

North Carolina Legislative Update: Session Law 2010-190

09.28.2010

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The 2010 North Carolina General Assembly adopted an ACT TO PROHIBIT FORECLOSURES UNDER POWER OF SALE WHILE MORTGAGORS OR TRUSTORS ARE ON ACTIVE MILITARY DUTY. This act applies only to foreclosures under power of sale which excludes judicial foreclosures that continue to be governed by the Servicemembers Civil Relief Act (50 U.S.C. App. § 501, et sec.).

Purpose. This action is to supplement and complement the Servicemembers Civil Relief Act and to afford greater peace and security for persons in federal active duty.

Power of Sale is Barred During Periods of Military Service. The power of sale shall not be exercised by a mortgagee, trustee, or other creditor during, or within 90 days after, the mortgagor or debtor's period of military service.

The Clerk of Court shall not conduct a foreclosure hearing unless the mortgagee or trustee seeking to exercise the power of sale certifies that the hearing will not take place during, or within 90 days after, a period of military service. Information on persons who are in military service may be obtained from the Department of Defense Manpower Data Center. <https://www.dmdc.osd.mil/scra/owa/home>.

The Clerk of Court is also required to make a finding in the foreclosure order that the sale is not barred by this Act. This Act applies only to mortgages and deeds of trust that are originated before the period of military service. The act does not prohibit foreclosures under a deed of trust executed by the servicemember during military service.

Waiver. The mortgagor or debtor may waive the rights provide by this Act by written agreement of the parties executed during or after the period of military service. This waiver must be an instrument separate from the obligation or liability being enforced. The waiver shall specify the legal instrument creating the obligation or liability, and must be at least 12 point type.

Definitions. Military Service for members of the Army, Navy, Air Force, Marine Corps, or Coast Guard is full time active duty.

In the case of a member of the National Guard, military service is service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days for purposes of responding to a national emergency declared by the President and supported by federal funds.



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In the case of a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, military service is active service and any period during which the servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

The period of military service is the period beginning on the date on which the servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

Effective Date. This Act becomes effective January 1, 2011 and applies to foreclosures initiated on or after that date.



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