



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

Foreclosures

Chapter 45

December 2012

Prepared by NCAOC Legal & Court Services Division



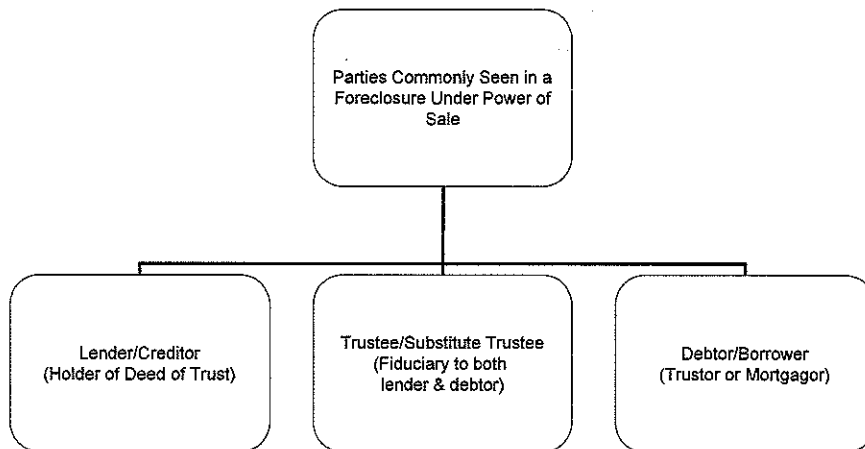
Foreclosure Introduction

Definition

- Method of enforcing payment of a debt secured by a mortgage or deed of trust upon real property by selling the property and applying the proceeds of the sale to satisfy the debt.
- A foreclosure is not a special proceeding; it is filed as an "SP" for recordkeeping purposes only.
- Do not issue a special proceeding summons.



Foreclosure Introduction cont...



Trustee

Role of Trustee

- Cannot ethically represent either lender or debtor in an advocacy role at any stage of a foreclosure proceeding.
- Puts foreclosure process in motion upon request of the lender.
- Role at hearing may depend on whether the case is contested or uncontested.
- Has fiduciary duty to use diligence & fairness in conducting the sale.
- Cannot bid on or purchase the property at the sale.

Trustee cont...

Contested Case (debtor challenges the default or the validity of the hearing).

- Must assume a neutral position and protect interests of both debtor and lender.
- Should not present evidence on behalf of the lender.
- May ethically perform for himself/herself such legal services as may affect the performance of his or her fiduciary duties.

Uncontested case (debtor does not challenge the default or the validity of the hearing).

- May present, on behalf of the lender, evidence necessary to support the clerk's findings essential to an order of sale.
- May perform routine legal services such as determining the existence of intervening liens in an uncontested case.

Substitute Trustee

- There can be, and usually is, a substitution of the originally named trustee before initiating a foreclosure.
- Succeeds to all the rights, title, and duties of the original trustee and has the power to foreclose the instrument according to its terms upon default.
 - The substitute trustee has authority ONLY from & after the recording of the document of substitution.



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Substitute Trustee

FILED
2012 JAN 17 AM 11:28
GRAMAN COUNTY, G.S.C.

RECORDED
2012 JAN 17 AM 11:28
GRAMAN COUNTY, G.S.C.
317 394-395

BY [Signature]

APPOINTMENT AND
SUBSTITUTION OF TRUSTEE

Prepared by and return to: Phillip A. Glass
Attorney at Law
1540 Kenanville Dr.
Suite 410
Raleigh, NC 27606

NORTH CAROLINA
GRAMAN COUNTY

THIS APPOINTMENT and Substitution is made and entered into this 28 day of
November, 2011, by State Employees' Credit Union.

WITNESSETH:

THAT DEBRAU State Employees' Credit Union is the owner and holder of a certain
Note secured by a Deed of Trust to Phillip E. Green, executed by Mark Cable and Sabrina
Cable, husband and wife, and recorded in Book 184, Page 621, Graman County Registry and

WHEREAS, it is the desire of the noteholder that Phillip A. Glass of Wake County,
Grant Clerk of Wake County, or Matthew Hefner of Wake County be substituted as Trustee
in and under the above-mentioned Deed of Trust, in the place and stead of the said Phillip
E. Green, Trustee, or any successive Trustee previously appointed.

NOW, THEREFORE, in consideration of the premises as authorized in said Deed of
Trust, the said State Employees' Credit Union does hereby appoint and substitute the said
Phillip A. Glass, Leahy Cicero, or Matthew Hefner, any one or whom may act as Trustee, in
and under the Deed of Trust hereinabove referred to in the place and stead of with the
title, rights, power and duties and covenants of the said Phillip E. Green, Trustee named
therein, or any successive Trustee previously appointed.



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Substitute Trustee

IN TESTIMONY WHEREOF, said party of the first part has caused this instrument to be signed in its corporate name by its Senior Vice President, this the day and year first above written.

State Employees' Credit Union

By: Philip E. Green
Philip E. Green
Senior Vice President

STATE OF NORTH CAROLINA
COUNTY OF WAKE

I, Shelia D. McNeill, the undersigned, a Notary Public, certify that Philip E. Green personally appeared before me this date and acknowledged that he is Senior Vice President of State Employees' Credit Union, a corporation, and that he, as Senior Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and Notarial seal, this 28th day of November, 2011.

Commission Expires: April 2, 2015



Order of Proceedings in a Foreclosure

- Pre-Foreclosure Notice by Lender
- Notice of Hearing
- Hearing by Clerk
- Notice of Sale & Sale by Trustee
- Report of Sale
- Upset Bid Periods
- Defaulting Bidder? Resale & Upset Bid Periods
- Final Report of Sale and Account
- Order of Possession (if needed)

Pre-Foreclosure Notice

G.S. 45-102

- 45 days before filing a foreclosure proceeding on a subject loan (i.e., residential home – borrower's primary dwelling), the lender or servicer must send a notice to the borrower itemizing the amounts due and informing him or her about the availability of resources or options to avoid foreclosure (six required elements):
 - Itemization of all past due amounts causing the loan to be in default.
 - Itemization of any other charges that must be paid to bring the loan current.
 - Statement that options other than foreclosure may be available and the borrower may discuss those options with the lender, the mortgage servicer, or a HUD approved counselor.



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Pre-Foreclosure Notice cont...

G.S. 45-102

- Address, telephone # & other contact information for the lender, the mortgage servicer or the agent for either of them who is authorized to work with the borrower to avoid foreclosure.
- Address, telephone # & other contact information for one or more HUD approved counseling agencies in NC.
- Address, telephone # & other contact information for the State Home Foreclosure Prevention Project of the Housing Finance Agency.



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Pre-Foreclosure cont...

G.S. 45-103 & 105

- Within 3 days of the notice, electronically file certain information about the borrower and the loan onto the NCAOC database.
- Upon review of this information, the Housing Finance Agency (HFA) can order a one-time extension of time of up to 30 days (beyond the 45 days) before a foreclosure proceeding can be filed.
- HFA must notify the borrower, the lender/servicer, and the NCAOC of such extension.
 - Clerk can verify extension on database.



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Notice of Hearing

G.S. 45-21.16(b)

Foreclosure initiated by filing of a notice of hearing by the trustee.

- Notice must be filed with the clerk and then served on all proper persons:
 - any person to whom deed of trust itself directs
 - any person obligated to pay indebtedness against whom holder intends to assert liability.
 - any record owner of the real estate whose interest is of record in the county where the real property is located at the time the hearing is filed in that county.

NOH is filed in every county where a portion of the land is situated.



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Notice of Hearing

NORTH CAROLINA
JACKSON COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK
FILE NO. 12-31-12

IN THE MATTER OF THE FORECLOSURE
OF THE DEED OF TRUST ENCLOSED BY
MARY FRANKS AKA MARY KAY FRANKS,
Recorded in Book 1790, Page 320,
Jackson County Registry

NOTICE OF HEARING
ON FORECLOSURE
OF DEED OF TRUST

TO: Mary Franks aka Mary Kay Franks

To the extent that this Notice of Hearing may be construed to be a communication within the scope of 35 U.S.C. §1024(c) et. seq., it is an attempt to collect a debt, and any information obtained will be used for that purpose.

YOU ARE HEREBY NOTIFIED that the Clerk of Superior Court of Jackson County will on **May 29, 2012 at 11:00 a.m.** in the Office of the Jackson County Clerk of Superior Court in Sylva, North Carolina, conduct a hearing in the above-entitled matter.

1. That at the hearing as scheduled above, the Clerk of Superior Court will hear evidence relative to the foreclosure rights under that certain deed of trust executed and delivered by **MARY FRANKS AKA MARY KAY FRANKS** to Jay B. Green, Trustee for Vanderbilt Mortgage and Finance, Inc. dated March 19, 2009 securing the sum of \$97,900.19 and recorded in Book 1790, Page 320, Jackson County Registry. The following described property sought to be sold "right unseen" which is secured by the subject Deed of Trust is located in Jackson County, North Carolina:

See "Exhibit A" attached hereto and incorporated herein by reference. Because the legal description is too voluminous to publish in the newspaper, reference is made to the subject legal description recorded as part of the subject Deed of Trust as described in the case caption of this proceeding.

Included is a 2009 Chrysler manufactured home bearing serial number CWP019339TN-AB.

2. That the name and address of the holder of the deed of trust at the time that the notice of hearing is filed by Vanderbilt Mortgage and Finance, Inc. at 500 Alston Trail, PO Box 9800, Knoxville, TN 37912.

3. That said holder will present evidence at said hearing that you are in default for failure to comply with the terms and conditions of the deed of trust and note secured by the deed of trust.

4. That Vanderbilt Mortgage and Finance, Inc. has accelerated the maturity of the debt secured by the aforesaid deed of trust. When necessary, the said holder is proceeding pursuant to G.S. 25-36-04d in order to foreclose any manufactured home that may be located on the subject property. That you are hereby expressly notified that any monies paid by you or received by the holder on your behalf from and after the date of this Notice shall be applied by the holder only for the purpose of reducing said holder's damage incurred by reason of the aforesaid debt and shall not constitute any cure of your default upon which this proceeding is based nor shall the receipt of any such payment by the holder be construed to waive any of said holder's rights resulting from your default under the aforesaid deed of trust. This notice to you shall not be affected by any conditions or restrictions which you may make or attempt to make in tendering any such payment after the date this Notice shall be served upon you.

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Notice of Hearing

5. That you have the right to pay the indebtedness in full set out above prior to the sale of the secured property. The holder has confirmed in writing to the person giving the notice that, within 30 days of the date of the notice, the holder was sent by first-class mail at the debtor's last known address a detailed written statement of the amount of principal, interest, and any other fees, expenses, and disbursements that the holder in good faith is claiming to be due as of the date of the written statement, together with a fully interest charge based on the contract rate as of the date of the written statement. Nothing herein is intended to authorize any fees, charges, or methods of charging interest which do not otherwise pertain under contract between the parties, and other applicable law. The holder has confirmed in writing to the person giving the notice that within the two-year period preceding the date of the statement all requests for information that have been made by the borrower in the contract pursuant to G.S. 45-21-12 have been complied with.

