

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1216
Commerce Committee Substitute Adopted 6/8/10
Finance Committee Substitute Adopted 6/9/10

Short Title: Extend Emergency Foreclosure Program.

(Public)

Sponsors:

Referred to:

May 19, 2010

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND AND EXTEND THE EMERGENCY PROGRAM TO REDUCE
3 HOME FORECLOSURES ACT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 11 of Chapter 45 of the General Statutes reads as rewritten:

6 "Article 11.

7 "Emergency Program to Reduce Home Foreclosures.

8 "§ 45-100. (For expiration date, see note) Title.

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

10 "§ 45-101. (For expiration date, see note) Definitions.

11 The following definitions apply throughout this Article:

12 (1) Act as a mortgage servicer. – To engage, whether for compensation or gain
13 from another or on its own behalf, in the business of receiving any scheduled
14 periodic payments from a borrower pursuant to the terms of any mortgage
15 loan, including amounts for escrow accounts, and making the payments of
16 principal and interest and such other payments with respect to the amounts
17 received from the borrower as may be required pursuant to the mortgage
18 loan, the mortgage servicing loan documents, or servicing contract.

19 (1a) ~~Annual percentage rate. — Defined in G.S. 24-1.1F.~~

20 (1b) Home loan. – A loan that has all of the following characteristics:

- 21 a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii)
22 a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage
23 transaction, or (iv) a bridge loan with a term of 12 months or less,
24 such as a loan to purchase a new dwelling where the borrower plans
25 to sell a current dwelling within 12 months.
- 26 b. The borrower is a natural person.
- 27 c. The debt is incurred by the borrower primarily for personal, family,
28 or household purposes.
- 29 d. The principal amount of the loan does not exceed the conforming
30 loan size limit for a single-family dwelling as established from time
31 to time by Fannie Mae.
- 32 e. The loan is secured by (i) a security interest in a manufactured home,
33 as defined in G.S. 143-145, in the State which is or will be occupied
34 by the borrower as the borrower's principal dwelling, (ii) a mortgage
35 or deed of trust on real property in the State upon which there is
36 located an existing structure designed principally for occupancy of



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- 1 from one to four families that is or will be occupied by the borrower
2 as the borrower's principal dwelling, or (iii) a mortgage or deed of
3 trust on real property in the State upon which there is to be
4 constructed using the loan proceeds a structure or structures designed
5 principally for occupancy of from one to four families which, when
6 completed, will be occupied by the borrower as the borrower's
7 principal dwelling.
- 8 f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct,
9 repair, rehabilitate, remodel, or improve the dwelling or the real
10 property on which it is located, (iii) satisfy and replace an existing
11 obligation secured by the same real property, or (iv) consolidate
12 existing consumer debts into a new home loan.
- 13 (2) Mortgage lender. – A person engaged in the business of making mortgage
14 loans for compensation or gain.
- 15 (3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage
16 servicer as that term is defined in subdivision (1) of this section or who
17 otherwise meets the definition of the term "servicer" in the Real Estate
18 Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage
19 loans.
- 20 (3a) ~~Rate spread home loan.—A home loan in which all the following apply:~~
- 21 a. ~~The difference between the annual percentage rate for the loan and~~
22 ~~the yield on U.S. Treasury securities having comparable periods of~~
23 ~~maturity is either equal to or greater than (i) three percentage points~~
24 ~~(3%), if the loan is secured by a first lien mortgage or deed of trust,~~
25 ~~or (ii) five percentage points (5%), if the loan is secured by a~~
26 ~~subordinate lien mortgage or deed of trust. Without regard to whether~~
27 ~~the loan is subject to or reportable under the provisions of the Home~~
28 ~~Mortgage Disclosure Act (12 U.S.C. § 2801, et seq.) (HMDA), the~~
29 ~~difference between the annual percentage rate and the yield on~~
30 ~~Treasury securities having comparable periods of maturity shall be~~
31 ~~determined using the same procedures and calculation methods~~
32 ~~applicable to loans that are subject to the reporting requirements of~~
33 ~~HMDA, as those procedures and calculation methods are amended~~
34 ~~from time to time, provided that the yield on Treasury securities shall~~
35 ~~be determined as of the fifteenth day of the month prior to the~~
36 ~~application for the loan.~~
- 37 b. ~~The difference between the annual percentage rate for the loan and~~
38 ~~the conventional mortgage rate is either equal to or greater than (i)~~
39 ~~one and three fourths percentage points (1.75%), if the loan is~~
40 ~~secured by a first lien mortgage or deed of trust, or (ii) three and~~
41 ~~three fourths percentage points (3.75%), if the loan is secured by a~~
42 ~~subordinate lien mortgage or deed of trust. For purposes of this~~
43 ~~calculation, the "conventional mortgage rate" means the most recent~~
44 ~~daily contract interest rate on commitments for fixed-rate first~~
45 ~~mortgages published by the Board of Governors of the Federal~~
46 ~~Reserve System in its Statistical Release H.15, or any publication~~
47 ~~that may supersede it, during the week preceding the week in which~~
48 ~~the interest rate for the loan is set.~~
- 49 (4) ~~Subprime loan.—A loan, originated on or after January 1, 2005, but before~~
50 ~~December 31, 2007, that meets the definition of a rate spread home loan~~
51 ~~under this Article. A mortgage servicer may rely on a chart reflecting the~~

