

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

S

D

SENATE BILL 1015  
Judiciary I Committee Substitute Adopted 5/12/09  
Third Edition Engrossed 5/13/09  
House Committee Substitute Favorable 6/2/10  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S1015-PCS65086-ROf-117

Short Title: Homeowner and Homebuyer Protection Act.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

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.

The General Assembly of North Carolina enacts:

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

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

"Article 6.

"Home Foreclosure Rescue Scams.

**"§ 75-120. Definitions.**

The following definitions shall apply in this Article:

- (1) Default. – Whenever a property owner is more than 60 days delinquent on any loan or debt that is secured by the property, including real estate taxes.
- (2) Exempt transaction. – A foreclosure rescue transaction in which the transferee is any of the following:



\* S 1 0 1 5 - P C S 6 5 0 8 6 - R O F - 1 1 7 \*

- 1           a.     A member of the transferor's immediate family as defined in  
2                 G.S. 53-244-030(13).  
3           b.     A bona fide nonprofit organization that regularly provides financial,  
4                 housing, or social services to individuals.  
5           c.     A state, federal, or local government agency or organization.  
6           d.     A bank, savings institution, or credit union, including operating  
7                 subsidiaries and affiliates, organized under the laws of the United  
8                 States or any state.  
9           e.     A mortgage lender or mortgage servicer licensed by the  
10                Commissioner of Banks under Article 19B of Chapter 53 of the  
11                General Statutes.
- 12       (3)   Foreclosure rescue transaction. – A transfer of residential real property,  
13           including a manufactured home that is permanently attached to the real  
14           property, which includes all of the following features:  
15           a.     The real property is the principal residence of the transferor.  
16           b.     The transferor is in default or legal proceedings have been initiated to  
17                 foreclose on the transferor's property.  
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       (4)   Property. – Real property upon which there is located one or more  
28           single-family dwellings, including an individual condominium unit,  
29           cooperative unit, manufactured home, or mobile home.

30   **"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.**

31       It is unlawful for a person or entity other than the transferor to engage in, promise to engage  
32       in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for  
33       financial gain or with the expectation of financial gain, unless prior to or at the time of transfer,  
34       the transferee pays the transferor at least fifty percent (50%) of the fair market value of the  
35       property as determined by a licensed appraiser. An appraisal to determine the fair market value  
36       of the property must be performed no more than 60 days prior to the transfer. The appraisal  
37       shall be delivered to the transferor no more than three days after the appraisal is performed and  
38       no less than seven days prior to the transfer of the property. This section does not apply to  
39       exempt transactions.

40   **"§ 75-122. Remedies.**

41       A violation of G.S. 75-121 is an unfair trade practice under G.S. 75-1.1. A homeowner may  
42       bring an action for the recovery of damages, to void a prohibited foreclosure rescue transaction,  
43       as well as for declaratory or equitable relief for a violation of this Article. The provisions of this  
44       section shall not be enforceable against a bona fide purchaser for value. The rights and  
45       remedies provided herein are cumulative to, and not a limitation of, any other rights and  
46       remedies provided by law or equity."

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

48                                   **"Chapter 47G.**

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

50   **"§ 47G-1. Definitions.**

51       The following definitions apply in this Chapter:

- 1           (1) Covered lease agreement or lease agreement. – A residential lease agreement  
2 that is combined with, or is executed concurrently with, an option contract.  
3           (2) Cure the default. – To perform the obligations under the lease agreement  
4 and/or option contract that are described in the notice of default and intent to  
5 forfeit required by G.S. 47G-5 and that are necessary to reinstate the lease  
6 agreement and/or the option contract. This term is synonymous with the term  
7 'cure.'  
8           (3) Forfeiture. – The termination of an option purchaser's rights to exercise an  
9 option to purchase property that is the subject of the option contract, and  
10 those rights of persons or entities claiming by or through an option  
11 purchaser, to the extent permitted by this Chapter, because of a breach of  
12 one or more of the purchaser's obligations under the option contract and/or  
13 covered lease agreement.  
14           (4) Option contract or contract. – An option contract for the purchase of  
15 property that includes or is combined with, or is executed in conjunction  
16 with, a covered lease agreement.  
17           (5) Option fee. – Any payment, however denominated, made by the option  
18 purchaser to the option seller that constitutes the price the option purchaser  
19 pays for the right to buy the property at a specified price in the future.  
20           (6) Option purchaser or purchaser. – An individual who purchases an interest in  
21 property under an option contract, or any legal successor in interest to that  
22 individual.  
23           (7) Option seller or seller. – A person or entity that makes a sale of an option by  
24 means of an option contract, or the person's or entity's successor in interest.  
25 If an option contract is subsequently assigned or sold to a third party, the  
26 assignor shall be deemed to be an option seller or seller for purposes of this  
27 Chapter.  
28           (8) Property. – Real property located in this State, upon which there is located or  
29 there is to be located a structure or structures designed principally for  
30 occupancy of from one to four families that is or will be occupied by the  
31 purchaser as the purchaser's principal dwelling.

