

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 226*

Short Title: Foreclosure Notice/AB.

(Public)

Sponsors: Representative Culpepper.

Referred to: Judiciary IV.

March 3, 1999

A BILL TO BE ENTITLED

1 AN ACT TO REQUIRE THAT A NOTICE OF FORECLOSURE HEARING INCLUDE
2 ADDITIONAL INFORMATION, AS RECOMMENDED BY THE GENERAL
3 STATUTES COMMISSION.
4

5 The General Assembly of North Carolina enacts:

6 Section 1. G.S. 45-21.16(c) reads as rewritten:

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

9 (1) The particular real estate security interest being foreclosed, with such a
10 description as is necessary to identify the real property, including the
11 date, original amount, original holder, and book and page of the security
12 instrument.

13 (2) The name and address of the holder of the security instrument at the
14 time that the notice of hearing is filed.

15 (3) The nature of the default claimed.

16 (4) The fact, if such be the case, that the secured creditor has accelerated the
17 maturity of the debt.

18 (5) Any right of the debtor to pay the indebtedness or cure the default if
19 such is permitted.

1 (5a) The holder has confirmed in writing to the person giving the notice, or if
2 the holder is giving the notice, the holder shall confirm in the notice,
3 that, within 30 days of the date of the notice, the debtor was sent by
4 first-class mail at the debtor's last known address a written statement of
5 the amount of principal and interest that the holder claims in good faith
6 is owed as of the date of the written statement, a daily interest charge
7 based on the contract rate as of the the date of the statement, and the
8 amount of other expenses the holder contends it is owed as of the date
9 of the statement.

10 (6) Repealed by Session Laws 1977, c. 359, s. 7.

11 (7) The right of the debtor (or other party served) to appear before the clerk
12 of court at a time and on a date specified, at which appearance he shall
13 be afforded the opportunity to show cause as to why the foreclosure
14 should not be allowed to be held. The notice shall contain a statement
15 that if the debtor does not intend to contest the creditor's allegations of
16 default, the debtor does not have to appear at the hearing and that his
17 failure to attend the hearing will not affect his right to pay the
18 indebtedness and thereby prevent the proposed sale, or to attend the
19 actual sale, should he elect to do so.

20 (8) That if the foreclosure sale is consummated, the purchaser will be
21 entitled to possession of the real estate as of the date of delivery of his
22 deed, and that the debtor, if still in possession, can then be evicted.

23 (8a) The name, address, and telephone number of the trustee or mortgagee.

24 (9) That the debtor should keep the trustee or mortgagee notified in writing
25 of his address so that he can be mailed copies of the notice of
26 foreclosure setting forth the terms under which the sale will be held, and
27 notice of any postponements or resales.

28 (10) If the notice of hearing is intended to serve also as a notice of sale, such
29 additional information as is set forth in G.S. 45-21.16A.

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

32 Section 2. G.S. 45-21.16 is amended by adding a new subsection to read:

33 "(c1) The person giving the notice of hearing, if other than the holder, may rely on
34 the written confirmation received from the holder under subdivision (c)(5a) of this
35 section and is not liable for inaccuracies in the written confirmation. Any dispute
36 concerning the written statement sent to the debtor under subdivision (c)(5a) of this
37 section shall not be considered in a foreclosure hearing under this section but may be
38 considered in an action to enjoin the foreclosure sale under G.S. 45-21.34."

39 Section 3. This act becomes effective January 1, 2000, and applies to notices
40 of hearing served on or after that date.