1 appropriate interest rate triggers for rate spread home loans for each day of
2 the period covered by this Article provided by the Commissioner of Banks
3 for the purposes of determining if a loan is a subprime loan covered by this
4 Article. The Commissioner shall provide the chart at least 60 days prior to
5 the effective date of this act."

6 **"§ 45-102. (For expiration date, see note) Pre-foreclosure notice for subprime home loans.**

7 At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding on a
8 primary residence, mortgage servicers of subprime home loans shall send written notice by
9 mail to the last known address of the borrower to inform the borrower of the availability of
10 resources to avoid foreclosure, including:

- 11 (1) An itemization of all past due amounts causing the loan to be in default.
- 12 (2) An itemization of any other charges that must be paid in order to bring the
13 loan current.
- 14 (3) A statement that the borrower may have options available other than
15 foreclosure and that the borrower may discuss available options with the
16 mortgage lender, the mortgage servicer, or a counselor approved by the U.S.
17 Department of Housing and Urban Development.
- 18 (4) The address, telephone number, and other contact information for the
19 mortgage lender, the mortgage servicer, or the agent for either of them who
20 is authorized to attempt to work with the borrower to avoid foreclosure.
- 21 (5) The name, address, telephone number, and other contact information for one
22 or more HUD-approved counseling agencies operating to assist borrowers in
23 North Carolina to avoid foreclosure.
- 24 (6) The address, telephone number, and other contact information for the
25 consumer complaint section of the Office of Commissioner of ~~Banks~~. Banks,
26 or, alternatively, if the loan is by a credit union, the address, telephone
27 number, and other contact information for the consumer complaint section of
28 the Credit Union Division.

29 **"§ 45-103. (For expiration date, see note) Pre-foreclosure information to be filed with the**
30 **Administrative Office of the Courts for ~~certain subprime home loans.~~**

31 (a) Within three business days of mailing the notice required by G.S. 45-102, the
32 mortgage servicer shall file certain information with the Administrative Office of the Courts.
33 The filing shall be in an electronic format, as designated by the Administrative Office of the
34 Courts, and shall contain the name and address of the ~~borrower~~ borrower, the due date of the
35 last scheduled payment made by the borrower, and the date the notice was mailed to the
36 borrower.

37 (b) As permitted by applicable State and federal law, optional information may be
38 requested from the mortgage servicer to facilitate further review by the State Home Foreclosure
39 Prevention Project described in G.S. 45-104. The nature of the optional information requested
40 shall be determined in connection with the design of the database established by subsection (c)
41 of this section. This optional information shall be used by the State Home Foreclosure
42 Prevention Project to prioritize efforts to reach borrowers most likely to avoid foreclosure and
43 to prevent delay for defaults where foreclosure is unavoidable.