6. That you as the debtor or otherwise agreed have the right to appear before the clerk of court at a time and on a date specified, at which appearance you shall be afforded the opportunity to show cause as to why the foreclosure should not be allowed to be held. You are further notified of the following:

- That if you do not intend to contest the creditor's allegations of default, then you do not have to appear at the hearing and that your failure to attend the hearing will not affect your right to pay the indebtedness and thereby prevent the proposed sale or to attend the actual sale, should you elect to do so.
- The trustee or substitute trustee is a neutral party and, while holding that position in the foreclosure proceeding, may not advocate for the secured creditor or for the debtor in the foreclosure proceeding.
- You have the right to apply to a judge of the superior court pursuant to G.S. 45-21-24 to enjoin the sale, upon any legal or equitable ground that the court may deem sufficient prior to the time that the rights of the parties in the sale or resale become final, provided that you comply with the requirements of G.S. 45-21-12.
- You have the right to appear at the hearing and contest the evidence that the clerk is to consider under G.S. 45-21-16(d) and that to authorize the foreclosure the clerk must find the statement of G) void in whole or in part and/or to foreclose as the holder, (D) default, (E) right to foreclose under the instrument, and (F) notice to those entitled to notice.
- If you fail to appear at the hearing, the trustee will ask the clerk for an order to sell the real property being foreclosed.
- You have the right to seek the advice of an attorney and that free legal services may be available to the debtor by contacting Legal Aid of North Carolina or other legal services organizations.
- That if the debtor is currently on military duty the foreclosure may be prohibited by G.S. 45-21-12A.

7. That should the Court enter an order allowing the foreclosure sale to proceed, that upon consummation of such sale, the purchaser will be entitled to possession of said real estate as of the date of delivery of the deed, and that you can then be evicted if you are still in possession of that time.

8. The name, address, and telephone number of the Substitute Trustee is Deirdre D. DeForester, c/o Jay B. Green, Attorney at Law, P.C., 908 E. Edenwood Street, Raleigh, NC 27601, Telephone: 919-829-6797.

9. That you should keep Deirdre D. DeForester, Substitute Trustee, informed of your current address in order that you can be mailed copies of the Notice of Sale setting forth the terms under which the foreclosure sale will be held, and notice of any postponements, if any. That this notice and action shall affect the rights of any unknown persons who have a marital or other property interest in the subject property and are unknown to the undersigned and receive actual or constructive notice of this action and further that this

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Notice of Hearing

(see, however shall) contingent any marital interests of unknown parties.

10. That the hearing may be held on a date later than that stated in the notice and you will be notified of any change in the hearing date.

11. My way of further information as to the program authorized by Chapter 45, Article 14, the findings certifies upon information and belief that the pre-foreclosure notice required by G.S. 45-102 and the pre-foreclosure information required by G.S. 45-103 were provided in accordance with this Article and that the periods of time established by the Article have elapsed.

Date: April 8, 2012.

JAY B. GREEN, ATTORNEY AT LAW, PC

Jay B. Green or Robert E. Kirkland, IV
Attorneys for Suburban Trustee
908 E. Johnson Street
Raleigh, North Carolina 27601
Telephone: 919.829.4207

THIS IS AN ATTEMPT TO COLLECT A DEBT.
ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Notice of Hearing cont...

G.S. 45-21.16(a); 1A-1, Rule 4

Notice of hearing must be served at least 10 days before the hearing.

- If served ONLY by posting - 20 days before hearing.
 - Party who cannot be served by personal, registered, or certified mail after reasonable and diligent effort.
 - Posting must be done by the sheriff.
 - Trustee proves service by filing an affidavit showing posting, the circumstances warranting service by posting, and the actual efforts made to locate and serve the respondent(s).

Notice of Hearing cont...

G.S. 45-21.16A

Contents of Notice

- A statement as to whether the holder or servicer (one who, on behalf of the holder, receives payments from the debtor), in the last two years, has received any requests for information from the borrower, and if so, whether the requests have been complied with – only applies to home loans (as defined in G.S. 45-101, See also 45-93);
- A statement that the trustee is a neutral party and may not advocate for the creditor or debtor in the foreclosure proceeding;



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Notice of Hearing cont...

G.S. 45-21.16A

- A statement that the debtor may apply to the judge of the superior court for an injunction to stop the foreclosure;
- A statement that, to authorize the foreclosure, the Clerk must find a valid debt of which the party seeking the foreclosure is the holder, default, the right to foreclose under the instrument, and notice to those entitled to it;
- A statement that the debtor has the right to appear before clerk at hearing and contest the evidence, but that the debtor is not required to attend the hearing & his failure to attend does not affect his right to pay the indebtedness and prevent the sale;
- A statement that if the debtor fails to appear at the hearing, the trustee will ask the Clerk for an order to sell the property;



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Notice of Hearing cont...

G.S. 45-21.16A

- A statement that the debtor has the right to seek the advice of an attorney and that free legal advice may be available by contacting Legal Aid or other service providers;
- Description, which identifies real estate, including date of execution of security agreement, original amount of debt, original holder of note, and book & page of security instrument;
- Name & address of holder of security instrument at time notice of hearing is filed;
- Nature of claimed default;
- Fact that maturity of debt has been accelerated if appropriate;



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Notice of Hearing cont...

- Any right of debtor to pay indebtedness or cure default;
- A statement that the holder has confirmed in writing to person giving notice that within 30 days of date of notice, debtor was sent by first class mail to last known address a statement of amount of principal and interest that is owed as of date of statement, a daily rate of interest based on contract rate, and the amount of other expenses holder contends it is owed;



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Notice of Hearing cont...

- A statement that, if foreclosure sale is consummated, purchaser is entitled to possession of real estate when the deed is delivered and that debtor can be evicted;
- Debtor should notify trustee in writing of any change in address to receive notice of all proceedings;
- Name, address, and telephone number of trustee; and
- Party will be notified of any change in hearing date.
- If the debtor is currently on military duty, the foreclosure may be prohibited by G.S. 45-21-12A.

Notice of Hearing cont...

In addition, the notice of hearing filed by trustee must contain the following certification:

- On all foreclosures filed as of 11/1/10, certification that it is not a “home loan” under G.S. 45-101, or the time limits have expired. (G.S. 45-107)
 - Affidavits must be verified.
 - Access HFA database to verify information and to check certifications.

New Military Certification

G.S. 45-21.12A

- Applies to foreclosures filed on or after 1/1/11.
- Prohibits creditor exercising power of sale during or within 90 days after mortgagor's active duty, and prohibits clerk from holding a hearing without a certification that the hearing will take place at a time that is NOT during active duty or within 90 days after active duty.
- Applies to DoTs, and to HOA liens.
- Does not apply to judicial foreclosures.

New Military Certification

G.S. 45-21.12A

11-5844

STATE OF NORTH CAROLINA
COUNTY OF GRANVILLE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
BEFORE THE CLERK

IN THE MATTER OF THE FORECLOSURE OF A DEED OF TRUST ACCOUNT BY DIANNE C. CLARK, THE ORIGINAL AMOUNT OF \$162,000.00 DATED NOVEMBER 12, 2004, RECORDED IN BOOK 246, PAGE 70, GRANVILLE COUNTY REGISTER, SUBSIDIARY TRUSTEE SERVICES, INC., SUBSIDIARY TRUSTEE.

MILITARY CERTIFICATION

The undersigned, Attorney at Law, hereby certifies the following:

HEREIN is the attorney for the mortgagee in the proceeding commenced on behalf of FNB Bank, National Association, who is the holder of the deed evidenced by the Note dated November 12, 2004, executed by DIANNE C. CLARK, and Clerk of Trust dated November 12, 2004, executed by DIANNE C. CLARK, and recorded in Book 246, Page 70, Granville County Register in the original amount of \$162,000.00 and the serial number of the Property described therein is 249 Lott Park South Circle, Road Robinsonville, NC 28771.

The holder of the Note and Indentures is FNB Bank, National Association, 3332 Newmark Drive, Birmingham, CH 45342.

That to the best of the undersigned's knowledge, the above described debtor(s), trustor(s) or mortgagor(s) is/are not/are not a service member(s) of the United States Armed Forces, nor reserve component called to active military service and debtor(s), trustor(s) or mortgagor(s) has/have not been in active military service within the last 90 days.

Based on evidence to date, no information, information collected, or information provided to the undersigned and to the best of the undersigned's knowledge, the hearing will take place pursuant to and in compliance with G.S. 45-21.12(a).

This 12th day of September, 2011.

Lance Conner
Lance Conner
Attorney at Law
P.O. Box 1000, Martinsville, North Carolina, P.A.
Subsidiary Trustee Services, Inc.
P.O. Box 2826, Fayetteville, NC 28301
MSB Case No. 1008064 (NC.FAY)

Dianne C. Clark, MSB Case No. FC090624

Notice of Hearing cont...

G.S. 45-21.16(f)

Waiver of Service of Notice of Hearing/Hearing

- In case of secured indebtedness of \$100,000 or more, any person entitled to notice & hearing may waive service by the sheriff and accept service by signed & acknowledged written instrument, and if so specified, waive the right to answer and/or appear at the hearing.
 - Waiver must clearly state what is being waived. (Service of notice; or hearing; or BOTH service of notice and hearing). Waiver must be at the time of the filing, not as of the loan.

Notice of Hearing cont...

- Party does not waive the right to a hearing by not appearing.
- Party's presence and willing participation at hearing constitutes waiver of notice.
- Consent judgment allowed only under circumstances authorizing waiver of notice and/or hearing.

Notice of Hearing cont...

Continuance of Hearing*

- Clerk must continue hearing if all parties have not been served at least 10 days before the hearing (or if served by posting at least 20 days before the hearing).
- Clerk may grant continuance of hearing "for good cause" like any other proceeding before the clerk. See factors in G.S. 45-21.16.C – Whether additional time or measures have reasonable likelihood of resolving.

The clerk should keep in mind that the lender's damages and the debtor's deficiency continue to increase until the sale is held.



Hearing by Clerk

- Hearing must be held before the clerk in the county where the land (or any part thereof) is situated. [G.S. 45-21.16(d)]
- Only one hearing is held when the property is located in more than one county; however, notice of hearing must be filed in every county where a portion of the land is located.
- If the debtor wishes to raise issues of equity or fairness, the debtor can do so by filing a lawsuit in superior court to enjoin foreclosure pursuant to G.S. 45-21.34.



Hearing by Clerk cont...

- Clerk must swear any witnesses who testify at the hearing.
- Clerk may consider evidence presented by parties, affidavits, and copies of documents.
 - Photocopies are acceptable.

Hearing is limited to determination of six issues upon which clerk must base findings of fact – GS 45-21.16(d).

- Legal Defenses (defenses that relate directly to negating the six findings necessary to enter an order authorizing sale - are properly considered by the clerk at the hearing).
- Equitable Defenses (defenses which relate to something other than the six findings necessary to enter an order authorizing sale and may not be considered by the clerk at the hearing).



Equitable or Legal?

