

§ 45-21.27. Upset bid on real property; compliance bonds.

(a) An upset bid is an advanced, increased, or raised bid whereby any person offers to purchase real property theretofore sold, for an amount exceeding the reported sale price or last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars (\$750.00). Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale or last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%) of the amount of the upset bid but in no event less than seven hundred fifty dollars (\$750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of the sale or the last notice of upset bid was filed by the close of normal business hours on the tenth day after the filing of the report of the sale or the last notice of upset bid, and if the tenth day shall fall upon a Sunday or legal holiday when the courthouse is closed for transactions, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the notice of upset bid filed on the day following when said office is open for the regular dispatch of its business. Subject to the provisions of G.S. 45-21.30, there shall be no resales; rather, there may be successive upset bids each of which shall be followed by a period of 10 days for a further upset bid. When an upset bid is not filed following a sale, resale, or prior upset bid within the time specified, the rights of the parties to the sale or resale become fixed.

(b) The clerk of the superior court may require an upset bidder or the highest bidder at a resale held pursuant to G.S. 45-21.30 also to deposit with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond, approved by the clerk. The compliance bond shall be in such amount as the clerk deems adequate, but in no case greater than the amount of the bid of the person being required to furnish the bond, less the amount of any required deposit. The compliance bond shall be payable to the State of North Carolina for the use of the parties in interest and shall be conditioned on the principal obligor's compliance with the bid.

(c), (d) Repealed by Session Laws 1993, c. 305, s. 16.

(e) At the same time that an upset bid on real property is submitted to the court as provided for in subsection (a) above, together with a compliance bond if one is required, the upset bidder shall simultaneously file with the clerk a notice of upset bid. The notice of upset bid shall:

- (1) State the name, address, and telephone number of the upset bidder;
- (2) Specify the amount of the upset bid;
- (3) Provide that the sale shall remain open for a period of 10 days after the date on which the notice of upset bid is filed for the filing of additional upset bids as permitted by law; and
- (4) Be signed by the upset bidder or the attorney or the agent of the upset bidder.

(e1) When an upset bid is made as provided in this section, the clerk shall notify the trustee or mortgagee who shall thereafter mail a written notice of upset bid by first-class mail to the last known address of the last prior bidder and the current record owner(s) of the property.

(f) When an upset bid is made as provided in this section, the last prior bidder, regardless of how the bid was made, shall be released from any further obligation on account of the bid and any deposit or bond provided by him shall be released.

(g) Any person offering to purchase real property by upset bid as permitted in this Article shall be subject to and bound by the terms of the original notice of sale except as modified by court order or the provisions of this Article.

(h) The clerk of superior court shall make all such orders as may be just and necessary to safeguard the interests of all parties, and shall have the authority to fix and determine all

necessary procedural details with respect to upset bids in all instances in which this Article fails to make definite provisions as to that procedure. (1949, c. 720, s. 1; 1963, c. 377; 1967, c. 979, s. 3; 1993, c. 305, s. 16; 2003-337, s. 6.)