

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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HOUSE BILL 1146

Short Title: Foreclosure Reform. (Public)

Sponsors: Representative Michaux.

Referred to: Judiciary II.

April 7, 2005

A BILL TO BE ENTITLED
AN ACT TO IMPROVE THE FORECLOSURE PROCESS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-21.16(c)(5) reads as rewritten:

"(5) Any right of the debtor to pay the indebtedness or ~~cure the default if such is permitted~~ to reinstate the loan pursuant to contract or under G.S. 45-21.20A."

SECTION 2. G.S. 45-21.16(c)(5a) reads as rewritten:

"(5a) The holder has confirmed in writing to the person giving the notice, or if the holder is giving the notice, the holder shall confirm in the notice, that, within 30 days of the date of the notice, the debtor was sent by first-class mail at the debtor's last known address a written statement of the amount of principal and interest that the holder claims in good faith is owed as of the date of the written statement, a daily interest charge based on the contract rate as of the date of the statement, ~~and~~ the amount of other expenses the holder contends it is owed as of the date of the ~~statement.~~ statement, and the amount necessary to reinstate the loan under G.S. 45-21.20A."

SECTION 3. G.S. 45-21.16(c)(7) reads as rewritten:

"(7) The right of the debtor (or other party served) to appear before the clerk of court at a time and on a date specified, at which appearance he shall be afforded the opportunity to show cause as to why the foreclosure should not be allowed to be held. The notice shall contain a all of the following:

a. A statement that if the debtor does not intend to contest the creditor's allegations of default, the debtor does not have to appear at the hearing and that his failure to attend the hearing will not affect his right to pay the indebtedness and thereby

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1 prevent the proposed sale, or to attend the actual sale, should he
2 elect to do so.

3 b. A statement that the trustee, or substitute trustee, is a neutral
4 party and in the event that the debtor contests the issues
5 presented in the foreclosure hearing, the trustee, or substitute
6 trustee, shall not advocate for the lender or for the debtor.

7 c. A statement that the debtor has the right to file a separate
8 lawsuit pursuant to G.S. 45-21.34 in which the debtor may be
9 able to assert legal or equitable claims against the maker or
10 holder of the loan and in which the debtor may apply to a judge
11 of the superior court for injunctive relief stopping the mortgage
12 sale prior to the time that the rights of the parties to the sale or
13 resale become fixed.

14 d. A statement that the debtor has the right to appear at the hearing
15 and serve a written response.

16 e. A statement that if the debtor fails to appear at the hearing, the
17 trustee will ask the clerk for an order to sell the debtor's home.

18 f. A statement that the debtor has the right to contest the
19 allegations in the notice."

20 **SECTION 4.** Article 2A of Chapter 45 of the General Statutes is amended
21 by adding a new section to read:

22 **"§ 45-21.20A. Reinstatement of debt after publishing or posting notice, but before**
23 **completion of sale.**

24 (a) A mortgage, under a consumer home loan as defined in G.S. 24-10.2(a), may
25 reinstate the loan if, prior to the time fixed for a sale or prior to the expiration of the
26 time for submitting any upset bid after a sale or resale has been held, the debtor makes
27 payment of all of the following reinstatement sums:

28 (1) The past due scheduled payments and authorized late fees, together
29 with past due taxes, hazard insurance, and homeowners association
30 dues or assessments.

31 (2) The filing fees, advertising and publication expenses actually incurred
32 with respect to the sale or proposed sale, and compensation for the
33 trustee's services under the conditions set forth in G.S. 45-21.15.

34 (b) Payment of reinstatement sums under subsection (a) of this section shall be
35 made to the court, and the court shall enter an order staying further proceedings in the
36 action and shall dismiss the special proceeding, without prejudice."

37 **SECTION 5.** Article 2A of Chapter 45 of the General Statutes is amended
38 by adding a new section to read:

39 **"§ 45-21.38A. Deficiency judgments abolished where mortgage represents part of**
40 **purchase price of manufactured mobile or manufactured modular home.**

41 In all mortgage loans of less than the sum of three hundred thousand dollars
42 (\$300,000) where part of the mortgage loan proceeds is used to purchase a
43 manufactured mobile home or manufactured modular home that will be occupied by the
44 borrower as the borrower's principal dwelling, the mortgage, or trustee, or holder of the

1 notes secured by such mortgage or deed of trust shall not be entitled to a deficiency
2 judgment on account of such mortgage, deed of trust, or obligation secured by the
3 same."

4 **SECTION 6.** This act becomes effective October 1, 2005, and applies to any
5 loan agreement entered into on or after that date.