- Defense 1
- Defense 2
- Defense 3
- Defense 4
- Defense 5
- Defense 6
- Defense 7
- Defense 8



THE FINDINGS

- **1) Notice** - proper notice to those entitled to it.
- **2) Right to Foreclose** - express power of sale in the instrument.
- **3) Valid Debt** - held by party seeking foreclosure.
- **4) Default** - by debtor.
- **5) After 11/1/10** – Not a “Home Loan” or all notices timely given.
- **6) After 1/1/11** – Not Active Duty Military with prior DoT.

Hearing by Clerk cont...

1) NOTICE

- Notice of Hearing must comply with G.S. 45-21.16.
- Clerk should check deed of trust to make sure terms regarding notice have been complied with, especially with regard to any additional persons entitled to notice.
- Make sure that all parties have been served at least 10 days before hearing (Posting - 20 days).

Hearing by Clerk cont...

1150 49

1066984 RETURN OF SERVICE

I certify that this NOTICE was received on the 22nd day of Oct 2011 and NOTICE was served as follows:

On DIANNE E. CLARK, UNWIFE OF THE HONORABLE E. CLARK on the _____ day of _____ at the following place: _____
848 EAST KING STREET, SUITE 200A, WAKEFIELL, NC
 () In address where copy was delivered or left by
 () delivering copies to him personally. () leaving copies with _____ who is a person of suitable age and discretion and who resides in the defendant's dwelling or usual abode.

IF NECESSARY LEAVE IDENT:

I certify that this NOTICE was received on the _____ day of _____ and NOTICE was served as follows: _____ on the _____ day of _____ at the following place: _____
848 EAST KING STREET, SUITE 200A, WAKEFIELL, NC
 () In address where copy was delivered or left by
 () delivering copies to him personally. () leaving copies with _____ who is a person of suitable age and discretion and who resides in the defendant's dwelling or usual abode.

If not served on defendant, state reason and give name: _____

() If the hearing NOTICE on record of property after diligent search and diligent search and not having found the respondents, this _____ day of _____ 2011.

FEE \$ _____ County: North Carolina. Sheriff of _____

Paid: _____ Deputy _____
 BY: _____ Date: 10-22-11

*** PLEASE DETACH AND RETURN YELLOW COPY IN ATTACHED ENVELOPE TO: ***

THE LAW FIRM OF HUTCHENS, SENTER & BRITTON, P.A.
 P.O. Box 1028
 Fayetteville, North Carolina 28302
 (910) 994-3000

Hearing by Clerk cont...

Sero

NORTH CAROLINA Special Proceedings No. 115P52
 GRAHAM COUNTY Subordinate Trustee Phillip A. Glass
 Plaintiff: MARCK CABLE and
SABRINA CABLE

DEFENDANT:

SHERIFF'S RETURN FOR SABRINA CABLE

Address(es) for personal service: 466 Old Yellow Branch Road
Robbinsville, NC 28771

Address(es) for posting: 466 Old Yellow Branch Road
Robbinsville, NC 28771

I certify that copies of the Notice of Foreclosure Hearing and the Notice of the Foreclosure Sale were served upon Sabrina Cable as follows:

Date of Service: 10-21-11

Service by:

(X) delivery copies to trustee personally
 Address: 466 Old Yellow Branch Rd

() leaving copies with _____ who is a person of suitable age and discretion and who resides in the dwelling house or usual place of abode of the party to be served.

() posting in a conspicuous place and manner upon the property located at 466 Old Yellow Branch Road, Robbinsville, NC 28771, after making a reasonable and diligent effort to locate the same in Graham County and serve the trustee personally.

() Sabrina NOT Executed: I certify that copies of the Notice of Foreclosure Hearing and the Notice of Foreclosure Sale were NOT served upon Sabrina Cable after making a due and diligent effort.

Robert Anderson
 Sheriff of Graham County, NC

SA Dean
 Deputy Sheriff Making Return

Hearing by Clerk cont...

2) RIGHT TO FORECLOSE

- Evidenced by terms of instrument itself.
- Clerk should make sure that substitute trustee initiating foreclosure has authority to exercise the power of sale.
 - Evidenced by written document recorded by the register of deeds prior to the NOH.



Hearing by Clerk cont...

FILED
2012 JAN 17 AM 11:28
GRAHAM COUNTY, C.S.C.
BY [Signature]

317 394-395

INSTRUMENT AND
ASSIGNMENT TO REGISTER

Prepared by and return to: Phillip A. Glass
Attorney at Law
2500 Courtview Dr.
Suite 114
Raleigh, NC 27603

NORTH CAROLINA
GRAHAM COUNTY

... assignment and substitution to have and entered into this 27 day of
November, 2011, by State Employees' Credit Union

... THAT WHEREAS State Employees' Credit Union is the owner and holder of a certain
... deed of trust to Phillip A. Glass, assigned by Mark Gable and Sabina
Dable, husband and wife, and recorded in Book 201, Page 403, Graham County Register's and
... WHEREAS, it is the desire of the recordholder that Phillip A. Glass of Wake County,
... and under the above-mentioned deed of trust in the place and stead of the said Phillip
A. Glass, trustee, be and successively trustee previously appointed
... NOW, THEREFORE, in consideration of the premises as authorized in said deed of
trust, the said State Employees' Credit Union does hereby appoint and substitute the said
Phillip A. Glass, Wake County, as trustee in the place and stead of the said Phillip A.
Glass, trustee, and under the above-mentioned deed of trust in the place and stead of the said
Phillip A. Glass, trustee, be and successively trustee previously appointed.



Hearing by Clerk cont...

3) VALID DEBT

- Evidence must show that party seeking to foreclose is **HOLDER** of **valid** debt.
- Invalid? – S/L, Wrong parties, other defects.
- Holder - Possession of original note (assignment or endorsement) is the key in determining holder of valid debt.
 - See memo dated January 24, 2007 - "Foreclosure Involving Mortgage Electronic Registration Systems" - for more information on holder of valid debt. Memo posted to the AOC intranet website:

<https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/index.jsp>



Hearing by Clerk cont...

- Photocopies of note and deed of trust are admissible as evidence of indebtedness. Foreclosing party must introduce assignments or endorsements (or copies) to prove holder. See In re Foreclosure of Adams, 204 NC App. 318.
- The fact that some amount of money is owed is sufficient to show default; the amount of debt outstanding is irrelevant and the clerk can find valid debt even if the amount is in dispute.



Hearing by Clerk cont...

NOTE

Produced Pursuant to Protective Order in Case No. 13-00100

November 19, 2004 Blountville 600011

649 East Park South Street, Blountville, NC 28711


1. BORROWER'S PROMISE TO PAY
 We agree for these due to have received, continue to pay U.S. \$ 100,000.00 (One hundred thousand and no/100ths) Dollars, on the order of the Lender, The Lender is 1011 First Community Mortgage Services, Inc., a Corporation of the State of North Carolina.
 I will make all payments under this Note to the Order of each, them or money order.
 I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "New Holder."

2. INTEREST
 Interest will be charged on unpaid principal until the full amount of Principal has been paid. I will pay interest at a yearly rate of 6.000%.
 The amount due required by this Section 2 in the next 15 days will pay both interest and what any interest accumulated to January 15th of this Note.

3. PAYMENTS
 (A) This Note shall be paid by the Borrower.
 I will pay Principal and Interest by making a payment every month.
 I will make my monthly payment on the 15th day of each month beginning on 11/15/04. I will make these payments every month until I have paid all of the Principal and Interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied to the arrearages due first and will be applied as Interest thereafter. Payment of 1.000% of the Principal will be applied to the Principal balance. I will pay some amount to the New Holder, which is called the "Maturity Date." I will make my monthly payments at P.O. Box 670, Blountville, NC or at a different place if required by the New Holder.
 (B) Amount of Monthly Payment
 My monthly payment will be in the amount of U.S. \$ 647.51.

4. BORROWER'S RIGHT TO PREPAY
 I have the right to make payments of Principal or any part before they are due. A portion of Principal only is known as a "Prepayment." When I make a Prepayment, I will tell the New Holder by writing that I am doing so. I pay no charges or penalties as a Prepayment if I have also made all my monthly payments due under this Note.
 I understand that the Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "New Holder." The New Holder will pay my Prepayment to reduce the amount of Principal that I owe under this Note. However, the New Holder may apply my Prepayment to the interest and unpaid amount on the Prepayment amount, before applying my Prepayment to reduce the Principal amount of this Note. If I make a partial Prepayment, there will be no charge to the New Holder in the amount of my monthly payment under this Note. Interest accrues as set forth in these terms.

5. SECURITY FOR THIS NOTE
 I have granted to the Lender a security interest in the property described in the instrument referred to in this Note.

U.S. District Court Case No. 13-00100
 Eastern District of North Carolina Date: 11/19/04
 Judge: Clerk: 

Hearing by Clerk cont...

4) DEFAULT

- Failure to pay installments as they become due.
- Failure to provide insurance, pay taxes, or any other default in an obligation created by the instrument.

Hearing by Clerk cont...

- Demand letter may be required by terms of deed of trust before default can occur.
 - Clerk may need to review deed of trust.
 - If deed of trust requires a demand letter or specific notice, affidavit should indicate that proper letter was sent or notice given.



Hearing by Clerk cont...

FILED
JUL 13 2011
ADMINISTRATIVE OFFICE, S.C.

END [REDACTED] 2012-20-11

June 20, 2011
Dianne E. Clark
816 Lott Fork Branch Ck
Reidsville, NC 28771

RE: Loan No. [REDACTED]
816 Lott Fork Branch
Reidsville, NC 28771

Dear Customer:

PNC Mortgage, a division of PNC Bank, National Association (PNC Mortgage) is the servicer and owner, or authorized representative of the owner of the mortgage on the referenced loan. As such, it is our duty to notify you that you have breached or defaulted to the performance of your obligation under the Note and Mortgage evidencing and securing your loan in the following respects:

- Monthly installment payments have not been made (including the payment for May 01, 2011).

The action required to cure the breach or default mentioned above on or before July 20, 2011 is as follows:

- Payment in certified funds of \$ 2,278.57 which includes the 7/20/11 installment and applicable late charges, property inspection and non-sufficient funds fees.

Failure to cure the breach or default by said date, will result in the acceleration of the maturity date of the Note, in the declaration that all sums secured by the Deed of Trust are immediately due and payable, and in this matter being referred to our attorney for whatever action is deemed appropriate and necessary. Should a foreclosure commence, with a resultant loss of the property, you may be liable for any deficiency balance, as provided by law.

After acceleration you may still have the right to reinstate by paying all amounts due, as provided in your Note and Mortgage, and all PNC Mortgage's expenses, including reasonable attorney's fees. You may also have the right to assert, in a foreclosure or other judicial proceeding, the non-existence of default or any other defense you may have to acceleration and foreclosure.

XC992



Hearing by Clerk cont...

Loan No. [REDACTED]

Page 2

Payments applied to your loan after the date of this notice, will not delay any proceedings on the part of PNC Mortgage, unless the action required to cure this default, as outlined above, has been performed.

If you have any questions, please call our Collections Center at: 1-800-523-8654.

