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SESSION 2009

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SENATE BILL 1015
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PROPOSED HOUSE COMMITTEE SUBSTITUTE S1015-PCS55613-RO-108

Short Title: Homeowner and Homebuyer Protection Act.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE HOMEOWNER AND HOMEBUYER PROTECTION ACT TO
3 PROHIBIT HOME FORECLOSURE RESCUE SCAMS AND OFFER PROTECTIONS
4 IN LEASE OPTION AND CONTRACT FOR DEED TRANSACTIONS.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. This act shall be known and may be cited as the "Homeowner and
7 Homebuyer Protection Act."

8 SECTION 2. Chapter 75 of the General Statutes is amended by adding a new
9 Article to read:

10 "Article 6.

11 "Home Foreclosure Rescue Scams.

12 "§ 75-120. Definitions.

13 The following definitions shall apply in this Article:

- 14 (1) Exempt transaction. – A foreclosure rescue transaction in which the
15 transferee is any of the following:
16 a. A member of the transferor's immediate family as defined in
17 G.S. 53-244-030(13).
18 b. A bona fide nonprofit organization that regularly provides financial,
19 housing, or social services to individuals.
20 c. A state, federal, or local government agency or organization.
21 d. A bank, savings institution, or credit union organized under the laws
22 of the United States or any state.
23 e. A mortgage lender or mortgage servicer licensed by the
24 Commissioner of Banks under Article 19B of Chapter 53 of the
25 General Statutes.
26 (2) Default. – Whenever a property owner is more than 60 days delinquent on
27 any loan or debt that is secured by the property, including real estate taxes.
28 (3) Foreclosure rescue transaction. – A transfer of residential real property,
29 including a manufactured home, which includes all of the following features:
30 a. The real property is the principal residence of the transferor.
31 b. The transferor is in default or legal proceedings have been initiated to
32 foreclose on the transferor's property.



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- 1 c. The transferee, an agent of the transferee, or others acting in concert
2 with the transferee make representations that the transfer of the
3 residential property will enable the transferor to prevent, postpone, or
4 reverse the effect of foreclosure and to remain in the residence.
- 5 d. By written or oral agreement, the transferor retains an interest in the
6 property conveyed, including a tenancy interest, an interest under a
7 lease-purchase agreement, an option to reacquire the property, or any
8 other legal, equitable, or possessory interest in the property
9 conveyed.
- 10 e. The transferee fails to pay to the transferor at least eighty-two
11 percent (82%) of the fair market value of the property. Fair market
12 value shall be determined by an appraisal performed by a licensed
13 appraiser. The appraisal must be performed no more than 60 days
14 prior to the transfer. The appraisal shall be delivered to the transferor
15 no more than three days after the appraisal is performed and no less
16 than seven days prior to the transfer of the property.

- 17 (4) Property. – Real property upon which there is located one or more
18 single-family dwellings, including an individual condominium unit,
19 cooperative unit, manufactured home, or mobile home.

20 **"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.**

21 It is unlawful for a person other than the transferor to engage in, promise to engage in,
22 arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for
23 financial gain or with the expectation of financial gain. This section does not apply to exempt
24 transactions.

25 **"§ 75-122. Remedies.**

26 A violation of G.S. 75-121 is an unfair trade practice under G.S. 75-1.1. A homeowner may
27 bring an action for the recovery of damages, to void a prohibited foreclosure rescue transaction,
28 as well as for declaratory or equitable relief for a violation of this Article. The rights and
29 remedies provided herein are cumulative to, and not a limitation of, any other rights and
30 remedies provided by law or equity. Any action brought pursuant to this section must be
31 commenced within four years from the date of the alleged violation."

