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SESSION 2009

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HOUSE BILL 1057*
Committee Substitute Favorable 4/30/09
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PROPOSED SENATE COMMITTEE SUBSTITUTE H1057-PCS50772-RI-44

Short Title: Abolish Certain Deficiency Judgments.

(Public)

Sponsors:

Referred to:

April 6, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ABOLISH DEFICIENCY JUDGMENTS IN CERTAIN CASES WHERE THE
3 MORTGAGE IS SECURED BY PRIMARY RESIDENCE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 2B of Chapter 45 of the General Statutes is amended by
6 adding a new section to read:

7 "§ 45-21.38A. Deficiency judgments abolished where mortgage secured by primary
8 residence.

9 (a) As used in this section, the term "nontraditional mortgage loan" means a loan in
10 which all of the following apply:

11 (1) The borrower is a natural person.

12 (2) The debt is incurred by the borrower primarily for personal, family, or
13 household purposes.

14 (3) The principal amount of the loan does not exceed the conforming loan size
15 for a single family dwelling as established from time to time by Fannie Mae.

16 (4) The loan is secured by: (i) a security interest in a manufactured home, as
17 defined in G.S. 143-145, in the State that is or will be occupied by the
18 borrower as the borrower's principal dwelling; (ii) a mortgage or deed of
19 trust on real property in the State upon which there is located an existing
20 structure designed principally for occupancy of from one to four families
21 that is or will be occupied by the borrower as the borrower's principal
22 dwelling; or (iii) a mortgage or deed of trust on real property in the State
23 upon which there is to be constructed using the loan proceeds a structure or
24 structures designed principally for occupancy of from one to four families
25 that, when completed, will be occupied by the borrower as the borrower's
26 principal dwelling.

27 (5) The terms of the loan: (i) permit the borrower as a matter of right to defer
28 payment of principal or interest; and (ii) allow or provide for the negative
29 amortization of the loan balance.

30 (b) Except as provided in subdivision (6) of subsection (c) of this section, this section
31 applies only to the following loans:



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- 1 (1) A loan originated on or after January 1, 2005, that was at the time the loan
2 was originated a rate spread home loan as defined in G.S. 24-1.1F.
- 3 (2) A loan secured by the borrower's principal dwelling, which loan was
4 modified after January 1, 2005, and became at the time of such modification
5 and as a consequence of such modification a rate spread home loan.
- 6 (3) A loan that was a nontraditional mortgage loan at the time the loan was
7 originated.
- 8 (4) A loan secured by the borrower's principal dwelling, which loan was
9 modified and became at the time of such modification and as a consequence
10 of such modification a nontraditional mortgage loan.
- 11 (c) This section does not apply to any of the following:
- 12 (1) A home equity line of credit as defined in G.S. 45-81(a).
- 13 (2) A construction loan as defined in G.S. 24-10(c).
- 14 (3) A reverse mortgage as defined in G.S. 53-257 that complies with the
15 provisions of Article 21 of Chapter 53 of the General Statutes.
- 16 (4) A bridge loan with a term of 12 months or less, such as a loan to purchase a
17 new dwelling where the borrower plans to sell his or her current dwelling
18 within 12 months.
- 19 (5) A loan made by a natural person who makes no more than one loan in a 12-
20 month period and is not in the business of lending.
- 21 (6) A loan secured by a subordinate lien on the borrower's principal dwelling,
22 unless the loan was made contemporaneously with a rate spread home loan
23 or a nontraditional mortgage loan that is subject to the provisions of this
24 section.
- 25 (d) In addition to any statutory or common law prohibition against deficiency
26 judgments, the following shall apply to the foreclosure of mortgages and deeds of trust that
27 secure loans subject to this section:
- 28 (1) For mortgages and deeds of trust recorded before January 1, 2010, the holder
29 of the obligation secured by the foreclosed mortgage or deed of trust shall
30 not be entitled to any deficiency judgment against the borrower for any
31 balance owing on such obligation if: (i) the real property encumbered by the
32 lien of the mortgage or deed of trust being foreclosed was sold by a
33 mortgagee or trustee under a power of sale contained in the mortgage or
34 deed of trust; and (ii) the real property sold was, at the time the foreclosure
35 proceeding was commenced, occupied by the borrower as the borrower's
36 principal dwelling.
- 37 (2) For mortgages and deeds of trust recorded on or after January 1, 2010, the
38 holder of the obligation secured by the foreclosed mortgage or deed of trust
39 shall not be entitled to any deficiency judgment against the borrower for any
40 balance owing on such obligation if: (i) the real property encumbered by the
41 lien of the mortgage or deed of trust being foreclosed was sold as a
42 consequence of a judicial proceeding or by a mortgagee or trustee under a
43 power of sale contained in the mortgage or deed of trust; and (ii) the real
44 property sold was, at the time the judicial or foreclosure proceeding was
45 commenced, occupied by the borrower as the borrower's principal dwelling.
- 46 (e) The court may, in its discretion, award to the borrower the reasonable attorneys' fees
47 actually incurred by the borrower in the defense of an action for deficiency if: (i) the borrower
48 prevails in an action brought by the holder of the obligation secured by the foreclosed mortgage
49 or deed of trust to recover a deficiency judgment following the foreclosure of a loan to which
50 this section applies; and (ii) the court rules that the holder of the obligation secured by the
51 foreclosed mortgage or deed of trust is not entitled to a deficiency judgment under the

1 provisions of this section. The amount of attorneys' fees to be awarded shall be determined
2 without regard to the provisions of the loan documents, the provisions of G.S. 6-21.2, or any
3 statutory presumption as to the amount of such attorneys' fees."

4 **SECTION 2.** Article 2B of Chapter 45 of the General Statutes is amended by
5 adding a new section to read:

6 "**§ 45-21.38C. Severability.**

7 The provisions of this Article shall be severable, and if any phrase, clause, sentence, or
8 provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law
9 or regulation, the validity of the remainder of this Article shall not be affected thereby."

10 **SECTION 3.** This act becomes effective October 1, 2009, and applies to actions
11 filed on or after that date.