

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 1400  
Judiciary I Committee Substitute Adopted 7/7/10  
Third Edition Engrossed 7/8/10

Short Title: No Foreclosure/Soldiers on Active Duty.

(Public)

Sponsors:

Referred to:

May 26, 2010

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROHIBIT FORECLOSURES WHILE MORTGAGORS OR TRUSTORS ARE  
3 ON ACTIVE MILITARY DUTY.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Part 2 of Article 2A of Chapter 45 of the General Statutes is amended  
6 by adding a new section to read:

7 "**§ 45-21.12A. Power of sale barred during periods of military service.**

8 (a) Power of Sale Barred. – A mortgagee, trustee, or other creditor shall not exercise a  
9 power of sale contained in a mortgage or deed of trust, or provided by statute, during, or within  
10 nine months after, a mortgagor's, trustor's, or debtor's period of military service. The clerk of  
11 court shall not conduct a hearing pursuant to G.S. 45-21.16(d) unless the mortgagee, trustee or  
12 other creditor seeking to exercise a power of sale under a mortgage or deed of trust, or provided  
13 by statute, files with the clerk a certification that the hearing will take place at a time that is not  
14 during, or within nine months after, a period of military service for the mortgagor, trustor or  
15 debtor. This subsection applies only to mortgages and deeds of trust that originated before the  
16 mortgagor's or trustor's period of military service.

17 (b) Waiver. – This section shall not apply if the mortgagor, trustor, or debtor waives his  
18 or her rights under this section pursuant to a written agreement of the parties executed during or  
19 after the mortgagor's, trustor's, or debtor's period of military service, as an instrument separate  
20 from the obligation or liability to which the waiver applies. Any waiver in writing of a right or  
21 protection provided by this section must be in at least 12 point type and shall specify the legal  
22 instrument creating the obligation or liability to which the waiver applies.

23 (c) Purpose. – The purpose of this section is to supplement and complement the  
24 provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501, et seq., and to afford  
25 greater peace and security for persons in federal active duty.

26 (d) Definitions. – The following definitions apply in this section:

27 (1) Military service. –

28 a. In the case of a member of the Army, Navy, Air Force, Marine  
29 Corps, or Coast Guard:

30 1. Active duty, as defined in 10 U.S.C. § 101(d)(1), and

31 2. In the case of a member of the National Guard, includes  
32 service under a call to active service authorized by the  
33 President or the Secretary of Defense for a period of more  
34 than 30 consecutive days under 32 U.S.C. § 502(f), for



1 purposes of responding to a national emergency declared by  
2 the President and supported by federal funds.

3 b. In the case of a servicemember who is a commissioned officer of the  
4 Public Health Service or the National Oceanic and Atmospheric  
5 Administration, active service, and

6 c. Any period during which a servicemember is absent from duty on  
7 account of sickness, wounds, leave, or other lawful cause.

8 (2) Period of military service. – The period beginning on the date on which a  
9 servicemember enters military service and ending on the date on which the  
10 servicemember is released from military service or dies while in military  
11 service.

12 (3) Servicemember. – A member of the Army, Navy, Air Force, Marine Corps,  
13 Coast Guard, the commissioned corps of the National Oceanic and  
14 Atmospheric Administration, or the commissioned corps of the Public  
15 Health Service."

16 **SECTION 2.** G.S. 45-21.16(c) is amended by adding a new subdivision to read:

17 "(c) Notice shall be in writing and shall state in a manner reasonably calculated to make  
18 the party entitled to notice aware of the following:

19 ...  
20 (12) That if the debtor is currently on military duty the foreclosure may be  
21 prohibited by G.S. 45-21.12A."

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

23 "(d) **(Effective until October 31, 2010)** The hearing provided by this section shall be  
24 held before the clerk of court in the county where the land, or any portion thereof, is situated. In  
25 the event that the property to be sold consists of separate tracts situated in different counties or  
26 a single tract in more than one county, only one hearing shall be necessary. However, prior to  
27 that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where  
28 any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the  
29 evidence of the parties and may consider, in addition to other forms of evidence required or  
30 permitted by law, affidavits and certified copies of documents. If the clerk finds the existence  
31 of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to  
32 foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), ~~and~~ (v)  
33 that the underlying mortgage debt is not a subprime loan as defined in G.S. 45-101(4), or if the  
34 loan is a subprime loan under G.S. 45-101(4), that the pre-foreclosure notice under G.S. 45-102  
35 was provided in all material respects, and that the periods of time established by Article 11 of  
36 this Chapter have elapsed, and (vi) that the sale is not barred by G.S. 45-21.12A, then the clerk  
37 shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or  
38 trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A  
39 certified copy of any authorization or order by the clerk shall be filed in any other county where  
40 any portion of the property to be sold is located before the mortgagee or trustee may proceed to  
41 advertise and sell any property located in that county. In the event that sales are to be held in  
42 more than one county, the provisions of G.S. 45-21.7 apply.

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

1 foreclose under the instrument, and (iv) notice to those entitled to such under subsection (b),  
2 and (v) that the sale is not barred by G.S. 45-21.12A, then the clerk shall authorize the  
3 mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give  
4 notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any  
5 authorization or order by the clerk shall be filed in any other county where any portion of the  
6 property to be sold is located before the mortgagee or trustee may proceed to advertise and sell  
7 any property located in that county. In the event that sales are to be held in more than one  
8 county, the provisions of G.S. 45-21.7 apply."

9           **SECTION 4.** This act is effective when it becomes law and applies to foreclosures  
10 initiated on or after that date.