32 **SECTION 3.** The General Statutes are amended by adding a new Chapter to read:

33 **"Chapter 47G.**

34 **"Option to Purchase Contracts Executed With Lease Agreements.**

35 **"§ 47G-1. Definitions.**

36 The following definitions apply in this Chapter:

- 37 (1) Covered lease agreement or lease agreement. – A residential lease agreement
38 that is combined with, or is executed concurrently with, an option contract.
- 39 (2) Cure the default. – To perform the obligations under the lease agreement
40 and/or option contract that are described in the notice of default and intent to
41 forfeit required by G.S. 47G-5 and that are necessary to reinstate the lease
42 agreement and/or the option contract. This term is synonymous with the term
43 'cure.'
- 44 (3) Forfeiture. – The termination of an option purchaser's rights to exercise an
45 option to purchase property that is the subject of the option contract, and
46 those rights of persons claiming by or through an option purchaser, to the
47 extent permitted by this Chapter, because of a breach of one or more of the
48 purchaser's obligations under the option contract and/or covered lease
49 agreement.

- 1 (4) Option contract or contract. – An option contract for the purchase of real
2 property that includes or is combined with, or is executed in conjunction
3 with, a covered lease agreement.
4 (5) Option fee. – Any payment, however denominated, made by the option
5 purchaser to the option seller that constitutes the price the option purchaser
6 pays for the right to buy the property at a specified price in the future.
7 (6) Option purchaser or purchaser. – An individual who purchases an interest in
8 property under an option contract, or any legal successor in interest to that
9 individual.
10 (7) Option seller or seller. – A person that makes a sale of an option by means of
11 an option contract, or the person's successor in interest. If an option contract
12 is subsequently assigned or sold to a third party, the assignor shall be
13 deemed to be an option seller or seller for purposes of this Chapter.
14 (8) Property. – Real estate located in this State, upon which there is located or
15 there is to be located a structure or structures designed principally for
16 occupancy of from one to four families that is or will be occupied by the
17 purchaser as the purchaser's principal dwelling.

18 **§ 47G-2. Minimum contents of option purchase contracts; recordation.**

19 (a) Writing Required. – Every option contract, including any assignment of same, shall
20 be evidenced by a contract signed by all parties to it and containing all the terms to which they
21 have agreed. The seller shall deliver to the purchaser an exact copy of the contract, containing
22 all the disclosures required by subsection (b) of this section, at the time the purchaser signs the
23 contract.

24 (b) Contents. – An option contract shall contain at least all of the following:

- 25 (1) The full names and addresses of all the parties to the contract.
26 (2) The date the contract is signed by each party.
27 (3) A legal description of the property to be conveyed subject to an option to
28 purchase.
29 (4) The sales price of the property to be conveyed subject to an option to
30 purchase.
31 (5) The option fee and any other fees or payments to be paid by each party to the
32 contract.
33 (6) All of the obligations that if breached by the purchaser will result in
34 forfeiture.
35 (7) The time period during which the purchaser must exercise the option.
36 (8) A statement of the rights of the purchaser to cure a default, including that the
37 purchaser has the right to cure a default only once in any 12-month period
38 during the period of the covered lease agreement.
39 (9) A conspicuous statement, in not less than 14-point boldface type,
40 immediately above the purchaser's signature, that the purchaser has the right
41 to cancel the contract at any time within three business days after receiving a
42 copy of the contract that contains all the disclosures required by this
43 subsection.

44 (c) The purchaser may exercise the right to cancel the option contract until midnight of
45 the third business day following execution of the option contract or delivery of a copy of the
46 option contract, with the required minimum disclosures, whichever occurs last. If the purchaser
47 cancels the option contract, the seller shall, not later than the tenth day after the date the seller
48 receives the purchaser's notice of cancellation, return to the purchaser any and all property
49 exchanged or payments made by the purchaser under the option contract minus an offset of an
50 amount equal to the fair market value of the use of the property during the duration of the

1 purchaser's possession of the property plus an amount necessary to compensate the seller for
2 any damages caused to the property by the purchaser beyond normal wear and tear.

