

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2623

Short Title: Emergency Foreclosure Reduction Program. (Public)

Sponsors: Representatives Blue, Church, Carney, Weiss (Primary Sponsors);
Bryant, Coates, Coleman, Current, Faison, Fisher, Glazier, Goforth, Hall,
Harrison, Jones, Lucas, Luebke, Ross, Wainwright, Womble, and Wray.

Referred to: Judiciary II, if favorable, Appropriations.

May 28, 2008

A BILL TO BE ENTITLED

AN ACT TO CREATE AN EMERGENCY PROGRAM TO REDUCE
FORECLOSURES AND TO APPROPRIATE FUNDS TO THE NORTH
CAROLINA HOUSING FINANCE AGENCY TO ESTABLISH A
FORECLOSURE PREVENTION RESERVE.

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 Foreclosures.

"§ 45-100. Title.

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

"§ 45-101. Definitions.

The following definitions apply throughout this Article:

- (1) Mortgage servicer. – A person who is in the business of receiving any scheduled periodic payment from a borrower pursuant to the terms of any loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required under the terms of the mortgage servicing loan document or servicing contract.
- (2) Qualifying loan. – A mortgage loan with all of the following characteristics:
 - a. The property securing the loan is occupied by the mortgagor at the time of the submission required in G.S. 45-102 as the mortgagor's principal residence.
 - b. The loan is a subprime loan.

- 1 c. The mortgagor has not received assistance under the Home
2 Protection Pilot Program administered by the North Carolina
3 Housing Finance Agency.
- 4 d. The mortgagor has not previously received assistance under this
5 Article for a prior delinquency.
- 6 e. Efforts by the Commissioner of Banks to encourage
7 communication have a realistic likelihood of preventing
8 foreclosure as determined by the Commissioner.

9 (3) Recently-originated. – A subprime loan originated on or after January
10 1, 2005, but no later than December 31, 2007.

11 (4) Subprime loan. – A loan that would meet the definition of a rate spread
12 home loan under G.S. 24-1-1F(a)(7), if that section had been in effect
13 when the loan was originated. A mortgage servicer may rely on a chart
14 reflecting the appropriate interest rate triggers for rate spread home
15 loans for each day of the period covered by this Article provided by
16 the Commissioner of Banks for the purposes of determining if a loan is
17 a subprime loan covered by this Article.

18 **"§ 45-102. Creation of database of subprime loans facing foreclosure.**

19 No later than September 1, 2008, the Commissioner of Banks shall create a database
20 comprised of qualifying loans in which a foreclosure filing is reasonably anticipated as
21 described in G.S. 45-103. The Commissioner shall utilize this database in order to
22 encourage communications between mortgage servicers and willing homeowners.

23 **"§ 45-103. Submission of information to the database.**

24 Mortgage servicers of recently-originated subprime home loans shall submit
25 information required by the Commissioner of Banks to the database created pursuant to
26 G.S. 45-102 at least 30 days prior to the institution of any foreclosure proceeding. The
27 Commissioner shall use the information to determine if a loan is a qualifying loan. The
28 Commissioner shall publicly provide the form, manner, and content of the filing no later
29 than 30 days prior to the date the database becomes active.

30 **"§ 45-104. Assistance for qualifying loans.**

31 In the case of a qualifying loan, the Commissioner of Banks shall notify the
32 mortgage servicer, the homeowner, and other parties, as appropriate, that the loan is a
33 qualifying loan and shall make efforts to facilitate communication between the parties to
34 avoid foreclosure. The mortgage servicer shall not institute foreclosure proceedings for
35 at least 60 days after receiving notice that the loan is a qualifying loan, in order to allow
36 the parties to determine if there is an alternative to foreclosure.

37 **"§ 45-105. Notification.**

38 For loans that are not qualifying loans, the Commissioner of Banks shall notify the
39 holder or the mortgage servicing agent of the determination that the loan is not a
40 qualifying loan within 30 days of the receipt of the initial notice required by this Article
41 so as not to disrupt foreclosure proceedings for loans not receiving assistance under this
42 program.

43 **"§ 45-106. Emergency powers of the Commissioner of Banks.**

1 The Commissioner of Banks shall be exempt from rulemaking under Chapter 150B
2 of the General Statutes solely with regard to establishing procedures to implement the
3 purposes of this Article. The Commissioner may employ agents to act on behalf of the
4 Commissioner to accomplish the purposes of this Article.

5 **"§ 45-107. Privacy of records.**

6 The Commissioner of Banks shall protect the privacy of personal financial
7 information provided in accordance with this Article that is not otherwise a public
8 record, and such information shall not be released to the public. A mortgage servicer
9 shall be held harmless by the Commissioner for any breach of privacy rights of the
10 mortgagor with respect to the information the mortgage servicer provides to the
11 Commissioner in accordance with G.S. 45-103.

12 **"§ 45-108. Foreclosure filing.**

13 (a) For the duration of this program, foreclosure notices filed on or after
14 September 1, 2008, shall contain a certification by the filing party that the loan was
15 properly submitted to the database as required by G.S. 45-103 and that the loan is not
16 currently receiving assistance under G.S. 45-104 or that the loan is not a qualifying
17 loan.

18 (b) An inaccurate statement in the certification required by subsection (a) of this
19 section shall be cause for the dismissal of any foreclosure proceeding initiated by the
20 mortgage servicer and a payment by the filing party of costs incurred by the mortgagor
21 in defending the foreclosure proceeding."

22 **SECTION 2.** (a) There is appropriated from the General Fund to the North
23 Carolina Housing Finance Agency the sum of one million dollars (\$1,000,000) for the
24 2008-2009 fiscal year to establish the Foreclosure Prevention Reserve. The Reserve will
25 be available as needed to reimburse local agencies for counseling services to
26 homeowners whose homes are at risk of foreclosure. The Reserve may only be used
27 when there are no other sources of funds available to provide these services.

28 (b) The Reserve will be set up in the Housing Finance Agency's special fund and
29 shall not revert at the end of the fiscal year.

30 (c) The North Carolina Housing Finance Agency shall report to the Joint
31 Legislative Commission on Governmental Operations by May 1 of each year until the
32 funds are completely disbursed from the Reserve. The report shall include the number
33 of clients helped, the effectiveness of the Reserve in preventing foreclosure, and provide
34 any other information that the agency determines is pertinent or that the General
35 Assembly requests.

36 **SECTION 3.** The Commissioner of Banks shall report to the General
37 Assembly on the costs and benefits of the Emergency Program to Reduce Foreclosures
38 on or before March 1, 2009 and 2010, along with any recommendations for further
39 efforts needed to reduce foreclosures.

40 **SECTION 4.** Sections 1 and 3 of this act become effective July 1, 2008, and
41 expire August 31, 2010. The remainder of this act becomes effective July 1, 2008.