Sincerely,

Collections Center

KC952 031 JCS

This is an attempt to collect a debt. Any information obtained will be used for that purpose.
©ND@ 75



Hearing by Clerk cont....

5) - Home Loan - BEFORE proceeding to the 5th finding, ask the following questions:

a) Is the loan a non-home loan as defined in G.S. 45-101? If yes, Pre-foreclosure notice doesn't apply and proceed to b).

Ex. of non-home loan: home equity lines of credit, loans to entities, loans on commercial, rental or vacation property – other than the borrower's principal dwelling.

b) Has the trustee submitted into evidence a signed and notarized "**Non-Home Loan Certificate**" printed from the AOC/NCHFA database to indicate it's not a home loan?

If "Yes" to both of these questions – **Enter the fifth finding as: The loan is NOT a home loan.** Proceed to 6th finding.




Hearing by Clerk cont....

■ What is a Non-Home Loan Certificate

- This certificate will certify that the loan is not a "home loan".
- Notarized signature by the lender/servicer certifying the form was printed from the database (sworn affidavit).
- Certificate can be received into evidence to establish that the loan is not a "home loan".
- Verify printout certification on the HFA database (Non-home loan certificate).
- If no HFA certification, clerk should require affidavits or sworn testimony clearly establishing that the loan is NOT a home loan.



Hearing by Clerk cont...

 **FILED**
NOV 19 2012 4:12
CLERK OF SUPERIOR COURT
COUNTY

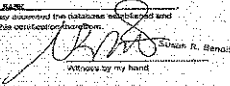
Non-Home Loan Certificate

This is to certify the following information about File No. 2011-856495 which has been processed by clerks to the database established and maintained by the Administrative Office of the Courts (the "database") as required under General Statute § 45-104:

1. That on August 26, 2011, the servicer of the loan subject to the File No. 2011-856495, PNC Bank, National Association, submitted information to the database regarding the terms of the loan, which are attached to this certification as Exhibit A.
2. That based upon the information provided by the servicer, the loan which is the subject of File No. 2011-856495 is not a "Home Loan" as defined under North Carolina General Statute 45-101(b).


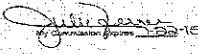
The information contained in this certification and Exhibit A may be verified by accessing the database at www.ncrob.org/ncrobhome.htm under File No. 2011-856495.

Notary Public, State of North Carolina
I, STUART R. BENNETT, an employee of agent of PNC BANK, a member of the body that is the subject of 2011-856495, have the day abovesaid the database established and maintained by the Administrative Office of the Courts and printed this certification as shown.

10/19/12
Date 
Notary by my hand

North Carolina
County: Alamogordo County

I certify that Stuart R. Bennett personally appeared before me this and acknowledged the due execution of the foregoing instrument, witness my hand and official seal this 19 day of October, 2012.

 
Official Seal



Hearing by Clerk cont...

Exhibit A

FILED
DEC 27 10 4 12
J.E. C.

File Number: 2011-225425
Servicer: FNC Bank National Association
Servicer Address: 2500 Liberty Avenue, Pittsburgh, PA 15222

Property Information
Address: 843 Lef Fork Beach Creek Rd, Robbinsville, NC 28771

Original Loan Date: 11/05/2004
APR: _____
Loan Status: 1
Application Date: _____
Original Interest Rate: 0.00
Property Vacant: Unknown
Date of 45-102 Pre-foreclosure notice: _____
Primary Borrower's Address: 2545 SW Hildebrand Lane, Stuart, FL 34994

Original Principal Balance: 128,000.00
Loan Term (months): 360
Interest Rate Set Date: _____
Current Interest Rate: 0.00
Covers Completed: No
Title Pencil ID: _____



Hearing by Clerk- Home Loan

If It Is A Home Loan, trustee must show:

- Pre-foreclosure notice was provided in all material respects; and
- Periods of time established under the act have expired.
- Both can be verified by a "Conditional Certificate of Compliance" form from the HFA.
 - Conditional Certificate of Compliance certifies that all required pre-foreclosure information has been submitted to database, and **IF** pre-foreclosure notice was sent to the borrower as required, then, based on the information submitted, the applicable time periods for compliance by the lender/servicer with all pre-foreclosure notice requirements have all expired.
 - Certificate *not* available for the lender/servicer to print in the database until the 45th day (or 75th day, if the HFA ordered a one-time 30 day extension).
 - For both home loans and loans that cannot be determined.




Hearing by Clerk- Home Loan cont....

Conditional Certificate of Compliance

- Notarized certification by lender or servicer
 - detailing when and how notices were given to show that all notice requirements of the statute have been complied with
 - demonstrating that all applicable time periods have expired
- Best practice for the clerk to require that a copy of the 45 day pre-foreclosure notice sent to the borrower be attached to the certification or otherwise introduced into evidence to show compliance with the statute.



Hearing by Clerk cont...


FILED
2012 JAN 17 AM 11:29
GRAHAM COUNTY, O.S.C.
**Conditional Certificate of Compliance with Article 11
Chapter 45 of the General Statutes**

This is in compliance with the following information about FIRM No. 2011-403217, which has been provided by access to the database established and maintained by the Administrative Office of the Courts (the "database") as required under General Statute § 45-134:

That on September 27, 2011, the servicer of the loan subject to the NCCUSB Form No. 2011-403217, State Employees Credit Union, had the following pre-foreclosure information required under 45-135(a):

- a. Borrower Name(s) - Mark DeWitt
- b. Property Address - 488 Old York Branch Rd, Rockwell, NC 28777
- c. That the pre-foreclosure notice required under G.S. 45-132 was mailed to the borrower at the last known address on September 29, 2011.
- d. Primary Borrower's Mailing Address -
- e. That the due date of the last scheduled payment made by the borrower was June 01, 2011.

That, first-party information is individually accurate as of September 10, 2011 received via pre-foreclosure as required by Article 11, Chapter 45 of the General Statutes, have existed.

The information contained in this certification may be verified by the Clerk of Court by accessing the database at: www.nccourts.gov/ncadatabase, under File No. 2011-403217.

Shelia Mabe, an employee or agent of State Employees Credit Union, servicer of the loan, has provided the database guidelines and information by the Administrative Office of the Courts and printed into certulatory instructions.

I, Clerk of Court, September 27, 2011, the borrower or servicer of the loan listed to the borrower's last known address a complete certification of all the information required under G.S. 45-132.

Mark DeWitt
Borrower

Shelia Mabe
Witness by my hand

Shelia Mabe
Clerk of Court

I hereby state that I am a Notary Public in and for the State of North Carolina and I have read and acknowledged the contents of the foregoing document. Witness my hand and seal this 20th day of January, 2012.

Tom J. O'Connell
Notary Public
Watauga County, NC

Tom J. O'Connell
Notary Public
Any Commission Expires 12/31/2014

(Official Seal)



Hearing by Clerk- Home loan cont...

- To determine if Lender/Service has complied with the statutory requirements, and that all applicable time periods have expired, the Clerk should start with the presumption that the loan is a home loan.
 - Require an affidavit attaching a copy of the pre-foreclosure notice to the borrower. (Verify that the notice contains all required elements).
 - Confirm that the loan information was submitted to the database within 3 business days of the pre-foreclosure notice by accessing the database and searching for the loan under the borrower's name, address, or NCHFA file number, if available.
 - Confirm that the requisite time period passed prior to the filing of the foreclosure action.
- Enter the 5th Finding as: "The pre-foreclosure notice required under G.S. 45-102 was provided in all material respects and the required time periods expired prior to the filing of the NOH".



The Fifth Finding Summary

Not a Home Loan:

- The Fifth Finding is "Not a Home Loan"

Even if it is a Home Loan:

- The pre-foreclosure notice required under G.S. 45-102 and 103 was provided in all material respects, and the requisite time periods expired prior to the filing of the NOH.

****To confirm that the information submitted to you was correct, that no extension was ordered, or that a non-home loan certificate was validly issued, you may access the database.



Dismissal and Sanctions

The following are grounds for dismissal without prejudice and payment by the filing party of the costs incurred by borrower in defending the action.

- Failure to submit a "home" loan to the database.
- Falsely certifying in the NOH on a "home" loan that the loan is not a home loan or that the pre-foreclosure notice was given in all material respects.



Find The Loan On The HFA Data Base

1. Go to the AOC Intranet site:

<https://cis1.nccourts.org/intranet/SignOn.jsp>

2. Click Resources > Tools
3. Click Pre-Foreclosure Filings to access account or request account.
4. Enter your User ID (E-mail address)
5. Enter your password
6. Find the loan: county, unique HFA file #, name



Intranet Site

NC Court System Intranet - Resources - Windows Internet Explorer
http://www.nccourts.gov/intranet/resources/...
Home Events & Training Forms News Policies Directories Resources
Home / resources...
C-COURT Emergency Procedures
Clarks of Court
Magistrates
NCAGO
Associate Director
Court Registers
Court Services
Court Services
Special Services
Statistical Information
Human Resources
Legal and Legislative
Professional Development
Purchasing
Research and Planning
Technology
NC Judicial Center
NCCourts.org
Application Manuals
1099 Reporting Manual
Bond Foreclosure User Manual
Financial Cash Receipts (FCR) Manual
Financial Management (FMS) Manual
Financial Management Inquiry (FMI) Manual
JA How Do I for the Bond Foreclosure Clerk
JA Manual
VCAP Manual
yCAP Menu Map
How to Use FastPath
Transport Public Inquiry Manual
Posting criminal calendars on the Internet
Posting civil calendars on the Internet
Tools
AOC report viewer
Bilingual resources for court officials
Beneficiary inquiry query
Child support calculator
Court calendars
Court forms
Online case cover sheets
Pre-foreclosure Filings
Pre-foreclosure Filings
Request Line Account
Pre-foreclosure 30-day Extension List
Inclusionary Preemptive Filings
Writing Resources
About
A to Z Style Guide
Abbreviations List
General Writing Guidelines
Letters and Memos
Information and Programs for Jurors
Communications Rules for Jurors
Juror Assistance Program
Miscellaneous
Court Performance Management System
Criminal Justice System Links of Interest
Grants administration

Log in or Request an Account

State Home Foreclosure Prevention Project
Official Use Only
This system contains confidential information provided to the North Carolina Housing Finance Agency, or as otherwise designated as confidential to this Agency at the time of disclosure. Unauthorized use or disclosure of this information is prohibited by NC General Statute 132-1.2.
This application requires Microsoft Internet Explorer 5.0 through 7.0. Internet Explorer 8.0 and above must be run in Compatibility View for the website to work properly.
Please Log On
User Name:
Password:
Click here to request your password to be reset.
New User Access Requests
Request new AOC User Access Request new Phone User Access

Internet Explorer browser window showing the "State Home Foreclosure Prevention Project" search interface. The search criteria are:

- Name: DeShield Greene (Update Profile)
- File #: [Empty]
- County: Swain
- Street: [Empty]
- Service #: [Empty]
- Borrower First Name: [Empty]
- City: [Empty]
- Borrower Last Name: [Empty]
- Zip: [Empty]

Buttons: Search, Clear, Exit

Matching Records: [Empty]

Page footer: NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS, December 2012 62

Internet Explorer browser window showing the "State Home Foreclosure Prevention Project" search interface. The search criteria are:

- Name: DeShield Greene (Update Profile)
- File #: [Empty]
- County: Cabarrus
- Street: [Empty]
- Service #: [Empty]
- Borrower First Name: Smith
- City: [Empty]
- Borrower Last Name: [Empty]
- Zip: [Empty]

Buttons: Search, Clear, Exit

1 Matching Records:

ID	Property	Date	Service	Property	County	Earliest Possible Court Filing Date	Home Loan?
2012-362356	Smith, Genevieve	7/7/2010	Oswen Loan Servicing, LLC	1024 Ardulin Falls Drive, Charlotte, NC - 28259	Cabarrus	8/16/2010	Yes

Three black arrows point upwards to the "Date", "Service", and "Home Loan?" columns of the table.

