

NOTE: Use of this form is at the sole risk of the abstractor and no guarantees are made herein.

FORECLOSURE ABSTRACT

File No. _____ SP _____ Date Filed: _____ County: _____

DT TO BE FORECLOSED: _____ Other Counties: _____

Borrower(s): _____

Current Mailing Address: _____

Evidence of Military Service (Currently or W/in 90 days): _____

Per NCGS §45-21.12A Power of Sale barred during periods of military service; Has service member waived this right? Y/N Need to file Certification with the Clerk Re: Hearing not scheduled during or Within 90 days after, a period of military service for the debtor? Y/N

Trustee: _____ Substituted Trustee: _____

Book & Page of Sub-Trustee: _____

Lender: _____

Loan Assigned? Y/N; If Y, to: _____

Book & Page of Loan Assignment: _____

Property: _____

Physical Address: _____

Power of Sale: Y/N; Where in DT? _____

NOTICE OF HEARING

Filed: _____ Date of Hearing: _____ Continued Date of Hearing: _____

Parties to be Served {Named in DT/Any Obligor/Every Record Owner w/ Present or Future Interest} & Address:

- (1) _____
- (2) _____
- (3) _____
- (4) _____

Manner/Date of Service {Must be served at least 10 days before hearing date}:

- (1) _____
- (2) _____
- (3) _____
- (4) _____

Posted at PIQ on _____ {at least 20 days b/f Hearing} By Sheriff? Y/N Sheriff's Affidavit? Have/Need

*If Hearing continued, Send Order of Continuance by 1st class mail to last known address

ANY WAIVER OF RT TO NOTICE? Y/N If Loan ≥ \$100,000 AND after default, Borrower can waive right to notice/hearing in a written, signed, acknowledged statement. Lender or Trustee can request the Clerk to mail waiver form to any other party after service of the Notice of Hearing

NOTICE OF HEARING CONTENTS

__ Description of DT>>>Date>>>Amount>>>Original Holder>>>Book _____, Page _____

__ Name & address of current holder

__ Nature of default

__ Statement creditor has accelerated maturity of the debt

__ Right of debtor to pay or cure the default

__ Statement sent (w/in 30 days) by 1st class mail to last known address: P&I due/Other costs/Per diem interest

__ Statement whether (w/in last 2 years) debtor made any requests to servicer/Status of requests

__ Right of debtor to appear at the hearing and:

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- D does not have to appear
- D can apply to Superior Ct. to enjoin sale
- Trustee will ask for a sale of the property
- Trustee is a neutral party
- D can contest the evidence
- D has right to an Atty/Free Legal Aid
- Purchaser will be entitled to possession; Can evict debtor
- Trustee's name; address & telephone number
- D is to keep T advised of D's address/contact information
- Notice of Sale (if included)
- Notice will be sent if date of hearing changes

PRE-FORECLOSURE NOTICE {Required until 5-31-13 if Notice of Hearing filed 11-1-10 or later}

EVIDENCE OF COMPLIANCE WITH w/ EMERGENCY PROGRAM TO REDUCE HOME FORECLOSURES

- Written notice to D at last known address sent at least 45 days prior to filing Notice of Hearing;
 - Itemization of past due amount
 - Itemization of other charges
 - Debtor's options
 - Contact info for lender/servicer/agent
 - Contact info for HUD approved credit counseling agency
 - Contact info for NC Commissioner of Banks
 - Within 3 business days of the above notice; the Lender or Servicer must E-File w/ the NC Comm. of Banks:
 - 1—Debtor's name and address
 - 2—Due date of the last payment made by debtor
 - 3—Date the above notice mailed to the debtor
- NOTE: Lender/Servicer pays \$75 to Office of the Commissioner of Banks towards State Home Foreclosure Prevention Fund**

