

## OUTLINE BY NICOLE BRINKLEY

### I. CONTINUANCES

#### CONTINUANCE POLICY:

##### TRUSTEE –

- Must file a motion to continue at least 7 days in advance of hearing.
- Written motion must be served same day it is filed (or before if motion mailed for filing).
- If the motion is not filed timely, the trustee must appear at the appointed day and time and request the continuance in person where the respondent has an opportunity to respond.
- Failure of the trustee to appear may result in the case being dismissed.

##### RESPONDENT -

##### N.C.G.S. §45-21.16C

(a) At the commencement of the hearing, the Clerk shall inquire as to whether the debtor occupies the real property at issue as his or her principal residence. If so, the Clerk shall further inquire as to the efforts the mortgagee, trustee, or loan servicer has made to communicate with the debtor and attempt to resolve prior to foreclosure:

##### (b) INQUIRY:

- What are your plans for the property? Is it your desire to keep the property? Or sell the property (regular or short sale)? Loan modification? Repayment/forbearance? Reinstatement?
- What efforts have you made to begin this process? Contact with servicer or mortgage company? Contact with HUD counselor or local attorney, such as Legal Aid?
- Do you have income?
- Have you contacted a realtor with knowledge about short sales?
- Is the property listed for sale?
- For loan modifications - What was your mortgage payment prior to default? At this time, what monthly payment could you afford? Have you submitted an application through the servicer, attorney, or HUD counselor?
- For reinstatement – What financial means and what time frame do you have to reinstate the loan (i.e. sale of property, loan/gift from family, loan or withdrawal from retirement account)
- How many continuances? Depends on the effort and the status of the loss mitigation efforts. We require documentation at each hearing to show progress (i.e. letter from mortgage company/services or HUD counselor with update, real estate contract documents to show closing date, call log to mortgage company or HUD counselor with follow up, faxes and confirmation of document submission)

## II. ROLE OF TRUSTEE/SUBSTITUTE TRUSTEE AND COUNSEL FOR CREDITOR/MORTGAGEE

- If the creditor substitutes a new trustee after the initial Notice of Hearing is filed, then the substitution of trustee must be recorded at the register of deeds. It is good practice for the trustee to serve the respondents with the substitution of trustee so all parties are aware. This can be included with a motion to continue or amended notice of hearing.
- If counsel for the trustee/substitute trustee is going to change roles and represent the creditor/holder, then a notice of appearance should be filed and served BEFORE the hearing.

## III. CORPORATE RESPONDENTS

- Pursuant to N.C.G.S. §84-5, corporate respondents in court proceedings must be represented by counsel. This issue typically arises when a corporation is record owner of property being foreclosed.

N.C.G.S. §84-5. Prohibition as to practice of law by corporation. (a) It shall be unlawful for any corporation to practice law or appear as an attorney for any person in any court in this State, or before any judicial body or the North Carolina Industrial Commission, Utilities Commission, or the Department of Commerce, Division of Employment Security, or hold itself out to the public or advertise as being entitled to practice law; and no corporation shall organize corporations, or draw agreements, or other legal documents, or draw wills, or practice law, or give legal advice, or hold itself out in any manner as being entitled to do any of the foregoing acts, by or through any person orally or by advertisement, letter or circular.

## IV. PROVIDING RESOURCES

Provide Legal Aid's info

Provide NC Foreclosure Prevention Fund brochure

- Available programs
- List of resources such as HUD counselors
- Loan through NC Housing Finance Agency

Foreclosure Assistance Scams

- If the Respondent says she/he is receiving assistance through a company or law firm, we ask who they are represented by or what company is providing assistance.
- If it is an out of state law firm or company, we provide a printout from the Department of Justice website about foreclosure assistance scams.
- Look out for local attorneys who are engaged by out of state law firms or corporations to represent folks at hearings. We had a local attorney who was reprimanded by the State Bar for violation of Rules 5.5(a) and 8.4(a). The State Bar found that the local attorney's arrangement assisted the out of state entity in the unauthorized practice of law and shared legal fees with a non-attorney.

