

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1374*

Short Title: Protect Homeowners/Reduce Foreclosure. (Public)

Sponsors: Representatives Blue, Glazier, Dickson, Weiss (Primary Sponsors);
Carney, Church, Faison, Fisher, Goforth, Hall, Harrison, Hurley, Luebke,
Pierce, Ross, and Womble.

Referred to: Judiciary II.

April 10, 2007

A BILL TO BE ENTITLED

1 AN ACT (1) TO OVERTURN THE SHEPARD CASE AND AMEND THE
2 LIMITATION REGARDING ACTIONS TO RECOVER FOR USURY; (2) TO
3 OVERTURN THE SKINNER CASE AND AMEND THE LONG-ARM STATUTE
4 TO ALLOW NORTH CAROLINA COURTS TO EXERCISE PERSONAL
5 JURISDICTION OVER CERTAIN NONRESIDENT DEFENDANTS; (3) TO
6 ALLOW THE REINSTATEMENT OF A DEBT SECURED BY A MORTGAGE
7 OR DEED OF TRUST WHERE THE DEBTOR MAKES OR TENDERS
8 PAYMENT OF CERTAIN SUMS; (4) TO REQUIRE THAT A NOTICE OF
9 FORECLOSURE CONTAIN CERTAIN INFORMATION; AND (5) TO MAKE
10 OTHER AMENDMENTS TO THE LAW GOVERNING HOME LOANS.

11 The General Assembly of North Carolina enacts:

12 **SECTION 1.** G.S. 1-53(2) reads as rewritten:

13 "(2) An action to recover the penalty for ~~usury-usury~~, including an action
14 regarding the financing of usurious points, fees, or other charges,
15 accrues at the time of the last payment made on the loan."

16 **SECTION 2.** G.S. 1-75.4(6) reads as rewritten:

17 "(6) Local Property. – In any action which arises out of:

- 18 a. A promise, made anywhere to the plaintiff or to some third
19 party for the plaintiff's benefit, by the defendant to create in
20 either party an interest in, or protect, acquire, dispose of, use,
21 rent, own, control or possess by either party real property
22 situated in this State; or
23 b. A claim to recover for any benefit derived by the defendant
24 through the use, ownership, control or possession by the
25 defendant of tangible property situated within this State either at
26

1 the time of the first use, ownership, control or possession or at
2 the time the action is commenced; or

3 c. A claim that the defendant return, restore, or account to the
4 plaintiff for any asset or thing of value which was within this
5 State at the time the defendant acquired possession or control
6 over it.

7 d. A claim related to a loan made in this State or deemed to have
8 been made in this State under G.S. 24-2.1, regardless of the
9 situs of the lender, assignee, or other holder of the loan note and
10 regardless of whether the loan payment or fee is received
11 directly by the defendant or indirectly through a loan servicer,
12 trustee, or other intermediary, provided all of the following
13 apply to the loan: (i) the loan was made to a borrower who is a
14 resident of this State, and (ii) the loan is secured by real
15 property located in this State."

16 **SECTION 3.** G.S. 24-2.1 reads as rewritten:

17 **"§ 24-2.1. Transactions governed by Chapter.**

18 For purposes of this Chapter, any extension of credit shall be deemed to have been
19 made in this State, and therefore subject to the provisions of this Chapter if the lender
20 offers or agrees in this State to lend to a borrower who is a resident of this State, or if
21 such borrower accepts or makes the offer in this State to borrow, regardless of the situs
22 of the contract as specified therein.

23 Any solicitation or communication to lend, oral or written, originating outside of this
24 State, but forwarded to and received in this State by a borrower who is a resident of this
25 State, shall be deemed to be an offer or agreement to lend in this State.

26 Any solicitation or communication to borrow, oral or written, originating within this
27 State, from a borrower who is a resident of this State, but forwarded to, and received by
28 a lender outside of this State, shall be deemed to be an acceptance or offer to borrow in
29 this State.

