licensed to practice law. Counsel fees are presumed reasonable  
29 if in compliance with G.S. 6-21.2(1) and (2). Nothing in this section, however, shall preclude  
30 the clerk of superior court from deeming a higher fee reasonable.

31 (b) Any surplus remaining after the application of the proceeds of the sale as set out in  
32 subsection (a) shall be paid to the person or persons entitled thereto, if the person who made the  
33 sale knows who is entitled thereto. Otherwise, the surplus shall be paid to the clerk of the  
34 superior court of the county where the sale was had–

- 35 (1) In all cases when the owner of the property sold is dead and there is no  
36 qualified and acting personal representative of his estate, and



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- 1           (2)    In all cases when he is unable to locate the persons entitled thereto, and  
2           (3)    In all cases when the mortgagee, trustee or vendor is, for any cause, in doubt  
3                    as to who is entitled to such surplus money, and  
4           (4)    In all cases when adverse claims thereto are asserted.  
5       (c)    Such payment to the clerk discharges the mortgagee, trustee or vendor from liability  
6 to the extent of the amount so paid.  
7       (d)    The clerk shall receive such money from the mortgagee, trustee or vendor and shall  
8 execute a receipt therefor.  
9       (e)    The clerk is liable on his official bond for the safekeeping of money so received  
10 until it is paid to the party or parties entitled thereto, or until it is paid out under the order of a  
11 court of competent jurisdiction."  
12           **SECTION 2.** This act is effective when it becomes law.