32 **"§ 47G-2. Minimum contents of option contracts; recordation.**

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

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

- 39           (1) The full names and addresses of all the parties to the contract.  
40           (2) The date the contract is signed by each party.  
41           (3) A legal description of the property to be conveyed subject to an option to  
42 purchase.  
43           (4) The sales price of the property to be conveyed subject to an option to  
44 purchase.  
45           (5) The option fee and any other fees or payments to be paid by each party to the  
46 contract.  
47           (6) All of the obligations that if breached by the purchaser will result in  
48 forfeiture of the option.  
49           (7) The time period during which the purchaser must exercise the option.

1           (8) A statement of the rights of the purchaser to cure a default, including that the  
2           purchaser has the right to cure a default once in any 12-month period during  
3           the period of the covered lease agreement.

4           (9) A conspicuous statement, in not less than 14-point boldface type,  
5           immediately above the purchaser's signature, that the purchaser has the right  
6           to cancel the contract at anytime until midnight of the third business day  
7           following execution of the option contract or delivery of the contract,  
8           whichever occurs last.

9           (c) Right to Cancel. – The purchaser may exercise the right to cancel the option  
10          contract until midnight of the third business day following execution of the option contract or  
11          delivery of a copy of the option contract, with the required minimum disclosures, whichever  
12          occurs last. If the purchaser cancels the option contract, the seller shall, not later than the tenth  
13          day after the date the seller receives the purchaser's notice of cancellation, return to the  
14          purchaser any and all property exchanged or payments made by the purchaser under the option  
15          contract minus an offset of an amount equal to the fair rental value of the use of the property  
16          during the duration of the purchaser's possession of the property plus an amount necessary to  
17          compensate the seller for any damages caused to the property by the purchaser beyond normal  
18          wear and tear.

19          (d) Recordation. – Within five business days after the option contract has been signed  
20          and acknowledged by both the seller and the purchaser, the seller shall cause a copy of the  
21          option contract or a memorandum of the option contract to be recorded in the office of the  
22          register of deeds in the county in which the property is located. If a memorandum of the  
23          contract is recorded, it shall be entitled "Memorandum of Option Contract" and shall contain,  
24          as a minimum, the names of the parties, the signatures of the parties, a description of the  
25          property, and applicable time periods as described in subdivisions (b)(7) and (8) of this section.  
26          A person other than a seller and purchaser may rely on the recorded materials in determining  
27          whether the requirements of this subsection have been met. The seller shall pay the fee to  
28          record the document unless the parties agree otherwise.

29          (e) Effect of Forfeiture. – Upon default and forfeiture after proper notice of default and  
30          intent to forfeit and failure of the purchaser to substantially cure the default, the purchaser's  
31          equitable right of redemption shall be extinguished by:

32               (1) A mutual termination executed by the parties and recorded in the office of  
33               the register of deeds of the county in which the property is located, or

34               (2) A final judgment or court order entered by a court of competent jurisdiction  
35               that terminates the purchaser's rights to the property and extinguishes the  
36               equity of redemption. A certified copy of the order shall be recorded in the  
37               office of the register of deeds of the county in which the property is located  
38               pursuant to G.S. 1-228.

39          (f) No instrument purporting to extinguish the equity of redemption that is executed as  
40          a condition of the transaction or prior to a default will be effective.

41          **"§ 47G-3. Application of Landlord Tenant Law.**

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

43          **"§ 47G-4. Condition of forfeiture; right to cure.**

44               A purchaser's right to exercise an option to purchase property under an option contract  
45               cannot be forfeited unless a breach has occurred in one or more of the purchaser's express  
46               obligations under the option contract and the option contract provides that as a result of such  
47               breach the seller is entitled to forfeit the contract. Notwithstanding any option contract or  
48               covered lease agreement provisions to the contrary, the purchaser's rights shall not be forfeited  
49               until the purchaser has been notified of the intent to forfeit in accordance with G.S. 47G-5 and  
50               been given a right to cure the default and has failed to do so within the time period allowed.

