

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 164
Committee Substitute Favorable 4/13/11

Short Title: Release of Upset Bid Deposit.

(Public)

Sponsors:

Referred to:

February 24, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE RELEASE OF FUNDS DEPOSITED BY AN UPSET
3 BIDDER OR A HIGH BIDDER IN A FORECLOSURE PROCEEDING WHEN A
4 BANKRUPTCY PETITION IS FILED.

5 The General Assembly of North Carolina enacts:

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

7 "**§ 45-21.22. Procedure upon dissolution of order restraining or enjoining sale, or upon**
8 **lifting of automatic debtor's bankruptcy stay, before completion of sale.**

9 (a) When, before the date fixed for a sale, a judge dissolves an order restraining or
10 enjoining the sale, he may, if the required notice of sale has been given, provide by order that
11 the sale shall be held without additional notice at the time and place originally fixed therefor, or
12 he may, in his discretion, make an order with respect thereto as provided in subsection (b).

13 (b) When, after the date fixed for a sale, a judge dissolves an order restraining or
14 enjoining the sale, he shall by order fix the time and place for the sale to be held upon notice to
15 be given in such manner and for such length of time as he deems advisable.

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

22 (d) In the event that completion of the foreclosure sale is stayed pursuant to 11 U.S.C. §
23 105 or 362, before the expiration of the 10-day upset bid period:

24 (1) The clerk of superior court who received a deposit from an upset bidder shall
25 release any deposits held on behalf of the upset bidder to the upset bidder
26 upon receipt of a certified copy of an order or notice from the bankruptcy
27 court indicating that the debtor has filed a bankruptcy petition; or

28 (2) The trustee or mortgagee who received a cash deposit from the high bidder
29 at the foreclosure sale, upon notification of the bankruptcy stay, shall release
30 any deposits held on behalf of the high bidder to the high bidder."

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