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

11 **"§ 47G-3. Application of Landlord Tenant Law.**

12 The provisions of Chapter 42 of the General Statutes apply to covered lease agreements.

13 **"§ 47G-4. Condition of forfeiture; right to cure.**

14 A purchaser's right to exercise an option to purchase property under an option contract
15 cannot be forfeited unless a breach has occurred in one or more of the purchaser's express
16 obligations under the option contract and the option contract provides that as a result of such
17 breach the seller is entitled to forfeit the contract. Notwithstanding any option contract or
18 covered lease agreement provisions to the contrary, the purchaser's rights shall not be forfeited
19 until the purchaser has been notified of the intent to forfeit in accordance with G.S. 47G-5 and
20 been given a right to cure the default and has failed to do so within the time period allowed.
21 The option purchaser is entitled to the right to cure a default at least once in every 12-month
22 period during the period of the covered lease agreement.

23 **"§ 47G-5. Notice of default and intent to forfeit.**

24 (a) A notice of default and intent to forfeit shall specify the nature of the default, the
25 amount of the default if the default is in the payment terms, the date after which the contract
26 will be forfeited if the purchaser does not cure the default, and the name and address of the
27 seller or the attorney for the seller. The period specified in the notice after which the contract
28 will be forfeited may not be less than 30 days after the notice of default and intent to forfeit is
29 sent, or before judgment is given in any action brought to recover the possession of the leased
30 premises pursuant to Article 3 of Chapter 42 of the General Statutes, whichever is earlier.

31 (b) Any notice of default and intent to forfeit must be delivered to the option purchaser
32 by hand delivery or by any manner authorized by G.S. 1A-1, Rule 4.

33 **"§ 47G-6. Title requirements.**

34 An option seller may not execute an option contract with an option purchaser unless, at the
35 time the option contract is entered into and recorded, (i) the option seller holds title to the
36 option property and is the mortgagor on any mortgage or deed of trust encumbering the option
37 property; or (ii) the option seller holds a real estate broker's license issued by the North
38 Carolina Real Estate Commission. An option contract executed in violation of this section is
39 voidable at the option of the option purchaser.

40 **"§ 47G-7. Encumbrances on title.**

41 (a) An option seller may not execute an option contract with an option purchaser if, at
42 the time the option contract is entered into and recorded, the property is encumbered by a lien,
43 mortgage, or encumbrance unless the seller notifies the purchaser in a separate written
44 disclosure:

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

47 (2) In 14-point type, boldface, capital letters, the following statement: **THIS**
48 **PROPERTY HAS EXISTING LIENS ON IT. IF THE SELLER FAILS**
49 **TO MAKE TIMELY PAYMENTS TO THE LIEN HOLDER, THE**
50 **LIEN HOLDER MAY FORECLOSE ON THE PROPERTY, EVEN IF**
51 **YOU HAVE MADE ALL YOUR PAYMENTS. YOU HAVE THE**

RIGHT TO HAVE YOUR ATTORNEY CONDUCT A TITLE SEARCH.

(b) If, at any time prior to the expiration of the time period in which the option purchaser has a right to exercise the option to purchase, the option seller defaults on a loan secured by a lien or mortgage on the property, the option purchaser may elect to exercise the option or cancel and rescind the contract and, in addition to any other remedies available at law or equity, seek the immediate return of all moneys paid by the option purchaser. If the purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal to the fair market value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear.

"§ 47G-8. Remedies.

A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1. An option purchaser may bring an action for the recovery of damages, to void a prohibited transaction, as well as for declaratory or equitable relief for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Any action brought pursuant to this section must be commenced within four years from the date of the alleged violation."

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

"Chapter 47H.

"Contracts for Deed.

"§ 47H-1. Definitions.