1 The option purchaser is entitled to the right to cure a default once in every 12-month period  
2 during the period of the covered lease agreement.

3 **"§ 47G-5. Notice of default and intent to forfeit.**

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

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

14 **"§ 47G-6. Effect of seller's default on loan secured by mortgage or lien on property.**

15 If, at any time prior to the expiration of the time period in which the option purchaser has a  
16 right to exercise the option to purchase, a default occurs on a loan secured by a mortgage,  
17 security interest, or other lien on the property, the option purchaser may elect to exercise the  
18 option or cancel and rescind the contract and, in addition to any other remedies available at law  
19 or equity, seek the immediate return of all moneys paid by the option purchaser. If the  
20 purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal to  
21 the fair rental value of the use of the property during the duration of the purchaser's possession  
22 of the property plus an amount necessary to compensate the seller for any damages caused to  
23 the property by the purchaser beyond normal wear and tear.

24 **"§ 47G-7. Remedies.**

25 A violation of any provision of this Chapter constitutes an unfair trade practice under  
26 G.S. 75-1.1. An option purchaser may bring an action for the recovery of damages, to void a  
27 transaction executed in violation of this Chapter, as well as for declaratory or equitable relief  
28 for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and  
29 not a limitation of, any other rights and remedies provided by law or equity. Nothing in this  
30 Chapter shall be construed to subject an individual homeowner selling his or her primary  
31 residence directly to an option purchaser to liability under G.S. 75-1.1."

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

33 **"Chapter 47H.**

34 **"Contracts for Deed.**

35 **"§ 47H-1. Definitions.**

36 The following definitions apply in this Chapter:

- 37 (1) Contract for deed or contract. – An agreement, whether denominated a  
38 "contract for deed," "installment land contract," "land contract," "bond for  
39 title," or any other title or description in which the seller agrees to sell an  
40 interest in property to the purchaser and the purchaser agrees to pay the  
41 purchase price in five or more payments exclusive of the down payment, if  
42 any, and the seller retains title to the property as security for the purchaser's  
43 obligation under the agreement.
- 44 (2) Cure the default. – To perform the obligations under the contract that are  
45 described in the notice of default and intent to forfeit required by G.S. 47H-4  
46 and that are necessary to reinstate the contract. This term is synonymous  
47 with the term 'cure.'
- 48 (3) Down payment. – A payment made by the purchaser to the seller that  
49 constitutes part of the purchase price of property that is the subject of a  
50 contract for deed and that is made or agreed to in connection with the  
51 execution of that contract.

- 1           (4)    Forfeiture. – The termination of all of a purchaser's rights, title, and interest,  
2           and those of persons or entities claiming by or through a purchaser, in  
3           property that is the subject of a contract for deed, to the extent permitted by  
4           this Chapter, because of a breach of one or more of the purchaser's  
5           obligations under the contract.
- 6           (5)    Property. – Either (i) real estate located in this State, upon which there is  
7           located or there is to be located a structure or structures designed principally  
8           for occupancy of from one to four families that is or will be occupied by the  
9           purchaser as the purchaser's principal dwelling, or (ii) a manufactured home,  
10           as that term is defined in G.S. 143-149.9, that is located in this State and is  
11           or will be occupied by a purchaser as the purchaser's principal dwelling, if  
12           the purchase price is five thousand dollars (\$5,000) or more.
- 13           (6)    Purchaser. – An individual or entity that purchases an interest in property  
14           under a contract for deed, or any legal successor in interest to that individual.
- 15           (7)    Seller. – A person or entity that makes a sale of property by means of a  
16           contract for deed, or the person's or entity's successor in interest.

