

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**SENATE BILL 1264**

Short Title: Protect Homeowners/Reduce Foreclosure. (Public)

Sponsors: Senators Nesbitt; Atwater, Dannelly, Dorsett, Garrou, Graham, Hagan, Hartsell, Jones, Malone, and Stevens.

Referred to: Judiciary I (Civil).

March 26, 2007

A BILL TO BE ENTITLED

1 AN ACT (1) TO OVERTURN THE SHEPARD CASE AND AMEND THE  
2 LIMITATION REGARDING ACTIONS TO RECOVER FOR USURY; (2) TO  
3 OVERTURN THE SKINNER CASE AND AMEND THE LONG-ARM STATUTE  
4 TO ALLOW NORTH CAROLINA COURTS TO EXERCISE PERSONAL  
5 JURISDICTION OVER CERTAIN NONRESIDENT DEFENDANTS; (3) TO  
6 ALLOW THE REINSTATEMENT OF A DEBT SECURED BY A MORTGAGE  
7 OR DEED OF TRUST WHERE THE DEBTOR MAKES OR TENDERS  
8 PAYMENT OF CERTAIN SUMS; (4) TO REQUIRE THAT A NOTICE OF  
9 FORECLOSURE CONTAIN CERTAIN INFORMATION; AND (5) TO MAKE  
10 OTHER AMENDMENTS TO THE LAW GOVERNING HOME LOANS.

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** G.S. 1-53(2) reads as rewritten:

13 "(2) An action to recover the penalty for ~~usury~~-usury, including an action  
14 regarding the financing of usurious points, fees, or other charges,  
15 accrues at the time of the last payment made on the loan."

16 **SECTION 2.** G.S. 1-75.4(6) reads as rewritten:

17 "(6) Local Property. – In any action which arises out of:

- 18 a. A promise, made anywhere to the plaintiff or to some third  
19 party for the plaintiff's benefit, by the defendant to create in  
20 either party an interest in, or protect, acquire, dispose of, use,  
21 rent, own, control or possess by either party real property  
22 situated in this State; or  
23 b. A claim to recover for any benefit derived by the defendant  
24 through the use, ownership, control or possession by the  
25 defendant of tangible property situated within this State either at  
26 the time of the first use, ownership, control or possession or at  
27 the time the action is commenced; or  
28

- 1 c. A claim that the defendant return, restore, or account to the  
2 plaintiff for any asset or thing of value which was within this  
3 State at the time the defendant acquired possession or control  
4 over it.
- 5 d. A claim related to a loan made in this State or deemed to have  
6 been made in this State under G.S. 24-2.1, regardless of the  
7 situs of the lender, assignee, or other holder of the loan note and  
8 regardless of whether the loan payment or fee is received  
9 directly by the defendant or indirectly through a loan servicer,  
10 trustee, or other intermediary, provided all of the following  
11 apply to the loan: (i) the loan was made to a borrower who is a  
12 resident of this State, and (ii) the loan is secured by real  
13 property located in this State."

14 **SECTION 3.** G.S. 24-2.1 reads as rewritten:

15 **"§ 24-2.1. Transactions governed by Chapter.**

16 For purposes of this Chapter, any extension of credit shall be deemed to have been  
17 made in this State, and therefore subject to the provisions of this Chapter if the lender  
18 offers or agrees in this State to lend to a borrower who is a resident of this State, or if  
19 such borrower accepts or makes the offer in this State to borrow, regardless of the situs  
20 of the contract as specified therein.

21 Any solicitation or communication to lend, oral or written, originating outside of this  
22 State, but forwarded to and received in this State by a borrower who is a resident of this  
23 State, shall be deemed to be an offer or agreement to lend in this State.

24 Any solicitation or communication to borrow, oral or written, originating within this  
25 State, from a borrower who is a resident of this State, but forwarded to, and received by  
26 a lender outside of this State, shall be deemed to be an acceptance or offer to borrow in  
27 this State.

