



ADOPTED

NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 1015

AMENDMENT NO. 1
(to be filled in by
Principal Clerk)

S1015-AST-25 [v.1]

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Comm. Sub. [YES]
Amends Title [NO]
Second Edition

Date 5-13, 2009

Senator Stein

1 moves to amend the bill on page 1, line 14 through page 6, line 24 by rewriting those lines to
2 read:

- 3
- 4 (1) Exempt transaction. – A foreclosure rescue transaction in which the
- 5 transferee is any of the following:
- 6 a. A member of the transferor's family.
- 7 b. A bona fide nonprofit organization that regularly provides financial,
- 8 housing, or social services to individuals.
- 9 c. A state, federal, or local government agency or organization.
- 10 (2) Default. – Whenever a mortgagor misses two or more consecutive scheduled
- 11 payments on a mortgage.
- 12 (3) Foreclosure rescue transaction. – A transfer of residential real property,
- 13 including a manufactured home, which includes all of the following features:
- 14 a. The real property is the principal residence of the transferor.
- 15 b. The transferor is in default or has received written notification from
- 16 the lender of the intent to foreclose on a mortgage loan obligation
- 17 that is secured by the transferor's principal residence.
- 18 c. The transferee, an agent of the transferee, or others acting in concert
- 19 with the transferee make representations that the transfer of the
- 20 residential property will enable the transferor to prevent, postpone, or
- 21 reverse the effect of foreclosure and to remain in the residence.
- 22 d. By written or oral agreement, the transferor retains an interest in the
- 23 property conveyed, including a tenancy interest, an interest under a
- 24 lease-purchase agreement, an option to reacquire the property, or any
- 25 other legal, equitable, or possessory interest in the property
- 26 conveyed.
- 27 e. The transferee fails to pay consideration to the transferor in an
- 28 amount of at least 50 percent of the fair market value of the property.

29 **"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.**

30 It is unlawful for a person other than the transferor to engage in, promise to engage in,

31 arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for

32 financial gain or with the expectation of financial gain. This section does not apply to exempt

33 transactions. A violation of this section is an unfair trade practice under G.S. 75-1.1."



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1 (c) Recordation. Within 20 days after the contract has been signed by both the seller
2 and the purchaser, the seller shall cause a copy of the contract or a memorandum of the contract
3 to be recorded at the purchaser's expense in the register of deeds in the county where the
4 property sold under the contract is located. If a memorandum of the contract is recorded, it shall
5 be entitled "Memorandum of Option Contract" and shall contain, as a minimum, the names of
6 the parties, the signatures of the parties, a description of the property and applicable time
7 periods. A person other than a seller and purchaser may rely on the recorded materials in
8 determining whether the requirements of this subsection have been met.

9 **"§ 47G-3. Escrow of down payment.**

10 The provisions of Chapter 42 of the General Statutes apply to the portion of the contract
11 that is a residential lease agreement. After a tenant exercises an option to purchase leased
12 property under a residential lease, Chapter 42 of the General Statutes shall no longer apply to
13 the lease.

14 **"§ 47G-4. Protection of tenants' rights.**

15 (a) A purchaser's right to exercise an option to purchase property under an option
16 contract cannot be forfeited unless a breach has occurred in one or more of the purchaser's
17 obligations under the option contract and the option contract provides that as a result of such
18 breach the seller is entitled to forfeit the contract.

19 (b) In addition to any other remedies at law, a seller's violation of this section entitles
20 the purchaser to either a claim for damages or the right to rescind the contract and seek the
21 return of all payments that have been made under the option contract.

22 **"§ 47G-5. Conditions of forfeiture; right to cure.**

23 (a) An option seller may not execute an Option Contract with an option purchaser if, at
24 the time the option contract is entered into and recorded, the property is encumbered by a lien,
25 mortgage or encumbrance unless the vendor notifies the purchaser in a separate written
26 disclosure:

27 (1) That the property is subject to one or more outstanding mortgages, liens, or
28 other encumbrances.

29 (2) In 14-point type, of the fact that if the option seller fails to make timely
30 payments, the lien holder may attempt to collect the debt by foreclosing on
31 the lien and selling the property at a foreclosure sale.

32 (b) If, at any time prior to the expiration of the time period in which the option purchaser
33 has a right to exercise the option to purchase, the obligor defaults on a loan secured by a lien or
34 mortgage on the property, the option purchaser may elect to exercise the option or cancel and
35 rescind the contract.

36 (c) A violation of this section is a violation of G.S. 75-1.1 and in addition to other rights or
37 remedies provided by law, entitles the option purchaser to cancel and rescind the option
38 contract and/or lease agreement and receive from the option seller:

39 (1) The return of all payments of any kind made to the option seller under the
40 contract.

41 (2) Reimbursement for the value of any improvements made to the property by
42 the option purchaser."

