

NORTH CAROLINA **PRO BONO** RESOURCE CENTER

Mortgages and Foreclosure During COVID-19

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WHAT ARE MY OPTIONS IF I AM UNABLE TO PAY MY MORTGAGE?

North Carolina:

In North Carolina foreclosures are typically non-judicial, but still require a hearing before a court clerk prior to the sale of a foreclosed home. As of March 16, 2020, North Carolina court cases, including the required foreclosure hearing before a court clerk, have been postponed for at least thirty (30) days. On April 2, 2020, Chief Justice Cheri Beasley issued an order that extended the postponement of court proceedings until at least June 1, 2020. Homeowners with a pending foreclosure will receive notice in the mail with a new court date, so it is essential to open all mail and attend next hearing. Additionally, foreclosure sales that have not been finalized will be held open through June 1, 2020. This means that the option to prevent the foreclosure and either (i) redeem the property by paying the debt in full, or (ii) filing for Chapter 13 bankruptcy, as further discussed below, will remain valid until June 1, 2020 for all foreclosure sales that are not finalized. While the order postponing foreclosures has not been extended, Governor Roy Cooper issued Executive Order 142 on May 30, 2020, which states, "The undersigned strongly encourages all lenders to work with property owners to the best of their abilities to provide loan payment flexibility that enables property owners to avoid foreclosures, in light of the COVID-19 State of Emergency," but does not expressly prohibit lenders from proceeding with foreclosures at this time.

North Carolina General Statutes Chapter 45 provides detailed requirements and procedures for foreclosures. Typically, prior to initiating a foreclosure action, the homeowner will likely receive several letters and phone calls from their loan servicer reminding them of their overdue payments. This is a good opportunity for the homeowner to discuss potential options to avoid foreclosure, such as loan modification, forbearance and a payment plan. Many servicers are increasingly willing to work with homeowners during this time of economic uncertainty, so homeowners should be proactive in notifying their loan servicer if they have experienced a change in circumstances due to COVID-19 and are now unable to pay their mortgage. Because rules and procedures are rapidly evolving during this time, communication with loan servicers is essential.

If a loan servicer wishes to proceed with a foreclosure, before filing a notice of hearing with the court clerk to authorize the sale of a home, the loan servicer must provide the homeowner at least forty-five (45) days prior notice, which includes the amount due, contact information for the mortgage lender, servicer or an agent authorized to work with the borrower, and contact information for a HUD-approved housing counseling agency. Then the lender must mail notice of default that includes a detailed statement of the amounts due to the borrower within thirty (30) days of the date of the notice of hearing. The foreclosure process officially starts with the lender filing notice of hearing with the court clerk (which as

explained above cannot happen in North Carolina until at least June 1, 2020). The borrower must receive a notice of hearing ten (10) days prior to the hearing if served with the notice personally or twenty (20) days prior to the hearing if notice is posted on the property. When the hearing can occur, the court considers whether the debt is valid, if the foreclosing party is the holder of the debt, if the borrower is in default, whether proper notice was given and if the foreclosure is allowed under the deed of trust.

The court clerk can choose to postpone the hearing for up to sixty (60) days if the residence is the homeowner's primary residence and there is good reason to believe additional time will allow the homeowner to resolve the delinquency without a foreclosure. Alternatively, the clerk may authorize the foreclosure sale and then twenty (20) days before the sale, the copy of sale must be provided to the borrower and posted in a public place. Also, the notice of sale must be published in a newspaper in the county in which the property is located once a week for two successive weeks prior to the sale. North Carolina statute doesn't provide for the right to reinstate the loan, but most deeds of trust allow for the borrower to cure the default and reinstate the loan up to five (5) days prior to the foreclosure sale. Finally, after a foreclosure sale, the borrower has a ten-day period to redeem the property by paying the debt in full. This ten-day period is the upset bid period, and as mentioned above, is now extended until at least June 1, 2020 for all non-finalized foreclosure sales. An alternative option for borrowers during this upset bid period is to file for Chapter 13 bankruptcy, which would prevent the foreclosure.

Federal:

Foreclosures are suspended until at least June 30, 2020 for most federally backed mortgages, which includes those from FHA (HUD), HECM reverse mortgages, VA loans, Fannie Mae, Freddie Mac, FHFA, and USDA. Even without the federal regulations, many mortgagees have offered forbearance, which allows mortgagors to postpone payments. This is not debt forgiveness and the loans still have to be repaid. However, forbearance can allow mortgagors to postpone payments for up to a year and then apply for a mortgage modification at the end of the forbearance period. Federally backed mortgage forbearance options are available from March 27, 2020 to December 31, 2020, or the end of the COVID-19 emergency, whichever comes first. Mortgagors experiencing hardship due to unemployment or other loss due to COVID-19 should be sure to talk to their mortgage servicers. If your job has been halted due to do the crisis, be sure to file for unemployment to ease with proving your inability to pay. Many privately backed mortgage lenders are also offering assistance such as forbearance and payment relief programs, not reporting missed payments to credit bureaus, waivers of late fees, and mortgage modifications to reduce interest rates and monthly payments.

According to 12 C.F.R. § 1024.41, federal law requires borrowers to be more than one hundred twenty (120) days overdue on their loan payments before the lender can proceed with the state foreclosure procedure laid out above.

For further information, go to:

HUD-certified Housing Counselor:

<https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=nc#searchArea>

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