Notice

Meredith Stone Smith
UNC School of Government
Foreclosure Hearings for Clerks
November 2025

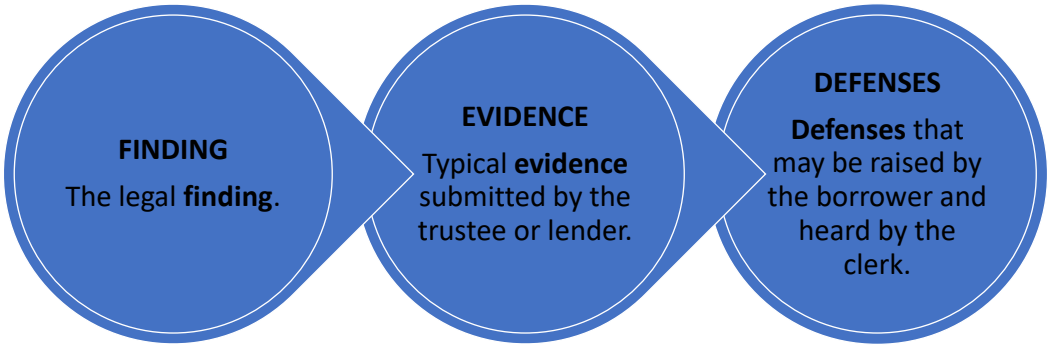
1

The Big Six

1. Holder of a valid debt
2. Right to foreclose
3. Default
4. Notice
5. Home Loan
6. Military Service

Plus one: loss mitigation pursuant to G.S. 45-21.16C.

2



3

The Clerk's Finding: Notice

If the clerk finds the existence of

(iv) **notice** to those entitled to such under G.S. 45-21.16(b).

G.S. 45-21.16(d)

4

Three Key Questions: Notice

1. **What** notice must be given?
2. **Who** is entitled to notice?
3. **How** is notice served?

5

What notice must be given?

6

What notice must be given?

Notice of hearing must

- be in writing,
- be filed with the clerk,
- state the time and place for the hearing before the clerk,
- state "in a manner reasonably calculated to make a party entitled to notice aware of" those issues set forth in G.S. 45-21.16(c) and (c2).

G.S. 45-21.16(a), (c), (c2).

Required Contents

Notice of Hearing

G.S. 45-21.16(c) and (c2)

1. Description of property subject to foreclosure	☐
2. Date of the deed of trust	☐
3. Original amount of the note	☐
4. Original holder of the note	☐
5. Book and page number of the recorded deed of trust	☐
6. Name of the holder at the time the notice of hearing filed	☐
7. Address of the holder at the time the notice of hearing filed	☐
8. Nature of the default	☐
9. Statement the debt was accelerated (only required if debt accelerated)	☐
10. Right of debtor to pay debt or cure default (if permitted)	☐
11. 30 day notice letter sent	☐
12. Statement regarding compliance with Borrower requests for information	☐
13. Right of the borrower to appear at the hearing	☐
14. Statement that if borrower does not contest, does not have to appear and failure to appear does not impact obligation to pay the debt or sale of the property	☐
15. The Substitute Trustee is a neutral party and may not advocate	☐
16. The Borrower may enjoin the sale on any legal or equitable ground, provided they comply with GS 45-21.34 (bond)	☐
17. Right of the Borrower to contest the foreclosure at the hearing and to authorize the foreclosure the clerk must find existence certain factors	☐
18. If Borrower fails to appear, substitute trustee will ask for an order to sell the property	☐
19. Borrower has right to seek the advice and counsel of an attorney and free services may be available through Legal Aid	☐
20. If sale held, then purchaser at sale is entitled to possession of the property and Borrower may be evicted if still on property	☐
21. Name of current trustee or mortgagee under the deed of trust	☐
22. Telephone number of current trustee or mortgagee under the deed of trust	☐
23. Address of current trustee or mortgagee under the deed of trust	☐

7

Who is entitled to notice?

1. Anyone required by the terms of the deed of trust
2. Any person obligated to repay the debt who the holder intends to hold liable for the debt in a deficiency action
3. Every record owner whose interest is "of record in the county where the real property is located at the time the notice of hearing is filed"

G.S. 45-21.16(b)

8

Record Owner

Does **not** include

1. Tenant under an unrecorded lease

2. Trustee in a deed of trust or the owner or holder of a mortgage, deed of trust, judgment, mechanic's or materialman's lien, or other lien or security interest in the real property

9

How is notice served?

Two methods for service. May run concurrently.

1. Rule 4 service at least 10 days prior to the hearing

2. Posting the notice by the sheriff in a conspicuous place on the property at least 20 days prior to the hearing

G.S. 45-21.16(a)

10

Rule 4(j)(1) Service on Natural Person

1. Delivering a copy of the NOH to the person
2. Leaving a copy of the NOH at the person's dwelling house or usual place of abode with an individual of "suitable age and discretion then residing therein"
3. Delivering a copy of the NOH to an agent authorized to accept service of process
4. Mailing a copy of the NOH, addressed to the party to be served, by registered or certified mail, return receipt requested, and delivering the copy to the addressee
5. Depositing a copy of the NOH, addressed to the party to be served, with a designated delivery service (typically UPS or FedEx), delivering the copy to the addressee, and obtaining a delivery receipt
6. Mailing a copy of the NOH, addressed to the party to be served, by United States Postal Service, signature confirmation delivery, and delivering the copy to the addressee

11

Dwelling or Usual Place of Abode

- No hard and fast rule
- Fact specific, case specific inquiry if challenged
- Person may have more than one

12

Posting

If service is obtained by posting, an **affidavit shall be filed with the clerk** showing the circumstances warranting the use of service by posting.

