

North Carolina MORTGAGE LENDING, FORECLOSURE, AND HOUSING PROTECTION LEGISLATION

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Background

- In 1999, North Carolina lead the nation by enacting laws prohibiting predatory residential mortgage lending. The act modified the kinds and amounts of fees which may be charged to a borrower by a lender in connection with a home loan. The act also placed restrictions on “high cost home loans”, which are loans that meet one or more of three thresholds relating to interest rate, the total amount charged as points and fees, and prepayment penalties. Loans that meet the thresholds are subject to certain restrictions on their terms, which are designed to create a very high disincentive to making such loans.

Recent Legislation

During the past three sessions, the General Assembly has enacted a number of new laws, expanding on the landmark Anti-Predatory Lending Act of 1999.

2007 Legislation

- **Identify Loan Originator on Deed of Trust** - S.L. 2007-176 (HB 313) amends the Good Funds Settlement Act to require that lenders include in the loan closing instructions the name of anyone acting as a mortgage broker in the transaction, and to require that a settlement agent who has received this information from the lender or who has actual knowledge that someone has acted as a mortgage broker must place an entry showing the name of the mortgage broker on the deed of trust.
- **Residential Mortgage Fraud Act** - S.L. 2007-163 (HB 817) creates a new Article in the criminal law establishing the crime of residential mortgage fraud. A person is guilty of this offense if for financial gain and with intent to defraud, the person knowingly makes or facilitates the making of any misrepresentation within the lending process that is relied upon by the borrower or any other person.

2007 Legislation (cont.)

- **NC Foreclosure/Landlord Tenant Laws** - S.L. 2007-353 (HB 947) amends the Foreclosure Law to expand the information that must be included in a notice of sale of residential real property with less than 15 rental units. The act requires that the notice of sale include notice that (1) if the property is sold, an order of possession may be issued against the party in possession of the property, and (2) a tenant who entered into or renewed a rental agreement on or after October 1, 2007, may terminate the agreement upon 10 days written notice to the landlord.
- **Protect Homeowners/Reduce Foreclosure** - S.L. 2007-351 (HB 1374) the “Mortgage Debt Collection and Servicing Act, applies to home loans that are secured by real property used by the borrower as a dwelling, and to servicers, defined as a person responsible for receiving scheduled periodic payments from a borrower and making payments as required by the loan. The act restricts the amount and conditions under which fees may be assessed by a servicer and establishes obligations of the servicer regarding handling escrow funds.

2007 Legislation (cont.)

- **Protect Consumers - Covered Loans - S.L. 2007-352 (HB 1817)** creates a new section applicable only to "rate spread home loans", which are residential mortgage loans with an APR that is at least 3% greater than a U.S. Treasury security with a comparable maturity or at least 1.75% greater than the conventional mortgage rate, on a first mortgage, or at least 5% greater than a Treasury note or 3.75% greater than a conventional mortgage on a subordinate loan. The following restrictions are placed on these loans:
 - No prepayment penalties may be charged or collected.
 - Lenders must verify the borrower's ability to repay the loan according to its terms and applicable taxes and insurance.

2008 Legislation

- **Regulate Mortgage Servicers** – S.L. 2008-228 (HB 2463) amends the Mortgage Lending Act to require the licensure and regulation of mortgage servicers by the Commissioner of Banks in a manner similar to that currently applied to mortgage brokers and mortgage bankers. The bill also imposes some specific duties on mortgage servicers and adds to the list of prohibited acts, certain acts specifically relating to mortgage servicers. The Commissioner of Banks is given authority to direct the Clerk of Superior Court to suspend a foreclosure proceeding for 60 days, if the Commissioner has evidence that there was a material violation of law in the origination or servicing of a loan.
- **Earlier Notification of Mortgage Servicer Fee** – S.L. 2008-227 (HB 2188) amends the recently enacted Mortgage Debt Collection and Servicing Act to require that any fee incurred by a servicer be clearly explained to the borrower within 30 days after the fee is assessed, and to clarify that the servicer is not required to send a statement to the borrower under certain circumstances.

