

March 26, 2009

S 974. CONSUMER ECONOMIC PROTECTION ACT OF 2009. Filed 3/25/09. *TO ENACT THE CONSUMER ECONOMIC PROTECTION ACT OF 2009.*

Enacts GS 45-21.16C providing that if the real property at issue is occupied by the debtor as the debtor's primary residence, the clerk must require the mortgagee or trustee to provide sufficient evidence of a good-faith effort to contact the debtor and address the delinquency before authorizing the mortgagee or trustee to proceed under the security agreement. Even if this requirement is satisfied, the clerk must order the hearing continued if the clerk finds good cause to believe that additional time or measures may resolve the delinquency. When a hearing is continued, the clerk must order the continuance for a date and time certain, not less than 30 days nor more than 120 days from the date of the original hearing. Amends GS 45-21.16(c) adding additional requirements to the contents of a notice of hearing, including a notice of rights under new GS 45-21.16C. Amends GS 45-21.16(d1) to provide that if the appealing party owns and occupies the property to be sold as a primary residence, the clerk must require a bond not to exceed the amount of the current scheduled monthly payment or periodic payments on the note or debt instrument as those payments become due beginning 30 days after the notice of appeal. Makes conforming changes. Amends GS 75-1.1 (methods of competition, acts and practices regulated; legislative policy), subsection (b) to provide that for purposes of investigation and enforcement by the Attorney General, "commerce" includes securities transactions relating to the offer, marketing, sale and purchase of any security as defined in GS 78A-2. Amends GS 75-55 and GS 58-70-115 to expand the definition of the unconscionable means prohibited by those sections in connection with debt collection.

Intro. by Rand.

GS 45, 75, 58

May 12, 2009

S 974. CONSUMER ECONOMIC PROTECTION ACT OF 2009. Filed 3/25/09. Senate committee substitute makes the following changes to 1st edition. Amends GS 45-21.16(7) to provide that the notice to a debtor or the party served in a foreclosure action must contain a statement that if the debtor owns and occupies the real property as the debtor's principal residence, the clerk may postpone the foreclosure hearing if there is a reasonable likelihood of resolving the past due payments without foreclosure. Additionally provides that if the mortgage owner has reason to believe that the real property is occupied by the debtor as the debtor's principal residence, the notice must contain a statement briefly describing any efforts that made to resolve the delinquency with the debtor before pursuing foreclosure

Amends GS 45-21.16(d1) by adding additional provision that the clerk may require a higher bond where there is substantial evidence of the likelihood of waste or damage to the property. Amends proposed new GS 45-21.16C by setting forth a standard by which the clerk is to determine whether there is an opportunity for the parties to resolve a delinquency without foreclosure. Also makes technical and stylistic changes to proposed new section. Amends GS 75-1.1(b) to delete the expansion of the definition of *commerce* and amends GS 75-55 deleting the amendments to the meaning of *unconscionable*. Amends GS 58-70-15(b) to include a definition for *debt buyer* as a person or entity that is in the business of purchasing delinquent or charged-off consumer loans. Amends GS 58-70-115 defining unfair practices by debt collection agencies to incorporate the provisions from GS 75-55 identifying unconscionable means prohibited in debt collection and constituting unfair practices. Incorporates the concept of the "debt buyer" into its prohibitions and adds a requirement that a collection agency give a debtor 45 days written notice of its intent to file a proceeding to collect a debt. Changes the effective date to October 1, 2009 (was, when it became law).

August 3, 2009

S 974. CONSUMER ECONOMIC PROTECTION ACT OF 2009. Filed 3/25/09. House committee substitute makes the following changes to 2nd edition. Amends GS 45-21.16(d1) to provide that in an appeal of a clerk's finding in a hearing regarding a power of sale under a mortgage or deed of trust, in which the appealing party owns and occupies the property to be sold as the party's principal residence, the clerk must require a bond that is 1% of the principal balance due on the

note or debt instrument (was, a bond not to exceed the amount of the current scheduled monthly payment or periodic payments in the note or debt instrument). Also requires that the clerk at the clerk's discretion may require (1) a lesser bond in cases of undue hardship or for other good cause shown or (2) a higher bond if there is a likelihood (was, substantial evidence of the likelihood) of damage or waste to the property during the pendency of the appeal *or for other good cause shown*. Deletes proposed GS 45-21.16(c)(7)d1. and d2. regarding including statements in the notice of foreclosure as to the circumstances under which the clerk may postpone the hearing.

