

March 26, 2009

S 1015. HOMEOWNER AND HOMEBUYER PROTECTION ACT. Filed 3/25/09. *TO ENACT THE HOMEOWNER AND HOMEBUYER PROTECTION ACT TO PROHIBIT HOME FORECLOSURE RESCUE SCAMS AND OFFER PROTECTIONS IN LAND INSTALLMENT SALES.*

Enacts a new Article 6 (Home Foreclosure Rescue Scams) in GS Chapter 75. New GS 75-121 makes it unlawful for a person other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, participate in, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain. Violations are unfair trade practices under GS 75-1.1. Exempts certain transactions. Defines relevant terms.

Enacts new GS Chapter 47G entitled Land Installment Contracts. Enacts various new provisions including: GS 47G-2, specifying the contents of land installment contracts; GS 47G-3, requiring escrow of down payments on land installment contracts; GS 47G-4, protecting the rights of tenants under a residential lease agreement in connection with land installment contracts; GS 47G-5, specifying when a purchaser's rights may be forfeited and the right to cure; GS 47G-6, specifying the requirements of a notice of intent to forfeit; GS 47G-7, requiring the vendor to provide the purchaser periodic statements of account; GS 47G-8, pertaining to the purchaser's right to cancel the contract; GS 47G-9, requiring the vendor to hold unencumbered title; GS 47G-10, capping late payment charges at 4% of the past due amount; and GS 47G-11, making the vendor liable for attorney's fees if the purchaser prevails in a lawsuit to enforce the provisions of the new Chapter. Defines relevant terms. Effective October 1, 2009.

Intro. by Stein.

GS 47G, 75

May 13, 2009

S 1015. HOMEOWNER AND HOMEBUYER PROTECTION ACT. Filed 3/25/09. Senate committee substitute makes the following changes to 1st edition. Makes technical changes only.

May 13, 2009

S 1015. HOMEOWNER AND HOMEBUYER PROTECTION ACT. Filed 3/25/09. Senate amendment makes the following changes to 2nd edition. Completely rewrites bill as follows. Creates Article 6 to GS Chapter 75 dealing with home foreclosure rescue scams to make it unlawful for person other than the transferor to carry out a foreclosure rescue transaction (as defined in bill) for financial gain. Makes violation of provision an unfair trade practice. Adds new GS Chapter 47G, Land Installment Contracts. Requires option contracts to buy real property as part of lease agreements to be in writing and requires seller to deliver to purchaser an exact copy of the contract, and failure to do so makes contract voidable. Requires contracts to be recorded in register of deeds office. Specifies that provisions of GS Chapter 42 apply to portion of contract that is for the lease, but if purchaser exercises right to purchase, Chapter 42 provisions no longer apply. Provides that purchaser's right to exercise option may not be forfeited unless there is a breach of contract. Specifies notice to be provided if seller of optioned property is selling property subject to lien or mortgage, and option purchaser's rights in event the option seller defaults on the underlying loan secured by the lien or mortgage. Adds new GS Chapter 47H, Contracts for Deed. Requires contract for deed (agreement in which the seller agrees to sell an interest in property to purchaser and purchaser agrees to pay the purchase price in five or more payments, and seller retains title to the property as security) to be in writing and spells out in detail the provisions that must be in contract. Requires seller to deliver to purchaser an exact copy of the contract, and failure to do so makes contract voidable. Requires contracts to be recorded in register of deeds office. Provides for escrow of down payments. Specifies that forfeiture of purchaser's right may only occur if contract breached, and spells out purchaser's remedies if seller violates provisions of the statute. Spells out in detail the contents of the notice of default and intent of seller to forfeit purchaser's interest. Spells out purchaser's options to cure the default. Requires annual statement of account for purchaser. Gives purchaser right to cancel contract fourteen days after signing contract or three days after moving in, whichever is earlier. Requires seller to own property in fee simple that is the subject of a contract for deed, subject to certain exceptions. Limits late fees for payments under a contract for deed to 5% of amount that is past due. Effective October 1, 2009, for transactions on or after that date.