17 **"§ 47H-2. Minimum contents for contracts for deed; recordation.**

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

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

- 24           (1)    The full names and addresses of all the parties to the contract.
- 25           (2)    The date the contract is signed by each party.
- 26           (3)    A legal description and the physical address of the property conveyed.
- 27           (4)    The sales price of the property conveyed.
- 28           (5)    Any charges or fees for services included in the contract separate from the  
29           sale price.
- 30           (6)    The amount of the purchaser's down payment.
- 31           (7)    The principal balance owed by the purchaser, which is the sum of the  
32           amounts stated in subdivisions (4) and (5) of this subsection, less the amount  
33           stated in subdivision (6) of this subsection.
- 34           (8)    The amount and due date of each installment payment and the total number  
35           of installment payments.
- 36           (9)    The interest rate on the unpaid balance, if any, and the method of  
37           determining the interest rate.
- 38           (10)   A conspicuous statement of any pending order of any public agency or other  
39           matters of public record adversely affecting the property, provided the seller  
40           has actual knowledge of the pending order or matter.
- 41           (11)   A statement of the rights of the purchaser to cure a default.
- 42           (12)   A statement setting forth the obligation of each party who is responsible for  
43           making repairs to the property, the payment of taxes, hazard insurance  
44           premiums, flood insurance premiums, homeowner association dues, and  
45           other charges against the property from the date of the contract.
- 46           (13)   A provision that the purchaser has the right to accelerate or prepay any  
47           installment payments without penalty; unless the property is encumbered by  
48           a deed of trust as permitted by G.S. 47H-6 and the loan secured by the  
49           property contains a prepayment penalty, in which case the contract may  
50           specify that the purchaser will compensate the seller for the prepayment  
51           penalty.

- 1           (14) A description of conditions of the property that includes whether the  
2 property, including any structures thereon, has water, sewer, septic, and  
3 electricity service, whether the property is in a floodplain, whether anyone  
4 else has a legal interest in the property, and whether restrictive covenants  
5 prevent building or installing a dwelling. If restrictive covenants are in place  
6 that affect the property, a copy of the restrictive covenants shall be made  
7 available to the purchaser at or before the execution of the contract.
- 8           (15) A statement indicating the current amount of any real estate taxes and/or  
9 homeowner association dues, or special assessments required to be paid on  
10 the property, and the amount of such taxes, dues, or assessments that are  
11 delinquent. To the extent these amounts are not known at the time the  
12 contract is executed, a reasonable estimate shall be given.
- 13           (16) If the property being sold is encumbered by a deed of trust, mortgage, or  
14 other encumbrance evidencing or securing a monetary obligation which  
15 constitutes a lien on the property, and the seller is not a licensed general  
16 contractor within the meaning of Chapter 87 of the General Statutes, or a  
17 licensed manufactured home dealer within the meaning of Article 9A of  
18 Chapter 143 of the General Statutes, a statement of the amount of the lien,  
19 and the amount and due date, if any, of any periodic payments.
- 20           (17) A conspicuous statement, in not less than 14-point boldface type,  
21 immediately above the purchaser's signature, that the purchaser has the right  
22 to cancel the contract at any time until midnight of the third business day  
23 following execution of the contract, or delivery of the contract, whichever  
24 occurs later.

25           (c) Right to Cancel. – The purchaser may exercise the right to cancel the contract for  
26 deed until midnight of the third business day following execution of the contract for deed or  
27 delivery of a copy of the contract with the required minimum contents, whichever occurs later.  
28 If the purchaser cancels the contract, the seller shall, not later than the tenth day after the date  
29 the seller receives the purchaser's notice of cancellation, return to the purchaser any and all  
30 property exchanged or payments made by the purchaser under the contract minus an offset of  
31 an amount equal to the fair rental value of the use of the property during the duration of the  
32 purchaser's possession of the property plus an amount necessary to compensate the seller for  
33 any damages caused to the property by the purchaser beyond normal wear and tear.

34           (d) Recordation. – Within five business days after the contract has been signed and  
35 acknowledged by both the seller and the purchaser, the seller shall cause a copy of the contract  
36 or a memorandum of the contract to be recorded in the office of the register of deeds in the  
37 county in which the property is located. If a memorandum of the contract is recorded, it shall be  
38 entitled "Memorandum of a Contract for Deed" and shall contain, as a minimum, the names of  
39 the parties, the signatures of the parties, a description of the property, and applicable time  
40 periods as described in subdivisions (b)(8) and (11) of this section. A person, other than a seller  
41 and purchaser may rely on the recorded materials in determining whether the requirements of  
42 this subsection have been met. The seller shall pay the fee to record the document unless the  
43 parties agree otherwise.

44           (e) Effect of Forfeiture. – Upon default and forfeiture after proper notice of default and  
45 intent to forfeit and failure of the purchaser to substantially cure the default, the purchaser's  
46 equitable right of redemption shall be extinguished by:

- 47           (1) A mutual termination executed by the parties and recorded in the office of  
48 the register of deeds of the county in which the property is located, or  
49           (2) A final judgment or court order entered by a court of competent jurisdiction  
50 that terminates the purchaser's rights to the property and extinguishes the  
51 equity of redemption. A certified copy of the order shall be recorded in the

1 office of the register of deeds of the county in which the property is located  
2 pursuant to G.S. 1-228.

