

STATE-BY-STATE

North Carolina

Legislative Updates

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Unlike many states, the North Carolina General Assembly seems to be reversing the Great Recession-era trend of increasing consumer protection by, instead, repealing certain regulations and streamlining the process of liquidating distressed property. Amendments were recently made to three state statutes that are relevant to servicing loans in North Carolina.

Powers of Attorney — The first of those new changes involve the recording requirements for powers of attorney. The legislature sought to address questions about where and when a power of attorney (POA) should be recorded when the selling entity may own property in multiple counties across the state, but has its power of attorney recorded in only one county. This situation arises most often in an REO context. Under the old statute, there was no way to tell whether the conveying entity had authority to act for the principal (e.g., a servicer executing a deed) unless the conveying deed specifically referenced the deed book and page of the recorded POA. A title searcher attempting to determine if there was authority for the attorney-in-fact to sign the conveyance deed would have to search all North Carolina counties or guess at the county in which the POA might have been recorded.

N.C.G.S. Section 45-28, as re-written, provides new clarity by requiring that a POA affecting real property shall be registered in the county in which the principal is domiciled or where the real property is located. If the principal is not a NC resident, the POA may be recorded in any county in the state where the principal owns real property. If that real property lies in more than one county, the POA shall be registered in any one of those counties. The revised statute goes on to state that if the conveying deed is recorded in a different county other than the one where the POA is registered, the conveyance must contain the recording information for the POA in order for it to be located. It should be noted that failure to comply with the new statute does constitute an infraction; however, it will not affect the validity or enforceability of the conveyance deed from the bank to the new owner. While the practical effect of this legislation may seem onerous to servicers liquidating statewide portfolios, this legislation will cut down on REO-related inquiries, delays in closings, and even lost contracts by comforting the buyer that the attorney-in-fact indeed has authority to act for the principal.

Evictions — The next legislative amendment is important to note in the context of evictions. North Carolina House Bill 802 revised portions of the existing landlord and tenant law by shortening the time periods for judgments to be entered from previously “not in excess of ten days” to requiring judgment on the same day on which the conclusion of all the evidence and submission of legal authority occurs. In addition, the bill also shortened the time period for a landlord to dispose of personal property remaining on the premises after the landlord has been

given possession. The previous ten-day period has been replaced with a shorter seven-day period to dispose of personal property remaining on the premises following lawful possession by a landlord. During the seven-day period, the landlord may move the personal property for storage purposes, but shall not throw away or otherwise dispose of such personal property prior to the expiration of the seven-day period. These changes apply to all evictions on or after September 12, 2013, and will assist the servicer during the post-lockout period to promptly dispose of any personal property and transfer the asset into its REO portfolio.

COB Authority re Foreclosure Suspension — Finally, the most dramatic reversal in North Carolina’s mortgage servicing legislation is the outright repeal of the Commissioner of Banks’ (COB) authority to unilaterally suspend foreclosures if it suspected that a “material violation” of law occurred with either the origination or the servicing of the loan. In 2008 and 2009, the consumer advocacy groups persuaded the General Assembly to enact sweeping reforms to existing North Carolina foreclosure and servicing law, including the adoption of the S.A.F.E. Mortgage Licensing Act. This act gave broad power to the COB to regulate previously unregulated servicers and exercise broad authority over servicing activities — especially in the context of foreclosure. N.C.G.S. Section 45-21.16B gave the commissioner the authority to prohibit the clerk of court from considering a foreclosure petition if it, in its own discretion, felt that a violation of prevailing origination and servicing law (state and federal) had occurred. This “stay” was only good for 60 days. Regardless, the law left the servicer no avenue for appeal or for due process unless it was able to persuade the commissioner’s office that, in fact, no material violation of origination or servicing law had occurred.

The program was enacted as part of the legislation that created the North Carolina State Home Foreclosure Prevention Project (SHFPP), which was in response to the subprime mortgage crisis that preceded the Great Recession in the final years of the last decade. The purpose of the SHFPP was to inform homeowners about governmental and non-profit homeownership preservation assistance. The commissioner also oversaw this program.

Shortly after the SHFPP was renewed in 2010 (and expanded to include all “home loans”), oversight of the SHFPP was transferred to the North Carolina Housing Finance Agency (HFA). The legislation that transferred the oversight of the SHFPP to the HFA, however, did not give it the power to “suspend” foreclosures. This power remained with the COB. The General Assembly recognized, though, that since the COB no longer had its hand in foreclosures, it should not have a role in deciding whether to suspend a foreclosure. Accordingly, this power, although rarely used, was removed from the COB, but the HFA did not receive it.

Conclusion — This article is meant only as a summary of some of the recent statutory revisions relevant to mortgage servicers, and the authors recommend that servicers contact their local NC counsel for more detailed information on how to ensure compliance with these new legislative changes.