June 2, 2010

S 1015. HOMEOWNER AND HOMEBUYER PROTECTION ACT. Filed 3/25/09. House committee substitute makes the following changes to 3rd edition.

Home Foreclosure Rescue Scams. Amends proposed GS 75-120 to clarify that among the transferees in an exempt transaction is (1) a member of the transferor's immediate family as defined in GS 53-244-030(13) (was, a member of the transferor's family); (2) a bank, savings institution, or credit union organized under US law or the laws of any state; (3) a mortgage lender or mortgager service licensed by the Commissioner of Banks under Article 19B of GS Chapter 53.

Amends the definition for *default* to mean whenever a property owner is more than 60 days delinquent on any loan or debt secure by the property, including real estate taxes (was, whenever a mortgagor missed two or more consecutive scheduled mortgage payments).

Amends the definition for *foreclosure rescue transaction* to provide the features that must exist include (1) a transfer of residential real property in which legal proceedings have been initiated to foreclose on the transferor's property (was, the transferor has received written notice from the lender of the lender's intent to foreclose on the property); and (2) to a transferee's failure to pay at least 82% of the fair market value (FMV) of the property to the transferor (was, transferee fails to pay consideration of at least 50% of the FMV to the transferor). Also provides process for determining FMV of the property. Adds a definition for *property* as real property upon which one or more single-family dwellings are located.

Enacts new GS 75-122 to make a violation of proposed GS 75-121 (prohibiting engaging in foreclosure rescue transactions for financial gain or the expectation of financial gain) an unfair trade practice under GS 75-1.1 and provides that homeowners may seek remedies for such violations. Requires actions to be commenced within four years of the violation.

Option to Purchase Contracts. Amends title of new GS Chapter 47G to *Option to Purchase Contracts Executed With Lease Agreements* (was, Land Installment Contracts). Adds a definition for *cure the default*, provides that this term is the same as *cure*. Amends the definition for *property* to remove manufactured homes as defined in GS 143-149.9 and meeting specified conditions. Applies the same definition to covered lease agreement or lease agreement. Defines option contract or contract to mean an option contract for the purchase of real property that includes or is combined with, or executed in conjunction with, a covered lease agreement. Extends the definition of *option seller or seller* to provide that if an option contract is assigned or sold to a third party, the assignor is an option seller for the purposes of proposed GS Chapter 47G.

Changes the catch line for proposed GS 47G-2 to *minimum contents of option purchase contracts; recordation* (was, minimum contents of land installment sales contracts). Provides that every option contract and every assignment of an option contract is to contain all of the terms to which the parties have agreed and to be signed by all the parties to the contract. Requires the seller to deliver an exact copy of the contract with all of the required disclosures when the purchaser signs the contract. Delineates the minimal content of an option contract, including that it must contain a conspicuous statement, in at least 14 point boldface type, immediately above the purchaser's signature, stating that the purchaser has the right to cancel the contract within three business days after receiving a copy of the contract. Provides additional criteria governing the cancellation of the contract. Deletes the requirement that the recordation of the contract is to be at the purchaser's expense. Makes conforming changes identifying the contract as an "option contract."

Provides that the provisions of GS Chapter 42 (landlord tenant law) apply to covered lease agreements. States the conditions under which a purchaser's right to purchase property under an option contract may be forfeited. Prohibits the forfeiture of the purchaser's rights without notice of the intent to forfeit under GS 47G-5 and the opportunity to cure the default. Amends proposed GS 47G-5 to provide criteria for the content of a notice of default and intent to forfeit. Requires that the notice of default and intent to forfeit must be delivered to the option purchaser by hand delivery or by any manner authorized by GS 1A-1, Rule 4.

