

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2623
Committee Substitute Favorable 7/7/08

Short Title: Emergency Foreclosure Reduction Program.

(Public)

Sponsors:

Referred to:

May 28, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE AN EMERGENCY PROGRAM TO REDUCE
3 FORECLOSURES AND TO AUTHORIZE THE COMMISSIONER OF BANKS
4 TO USE FUNDS FOR FORECLOSURE PREVENTION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Chapter 45 of the General Statutes is amended by adding a
7 new Article to read:

8 "Article 11.

9 "Emergency Program to Reduce Foreclosures.

10 "§ 45-100. Title.

11 This Article shall be known as the Emergency Program to Reduce Foreclosures Act.

12 "§ 45-101. Definitions.

13 The following definitions apply throughout this Article:

- 14 (1) Act as a mortgage servicer. – To engage, whether for compensation or
15 gain from another or on its own behalf, in the business of receiving
16 any scheduled periodic payments from a borrower pursuant to the
17 terms of any mortgage loan, including amounts for escrow accounts,
18 and making the payments of principal and interest and such other
19 payments with respect to the amounts received from the borrower as
20 may be required pursuant to the mortgage loan, the mortgage servicing
21 loan documents or servicing contract.
- 22 (2) Mortgage lender. – A person engaged in the business of making
23 mortgage loans for compensation or gain.
- 24 (3) Mortgage servicer. – A person who directly or indirectly acts as a
25 mortgage servicer as that term is defined in subdivision (1) of this
26 section or who otherwise meets the definition of the term 'servicer' in
27 the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i), with
28 respect to mortgage loans.

1 (4) Subprime loan. – A loan, originated on or after January 1, 2005, but
2 before December 31, 2007, that would meet the definition of a rate
3 spread home loan under G.S. 24-1.1F(a)(7), if that section had been in
4 effect when the loan was originated. A mortgage servicer may rely on
5 a chart reflecting the appropriate interest rate triggers for rate spread
6 home loans for each day of the period covered by this Article provided
7 by the Commissioner of Banks for the purposes of determining if a
8 loan is a subprime loan covered by this Article. The Commissioner
9 shall provide the chart at least 60 days prior to the effective date of this
10 act.

11 **§ 45-102. Pre-foreclosure notice for subprime loans.**

12 At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding,
13 mortgage servicers of subprime loans shall send written notice by mail to the last known
14 address of the borrower to inform the borrower of the availability of resources to avoid
15 foreclosure, including:

- 16 (1) An itemization of all past due amounts causing the loan to be in
17 default.
18 (2) An itemization of any other charges that must be paid in order to bring
19 the loan current.
20 (3) A statement that the borrower may have options available other than
21 foreclosure, and that the borrower may discuss available options with
22 the mortgage lender, the mortgage servicer, or a counselor approved
23 by the U.S. Department of Housing and Urban Development.
24 (4) The address, telephone number, and other contact information for the
25 mortgage lender, the mortgage servicer, or the agent for either of them
26 who is authorized to attempt to work with the borrower to avoid
27 foreclosure.
28 (5) The name, address, telephone number, and other contact information
29 for one or more HUD approved counseling agencies operating to assist
30 borrowers in North Carolina to avoid foreclosure.
31 (6) The address, telephone number, and other contact information for the
32 consumer complaint section of the Office of Commissioner of Banks.

33 **§ 45-103. Pre-foreclosure information to be filed with the Administrative Office**
34 **of the Courts for certain subprime loans.**

35 (a) Within three business days of mailing the notice required by G.S. 45-102, the
36 mortgage servicer shall file certain information with the Administrative Office of the
37 Courts. The filing shall be in an electronic format, as designated by the Administrative
38 Office of the Courts, and shall contain the name and address of the borrower and the
39 date the notice was mailed to the borrower.

40 (b) As permitted by applicable State and federal law, optional information may
41 be requested from the mortgage servicer to facilitate further review by the State
42 Foreclosure Prevention Project described in G.S. 45-104. The nature of the optional
43 information requested shall be determined in connection with the design of the database
44 established by subsection (c) of this section. This optional information shall be used by

1 the State Foreclosure Prevention Project to prioritize efforts to reach borrowers most
2 likely to avoid foreclosure and to prevent delay for defaults where foreclosure is
3 unavoidable.

4 (c) No later than October 1, 2008, the Administrative Office of the Courts shall
5 establish an internal database to track information provided in this section. The
6 Commissioner of Banks shall design and develop this database, in consultation with the
7 Administrative Office of the Courts, in a manner to promote the efforts of the State
8 Foreclosure Prevention Project. Only the Administrative Office of the Courts, the Office
9 of Commissioner of Banks, and the clerk of court as provided by G.S. 45-107 shall have
10 access to the database.