The following definitions apply in this Chapter:

- (1) Contract for deed or contract. – An agreement, whether denominated a "contract for deed," "installment land contract," "land contract," "bond for title," or any other title or description in which the seller agrees to sell an interest in property to the purchaser and the purchaser agrees to pay the purchase price in five or more payments exclusive of the down payment, if any, and the seller retains title to the property as security for the purchaser's obligation under the agreement.
- (2) Cure the default. – To perform the obligations under the contract that are described in the notice of default and intent to forfeit required by G.S. 47H-4 and that are necessary to reinstate the contract. This term is synonymous with the term 'cure.'
- (3) Down payment. – A payment made by the purchaser to the seller that constitutes part of the purchase price of property that is the subject of a contract for deed and that is made or agreed to in connection with the execution of that contract.
- (4) Forfeiture. – The termination of all of a purchaser's rights, title, and interest, and those of persons claiming by or through a purchaser, in property that is the subject of a contract for deed, to the extent permitted by this Chapter, because of a breach of one or more of the purchaser's obligations under the contract.
- (5) Property. – Either (i) real estate located in this State, upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families that is or will be occupied by the purchaser as the purchaser's principal dwelling, or (ii) a manufactured home, as that term is defined in G.S. 143-149.9, that is located in this State and is or will be occupied by a purchaser as the purchaser's principal dwelling, if the purchase price is five thousand dollars (\$5,000) or more.

- 1 (6) Purchaser. – An individual or entity that purchases an interest in property
2 under a contract for deed, or any legal successor in interest to that individual.
3 (7) Seller. – A person who makes a sale of property by means of a contract for
4 deed, or the person's successor in interest.

5 **"§ 47H-2. Minimum contents for contracts for deed; recordation.**

6 (a) Writing Required. – Every contract for deed shall be evidenced by a contract signed
7 by all parties to it and containing all the terms to which they have agreed. The seller shall
8 deliver to the purchaser an exact copy of the contract, containing all the disclosures required by
9 subsection (b) of this section, at the time the purchaser signs the contract.

10 (b) Contents. – A contract for deed contract shall contain at least all of the following:

- 11 (1) The full names and addresses of all the parties to the contract.
12 (2) The date the contract is signed by each party.
13 (3) A legal description of the property conveyed.
14 (4) The sales price of the property conveyed.
15 (5) Any charges or fees for services included in the contract separate from the
16 sale price.
17 (6) The amount of the purchaser's down payment.
18 (7) The principal balance owed by the purchaser, which is the sum of the
19 amounts stated in subdivisions (4) and (5) of this subsection, less the amount
20 stated in subdivision (6) of this subsection.
21 (8) The amount and due date of each installment payment and the total number
22 of installment payments.
23 (9) The interest rate on the unpaid balance, if any, and the method of
24 determining the interest rate.
25 (10) A conspicuous statement of any pending order of any public agency or other
26 matters of public record affecting the property.
27 (11) A statement of the rights of the purchaser to cure a default.
28 (12) A statement setting forth the obligation of each party who is responsible for
29 making repairs to the property, the payment of taxes, hazard insurance
30 assessments, homeowner association dues, and other charges against the
31 property from the date of the contract.
32 (13) A provision that the purchaser has the right to accelerate or prepay any
33 installment payments without penalty; unless the property is encumbered by
34 a mortgage and the seller will be liable for paying a prepayment penalty on
35 the mortgage in order to deliver title to the buyer, in which case the contract
36 may specify that the buyer will compensate the seller for the prepayment
37 penalty.
38 (14) A description of conditions of the property that includes whether the
39 property, including any structures thereon, has water, sewer, septic, and
40 electricity service, whether the property is in a floodplain, whether anyone
41 else has a legal interest in the property, and whether restrictive covenants
42 prevent building or installing a dwelling. If restrictive covenants are in place
43 that affect the property, a copy of the restrictive covenants shall be made
44 available to the purchaser.
45 (15) A statement indicating the amount of any real estate taxes and/or
46 homeowner association dues, or special assessments owed on the property
47 that is the subject of the contract, and the amount of such taxes, dues, or
48 assessments that are delinquent.
49 (16) A conspicuous statement, in not less than 14-point boldface type,
50 immediately above the purchaser's signature, that the purchaser has the right
51 to cancel the contract at any time within three business days after receiving a

1 copy of the contract that contains all the disclosures required by this
2 subsection.