44 (c) ~~No later than October 1, 2008, the Administrative Office of the Courts shall~~
45 ~~establish an internal database to track information provided in this section. The Commissioner~~
46 ~~of Banks shall design and develop this database, in consultation with the Administrative Office~~
47 ~~of the Courts, in a manner to promote the efforts of the State Home Foreclosure Prevention~~
48 ~~Project. Only the Administrative Office of the Courts, the Office of Commissioner of Banks,~~
49 ~~and the clerk of court as provided by G.S. 45-107 shall have access to the database."~~

50 **"§ 45-104. (For expiration date, see note) State Home Foreclosure Prevention**
51 **Project.Project and Fund.**

1 (a) The Commissioner of Banks is authorized to establish the State Home Foreclosure
2 Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures for
3 ~~ertain subprime~~ home loans. In developing the Project, the Commissioner may include input
4 from HUD-approved housing counselors, community organizations, the Credit Union Division
5 and other state agencies, mortgage lenders, mortgage servicers, and other partners.

6 (b) There is established a State Home Foreclosure Prevention Trust Fund to be managed
7 and maintained by the Office of the Commissioner of Banks. The funds shall be held separate
8 from any other funds received by the Office of the Commissioner of Banks in trust for the
9 operation of the State Home Foreclosure Prevention Project.

10 (c) Upon the filing of the information required under G.S. 45-103, the mortgage
11 servicer shall pay a fee of seventy-five dollars (\$75.00) to the State Home Foreclosure
12 Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered
13 by this act. The collection of this fee shall be managed by the Office of the Commissioner of
14 Banks in a manner so as to minimize burdens on mortgage servicers in complying with the
15 requirements of this section.

16 (d) The Commissioner of Banks shall allocate funds from the State Home Foreclosure
17 Prevention Trust Fund to implement the purposes of this act in the following manner:

18 (1) An amount, not to exceed the greater of two million two hundred thousand
19 dollars (\$2,200,000) or thirty percent (30%) of the funds per year, to cover
20 the administrative costs of the operation of the program by the Office of the
21 Commissioner of Banks, including managing on behalf of the
22 Administrative Office of the Courts the database identified in G.S. 45-103,
23 expenses associated with informing homeowners of State resources available
24 for foreclosure prevention, expenses associated with connecting
25 homeowners to available resources, and assistance to homeowners and
26 counselors in communicating with mortgage servicers.

27 (2) An amount, not to exceed the greater of three million four hundred thousand
28 dollars (\$3,400,000) or forty percent (40%) per year, to make grants to or
29 reimburse nonprofit housing counseling agencies for providing foreclosure
30 prevention counseling services to homeowners involved in the State Home
31 Foreclosure Prevention Project.

32 (3) An amount, not to exceed thirty percent (30%) of the total funds collected
33 per year, to make grants to or reimburse nonprofit legal service providers for
34 services rendered on behalf of homeowners in danger of defaulting on a
35 home loan to avoid foreclosure, limited to legal representation such as
36 negotiation of loan modifications or other loan work-out solutions,
37 defending homeowners in foreclosure or representing homeowners in
38 bankruptcy proceedings, and research and counsel to homeowners regarding
39 the status of their home loans.

40 (4) Any funds remaining upon the expiration of the State Home Foreclosure
41 Prevention Project shall be directed to the North Carolina Housing Trust
42 Fund.

43 (e) The Commissioner of Banks shall have the discretion to enter into an agreement to
44 administer funds under subdivisions (2) and (3) of subsection (d) of this section in a manner
45 that complements or supplements other State and federal programs directed to prevent
46 foreclosures for homeowners participating in the State Home Foreclosure Prevention Project.

47 **"§ 45-105. (For expiration date, see note) Extension of foreclosure process.**

48 The Commissioner of Banks shall review information provided in the database created by
49 G.S. 45-103 to determine which ~~subprime~~ home loans are appropriate for efforts to avoid
50 foreclosure. If the Commissioner reasonably believes, based on a full review of the loan
51 information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest

1 in staying in the home, and other appropriate factors, that further efforts by the State Home
2 Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary
3 residences, the Commissioner shall have the authority to extend one time under this Article the
4 allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days
5 beyond the earliest filing date established by the pre-foreclosure notice. If the Commissioner
6 makes the determination that a loan is subject to this section, the Commissioner shall notify the
7 borrower, mortgage servicer, and the Administrative Office of the Courts. If the mortgage
8 servicer is a state or federally chartered credit union, the Commissioner shall also notify the
9 Administrator of the Credit Union Division of the determination.