28 Any oral or written offer, acceptance, solicitation or communication to lend or  
29 borrow, made in this State to, or received in this State from, a borrower who is not a  
30 resident of this State shall be subject to the provisions of this Chapter, applicable federal  
31 law, law of the situs of the contract, or law of the residence of any such borrower as the  
32 parties may elect.

33 Any person who acquires a right by contract or by assignment to receive payments  
34 under a loan made in this State and who benefits from the laws of this State by having  
35 the loan secured by real property located in this State is deemed to have consented to the  
36 courts of this State having jurisdiction over such person for any claim under this  
37 Chapter and for any claim related to the loan instrument.

38 The provisions of this section shall be severable and if any phrase, clause, sentence  
39 or provision is declared to be invalid, the validity of the remainder of this section shall  
40 not be affected thereby.

41 It is the paramount public policy of North Carolina to protect North Carolina  
42 resident borrowers through the application of North Carolina interest laws. Any  
43 provision of this section which acts to interfere in the attainment of that public policy  
44 shall be of no effect."

1           **SECTION 4.** G.S. 45-21.16(c) reads as rewritten:

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

4           ...

5           (4a) That the debtor has a right to cure a default or have the debt reinstated  
6 pursuant to G.S. 45-91 and that the debtor will have failed to exercise  
7 that right if the debtor has not done so within the prescribed period.

8           (5) Any right of the debtor to pay the indebtedness or ~~cure the default if~~  
9 ~~such is permitted~~ to reinstate the loan pursuant to contract or under  
10 G.S. 45-91(f).

11           (5a) The holder has confirmed in writing to the person giving the notice, or  
12 if the holder is giving the notice, the holder shall confirm in the notice,  
13 that, within 30 days of the date of the notice, the debtor was sent by  
14 first-class mail at the debtor's last known address a written statement  
15 of the amount of principal and interest that the holder claims in good  
16 faith is owed as of the date of the written statement, a daily interest  
17 charge based on the contract rate as of the date of the statement, and  
18 the amount of other expenses the holder contends it is owed as of the  
19 date of the ~~statement~~ statement, and the amount necessary to reinstate  
20 the loan under G.S. 45-91(f). This statement shall include a complete  
21 transaction history of the loan and shall set forth the amounts alleged  
22 to be in default. This transaction history shall document all debits and  
23 credits to the account during this period of time, including the  
24 application and disbursement of all payments received from or for the  
25 benefit of the mortgagor. This transaction history shall be clear and  
26 easily understood. The statement should set forth the total amount  
27 owed by or on behalf of the borrower and shall itemize the amount and  
28 basis for the following fees, as applicable:

29           a. The past due scheduled principal payments.

30           b. The interest due.

31           c. Past due taxes.

32           d. Hazard insurance.

33           e. Mortgage insurance premiums.

34           f. Late fees.

35           g. Homeowners association dues or assessments.

36           h. Filing fees.

37           i. Service fees.

38           j. Postage.

39           k. Advertising.

40           l. Publication expenses.

41           m. Reasonable attorneys' fees incurred with respect to the  
42 foreclosure proceeding.

43           n. Compensation for the trustee's services under the conditions set  
44 forth in G.S. 45-21.15.

