

## Foreclosure by Power of Sale

# Home Loans

## G.S. Chapter 45, Article 11

### **G.S. 45-101(1b)** - Requirements to be a valid **Home Loan**:

1. **TYPE OF LOAN:**
  - a. Not an equity line.
  - b. Not a construction loan with funds disbursed periodically.
  - c. Not a reverse mortgage.
  - d. Not a loan with a term of 12 months or less.
  - e. Not a commercial/business loan.
  
2. **TYPE OF BORROWER:** Borrower must be a natural person.
  
3. **TYPE OF DEBT:** Debt for family, personal, or household purposes.
  
4. **MAX AMOUNT OF DEBT:** Principal amount does not exceed Fannie Mae limits.
  - a. Visit <http://www.fhfa.gov/DataTools/Downloads/Pages/Conforming-Loan-Limits.aspx> to determine loan limit.
  - b. Limit depends on: date of the loan and the county where property located.
  - c. Ex., the limit on a loan made in 2012 on a single family home in Edgecombe County was \$424,100.
  
5. **TYPE OF SECURITY:** Secured by a lien on current or future principal dwelling, which is:
  - a. Manufactured home,
  - b. 1-4 family existing structure, or
  - c. 1-4 family to be built structure
  
6. **PURPOSE OF THE LOAN:**
  - a. Purchase the house,
  - b. Construct, improve, repair, remodel an existing house or lot,
  - c. Refinance, or
  - d. Consolidate debt.

\*\* Applies to anyone who acts as a mortgage servicer – meaning anyone who accepts loan payments for compensation or gain.

**CLERK'S ROLE:**

1. Determine whether there is competent evidence that the loan is a home loan or not. Use definition found in GS 45-101(1b).
2. If it is not a home loan, confirm the following in the foreclosure filings:
  - a. A statement that it is not a home loan,
  - b. Attested to by someone with the capacity to certify loan status,
  - c. Who states why it is not a home loan.
3. If it is a home loan based on the evidence presented:
  - a. Review the 45 day letter and confirm per GS 45-102 and GS 45-107(a):
    - i. It was sent in writing, by mail to the borrower's last known address,
    - ii. It was sent at least 45 days prior to the filing of the NOH, and
    - iii. It contained the following information:
      1. Itemized past due amounts
      2. Itemized charges due to bring loan current
      3. A statement that there may be other options available than foreclosure
      4. Name, address and phone number for the following:
        - a. Servicer, lender or other agent authorized to work with Borrower to avoid foreclosure
        - b. HUD approved counseling agency
        - c. State Home Foreclosure Prevention Project
  - b. Confirm that the Notice of Hearing was filed at least 45 days after the date of the 45-day letter and the HFA did not extend the restriction on filing.
  - c. Review Certificate of Compliance filed by the servicer and if desired, check the HFA database, to confirm servicer registered the require information per GS 45-107, and did not make a materially inaccurate statement, including:
    - i. Certification that the servicer mailed 45-day letter.
    - ii. Borrower's correct name and address.
    - iii. Contains last scheduled payment made at the time registered.
    - iv. Date the 45-day notice mailed.
    - v. Confirm servicer registered the loan within 3 days of the letter.
4. If it is a home loan and the servicer provided a materially inaccurate statement in the certificate of compliance, dismiss the foreclosure without prejudice.