Instructions:

- Check the "Home Loan" column for "NO" OR
- Confirm the requisite time periods have passed.
 - Registered on Database within 3 days after Pre-foreclosure notice
 - NOH was not filed before "Earliest Possible Court Filing Date" (either 45 or 75 days)

Page footer: NORTH CAROLINA ADMINISTRATIVE OFFICE of the COURTS, December 2012 63

6) – Military Finding – G.S. 45-21.12A, & 10 USC 101(d)(1)

In foreclosures filed on or after 1/1/11, the clerk must make a new 6th finding that “the sale is not barred by G.S. 45-21.12A,” which provides a lender may not exercise a power of sale during or within 90 days after debtor’s military service, and CSC may not hold a hearing without **certification** the hearing will not take place within those dates.

- Applies only to members of the Army, Navy, Air Force, Marine Corps, or Coast Guard **on active duty, or within 90 days thereafter.**

- Does NOT apply to full time National Guard duty, except upon a call to active duty by the President or Sec. of Defense for a period of more than 30 consecutive days for national emergency.

<https://www.dmdc.osd.mil/appj/scra/scraHOME.doc>

MILITARY FINDING, cont.

- Applies only to mortgages and DoTs **originated before their period of military service.**

- May be waived by written instrument executed during or after military service.

- Does not affect judicial foreclosures, only Chap. 45 cases.

- NOTE: General Assembly staff attorneys advise this **also prohibits HOA lien foreclosures** (HOA liens also under Chap 45)

SERVICE MEMBERS CIVIL RELIEF ACT

Even if the military finding does not apply, any foreclosure involving military personnel may be affected by the Service Members Civil Relief Act. Please see the memos detailing how to handle those matters on the NCAOC intranet site :

<https://cis1.nccourts.org/intranet/aoc/legalservices/legalmemos/index.jsp>



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

December 2012 66

SERVICE MEMBERS CIVIL RELIEF ACT

STATE OF NORTH CAROLINA, IN THE GENERAL COURT OF JUSTICE
COUNTY OF GRAHAM, 2011-07-15 IN SUPERIOR COURT DIVISION
BEFORE THE CLERK

In the Matter of the foreclosure of a Deed of Trust executed by Diane E. Clark in the original amount of \$100,000.00 dated November 19, 2004, recorded in Book 249, Page 70, Graham County Registry Substitute Trustee Services, Inc., Substitute Trustee

MILITARY CERTIFICATION

The undersigned, Attorney at Law, hereby certifies the following:
He/She is the attorney for the substitute trustee in this proceeding commenced on behalf of PNC Bank, National Association, who is the holder of the debt evidenced by the Note dated November 19, 2004 executed by Diane E. Clark, and Deed of Trust dated November 19, 2004 executed by Diane E. Clark, and recorded in Book 249, Page 70, Graham County Registry in the original amount of \$100,000.00 and the street address of the property described therein is 699 Left Fork Beach Creek Road, Robbinsville, NC 28771.

The holder of the Note and indebtedness is PNC Bank, National Association, 9232 Newmark Drive, Cincinnati, OH 45242.

That to the best of the undersigned's knowledge, the above described debtor(s), trustor(s) or mortgagor(s) have not active service members of the United States Armed Forces, nor reserve members called to active military service and debtor(s), trustor(s) or mortgagor(s) has/have not been in active military service within the last 90 days.

Based on attempts to collect information, informants contacted, or information provided to the undersigned and to the best of the undersigned's knowledge, the hearing will take place pursuant to and in compliance with G.S. 45-21.12A(b).

This 12th day of September, 2011.

BY: *Lance Burman*

Lance Burman
Attorney at Law
For The Law Firm of Hutchison, Genter & Britten, P.A.
Attorneys for Sinsabute Trustee Services, Inc.
Substitute Trustee
P. O. Box 2526, Fayetteville, NC 28302
HSS Case No: 1066066 (FC-FAY)

Diane E. Clark, #58 Case No. FC-1002064



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

December 2012 67

SERVICE MEMBERS CIVIL RELIEF ACT

Department of Defense Manpower Data Center Nov-28-2011 07:09:56

Military Status Report
 Pursuant to the Service Members Civil Relief Act

Last Name	First/Middle	Birth Date	Active Duty Status	Active Duty End Date	Service Agency
CABLE	MARK		Based on the information you have furnished, the DMDC does not possess any information indicating the individual serves.		

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Searcy-Dixon

Mary M. Searcy-Dixon, Director
 Department of Defense - Manpower Data Center
 1600 Wilson Blvd., Suite 400
 Arlington, VA 22209-2793

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DDC strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. 65, 91 et seq., so amended) (SCRA) (formerly known as the Soldiers and Sailors Civil Relief Act of 1940). DMDC has issued hundreds of thousands of orders to preserve any information indicating that the individual is currently on active duty, responses, and has experienced a small error rate. In the event the individual referenced above, or any family member friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protection of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "DefenseLink.mil" URL: <http://www.defenselink.mil/forwards/DMDC/DA.html>. If you have evidence the person is no active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. 6321(f).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that name.

This response reflects active duty status searching only the individual was last on active duty, if it was within the preceding 757 days. For historical information, please contact the Service SCRA point-of-contact.

<http://www.dmdc.osd.mil/eggs/sam/paperreport.do> 11/28/2011

SERVICE MEMBERS CIVIL RELIEF ACT

More Information on "Active Duty" Status
 Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(a)(12) for a period of more than 180 consecutive days. In the case of a member of the National Guard, it 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 USC § 503(b) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized individual's position in the unit they support. This includes Navy YARs, Marine Corp. ARs and Coast Guard CRAs. Active Duty status also applies to a Uniformed Services member who is an active duty commissioned officer of the US Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 180 consecutive days.

Coverage Under the SCRA is Broader in Some Cases
 Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. Many times orders are amended to extend the period of active duty, which would extend SCRA protection. Persons seeking to rely on this website verification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be indoned, but who have not actually begun active duty or actually reported for induction. The last three for Active Duty may be important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who request rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed by Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.
 Report ID: 15QARY50V

Equitable or Legal?

- Defense 1
- Defense 2
- Defense 3
- Defense 4
- Defense 5
- Defense 6
- Defense 7
- Defense 8



Hearing by Clerk cont...

Clerk's Findings and Order of Sale

- GRANT request to proceed with foreclosure sale if clerk finds the existence of ALL six requisite issues from the evidence presented.
- DENY request to proceed with foreclosure sale if clerk fails to find the existence of ANY ONE of the requisite issues.



Hearing by Clerk cont...

<p>STATE OF NORTH CAROLINA COUNTY OF SWAIN</p> <p>IN THE MATTER OF THE FORECLOSURE OF TRUST DEED OF TRUST RECORDED IN BOOK 365, AT PAGE 316 ON JUNE 30, 2008</p> <p>MORGAN CRISP, INC. TRAVIS AL CRISP DAVID A. WILKICKRAMA TO: KIRK ROBINSON, AND STEPHEN C. WILKIE, SURVIVING TRUSTEES</p>	<p>IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILED</p> <p>2011 OCT - 6 AM 10:41</p> <p>SWAIN CO., C.S.C.</p> <p>BY: <i>[Signature]</i></p> <p>ORDER ALLOWING FORECLOSURE</p>
--	--

THIS CAUSE, heard before the undersigned Clerk of Superior Court of Swain County, North Carolina, on December 7, 2011, pursuant to N.C.G.S. Chapter 45 to determine whether foreclosure shall be allowed. The Clerk, having heard the evidence and having examined the relevant documents, deems hereby that as follows:

- The Notice of Hearing was properly served upon the interested parties, pursuant to an Order to Serve issued on July 28, 2011. This service occurred at least Ten (10) days prior to the date of the hearing as accelerated under the terms of process equating to an order in the North Carolina General Statutes, and that the service requirement in this action has been satisfied in accordance with North Carolina Law.
- On June 30, 2008, a properly executed Deed of Trust of Kirk Robinson, Trustee, securing a properly executed and delivered Promissory Note in the original amount of \$100,421.00 in favor of Mountain De Bank & Trust, was recorded in the Office of the Register of Deeds for Swain County, North Carolina.
- This certain Promissory Note dated June 27, 2008, and properly secured with this Deed of Trust recorded on June 30, 2008, in Trust Book 362, at Page 316, is evidence of a valid debt against the mortgagor hereof.
- This Deed of Trust recorded on June 30, 2008, in Trust Book 362, at Page 316 contains a valid power of sale vested in the Trustee, granting in the Trustee the right to foreclose in the event of a default in the assumed obligation.
- A default has occurred under the provisions of the Promissory Note and Deed of Trust, and the holder thereof has, within Thirty (30) days of the issue of the Notice of Hearing in this matter, caused a written statement which outlined default, accelerated the debt, and indicated the amount of principal, interest and expenses owed, as of the date of said statement. And such default entitles the Acting Trustee to foreclose and expose the subject property to a public sale to satisfy the debt.
- That the Promissory Note and underlying obligation is not a "rule game" or "House Loan" loan as defined in N.C.G.S. Chapter 45-16(c) and is not subject to notice requirements as set forth in N.C.G.S. Chapter 45, Article 7.
- That the foreclosure is not prohibited by N.C.G.S. 45-21.12A.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED that Stephen C. Wilkie, Acting Trustee may proceed to foreclose under the power of sale granted under the Deed of Trust recorded on June 30, 2008 in Trust Book 362, at Page 316 of the Swain County Register of Deeds, after giving Notice of Sale to all parties entitled to such notice in accordance with the terms of the Deed of Trust and pursuant to the process set forth in the North Carolina General Statutes.

Witness my hand and the Seal of Office on this 6th day of October, 2011.

[Signature]
Clerk of Superior Court

COB Suspension

G.S. 45-21.16B

- Commissioner of Banks may require suspension of foreclosure proceedings for 60 days (G.S. 45-21.16B & 53-244.117).
- Applies to residential real property foreclosure proceedings filed on or after January 1, 2009.
- COB may notify the clerk, and the clerk must enter an order **suspending the foreclosure proceedings for 60 days from the date of the notice.**

COB Suspension cont...