Adds new GS 47G-6 to provide title requirements that must be met prior to the execution of an option contract and adds new GS 47G-7 regarding notice of encumbrances on the title of a property that is subject to transfer via an option contract. Prohibits an option seller from executing

an option contract with an option purchaser if at the time the option contract is entered into and recorded the property is not free of encumbrances unless the seller notifies the purchaser of the encumbrances. Specifies the content and format of the required notice to the purchaser. Provides that a violation of any provision of proposed GS Chapter 47G constitutes an unfair trade practice under GS 75-1.1 and provides that an option purchaser may seek remedies for such violations.

Contracts for Deeds. Amends proposed GS Chapter 47H, *Contracts for Deeds*, to clarify the definitions applying in the chapter. Defines contract or contract for deed as applying to an agreement regardless if it's named a (1) contract for deed, (2) installment land contract, (3) land contract, (4) bond for title, or any other title or description in which the seller and the purchaser meet the specified conditions in the sale and purchase of the property. Specifies that a seller must deliver an exact copy of the contract, with all the disclosures, when the purchaser signs the contract. Provides that among the required content for a contract for deed contract are provisions regarding encumbered property, copies of restrictive covenants, and a conspicuous statement of the buyer's right to cancel within three business days after receiving a copy of the contract. Also provides additional guidelines regarding the purchaser's right to cancel. Provides that a notice of default and intent to forfeit must contain a statement that the contract will be forfeited if all defaults are not cured by a date less than 30 days (was, 45 days) after the notice is sent or any longer other period specified in the contract. Provides requirements as to title, including prohibiting a seller from executing a contract for deed with a purchaser for property for which the seller does not hold title. Also requires that the seller provide conspicuous notice in a specified format for a sale property that is encumbered. Deletes provisions regarding escrow of the down payment. Also deletes requirement that seller hold unencumbered legal title. Deletes provision that a late fee that is in excess of 5% is declared usurious. Makes violations of Chapter 47H an unfair and deceptive trade practice subject to the remedies of GS 75-1.1.

Amends GS 143-143.13(a) to add failing to comply with the provisions of proposed Chapters 47G and 47H as grounds for denying, suspending, or revoking of one's license as a manufactured homes salesperson.

Effective date is October 1, 2010 (was, October 1, 2009) and applies to transactions on or after that date. Makes conforming change to the title.

June 29, 2010

S 1015. HOMEOWNER AND HOMEBUYER PROTECTION ACT. Filed 3/25/2009. House committee substitute makes the following changes to 4th edition.

Proposed Chapter 47G. Adds operating subsidiaries and affiliates of banks, credit unions, and savings institutions to the list of exempt transactions when that entity is the transferee. Amends proposed GS 75-121 to make it unlawful for a person or entity (was, person only) other than the transferor to engage, in any way, with a foreclosure rescue transaction *unless*, prior to or at the time of the transfer, the transferee pays the transferor at least 50% of the fair market value of the property as determined by a licensed appraiser no more than 60 days before the transfer. Makes a conforming change to add *entity* throughout. Amends proposed GS 75-122 to declare that the provisions of the section are not enforceable against a bona fide purchaser for value, and deletes the requirement that any action brought under the section must be commenced within four years from the date of alleged violation. Amends proposed GS 47G-2 to require the seller to record the option contract or a memorandum within five business days (was, within 20 days) after the option contract has been signed and acknowledged by seller and purchaser. Outlines the effect of forfeiture and procedures extinguishing the purchaser's equitable right of redemption. Deletes provision detailing encumbrances on title in the context of an option contract. States that nothing in proposed GS Chapter 47G can be construed to subject an individual homeowner selling his or her primary residence directly to an option purchaser to liability under GS 75-1.1.