30 Any oral or written offer, acceptance, solicitation or communication to lend or
31 borrow, made in this State to, or received in this State from, a borrower who is not a
32 resident of this State shall be subject to the provisions of this Chapter, applicable federal
33 law, law of the situs of the contract, or law of the residence of any such borrower as the
34 parties may elect.

35 Any person who acquires a right by contract or by assignment to receive payments
36 under a loan made in this State and who benefits from the laws of this State by having
37 the loan secured by real property located in this State is deemed to have consented to the
38 courts of this State having jurisdiction over such person for any claim under this
39 Chapter and for any claim related to the loan instrument.

40 The provisions of this section shall be severable and if any phrase, clause, sentence
41 or provision is declared to be invalid, the validity of the remainder of this section shall
42 not be affected thereby.

43 It is the paramount public policy of North Carolina to protect North Carolina
44 resident borrowers through the application of North Carolina interest laws. Any

1 provision of this section which acts to interfere in the attainment of that public policy
2 shall be of no effect."

3 **SECTION 4.** G.S. 45-21.16(c) reads as rewritten:

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

6 ...

7 (4a) That the debtor has a right to cure a default or have the debt reinstated
8 pursuant to G.S. 45-91 and that the debtor will have failed to exercise
9 that right if the debtor has not done so within the prescribed period.

10 (5) Any right of the debtor to pay the indebtedness or cure the default if
11 such is permitted to reinstate the loan pursuant to contract or under
12 G.S. 45-91(f).

13 (5a) The holder has confirmed in writing to the person giving the notice, or
14 if the holder is giving the notice, the holder shall confirm in the notice,
15 that, within 30 days of the date of the notice, the debtor was sent by
16 first-class mail at the debtor's last known address a written statement
17 of the amount of principal and interest that the holder claims in good
18 faith is owed as of the date of the written statement, a daily interest
19 charge based on the contract rate as of the date of the statement, and
20 the amount of other expenses the holder contends it is owed as of the
21 date of the statement, and the amount necessary to reinstate
22 the loan under G.S. 45-91(f). This statement shall include a complete
23 transaction history of the loan and shall set forth the amounts alleged
24 to be in default. This transaction history shall document all debits and
25 credits to the account during this period of time, including the
26 application and disbursement of all payments received from or for the
27 benefit of the mortgagor. This transaction history shall be clear and
28 easily understood. The statement should set forth the total amount
29 owed by or on behalf of the borrower and shall itemize the amount and
30 basis for the following fees, as applicable:

31 a. The past due scheduled principal payments.

32 b. The interest due.

33 c. Past due taxes.

34 d. Hazard insurance.

35 e. Mortgage insurance premiums.

36 f. Late fees.

37 g. Homeowners association dues or assessments.

38 h. Filing fees.

39 i. Service fees.

40 j. Postage.

41 k. Advertising.

42 l. Publication expenses.

43 m. Reasonable attorneys' fees incurred with respect to the
44 foreclosure proceeding.

