

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**SENATE BILL 809\***

Short Title: Foreclosure Notice of Sale/Disp. of Proceeds.

(Public)

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Sponsors: Senators Apodaca; and Bingham.

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Referred to: Judiciary II.

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March 23, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT ALL NOTICES OF SALE INDICATE THAT THE  
2 SALE MAY BE DELAYED AND TO DIRECT THE DISPOSITION OF  
3 PROCEEDS FROM FORECLOSURE SALES TO PROTECT SECOND AND  
4 SUCCESSOR MORTGAGEES AND JUDGMENT CREDITORS.  
5

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 45-21.16A(2) reads as rewritten:

8 "(2) Designate the date, ~~hour-hour~~, including the possibility of a one-hour  
9 delay as provided in G.S. 45-21.23, and place of sale consistent with  
10 the provisions of the instrument and this Article;".

11 **SECTION 2.** G.S. 45-21.31 reads as rewritten:

12 "**§ 45-21.31. Disposition of proceeds of sale; payment of surplus to clerk.**

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

- 15 (1) Costs and expenses of the sale, including the trustee's commission, if  
16 any, and a reasonable auctioneer's fee if ~~such-that~~ expense has been  
17 ~~incurred;~~ incurred.
- 18 (2) Taxes due and unpaid on the property sold, as provided by  
19 G.S. 105-385, unless the notice of sale provided that the property be  
20 sold subject to taxes thereon and the property was so ~~sold;~~ sold.
- 21 (3) Special assessments, or any installments thereof, against the property  
22 sold, which are due and unpaid, as provided by G.S. 105-385, unless  
23 the notice of sale provided that the property be sold subject to special  
24 assessments thereon and the property was so ~~sold;~~ sold.
- 25 (4) The obligation secured by the mortgage, deed of trust or conditional  
26 sale contract.
- 27 (5) Any judgment or other obligation of record secured by a mortgage,  
28 deed of trust, or conditional sales contract, in order of their respective  
29 priorities.

1 (b) Any surplus remaining after the application of the proceeds of the sale as set  
2 out in subsection (a) of this section shall be paid to the person or persons entitled  
3 ~~thereto, if the person who made the sale knows who is entitled thereto. to that surplus.~~  
4 Otherwise, the surplus shall be paid to the clerk of the superior court of the county  
5 where the sale was had—

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

8 (2) In all cases when he is unable to locate the persons entitled thereto,  
9 and

10 (3) In all cases when the mortgagee, ~~trustee or vendor is, for any cause,~~  
11 trustee, or vendor is in doubt as to who is entitled to ~~such~~ the surplus  
12 money, and

13 (4) In all cases when adverse claims thereto are asserted.

14 (c) Such payment to the clerk discharges the mortgagee, trustee or vendor from  
15 liability to the extent of the amount so paid.

16 (d) The clerk shall receive such money from the mortgagee, trustee or vendor and  
17 shall execute a receipt therefor.

18 (e) The clerk is liable on his official bond for the safekeeping of money so  
19 received until it is paid to the party or parties entitled thereto, or until it is paid out under  
20 the order of a court of competent jurisdiction."

21 **SECTION 3.** This act becomes effective October 1, 2005, and applies to all  
22 pending foreclosure proceedings and foreclosure proceedings filed on or after that date.