3 (c) The purchaser may exercise the right to cancel the contract for deed until midnight
4 of the third business day following consummation of the contract for deed or delivery of a copy
5 of the contract with the required minimum contents, whichever occurs last. If the purchaser
6 cancels the contract, the seller shall, not later than the tenth day after the date the seller receives
7 the purchaser's notice of cancellation, return to the purchaser any and all property exchanged or
8 payments made by the purchaser under the contract minus an offset of an amount equal to the
9 fair market value of the use of the property during the duration of the purchaser's possession of
10 the property plus an amount necessary to compensate the seller for any damages caused to the
11 property by the purchaser beyond normal wear and tear.

12 (d) Recordation. – Within 20 days after the contract has been signed by both the seller
13 and the purchaser, the seller shall cause a copy of the contract or a memorandum of the contract
14 to be recorded in the register of deeds in the county where the property sold under the contract
15 is located. If a memorandum of the contract is recorded, it shall be entitled "Memorandum of a
16 Contract for Deed" and shall contain, as a minimum, the names of the parties, the signatures of
17 the parties, a description of the property, and applicable time periods.

18 **"§ 47H-3. Conditions of forfeiture; right to cure.**

19 A purchaser's rights under a contract for deed shall not be forfeited except as provided in
20 this Chapter. A contract for deed cannot be forfeited unless a breach has occurred in one or
21 more of the purchaser's express obligations under the contract and the contract provides that as
22 a result of such breach the seller is entitled to forfeit the contract. Furthermore, the purchaser's
23 rights shall not be forfeited until the purchaser has been notified of the intent to forfeit in
24 accordance with G.S. 47H-4 and been given a right to cure the default and has failed to do so
25 within the time period allowed. A timely tender of cure shall reinstate the contract for deed.

26 **"§ 47H-4. Notice of default and intent to forfeit.**

27 (a) The notice of default and intent to forfeit shall contain all of the following:

- 28 (1) The name, address, and telephone number of the seller and the seller's agent
29 or attorney giving the notice, if any.
- 30 (2) A description of the contract, including the names of the original parties to
31 the contract for deed.
- 32 (3) The physical address of the property.
- 33 (4) A description of each default under the contract on which the notice is based.
- 34 (5) A statement that the contract will be forfeited if all defaults are not cured by
35 a date stated in the notice which is not less than 30 days after the notice of
36 default and intent to forfeit is sent or any longer period specified in the
37 contract or other agreement with the seller.
- 38 (6) An itemized statement of, or to the extent not known at the time the notice of
39 default and intent to forfeit is given or recorded, a reasonable estimate of, all
40 payments of money in default, and, for defaults not involving the failure to
41 pay money, a statement of the action required to cure the default.
- 42 (7) Any additional information required by the contract for deed or other
43 agreement with the seller.

44 (b) Any notice of default and intent to forfeit must be delivered to the purchaser by
45 hand or by any manner authorized in G.S. 1A-1, Rule 4. Any notice of default and intent to
46 forfeit must also be delivered to the occupant of the dwelling that is the subject of the contract
47 for deed, if different from the purchaser.

48 **"§ 47H-5. Periodic statements of account.**

49 The seller shall provide the purchaser with a statement of account at least once every
50 12-month period for the term of a contract for deed. The statement must include at least the
51 following information:

- 1 (1) The amount paid under the contract.
- 2 (2) The remaining amount owed under the contract.
- 3 (3) The number of payments remaining under the contract.
- 4 (4) The amounts paid to taxing authorities, if paid or collected by the seller or
5 the purchaser.
- 6 (5) The amounts paid to insure the property on the purchaser's behalf, if
7 collected by the seller.
- 8 (6) If the property has been damaged and the seller has received insurance
9 proceeds, an accounting of the proceeds applied to the property.
- 10 (7) If the property is encumbered by a lien or mortgage pursuant to G.S. 47H-6
11 (b), the outstanding balance of the loan that is secured by the property.