- 1 (6) Repealed by Session Laws 1977, c. 359, s. 7.
- 2 (7) The right of the debtor (or other party served) to appear before the  
3 clerk of court at a time and on a date specified, at which appearance he  
4 shall be afforded the opportunity to show cause as to why the  
5 foreclosure should not be allowed to be held. The notice shall contain a  
6 ~~statement that if the debtor does not intend to contest the creditor's~~  
7 ~~allegations of default, the debtor does not have to appear at the hearing~~  
8 ~~and that his failure to attend the hearing will not affect his right to pay~~  
9 ~~the indebtedness and thereby prevent the proposed sale, or to attend~~  
10 ~~the actual sale, should he elect to do so.~~ all of the following:
- 11 a. A statement that if the debtor does not intend to contest the  
12 creditor's allegations of default, the debtor does not have to  
13 appear at the hearing and that his failure to attend the hearing  
14 will not affect his right to pay the indebtedness and thereby  
15 prevent the proposed sale, or to attend the actual sale, should he  
16 elect to do so.
- 17 b. A statement that the trustee, or substitute trustee, is a neutral  
18 party and, while holding that position, may not advocate for the  
19 secured creditor or for the debtor.
- 20 c. A statement that the debtor has the right to apply to a judge of  
21 the superior court pursuant to G.S. 45-21.34 to enjoin the sale,  
22 upon any legal or equitable ground that the court may deem  
23 sufficient prior to the time that the rights of the parties to the  
24 sale or resale become fixed, provided that the debtor complies  
25 with the requirements of G.S. 45-21.34.
- 26 d. A statement that the debtor has the right to appear at the hearing  
27 and serve a written response.
- 28 e. A statement that if the debtor fails to appear at the hearing, the  
29 trustee will ask the clerk for an order to sell the real property  
30 being foreclosed.
- 31 f. A statement that the debtor has the right to contest the  
32 allegations in the notice.
- 33 (8) That if the foreclosure sale is consummated, the purchaser will be  
34 entitled to possession of the real estate as of the date of delivery of his  
35 deed, and that the debtor, if still in possession, can then be evicted.
- 36 (8a) The name, address, and telephone number of the trustee or mortgagee.
- 37 (9) That the debtor should keep the trustee or mortgagee notified in  
38 writing of his address so that he can be mailed copies of the notice of  
39 foreclosure setting forth the terms under which the sale will be held,  
40 and notice of any postponements or resales.
- 41 (10) If the notice of hearing is intended to serve also as a notice of sale,  
42 such additional information as is set forth in G.S. 45-21.16A.

1 (11) That the hearing may be held on a date later than that stated in the  
2 notice and that the party will be notified of any change in the hearing  
3 date."

4 **SECTION 5.** Chapter 45 of the General Statutes is amended by adding a  
5 new Article to read:

6 "Article 10.

7 "Home Loans.

8 **"§ 45-85. Definitions.**

9 As used in this Article, the following definitions apply:

10 (1) Collateral protection insurance. – Insurance coverage that is purchased  
11 unilaterally by a lender or servicer of a home loan that provides  
12 monetary protection against loss of, or damage to, the collateral and is  
13 purchased as a result of a borrower's alleged failure to provide  
14 evidence of insurance or failure to maintain adequate insurance  
15 covering the home. Collateral protection insurance does not include  
16 any of the following:

17 a. Insurance coverage that is purchased by the lender for which  
18 the borrower is not charged.

19 b. Credit insurance.

20 c. Mortgage protection insurance.

21 d. Insurance issued to cover the life or health of the borrower or  
22 any other insurance maintained to cover the inability or failure  
23 of the borrower to make payment under the credit agreement.

24 e. Title insurance.

25 f. Flood insurance required under 42 U.S.C. § 4012(a), as  
26 amended, to be placed by creditors pursuant to the National  
27 Flood Insurance Reform Act of 1994.

28 (2) Home loan. – A loan secured by a home used, or intended to be used,  
29 as a principal dwelling in this State, whether it is real or personal  
30 property, and regardless of whether the loan is used to purchase the  
31 home or whether the proceeds of the loan are used for personal,  
32 family, or business purposes.

33 (3) Servicer. – A person who, under contract with a lender, or on its own  
34 behalf, receives payments from borrowers for home loans, or taxes and  
35 insurance associated with a home loan.

36 **"§ 45-86. Duty of good faith and fair dealing.**

37 Both the lender and the servicer owe a duty of good faith and fair dealing to the  
38 borrower in all dealings related to a home loan. This duty specifically includes an  
39 obligation to avoid foreclosure on the home unless both of the following are true:

40 (1) The servicer or lender has made a good faith review of the borrower's  
41 financial situation and offered, whenever feasible, a repayment plan,  
42 forbearance, loan modification, or other option to assist the borrower  
43 in bringing the arrears current.

44 (2) There is no other reasonable mechanism to collect on the loan.