**Memo**

**To:           Substitute Trustees**  
**From:       Wake County Clerk of Court**  
**Jennifer J. Knox**  
**Date:        October 9, 2013**

**Policy Instituted on 06/01/13**

**FORECLOSURE HEARING CONTINUATION/CANCELLATION POLICY**

Our office has recently become concerned with the number of respondents who have not received notice of a lender's intent to continue a case and who appear for a previously noticed foreclosure hearing resulting in many instances in additional hardship and loss of income to the respondent. In the interest of justice, beginning June 1, 2013, we instituted the following continuance policy as it pertains to foreclosure cases.

If a substitute trustee seeks to continue a case on behalf of a lender, he or she must submit to the court a written motion for continuation at least seven days prior to the hearing date. This motion must be served on the Respondent at the time it is filed.

If a motion is not timely filed, the substitute trustee must appear and seek to be heard by the court on a motion to continue where the respondent may also have an opportunity to be heard. Failure of the substitute trustee to appear may result in the case being dismissed.

If exigent circumstances arise that prevent the filing of a continuance in a timely manner, the substitute trustee may contact the court to report the situation by calling our Special Proceedings Division (919-792-4600).

## **FORECLOSURE CHEAT SHEET: Respondent Present at Hearing.**

1. Introductions.
2. Role of Trustee. Is a neutral party. Does not represent the lender or the borrower.
3. Respondent present. Hearing officer asks are they currently working on a loan modification, repayment plan, or other loss mitigation option with the lender?

Does the respondent have any documentation to present to show they are working with the lender to retain ownership of their home?

### **Homeowner Assistance Programs/Options:**

- a. Repayment Plan – you may be eligible for a Special Forbearance or Repayment plan which could allow you to repay the missed payments over an agreed time period.
- b. Loan Modification – A loan modification may add the missed payments to you existing loan balance and could change one or more terms of your mortgage to restructure your loan payments.
- c. Pre-foreclosure Sale – A pre-foreclosure sale or short sale may allow you to sell the property at market value and use the proceeds as full satisfaction of your mortgagor obligation.
- d. Deed in Lieu – The lender may agree to allow you to voluntarily give the deed to the property back if you are unable to sell the property at fair market value.

Also, can provide information about NC Foreclosure Prevention Fund which is the yellow sticky/postcard in the Small Conference Room.

Also an option may be HUD Loan Approval Agencies.

If respondent states they are in a trial period w/ HUD agreement, ask the respondent if he or she has made a payment.

4. If good cause exists to grant continuance (reasonable likelihood of resolving default), you may continue the hearing for up to 60 days. Respondent must show proof of progress for additional continuances.

**Continuance of Hearing.** (Clerk must grant for improper service and may grant for good cause)

5. Respondent will receive a copy of the amended notice of hearing or Motion and Order continuing the hearing with the new scheduled date of hearing. This is mailed by the Substitute Trustee. If a Notice of Sale was attached to the Notice of Hearing when first served, inform respondent this was a tentative date and that date of sale will change also, if order for sale is granted at the next hearing.
6. If good cause does NOT exist to grant continuance, the clerk will continue with the hearing.