3 (f) No instrument purporting to extinguish the equity of redemption that is executed as  
4 a condition of the transaction or prior to a default will be effective.

5 **"§ 47H-3. Conditions of forfeiture; right to cure.**

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

13 **"§ 47H-4. Notice of default and intent to forfeit.**

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

- 15 (1) The name, address, and telephone number of the seller and the seller's agent  
16 or attorney giving the notice, if any.
- 17 (2) A description of the contract, including the names of the original parties to  
18 the contract for deed.
- 19 (3) The physical address of the property.
- 20 (4) A description of each default under the contract on which the notice is based.
- 21 (5) A statement that the contract will be forfeited if all defaults are not cured by  
22 a date stated in the notice which is not less than 30 days after the notice of  
23 default and intent to forfeit is served or any longer period specified in the  
24 contract or other agreement with the seller.
- 25 (6) An itemized statement of, or to the extent not known at the time the notice of  
26 default and intent to forfeit is given or recorded, a reasonable estimate of, all  
27 payments of money in default, and, for defaults not involving the failure to  
28 pay money, a statement of the action required to cure the default.
- 29 (7) Any additional information required by the contract for deed or other  
30 agreement with the seller.

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

33 **"§ 47H-5. Periodic statements of account.**

34 The seller shall provide the purchaser with a statement of account at least once every  
35 12-month period for the term of a contract for deed. The statement must include at least the  
36 following information:

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

48 **"§ 47H-6. Title requirements.**

49 (a) A seller may not execute a contract for deed with a purchaser if the seller does not  
50 hold title to the property. If the title is not held in fee simple, free from any deeds of trust,  
51 mortgages, or other encumbrances evidencing or securing a monetary obligation which



1 constitutes a lien on the property, the seller may execute a contract for deed only if the  
2 mortgage or encumbrance is in the name of the seller and meets at least one of the following  
3 conditions:

4 (1) It was agreed to by the purchaser, in writing, as a condition of a loan  
5 obtained to make improvements on the property.

6 (2) It was placed on the property by the seller prior to the execution of the  
7 contract for deed if the seller is a licensed general contractor within the  
8 meaning of Chapter 87 of the General Statutes, a licensed manufactured  
9 home dealer within the meaning of Article 9A of Chapter 143 of the General  
10 Statutes, or a licensed real estate broker within the meaning of Chapter 93A  
11 of the General Statutes, provided that the general contractor, manufactured  
12 home dealer, or real estate broker continues to make timely payments on the  
13 outstanding mortgage or encumbrance.

14 (3) It was placed on the property by the seller prior to the execution of the  
15 contract for deed, if the seller is not a licensed general contractor within the  
16 meaning of Chapter 87 of the General Statutes, a licensed manufactured  
17 home dealer within the meaning of Article 9A of Chapter 143 of the General  
18 Statutes, or a licensed real estate broker within the meaning of Chapter 93A  
19 of the General Statutes, if the lien is attached only to the property sold to the  
20 purchaser under the contract for deed, and the seller continues to make  
21 timely payments on the outstanding mortgage or encumbrance.

22 (b) If the property being sold is encumbered by one or more deeds of trust, mortgages,  
23 or other encumbrances evidencing or securing a monetary obligation which constitutes a lien  
24 on the property, the seller must notify the purchaser in a separate written disclosure, provided at  
25 or before the execution of the contract, in 14-point type, boldface, capital letters, the following  
26 statement: **THIS PROPERTY HAS EXISTING LIENS ON IT. IF THE SELLER FAILS**  
27 **TO MAKE TIMELY PAYMENTS TO THE LIEN HOLDER, THE LIEN HOLDER**  
28 **MAY FORECLOSE ON THE PROPERTY, EVEN IF YOU HAVE MADE ALL YOUR**  
29 **PAYMENTS.**

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

37 "§ 47H-7. Late fees.

38 No seller may charge a late payment charge under a contract for deed in excess of four  
39 percent (4%) of the amount of the payment past due. A late fee may only be charged on  
40 payments that are more than 15 days past due.

41 "§ 47H-8. Remedies.

42 A violation of any provision of this Chapter constitutes an unfair trade practice under  
43 G.S. 75-1.1. A purchaser may bring an action for the recovery of damages, to rescind a  
44 transaction, as well as for declaratory or equitable relief, for a violation of this Chapter. The  
45 rights and remedies provided herein are cumulative to, and not a limitation of, any other rights  
46 and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject  
47 an individual homeowner selling his or her primary residence directly to a buyer to liability  
48 under G.S. 75-1.1."

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

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

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