

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H.B. 469
Mar 23, 2023
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40222-MQ-80

Short Title: Foreclosures/Extend Servicemember Protections. (Public)

Sponsors: Representative Cleveland.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO SUPPLEMENT AND EXTEND PROTECTIONS FROM REAL ESTATE
3 FORECLOSURES FOR OUR SERVICEMEMBERS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 45-21.12A reads as rewritten:

6 "§ 45-21.12A. Power of sale barred during periods of military service.

7 (a) Power of Sale Barred. – A mortgagee, trustee, or other creditor shall not exercise a
8 power of sale contained in a mortgage or deed of trust, or provided by statute, during, or within
9 ~~90~~365 days after, a mortgagor's, trustor's, or debtor's period of military service. The clerk of
10 court shall not conduct a hearing pursuant to G.S. 45-21.16(d) unless the mortgagee, trustee or
11 other creditor seeking to exercise a power of sale under a mortgage or deed of trust, or provided
12 by statute, files with the clerk a certification that the hearing will take place at a time that is not
13 during, or within ~~90~~365 days after, a period of military service for the mortgagor, trustor or
14 debtor. This subsection applies only to mortgages and deeds of trust that originated before the
15 mortgagor's or trustor's period of military service.

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

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

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

26 (1) Military service. –

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

- 29 1. Active duty, as defined in 10 U.S.C. § 101(d)(1), and
30 2. In the case of a member of the National Guard, includes service
31 under a call to active service authorized by the President or the
32 Secretary of Defense for a period of more than 30 consecutive
33 days under 32 U.S.C. § 502(f), for purposes of responding to a
34 national emergency declared by the President and supported by
35 federal funds.



- 1 b. In the case of a servicemember who is a commissioned officer of the
- 2 Public Health Service or the National Oceanic and Atmospheric
- 3 Administration, active service, and
- 4 c. Any period during which a servicemember is absent from duty on
- 5 account of sickness, wounds, leave, or other lawful cause.
- 6 (2) Period of military service. – The period beginning on the date on which a
- 7 servicemember enters military service and ending on the date on which the
- 8 servicemember is released from military service or dies while in military
- 9 service.
- 10 (3) Servicemember. – A member of the United States Army, Navy, Air Force,
- 11 Marine Corps, Coast Guard, the commissioned corps of the National Oceanic
- 12 and Atmospheric Administration, or the commissioned corps of the Public
- 13 Health Service."

14 **SECTION 2.** This act is effective when it becomes law and applies to petitions filed

15 on or after that date.