G.S. 45-21.16B

- If the suspension order comes **before** the hearing, and the 60 day period later expires, the trustee may proceed to hearing by providing at least 10 days written notice to all parties.
- If the suspension order comes **after** the hearing and after an order allowing the foreclosure to proceed has been entered, but before the expiration of the upset bid period, and the 60 day period later expires, the trustee need not seek rehearing of the matter. Instead, he or she need only re-advertise and hold the sale in accordance with G.S. 45-21.16A, 17, and 17A.
- If the COB determines the violation has been cured or that no material violation actually occurred, and the COB so notifies the clerk prior to the expiration of the 60 day period, the trustee may resume the foreclosure proceeding immediately, and proceed after giving proper notice. (G.S. 53-244.17)



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After the Hearing

- Following entry of the order of sale, the trustee can give notice of sale and conduct sale under the statute and deed of trust [G.S. 45-21.16(d)].
- Trustee must file a certified copy of clerk's order of sale in any other county where a portion of the property is located before trustee may proceed with sale of property located in that county.



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Appeal

Appeal

- May be appealed within 10 days.
 - Less than \$10,000 - district
 - \$10,000 or more - superior
- Appeal heard trial de novo.
 - Judge is limited to same six findings of fact.



Appeal Bond

- Clerk must set appeal bond to protect opposing party from probable loss as a result of a delay in the foreclosure. [G.S. 45-21.16(d1)]
- The CSC must require a bond that is 1% of the principal balance due on the note or debt instrument. The CSC has discretion to require a lesser bond in cases of undue hardship or for other good cause shown, or to require a higher bond if there is a likelihood of damage or waste to the property or for other good cause shown. [G.S. 45-21.16(d1)]



Appeal - Alternative Bond

- In setting an alternative bond to the 1% presumptive bond, the clerk may wish to consider various factors depending on the facts of the particular case, such as:
 - Equity in property
 - Length of appeal
 - Daily interest accruing on note
 - Lack of adequate hazard insurance
 - Weather conditions affecting partial construction
 - Lack of occupancy
 - Physical security of property

Appeal cont...

- When the bond is posted, the clerk must stay the foreclosure pending appeal [G.S. 45-21.16 (d1)].
- Parties have a right to have the appeal heard promptly, generally the next succeeding term of court.
- Trustee must file a certified copy of an order entered as a result of appeal in all counties where notice of hearing filed.

Sale by Trustee

G.S. 45-21.16A

Notice of Sale

■ Contents

- Description of the instrument;
- Date/hour/place of sale;
- Description of the real property & improvements to be sold;
- Terms of the sale;
- Any other provisions required by deed of trust;
- Statement that property will be sold subject to taxes or special assessments; and
- Statement whether the property will be sold subject to or together with identified subordinate interests.

Sale by Trustee

G.S. 45-21.16A

NORTH CAROLINA
GRAHAM COUNTY

Special Proceedings No. 11595
Substitute Trustee: Philip A. Glueck
JAN 15 2012 2 29
GRAHAM COUNTY, G.S.C.

NOTICE OF FORECLOSURE SALE

Date of Sale: February 14, 2012
Time of Sale: 12:00 pm
Place of Sale: Graham County Courthouse
Description of Property: See Attached Description
Record Owners: Mark Cable and Sabrina Cable
Address of Property: 466 Old Yellow Branch Road
Robbinsville, NC 28771

Deed of Trust:
Book: 294 Page: 601
Date: August 8, 2008
Grantor: Mark Cable and Sabrina Cable, husband and wife
Original Lender: State Employees Credit Union


CONDITIONS OF SALE: Should the property be purchased by a third party, that person must pay the tax of forty-five cents (45¢) per One Hundred Dollars (\$100.00) required by N.C.G.S. §7A-305(a)(1).

This sale is made subject to all interest taxes and expenses (rent or encumbrances of record and assessment, if any, against the said property, and any recorded leases. This sale is also subject to any applicable county land transfer tax, and the successful third party bidder shall be required to make payment for any such county land transfer tax.

A cash deposit of 5% of the purchase price will be required at the time of the sale. Any successful bidder shall be required to tender the full balance of the purchase price as bid in cash or certified check at the time the Substitute Trustee sends to him a deed for the property or attempt to tender such deed, and should said successful bidder fail to pay the full balance purchase price so bid at that time, he shall remain liable on this bid as provided for in North Carolina General Statutes Section 45-21.16 (d) and (e). This sale will be held open ten (10) days for upset bids as required by law.

Residential real property with less than 15 rental units, as to the possession of the property may be issued pursuant to G.S. 45-21.29 in favor of the purchaser and against the party or parties in possession by the clerk of superior court of the county in which the property is sold. Any person who occupies the property pursuant to a rental agreement entered into or renewed on or after October 1, 2007, may, after receiving notice of sale, terminate the rental agreement upon 10 days' written notice to the landlord. Upon termination of a rental agreement, the tenant is liable for rent for the entire rental agreement period to the effective date of the termination.

Dated: 1/15/12


Philip A. Glueck, Substitute Trustee
Nodel, Glueck & Haskell, L.L.P.

Posted on: 1/15/12

Notice of Sale cont...

G.S. 45-21.17

- Must be posted & published as required by the deed of trust & according to statute.
 - Posted in area designated by the clerk for posting publications in the county in which the property is situated at least 20 days immediately preceding sale.
 - Published in a newspaper that is published in & qualified for legal advertising in the county in which the property is located, or, if none, in one having general circulation in the county, once a week for two successive weeks, at least 7 days apart & completed no more than 10 days preceding date of sale.

Notice of Sale cont...

G.S. 45-21.17

FILED
12 MAR -2 PM 4:09
GRAHAM COUNTY, N.C.
BY *[Signature]*

NORTH CAROLINA
GRAHAM COUNTY
AFFIDAVIT OF PUBLICATION

Before the undersigned, Nancy Waldman, a Notary Public of Graham County and North Carolina, duly commissioned, qualified and authorized by law to administer oaths, personally appeared, Julie Campbell, who being duly sworn, deposes and says that she is the Operator of *The Graham Star*, engaged in the publication of a newspaper known as *The Graham Star*, published, issued and entered as periodical mail in the town of Robbinsville, in Graham County, in the state of North Carolina; that she is authorized to make this affidavit and swear statement; That the notice or other legal advertisement — a true copy of which is appended hereto — was published in *The Graham Star* on the following date: Feb. 13 th of 2012; and that *The Graham Star* in which such notice, paper, document or legal advertisement was published was, at the time of each and every such publication, a newspaper meeting all of the requirements and qualifications of Section 1-597 of the General Statutes of North Carolina and was a qualified newspaper within the meaning of Section 1-597 of the General Statutes of North Carolina.

**
This 13 day of Feb, 2012.

Julie Campbell
Julie Campbell

Sworn to and subscribed before me this 13 day of Feb, 2012.

Nancy Waldman
Nancy Waldman
(Notary Public)
My commission expires Oct 25, 2014.

Notice of Sale cont...

G.S. 45-21.17

[The text in this block is extremely faint and largely illegible due to the quality of the scan. It appears to be a continuation of a legal notice regarding foreclosure procedures.]

Notice of Sale cont...

- Clerk may authorize additional advertising which in the opinion of the clerk will serve the interest of the parties, with costs paid as part of the cost of foreclosure.
- If the property is situated in more than one county, the trustee must comply with notice of sale provisions in each county in which any part of property is situated.
- Trustee must mail a notice of sale by first class mail at least 20 days before sale to all parties entitled to hearing, and to any party who has properly filed a request to receive notice of sale.

Sale by Trustee cont...

Time & Place of Sale

- **Courthouse door of county in which land is situated, except as follows:**
 - Single Tract located in two or more counties (Sale may be held in any one of the counties).
 - If Deed of Trust designates place of sale within county, the sale is held at the designated place.
 - If trustee is given power to designate place, the place shall be either on the premises to be sold or at the courthouse door in a county where property situated.



Sale by Trustee - Time

G.S. 45-21.23

- Sale may take place between 10:00 A.M. and 4:00 P.M. on any day except Sunday or a legal holiday when the courthouse is closed.
- The sale must begin at the designated time and place except that a one-hour delay or a delay caused by other sales at same place is permitted.



Sale by Trustee cont...

G.S. 45-21.21

Postponement of Sale

- **May be postponed by the person exercising the power of sale to not later than 90 days (exclusive of Sunday) after the original date of sale, when:**
 - There are no bidders;
 - Number of prospective bidders is substantially decreased by inclement weather or any casualty;
 - So many other sales are scheduled as to make it expedient or impracticable to hold the sale;
 - Trustee is unable to hold sale because of illness or other good reason; or
 - Other good cause exists.



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ADMINISTRATIVE OFFICE
of the COURTS

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Sale by Trustee cont...

Procedure for Postponement

- Trustee must publicly announce the postponement at the time and place advertised for sale.
- On the same day, trustee must attach a notice of postponement to the original notice of sale posted at courthouse bulletin board or note the postponement directly on the original notice.
- Trustee must give notice of postponement (written or oral) to each person entitled to notice.



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Sale by Trustee cont...

- If the sale is not held at the time fixed and is not postponed as required, trustee must comply again with the provisions of notice of sale in G.S. 45-21.16A, 45-21.17, and 45-21.17A but need not comply with the provisions for notice of hearing and hearing in G.S. 45-21.26.



Sale by Trustee cont...

G.S. 45-21.20

Termination of Power of Sale

- Debtor can terminate the power of sale before the sale by tendering payment of the obligation secured along with all expenses incurred, including the trustee's fees, if any.



Sale by Trustee cont...

Sale Procedure

- Trustee may appoint an agent or attorney to conduct the sale.
- Person conducting the sale invites offers from those attending and accepts the bid of highest bidder.
- Trustee (or agent) may not personally bid on or purchase the property at the sale.
- Lender may bid on property secured by deed of trust (not a mortgage).



Sale by Trustee cont...

- Purchaser must be able to pay a cash deposit, if required.
- If no provision in deed of trust, the trustee may require the highest bidder to make an immediate cash deposit, not to exceed the greater of 5% of the bid or \$750.
- Property may be re-offered immediately if the highest bidder fails to make the required deposit.
- Bidder on property is bound from the moment the bid is accepted.



Sale by Trustee cont...

G.S. 45-21.24

Continuance of Sale

- If sale has begun and is not completed by 4:00 P.M., the trustee (or agent) may continue the sale until the following day, other than Sunday or legal holiday.
- If such continuance is necessary, the time of the continued sale must be publicly announced.



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Report of Sale

- Form: AOC-SP-400 (*Report of Foreclosure Sale/Resale*).
- Trustee must file with the clerk in county where sale took place.
- Must file within five (5) days following the sale to the highest bidder.