7. **Required Findings:** 6 items to present to foreclose:
  - A. Proper **Notice** to those entitled.
  - B. **Right to Foreclose** – express power of sale. Verify that the trustee or substitute trustee initiating foreclosure has authority to exercise the power of sale. This is accomplished by checking the Deed of Trust. If there is a Substitution of Trustee, then this instrument must be recorded prior to filing of Notice of Hearing by 1 minute.
  - C. **Valid Debt** – held by party seeking foreclosure. Photocopies of Note and Deed of Trust are admissible as evidence of indebtedness, together with an Affidavit from Holder or Servicer. Holder is the possessor of the original note (assignment, endorsement, or allonge) is key in determining holder of valid debt. 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.
  - D. **Default** – by debtor. 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. **AFFIDAVIT MUST BE ORIGINAL DOCUMENT**.
  - E. **Home Loan Status**. (Issued by the Commissioner of Banks). Verify that the loan is NOT a home loan. Substitute Trustee will file a Non-“Home Loan” Certificate. If the loan is a home loan, the Substitute Trustee will file a Conditional Certificate of Compliance with Article 11, chapter 45 of the General Statutes. This verifies all Notices were timely given. A copy of this letter(s) must also be provided. Pursuant to N.C. Gen. Stat. 45-21.16(c)(5a) must provide copy of letter sent by first-class mail to the debtor's last known address within 30 days of the date of the notice 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 by first-class mail at the debtor's last known address daily interest charge based on the contract rate as of the date of the written statement.
  - F. **Not Active Duty Military – Protected Military Service**. Power of sale is not barred by debtor’s military service. Also applies to HOA liens. The statute provides a lender may not exercise a power of sale during or w/in 90 days after debtor’s military service. This is confirmed by Affidavit from the Substitute Trustee. To obtain military status, contact the Dept. of Defense.
8. **Notice of Foreclosure Sale** (Check description of the instrument, date/hour/place of sale, description of real property to be sold – correct address, terms of sale, any other provisions required by deed of trust, statement – sold subject to taxes, identified subordinate interests)
9. **Order to Allow Foreclosure Sale**. Sign original and all copies.
10. **Appeal** May be appealed w/in 10 days. To stay the proceedings pending a hearing on appeal, a bond must be posted).



## FORECLOSURE/LOAN MODIFICATION

Unexpected troubles like a lay off, illness or death in the family can make it hard to keep up with mortgage payments, and homeowners may find themselves facing foreclosure. Sometimes, loan rates are set up to adjust to higher and higher rates, catching unsuspecting consumers off guard.

Foreclosures hurt families, communities, and our entire economy. It's in all of our interests to help homeowners find a way out of foreclosure when possible.

We investigated the top mortgage companies and helped win a [national settlement](#) to provide relief to struggling homeowners and prohibit past foreclosure.

**Learn how to avoid foreclosure relief and loan modification scams that pretend to help you, and how to get real help instead:**

- Beware of so-called foreclosure assistance or rescue companies that require payment up front before they "help" you. It's illegal to charge an upfront fee for foreclosure assistance or loan modification services in North Carolina.
- Steer clear of foreclosure assistance or rescue companies that want you to make your mortgage payment to them, or who tell you not to talk to your mortgage company or to an attorney.
- Watch out for so-called real estate investors, who promise to pay off your mortgage if you sign over the deed to your property, but not the mortgage. The investor then rents your home back to you or to a tenant but doesn't make mortgage payments and the bank forecloses. Remember, just signing over your deed doesn't get you out of the responsibility for paying your mortgage.
- Other scam tip offs: the schemer refuses to put his or her promises in writing, pressures you to sign paperwork you haven't had a chance to read thoroughly, or offers to fill out the paperwork for you.
- If you get behind on your mortgage payments, you should contact with your lender immediately. Remember, most banks and mortgage lenders do not want to foreclose because they lose money on foreclosure sales. Even if you are delinquent, many lenders will be willing to offer a temporary forbearance or a loan modification to avoid foreclosure.
- Free help dealing with foreclosure is available from a pair of programs administered by the NC Housing Finance Agency. The [Foreclosure Prevention Fund](#) assists homeowners who lose their jobs or experience certain temporary financial hardships. The [Foreclosure Prevention Project](#) can help homeowners who are facing foreclosure for any reason. This program can connect homeowners with free housing counseling, help them work with their mortgage servicer, and provide access to legal services for homeowners with lower incomes. Both programs can be reached at 1-888-623-8631.

**We Can Help**

To report a foreclosure scam, [file a complaint online](#) or call toll free within North Carolina at 1-877-5-NO-SCAM.

North Carolina Department of Justice / Josh Stein, Attorney General (919) 716-6400



## Roy Cooper North Carolina Attorney General

### FIGHTING FORECLOSURE AND LOAN MODIFICATION SCAMS

Many North Carolina homeowners are struggling to make their mortgage payments, and scammers are trying to take advantage of them.

