

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

3

HOUSE BILL 1374*
Committee Substitute Favorable 5/15/07
Third Edition Engrossed 5/16/07

Short Title: Protect Homeowners/Reduce Foreclosure.

(Public)

Sponsors:

Referred to:

April 10, 2007

A BILL TO BE ENTITLED

AN ACT TO OVERTURN THE SHEPARD CASE AND AMEND THE LIMITATION REGARDING ACTIONS TO RECOVER FOR USURY; TO OVERTURN THE SKINNER CASE AND AMEND THE LONG-ARM STATUTE TO ALLOW NORTH CAROLINA COURTS TO EXERCISE PERSONAL JURISDICTION OVER CERTAIN NONRESIDENT DEFENDANTS; TO REQUIRE THAT A NOTICE OF FORECLOSURE CONTAIN CERTAIN INFORMATION; AND TO MAKE OTHER AMENDMENTS TO THE LAW GOVERNING HOME LOANS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 1-53 is amended by adding a new subdivision to read:

"(2a) An action to recover the penalty for the financing of usurious points, usurious fees, or other usurious charges accrues at the time of the last payment made on the loan."

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

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

- a. A promise, made anywhere to the plaintiff or to some third party for the plaintiff's benefit, by the defendant to create in either party an interest in, or protect, acquire, dispose of, use, rent, own, control or possess by either party real property situated in this State; or
- b. A claim to recover for any benefit derived by the defendant through the use, ownership, control or possession by the defendant of tangible property situated within this State either at the time of the first use, ownership, control or possession or at the time the action is commenced; or
- c. A claim that the defendant return, restore, or account to the plaintiff for any asset or thing of value which was within this

1 State at the time the defendant acquired possession or control
2 over it.

- 3 d. A claim related to a loan made in this State or deemed to have
4 been made in this State under G.S. 24-2.1, regardless of the
5 situs of the lender, assignee, or other holder of the loan note and
6 regardless of whether the loan payment or fee is received
7 through a loan servicer, provided that (i) the loan was made to a
8 borrower who is a resident of this State, and (ii) the loan is
9 secured by real property located in this State."

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

11 "**§ 24-2.1. Transactions governed by Chapter.**

12 (a) For purposes of this Chapter, any extension of credit shall be deemed to have
13 been made in this State, and therefore subject to the provisions of this Chapter if the
14 lender offers or agrees in this State to lend to a borrower who is a resident of this State,
15 or if such borrower accepts or makes the offer in this State to borrow, regardless of the
16 situs of the contract as specified therein.

17 (b) Any solicitation or communication to lend, oral or written, originating outside
18 of this State, but forwarded to and received in this State by a borrower who is a resident
19 of this State, shall be deemed to be an offer or agreement to lend in this State.

20 (c) Any solicitation or communication to borrow, oral or written, originating
21 within this State, from a borrower who is a resident of this State, but forwarded to, and
22 received by a lender outside of this State, shall be deemed to be an acceptance or offer
23 to borrow in this State.

24 (d) Any oral or written offer, acceptance, solicitation or communication to lend
25 or borrow, made in this State to, or received in this State from, a borrower who is not a
26 resident of this State shall be subject to the provisions of this Chapter, applicable federal
27 law, law of the situs of the contract, or law of the residence of any such borrower as the
28 parties may elect.

29 (e) Any person who acquires a right by contract or by assignment to receive
30 payments under a loan made in this State and who benefits from the laws of this State
31 by having the loan secured by real property located in this State is deemed to have
32 consented to the courts of this State having jurisdiction over such person for any claim
33 under this Chapter and for any claim related to the loan instrument.

34 (f) The provisions of this section shall be severable and if any phrase, clause,
35 sentence or provision is declared to be invalid, the validity of the remainder of this
36 section shall not be affected thereby.

37 (g) It is the paramount public policy of North Carolina to protect North Carolina
38 resident borrowers through the application of North Carolina interest laws. Any
39 provision of this section which acts to interfere in the attainment of that public policy
40 shall be of no effect."

41 **SECTION 4.** G.S. 45-21.16(c)(7) reads as rewritten:

42 "(7) The right of the debtor (or other party served) to appear before the
43 clerk of court at a time and on a date specified, at which appearance he
44 shall be afforded the opportunity to show cause as to why the

1 foreclosure should not be allowed to be held. The notice shall contain a
2 statement that if the debtor does not intend to contest the creditor's
3 allegations of default, the debtor does not have to appear at the hearing
4 and that his failure to attend the hearing will not affect his right to pay
5 the indebtedness and thereby prevent the proposed sale, or to attend
6 the actual sale, should he elect to do so: all of the following:

- 7 a. A statement that if the debtor does not intend to contest the
8 creditor's allegations of default, the debtor does not have to
9 appear at the hearing and that his failure to attend the hearing
10 will not affect his right to pay the indebtedness and thereby
11 prevent the proposed sale, or to attend the actual sale, should he
12 elect to do so.
- 13 b. A statement that the trustee, or substitute trustee, is a neutral
14 party and, while holding that position, may not advocate for the
15 secured creditor or for the debtor.
- 16 c. A statement that the debtor has the right to apply to a judge of
17 the superior court pursuant to G.S. 45-21.34 to enjoin the sale,
18 upon any legal or equitable ground that the court may deem
19 sufficient prior to the time that the rights of the parties to the
20 sale or resale become fixed, provided that the debtor complies
21 with the requirements of G.S. 45-21.34.
- 22 d. A statement that the debtor has the right to appear at the hearing
23 and serve a written response.
- 24 e. A statement that if the debtor fails to appear at the hearing, the
25 trustee will ask the clerk for an order to sell the real property
26 being foreclosed.
- 27 f. A statement that the debtor has the right to contest the
28 allegations in the notice.
- 29 g. A statement that the debtor has the right to seek the advice of an
30 attorney and that free legal services may be available to that
31 debtor by contacting Legal Aid of North Carolina at the then
32 current telephone number of that organization or at such
33 number provided by that organization from time to time."

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

36 "Article 10.

37 "Home Loans.

38 "**§ 45-85. Definitions.**

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

- 40 (1) Home loan. – A loan secured by a home used, or intended to be used,
41 as a principal dwelling in this State, whether it is real or personal
42 property, and regardless of whether the loan is used to purchase the
43 home or refinance the prior purchase of the home or whether the

1 proceeds of the loan are used for personal, family, or business
2 purposes.

3 (2) Servicer. – A person or entity who, under contract with a lender, a
4 trustee for a securitized trust, another servicer, an originator, an
5 investor, or with any other party related to or affiliated with a home
6 mortgage loan, or on its own behalf, receives payments from
7 borrowers for home loans, or taxes and insurance associated with a
8 home loan. A licensed attorney, who in the practice of law, accepts
9 payments related to a loan closing, default, foreclosure, or settlement
10 of a dispute or legal claim related to a loan, shall not be considered a
11 servicer for the purposes of this Article.

12 **"§ 45-86. Obligation of servicer to handle escrow funds.**

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

18 **"§ 45-87. Severability.**

19 The provisions of this Article shall be severable, and if any phrase, clause, sentence,
20 or provision is declared to be invalid or is preempted by federal law or regulation, the
21 validity of the remainder of this section shall not be affected thereby. If any provision of
22 this Article is declared to be inapplicable to any specific category, type, or kind of
23 points and fees, the provisions of this Article shall nonetheless continue to apply with
24 respect to all other points and fees."

25 **SECTION 6.** Sections 4 and 5 of this act become effective January 1, 2008.

26 All other sections of this act are effective when it becomes law.