



# State of North Carolina

## OFFICE OF THE COMMISSIONER OF BANKS

MICHAEL F. EASLEY  
GOVERNOR

JOSEPH A. SMITH, JR.  
COMMISSIONER OF BANKS

### Frequently Asked Questions for Servicers

October 29, 2008 – Updated

#### 1. How does a servicer access the database to file a pre-foreclosure notice?

Servicers will need to set up log-in accounts to access the pre-foreclosure filing database. These accounts will be set up in different ways, depending on the type of institution servicing the loans:

- a. *Licensed mortgage bankers and mortgage brokers:* Institutions licensed with NCCOB as mortgage bankers or mortgage brokers will be able to access the pre-foreclosure filing database through their NCCOB account. For banker/brokers with a separate servicing contact, the database will permit the institution to have two qualified individuals (one for origination and one for servicing).
- b. *Exempt organizations:* Institutions that are exempt from the requirements of the Mortgage Lending Act (banks, thrifts, and credit unions) may set up their account by filing a form with NCCOB. The form is available at:  
<http://www.nccob.org/NR/rdonlyres/F349D5EA-879C-4E52-9299-B432E19007BB/0/MLA04ClaimofExemption.pdf>
- c. *Stand-alone servicing institutions not otherwise exempt or licensed as mortgage bankers:* Servicers that are not licensed as mortgage bankers or mortgage brokers currently and not otherwise exempt by virtue of their status as a depository institution will need to apply for a license as a mortgage servicer in order to service loans after January 1, 2009. In order to set up an account in the pre-foreclosure filing database, you will need to begin the application process for a servicing license. To get started, please see information on the Nationwide Mortgage Licensing System at:  
[http://www.stateregulatoryregistry.org/AM/Template.cfm?Section=North\\_Carolina](http://www.stateregulatoryregistry.org/AM/Template.cfm?Section=North_Carolina)

#### 2. When will the pre-foreclosure filing database be available?

The pre-foreclosure filing database will be available by October 1, 2008. Servicers will be able to access that database either through the website for the Administrative Office of the Courts at: [www.nccourts.org](http://www.nccourts.org) or through NCCOB's website at: [www.nccob.org](http://www.nccob.org).

**3. What is the contact information of the Office of the Commissioner of Banks required for the pre-foreclosure notice?**

For pre-foreclosure letters mailed after October 1, 2008, the contact number for the consumer complaints division of the Office of the Commissioner of Banks is 888-442-8188. This number will not be functional prior to October 1, 2008.

**4. Where can a servicer find a list of HUD-approved counseling agencies operating to assist borrowers to avoid foreclosure?**

The U.S. Department of Housing and Urban Development maintains a list of HUD-approved counseling agencies.<sup>1</sup> In addition, the State Home Foreclosure Prevention Project will publish a list of counseling agencies in North Carolina that are participating in this program on by September 26, 2008. This list will be available at NCCOB's website ([www.nccob.org](http://www.nccob.org)) and at our foreclosure website: [www.ncforeclosurehelp.org](http://www.ncforeclosurehelp.org).

**5. What information will be *required* to be filed with the pre-foreclosure database?**

Servicers will need to provide the following information for every notice submitted to the database:

- a. Name of the borrower(s)
- b. Address of the property
- c. Date the pre-foreclosure notice was mailed to the borrower
- d. Information necessary to determine if the loan is a subprime loan (note: if servicer does not provide these additional fields, the database will presume that the loan is a subprime loan)

**6. What additional *optional* information will servicers be able to provide to assist the State outreach efforts to homeowners?**

The database will permit servicers to provide additional information that will enable the State Home Foreclosure Prevention Project to target its outreach efforts and to connect homeowners to available resources. For instance, the database will enable servicers to identify if the servicer believes the property is vacant or if the servicer has knowledge that the homeowner has recently lost a job.

**7. How can a servicer determine if a loan is subprime?**

NCCOB has published a chart<sup>2</sup> and instructions<sup>3</sup> to assist servicers in making the determination if a loan is subprime and covered by this program. In addition, the pre-foreclosure filing database will enable servicers to input information into the database to determine if the loan is subprime, for purposes of this program.

---

<sup>1</sup> <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm?webListAction=search&searchstate=NC>

<sup>2</sup> <http://www.nccob.org/NR/rdonlyres/3EF67B49-075E-4DA7-A164-19F4603F7B3D/0/triggerratable1520and30yearloanfinalVersionstwh.pdf>.