More than 1,200 consumers have reported foreclosure and loan modification scams to the Attorney General's Consumer Protection Division in the past five years. To fight these scams, Attorney General Cooper helped win a law in 2005 that makes it illegal to charge an upfront fee for foreclosure assistance in North Carolina.

To fight foreclosure and loan modification scams, the Attorney General's Consumer Protection team has:

- Issued hundreds of cease and desist letters to warn foreclosure relief schemes to stop violating North Carolina law.
- Won judgments worth more than \$1.6 million from foreclosure scammers, including refunds for consumer victims of these schemes.
- Taken 18 foreclosure scammers to court, winning money back in 17 cases so far.

#### Home Remedy Center and its owner Pamela Gressier (2014)

Cooper filed suit in July 2014 against this California mortgage relief scheme, alleging the company collected illegal upfront payments from NC homeowners but failed to win loan modifications or save them from foreclosure as promised. The case was filed as part of a national sweep against foreclosure/loan modification scams that included North Carolina, 14 other states, the Federal Trade Commission and the Consumer Financial Protection Bureau.

#### Community Mortgage Assistance Program and Koy Chiu, of Charlotte (2012)

#### Lender Exchange, Kenneth McCurd and Tanya Wilson, of Charlotte (2012)

#### Tidewater Financial Solutions and Elaine Madej, of Wilmington (2012)

Cooper filed suit against these three companies and their principals in September 2012, alleging that they charged consumers illegal advance fees for mortgage loan modification services and then failed to provide them with meaningful help. In July and September 2013, Cooper won consent judgments, ordering Lender Exchange and the Community Mortgage Assistance Program to close permanently and each to pay \$4,000 in consumer refunds or face substantial penalties. Also in September 2013, Cooper obtained a consent judgment against Tidewater, permanently barring the company from charging advance fees for loan modification or foreclosure assistance and requiring it to pay \$8,200 in consumer refunds, or face a penalty of \$30,000.

#### Credit Enhancement Services and Edward "Eddie" Phillip Long, Jr. (2011)

In May 2011, Cooper filed suit against Long and Credit Enhancement Services of Winston-Salem for charging consumers upfront fees of \$300-\$500 for loan modification help. In February 2012, the Attorney General's Office won a consent judgment, banning Long from offering foreclosure and loan modification services in North Carolina and winning \$5,600 back for consumers



#### Reginald Keith Turner/Hazelton Management/The Carley Group (2010)

In June 2010, Cooper filed suit against Turner for operating foreclosure rescue companies in Charlotte and Colfax, NC. Turner advertised that he'd identified possible legal violations by mortgage lenders and promised to use the information to negotiate favorable loan modifications. Homeowners who responded to the ads paid as much as \$2,500 in advance but got no real help from Turner. In January of 2011, Cooper won a default judgment against Turner, permanently prohibiting him from foreclosure assistance, loan modification and debt relief work in NC. The judgment also orders Turner to pay more than \$80,000 in consumer refunds and civil penalties.

#### The Lamb Group/US Consumer Solutions and Geoffrey Lamb (2009)

In December of 2009, Cooper won court orders stopping Lamb from taking money for foreclosure assistance or loan modifications. The Kannapolis-based scam claimed on its website to be a "non-profit foreclosure relief organization" with a "success rate of 97%" In reality, Lamb charged homeowners an up-front fee of as much as \$1,500, told them not to contact their mortgage lenders, and then did little or nothing to help save their homes. Under a consent judgment entered May 27, 2010, Lamb is under a permanent injunction and must pay \$65,000 if he violates it.

#### Campbell Law Firm and Rudolph C. Campbell (2009)

In December of 2009, Cooper filed suit against Campbell and his Florida firm. The company promised consumers that a lawyer would "carefully review your foreclosure matter" and help win a loan modification for an advance fee of \$1,000. NC consumers who paid the money got little or no help, and had no contact with an attorney from the firm. The Florida Supreme Court disbarred Campbell on June 3, 2010 for his loan modification activities. On September 27, 2010, a North Carolina judge issued a default judgment to stop the company's operations here permanently and ordered Campbell to pay \$40,000 in refunds and penalties.