- 1 n. Compensation for the trustee's services under the conditions set
2 forth in G.S. 45-21.15.
- 3 (6) Repealed by Session Laws 1977, c. 359, s. 7.
- 4 (7) The right of the debtor (or other party served) to appear before the
5 clerk of court at a time and on a date specified, at which appearance he
6 shall be afforded the opportunity to show cause as to why the
7 foreclosure should not be allowed to be held. The notice shall contain a
8 ~~statement that if the debtor does not intend to contest the creditor's~~
9 ~~allegations of default, the debtor does not have to appear at the hearing~~
10 ~~and that his failure to attend the hearing will not affect his right to pay~~
11 ~~the indebtedness and thereby prevent the proposed sale, or to attend~~
12 ~~the actual sale, should he elect to do so.~~all of the following:
- 13 a. A statement that if the debtor does not intend to contest the
14 creditor's allegations of default, the debtor does not have to
15 appear at the hearing and that his failure to attend the hearing
16 will not affect his right to pay the indebtedness and thereby
17 prevent the proposed sale, or to attend the actual sale, should he
18 elect to do so.
- 19 b. A statement that the trustee, or substitute trustee, is a neutral
20 party and, while holding that position, may not advocate for the
21 secured creditor or for the debtor.
- 22 c. A statement that the debtor has the right to apply to a judge of
23 the superior court pursuant to G.S. 45-21.34 to enjoin the sale,
24 upon any legal or equitable ground that the court may deem
25 sufficient prior to the time that the rights of the parties to the
26 sale or resale become fixed, provided that the debtor complies
27 with the requirements of G.S. 45-21.34.
- 28 d. A statement that the debtor has the right to appear at the hearing
29 and serve a written response.
- 30 e. A statement that if the debtor fails to appear at the hearing, the
31 trustee will ask the clerk for an order to sell the real property
32 being foreclosed.
- 33 f. A statement that the debtor has the right to contest the
34 allegations in the notice.
- 35 (8) That if the foreclosure sale is consummated, the purchaser will be
36 entitled to possession of the real estate as of the date of delivery of his
37 deed, and that the debtor, if still in possession, can then be evicted.
- 38 (8a) The name, address, and telephone number of the trustee or mortgagee.
- 39 (9) That the debtor should keep the trustee or mortgagee notified in
40 writing of his address so that he can be mailed copies of the notice of
41 foreclosure setting forth the terms under which the sale will be held,
42 and notice of any postponements or resales.
- 43 (10) If the notice of hearing is intended to serve also as a notice of sale,
44 such additional information as is set forth in G.S. 45-21.16A.

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

4 **SECTION 5.** Chapter 45 of the General Statutes is amended by adding a
5 new Article to read:

6 "Article 10.

7 "Home Loans.

8 **"§ 45-85. Definitions.**

9 As used in this Article, the following definitions apply:

10 (1) Collateral protection insurance. – Insurance coverage that is purchased
11 unilaterally by a lender or servicer of a home loan that provides
12 monetary protection against loss of, or damage to, the collateral and is
13 purchased as a result of a borrower's alleged failure to provide
14 evidence of insurance or failure to maintain adequate insurance
15 covering the home. Collateral protection insurance does not include
16 any of the following:

17 a. Insurance coverage that is purchased by the lender for which
18 the borrower is not charged.

19 b. Credit insurance.

20 c. Mortgage protection insurance.

21 d. Insurance issued to cover the life or health of the borrower or
22 any other insurance maintained to cover the inability or failure
23 of the borrower to make payment under the credit agreement.

24 e. Title insurance.

25 f. Flood insurance required under 42 U.S.C. § 4012(a), as
26 amended, to be placed by creditors pursuant to the National
27 Flood Insurance Reform Act of 1994.

28 (2) Home loan. – A loan secured by a home used, or intended to be used,
29 as a principal dwelling in this State, whether it is real or personal
30 property, and regardless of whether the loan is used to purchase the
31 home or whether the proceeds of the loan are used for personal,
32 family, or business purposes.

33 (3) Servicer. – A person who, under contract with a lender, or on its own
34 behalf, receives payments from borrowers for home loans, or taxes and
35 insurance associated with a home loan.

36 **"§ 45-86. Duty of good faith and fair dealing.**

37 Both the lender and the servicer owe a duty of good faith and fair dealing to the
38 borrower in all dealings related to a home loan. This duty specifically includes an
39 obligation to avoid foreclosure on the home unless both of the following are true:

40 (1) The servicer or lender has made a good faith review of the borrower's
41 financial situation and offered, whenever feasible, a repayment plan,
42 forbearance, loan modification, or other option to assist the borrower
43 in bringing the arrears current.

44 (2) There is no other reasonable mechanism to collect on the loan.

