

§ 45-36.7A. Credit suspension directives.

(a) A credit suspension directive may be given to a secured creditor by any of the following:

- (1) Any borrower.
- (2) The legal representative of any borrower.
- (3) The attorney for any borrower.
- (4) An attorney licensed to practice law in the State of North Carolina or a bank, savings and loan association, savings bank, or credit union, but only when (i) the attorney, bank, savings and loan association, savings bank, or credit union is responsible for the disbursement of funds in connection with the sale of, or a new loan secured by, real property then encumbered by an existing security instrument; (ii) a requirement of the sale or new loan transaction is that the property be conveyed or encumbered free and clear of the lien of the existing security instrument; and (iii) the credit suspension directive is given to the secured creditor contemporaneously with a notification requesting a payoff statement or a short-pay statement in anticipation of and in preparation for the imminent settlement of the sale or new loan transaction.

(b) A credit suspension directive must contain all of the following:

- (1) The name and authority of the person giving the directive.
- (2) Sufficient information to enable the creditor to identify the secured obligation, the identity of the borrower, and the real property encumbered by the security interest.
- (3) The specified payoff date, which may not be more than 30 days after the notification is given.
- (4) A clear and unambiguous directive to the secured creditor to suspend through and including the payoff date the borrower's right and ability to obtain any additional credit advances which, if made, would be secured by the security instrument.

(c) If the person who gives a credit suspension directive to a secured creditor is a person listed in subdivision (a)(4) of this section, that person shall also (i) give a copy of the credit suspension directive to the borrower and (ii) provide an additional notification to the borrower that provides substantially as follows:

"NOTICE TO BORROWER

You have a loan with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We will be responsible for disbursing funds in connection with a scheduled sale of the property or a new loan that will be secured by the property. A requirement of the sale or new loan transaction is that the property be conveyed or encumbered free and clear of the existing mortgage or deed of trust that secures your loan.

As permitted by North Carolina law, we are sending the (enclosed/attached/following/foregoing) notification to your lender directing that it temporarily suspend your right and ability to obtain credit advances in anticipation of the settlement of the sale or loan. The notification accompanies a request asking the amount that must be sent to your lender to pay your loan in full and cancel the

mortgage or deed of trust that secures your loan (or, if your loan will not be paid in full, to release the property from the mortgage or deed of trust that secures your loan). The information your lender provides us may be inaccurate if you obtain additional credit advances before the scheduled settlement date of the sale or new loan transaction.

When your lender receives our directive, it will temporarily suspend your right and ability to obtain credit advances. The period of suspension will continue through and including (anticipated payoff date), the anticipated payoff date, regardless of whether the settlement of the sale or new loan transaction occurs as scheduled. The suspension will not affect your responsibility to continue making payments to your lender during the suspension period. You should not attempt to obtain additional credit advances from your lender during the suspension period.

You may instruct us at any time during the suspension period to withdraw the credit suspension directive we are sending your lender, and we are required by law to comply. However, if you do so, you may jeopardize the settlement of the sale or new loan transaction because the payoff or release information provided by your lender may become inaccurate.

When proceeds from a sale or new loan transaction are used to pay an existing loan in full, lenders typically close the loan account, thereby terminating their borrower's ability to obtain additional credit advances. You should contact your lender to determine whether you will be able to obtain additional credit advances after the settlement of the sale or new loan transaction.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of attorney, bank, savings and loan association, savings bank, or credit union)"

- (d) Upon receipt of a credit suspension directive, a secured creditor shall:
- (1) Subject to subsection (e) of this section, suspend the borrower's right and ability to obtain credit advances which, if made, would be secured by the security instrument. The period of suspension shall continue through and including the payoff date stated in the credit suspension directive.
 - (2) Apply all sums subsequently paid during the period of suspension by or on behalf of the borrower in connection with the secured obligation, including sums paid to the secured creditor by a person responsible for the disbursement of funds in connection with the sale of, or a new loan secured by, real property then encumbered by a security instrument, to the satisfaction of the secured obligation, regardless of whether the amount or amounts paid are sufficient to pay the secured obligation and other sums secured by the security instrument in full. Sums paid to the secured creditor in excess of the amount required to pay the secured obligation and other sums secured by the security instrument in full shall be refunded by the secured creditor to or at the direction of the person who paid the excess amount.

(e) Notwithstanding a secured creditor's receipt of a credit suspension directive, a secured creditor may do any of the following, all of which shall be secured by the security instrument:

- (1) The secured creditor may advance sums and incur expenses (i) for insurance, taxes, and assessments, (ii) to protect the secured creditor's interest under the security instrument, (iii) to preserve and protect the value or condition of the real property encumbered by the security instrument, or (iv) to complete the construction of improvements on the real property encumbered by the security instrument.
- (2) The secured creditor may permit the borrower to obtain a credit advance, but only if the credit advance was initiated or approved before the secured creditor received the credit suspension directive.

(f) If the person giving a credit suspension directive is not a borrower, then the person giving a credit suspension directive shall be conclusively deemed the borrower's agent acting with full authority from the borrower to issue the credit suspension directive on the borrower's behalf.

(g) A credit suspension directive may be withdrawn at any time by the person who gave the directive. If the person who gives a credit suspension directive to a secured creditor is a person listed in subdivision (a)(4) of this section, that person shall promptly notify the secured creditor that the credit suspension directive is withdrawn (i) if instructed by the borrower at any time to withdraw the directive or (ii) if the anticipated sale or new loan transaction is cancelled. Upon receipt of a notice from the person who originally gave the credit suspension directive that the credit suspension directive is withdrawn, the secured creditor may reinstate the borrower's right and ability to obtain credit advances. (2011-312, s. 6.)