

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 2742*

Short Title: Mortgage Crisis/Funds. (Public)

Sponsors: Representatives Adams; Bryant, Faison, Harrison, Hughes, Pierce, Wainwright, and Womble.

Referred to: Judiciary II, if favorable, Appropriations.

May 28, 2008

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE AN EMERGENCY PROGRAM TO REDUCE
3 FORECLOSURES AND TO APPROPRIATE FUNDS TO ENHANCE HOUSING
4 COUNSELING IN THIS STATE, PREVENT FORECLOSURES OF SUBPRIME
5 LOANS, STIMULATE THE HOUSING MARKET, AND PROVIDE
6 CONTINUED SUPPORT OF THE HOUSING FINANCE AGENCY.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Chapter 45 of the General Statutes is amended by adding a
9 new Article to read:

10 "Article 11.

11 "Emergency Program to Reduce Foreclosures.

12 **"§ 45-100. Title.**

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

15 **"§ 45-101. Definitions.**

16 The following definitions apply throughout this Article:

17 (1) Mortgage servicer. – A person who is in the business of receiving any
18 scheduled periodic payment from a borrower pursuant to the terms of
19 any loan, including amounts for escrow accounts, and making the
20 payments of principal and interest and such other payments with
21 respect to the amounts received from the borrower as may be required
22 under the terms of the mortgage servicing loan document or servicing
23 contract.

24 (2) Qualifying loan. – A mortgage loan with all of the following
25 characteristics:

26 a. The property securing the loan is occupied by the mortgagor at
27 the time of the submission required in G.S. 45-102 as the
28 mortgagor's principal residence.

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

10 (3) Recently originated. – A subprime loan originated on or after January
11 1, 2005.

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

19 **"§ 45-102. Creation of database of subprime loans facing foreclosure.**

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

24 **"§ 45-103. Submission of information to the database.**

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

31 **"§ 45-104. Assistance for qualifying loans.**

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

38 **"§ 45-105. Notification.**

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

44 **"§ 45-106. Emergency powers of the Commissioner of Banks.**

1 The Commissioner of Banks shall be exempt from rule making 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.** There is appropriated from the General Fund to the North
23 Carolina Housing Finance Agency the sum of one million dollars (\$1,000,000) in
24 recurring funds for the 2008-2009 fiscal year to provide counseling to homeowners
25 potentially at risk of losing their homes to foreclosure, to make grants to nonprofit
26 counseling agencies in this State that are designated and approved by the Agency, and
27 to provide funding for training of counselors where necessary as determined by the
28 Agency. Nonprofit counseling agencies selected by the North Carolina Housing Finance
29 Agency shall provide housing counseling and related services to help homeowners
30 avoid home loss, foreclosure, and preserve home equity.

31 **SECTION 3.** There is appropriated from the General Fund to the North
32 Carolina State Bar the sum of two million dollars (\$2,000,000) in recurring funds for the
33 2008-2009 fiscal year to make grants to legal service providers to help prevent
34 foreclosure and home loss, preserve home equity among low-income consumers, and
35 assist low-income consumers in cases involving predatory mortgage lending, mortgage
36 broker and loan services abuses, and related legal issues. The following organizations
37 shall be eligible for grants under this section: Legal Services of Southern Piedmont,
38 Pisgah Legal Services, the Land Loss Prevention Project, Legal Aid of North Carolina,
39 Inc., and the Financial Protection Law Center.

40 **SECTION 4.** There is appropriated the sum of seven hundred thousand
41 dollars (\$700,000) to the North Carolina Housing Finance Agency to be used to:

- 42 (1) Create a pilot program in five or six geographical regions of the State
43 by identifying a nonprofit organization in each region to receive up to
44 the sum of seventy-five thousand dollars (\$75,000) as a grant-in-aid to

1 be used to create an affordable housing council. Each affordable
2 housing council shall be composed of persons, nonprofits, and
3 businesses representing all aspects of the housing market and shall
4 work to identify the local needs and available resources for affordable
5 housing as well as develop a strategic plan for increasing the amount
6 of affordable housing in the region.

- 7 (2) Allocate the sum of two hundred fifty thousand dollars (\$250,000) to
8 provide professional and other assistance to the councils, including the
9 identification of best practices for increasing the stock of affordable
10 housing, market data for the region and for the State, and coordination
11 of the councils' efforts. The Housing Finance Agency may also use
12 these funds to increase public awareness of these affordable housing
13 councils and the actions the councils are taking to increase the amount
14 of affordable housing across the State.

15 **SECTION 5.** The State Treasurer shall work with the entities listed in
16 G.S. 147-69.1(c)(2) to develop a North Carolina specific mortgage portfolio in which
17 the Treasurer may invest funds under G.S. 147-69.1(c)(2). The State Treasurer shall
18 attempt to invest at least one hundred million dollars (\$100,000,000) in this mortgage
19 portfolio in order to assist with mortgage financing liquidity in this State.

20 **SECTION 6.** There is appropriated from the General Fund to the North
21 Carolina Housing Finance Agency the sum of two million dollars (\$2,000,000) in
22 recurring funds for the 2008-2009 fiscal year to provide expanded funding for the
23 Agency's existing programs.

24 **SECTION 7.** Section 1 of this act becomes effective July 1, 2008, and
25 expires August 31, 2010. The remainder of this act becomes effective July 1, 2008.