



HOUSE BILL 469: Foreclosures/Extend Servicemember Protections.

2023-2024 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	April 18, 2023
Introduced by:	Reps. Cleveland, Shepard	Prepared by:	Brian Gwyn*
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *The 2nd edition of House Bill 469 would prohibit a creditor from exercising a power of sale foreclosure during a debtor's period of military service or within the 365 days after a debtor's period of military service ends.*

CURRENT LAW: Foreclosure pursuant to a power of sale is regulated by Article 2A of Chapter 45 of the General Statutes. A "sale" is defined as a sale of real property or a sale of any leasehold interest created by a lease of real property pursuant to an express power of sale contained in a mortgage, deed of trust, leasehold mortgage, or leasehold deed of trust, or a "power of sale" authorized by any other statutory provision. A power of sale foreclosure gives the lender the power to sell the real property if the borrower defaults.

A power of sale foreclosure requires the Clerk of Superior Court to find the following:

- Written notice was provided to the debtor and other specified parties.
- A valid debt of which the party seeking to foreclose is the holder.
- There was a default on the debt.
- A right to foreclose was included in the deed of trust.
- Foreclosure is not barred due to military service.

If the clerk makes these findings, the clerk must authorize the lender to proceed in exercising the power of sale. However, a lender may not exercise a power of sale foreclosure for active duty servicemembers during or within the 90 days after a period of military service. G.S. 45-21.12A specifically bars a Clerk of Superior Court from holding a hearing to determine if the power of sale foreclosure may be exercised within 90 days of the end of a servicemember's period of service.

The federal Servicemembers Civil Relief Act provides certain legal protections for servicemembers, including a prohibition on certain foreclosures. Any servicemember who has a mortgage loan that was taken out prior to his or her military service is protected against a non-judicial foreclosure, including a power of sale foreclosure, during service and for 365 days afterward, except when there has been a court order authorizing the foreclosure that occurred prior to that foreclosure. (See 50 U.S.C. § 3953). A lender may still exercise a foreclosure right, but the lender must obtain a court order or obtain a waiver from the servicemember.

BILL ANALYSIS: The bill would prohibit a hearing to determine if the power of sale foreclosure could be exercised and would also prohibit a lender from exercising a power of sale foreclosure for active duty servicemembers during or within 365 days after a servicemember's period of service provided the loan was taken out prior to the servicemember's military service.

EFFECTIVE DATE: The bill would be effective December 1, 2023, and would apply to notices of hearings filed on or after that date.

*Hillary Woodard, staff attorney with the Legislative Analysis Division, substantially contributed to this summary.

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