1 **"§ 45-87. Assessment of fees; processing of payments; publication of statements.**

2 (a) Every outstanding home loan, regardless of whether the loan is considered in
3 default or the borrower is in bankruptcy or the borrower has been in bankruptcy, shall
4 comply with the following requirements:

5 (1) Any fee charged by a lender or servicer must be reasonable, for
6 services actually rendered, and specifically authorized by the home
7 loan contract. Unless the home is the subject of a foreclosure action
8 and the debt has been accelerated, the home loan contract shall not
9 require, nor shall any lender or servicer assess or receive, any fees,
10 charges, or payment other than the following:

11 a. Principal.

12 b. Interest at the contract rate.

13 c. Lawfully imposed late fees.

14 d. Non-sufficient funds fees.

15 e. Amounts to be put into an escrow account to pay taxes, hazard
16 insurance, private mortgage insurance, homeowners association
17 dues, and other similar property charges.

18 (2) A fee that is otherwise permitted under subdivision (1) of this
19 subsection shall be both:

20 a. Assessed within 30 days of the date on which the fee was
21 accrued.

22 b. Explained clearly and conspicuously in the next periodic
23 statement provided to the borrower.

24 (3) Monthly periodic statements shall be provided to the borrower that
25 plainly indicate all of the following:

26 a. The application of the previous month's payment, including the
27 allocation of the payment to interest, principal, escrow, and
28 fees.

29 b. The status of the escrow account, if there is an escrow account,
30 including the payments into and from the escrow account
31 during the previous month.

32 c. The assessment of fees accruing in the previous month,
33 including their purpose and the date they accrued.

34 d. The loan balance.

35 (4) All amounts received by a lender or a servicer shall be accepted and
36 credited on the date received. The payments shall be credited to
37 interest and principal due on the loan before crediting payments to
38 taxes, insurance, or fees. For purposes of this subdivision, payments
39 shall be applied first to current installments, then to delinquent
40 payments, and then to delinquency charges.

41 (5) Notwithstanding G.S. 24-10.1(b)(4), if a payment is otherwise a full
42 payment for the applicable period and is paid on its due date or within
43 an applicable grace period, and the only delinquency or insufficiency
44 of payment is attributable to any late fee or delinquency charge

1 assessed on any earlier payment, no late fee or delinquency charge
2 shall be imposed on such payment. If a late payment charge has been
3 once imposed with respect to a particular late payment, no such charge
4 shall be imposed with respect to any future payment which would have
5 been timely and sufficient but for the previous late payment.

6 (b) Failure to provide the information or charge the fee within the allowable time
7 and in the manner required under subdivision (2) of subsection (a) of this section
8 constitutes a waiver of such fee.

9 "**§ 45-88. Restrictions on collateral protection insurance.**

10 (a) Collateral protection insurance may be obtained and charged to the borrower
11 only if all of the following conditions are met:

12 (1) The home loan agreement requires the borrower to maintain insurance
13 on the collateral and clearly provides all of the following:

14 a. The terms and conditions for payment for, and imposition of,
15 the collateral protection insurance.

16 b. A clear and conspicuous statement in the agreement that the
17 collateral protection insurance may not protect the interests of
18 the borrower and may be substantially more expensive than
19 insurance that the borrower may be able to obtain
20 independently.

21 c. A clear and conspicuous statement in the agreement that the
22 borrower will be charged for the cost of the collateral protection
23 insurance.

24 (2) The servicer of the home loan shall make every effort to avoid
25 obtaining collateral protection insurance, including at least written
26 notice and telephone communications with the borrower, and the
27 insurance agent of record, where appropriate, regarding the borrower's
28 obligations to maintain property insurance and an explanation of the
29 additional cost to the borrower, on a monthly basis, if collateral
30 protection insurance is obtained by the lender or servicer.

31 (3) Clear notice is received by the borrower at least 15 days in advance of
32 the obtaining of the collateral protection insurance that the obtaining of
33 the insurance is imminent, the costs of the insurance to the borrower,
34 the new monthly payment to the borrower that reflects these additional
35 costs, the fact that the insurance will not protect the borrower from
36 loss, and instructions on the steps the borrower can take to avoid this
37 placement of insurance.

