

**04 NCAC 03M .0702 REQUIREMENTS FOR MORTGAGE SERVICERS TO
COMMUNICATE EFFECTIVELY WITH BORROWERS
REGARDING LOSS MITIGATION**

(a) A mortgage servicer shall acknowledge, in writing, a borrower's loss mitigation request no later than 10 (ten) business days after the request. The acknowledgement must identify any information needed from the borrower in order for the mortgage servicer to consider the borrower's loss mitigation request. For purposes of this Rule and Rule .0703 of this subchapter, a loss mitigation request is considered received by a servicer upon the borrower or the borrower's agent contacting the servicer at the address, phone or other contact information required to be provided to borrowers in a notice complying with G.S. 53-244.111(22).

(b) A mortgage servicer shall respond to a loss mitigation request from a borrower no later than thirty (30) business days after the receipt of all information necessary from the borrower to assess whether or not a borrower qualifies for any loss mitigation programs offered by the mortgage servicer.

(c) A mortgage servicer shall include in a final response denying a loss mitigation request the reason for the denial and contact information for a person at the mortgage servicer with authority to reconsider the denial. In addition, the denial shall also include the following statement, in a boldface type and in a print no smaller than the largest print used elsewhere in the main body of the denial: 'If you believe the loss mitigation request has been wrongly denied, you may file a complaint with the North Carolina Office of the Commissioner of Banks website, www.nccob.gov.'

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

[Codified version will be posted by the N.C. Office of Administrative Hearings at <http://reports.oah.state.nc.us/ncac.asp?folderName=\Title%2004%20-%20Commerce\Chapter%2003%20-%20Banking%20Commission.>]

**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; provided however, that 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 6 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 reasonably 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 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 which was initiated prior to the loss mitigation request being received, from filing or causing to be filed any pleading or notice which 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);
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