If service is by posting, the clerk must find competent evidence that the trustee used reasonable and diligent efforts to **LOCATE** and **SERVE** the party entitled to notice by Rule 4 service before relying on posting.

Can't skip Rule 4 service and rely on posting alone.

G.S. 45-21.16(a)

13

Locate + Serve

Affidavit should describe efforts to locate:

- Google, Lexis, Facebook, VCAP, ROD, tax records, loan docs, email
- Anything else?

Affidavit should describe efforts to serve via Rule 4:

- Don't have to use all methods before posting
- Case by case basis

14

Diligent and Reasonable Efforts

In re Foreclosure of Ackah, 804 S.E.2d 794 (NC App. Sept. 2017)

Holding: HOA failed to use due diligence before relying on posting

- Attempted service by certified mail (unclaimed) and regular mail
- Had homeowner's email address and failed to email her to locate her

15

Diligent and Reasonable Efforts

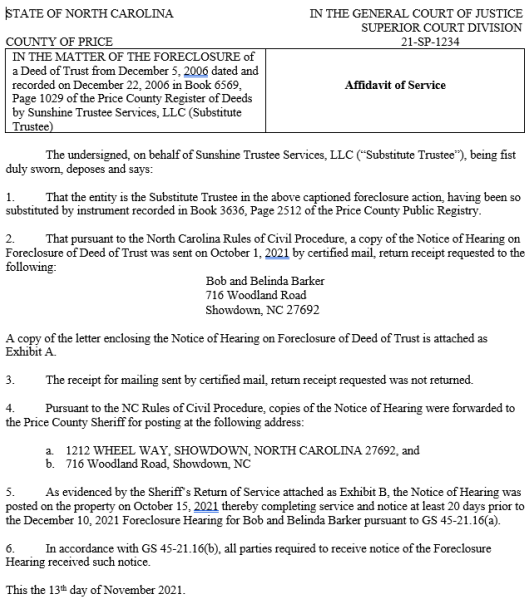
Our appellate courts have refused to make a restrictive mandatory checklist for what constitutes due diligence.

Case by case, fact specific analysis.

In re Foreclosure of Powell, 237 NC App 441 (2014)

16

Evidence: Affidavit of Service



STATE OF NORTH CAROLINA
COUNTY OF PRICE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21-SP-1234

IN THE MATTER OF THE FORECLOSURE of a Deed of Trust from December 5, 2006 dated and recorded on December 22, 2006 in Book 6569, Page 1029 of the Price County Register of Deeds by Sunshine Trustee Services, LLC (Substitute Trustee)	**Affidavit of Service**

The undersigned, on behalf of Sunshine Trustee Services, LLC ("Substitute Trustee"), being fist duly sworn, deposes and says:

1. That the entity is the Substitute Trustee in the above captioned foreclosure action, having been so substituted by instrument recorded in Book 3636, Page 2512 of the Price County Public Registry.

2. That pursuant to the North Carolina Rules of Civil Procedure, a copy of the Notice of Hearing on Foreclosure of Deed of Trust was sent on October 1, 2021 by certified mail, return receipt requested to the following:

Bob and Belinda Barker
716 Woodland Road
Showdown, NC 27692

A copy of the letter enclosing the Notice of Hearing on Foreclosure of Deed of Trust is attached as Exhibit A.

3. The receipt for mailing sent by certified mail, return receipt requested was not returned.

4. Pursuant to the NC Rules of Civil Procedure, copies of the Notice of Hearing were forwarded to the Price County Sheriff for posting at the following address:

a. 1212 WHEEL WAY, SHOWDOWN, NORTH CAROLINA 27692, and
b. 716 Woodland Road, Showdown, NC

5. As evidenced by the Sheriff's Return of Service attached as Exhibit B, the Notice of Hearing was posted on the property on October 15, 2021 thereby completing service and notice at least 20 days prior to the December 10, 2021 Foreclosure Hearing for Bob and Belinda Barker pursuant to GS 45-21.16(a).

6. In accordance with GS 45-21.16(b), all parties required to receive notice of the Foreclosure Hearing received such notice.

This the 13th day of November 2021.

17

Defense: Insufficient Notice

If any party is not served or is not timely served prior to the date of the hearing, the clerk **shall order the hearing continued** to a date and time certain that is not less than 10 days from the original hearing date.

G.S. 45-21.16(a).

18

Party entitled to notice….

1. **Is not at the hearing**
   - Clerk confirms proper notice prior to or at the start of the hearing; if improper, continue the hearing at least 10 days to allow proper notice to be completed

2. **Is at the hearing and asserts there was improper notice**
   - If clerk agrees with objection, clerk continues unless party waives objection

3. **Is at the hearing and does not object to notice**
   - If clerk confirms improper notice, get an affirmative waiver from the party at the start of the hearing or continue at least 10 days to allow proper notice to be completed

19

Effect of Continuance

- All notices already timely served remain effective.

- Trustee or holder must serve the party not served or not timely served with notice of the original hearing.

- Any party timely served, who has not received actual notice of the continuance date, must be sent the order of continuance by first-class mail at their last known address.

G.S. 45-21.16(a)

20

Questions

21