

39-7-115 Mortgage foreclosures.

- (1) The creditor of a service member who, prior to entry into military service, has entered into a mortgage contract with the service member or his dependent for the purchase of real or personal property may not foreclose on the mortgage or repossess the property for nonpayment or any breach occurring during military service without an order from a court of competent jurisdiction.
- (2) The court, upon application to it under this section, may, unless the court finds on the record that the ability of the service member to comply with the terms of the mortgage is not materially affected by reason of his military service:
 - (a) order repayment of any prior installments or deposits as a condition of terminating the contract and resuming possession of the property;
 - (b) order a stay of the proceedings on its own motion, or on motion by the service member or another person on his behalf; or
 - (c) make any other disposition of the case as it considers to be equitable to conserve the interests of all parties.
- (3) In order to come within the provisions of this section, the service member or dependent shall establish the following:
 - (a) that relief is sought on an obligation secured by a mortgage, trust deed, or other security in the nature of a mortgage on either real or personal property;
 - (b) that the obligation originated prior to the service member's entry into military service;
 - (c) that the property was owned by the service member or his dependent prior to the commencement of military service; and
 - (d) that the property is still owned by the service member or his dependent at the time relief is sought.
- (4) Any person who knowingly forecloses on property which is the subject of this section other than as provided in Subsection (1) is guilty of a misdemeanor.

Enacted by Chapter 306, 1997 General Session