10 **"§ 45-106. (For expiration date, see note) Use and privacy of records.**

11 The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall
12 be exclusively for the use and purposes of the State Home Foreclosure Prevention Project
13 developed by the Commissioner of Banks in accordance with G.S. 45-104. The information
14 provided to the database is not a public record, except that a mortgage lender and a mortgage
15 servicer shall have access to the information submitted only with regard to its own loans. Any
16 notice provided by the Commissioner to the Administrator of the Credit Union Division under
17 G.S. 45-105 is not a public record. Provision of information to the Administrative Office of the
18 Courts for use by the State Home Foreclosure Prevention Project shall not be considered a
19 violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of
20 privacy rights of the borrower with respect to the information the mortgage servicer provides in
21 accordance with this Article.

22 **"§ 45-107. (For expiration date, see note) Foreclosure filing.**

23 (a) For the duration of the program authorized by this Article, foreclosure notices filed
24 on ~~subprime~~ home loans on or after ~~November 15, 2008,~~ November 1, 2010, shall contain a
25 certification by the filing party that the pre-foreclosure notice required by G.S. 45-102 and the
26 pre-foreclosure information required by G.S. 45-103 were provided in accordance with this
27 Article and that the periods of time established by the Article have elapsed.

28 (b) The clerk of superior court or other judicial officer may have access to the
29 pre-foreclosure database to confirm information provided in subsection (a) of this section. A
30 materially inaccurate statement in the certification shall be cause for dismissal without
31 prejudice of any foreclosure proceeding on a primary residence initiated by the mortgage
32 servicer and for payment by the filing party of costs incurred by the borrower in defending the
33 foreclosure proceeding."

34 **SECTION 2.** G.S. 45-21.16(c2) reads as rewritten:

35 "(c2) (**Expires October 31, 2010**) In any foreclosure filed on or after ~~November 15,~~
36 ~~2008,~~ November 1, 2010, where the underlying mortgage debt is a ~~subprime~~ home loan as
37 defined in ~~G.S. 45-101(4),~~ G.S. 45-101(1b), the notice required by subsection (b) of this section
38 shall contain a certification by the filing party that the pre-foreclosure notice and information
39 required by G.S. 45-102 and G.S. 45-103 were provided in all material respects and that the
40 periods of time established by Article 11 of this Chapter have elapsed."

41 **SECTION 3.** G.S. 45-21.16(d) reads as rewritten:

42 "(d) (**Effective until October 31, 2010**) The hearing provided by this section shall be
43 held before the clerk of court in the county where the land, or any portion thereof, is situated. In
44 the event that the property to be sold consists of separate tracts situated in different counties or
45 a single tract in more than one county, only one hearing shall be necessary. However, prior to
46 that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where
47 any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the
48 evidence of the parties and may consider, in addition to other forms of evidence required or
49 permitted by law, affidavits and certified copies of documents. If the clerk finds the existence
50 of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to
51 foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), and (v)

1 that the underlying mortgage debt is not a ~~subprime-home~~ loan as defined in ~~G.S. 45-101(4),~~
2 G.S. 45-101(1b), or if the loan is a ~~subprime-home~~ loan under ~~G.S. 45-101(4),~~ G.S. 45-101(1b),
3 that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that
4 the periods of time established by Article 11 of this Chapter have elapsed, then the clerk shall
5 authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or
6 trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A
7 certified copy of any authorization or order by the clerk shall be filed in any other county where
8 any portion of the property to be sold is located before the mortgagee or trustee may proceed to
9 advertise and sell any property located in that county. In the event that sales are to be held in
10 more than one county, the provisions of G.S. 45-21.7 apply."

11 **SECTION 4.** Section 6 of S.L. 2008-226 reads as rewritten:

12 "**SECTION 6.** Section 4 of this act becomes effective July 1, 2008. ~~The remainder of this~~
13 ~~act becomes effective November 1, 2008, and expires October 31, 2010. Sections 1, 2, 3, and 5~~
14 become effective November 1, 2008, and expire May 31, 2013. The remainder of this act is
15 effective when it becomes law."

16 **SECTION 5.** Sections 1 through 3 of this act become effective November 1, 2010.
17 The remainder of this act is effective when it becomes law.