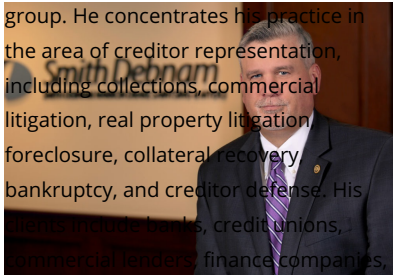


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What You Need to Know About North Carolina's Home Protection Pilot Program

October 24, 2005 | by

This year the North Carolina General Assembly, as a part of its annual budget bill, created the "North Carolina Home Protection Pilot Program and Loan Fund." This provision in the legislation is designed to provide relief in certain counties in the State by stopping the commencement or continuation of a home mortgage foreclosure for certain qualified residents. The legislation, which became law on January 1, 2005 will, for a specified period of time, prevent a home mortgage lender from enforcing its right of foreclosure. This new program is administered by the North Carolina Housing Finance Agency ("NCHFA").

In passing this legislation, the General Assembly concluded that the changing economic conditions in certain counties have created an increase in home mortgage foreclosures. The legislation was passed to provide assistance to homeowners who are struggling economically and who meet specific criteria set out in the legislation.

Qualification for Assistance

The first aspect of the new program's assistance is to delay foreclosure of a home mortgage until the NCHFA can evaluate the economic circumstances of a homeowner and determine whether assistance to the homeowner is available. To qualify, a homeowner must be unemployed under circumstances that would allow that homeowner to receive unemployment benefits. The homeowner must complete an application, which is evaluated by the NCHFA. The evaluation reviews a number of criteria to determine if the homeowner qualifies for assistance. Factors considered include: (i) the reason for the loss of employment and the ability of the homeowner to obtain other employment, (ii) the ability of the homeowner to meet his/her monthly mortgage payment and (iii) the homeowner's credit history and overall financial condition.

If the evaluation determines that the homeowner qualifies, then the homeowner will receive either a one time loan, payable directly to the lender, to cure the arrearage on the mortgage loan, or a continuing monthly loan, payable directly to the lender, to make or supplement the homeowner's regular monthly mortgage payment. The assistance

received cannot exceed \$20,000.00, or the total of eighteen of the homeowner's monthly mortgage payments, whichever is less. Any assistance provided by NCHFA will be evidenced by an interest free promissory note for a period of fifteen years and secured by a deed of trust on the homeowner's residence.

Affected Counties

The new law applies to homeowners living in the following North Carolina counties:

- Cabarrus
- Cleveland
- Cumberland
- Edgecombe
- Forsyth
- Guilford
- Rowan
- Rutherford

How the Program Works

Once NCHFA receives the homeowner's application, it is required to mail a Notice of Receipt of Application to the homeowner's mortgage lender. The notice creates a temporary stay and/or injunction against certain acts by the lender to collect or foreclose under the mortgage loan. The stay or injunction becomes effective on the date the application is received by the NCHFA, which date will be contained in the notice.

The notice imposes a 120-day stay and/or injunction on the following activities:

- commencing of a foreclosure action
- continuation of a pending foreclosure action
- accelerating the maturity of the obligation secured by the mortgage
- taking any action to acquire possession of any mortgaged property
- requesting or receiving a deed in lieu of foreclosure
- entering a judgment by confession pursuant to any promissory note secured by the mortgage
- enforcing the mortgage obligation under the rules of civil procedure

Once the lender receives the notice from the NCHFA, the lender is prevented from pursuing any of the actions listed above. The stay or injunction remains in effect for 120 days from the date of the homeowner's application. During the 120-day period, the NCHFA will evaluate the application and decide whether or not the homeowner is entitled to assistance. The NCHFA will then send a second notice to both the lender and the Clerk of Superior Court informing each whether the homeowner's application has been approved or denied. If the second notice is not sent, the stay or injunction will automatically terminate after 120 days. It will also immediately terminate if the second notice indicates that the homeowner's application was denied. In either event, the lender is then free to commence or continue its collection efforts.

Duties of the Lender

If a lender receives notice of an application with the NCHFA, it must comply with the legislation and cease any further prohibited collection or foreclosure activities for the required 120-day period, or until it has been notified that the homeowner's application has been denied. The homeowner is allowed to seek an injunction from the Court against the lender if the lender fails to comply. To ensure that the Court is aware of a pending application for assistance, the legislation created a process whereby the NCHFA is required to send all notices to the Clerk of Superior Court. If a foreclosure is pending, the Clerk is required to file the notice in the case file. If no such action is pending, a separate file is established by the Clerk to contain such notices.

As this legislation only became law January 1, 2005, it remains largely untested at this time, and may very well contain many wrinkles to be ironed out. However, attorneys assisting homeowners are slowly becoming aware of the law and the restrictions it places on the foreclosure rights of lenders. Lenders will therefore soon begin receiving these application notices from the NCHFA, and should be aware of the law and its effects.

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