



POWER OF SALE FORECLOSURE ORDER FOR POSSESSION CHECKLIST

Office of General Counsel

Updated November 7, 2019

Be familiar with relevant state and federal law: N.C.G.S. §§ 45-21.29 AND the federal Protecting Tenants at Foreclosure Act (PTFA).

Requirements at time of filing:

1. Filing fee - \$25.00
2. Sheriff's service fee - \$30.00 per person/occupant (unless applicant will deliver to sheriff)
3. Foreclosure Final Report and Account of Foreclosure Sale (AOC-SP-402) filed by the trustee and audited and recorded by the clerk
4. Petition for order for possession
 - Review petition for accuracy and compliance with G.S. 45-21.29(k):
 - (1) Property has been sold in the exercise of the power of sale;
 - (2a) The provisions of Art. 2A of G.S. Ch. 45 have been complied with;
 - (3) The sale has been consummated and the purchase price has been paid;
 - (4) The purchaser has acquired title and is entitled to possession of the property;
 - (5) 10 days' notice has been given to parties in possession (or 30 days' notice for properties containing 15 or more rental units) at the time application is made; and
 - (6) Application is made by petition to the clerk by the mortgagee, the trustee, or the purchaser of the property or their authorized representative.
5. Confirm occupant is not a bona fide tenant under the PTFA. Applicant may include sworn statement about applicant's knowledge of person(s) occupying property. A tenancy under the PTFA is considered bona fide if:
 - (1) the tenant is not the mortgagor or the child, parent, or spouse of the mortgagor;
 - (2) the lease or tenancy was the result of an arms-length transaction; and
 - (3) the lease or tenancy requires the payment of rent that is not substantially less than fair market value (as subsidized if applicable, for example Section 8 housing assistance).
6. Copies of notices to vacate: 10 or 30 days' notice in all cases
 - Confirm notices sent to occupants *after* the date of the recording of the trustee's deed transferring the property.
 - Review notices to ensure sent to the correct addresses.
 - 10 or 30 days' notice:

- i. Must be sent to all parties who remain in possession as of the time application is made.
 - ii. Must receive full 10 days' notice (or 30 days' notice for properties containing 15 or more rental units)
- 7. Copy of recorded trustee's deed (or book & page number included in petition for clerk to review)
 - Deed confirms "sale has been consummated" and "purchaser has acquired title" through the foreclosure.
- 8. Sufficient copies of documents to be served (or appropriate fee for clerk to make copies)
- 9. Order for Possession with Return of Service
 - Applicant should provide contact information for sheriff to coordinate lockout.
 - Review any orders provided by applicant to ensure information and address correct.
 - Recalls: Petitioner may file a request for recall of the order for possession with the clerk or contact the sheriff's office. The sheriff's office may require an order authorizing recall.