Amends proposed GS 45-21-16C to provide that the clerk is not required to make an inquiry at the commencement of the hearing about the efforts of the mortgagee, trustee, or loan officer to communicate with the debtor if the debt holder submits at or before the hearing an affidavit that briefly describes efforts to resolve the default with the debtor and the results of those efforts. Directs the clerk to order the hearing continued if the clerk finds that there is good cause to believe that additional time or additional measures have a reasonable likelihood of resolving the delinquency without foreclosure. Provides that where good cause exists to continue the hearing, the clerk must order the hearing continued to a date and time certain that is not more than 60 days (was, not less than 30 days and not more than 120 days) from the date scheduled for the original hearing.

Amends GS 58-70-70 to add new subsection (b) to provide requirements regarding the issuance of the receipt for any payment received by or on behalf of a debt buyer. Includes requirements that the receipt show (1) the name of the creditor or creditors for whom the debt was collected and (2) the account number assigned by the creditor or creditors. Requires that if the current creditor is not the original creditor, the receipt must include the account number assigned by the original creditor. Also requires that the receipt clearly state whether the payment is accepted as payment in full for the debt, and if it is not, must state clearly the balance that is still due after the payment is applied.

Amends GS 58-70-115 to identify failing to comply with Part 5 of this Article as an *unfair practice*.

Amends GS 58-70-130 regarding the civil liability of a debt collection agency that violates GS Chapter 58, Article 70, Part 3 (Prohibited Practices by Collection Agencies Engaged in the Collection of Debt from Consumers). Subjects any collection agency violating Part 3 of Article 70 to a penalty, in addition to actual damages, of not less than \$500 (was, \$100) and not greater than \$4,000 (was, \$2,000) for each violation. Specifies that in spite of the provisions of GS 75-16, the civil penalties provided in this section are not to be trebled and prohibits imposing a civil penalty in excess of \$4,000 (was, \$2,000) for each violation. Prohibits reducing any punitive damages assessed against a collection agency by the amount of the civil penalty assessed against the agency under subsection (b) of this section (was, directed that punitive damages assessed against the agency be reduced by the amount of the civil penalty assessed against the collection agency).

Amends GS 6-21.2 to require that certain materials, including a copy of the contract or other writing showing evidence of the original debt and a copy of the assignment or other writing establishing that the plaintiff owns the debt, be submitted to the court before the court may enforce provisions allowing attorneys' fees for services rendered to an assignee or debt buyer as defined in GS 58-70-15.

Enacts a new Part 5 to GS Chapter 58, Article 70, to set out special requirements in actions filed by collection agency plaintiffs. Specifies that the complaint of a collection agency must contain certain allegations. Requires that the complaint of a debt buyer plaintiff must be accompanied by certain materials attached to the complaint that show evidence of the original debt and evidence that the plaintiff is the owner of the debt. Also provides guidelines if the claim is based on credit card debt and there is no signed written evidence of the original debt. Directs that before the entry of a default judgment or summary judgment against a debtor in a complaint initiated by a debt buyer, the debt buyer plaintiff must file evidence with the court to establish the amount and nature of the debt. Provides that the only sufficient evidence to establish the amount and nature of the debt are properly authenticated business records that satisfy the requirements of Rule 803(b) of the North Carolina Rules of Evidence. Lists the items that must minimally be included in the authenticated business records.

Makes conforming changes to GS 75-76 regarding the application of the provisions of Article 2 of GS Chapter 75 (Prohibited Acts by Debt Collectors). Amends GS 75-65(h) to provide that a credit union that is subject to and in compliance with the Final Guidance on Response Programs for Unauthorized Access to Member Information and Member Notice, issued on April 14, 2005, by the National Credit Union Administration is deemed to be in compliance with the statute.

Makes additional conforming and technical changes. Provides that the act, effective October 1, 2009, applies to foreclosures initiated, debt collection activities undertaken, and actions filed on or after that date (was, applied to notices and hearings conducted after October 1, 2009).

September 24, 2009

SL 2009-573 (S 974). CONSUMER ECONOMIC PROTECTION ACT OF 2009. AN ACT TO ENACT THE CONSUMER ECONOMIC PROTECTION ACT OF 2009. Summarized in *Daily Bulletin* 3/26/09, 5/12/09, and 8/3/09. Enacted September 9, 2009. Effective October 1, 2009.