38 (4) After placement of the insurance, notice of the new monthly payment
39 requirements shall be delivered to the borrower at least 15 days prior
40 to the first payment increase to cover the cost of the collateral
41 protection insurance with an explanation of the imposition of the new
42 charges for the insurance and what the borrower can do to obviate the
43 need for the collateral protection insurance.

1 (b) In no event shall collateral protection insurance be obtained when the servicer
2 or lender is collecting fees in escrow from the borrower for the payment of property
3 taxes and homeowners insurance, unless the borrower has had the borrower's insurance
4 cancelled for some reason other than nonpayment of the premium.

5 **"§ 45-89. Obligation of servicer to handle escrow funds.**

6 The servicer or lender shall make all payments from the escrow account held for the
7 borrower for insurance, taxes, and other charges with respect to the property in a timely
8 manner so as to ensure that no late penalties are assessed or other negative
9 consequences result regardless of whether the loan is delinquent unless the servicer or
10 lender has a reasonable basis to believe that recovery of these funds will not be possible.

11 **"§ 45-90. Borrower requests for information.**

12 (a) The servicer or lender shall respond without cost to, and within 10 days of, a
13 borrower's request for information and for resolution of disputes. The servicer or lender
14 shall maintain written or electronic records of each request for information and the
15 handling of all oral disputes. Specifically, the servicer or lender is required to do all of
16 the following:

17 (1) Provide the following information when requested:

- 18 a. Whether the account is current or, if the account is not current,
19 an explanation of the date the account went into default and the
20 basis for any default.
21 b. The current balance due on the loan, including the principal
22 due, an explanation of the escrow balance, and whether there
23 are any escrow deficiencies or shortages.
24 c. A full payment history that shows in a clear and easily
25 understandable manner all of the activity on the home loan
26 since the origination of the loan, including the escrow account
27 and the application of payments.
28 d. A copy of the original note and security instrument.
29 e. The identity, address, and other relevant information about the
30 current holder, owner, or assignee of the loan.
31 f. The telephone number of a lender or servicer representative
32 with the information and authority to answer questions and
33 resolve issues.

34 (2) Correct errors relating to the allocation of payments, final balances for
35 purposes of paying off the loan or avoiding foreclosure, or any other
36 servicer's or lender's obligations.

37 (b) During the 90-day period beginning on the date of the servicer's or lender's
38 receipt from any borrower of a request under subsection (a) of this section, a servicer or
39 lender shall not provide information regarding any overdue payment, or other default on
40 the loan, by such borrower to any consumer reporting agency.

41 **"§ 45-91. Borrower's right to cure and reinstate the home loan.**

42 (a) Before any action is filed to foreclose upon the home, any exercise of the
43 power of sale governed by Article 2A of this Chapter or any other action is taken to

1 seize or transfer ownership of a home, the borrower shall be provided a right to cure
2 under this section. The borrower shall have at least 30 days to cure a default.

3 (b) A notice of the right to cure the default shall be delivered to the borrower,
4 informing the borrower of all of the following:

5 (1) The nature of the default claimed on the home loan and the borrower's
6 right to cure the default by paying the sum of money required to cure
7 the default. If the amount necessary to cure the default is subject to
8 change before the expiration of the right to cure has expired due to the
9 application of a daily interest rate or the addition of late fees, the
10 notice shall give sufficient information to enable the borrower to
11 calculate the amount at any point during this period.

12 (2) The date by which the borrower must cure the default to avoid
13 acceleration and initiation of foreclosure or other action to seize the
14 home and the name and address and phone number of a person to
15 whom the payment or tender shall be made. The date required under
16 this subdivision shall not be less than 30 days after the date the notice
17 is received.

18 (3) That, if the borrower does not cure the default by the date specified,
19 the lender or servicer may take steps to terminate the borrower's
20 ownership in the property by commencing a foreclosure proceeding or
21 other action to seize the home.

