

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SENATE BILL 1400
RATIFIED BILL

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, trustee, or other creditor shall not exercise a power of sale contained in a mortgage or deed of trust, or provided by statute, during, or within 90 days after, a mortgagor's, trustor's, or debtor'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, trustee or other creditor seeking to exercise a power of sale under a mortgage or deed of trust, or provided by statute, files with the clerk a certification that the hearing will take place at a time that is not during, or within 90 days after, a period of military service for the mortgagor, trustor or debtor. This subsection applies only to mortgages and deeds of trust that originated before the mortgagor's or trustor's period of military service.

(b) Waiver. – This section shall not apply if the mortgagor, trustor, or debtor waives his or her rights under this section pursuant to a written agreement of the parties executed during or after the mortgagor's, trustor's, or debtor's period of military service, as an instrument separate from the obligation or liability to which the waiver applies. Any waiver in writing of a right or protection provided by this section must be in at least 12 point type and shall specify the legal instrument creating the obligation or liability to which the waiver applies.

(c) 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.

(d) 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 32 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.

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

(3) Servicemember. – A member of the Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and



Atmospheric Administration, or the commissioned corps of the Public Health Service."

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

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

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

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

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

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

SECTION 4. This act becomes effective January 1, 2011 and applies to foreclosures initiated on or after that date.

In the General Assembly read three times and ratified this the 10th day of July, 2010.

Walter H. Dalton
President of the Senate

Joe Hackney
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____m. this _____ day of _____, 2010