1 **"§ 45-87. Assessment of fees; processing of payments; publication of statements.**

2 (a) Every outstanding home loan, regardless of whether the loan is considered in  
3 default or the borrower is in bankruptcy or the borrower has been in bankruptcy, shall  
4 comply with the following requirements:

5 (1) Any fee charged by a lender or servicer must be reasonable, for  
6 services actually rendered, and specifically authorized by the home  
7 loan contract. Unless the home is the subject of a foreclosure action  
8 and the debt has been accelerated, the home loan contract shall not  
9 require, nor shall any lender or servicer assess or receive, any fees,  
10 charges, or payment other than the following:

11 a. Principal.

12 b. Interest at the contract rate.

13 c. Lawfully imposed late fees.

14 d. Non-sufficient funds fees.

15 e. Amounts to be put into an escrow account to pay taxes, hazard  
16 insurance, private mortgage insurance, homeowners association  
17 dues, and other similar property charges.

18 (2) A fee that is otherwise permitted under subdivision (1) of this  
19 subsection shall be both:

20 a. Assessed within 30 days of the date on which the fee was  
21 accrued.

22 b. Explained clearly and conspicuously in the next periodic  
23 statement provided to the borrower.

24 (3) Monthly periodic statements shall be provided to the borrower that  
25 plainly indicate all of the following:

26 a. The application of the previous month's payment, including the  
27 allocation of the payment to interest, principal, escrow, and  
28 fees.

29 b. The status of the escrow account, if there is an escrow account,  
30 including the payments into and from the escrow account  
31 during the previous month.

32 c. The assessment of fees accruing in the previous month,  
33 including their purpose and the date they accrued.

34 d. The loan balance.

35 (4) All amounts received by a lender or a servicer shall be accepted and  
36 credited on the date received. The payments shall be credited to  
37 interest and principal due on the loan before crediting payments to  
38 taxes, insurance, or fees. For purposes of this subdivision, payments  
39 shall be applied first to current installments, then to delinquent  
40 payments, and then to delinquency charges.

41 (5) Notwithstanding G.S. 24-10.1(b)(4), if a payment is otherwise a full  
42 payment for the applicable period and is paid on its due date or within  
43 an applicable grace period, and the only delinquency or insufficiency  
44 of payment is attributable to any late fee or delinquency charge

1           assessed on any earlier payment, no late fee or delinquency charge  
2           shall be imposed on such payment. If a late payment charge has been  
3           once imposed with respect to a particular late payment, no such charge  
4           shall be imposed with respect to any future payment which would have  
5           been timely and sufficient but for the previous late payment.

6           (b) Failure to provide the information or charge the fee within the allowable time  
7           and in the manner required under subdivision (2) of subsection (a) of this section  
8           constitutes a waiver of such fee.

9           "**§ 45-88. Restrictions on collateral protection insurance.**

10          (a) Collateral protection insurance may be obtained and charged to the borrower  
11          only if all of the following conditions are met:

12           (1) The home loan agreement requires the borrower to maintain insurance  
13           on the collateral and clearly provides all of the following:

14           a. The terms and conditions for payment for, and imposition of,  
15           the collateral protection insurance.

16           b. A clear and conspicuous statement in the agreement that the  
17           collateral protection insurance may not protect the interests of  
18           the borrower and may be substantially more expensive than  
19           insurance that the borrower may be able to obtain  
20           independently.

21           c. A clear and conspicuous statement in the agreement that the  
22           borrower will be charged for the cost of the collateral protection  
23           insurance.

24           (2) The servicer of the home loan shall make every effort to avoid  
25           obtaining collateral protection insurance, including at least written  
26           notice and telephone communications with the borrower, and the  
27           insurance agent of record, where appropriate, regarding the borrower's  
28           obligations to maintain property insurance and an explanation of the  
29           additional cost to the borrower, on a monthly basis, if collateral  
30           protection insurance is obtained by the lender or servicer.

31           (3) Clear notice is received by the borrower at least 15 days in advance of  
32           the obtaining of the collateral protection insurance that the obtaining of  
33           the insurance is imminent, the costs of the insurance to the borrower,  
34           the new monthly payment to the borrower that reflects these additional  
35           costs, the fact that the insurance will not protect the borrower from  
36           loss, and instructions on the steps the borrower can take to avoid this  
37           placement of insurance.

