

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1146  
Committee Substitute Favorable 6/1/05  
Third Edition Engrossed 6/1/05

Short Title: Foreclosure Reform.

(Public)

Sponsors:

Referred to:

April 7, 2005

1 A BILL TO BE ENTITLED  
2 AN ACT TO IMPROVE THE FORECLOSURE PROCESS.  
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 45-21.16(c)(7) reads as rewritten:

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

- 10 a. A statement that if the debtor does not intend to contest the  
11 creditor's allegations of default, the debtor does not have to  
12 appear at the hearing and that his failure to attend the hearing  
13 will not affect his right to pay the indebtedness and thereby  
14 prevent the proposed sale, or to attend the actual sale, should he  
15 elect to do so.
- 16 b. A statement that the trustee, or substitute trustee, is a neutral  
17 party and in the event that the debtor contests the issues  
18 presented in the foreclosure hearing, the trustee, or substitute  
19 trustee, shall not advocate for the lender or for the debtor.
- 20 c. A statement that the debtor has the right to appear at the hearing  
21 and serve a written response.
- 22 d. A statement that if the debtor fails to appear at the hearing, the  
23 trustee will ask the clerk for an order to sell the debtor's home.
- 24 e. A statement that the debtor has the right to contest the  
25 allegations in the notice."

26 **SECTION 2.** G.S. 45-21.29(k) reads as rewritten:

27 "(k) Orders for possession of real property sold pursuant to this Article, in favor of  
28 the purchaser and against any party or parties in possession at the time of application

1 therefore, may be issued by the clerk of the superior court of the county in which such  
2 property is sold, when:

- 3 (1) Such property has been sold in the exercise of the power of sale  
4 contained in any mortgage, deed of trust, leasehold mortgage,  
5 leasehold deed of trust, or a power of sale authorized by any other  
6 statutory provisions,  
7 (2) Repealed by Session Laws 1993, c. 305, s. 18.  
8 (2a) The provisions of this Article have been complied with,  
9 (3) The sale has been consummated, and the purchase price has been paid,  
10 (4) The purchaser has acquired title to and is entitled to possession of the  
11 real property sold,  
12 (5) Ten days' notice has been given to the party or parties who remain in  
13 possession at the time application is made, and  
14 (6) Application is made by petition to such clerk by the mortgagee, the  
15 trustee, the purchaser of the property, or any such person's authorized  
16 representative."

17 **SECTION 3.** This act becomes effective October 1, 2005, and applies to any  
18 loan agreement entered into on or after that date.