12 **§ 47H-6. Title requirements.**

13 (a) A seller may not execute a contract for deed with a purchaser if the seller does not
14 hold title to the property. If the title is not held in fee simple, free from any liens, mortgages, or
15 other encumbrances, the seller may execute a contract for deed only if the mortgage or
16 encumbrance is in the name of the seller and meets at least one of the following conditions:

- 17 (1) It was placed on the property because of the conduct of the purchaser.
- 18 (2) It was agreed to by the purchaser as a condition of a loan obtained to place
19 improvements on the property, including utility and fire protection
20 improvements.
- 21 (3) It was placed on the property by the seller prior to the execution of the
22 contract for deed if the seller is a licensed general contractor within the
23 meaning of Chapter 87 of the General Statutes, a licensed manufactured
24 home dealer within the meaning of Article 9A of Chapter 143 of the General
25 Statutes, or a licensed real estate broker within the meaning of Chapter 93A
26 of the General Statutes, provided that the general contractor, manufactured
27 home dealer, or real estate broker continues to make timely payments on the
28 outstanding mortgage or encumbrance.
- 29 (4) It was placed on the property by the seller prior to the execution of the
30 contract for deed, if the seller is not a licensed general contractor within the
31 meaning of Chapter 87 of the General Statutes, a licensed manufactured
32 home dealer within the meaning of Article 9A of Chapter 143 of the General
33 Statutes, or a licensed real estate broker within the meaning of Chapter 93A
34 of the General Statutes, if the lien is attached only to the property sold to the
35 purchaser under the contract for deed, and the seller continues to make
36 timely payments on the outstanding mortgage or encumbrance.

37 (b) If the property being sold is encumbered by one or more mortgages, and the seller is
38 not a licensed general contractor within the meaning of Chapter 87 of the General Statutes, a
39 licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the
40 General Statutes, or a licensed real estate broker within the meaning of Chapter 93A of the
41 General Statutes, the seller must notify the purchaser in a separate written disclosure of all of
42 the following:

- 43 (1) The amount of the outstanding balance of the loan.
- 44 (2) The amount of the monthly payments due on the loan and the due date of
45 those payments.
- 46 (3) In 14-point type, boldface, capital letters, the following statement: **THIS**
47 **PROPERTY HAS EXISTING LIENS ON IT. IF THE SELLER FAILS**
48 **TO MAKE TIMELY PAYMENTS TO THE LIEN HOLDER, THE**
49 **LIEN HOLDER MAY FORECLOSE ON THE PROPERTY, EVEN IF**
50 **YOU HAVE MADE ALL YOUR PAYMENTS. YOU HAVE THE**

1 **RIGHT TO HAVE YOUR ATTORNEY CONDUCT A TITLE**
2 **SEARCH.**

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

10 **"§ 47H-7. Late fees.**

11 No seller may charge a late payment charge under a contract for deed in excess of four
12 percent (4%) of the amount of the payment past due.

13 **"§ 47H-8. Remedies.**

14 A violation of any provision of this Chapter constitutes an unfair trade practice under
15 G.S. 75-1.1. A purchaser may bring an action for the recovery of damages, to rescind a
16 transaction, as well as for declaratory or equitable relief, for a violation of this Chapter. The
17 rights and remedies provided herein are cumulative to, and not a limitation of, any other rights
18 and remedies provided by law or equity. Any action brought pursuant to this section must be
19 commenced within four years from the date of the alleged violation."

20 **SECTION 5.** G.S. 143-143.13(a) is amended by adding a new subdivision to read:

21 "(15) Failure to comply with the provisions of Chapters 47G and 47H of the
22 General Statutes."

23 **SECTION 6.** This act becomes effective October 1, 2010, and applies to
24 transactions on or after that date.