

North Carolina Update: A look into the new CFPB regulations and their impact on foreclosure proceedings

By: *Claire L. Collins and Natasha M. Barone – Hutchens Law Firm*

On January 10, 2014, the Consumer Financial Protection Bureau (“CFPB”) introduced new changes to loan servicing and loss mitigation regulations that have impacted mortgage servicers nationwide. The CFPB’s singular goal in implementing these changes was to afford greater protections to borrowers seeking loss mitigation options in order to prevent foreclosure. These highly anticipated changes have drastically changed foreclosure procedure in the State of North Carolina and have also raised new concerns in power of sale foreclosure proceedings.

As a result of the new CFPB regulations, a servicer in North Carolina is prohibited from filing the notice of hearing, which initiates a power of sale foreclosure, until the borrower’s loan is more than 120 days delinquent. 12 CFR § 1024.41(f). Additionally, now a servicer cannot hold a foreclosure hearing or proceed with a foreclosure sale if the borrower is *performing* pursuant to the terms of a loss mitigation agreement. 12 CFR § 1024.41(g).

In addition to altering foreclosure procedure, mortgagors have attempted to argue before the court in power of sale foreclosures that an alleged violation of the CFPB’s regulations should prevent the foreclosure hearing from proceeding. However, this is an equitable argument that is outside the scope of the court’s jurisdiction in a power of sale foreclosure hearing.

In North Carolina, it is well established that the court is without jurisdiction to consider equitable defenses in a power of sale foreclosure hearing pursuant to section 45-21.16 of the General Statutes. *Meehan v. Cable*, 127 N.C. App. 336 (1997). North Carolina courts have routinely held that a foreclosure hearing under 45-21.16 is “not intended to settle all matters in controversy between mortgagor and mortgagee, nor was it designed to provide a second procedure for invoking equitable relief.” *In re David A. Simpson, P.C.*, 711 S.E.2d 165 (2011). This applies not only to hearings before the clerk of court, but also during appeals to the North Carolina Superior Court, the North Carolina Court of Appeals and the North Carolina Supreme Court. Although, a mortgagor would have a private right of action to allege a violation of the new CFPB regulations pursuant to Section 6(f) of the Real Estate Settlement Procedures Act (“RESPA”), such a claim is equitable in nature and should be raised in a separate civil action.