38           (4) After placement of the insurance, notice of the new monthly payment  
39           requirements shall be delivered to the borrower at least 15 days prior  
40           to the first payment increase to cover the cost of the collateral  
41           protection insurance with an explanation of the imposition of the new  
42           charges for the insurance and what the borrower can do to obviate the  
43           need for the collateral protection insurance.

1       (b) In no event shall collateral protection insurance be obtained when the servicer  
2 or lender is collecting fees in escrow from the borrower for the payment of property  
3 taxes and homeowners insurance, unless the borrower has had the borrower's insurance  
4 cancelled for some reason other than nonpayment of the premium.

5 **"§ 45-89. Obligation of servicer to handle escrow funds.**

6       The servicer or lender shall make all payments from the escrow account held for the  
7 borrower for insurance, taxes, and other charges with respect to the property in a timely  
8 manner so as to ensure that no late penalties are assessed or other negative  
9 consequences result regardless of whether the loan is delinquent unless the servicer or  
10 lender has a reasonable basis to believe that recovery of these funds will not be possible.

11 **"§ 45-90. Borrower requests for information.**

12       (a) The servicer or lender shall respond without cost to, and within 10 days of, a  
13 borrower's request for information and for resolution of disputes. The servicer or lender  
14 shall maintain written or electronic records of each request for information and the  
15 handling of all oral disputes. Specifically, the servicer or lender is required to do all of  
16 the following:

17           (1) Provide the following information when requested:

- 18           a. Whether the account is current or, if the account is not current,  
19           an explanation of the date the account went into default and the  
20           basis for any default.  
21           b. The current balance due on the loan, including the principal  
22           due, an explanation of the escrow balance, and whether there  
23           are any escrow deficiencies or shortages.  
24           c. A full payment history that shows in a clear and easily  
25           understandable manner all of the activity on the home loan  
26           since the origination of the loan, including the escrow account  
27           and the application of payments.  
28           d. A copy of the original note and security instrument.  
29           e. The identity, address, and other relevant information about the  
30           current holder, owner, or assignee of the loan.  
31           f. The telephone number of a lender or servicer representative  
32           with the information and authority to answer questions and  
33           resolve issues.

34           (2) Correct errors relating to the allocation of payments, final balances for  
35 purposes of paying off the loan or avoiding foreclosure, or any other  
36 servicer's or lender's obligations.

37       (b) During the 90-day period beginning on the date of the servicer's or lender's  
38 receipt from any borrower of a request under subsection (a) of this section, a servicer or  
39 lender shall not provide information regarding any overdue payment, or other default on  
40 the loan, by such borrower to any consumer reporting agency.

41 **"§ 45-91. Borrower's right to cure and reinstate the home loan.**

42       (a) Before any action is filed to foreclose upon the home, any exercise of the  
43 power of sale governed by Article 2A of this Chapter or any other action is taken to



1 seize or transfer ownership of a home, the borrower shall be provided a right to cure  
2 under this section. The borrower shall have at least 30 days to cure a default.

3 (b) A notice of the right to cure the default shall be delivered to the borrower,  
4 informing the borrower of all of the following:

5 (1) The nature of the default claimed on the home loan and the borrower's  
6 right to cure the default by paying the sum of money required to cure  
7 the default. If the amount necessary to cure the default is subject to  
8 change before the expiration of the right to cure has expired due to the  
9 application of a daily interest rate or the addition of late fees, the  
10 notice shall give sufficient information to enable the borrower to  
11 calculate the amount at any point during this period.

12 (2) The date by which the borrower must cure the default to avoid  
13 acceleration and initiation of foreclosure or other action to seize the  
14 home and the name and address and phone number of a person to  
15 whom the payment or tender shall be made. The date required under  
16 this subdivision shall not be less than 30 days after the date the notice  
17 is received.

18 (3) That, if the borrower does not cure the default by the date specified,  
19 the lender or servicer may take steps to terminate the borrower's  
20 ownership in the property by commencing a foreclosure proceeding or  
21 other action to seize the home.

