

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 484

Short Title: Transfer Emergency Foreclosure Program to HFA. (Public)

Sponsors: Representative Brubaker (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

March 29, 2011

A BILL TO BE ENTITLED

AN ACT TO TRANSFER MANAGEMENT OF THE STATE HOME FORECLOSURE PREVENTION PROJECT AND FUND TO THE NORTH CAROLINA HOUSING FINANCE AGENCY, TO EXEMPT THE NORTH CAROLINA HOUSING FINANCE AGENCY FROM THE REQUIREMENTS OF ARTICLES 6 AND 7 OF CHAPTER 143 OF THE GENERAL STATUTES, AND TO AUTHORIZE THE COMMISSIONER OF BANKS TO ACQUIRE PROPERTY SUBJECT TO APPROVAL OF THE STATE BANKING COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 45-101 reads as rewritten:

"§ 45-101. (For expiration date, see note) **Definitions.**

The following definitions apply throughout this Article:

...

(3b) Housing Finance Agency. – The North Carolina Housing Finance Agency.

...."

SECTION 2. G.S. 45-103(a) reads as rewritten:

"(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower. The Administrative Office of the Courts shall establish an internal database to track information required by this section. The Commissioner of Banks shall design and develop the database, in consultation with the Administrative Office of the Courts. Only the Administrative Office of the Courts, the Office of Commissioner of Banks, the Housing Finance Agency, and the clerk of court as provided by G.S. 45-107 shall have access to the database."

SECTION 3. G.S. 45-104 reads as rewritten:

"§ 45-104. (For expiration date, see note) **State Home Foreclosure Prevention Project and Fund.**

(a) The Commissioner of Banks is authorized to establish the State Home Foreclosure Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures for home loans. In developing the Project, the Commissioner may include input from HUD-approved housing counselors, community organizations, the Credit Union Division and other State agencies, mortgage lenders, mortgage servicers, and other partners. The Housing Finance Agency shall administer the Project.



1 (b) There is established a State Home Foreclosure Prevention Trust Fund to be managed
2 and maintained by the ~~Office of the Commissioner of Banks~~, Housing Finance Agency. The
3 funds shall be held separate from any other funds received by either the Office of the
4 Commissioner of Banks or the Housing Finance Agency in trust for the operation of the State
5 Home Foreclosure Prevention Project.

6 (c) Upon the filing of the information required under G.S. 45-103, the mortgage
7 servicer shall pay a fee of seventy-five dollars (\$75.00) to the State Home Foreclosure
8 Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered
9 by this act. ~~The collection of this fee shall be managed by the Office of the Commissioner of~~
10 ~~Banks shall collect the fee, in a manner so as to minimize burdens on mortgage servicers in~~
11 ~~complying with the requirements of this section.~~ Upon receipt of the fee the Commissioner
12 shall deposit the funds into a separate account. The funds shall be transferred no less than
13 monthly into the State Home Foreclosure Prevention Trust Fund. The Housing Finance Agency
14 shall manage the State Home Foreclosure Prevention Trust Fund.

15 (d) ~~The Commissioner of Banks~~ Housing Finance Agency shall ~~allocate~~ use funds from
16 the State Home Foreclosure Prevention Trust Fund to compensate performance-based service
17 contracts or other contracts and grants necessary to implement the purposes of this act in the
18 following manner:

19 (1) An amount, not to exceed the greater of two million two hundred thousand
20 dollars (\$2,200,000) or thirty percent (30%) of the funds per year, to cover
21 the administrative costs of the operation of the program by the Office of the
22 Commissioner of ~~Banks~~, Banks and the Housing Finance Agency, including
23 managing on behalf of the Administrative Office of the Courts the database
24 identified in G.S. 45-103, expenses associated with informing homeowners
25 of State resources available for foreclosure prevention, expenses associated
26 with connecting homeowners to available resources, and assistance to
27 homeowners and counselors in communicating with mortgage servicers.

28 (2) An amount, not to exceed the greater of three million four hundred thousand
29 dollars (\$3,400,000) or forty percent (40%) per year, to make grants to or
30 reimburse nonprofit housing counseling agencies for providing foreclosure
31 prevention counseling services to homeowners involved in the State Home
32 Foreclosure Prevention Project.

33 (3) An amount, not to exceed thirty percent (30%) of the total funds collected
34 per year, to make grants to or reimburse nonprofit legal service providers for
35 services rendered on behalf of homeowners in danger of defaulting on a
36 home loan to avoid foreclosure, limited to legal representation such as
37 negotiation of loan modifications or other loan work-out solutions,
38 defending homeowners in foreclosure or representing homeowners in
39 bankruptcy proceedings, and research and counsel to homeowners regarding
40 the status of their home loans.