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Report of Sale

STATE OF NORTH CAROLINA GRAHAM COUNTY		File No. TS SP-04
Mortgagee/Trustee: <u>Dianne E. Clark</u>		In the General Court of Justice Superior Court Division Before the Clerk
Mortgage/Trustee Record/Deed Book/Patent No. <u>74</u>	REPORT OF FORECLOSURE SALE/RESALE	
Book of Trust/Deed and Page No. Book 249, Page 70	G.S. 45-21.14	
Name and Address of Property and Highest Bidder: PNC Bank National Association 3232 Northwest Drive Morgantown, OH 45342		
Name of the Trustee/Trustee's Attorney Agent <u>Tracy S. ...</u>		Amount Bid <u>107,363.41</u>
Place of Sale <u>Robbinsville, North Carolina</u>		Date January 5, 2012
Time of Sale <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM		
Date of Report January 5, 2012		
Name of the Trustee/Trustee's Attorney Agent Signature of Trustee/Trustee's Attorney Agent <u>Tracy S. ...</u>		
Last Date For Payment <u>1-16-2012</u>		
Maximum Amount of Loan/Trust Fee <u>118,731.58</u>		
Amount of Disbursal Received to Date <u>5,626.27</u>		

Report of Sale cont...

G.S. 45-21.14

Fail to File?

- Clerk may order the trustee to file a correct and complete report within 20 days after service of the order on him/her.
- No specific NCAOC form but may modify...
 - Notice to File (AOC-SP-404)
 - Order to File (AOC-SP-915M)
 - Civil Contempt/ Show Cause (Proceed with care)

Report of Sale cont...

G.S. 45-21.14

STATE OF NORTH CAROLINA		FILE NO.
County		In The General Court Of Justice Superior Court Division Before The Clerk
IN THE MATTER OF		NOTICE
VERSUS		
G.S. 45-21.14		
TO:		
<p>Before your account can be accepted and approved, it will be necessary for you to establish to the office the items indicated below:</p> <input type="checkbox"/> Plaintiff's Affidavit <input type="checkbox"/> Notice of Sale <input type="checkbox"/> Vouchers or Verified Proof Supporting All Disbursements <input type="checkbox"/> Signature Must Be Notarized <input type="checkbox"/> Pay Order in the amount of \$ <input type="checkbox"/> Other:		
Please Give This Matter Your Personal Attention:		
<input type="checkbox"/> County Clerk <input type="checkbox"/> Assistant Clerk <input type="checkbox"/> Clerk Of Superior Court		
<small>WOC 88-9384 Rev. 8/98 © 1988 Administrative Office of the Courts</small>		

Report of Sale cont...

G.S. 45-21.14

STATE OF NORTH CAROLINA		FILE NO.								
County		In The General Court Of Justice Superior Court Division Before The Clerk								
IN THE MATTER OF		ORDER TO FILE ACCOUNT								
VERSUS										
G.S. 45-21.14										
<p>To The Trustee/Commissioner Named Above: You are hereby notified that: <input type="checkbox"/> you have failed to file the report of sale account as required by law. <input type="checkbox"/> the account which you submitted is incomplete or unacceptable. You are ORDERED that you file the required account in my office within twenty (20) days after service of this Order upon you. TAKE NOTICE that if your account is not filed or good cause shown to your failure to do so within twenty (20) days after the service of this Order, a contempt proceeding may be begun against you, and you may be imprisoned until a correct and complete account is filed.</p>										
<p>To The Sheriff: You are commanded to deliver a copy of this Order to the Account to the Trustee/Commissioner whose name and address are shown above and make due return to the undersigned within twenty (20) days after the date of this Order.</p>										
<p>I hereby certify that this Order to File Account was received and served as follows:</p>										
<input type="checkbox"/> By delivering to the Trustee/Commissioner named above a copy of this Order. <input type="checkbox"/> The Trustee/Commissioner WAS NOT located for the foregoing reason:										
<table border="1"> <tr> <th>Name</th> <th>Address</th> <th>Date Delivered</th> <th>Signature of County Clerk or Deputy Clerk</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>			Name	Address	Date Delivered	Signature of County Clerk or Deputy Clerk				
Name	Address	Date Delivered	Signature of County Clerk or Deputy Clerk							
<small>WOC 88-9384 Rev. 8/98 © 1988 Administrative Office of the Courts</small>										

Report of Sale cont...

When do rights of parties become fixed?

- If no upset deposit is filed with the clerk by the close of the normal business hours on the 10th day after filing the report of sale. (G.S. 45-21.27)
- Debtor retains an insurable interest and the right to possession until the purchase price is paid and the deed delivered. See Sprouse v. North River Ins. Co., 81 NC App. 311 (1986).



Upset Bid Period

Definition

- Bid or offer to buy real property for a higher price than the property sold for at the original sale or prior upset bid.
- There is no advertised resale after an upset bid; rather each upset bid is followed by period of 10 days for further upset bids unless a successful bidder defaults.



Upset Bid Period cont...

G.S. 45-21.27

Requirements of upset bid

- Determine whether the upset bid was filed in proper time.
 - Must be deposited with clerk within 10 days after the filing of the report of sale or last notice of upset bid is filed.
 - Day one is the day **AFTER** the report is received by the clerk.
 - If the 10th day falls on a weekend or a legal holiday when the courthouse is closed for transactions, the bid must be filed by the close of normal business hours on the next day that the office is open for business.
 - Deposit must be filed by the close of normal business hours on the 10th day after filing of report of sale. (Physically present the money to the clerk).



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Upset Bid Period cont...

Determine whether the amount of the upset bid is adequate.

- An upset bid must exceed the reported sales price by at least 5%, but in any event the minimum increase is \$750.
 - Clerk cannot require an upset bid in excess of the amount required by statute. CSC can establish conditions of sale, including high cash bond.
 - Bidder can make an upset bid higher than the minimum required by statute.



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Upset Bid Period cont...

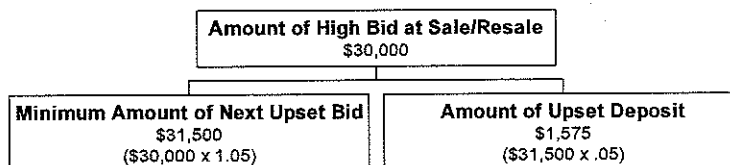
Determine whether the upset bidder made a proper deposit.

- The upset bidder must make a deposit with the clerk of an amount equal to 5% of the amount of the upset bid, but at least \$750.
- Deposit must be made in cash, certified check, or cashier's check satisfactory with clerk.
- There is no authority which would allow clerk to accept a check that is not a certified or cashier's check.
- Clerk should not accept a bid filed after the close of business hours of the tenth day.



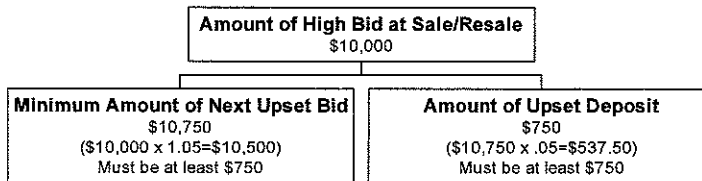
Upset Bid Period cont...

Determining the Minimum Amount of Upset Bid and the Amount of Upset Deposit
Example 1



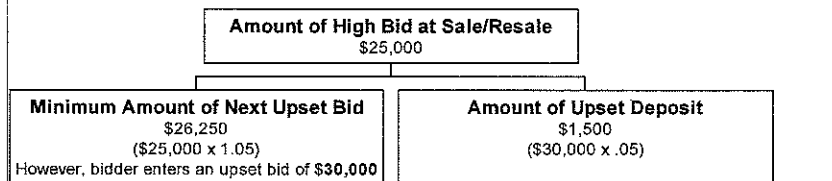
Upset Bid Period cont...

Determining the Minimum Amount of Upset Bid and the Amount of Upset Deposit
(Minimum Increase is less than \$750)
Example 2



Upset Bid Period cont...

Determining the Minimum Amount of Upset Bid and the Amount of Upset Deposit
(Higher Upset Bid than Required)
Example 3



Upset Bid Period cont...

Notice of Upset Bid

- **Upset Bidder must file a Notice of Upset Bid.**
- **AOC-SP-403 (*Notice of Upset Bid Notice to Trustee or Mortgagee*).**
- **Contents**
 - Name, address, phone number of upset bidder;
 - Amount of the upset bid;
 - State sale will remain open for 10 days for further upset bids; and
 - Signature of upset bidder (or attorney/agent).



Upset Bid Period cont...

- Clerk must notify trustee when a notice of upset bid is filed.
- Trustee must give written notice of upset bid to the last prior bidder, current record owners of property, and others requesting notice.
 - Notice must be given by first class mail to last known address.
 - If trustee fails to notify proper parties, upon motion of trustee, the clerk may extend time for filing of upset bids.



Upset Bid Period cont...

- Upset bidder is subject to terms of the original notice of sale unless it has been modified by court order.
- When an upset bid is filed that complies with the statute, the last prior bidder is released from any further obligation on account of his/her bid, and the clerk must release any deposit or bond provided by bidder on the prior upset bid.
- The trustee must release the deposit on the original sale when an upset bid is filed.
- If bankruptcy has been filed, the current bidders deposit may be released upon receipt of a certified copy of an order or notice from the Bankruptcy Court indicating the filing of bankruptcy by the debtor(s). [G.S. 45-21.22]



Defaulting Bidders

G.S. 45-21.30

- If bidder fails to make a cash deposit immediately after making a high bid, the trustee must again offer the property for sale at the same time and place.
- If bidder fails to comply with the bid after tender or a bona fide attempt to tender a deed for the property, the clerk, upon motion, may enter an order authorizing a resale.
- Bidder is liable on the bid to the extent that the final sales price is less than defaulting bid, plus all costs of resale.
- Clerk must hold the deposit or compliance bond made by a defaulting bidder because the deposit & bond secure payment of the amount for which the defaulting bidder remains liable.



Defaulting Bidder cont...

Claiming deposit/determining defaulting bidder's liability:

- Upon motion, clerk may give deposit to trustee to apply to default damages.
 - Before giving back the deposit, clerk should give notice to defaulting bidder to appear and show cause why the money should not be turned over to the trustee to apply to the default.
 - Trustee then accounts for deposit in the final report of sale.
- Clerk should not release the current bidders deposit to the depositor until the sale has been completed.
- Defaulting bidder is entitled to a refund of his/her deposit after the property is resold for amount in excess of the bid of defaulting bidder plus expenses of resale.

Final Report of Sale

G.S. 45-21.33(a)

- Trustee (or agent) must file a final report and account of receipts and disbursements with the clerk.
- AOC-SP-402 (*Final Report and Account of Foreclosure Sale*).
- Report must be filed within 30 days after receipt of the proceeds of sale.
- Report must show whether property was sold as a whole or in parts, whether all the property was sold, and whether all or only part of the obligation was satisfied. NOTE: If tracts sold separately, and were subject to separate upset bidding, separate final reports & fees are required.

Final Report of Sale

G.S. 45-21.33(a)

STATE OF NORTH CAROLINA
JACKSON County

In The General Court of Justice
Superior Court Division
Before The Clerk

IN THE MATTER OF:
Allen K. Pickett and wife, Kelly L. Pickett

**FINAL REPORT AND ACCOUNT
OF
FORECLOSURE SALE**

Trustee: Jackson Savings Bank, S.S.B.