AT THE HEARING, the Clerk will find (1)evidence of a valid debt upon which the holder is seeking to foreclose; (2) default; (3) right to foreclose exists and (4) notice given to those entitled AND UNTIL 5-31-2013: (5) The mortgage debt is not a home Loan per NCGS §45-101(1b) or if it is a home loan, then the pre-foreclosure notice was given; and (6) the sale is not barred by NCGS §45-21.12A (Debtor in Military Service). **If Owner Occupied Residential Property:** The clerk shall inquire if the property is D's primary residence; whether the lender/servicer/trustee have communicated with D and tried to resolve delinquency short of foreclosure; Clerk shall continue the hearing if the Clerk finds good cause to believe additional time or measures have a reasonable likelihood of resolving the delinquency without foreclosure. The Clerk's inquiry is not required if the lender/trustee file an affidavit describing efforts to resolve the default and the results of those efforts.

DISCUSS>>> 1) In Re Gilmore: Signature on notice of hearing

2) In Re Adams: Is the possessor of note a "holder"?

3)In Re Gilbert: Name of entity on chain of endorsements?

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4) In Re Yopp: Corporate merger yielded “holder” status

NOTICE OF SALE CONTENTS/REQUIREMENTS

- DT being foreclosed upon described by recording data and names of original borrowers
- ID current record owner if different from original borrower; Last 10 days of Reg. of Deeds records
- Date, Hour, Place of Sale
- Description of real property to be sold
- Terms of Sale; Cash deposit required
- Any other information as required by or in the DT
- Whether PIQ sold subject to taxes, special assessments, etc....
- Whether PIQ sold subject to or together with any other subordinate rights
- Order for Possession may be issued (If rental residential w/ less than 15 units)
- Tenant may terminate lease upon 10 days’ written notice to landlord (If rental residential; ≤ 15 units)
- Posted ≥ 20 days before the sale @ designated place in courthouse for public sales AND:
 - Once/week for 2 consecutive weeks in a paper qualified for legal advertising
 - Published at least 7 days apart; Last date of publication is not more than 10 days b/f the sale
- Mailed by 1st class mail at least 20 days b/f sale date to each party entitled to notice of the hearing
AND to named resident or “Occupant” if residential and less than 15 units
- IF POSTPONED; Notice sent to required parties; Can be postponed to a day certain not later than 90 days after the original sale date; New sale date cannot fall on a Sunday or legal holiday

DISCUSS>>> 1) In Re Wilson: Debtor failed to take any action

2) In Re Hackley: Debtor relied on bankruptcy petition; His record on appeal did not contain all referenced documents

3) In Re Cornblum: Appeal does not stay execution sale; Trial court’s decision allowing the sale was set aside, but the Court of Appeals would not set aside the sale

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EVIDENCE OF BANKRUPTCY? Notice of bankruptcy received _____; Need to postpone sale? Y/N; Need to refund any bids/deposits? Y/N; Stay lifted? Y/N; Date of re-sale: _____

REPORT OF SALE to be filed within 5 days of the sale; AOC form no. AOC-SP-400 has all required information; Date filed _____ + 10 days = _____ (last date to file an upset bid)

UPSET BID(S) to be filed by the close of normal business hours on the 10th day after the filing of the Report of Sale; Can be filed on the day when the Clerk's office is open for regular business if the 10th days falls on a Sunday or legal holiday.

_____ Evidence of upset bid filed; Date filed _____ + 10 days = _____ ; Amount \$ _____
_____ Multiple upset bids filed; Last date filed _____; Final bid amount \$ _____

FINAL REPORT OF SALE to be filed within 30 days of receipt of sale proceeds; AOC form no. AOC-SP-402 has all required information; Date filed _____; Approved by the Clerk on _____

_____ Copies of notices of sale/resale which were posted to be filed by trustee

_____ Copies of notices of sale/resale which were published to be filed by trustee

_____ Affidavit of publication filed

_____ If necessary or required by the Clerk>>affidavit f/ trustee that notice of hearing, sale or resale was served on all parties entitled thereto

MISCELLANEOUS NOTES:
