

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1400
Judiciary I Committee Substitute Adopted 7/7/10

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

(Public)

Sponsors:

Referred to:

May 26, 2010

1 A BILL TO BE ENTITLED
2 AN ACT TO PROHIBIT FORECLOSURES WHILE MORTGAGORS OR TRUSTORS ARE
3 ON ACTIVE MILITARY DUTY.

4 The General Assembly of North Carolina enacts:

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

7 **"§ 45-21.12A. Power of sale barred during periods of military service.**

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

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

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

20 (1) Military service. –

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

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

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

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

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

35 (2) Period of military service. – The period beginning on the date on which a
36 servicemember enters military service and ending on the date on which the



1 servicemember is released from military service or dies while in military
2 service.

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

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

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

10 ...

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

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

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

34 (d) **(Effective October 31, 2010)** The hearing provided by this section shall be held
35 before the clerk of court in the county where the land, or any portion thereof, is situated. In the
36 event that the property to be sold consists of separate tracts situated in different counties or a
37 single tract in more than one county, only one hearing shall be necessary. However, prior to
38 that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where
39 any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the
40 evidence of the parties and may consider, in addition to other forms of evidence required or
41 permitted by law, affidavits and certified copies of documents. If the clerk finds the existence
42 of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to
43 foreclose under the instrument, and (iv) notice to those entitled to such under subsection (b),
44 and (v) that the sale is not barred by G.S. 45-21.12A, then the clerk shall authorize the
45 mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give
46 notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any
47 authorization or order by the clerk shall be filed in any other county where any portion of the
48 property to be sold is located before the mortgagee or trustee may proceed to advertise and sell
49 any property located in that county. In the event that sales are to be held in more than one
50 county, the provisions of G.S. 45-21.7 apply."

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