

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

S

1

SENATE BILL 54

Short Title: Time for Recording Foreclosure Notice. (Public)

Sponsors: Senator Graham (Primary Sponsor).

Referred to: Judiciary II.

February 6, 2013

A BILL TO BE ENTITLED

AN ACT REQUIRING THAT IN CASE OF FORECLOSURE OF A DEED OF TRUST OR MORTGAGE THE COMMISSIONER OR TRUSTEE AUTHORIZED TO SELL THE PROPERTY SHALL RECORD A NOTICE OF FORECLOSURE IN THE OFFICE OF THE REGISTER OF DEEDS WITHIN SIXTY DAYS AFTER FILING THE FINAL REPORT ON THE SALE OF THE PROPERTY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 1-339.31 reads as rewritten:

"§ 1-339.31. **Public sale; report of commissioner or trustee in deed of ~~trust~~trust; recording of foreclosure.**

(a) A commissioner or a trustee in a deed of trust, authorized pursuant to G.S. 1-339.4 to hold a public sale of property, shall, in addition to all other reports required by this Article, file with the clerk of the superior court an account of his receipts and disbursements as follows:

- (1) When the sale is for cash, a final report shall be filed within thirty days after receipt of the proceeds of the sale;
- (2) When the sale is wholly or partly on time and the commissioner or trustee is not required to collect deferred payments, a final report shall be filed within thirty days after receipt of the cash payment, if any is required, and the receipt of all securities for the purchase price;
- (3) When the commissioner or trustee is required to collect deferred payments,
  - a. He shall file a preliminary report within thirty days after receipt of the cash payment, if any is required, and the receipt of all securities for the purchase price, and
  - b. If the period of time during which he is required to collect deferred payments extends over more than one year, he shall file an annual report of his receipts and disbursements, and
  - c. After collecting all deferred payments, he shall file a final report.

(b) The clerk shall audit and record the reports and accounts required to be filed pursuant to this section.

(c) In case of foreclosure of any deed of trust or mortgage, the commissioner or trustee shall, within 60 days after filing the report required by subsection (a) of this section, record in the office of the register of deeds in the county in which the property is situated a notice of foreclosure that complies with the provisions of G.S. 45-38."

**SECTION 2.** G.S. 1-339.40 reads as rewritten:

"§ 1-339.40. **Private sale; ~~final report~~report; recording of foreclosure.**



1 (a) A commissioner or a trustee in a deed of trust authorized pursuant to G.S. 1-339.4 to  
2 hold a private sale of property shall make such a final report as is specified in G.S. 1-339.31.

3 (a1) In case of foreclosure of any deed of trust or mortgage, the commissioner or trustee  
4 shall, within 60 days after filing the report required by G.S. 1-339.31(a), record in the office of  
5 the register of deeds in the county in which the property is situated a notice of foreclosure that  
6 complies with the provisions of G.S. 45-38.

7 (b) Any other person authorized pursuant to G.S. 1-339.4 to hold a private sale of  
8 property shall make such a final report as is specified in G.S. 1-339.32."

9 **SECTION 2.** G.S. 45-38 reads as rewritten:

10 **"§ 45-38. Recording of foreclosure.**

11 In case of foreclosure of any deed of ~~trust,~~trust or mortgage, the trustee, mortgagee, or the  
12 trustee's or mortgagee's attorney ~~shall~~shall, within 60 days after filing the final report required  
13 by G.S. 45-21.33, record a notice of foreclosure that includes the date when, and the person to  
14 whom, a conveyance was made by reason of the foreclosure. In the event the entire obligation  
15 secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property  
16 embraced within the terms of the mortgage or deed of trust, the trustee, mortgagee, or the  
17 trustee's or mortgagee's attorney shall indicate in the notice of foreclosure which property was  
18 sold.

19 A notice of foreclosure shall consist of a separate instrument, or that part of the original  
20 deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names  
21 of the original parties to the original instrument foreclosed, and the recording data for the  
22 instrument foreclosed. A notice of foreclosure shall be indexed by the register of deeds in  
23 accordance with G.S. 161-14.1."

24 **SECTION 3.** This act becomes effective October 1, 2013, and applies to any  
25 foreclosure of a deed of trust or mortgage that occurs on or after that date.