

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1146
Committee Substitute Favorable 6/1/05

Short Title: Foreclosure Reform.

(Public)

Sponsors:

Referred to:

April 7, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE FORECLOSURE PROCESS.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 45-21.16(c)(7) reads as rewritten:

5 "(7) The right of the debtor (or other party served) to appear before the
6 clerk of court at a time and on a date specified, at which appearance he
7 shall be afforded the opportunity to show cause as to why the
8 foreclosure should not be allowed to be held. The notice shall contain a
9 all of the following:

- 10 a. A statement that if the debtor does not intend to contest the
11 creditor's allegations of default, the debtor does not have to
12 appear at the hearing and that his failure to attend the hearing
13 will not affect his right to pay the indebtedness and thereby
14 prevent the proposed sale, or to attend the actual sale, should he
15 elect to do so.
- 16 b. A statement that the trustee, or substitute trustee, is a neutral
17 party and in the event that the debtor contests the issues
18 presented in the foreclosure hearing, the trustee, or substitute
19 trustee, shall not advocate for the lender or for the debtor.
- 20 c. A statement that the debtor has the right to file a separate
21 lawsuit pursuant to G.S. 45-21.34 in which the debtor may be
22 able to assert legal or equitable claims against the maker or
23 holder of the loan and in which the debtor may apply to a judge
24 of the superior court for injunctive relief stopping the mortgage
25 sale prior to the time that the rights of the parties to the sale or
26 resale become fixed.
- 27 d. A statement that the debtor has the right to appear at the hearing
28 and serve a written response.

- 1 e. A statement that if the debtor fails to appear at the hearing, the
2 trustee will ask the clerk for an order to sell the debtor's home.
3 f. A statement that the debtor has the right to contest the
4 allegations in the notice."

5 **SECTION 2.** G.S. 45-21.29(k) reads as rewritten:

6 "(k) Orders for possession of real property sold pursuant to this Article, in favor of
7 the purchaser and against any party or parties in possession at the time of application
8 therefore, may be issued by the clerk of the superior court of the county in which such
9 property is sold, when:

- 10 (1) Such property has been sold in the exercise of the power of sale
11 contained in any mortgage, deed of trust, leasehold mortgage,
12 leasehold deed of trust, or a power of sale authorized by any other
13 statutory provisions,
14 (2) Repealed by Session Laws 1993, c. 305, s. 18.
15 (2a) The provisions of this Article have been complied with,
16 (3) The sale has been consummated, and the purchase price has been paid,
17 (4) The purchaser has acquired title to and is entitled to possession of the
18 real property sold,
19 (5) ~~Ten~~ Thirty days' notice has been given to the party or parties who
20 remain in possession at the time application is made, and
21 (6) Application is made by petition to such clerk by the mortgagee, the
22 trustee, the purchaser of the property, or any such person's authorized
23 representative."

24 **SECTION 3.** This act becomes effective October 1, 2005, and applies to any
25 loan agreement entered into on or after that date.