11 **"§ 45-104. State Foreclosure Prevention Project.**

12 The Commissioner of Banks is authorized to establish the State Foreclosure
13 Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures
14 for certain subprime loans. In developing the Project, the Commissioner may include
15 input from HUD approved housing counselors, community organizations, state
16 agencies, mortgage lenders, mortgage servicers, and other partners.

17 **"§ 45-105. Extension of foreclosure process.**

18 The Commissioner of Banks shall review information provided in the database
19 created by G.S. 45-103 to determine which subprime loans are appropriate for efforts to
20 avoid foreclosure. If the Commissioner reasonably believes, based on a full review of
21 the loan information, the mortgage servicer's loss mitigation efforts, the borrower's
22 capacity and interest in staying in the home, and other appropriate factors, that further
23 efforts by the State Foreclosure Prevention Project offer a reasonable prospect to avoid
24 foreclosure, the Commissioner shall have the authority to extend the allowable filing
25 date for any foreclosure proceeding by up to 30 days beyond the earliest filing date
26 established by the pre-foreclosure notice. If the Commissioner makes the determination
27 that a loan is subject to this section, the Commissioner shall notify the borrower,
28 mortgage servicer and the Administrative Office of the Courts.

29 **"§ 45-106. Use and privacy of records.**

30 The data provided to the Administrative Office of the Courts pursuant to
31 G.S. 45-103 shall be exclusively for the use and purposes of the State Foreclosure
32 Prevention Project developed by the Commissioner of Banks in accordance with
33 G.S. 45-104. The information provided to the database is not a public record, except that
34 a mortgage lender and a mortgage servicer shall have access to the information
35 submitted only with regard to its own loans. Provision of information to the
36 Administrative Office of the Courts for use by the State Foreclosure Prevention Project
37 shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held
38 harmless for any alleged breach of privacy rights of the borrower with respect to the
39 information the mortgage servicer provides in accordance with this Article.

40 **"§ 45-107. Foreclosure filing.**

41 (a) For the duration of the program authorized by this Article, foreclosure notices
42 filed on subprime loans on or after November 15, 2008, shall contain a certification by
43 the filing party that the pre-foreclosure notice required by G.S. 45-102 and the

1 pre-foreclosure information required by G.S. 45-103 were provided in accordance with
2 this Article and that the periods of time established by the Article have elapsed.

3 (b) The Clerk of Superior Court or other judicial officer may have access to the
4 pre-foreclosure database to confirm information provided in subsection (a) of this
5 section. A materially inaccurate statement in the certification shall be cause for
6 dismissal without prejudice of any foreclosure proceeding initiated by the mortgage
7 servicer and for payment by the filing party of costs incurred by the borrower in
8 defending the foreclosure proceeding."

9 **SECTION 2.** G.S. 45-21.16 is amended by adding a new subsection to read:

10 "(c2) In any foreclosure filed on or after November 15, 2008, where the underlying
11 mortgage debt is a subprime loan as defined in G.S. 45-101(b), the notice required by
12 subsection (b) of this section shall contain a certification by the filing party that the
13 pre-foreclosure notice and information required by G.S. 45-102 and G.S. 45-103, were
14 provided in all material respects and that the periods of time established by Article 11 of
15 this Chapter have elapsed."

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

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

38 **SECTION 4.(a)** The Commissioner of Banks shall use six hundred thousand
39 dollars (\$600,000) of the funds available to the State Banking Commission in the
40 2008-2009 fiscal year to make grants to nonprofit counseling agencies in the State. The
41 Commissioner of Banks shall use four hundred thousand dollars (\$400,000) of the funds
42 available to the State Banking Commission in the 2008-2009 fiscal year to implement
43 this Article.

1 **SECTION 4.(b)** The Office of the Commissioner of Banks shall report to
2 the General Assembly describing the operation of the program established by this act
3 not later than May 1 of each year until the funds are completely disbursed from the
4 reserve. Information in the report shall be presented in aggregate form, and may include
5 the number of clients helped, the effectiveness of the funds in preventing foreclosure,
6 recommendations for further efforts needed to reduce foreclosures, and provide any
7 other aggregated information the Commissioner determines is pertinent or that the
8 General Assembly requests.

9 **SECTION 5.** Section 4 of this act becomes effective July 1, 2008. The
10 remainder of this act becomes effective November 1, 2008, and expires on October 31,
11 2010.