

April 2, 2009

H 1057. ABOLISH CERTAIN DEFICIENCY JUDGMENTS (=S 819). Filed 4/2/09. *TO ABOLISH DEFICIENCY JUDGMENTS WHERE THE MORTGAGE IS SECURED BY PRIMARY RESIDENCE.*

Identical to S 819, filed 3/24/09.

Intro. by Blue.

GS 45

April 30, 2009

H 1057. ABOLISH CERTAIN DEFICIENCY JUDGMENTS. Filed 4/2/09. House committee substitute makes the following changes to 1st edition. Amends proposed GS 45-21.38A to condition the abolishment of deficiency judgments where the mortgage is secured by a primary residence and foreclosed under power of sale on whether the defaulted mortgage loan was a rate spread loan as defined in GS 24-1.1F or a nontraditional loan featuring a negative amortization payment option. Provides that this provision does not apply to Home Equity Lines of Credit, construction loans, or bridge loans.

Amends proposed GS 45-21.38B, applying to mortgages made on or after January 1, 2010, to condition the abolishment of deficiency judgments where the mortgage is secured by a primary residence and foreclosed under power of sale, or as a result of a court action, on whether the defaulted mortgage loan was a rate spread loan as defined in GS 24-1.1F or a nontraditional loan featuring a negative amortization payment option. Also provides that this provision does not apply to Home Equity Lines of Credit, construction loans, or bridge loans.

Makes a conforming change to the title.

May 12, 2009

H 1057. ABOLISH CERTAIN DEFICIENCY JUDGMENTS. Filed 4/2/09. House amendment makes the following changes to 2nd edition. Adds a provision to GS 45-21-38A and GS 45-21-38B providing that those sections do not apply to a loan made by a natural person who makes no more than one loan in a 12-month period and is not in the business of lending.

July 21, 2009

H 1057. ABOLISH CERTAIN DEFICIENCY JUDGMENTS. Filed 4/2/09. Senate committee substitute makes the following changes to 3rd edition. Deletes proposed GS 45-21.38B (regarding abolishing deficiency judgments where the mortgage is secured by the primary residence and made on or after January 1, 2010). Amends the catch line for new GS 45-21.38A to read, *deficiency judgments abolished where mortgage secured by primary residence* (deletes "and foreclosed under power of sale"). Amends new GS 45-21.38A and reformats its provisions. Provides that this section, which abolishes the ability of a mortgagee or trustee to secure a deficiency judgment in the sale of real property secured by a borrower's primary residence, applies only to a rate spread home loan or a nontraditional mortgage. Provides that this section does not apply to (1) a home equity line of credit as defined in GS 45-81(a), (2) a construction loan as defined in GS 24-10(c), (3) a reverse mortgage as defined in GS 53-257, (4) a bridge loan with a term of 12 months or less, and (5) a loan made by a natural person who makes no more than one loan in a 12-month period and who is not in the business of lending. Also provides that this section does not apply to a loan that is secured by a subordinate lien on the borrower's principal dwelling; however, makes an exception if the loan was made at the same time as a rate spread home loan or a nontraditional mortgage that is subject to the provisions of this section.

Abolishes deficiency judgments in foreclosures of a borrower's principal residence that are commenced under a power of sale clause contained in a mortgage or deed of trust, if the mortgage or deed of trust was recorded before January 1, 2010. Also abolishes deficiency judgments for a mortgage or a deed of trust recorded for a principal residence on or after January 1, 2010, if the real property being foreclosed was sold as a consequence of a judicial proceeding or under a power of sale clause contained in the mortgage or deed of trust.

Adds a definition for the term *nontraditional mortgage loan* specifying that the (1) borrower must be a natural person; (2) the debt must be incurred by the borrower primarily for personal,

family, or household purposes; (3) the principal loan amount cannot exceed Fannie Mae's guidelines regarding the conforming loan size for a single family dwelling; (4) the loan must be secured by a security interest in a manufactured home, or a mortgage or deed of trust on real property where there is an existing structure designed for occupancy that is or will be occupied as the borrower's principal dwelling, or a mortgage or deed of trust on real property where a structure is to be completed that will be occupied by the borrower as the borrower's principal dwelling; and (5) the terms of the loan allow the borrower to defer payment of principal or interest and allow or provide for negative amortization of the loan balance.

Authorizes the court, at its discretion, to award reasonable attorneys' fees to a borrower who prevails in an action brought by the holder of the obligation to recover a deficiency judgment following a foreclosure under this section and the court rules that the holder is not entitled to a deficiency judgment under this section.

Makes this act effective October 1, 2009 (was, when it becomes law) and provides that it applies to actions filed on or after that date.