Proposed Chapter 47H. Makes clarifying changes and adds to the contents required for inclusion in a contract for deed contract under proposed GS 47H-2. Requires a seller to record the contract or a memorandum within five business days (was, 20 days) after the contract is signed and acknowledged by seller and purchaser. Outlines the effect of forfeiture and procedures extinguishing the purchaser's equitable right of redemption. Makes clarifying changes to proposed GS 47H-6 (title requirements). Allows a late fee to be charged under the Chapter

only if payments are more than 15 days past due. States that nothing in proposed GS Chapter 47H can be construed to subject an individual homeowner selling his or her primary residence directly to a buyer to liability under GS 75-1.1.

Makes additional conforming, clarifying, and technical changes, and expands the title.

July 6, 2010

S 1015. HOMEOWNER AND HOMEBUYER PROTECTION ACT. Filed 3/25/09. House amendments make the following changes to 5th edition.

Amendment #3. Amends proposed GS 75-120 to clarify that the definition for *foreclosure rescue transaction* includes a transfer of residential real property in which the transferor retains an interest in the property conveyed (was, retained an interest by oral or written agreement).

Amends proposed GS 75-121 to provide that before the transfer of residential real property in a foreclosure rescue transaction, a licensed appraiser must determine the fair market value of the property no more than 90 days before the transfer (was, no more than 60 days before the transfer).

Adds new subsection (b) to proposed GS 75-121 to require that every contract for foreclosure rescue transaction in which the transferee pays at least 50% of the fair market value of the property (1) be in writing, (2) be signed and acknowledged by all of the parties to the contract, (3) and contain all the terms agreed to by the parties. Additionally requires that the contract contain (i) the names and addresses of all parties, (ii) the legal description of the transferred property, (iii) any financial obligation of the transferor that the transferee will assume, (iv) the total amount the transferee is to pay, (v) the fair market value of the property, (vi) a description of the interest in the property that is retained by transferor as provided in GS 75-120(3)d, and (vii) the terms of the transferor's right to any future possession or ownership interest in the property.

Amendment #4. Amends proposed GS 75-120 to delete a bona fide nonprofit organization that regularly provides financial, housing, or social services to individuals from the definition for an exempt foreclosure transaction.

Makes organizational changes.

August 12, 2010

SL 2010-164 (S 1015). HOMEOWNER AND HOMEBUYER PROTECTION ACT. AN ACT TO ENACT THE HOMEOWNER AND HOMEBUYER PROTECTION ACT TO PROHIBIT HOME FORECLOSURE RESCUE SCAMS IN WHICH A TRANSFEROR IS INDUCED TO SELL PROPERTY FOR LESS THAN FIFTY PERCENT OF ITS FAIR MARKET VALUE TO AVOID FORECLOSURE, TO PROVIDE PROTECTIONS IN LEASE OPTION CONTRACTS BY REQUIRING THAT SUCH CONTRACTS BE IN WRITING, INCLUDE SPECIFIED MINIMUM CONTENTS, BE RECORDED, GIVE PURCHASERS UNDER THE CONTRACT NOTICE OF AND THE RIGHT TO CURE ANY DEFAULT, AND SPECIFY THE CONSEQUENCES OF A SELLER'S DEFAULT ON A LOAN SECURED BY A LIEN ON THE PROPERTY, TO PROVIDE PROTECTIONS IN CONTRACT FOR DEED TRANSACTIONS BY REQUIRING THAT SUCH CONTRACTS BE IN WRITING, INCLUDE SPECIFIED MINIMUM CONTENTS, BE RECORDED, GIVE PURCHASERS UNDER THE CONTRACT NOTICE OF AND THE RIGHT TO CURE ANY DEFAULT, AND INVOLVE PROPERTY TO WHICH THE SELLER HOLDS TITLE, AND TO MAKE VIOLATION OF CHAPTERS 47G AND 47H OF THE GENERAL STATUTES A BASIS FOR DISCIPLINE UNDER THE MANUFACTURED HOMES LICENSING ACT. Summarized in *Daily Bulletin* 3/26/09, 5/13/09, 6/2/10, 6/29/10, and 7/6/10. Enacted August 2, 2010. Effective October 1, 2010.