



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

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

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

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

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

(b)(ii) to the obligation secured by the trust indenture that is the subject of the sale;

(c)(b) the surplus, if any, to the person or persons legally entitled to the surplus, or the trustee, in the trustee's discretion, may deposit the surplus with the clerk and recorder of the county in which the sale took place. Any surplus funds must be deposited with the clerk and recorder of the county in which the sale took place, along with written notice of the amount of the surplus funds and a copy of the notice of the trustee's sale. The trustee shall mail copies of the notice of the surplus funds, the notice of the trustee's sale, and the affidavit of mailing required under 71-1-315(2) to each party who was sent notice under 71-1-315.

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

(3) (a) A party seeking disbursement of the surplus funds shall file a petition to request an order for disbursement in the district court for the county in which the surplus funds are deposited. The district court shall

determine the order of priority of any interests in or liens or claims of liens against the surplus and shall issue a written order directing the county treasurer to disburse the surplus funds in accordance with the order.

(b) A party with an interest, lien, or claim that was junior to the interest that was the subject of the sale has an interest in the surplus funds in the same order of priority that existed in the property at the time of the sale.

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

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

- END -

I hereby certify that the within bill,
HB 0164, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2015.

President of the Senate

Signed this _____ day
of _____, 2015.

HOUSE BILL NO. 164

INTRODUCED BY N. SCHWADERER

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