41 (4) ~~Any funds remaining upon the expiration of the State Home Foreclosure~~
42 ~~Prevention Project~~ in the State Home Foreclosure Prevention Trust Fund as
43 of June 30, 2011, and any funds remaining in the State Home Foreclosure
44 Prevention Trust Fund upon the expiration of each subsequent fiscal year
45 shall be directed to the North Carolina Housing Trust Fund.

46 (e) ~~The Commissioner of Banks~~ Housing Finance Agency shall have the discretion to
47 enter into an agreement to administer funds under subdivisions (2) and (3) of subsection (d) of
48 this section in a manner that complements or supplements other State and federal programs
49 directed to prevent foreclosures for homeowners participating in the State Home Foreclosure
50 Prevention Project."

51 **SECTION 4.** G.S. 45-105 reads as rewritten:

1 **"§ 45-105. (For expiration date, see note) Extension of foreclosure process.**

2 The Commissioner of Banks upon referral from the Housing Finance Agency shall review
3 information provided in the database created by G.S. 45-103 to determine which home loans
4 are appropriate for efforts to avoid foreclosure. If the Commissioner reasonably believes, based
5 on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the
6 borrower's capacity and interest in staying in the home, and other appropriate factors, that
7 further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to
8 avoid foreclosure on primary residences, the Commissioner shall have the authority to extend
9 one time under this Article the allowable filing date for any foreclosure proceeding on a
10 primary residence by up to 30 days beyond the earliest filing date established by the
11 pre-foreclosure notice. If the Commissioner makes the determination that a loan is subject to
12 this section, the Commissioner shall notify the borrower, mortgage servicer, and the
13 Administrative Office of the Courts. If the mortgage servicer is a state or federally chartered
14 credit union, the Commissioner shall also notify the Administrator of the Credit Union Division
15 of the determination."

16 **SECTION 5.** G.S. 45-106 reads as rewritten:

17 **"§ 45-106. (For expiration date, see note) Use and privacy of records.**

18 The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall
19 be exclusively for the use and purposes of the State Home Foreclosure Prevention Project
20 developed by the Commissioner of Banks and administered by the Housing Finance Agency in
21 accordance with G.S. 45-104. The information provided to the database is not a public record,
22 except that a mortgage lender and a mortgage servicer shall have access to the information
23 submitted only with regard to its own loans. Any notice provided by the Commissioner to the
24 Administrator of the Credit Union Division under G.S. 45-105 is not a public record. Provision
25 of information to the Administrative Office of the Courts for use by the State Home
26 Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage
27 servicer shall be held harmless for any alleged breach of privacy rights of the borrower with
28 respect to the information the mortgage servicer provides in accordance with this Article."

29 **SECTION 6.** G.S. 53-102 reads as rewritten:

30 **"§ 53-102. Offices.**

31 ~~Suitable offices shall be provided for the Commissioner of Banks in some state-owned~~
32 ~~public building in Raleigh. Notwithstanding any other provision of law, the Commissioner of~~
33 ~~Banks may establish and maintain offices for the transaction of business at such place or places~~
34 ~~as the Commissioner deems advisable or necessary in carrying out the purposes of this Chapter.~~
35 ~~The Commissioner may acquire, hold, rent, encumber, transfer, convey, and otherwise deal~~
36 ~~with real property and utilities in the same manner as a private person or corporation, subject~~
37 ~~only to the approval of the State Banking Commission. The Commissioner may, with the~~
38 ~~approval of the State Banking Commission, pledge or encumber funds available to the State~~
39 ~~Banking Commission to secure financing for real property."~~

40 **SECTION 7.** G.S. 122A-5 reads as rewritten:

41 **"§ 122A-5. General powers.**

42 The Agency shall have all of the powers necessary or convenient to carry out the provisions
43 of this Chapter, ~~including, but without limiting the generality of the foregoing, including the~~
44 power:

- 45 ...
- 46 (18) To establish and maintain an office for the transaction of its business in the
47 City of Raleigh and at such place or places as the board of directors deems
48 advisable or necessary in carrying out the purposes of this Chapter;
49 ~~provided, however, that the Agency shall comply with the provisions of~~
50 ~~Articles 6 and 7 of Chapter 146 of the General Statutes governing the~~
51 ~~acquisition of office space;~~

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SECTION 8. This act becomes effective July 1, 2011.