#### Peoples First Financial (2009)

#### 21<sup>st</sup> Century Legal Services (2009)

In July of 2009, Cooper joined federal officials and attorneys general from 17 other states to crack down on foreclosure scammers nationwide. Cooper filed suit against two California companies, Peoples First Financial and 21<sup>st</sup> Century Legal Services, that promised to help North Carolinians negotiate lower mortgage payments and save their homes from foreclosure. Both companies took money upfront and did little or nothing to help homeowners. Cooper won a default judgment against 21<sup>st</sup> Century Legal Services in February 2010, which contains a permanent injunction and orders payment of \$217,000 in refunds and penalties. Cooper won a default judgment against Peoples First in January 2011, permanently banning the company from performing or offering foreclosure assistance, loan modification and debt relief services in the state and ordering \$9,497.50 in refunds to consumers and \$25,000 in civil penalties to local public schools.

#### Mortgage Help Services and Nathaniel Livingston (2009)

In June of 2009, Cooper won a court order to stop Mortgage Help Services Inc. of Raleigh and its CEO from advertising, performing or taking money for loan modification and foreclosure assistance services. The company advertised on local TV stations and Christian radio stations that its experts could rescue homes from foreclosure, but homeowners who paid Mortgage Help Services between \$500 and \$1,500 upfront got little or no help. On February 2, 2010, Cooper won a permanent injunction and a judgment of \$244,409.94 against the defendants.

#### Robert E. Cassell, Jr., doing business as American Mortgage Assistance (2008)

#### Home Assure, LLC and its vice president Michael Grieco (2008)

#### Metrolina Mortgage Relief, LLC and its president Jeffery Mika (2008)

In October 2008, Cooper took action against these three Charlotte area foreclosure rescue companies that charged homeowners facing foreclosure high fees but failed to save their homes. In May of 2009, the Attorney General won a permanent injunction and judgment worth \$10,000 against Metrolina. In July 2009, the Attorney General won a permanent injunction and judgments worth more than \$147,000 against Grieco and Home Assure. In November 2009, the Attorney General won a permanent injunction against American Mortgage Assistance, \$50,000 in refunds, and an additional penalty of \$25,000 if either Cassell or the company violates the injunction.

Alphin Marketing Group, Inc., Alphin Group, Inc., and Russell E. Alphin (2008)

The Alphin Group targeted distressed homeowners with false offers to help save them from foreclosure. In May 2008, Cooper won a court order to stop the defendants from taking consumers' money. In May 2009, the Attorney General won a permanent injunction to bar the company from offering foreclosure assistance and debt adjusting services in NC and a monetary judgment of \$30,000.

Mortgage Assistance Solutions, LLC, doing business as Fresh Start, and Michael Thomas Stoller (2008)

Fresh Start contacted NC homeowners facing foreclosure and told that they would negotiate with their lenders and help them get a new loan in exchange for an upfront fee of \$1,200 to \$1,400. In February 2008, Cooper won a court order barring the Florida company and its Beverly Hills-based manager from conducting foreclosure assistance services in NC. In May of 2008, the court imposed a permanent injunction and ordered the defendants to pay \$10,000 in refunds.

Mortgage Assistance of the Carolinas and Alan Steve Seabolt (2006)

This Charlotte company targeted distressed homeowners with promises of special expertise in rescuing homes from foreclosure, collecting an upfront fee but doing little or nothing to help consumers save their homes. Cooper filed suit against Seabolt and his company in August 2006. In September 2007, the court entered a default judgment and permanent injunction against the defendants, barring them from engaging in any foreclosure assistance or related services in NC and ordering them to pay \$105,000.

Webster's Marketing and Financial Services, Inc., David D. Webster and Marva Renee Dorsett (2002)

This Greensboro company claimed to provide foreclosure recovery, loan broker, and credit repair services but instead took people's money without providing them any real help. Consumers trying to save their homes from foreclosure lost thousands of dollars each to Webster's. In October 2002, Cooper won an order barring the defendants from their illegal activities. In 2003, the court entered a judgment ordering Webster to pay \$604,000 and Dorsett to pay \$35,000.