

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1400
PROPOSED COMMITTEE SUBSTITUTE S1400-PCS75411-TG-53

Short Title: No Foreclosure/Soldiers on Active Duty/Funds.

(Public)

Sponsors:

Referred to:

May 26, 2010

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT FORECLOSURES WHILE MORTGAGORS OR TRUSTORS ARE ON ACTIVE MILITARY DUTY.

The General Assembly of North Carolina enacts:

SECTION 1. Part 2 of Article 2A of Chapter 45 of the General Statutes is amended by adding a new section to read:

"§ 45-21.12A. Power of sale barred during periods of military service.

(a) Power of Sale Barred. – A mortgagee or trustee shall not exercise a power of sale contained in a mortgage or deed of trust, or provided by statute, during a mortgagor's or trustor's period of military service. The clerk of court shall not conduct a hearing pursuant to G.S. 45-21.16(d) unless the mortgagee or trustee seeking to exercise a power of sale under a mortgage or deed of trust files with the clerk a certification that the hearing will take place at a time that is not during a period of military service for the mortgagor or trustor. This subsection applies only to mortgages and deeds of trust that originated before the mortgagor's or trustor's period of military service.

(b) Purpose. – The purpose of this section is to supplement and complement the provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501, et seq., and to afford greater peace and security for persons in federal active duty.

(c) Definitions. – The following definitions apply in this section:

(1) Military service. –

a. In the case of a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard:

1. Active duty, as defined in 10 U.S.C. § 101(d)(1), and

2. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 10 U.S.C. § 502(f), for purposes of responding to a national emergency declared by the President and supported by federal funds.

b. In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service, and

c. Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.



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1 (2) Period of military service. – The period beginning on the date on which a
2 servicemember enters military service and ending on the date on which the
3 servicemember is released from military service or dies while in military
4 service.

5 (3) Servicemember. – A member of the Army, Navy, Air Force, Marine Corps,
6 Coast Guard, the commissioned corps of the National Oceanic and
7 Atmospheric Administration, or the commissioned corps of the Public
8 Health Service."

9 **SECTION 2.** G.S. 45-21.16(c) is amended by adding a new subdivision to read:

10 "(c) Notice shall be in writing and shall state in a manner reasonably calculated to make
11 the party entitled to notice aware of the following:

12 ...

13 (12) That if the debtor is currently on military duty the foreclosure may be
14 prohibited by G.S. 45-21.12A."

15 **SECTION 3.** G.S. 45-21.16(d) reads as rewritten:

16 "(d) **(Effective until October 31, 2010)** The hearing provided by this section shall be
17 held before the clerk of court in the county where the land, or any portion thereof, is situated. In
18 the event that the property to be sold consists of separate tracts situated in different counties or
19 a single tract in more than one county, only one hearing shall be necessary. However, prior to
20 that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where
21 any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the
22 evidence of the parties and may consider, in addition to other forms of evidence required or
23 permitted by law, affidavits and certified copies of documents. If the clerk finds the existence
24 of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to
25 foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), ~~and~~ (v)
26 that the underlying mortgage debt is not a subprime loan as defined in G.S. 45-101(4), or if the
27 loan is a subprime loan under G.S. 45-101(4), that the pre-foreclosure notice under G.S. 45-102
28 was provided in all material respects, and that the periods of time established by Article 11 of
29 this Chapter have elapsed, and (vi) that the sale is not barred by G.S. 45-21.12A, then the clerk
30 shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or
31 trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A
32 certified copy of any authorization or order by the clerk shall be filed in any other county where
33 any portion of the property to be sold is located before the mortgagee or trustee may proceed to
34 advertise and sell any property located in that county. In the event that sales are to be held in
35 more than one county, the provisions of G.S. 45-21.7 apply.

36 (d) **(Effective October 31, 2010)** The hearing provided by this section shall be held
37 before the clerk of court in the county where the land, or any portion thereof, is situated. In the
38 event that the property to be sold consists of separate tracts situated in different counties or a
39 single tract in more than one county, only one hearing shall be necessary. However, prior to
40 that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where
41 any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the
42 evidence of the parties and may consider, in addition to other forms of evidence required or
43 permitted by law, affidavits and certified copies of documents. If the clerk finds the existence
44 of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to
45 foreclose under the instrument, and (iv) notice to those entitled to such under subsection (b),
46 and (v) that the sale is not barred by G.S. 45-21.12A, then the clerk shall authorize the
47 mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give
48 notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any
49 authorization or order by the clerk shall be filed in any other county where any portion of the
50 property to be sold is located before the mortgagee or trustee may proceed to advertise and sell

1 any property located in that county. In the event that sales are to be held in more than one
2 county, the provisions of G.S. 45-21.7 apply."

3 **SECTION 4.** This act is effective when it becomes law and applies to foreclosures
4 initiated on or after that date.