

§ 45-21.12A. Power of sale barred during periods of military service.

(a) Power of Sale Barred. – A mortgagee, trustee, or other creditor shall not exercise a power of sale contained in a mortgage or deed of trust, or provided by statute, during, or within 90 days after, a mortgagor's, trustor's, or debtor's period of military service. The clerk of court shall not conduct a hearing pursuant to G.S. 45-21.16(d) unless the mortgagee, trustee or other creditor seeking to exercise a power of sale under a mortgage or deed of trust, or provided by statute, files with the clerk a certification that the hearing will take place at a time that is not during, or within 90 days after, a period of military service for the mortgagor, trustor or debtor. This subsection applies only to mortgages and deeds of trust that originated before the mortgagor's or trustor's period of military service.

(b) Waiver. – This section shall not apply if the mortgagor, trustor, or debtor waives his or her rights under this section pursuant to a written agreement of the parties executed during or after the mortgagor's, trustor's, or debtor's period of military service, as an instrument separate from the obligation or liability to which the waiver applies. Any waiver in writing of a right or protection provided by this section must be in at least 12 point type and shall specify the legal instrument creating the obligation or liability to which the waiver applies.

(c) Purpose. – The purpose of this section is to supplement and complement the provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501, et seq., and to afford greater peace and security for persons in federal active duty.

(d) Definitions. – The following definitions apply in this section:

(1) Military service. –

a. In the case of a member of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

1. Active duty, as defined in 10 U.S.C. § 101(d)(1), and
2. In the case of a member of the National Guard, includes 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 under 32 U.S.C. § 502(f), for purposes of responding to a national emergency declared by the President and supported by federal funds.

b. In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service, and

c. Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) Period of military service. – The period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(3) Servicemember. – A member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, or the commissioned corps of the Public Health Service. (2010-190, s. 1; 2011-183, s. 127(b).)