

New Foreclosure Protection for Residents of Cleveland and Rutherford County, North Carolina

During the 2004 session, the General Assembly inserted a pilot project provision into the budget bill (H-1414, S.L. 2004-124, Sec. 20A.1) that had a significant impact on foreclosure proceedings in eight selected counties. Those counties are Cabarrus, Cleveland, Cumberland, Edgecombe, Forsyth, Guilford, Rowan and Rutherford. During the 2005 session, the General Assembly continued the program in the existing counties, and expanded it to an additional 19 counties (See S-622, SL 2005-276, Sec.20.2). Those counties are: Anson, Bertie, Bladen, Caswell, Caldwell, Graham, Halifax, Mitchell, Montgomery, Northampton, Richmond, Robeson, Scotland, Tyrell, Vance, Warren, Washington, Wilson, and Yancey.

The legislation creates the North Carolina **Home Protection Pilot Program and Loan Fund** „to assist North Carolina workers who have lost jobs as a result of changing economic conditions in North Carolina, when the workers are in need of temporary assistance to avoid losing their homes to foreclosure. The program is administered by the North Carolina Housing Finance Agency (NCHFA or Agency), and will be up and running in in the newly added counties by November 1, 2005. Obviously, it has been up and running in the original counties for some months. It is important for clerks and judges in the affected counties to be familiar with the legislation, because it imposes an automatic stay.

Here is how it works.

How The Plan Works For the Homeowner

A homeowner in the named counties, who has lost his or her job as a result of changing economic conditions, due to no fault of their own, and who is eligible for unemployment benefits, and who has completed a session with a local counseling agency approved by NCHFA, may apply to the Agency for assistance. The Agency reviews the work and credit history of the homeowner, the lack of impediments to reemployment, other assets, benefits, debts and obligations, and many other factors. If approved, the homeowner can be eligible for 1) a one time loan (payable directly to the homeowner's lender) to catch up the delinquency, if any, on the existing mortgage, and 2)

continuing monthly assistance, again payable directly to the lender, to help the homeowner make his mortgage payments. The assistance may not exceed the lesser of \$20,000 or 18 months of the regular mortgage payment amount. In return, the Agency gets a promissory note at 0% interest payable over 15 years and a deed of trust.

How The Stay Works

Once an application is received by the Agency, the legislation imposes an automatic 120 day stay on all efforts and proceedings to recover a mortgage obligation, including civil actions and foreclosure proceedings. The Agency has adopted guidelines which require that a notice be sent by the Agency to the lender and to the clerk of court in the county where the property is located in the event an application is received. The Agency has 120 days from the date of receipt to consider the application. The notice of receipt of application will state on its face when the application was received. If the application is denied, the Agency will send a notice to the clerk lifting the stay. If the application is approved, the Agency will send a notice to the clerk. If no notice is received by the clerk one way or the other, the stay is automatically lifted by operation of law after the 120 days from the date of receipt by the Agency of the application.

How to Handle The Paper Notices

If a foreclosure action has been filed, place all notices in the special proceeding file, and make an appropriate entry in VCAP. Please note, the Agency intends to include in its notice a recitation of the file number of any foreclosure proceedings they know about. However, the Agency may not be aware of some filings. Thus, some notices may come to you without any designation of a file number. It is not the duty of the clerk to conduct a file search to determine if a foreclosure proceeding involving any of the parties mentioned in the notice has been filed. (Note: The Agency is required to notify the lender of the application and the stay.) Nevertheless, it would be a good practice for clerk personnel to conduct a cursory examination of recent foreclosure filings to see if any match up with the notice, and, if so, to place the notice in that file and to make the necessary entries into VCAP.

If a foreclosure has not been filed at the time a notice of receipt of application comes from the Agency to you, file it as an „R_ filing.

How To Proceed Once the Stay Is Lifted Or the Application is Approved

Although the legislation gives only limited guidance as to procedure, it appears that the best interpretation may be to follow the bankruptcy case model to fill in the details. After discussions with the lawyers for the Agency and the NC Justice Center, who sponsored or consulted on the legislation, we propose the following: If the application is filed with the Agency after the hearing in the foreclosure, and if the stay is later lifted, then it is not necessary to start over or to hold another hearing. However, the sale process must be repeated in its entirety. On the other hand, if the application to the Agency is filed before the hearing, then any hearing held after that filing is void, and there must be a new notice and hearing after the stay is lifted.

If the application is approved, upon the Clerk's receipt of the notice thereof from the Agency, the foreclosure action should be dismissed. If there is a later default, a new foreclosure action must be brought.

If you or one of your local attorneys wants more information about the pilot program, you may contact Patricia Amend or Keir Morton at the North Carolina Housing Finance Agency (919) 877-5700. Information may also be available on the Agency's website, www.nchfa.com.

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