

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2623
Committee Substitute Favorable 7/7/08
Committee Substitute # 2 Favorable 7/9/08
Senate Appropriations/Base Budget Committee Substitute Adopted 7/15/08

Short Title: Emergency Foreclosure Reduction Program. (Public)

Sponsors:

Referred to:

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO CREATE AN EMERGENCY PROGRAM TO REDUCE HOME
FORECLOSURES AND TO AUTHORIZE THE COMMISSIONER OF BANKS
TO USE FUNDS FOR HOME FORECLOSURE PREVENTION.

Whereas, the General Assembly finds that there is a substantial increase in mortgage foreclosures due to the national subprime mortgage and housing crisis; and

Whereas, it will benefit both borrowers and lenders in the State of North Carolina if every effort is made to bring the parties together to seek solutions and avoid foreclosures; and

Whereas, in seeking resolutions to avoid foreclosure, it is important to recognize the rights and obligations under the existing mortgages and servicing contracts and the needs of borrowers and communities to preserve home ownership;

Now, therefore,

The General Assembly of North Carolina enacts:

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

"Article 11.

"Emergency Program to Reduce Home Foreclosures.

"§ 45-100. Title.

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

"§ 45-101. Definitions.

The following definitions apply throughout this Article:

- (1) Act as a mortgage servicer. – To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts,

1 and making the payments of principal and interest and such other
2 payments with respect to the amounts received from the borrower as
3 may be required pursuant to the mortgage loan, the mortgage servicing
4 loan documents, or servicing contract.

5 (2) Mortgage lender. – A person engaged in the business of making
6 mortgage loans for compensation or gain.

7 (3) Mortgage servicer. – A person who directly or indirectly acts as a
8 mortgage servicer as that term is defined in subdivision (1) of this
9 section or who otherwise meets the definition of the term 'servicer' in
10 the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i), with
11 respect to mortgage loans.

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

22 **"§ 45-102. Pre-foreclosure notice for subprime loans.**

23 At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding
24 on a primary residence, mortgage servicers of subprime loans shall send written notice
25 by mail to the last known address of the borrower to inform the borrower of the
26 availability of resources to avoid foreclosure, including:

27 (1) An itemization of all past due amounts causing the loan to be in
28 default.

29 (2) An itemization of any other charges that must be paid in order to bring
30 the loan current.

31 (3) A statement that the borrower may have options available other than
32 foreclosure and that the borrower may discuss available options with
33 the mortgage lender, the mortgage servicer, or a counselor approved
34 by the U.S. Department of Housing and Urban Development.

35 (4) The address, telephone number, and other contact information for the
36 mortgage lender, the mortgage servicer, or the agent for either of them
37 who is authorized to attempt to work with the borrower to avoid
38 foreclosure.

39 (5) The name, address, telephone number, and other contact information
40 for one or more HUD-approved counseling agencies operating to assist
41 borrowers in North Carolina to avoid foreclosure.

42 (6) The address, telephone number, and other contact information for the
43 consumer complaint section of the Office of Commissioner of Banks.

1 **"§ 45-103. Pre-foreclosure information to be filed with the Administrative Office**
2 **of the Courts for certain subprime loans.**

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

8 (b) As permitted by applicable State and federal law, optional information may
9 be requested from the mortgage servicer to facilitate further review by the State Home
10 Foreclosure Prevention Project described in G.S. 45-104. The nature of the optional
11 information requested shall be determined in connection with the design of the database
12 established by subsection (c) of this section. This optional information shall be used by
13 the State Home Foreclosure Prevention Project to prioritize efforts to reach borrowers
14 most likely to avoid foreclosure and to prevent delay for defaults where foreclosure is
15 unavoidable.

16 (c) No later than October 1, 2008, the Administrative Office of the Courts shall
17 establish an internal database to track information provided in this section. The
18 Commissioner of Banks shall design and develop this database, in consultation with the
19 Administrative Office of the Courts, in a manner to promote the efforts of the State
20 Home Foreclosure Prevention Project. Only the Administrative Office of the Courts, the
21 Office of Commissioner of Banks, and the clerk of court as provided by G.S. 45-107
22 shall have access to the database.

