

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 226\*  
Committee Substitute Favorable 3/22/99

Short Title: Foreclosure Notice/AB.

(Public)

Sponsors:

Referred to:

March 3, 1999

A BILL TO BE ENTITLED  
AN ACT TO REQUIRE THAT A NOTICE OF FORECLOSURE HEARING INCLUDE  
ADDITIONAL INFORMATION, AS RECOMMENDED BY THE GENERAL  
STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-21.16(c) reads as rewritten:

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

- (1) The particular real estate security interest being foreclosed, with such a description as is necessary to identify the real property, including the date, original amount, original holder, and book and page of the security instrument.
- (2) The name and address of the holder of the security instrument at the time that the notice of hearing is filed.
- (3) The nature of the default claimed.
- (4) The fact, if such be the case, that the secured creditor has accelerated the maturity of the debt.
- (5) Any right of the debtor to pay the indebtedness or cure the default if such is permitted.

1           (5a) The holder has confirmed in writing to the person giving the notice, or if  
2 the holder is giving the notice, the holder shall confirm in the notice,  
3 that, within 30 days of the date of the notice, the debtor was sent by  
4 first-class mail at the debtor's last known address a written statement of  
5 the amount of principal and interest that the holder claims in good faith  
6 is owed as of the date of the written statement, a daily interest charge  
7 based on the contract rate as of the date of the statement, and the amount  
8 of other expenses the holder contends it is owed as of the date of the  
9 statement.

10           (6) Repealed by Session Laws 1977, c. 359, s. 7.

11           (7) The right of the debtor (or other party served) to appear before the clerk  
12 of court at a time and on a date specified, at which appearance he shall  
13 be afforded the opportunity to show cause as to why the foreclosure  
14 should not be allowed to be held. The notice shall contain a statement  
15 that if the debtor does not intend to contest the creditor's allegations of  
16 default, the debtor does not have to appear at the hearing and that his  
17 failure to attend the hearing will not affect his right to pay the  
18 indebtedness and thereby prevent the proposed sale, or to attend the  
19 actual sale, should he elect to do so.

20           (8) That if the foreclosure sale is consummated, the purchaser will be  
21 entitled to possession of the real estate as of the date of delivery of his  
22 deed, and that the debtor, if still in possession, can then be evicted.

23           (8a) The name, address, and telephone number of the trustee or mortgagee.

24           (9) That the debtor should keep the trustee or mortgagee notified in writing  
25 of his address so that he can be mailed copies of the notice of  
26 foreclosure setting forth the terms under which the sale will be held, and  
27 notice of any postponements or resales.

28           (10) If the notice of hearing is intended to serve also as a notice of sale, such  
29 additional information as is set forth in G.S. 45-21.16A.

30           (11) That the hearing may be held on a date later than that stated in the notice  
31 and that the party will be notified of any change in the hearing date."

32           Section 2. G.S. 45-21.16 is amended by adding a new subsection to read:

33           "(c1) The person giving the notice of hearing, if other than the holder, may rely on  
34 the written confirmation received from the holder under subdivision (c)(5a) of this  
35 section and is not liable for inaccuracies in the written confirmation. Any dispute  
36 concerning the mailing or accuracy of the written statement described in subdivision  
37 (c)(5a) of this section shall not be considered in a hearing under this section."

38           Section 3. This act becomes effective January 1, 2000, and applies to notices  
39 of hearing served on or after that date.