

HOUSE BILL NO. 164

INTRODUCED BY N. SCHWADERER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DISPOSITION OF PROCEEDS FROM A TRUSTEE
5 SALE; ADDING ADDITIONAL FILING REQUIREMENTS UPON DEPOSIT OF A SURPLUS FUNDS WITH THE
6 COUNTY CLERK AND RECORDER; ALLOWING A LIENHOLDER TO FILE A PETITION REQUESTING
7 DISBURSEMENT OF SURPLUS FUNDS FROM A TRUSTEE SALE TO SATISFY THE LIEN; REQUIRING THE
8 COUNTY TREASURER TO DISBURSE SURPLUS FUNDS ACCORDING TO COURT ORDER; AND
9 AMENDING SECTION 71-1-316, MCA."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 **Section 1.** Section 71-1-316, MCA, is amended to read:

14 **"71-1-316. Disposition of proceeds of sale -- notice -- surplus funds -- attorney fees.** (1) (a) The
15 trustee shall apply the proceeds of the trustee's sale as follows:

16 ~~(a)~~(i) to the costs and expenses of exercising the power of sale and of the sale, including reasonable
17 trustee's fees and attorney fees;

18 ~~(b)~~(ii) to the obligation secured by the trust indenture THAT IS THE SUBJECT OF THE SALE;

19 ~~(c)~~(b) the surplus, if any, to the person or persons legally entitled to the surplus, or the trustee, in the
20 trustee's discretion, may deposit the surplus with the clerk and recorder of the county in which the sale took place.

21 Any surplus FUNDS must be deposited with the clerk and recorder of the county in which the sale took place, along
22 with written notice of the amount of the surplus FUNDS and a copy of the notice of the trustee's sale. The trustee
23 shall mail copies of the notice of the surplus FUNDS, the notice of the trustee's sale, and the affidavit of mailing
24 required under 71-1-315(2) to each party who was sent notice under 71-1-315.

25 (2) Upon the deposit of the surplus FUNDS, the trustee is discharged from all further responsibility for the
26 surplus FUNDS. The clerk and recorder shall deposit the surplus FUNDS with the county treasurer. ~~The county~~
27 ~~treasurer shall pay the surplus funds as provided in a written order from the district court.~~

28 (3) (a) A party seeking disbursement of the surplus funds shall file a petition to request an order for
29 disbursement in the district court for the county in which the surplus funds are deposited. The district court shall
30 determine the order of priority of any interests in or liens or claims of liens against the surplus and shall issue a



1 written order directing the county treasurer to disburse the surplus funds in accordance with the order.

2 ~~(b) Any remaining interests in or liens or claims of liens against the property that were eliminated by sale~~
3 ~~under 71-1-315 must attach to the surplus in the order of priority that they had attached to the property.~~

4 (B) A PARTY WITH AN INTEREST, LIEN, OR CLAIM THAT WAS JUNIOR TO THE INTEREST THAT WAS THE SUBJECT
5 OF THE SALE HAS AN INTEREST IN THE SURPLUS FUNDS IN THE SAME ORDER OF PRIORITY THAT EXISTED IN THE PROPERTY
6 AT THE TIME OF THE SALE.

7 (c) Not less than 20 days prior to the hearing of the motion, notice of the petition must be served upon
8 any party who was sent notice of the surplus FUNDS under subsection (1) and any other party who has entered
9 an appearance in the proceeding.

10 (4) A party who is awarded any portion of the surplus funds because of an existing interest in or lien or
11 claim of lien against the property is entitled to seek costs and attorney fees from the surplus funds. The costs and
12 attorney fees must be allowed to each claimant whose lien is established, and the reasonable attorney fees must
13 be allowed to the defendant against whose property a lien is claimed if a lien is not established."

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