2008 Legislation (cont.)

- **Emergency Foreclosure Reduction Program** – S.L. 2008-226 (HB 2623) creates an "Emergency Program to Reduce Home Foreclosures". The program establishes a system by which mortgage servicers are required to identify certain subprime loans that are in jeopardy of foreclosure. The servicer must then submit information on those loans to a database designed by the Commissioner of Banks and maintained by the Administrative Office of the Courts. The Commissioner of Banks uses the information to attempt to assist the parties avoid foreclosure. The Commissioner is also authorized to extend the foreclosure process for up to 30 days once in an appropriate case.

2009 Legislation

- **Mortgage/Rate Spread & High-Cost Loans** – S.L. 2009-457 (HB 1222) amends the rate spread and high-cost home loan statutes to update the definition of rate spread home and to clarify the definition of points and fees in connection with high-cost home loans. The act amends the definition of rate spread home loan to allow lenders to meet either the new Federal Reserve rules definition or the current North Carolina definition. The State is not required to conform to federal rules but including this definition will make it easier for some lenders to comply with the law while not compromising consumer protections.
- **S.A.F.E. Mortgage Licensing Act** – S.L. 2009-374 (HB 1523) repeals the NC Mortgage Lending Act and replaces it with the Secure and Fair Enforcement Mortgage Licensing Act (SAFE) in order to conform to the requirements of Title V of the federal Housing and Economic Recovery Act of 2008. The act provides for the licensing of residential loan originators, as well as mortgage brokers, mortgage bankers, and mortgage servicers through the Nationwide Mortgage Licensing System and Registry, and for the supervision and enforcement of the law by the Commissioner of Banks.

2009 Legislation (cont.)

- **Abolish Certain Deficiency Judgments** – S.L. 2009-441 (HB 1057) abolished the ability of a mortgagee to obtain a deficiency judgment after foreclosure and sale of real property secured by a borrower’s primary residence if the defaulted mortgage loan was a rate spread home loan or a nontraditional mortgage loan. A nontraditional loan allows for payments that defer satisfaction of principal and interest and allow for negative amortization of the loan balance.
- **Amend Future Advances Statutes** – S.L. 2009-197 (HB 1368) clarifies the distinction between “advances” and “obligations”, rewrites the law governing the priority of security instruments relating to real property, clarifies that future advances and additional obligations may be made under a security instrument within a specified time period, and provides that a security instrument has the same priority to the extent of future advances and obligations as if the advances and obligations had been made at the time the instrument was registered.

2009 Legislation (cont.)

- **Consumer Economic Protection Act – S.L. 2009- (SB 974)**
amends the law governing foreclosure under power of sale to require additional information in the notice of foreclosure relating to efforts made to resolve the matter voluntarily. The clerk of courts is authorized to continue a foreclosure hearing for up to 60 days if the clerk finds that additional time might create a reasonable likelihood of resolving the matter. The act also amends and expands the laws regulating collection agencies to include debt buyers. Debt buyers purchase delinquent or charged-off consumer loans or consumer credit accounts or other consumer debt and then aggressively pursue collection efforts.

Conclusion

In its first six months of operation, the 2008 Emergency Program to Reduce Foreclosures has produced the following results*:

- At least 523 foreclosures have been prevented (actual number is likely higher).
- More than 2,800 homeowners have received in-person, free foreclosure prevention counseling.
- More than 9,400 homeowners have spoken with the toll-free call center.
- More than 57,000 letters have been sent to homeowners informing them of resources available to prevent foreclosure.
- Surrounding neighbors have avoided an estimated \$8.7 million in lost property values.
- Investors have avoided an estimated \$36.6 million in losses from prevented foreclosures.

**NC Office of Commissioner of Banks, "The Emergency Program to Reduce Home Foreclosures – Report to the North Carolina General Assembly, May 1, 2009"*