22 (4) The name and address of the lender or servicer and the telephone  
23 number of a representative of the lender or servicer whom the  
24 borrower may contact if the borrower disagrees with the lender's or  
25 servicer's assertion that a default has occurred or the correctness of the  
26 lender's or servicer's calculation of the amount required to cure the  
27 default.

28 (5) That a repayment plan, forbearance, loan modification, or other  
29 workout tool may be available to help the borrower repay the arrears  
30 and the name, address, and telephone number of the lender or servicer  
31 whom the borrower may contact to request this assistance.

32 (6) That the borrower may be eligible for a Home Preservation Loan to  
33 cure the default, a short description of the eligibility requirements, and  
34 the name, address, and telephone number of the agency whom the  
35 borrower may contact to request this assistance.

36 (c) To cure a default under this section, a borrower shall not be required to pay  
37 any charge, fee, or penalty attributable to the exercise of the right to cure a default as  
38 provided for in this section. The borrower's payment of all amounts past due for  
39 principal, interest, escrow, and late charges, as specifically permitted in the home loan  
40 and under this Article, shall cure a default.

41 (d) The borrower shall not be liable for any attorneys' fees relating to the  
42 borrower's default that are incurred by the lender or servicer prior to the expiration of  
43 the right to cure period.

1 (e) If a borrower fails to cure the default and a lender or servicer files or initiates  
2 a foreclosure action or takes other action to seize or transfer ownership of the home, the  
3 borrower shall only be liable for attorneys' fees that are reasonable and actually incurred  
4 by the lender or servicer based on a reasonable hourly rate and a reasonable number of  
5 hours plus any other reasonable and necessary expenses incurred by the lender or  
6 servicer.

7 (f) The borrower may reinstate the loan at any time after a notice of foreclosure  
8 hearing is filed pursuant to G.S. 45-21.16, up to the time the foreclosure sale has been  
9 consummated and the upset bid period has expired, by paying all amounts past due for  
10 principal, interest, escrow, and late charges, as specifically permitted in the home loan  
11 agreement and under this Article, plus reasonable expenses related to the foreclosure.  
12 Upon reinstatement by the borrower, the mortgage or deed of trust and the obligation  
13 secured thereby shall remain fully effective as if no acceleration had occurred.

14 (g) If a default is cured prior to the filing of a notice of foreclosure hearing  
15 pursuant to G.S. 45-21.16 or the initiation of any action to foreclose or to seize or  
16 transfer a home, the lender or servicer shall not file a notice of hearing, institute the  
17 foreclosure proceeding or other action for that default. If the loan is reinstated by the  
18 borrower, the lender or servicer shall take such steps as are necessary to terminate the  
19 foreclosure special proceeding or other action,

20 **"§ 45-92. Remedies.**

21 In addition to any other remedies at law, any violation of this Article is declared  
22 unlawful as an unfair or deceptive practice in violation of G.S. 75-1.1. Any person who  
23 fails to comply with any requirement imposed under this Article is liable for each  
24 violation in an amount equal to the sum of any actual damages sustained by such person  
25 as a result of the failure, or an amount not less than five thousand dollars (\$5,000),  
26 whichever is greater. The Attorney General, the Commissioner of Banks, or any party to  
27 a home loan may enforce the provisions of this section.

28 **"§ 45-93. Severability.**

29 The provisions of this Article shall be severable, and if any phrase, clause, sentence,  
30 or provision is declared to be invalid or is preempted by federal law or regulation, the  
31 validity of the remainder of this section shall not be affected thereby. If any provision of  
32 this Article is declared to be inapplicable to any specific category, type, or kind of  
33 points and fees, the provisions of this Article shall nonetheless continue to apply with  
34 respect to all other points and fees.

35 **"§ 45-94. Servicer is an agent of the lender.**

36 For purposes of this Article, a servicer is the agent of the lender with which the  
37 servicer has contracted, as described in G.S. 45-85(3)."

38 **SECTION 6.** Sections 4 and 5 of this act become effective October 1, 2007.  
39 All other sections of this act are effective when it becomes law.