

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE DRH70349-MD-110 (03/25)

Short Title: Allow Money Damages for SCRA Violations.

(Public)

Sponsors: Representative Martin.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT MONEY DAMAGES MAY BE AWARDED IN CIVIL
3 ACTIONS UNDER THE SERVICEMEMBERS CIVIL RELIEF ACT; AND TO
4 PROHIBIT CLERKS FROM ALLOWING POWER OF SALE FORECLOSURE SALES
5 FOR PERSONS WHO ARE SUBJECT TO THAT ACT.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Article 43 of Chapter 1 of the General Statutes is amended by adding
8 a new section to read:

9 "§ 1-539.2D. Damages for violations of the Servicemembers Civil Relief Act.

10 Any person who suffers economic harm as a result of a violation of the Servicemembers
11 Civil Relief Act, 50 U.S.C. App. § 501, et seq., shall be entitled to recover actual damages
12 suffered as a result of the violation. This section shall be interpreted and applied consistently
13 with applicable federal law."

14 SECTION 2. G.S. 45-21.16(d) reads as rewritten:

15 "(d) (Effective until October 31, 2010) The hearing provided by this section shall be
16 held before the clerk of court in the county where the land, or any portion thereof, is situated. In
17 the event that the property to be sold consists of separate tracts situated in different counties or
18 a single tract in more than one county, only one hearing shall be necessary. However, prior to
19 that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where
20 any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the
21 evidence of the parties and may consider, in addition to other forms of evidence required or
22 permitted by law, affidavits and certified copies of documents. If the clerk ~~finds the existence~~
23 ~~of finds:~~ (i) the existence of a valid debt of which the party seeking to foreclose is the holder,
24 (ii) the existence of a default, (iii) a right to foreclose under the instrument, (iv) notice to those
25 entitled to such under subsection (b), ~~and~~ (v) that the underlying mortgage debt is not a
26 subprime loan as defined in G.S. 45-101(4), or if the loan is a subprime loan under
27 G.S. 45-101(4), that the pre-foreclosure notice under G.S. 45-102 was provided in all material
28 respects, and that the periods of time established by Article 11 of this Chapter have
29 ~~elapsed, elapsed,~~ and (vi) that the debtor is not entitled to any of the protections under the
30 Servicemembers Civil Relief Act of 2004, 50 U.S.C. App. § 501, et seq., then the clerk shall
31 authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or
32 trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A
33 certified copy of any authorization or order by the clerk shall be filed in any other county where
34 any portion of the property to be sold is located before the mortgagee or trustee may proceed to



1 advertise and sell any property located in that county. In the event that sales are to be held in
2 more than one county, the provisions of G.S. 45-21.7 apply.

3 (d) **(Effective October 31, 2010)** The hearing provided by this section shall be held
4 before the clerk of court in the county where the land, or any portion thereof, is situated. In the
5 event that the property to be sold consists of separate tracts situated in different counties or a
6 single tract in more than one county, only one hearing shall be necessary. However, prior to
7 that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where
8 any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the
9 evidence of the parties and may consider, in addition to other forms of evidence required or
10 permitted by law, affidavits and certified copies of documents. If the clerk ~~finds the existence~~
11 ~~of~~ finds: (i) the existence of a valid debt of which the party seeking to foreclose is the holder,
12 (ii) a default, (iii) a right to foreclose under the instrument, and ~~(iv) notice to those entitled to~~
13 such under subsection (b), and (v) that the debtor is not entitled to any of the protections under
14 the Servicemembers Civil Relief Act of 2004, 50 U.S.C. App. § 501, et seq., then the clerk
15 shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or
16 trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A
17 certified copy of any authorization or order by the clerk shall be filed in any other county where
18 any portion of the property to be sold is located before the mortgagee or trustee may proceed to
19 advertise and sell any property located in that county. In the event that sales are to be held in
20 more than one county, the provisions of G.S. 45-21.7 apply."

21 **SECTION 3.** This act becomes effective October 1, 2009.