

04 NCAC 03M .0703 CESSATION OF FORECLOSURE ACTIVITY DURING PENDENCY OF LOSS MITIGATION REQUEST

(a) A mortgage servicer shall not initiate or further a foreclosure proceeding or impose a charge incident to a foreclosure proceeding during the pendency of a loss mitigation request. This requirement does not apply if:

- (1) the borrower has failed to comply with the terms of a loss mitigation plan within the previous 12 months, if the loss mitigation plan:
 - (A) was implemented pursuant to a Federal or State foreclosure prevention program, including the Home Affordable Modification Program; or
 - (B) reduced the monthly payment of loan by six percent from the scheduled monthly payment and resulted in a monthly payment of principal, interest, taxes, and insurance of less than 31 percent of the borrower's household income;
- (2) the mortgage servicer has provided a final response regarding a loss mitigation request within the last 12 months and believes that the current loss mitigation request was not made in good faith;
- (3) the borrower has failed to comply with a Chapter 13 bankruptcy repayment plan or has had any bankruptcy proceedings dismissed for abuse of process within the last 12 months;
- (4) the loss mitigation request is received by the servicer after the time for appealing an order granting foreclosure of the secured residential real estate has passed in accordance with Article 2A of Chapter 45; or
- (5) the servicing contract or the terms of the mortgage loan, entered into prior to October 1, 2009, prohibits such a delay.

(b) Nothing in this Rule shall prevent a mortgage servicer, in order to avoid dismissal or any other adverse order in a foreclosure proceeding that was initiated prior to the loss mitigation request being received, from filing or causing to be filed any pleading or notice that is required under Article 2A of Chapter 45, the Rules of Civil Procedure, or the Local Rules of Court to continue or delay further proceedings.

*History Note: Authority G.S. 53-244.110(7); 53-244.118(a);
Eff. June 1, 2010;
Readopted Eff. August 1, 2018.*