23 **"§ 45-104. State Home Foreclosure Prevention Project.**

24 The Commissioner of Banks is authorized to establish the State Home Foreclosure
25 Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures
26 for certain subprime loans. In developing the Project, the Commissioner may include
27 input from HUD-approved housing counselors, community organizations, state
28 agencies, mortgage lenders, mortgage servicers, and other partners.

29 **"§ 45-105. Extension of foreclosure process.**

30 The Commissioner of Banks shall review information provided in the database
31 created by G.S. 45-103 to determine which subprime loans are appropriate for efforts to
32 avoid foreclosure. If the Commissioner reasonably believes, based on a full review of
33 the loan information, the mortgage servicer's loss mitigation efforts, the borrower's
34 capacity and interest in staying in the home, and other appropriate factors, that further
35 efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to
36 avoid foreclosure on primary residences, the Commissioner shall have the authority to
37 extend one time under this Article the allowable filing date for any foreclosure
38 proceeding on a primary residence by up to 30 days beyond the earliest filing date
39 established by the pre-foreclosure notice. If the Commissioner makes the determination
40 that a loan is subject to this section, the Commissioner shall notify the borrower,
41 mortgage servicer, and the Administrative Office of the Courts.

42 **"§ 45-106. Use and privacy of records.**

43 The data provided to the Administrative Office of the Courts pursuant to
44 G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure

1 Prevention Project developed by the Commissioner of Banks in accordance with
2 G.S. 45-104. The information provided to the database is not a public record, except that
3 a mortgage lender and a mortgage servicer shall have access to the information
4 submitted only with regard to its own loans. Provision of information to the
5 Administrative Office of the Courts for use by the State Home Foreclosure Prevention
6 Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be
7 held harmless for any alleged breach of privacy rights of the borrower with respect to
8 the information the mortgage servicer provides in accordance with this Article.

9 **"§ 45-107. Foreclosure filing.**

10 (a) For the duration of the program authorized by this Article, foreclosure notices
11 filed on subprime loans on or after November 15, 2008, shall contain a certification by
12 the filing party that the pre-foreclosure notice required by G.S. 45-102 and the
13 pre-foreclosure information required by G.S. 45-103 were provided in accordance with
14 this Article and that the periods of time established by the Article have elapsed.

15 (b) The clerk of superior court or other judicial officer may have access to the
16 pre-foreclosure database to confirm information provided in subsection (a) of this
17 section. A materially inaccurate statement in the certification shall be cause for
18 dismissal without prejudice of any foreclosure proceeding on a primary residence
19 initiated by the mortgage servicer and for payment by the filing party of costs incurred
20 by the borrower in defending the foreclosure proceeding."

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

22 "(c2) In any foreclosure filed on or after November 15, 2008, where the underlying
23 mortgage debt is a subprime loan as defined in G.S. 45-101(4), the notice required by
24 subsection (b) of this section shall contain a certification by the filing party that the
25 pre-foreclosure notice and information required by G.S. 45-102 and G.S. 45-103 were
26 provided in all material respects and that the periods of time established by Article 11 of
27 this Chapter have elapsed."

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

29 "(d) The hearing provided by this section shall be held before the clerk of court in
30 the county where the land, or any portion thereof, is situated. In the event that the
31 property to be sold consists of separate tracts situated in different counties or a single
32 tract in more than one county, only one hearing shall be necessary. However, prior to
33 that hearing, the mortgagee or trustee shall file the notice of hearing in any portion of
34 the property to be sold is located. Upon such hearing, the clerk shall consider the
35 evidence of the parties and may consider, in addition to other forms of evidence
36 required or permitted by law, affidavits and certified copies of documents. If the clerk
37 finds the existence of (i) valid debt of which the party seeking to foreclose is the holder,
38 (ii) default, (iii) right to foreclose under the instrument, ~~and~~(iv) notice to those entitled
39 to such under subsection (b), and (v) that the underlying mortgage debt is not a
40 subprime loan as defined in G.S. 45-101(4), or if the loan is a subprime loan under
41 G.S. 45-101(4), that the pre-foreclosure notice under G.S. 45-102 was provided in all
42 material respects, and that the periods of time established by Article 11 of this Chapter
43 have elapsed, then the clerk shall authorize the mortgagee or trustee to proceed under
44 the instrument, and the mortgagee or trustee can give notice of and conduct a sale

1 pursuant to the provisions of this Article. A certified copy of any authorization or order
2 by the clerk shall be filed in any other county where any portion of the property to be
3 sold is located before the mortgagee or trustee may proceed to advertise and sell any
4 property located in that county. In the event that sales are to be held in more than one
5 county, the provisions of G.S. 45-21.7 apply."

6 **SECTION 4.(a)** If House Bill 2436, 2008 Regular Session, becomes law,
7 Section 6.9A(1) of that act reads as rewritten:

8 "**SECTION 6.9A.** The General Assembly finds that homeownership is the primary
9 means by which families and individuals of low and moderate incomes build wealth.
10 The General Assembly further finds that homeownership and a healthy housing market
11 are essential to the health and economic vitality of North Carolina. To help stabilize the
12 housing market, the General Assembly provides in excess of fourteen million dollars
13 (\$14,000,000) in funding for and support of the following initiatives:

- 14 (1) ~~\$1,000,000~~ \$600,000 in nonrecurring funds from the State Banking
15 Commission for counseling services to assist homeowners at risk of
16 ~~foreclosure.~~ foreclosure and \$400,000 in nonrecurring funds from the
17 State Banking Commission to implement the Emergency Home
18 Foreclosure Reduction Program as provided in House Bill 2623, 2008
19 Regular Session.

20 "...."

21 **SECTION 4.(b)** If House Bill 2436, 2008 Regular Session, becomes law,
22 Section 13.6B of that act reads as rewritten:

23 "**SECTION 13.6B.(a)** The Commissioner of Banks shall use ~~one million dollars~~
24 ~~(\$1,000,000)~~ six hundred thousand dollars (\$600,000) of the funds available to the State
25 Banking Commission in the 2008-2009 fiscal year to make grants to nonprofit
26 counseling agencies in the ~~State that are designated and approved by the North Carolina~~
27 ~~Housing Finance Agency.~~ State. Grants made under this section shall be used to provide
28 housing counseling and related services to help homeowners avoid home loss and
29 foreclosure and to preserve home equity. Grants may also be used to provide training
30 for counselors.

31 "**SECTION 13.6B.(b)** The State Banking Commission shall report to the Joint
32 Legislative Commission on Governmental Operations regarding the implementation of
33 ~~this program~~ the program in subsection (a) of this section by February 15, 2009.

34 "**SECTION 13.6B.(c)** The Commissioner of Banks shall use four hundred thousand
35 dollars (\$400,000) of the funds available to the State Banking Commission in the
36 2008-2009 fiscal year to implement the Emergency Home Foreclosure Reduction
37 Program as provided in House Bill 2623, 2008 Regular Session."

38 **SECTION 5.** The Office of the Commissioner of Banks shall report to the
39 General Assembly describing the operation of the program established by this act not
40 later than May 1 of each year until the funds are completely disbursed from the reserve.
41 Information in the report shall be presented in aggregate form and may include the
42 number of clients helped, the effectiveness of the funds in preventing home foreclosure,
43 recommendations for further efforts needed to reduce foreclosures, and provide any

1 other aggregated information the Commissioner determines is pertinent or that the
2 General Assembly requests.

3 **SECTION 6.** Section 4 of this act becomes effective July 1, 2008. The
4 remainder of this act becomes effective November 1, 2008, and expires October 31,
5 2010.