<sup>3</sup> <http://www.nccob.org/NR/rdonlyres/02549F13-BFF8-4CEF-9C8A-CFD47C8BD5BF/0/Ratespreadcalculation.pdf>.

**8. Do servicers need to submit loans originated prior to January 1, 2005?**

Some servicers have been filing loans prior to this date in order to receive a certificate that the loan was not a subprime loan for purposes of this program. We have discussed this matter with the Administrative Office of the Courts and do not believe this should be necessary since the origination date is on the face of the underlying loan note. If a foreclosing party submits acceptable evidence that loan was originated prior to January 1, 2005, it should not be necessary to obtain a certificate from the pre-foreclosure notice database.

**9. Why are phone numbers of homeowners requested?**

A key component of our program is the State Home Foreclosure Prevention Project's effort to contact homeowners directly. We have the capacity to make outbound phone calls to homeowners to complement existing efforts by creditors and servicers to reach homeowners. Please provide phone numbers, if available, to support our outreach efforts.

**8. What should a servicer do if they are unable to determine if a loan is subprime or if the servicer does not wish to expend the resources to make such a determination?**

In the event the servicer is unable to determine if a loan is subprime, the servicer may choose to send a pre-foreclosure notice and file the notice in the database. This loan will be treated as a subprime loan for purposes of the program. Any 30-year loan originated with an Annual Percentage Rate (APR) of less than 7.28% is not a subprime loan under this program.

**9. Can a servicer send in a batch file of pre-foreclosure notice filings?**

Not at this time. The pre-foreclosure filing database requires individual submission of pre-foreclosure notices; however, NCCOB intends to update the database by the end of the year to accept batch files of notices.

**10. What evidence will servicers need to prove they have complied with this program?**

Clerks of Court are vested with the authority to determine if a foreclosure filing meets the requirements of Chapter 45. The pre-foreclosure filing database will enable servicers to print a certificate directly from the database to indicate that the loan was filed in the database, that the servicer has submitted the date of the pre-foreclosure notice to the database, and that the period of time required by the statute has elapsed as of a particular date. This certification cannot be printed prior to the end of the time period required by the statute. The database will also enable servicers to print a certificate that indicates that, based on information provided to the database, the loan was not a subprime loan.

**11. What should a servicer do if the servicing of a loan is transferred after the filing of the pre-foreclosure notice, but before the filing of the foreclosure?**

If servicing of a subprime loan is transferred after a pre-foreclosure notice is filed, the new servicer should send the homeowner a new pre-foreclosure notice and re-file the information with the database to ensure the homeowner has received the correct contact information for the mortgage servicer authorized to work with the borrower to avoid foreclosure. Both the new and the old servicer should notify NCCOB of the servicing transfer in order to assist the homeowner in connecting to the appropriate party.

**12. How will servicers be notified if the Commissioner of Banks extends the foreclosure filing date by 30 days?**

The Commissioner will notify the servicer by mail to contact information in the database. Upon request, NCCOB will send an e-mail notification to the qualifying individual. In addition, servicers will be able to review the status of each loan submitted to the database to identify if a foreclosure filing date has been extended.

**13. When do each of the new requirements begin?**

***For Foreclosure filed before November 1***

The law applies only to foreclosures filed after November 1, 2008. There is no requirement that the pre-foreclosure notice and pre-foreclosure information be provided where the foreclosure is filed before November 1, regardless of when the foreclosure hearing is held.

***For Foreclosures Filed After November 1***

For any foreclosure filed on or after November 1 and involving a subprime loan, the servicer will be required to send the pre-foreclosure notice and provide the pre-foreclosure information. The Commissioner of Banks will have the authority to delay the foreclosure filing by thirty days.

For all foreclosures filed on or after November 1, 2008 the Clerk will be required to make a finding that either (a) the loan is not subprime or that the pre-foreclosure notice requirement and the time periods under Article 11 has been fulfilled.

***For Foreclosures Filed After November 15, 2008***

As of November 15, 2008, the Notice of Hearing will have to contain a certification that the pre-foreclosure notice and the pre-foreclosure information have been provided the time periods under Article 11 have elapsed. A materially inaccurate certification shall be grounds for dismissal without prejudice of the foreclosure.