

April 18, 2007

H 1708. "SUBJECT TO" REAL ESTATE TRANSACTIONS. Filed 4/18/07. *TO REGULATE "SUBJECT TO" REAL ESTATE TRANSACTIONS.*

Enacts new Article 6 of GS Chapter 75 regulating "subject to" real estate transactions. Declares that it is an unfair and deceptive trade practice for a person to willfully induce or cause another person to take an action that activates a due on sale clause in a mortgage without first providing notice to the other person. Allows the seller of a covered property (defined as residential property in the state with no more than two dwelling units, one of which is the owner's principal residence, that is subject to a mortgage containing a due on sale clause) to cancel the sale by notifying the covered person (as defined) in writing within the specified time frame. Enumerates the ways in which a mortgage on a covered property may be extinguished. Requires a covered person to provide the owner of the covered property a statement, as provided in the bill, before executing a contract entering into a covered transaction (a transaction in which a buyer purchases covered property in which the mortgage will not be extinguished at the time title passes from the owner to the buyer). Makes it an unfair and deceptive trade practice for a person to advertise that they will "take over payments" and to then enter into a transaction for the purchase of covered property in which the advertiser fails to agree to pay the indebtedness or extinguish the mortgage. Excludes specific types of transactions from the article. Effective for contracts for covered transactions entered into on or after October 1, 2007.

Intro. by Stam, Ross.

GS 75

May 7, 2007

H 1708. "SUBJECT TO" REAL ESTATE TRANSACTIONS. Filed 4/18/07. House committee substitute makes the following changes to 1st edition. Modifies proposed GS 75-120 as follows: (1) modifies the definition of *covered person* to remove the requirement that the covered property not be used as the person's primary residence and to exclude a licensed attorney acting under GS Chapter 84 (attorneys at law); (2) modifies the definition of *covered property* to provide that at least one of the dwelling units must have been the owner's principal residence within the previous two months (previous language required the dwelling to be occupied as the owner's principal residence); (3) adds a definition of *covered real estate seminar*; (4) modifies the definition of *covered transaction* to include a covered person instead of a buyer; (5) removes two or more persons that have a joint or common interest from the definition of *person*; and (6) changes the definition of *purchase* to the acquisition of an interest in covered property, however denominated or structured. Modifies proposed new GS 75-121 to prohibit a covered person from engaging in a covered transaction without the mortgagee or the beneficiary of the pre-existing deed of trust giving express consent (previous language made it an unfair trade practice to willfully induce, counsel, aid, or cause another person to take an action that would activate a due on sale clause in a mortgage without providing notice to the other person first). Modifies proposed new GS 75-122 to also require the seller to notify the settlement agent in writing in order to cancel the transaction. Modifies proposed new GS 75-124 to change the notice statement to provide that an owner of the covered property may cancel the contract, by following the listed procedure, after receiving their lender's consent and entering into the contract. Modifies proposed GS 75-125 to prohibit the listed advertising practice (previous language said that the advertising practice was an unfair and deceptive trade practice). Enacts new GS 75-126 to require a person conducting a covered real estate seminar to provide a copy of the article as part of the seminar materials and prohibiting the person from instructing anyone to engage in the practice prohibited in the article. Makes conforming statute renumbering.