43 **SECTION 4.** The General Statutes are amended by adding a new Chapter to read:

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- 1 (2) The date the contract is signed by each party.
- 2 (3) A legal description of the property conveyed.
- 3 (4) The sales price of the property conveyed.
- 4 (5) Any charges or fees for services included in the contract separate from the
5 sale price.
- 6 (6) The amount of the purchaser's down payment.
- 7 (7) The principal balance owed by the purchaser, which is the sum of the
8 amounts stated in subdivisions (4) and (5) of this subsection, less the amount
9 stated in subdivision (6) of this subsection.
- 10 (8) The amount and due date of each installment payment and the total number
11 of installment payments.
- 12 (9) The interest rate on the unpaid balance, if any, and the method of
13 determining the interest rate.
- 14 (10) A conspicuous statement of any pending order of any public agency or other
15 matters of public record affecting the property.
- 16 (11) A statement of the rights of the purchaser to cure a default.
- 17 (12) A statement setting forth the obligation of each party who is responsible for
18 making repairs to the property, the payment of taxes, hazard insurance
19 assessments, homeowner association dues and other charges against the
20 property from the date of the contract.
- 21 (13) A provision that the purchaser has the right to accelerate or prepay any
22 installment payments without penalty.
- 23 (14) A description of conditions of the property that includes whether any
24 structure on the property has water, sewer, septic, and electricity service,
25 whether the property is in a floodplain, whether anyone else has a legal
26 interest in the property, and whether restrictive covenants prevent building
27 or installing a dwelling.
- 28 (15) A statement indicating the amount of any real estate taxes and/or
29 homeowner association dues, or special assessments owed on the property
30 that is the subject of the contract, and the amount of such taxes dues, or
31 assessments that are delinquent.
- 32 (16) A statement of the purchaser's right to cancel pursuant to G.S. 47G-7.

33 (c) At the time the purchaser signs the contract, the seller shall deliver to him an exact
34 copy of the contract. If the seller fails to provide a copy of the contract, or the contract does not
35 contain the minimum provisions, the contract signed by the purchaser is voidable at the option
36 of the purchaser, and the seller, on demand, shall immediately refund to the purchaser all
37 payments and deposits that have been made. However, the contract shall not be voidable simply
38 as a result of clerical errors, momentary delays in the provision of an exact copy of the contract
39 to the purchaser, or other immaterial errors.

40 (d) Recordation. Within 20 days after the contract has been signed by both the seller
41 and the purchaser, the seller shall cause a copy of the contract or a memorandum of the contract
42 to be recorded at the purchaser's expense in the register of deeds in the county where the
43 property sold under the contract is located. If a memorandum of the contract is recorded, it shall

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1 (6) An itemized statement of, or to the extent not known at the time the notice of
2 default and intent to forfeit is given or recorded, a reasonable estimate of, all
3 payments of money in default and, for defaults not involving the failure to
4 pay money, a statement of the action required to cure the default.

5 (7) Any additional information required by the contract or other agreement with
6 the seller.

7 (b) Any notice of default and intent to forfeit must be served on the purchaser in
8 accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. Any notice
9 of default and intent to forfeit must also be served on the occupant of the dwelling that is the
10 subject of the contract for deed, if different from the purchaser.

11 (c) In addition to any other remedies at law, a seller's violation of this section entitles
12 the purchaser to either a claim for damages or the right to rescind the contract and seek the
13 return of all payments, deposits, and down payments that have been made under the contract. If
14 the purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal
15 to the fair market value of the use of the property during the duration of the purchaser's
16 possession of the property plus an amount necessary to compensate the seller for any damages
17 caused to the property by the purchaser beyond normal wear and tear.

18 "§ 47H-6. Periodic statements of account.

19 The seller shall provide the purchaser with a statement of account at least once every
20 12-month period for the term of a Contract for Deed. The statement must include at least the
21 following information:

22 (1) The amount paid under the contract.

23 (2) The remaining amount owed under the contract.

24 (3) The number of payments remaining under the contract.

25 (4) The amounts paid to taxing authorities on the purchaser's behalf, if collected
26 by the seller.

27 (5) The amounts paid to insure the property on the purchaser's behalf, if
28 collected by the seller.

29 (6) If the property has been damaged and the seller has received insurance
30 proceeds, an accounting of the proceeds applied to the property.

31 (7) If the property is encumbered by a lien or mortgage pursuant to
32 G.S. 47G-8(b), the outstanding balance of the loan that is secured by the
33 property.

34 "§ 47H-7. Purchaser's right to cancel contract.

35 (a) In addition to any other rights or remedies provided by law, the purchaser may cancel
36 and rescind an Contract for Deed for any reason by sending by certified or registered mail,
37 return receipt requested, or by delivering in person a signed, written notice of cancellation to
38 the seller not later than the third day after taking possession of the property or the fourteenth
39 day after the date of the signing of the contract, whichever is earlier.

40 (b) If the purchaser cancels the contract pursuant to subsection (a) of this section, the seller
41 shall, not later than the tenth day after the date the seller receives the purchaser's notice of
42 cancellation, or the tenth day after the property is vacated, whichever occurs the latest, inspect
43 the subject property. Within five days of inspection, the vendor shall return to the purchaser