Name of Trustee: W. Ross Hinkle, Jr.
Date of Final Report: 12/15/12
Book (Vol.), Page (No.):

All of the property referred to in the mortgage or deed of trust indicated herein has been sold as a whole and the entire amount of the secured obligation was satisfied.

Trustee's Name: Jackson Savings Bank, S.S.B.

Date	Item	Disbursements	Receipts
	Proceeds Of Sale		45,321.00
	Court Costs	202.00	
	Cost For Publication Of Notice Of Sale	124.40	
	Trustee's Commission	3,253.00	
	Auctioneer's Fee		
	Real Property Taxes		
	Documentary Stamp	91.70	
	Miscellaneous Disbursements	45,251.00	
	Payments To Parties Entitled (Lump Sums, Etc.)		
	Filing Fee and service fee	190.00	
	Certified mail	10.60	
	Surplus Sale Proceeds Paid To C&C Sale Service		
	TOTALS	45,221.00	45,321.00

I certify that the above is a true and complete account of my receipts and disbursements and that notices of hearing, sale and resale were served upon all persons entitled to such notice by statute.

5-21-12
W. Ross Hinkle, Jr.
Clerk of Superior Court

12/15/12
W. Ross Hinkle, Jr.
Clerk of Superior Court

ACCEPTED: Rev. 10/07
N.C. Administrative Office of the Courts

Final Report of Sale cont...

- Clerk audits the account and records it.
- Does not approve it.
- Clerk is merely authorized to determine whether entries in the report reflect the actual receipts and disbursements made by the trustee.
- Clerk should make sure there are proper vouchers or documentation for each receipt or disbursement entered on the final report and account.
- Clerk has no authority to pre-approve costs & expenses of sale including trustee's commission and auctioneer's fee.

Final Report of Sale cont...

G.S. 7A-308(a)(1)

Fees which should appear on the final account include:

- \$300.00 for foreclosure under power of sale in deed of trust.
- \$.45 per \$100.00 of final sales price, with a minimum fee of \$10.00 and a maximum of \$500.00.
 - The fee is not collectable where the ultimate burden of paying the fee falls upon the federal government.
- Recordation fee for Trustee's Deed.
 - May want to provide Book and Page number on account.
- Recordation fee for Notice of Foreclosure.

Final Report of Sale cont...

Trustee (or agent) must also file with clerk the following:

- Copy of notices of sale & resale, if any, which were posted.
- Copy of notices of sale and resale, if any, which were published, with affidavit of publication; and
- Proof as required by the clerk that notices of hearing, sale and resale were served on all parties entitled to notice.
- In the absence of an affidavit to the contrary, an affidavit by the person holding the sale that notice of sale was posted in area designated by clerk for posting public notices in proper county 20 days before sale is proof of compliance with requirements of G.S. 45-21.17(1)(a).

Final Report of Sale cont...

G.S. 45-21.14

Failure to File?

- Clerk may issue order to compel the filing of a correct and complete report within 20 days, and upon a failure to comply may initiate civil contempt proceedings against person (proceed with care).
- NCAOC forms that may be used:
 - Notice to File (AOC-SP-404)
 - Order to File (AOC-SP-915M)



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

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Order of Possession

- Clerk may issue an order for possession of real property sold in favor of the purchaser and against the former owner when the following six items have occurred:
 - 1) Property is sold in exercise of the power of sale;
 - 2) Statutory provisions have been complied with;
 - 3) Sale has been consummated and purchase price has been paid;
 - 4) Purchaser has acquired title to and is entitled to possession;
 - 5) Ten days notice has been given to former owner who remains in possession; and
 - 6) Application is made by petition to the clerk by the trustee, the lender, the purchaser of the property, or an authorized representative of any of the three. [G.S. 45-21.29(k)]
- Clerk may require an affidavit indicating compliance.



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Order of Possession cont...

NORTH CAROLINA
 FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE
 BEFORE THE CLERK
 05 SP 1174 SEP 28 2005

In the Matter of the Enforcement of a Deed of Trust executed by Kenneth M. Samuels dated December 16, 1999, recorded in Book 2097, Page 2880, Forsyth County Registry.
 The Law Firm of Hutchens, Senter & Britton, P.A.

APPLICATION FOR WRIT OF POSSESSION
 PROPERTY ADDRESS:
 2721 Old Rural Hill Road
 Winston Salem, NC 27105

To the Clerk of Superior Court of Forsyth County, North Carolina:
 The undersigned Applicant respectfully shows unto the Clerk that the requirements of NCGS 545-21.29 have been met:

1. That the property described in the Deed of Trust set forth above was duly sold in the exercise of the power of sale provided contained in the above-referenced Deed of Trust on the seventeenth day of August, 2005;
2. The provisions of Article 2A of NCGS Chapter 45 have been complied with;
3. The sale has been consummated and the purchase price paid;
4. The purchaser has acquired title to and is entitled to possession of said real property;
5. That following the consummation on the 19th day of August, 2005, of said sale, notice of said sale was given in writing to the occupants in possession of said property giving them ten (10) days to vacate said property;
6. And that to date, said occupants have not vacated the said property.

WHEREFORE, the Applicant prays for a Writ as he directed to the Sheriff of Forsyth County, North Carolina, directing him to forthwith remove the occupants from the premises.

This 27th day of September, 2005.

THE LAW FIRM OF HUTCHENS, SENTER & BRITTON, P.A.
 BY: *[Signature]*
 Attorney at Law

Case No: 05-1174-24

Order of Possession cont...

NORTH CAROLINA
 FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE
 BEFORE THE CLERK
 05 SP 1174

In the Matter of the Enforcement of a Deed of Trust executed by Kenneth M. Samuels dated December 16, 1999, recorded in Book 2097, Page 2880, Forsyth County Registry.
 The Law Firm of Hutchens, Senter & Britton, P.A.

NOTICE TO VACATE
 PROPERTY ADDRESS:
 2721 Old Rural Hill Road
 Winston Salem, NC 27105

TO: Kenneth Maurice Samuels aka Kenneth M. Samuels, Spouse of Kenneth Maurice Samuels aka Kenneth M. Samuels, Occupant(s)

You are hereby advised that the property described in the above set forth Deed of Trust was foreclosed on the Seventeenth day of August, 2005 and you are hereby given ten days notice from the date hereof to vacate the premises along with all of your personal property.

You are hereby advised that upon your failure to vacate the said premises along with all of your personal property, an Application for Writ of Possession will be made to the Clerk of the Superior Court for an Order directing the Sheriff of Forsyth County to remove you and your personal property from the premises.

This 13th day of September, 2005.

THE LAW FIRM OF HUTCHENS, SENTER & BRITTON, P.A.
 BY: *[Signature]*
 Attorney at Law

I hereby certify that this is a true copy of the original Notice mailed for the 13 September 2005.

MAILED TO:
 Kenneth Maurice Samuels aka Kenneth M. Samuels
 2721 Old Rural Hill Road
 Winston Salem, NC 27105

THE LAW FIRM OF HUTCHENS, SENTER & BRITTON, P.A.
 BY: *[Signature]*
 Attorney at Law

Case No: 05-1174-24

DO NOT ISSUE A G.S. 45-21.29 WRIT OF POSSESSION REGARDING A TENANT

NOTE: A writ of possession may not be issued against a bona fide tenant (someone other than a child, spouse or parent) with a lease by arm's length transaction for rent not substantially less than FMV. The new buyer must honor the lease, and the tenant may only be removed by summary ejectment. Federal law applies whether lease is recorded or not.

- If the lease has expired – new purchaser must give 90 days notice to bona fide tenants.
- If the buyer sells the property to someone as a primary residence, the lease can be terminated at closing, upon prior 90 day notice. [US Public Law 111-203, expires 12/31/14].
- OK to issue writ under G.S. 45-21.29 against former owner.

Order of Possession cont...

Orders of possession must be directed to the sheriff and must authorize the sheriff to remove all occupants in possession and their personal property from premises and to put the purchaser in possession.

- Executed in same manner as a writ of possession in a summary ejectment proceeding under G.S. 42-36.2.
- Purchaser has same rights as a landlord under G.S. 42 & 44A.
- Purchaser is not entitled to possession until the purchase price is paid and the deed has been delivered; the debtor may remain in possession pending the closing.

Order of Possession cont...

NORTH CAROLINA
 FORSYTH COUNTY

IN THE GENERAL COURT OF JUSTICE
 BEFORE THE CLERK
 OF SAID COUNTY
 OCT 8 2007

To the Master of the Foreclosure of a Deed of Trust executed by Kenneth M. Samuels dated December 16, 1999 recorded in Book 2097, Page 2886, Forsyth County Registry, The Law Firm of Robinson, Seaver & Sullivan, P.A.

WRIT OF POSSESSION OF REAL PROPERTY
 PROPERTY ADDRESS:
 5221 Old River Highway
 Winston Salem, NC 27105

TO: Kenneth Maurice Samuels aka Kenneth M. Samuels, Spouse of Kenneth Maurice Samuels aka Kenneth M. Samuels, Occupant(s) 03644

TO: Sheriff of Forsyth County, North Carolina

GREETING:

WHEREAS, North Carolina General Statutes 24-21.29 (b) confers upon the Clerk of Superior Court the power to issue Writs of Possession to place the purchaser in possession of the property sold at foreclosure; and whereas, all of the requisites of the General Statutes of North Carolina have been complied with;

NOW THEREFORE, you are commanded to remove the occupants from these premises located at 5221 Old River Highway, Winston Salem, NC 27105, and to place the purchaser in possession of the said premises.

HEREIN FAIL, NOT, and make your return hereon.
 This 07 day of SEPTEMBER 2007

CLERK OF SUPERIOR COURT
 OFFICER'S RETURN

RECEIVED: _____ (Date)
 SERVED: _____ (Date)
 SHERIFF OF FORSYTH COUNTY \$15.00 PAID
 BY: 5/10/07

Please call with lockout information: Kimberly D. Outlander, 910-864-3068, Ext 1850.
 Case No. 07-10228

Order of Possession cont...

RETURN OF SERVICE

1. The writ of possession was served as follows:

a. By removing the defendants from the premises and putting the plaintiff in possession after giving notice of removal to the defendant(s) as required by law.

b. By removing the defendants from the premises and putting the plaintiff in possession after giving notice of removal to the defendant(s) as required by law. The defendant(s)' property was taken to the warehouse listed below for storage.

c. By giving notice of removal to the defendant(s) as required by law and by leaving the defendant(s)' property on the premises and taking the address in accordance with the written request of the plaintiff which is attached.

2. I have failed to remove the defendant(s) from the premises for the following reason:

a. The plaintiff requested that the writ of possession be issued to satisfy the obligation to the plaintiff.

b. The plaintiff failed to provide the addresses of removal and one month's storage when being asked to do so.

c. Other reason:

Name of the Sheriff of the County: _____

Date Served	09-24-07	Name of the Sheriff of the County	William T. Schatzman
Time Served	10:00 AM	Name of the Plaintiff	FORSYTH

2007 Sheriff's Fee: \$15.00
 A 1000 (FORSYTH COUNTY)