22 (4) The name and address of the lender or servicer and the telephone
23 number of a representative of the lender or servicer whom the
24 borrower may contact if the borrower disagrees with the lender's or
25 servicer's assertion that a default has occurred or the correctness of the
26 lender's or servicer's calculation of the amount required to cure the
27 default.

28 (5) That a repayment plan, forbearance, loan modification, or other
29 workout tool may be available to help the borrower repay the arrears
30 and the name, address, and telephone number of the lender or servicer
31 whom the borrower may contact to request this assistance.

32 (6) That the borrower may be eligible for a Home Preservation Loan to
33 cure the default, a short description of the eligibility requirements, and
34 the name, address, and telephone number of the agency whom the
35 borrower may contact to request this assistance.

36 (c) To cure a default under this section, a borrower shall not be required to pay
37 any charge, fee, or penalty attributable to the exercise of the right to cure a default as
38 provided for in this section. The borrower's payment of all amounts past due for
39 principal, interest, escrow, and late charges, as specifically permitted in the home loan
40 and under this Article, shall cure a default.

41 (d) The borrower shall not be liable for any attorneys' fees relating to the
42 borrower's default that are incurred by the lender or servicer prior to the expiration of
43 the right to cure period.

1 (e) If a borrower fails to cure the default and a lender or servicer files or initiates
2 a foreclosure action or takes other action to seize or transfer ownership of the home, the
3 borrower shall only be liable for attorneys' fees that are reasonable and actually incurred
4 by the lender or servicer based on a reasonable hourly rate and a reasonable number of
5 hours plus any other reasonable and necessary expenses incurred by the lender or
6 servicer.

7 (f) The borrower may reinstate the loan at any time after a notice of foreclosure
8 hearing is filed pursuant to G.S. 45-21.16, up to the time the foreclosure sale has been
9 consummated and the upset bid period has expired, by paying all amounts past due for
10 principal, interest, escrow, and late charges, as specifically permitted in the home loan
11 agreement and under this Article, plus reasonable expenses related to the foreclosure.
12 Upon reinstatement by the borrower, the mortgage or deed of trust and the obligation
13 secured thereby shall remain fully effective as if no acceleration had occurred.

14 (g) If a default is cured prior to the filing of a notice of foreclosure hearing
15 pursuant to G.S. 45-21.16 or the initiation of any action to foreclose or to seize or
16 transfer a home, the lender or servicer shall not file a notice of hearing, institute the
17 foreclosure proceeding or other action for that default. If the loan is reinstated by the
18 borrower, the lender or servicer shall take such steps as are necessary to terminate the
19 foreclosure special proceeding or other action,

20 **"§ 45-92. Remedies.**

21 In addition to any other remedies at law, any violation of this Article is declared
22 unlawful as an unfair or deceptive practice in violation of G.S. 75-1.1. Any person who
23 fails to comply with any requirement imposed under this Article is liable for each
24 violation in an amount equal to the sum of any actual damages sustained by such person
25 as a result of the failure, or an amount not less than five thousand dollars (\$5,000),
26 whichever is greater. The Attorney General, the Commissioner of Banks, or any party to
27 a home loan may enforce the provisions of this section.

28 **"§ 45-93. Severability.**

29 The provisions of this Article shall be severable, and if any phrase, clause, sentence,
30 or provision is declared to be invalid or is preempted by federal law or regulation, the
31 validity of the remainder of this section shall not be affected thereby. If any provision of
32 this Article is declared to be inapplicable to any specific category, type, or kind of
33 points and fees, the provisions of this Article shall nonetheless continue to apply with
34 respect to all other points and fees.

35 **"§ 45-94. Servicer is an agent of the lender.**

36 For purposes of this Article, a servicer is the agent of the lender with which the
37 servicer has contracted, as described in G.S. 45-85(3)."

38 **SECTION 6.** Sections 4 and 5 of this act become effective October 1, 2007.
39 All other sections of this act are effective when it becomes law.