

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE DRH30060-MQ-25 (02/13)

Short Title: Landlord/Tenant-Foreclosure & Evict. Changes. (Public)

Sponsors: Representatives Bradford and Stam (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND AND ENHANCE CERTAIN NOTICE REQUIREMENTS AND PROTECTIONS FOR TENANTS OF REAL PROPERTIES IN FORECLOSURE AND TO ALLOW FOR PURCHASERS OF REAL PROPERTY UNDER OPTION CONTRACTS TO PURSUE MONETARY DAMAGES SEPARATELY FROM SUMMARY EJECTMENT PROCEEDINGS AND OTHER AMENDMENTS TO THE HOMEBUYER PROTECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 42-45.2 reads as rewritten:

"§ 42-45.2. **Early termination of rental agreement by military and tenants residing in certain foreclosed property.**

~~Any~~ Upon expiration of the upset bid period provided by G.S. 45-21.27, a tenant who resides in residential real property containing less than 15 rental units that is being sold in a foreclosure proceeding under Article 2A of Chapter 45 of the General Statutes may terminate the rental agreement for the dwelling unit ~~after receiving notice pursuant to G.S. 45-21.17(4) by~~ providing the landlord with a written notice of termination to be effective on a date stated in the notice that is at least 10 ~~days~~ days, but no more than 90 days, after the date of the ~~notice of sale.~~ expiration of the upset bid period. Upon termination of a rental agreement under this section, the tenant is liable for the rent due under the rental agreement prorated to the effective date of the termination payable at the time that would have been required by the terms of the rental agreement. The tenant is not liable for any other rent or damages due only to the early termination of the tenancy."

SECTION 1.(b) G.S. 45-21.16A(b) reads as rewritten:

"§ 45-21.16A. **Contents of notice of sale.**

...

(b) In addition to the requirements contained in subsection (a) of this section, the notice of sale of residential real property with less than 15 rental units shall also state all of the following:

- (1) That an order for possession of the property may be issued pursuant to G.S. 45-21.29 in favor of the purchaser and against the party or parties in possession by the clerk of superior court of the county in which the property is sold.
- (2) Any person who occupies the property pursuant to a rental agreement entered into or renewed on or after October 1, 2007, may, ~~after receiving the notice of sale,~~ upon expiration of the upset bid period provided under G.S. 45-21.27, terminate the rental agreement ~~upon 10 days~~ by providing



1 written notice to the ~~landlord~~ landlord, to be effective on a date stated in the
2 notice that is at least 10 days, but no more than 90 days, after the date of the
3 expiration of the upset bid period. The notice shall also state that upon
4 termination of a rental agreement, the tenant is liable for rent due under the
5 rental agreement prorated to the effective date of the termination."

6 **SECTION 2.(a)** G.S. 45-21.29(k) is rewritten to read:

7 **"§ 45-21.29. Orders for possession.**

8 ...
9 (k) Orders for possession of real property sold pursuant to this Article, in favor of the
10 purchaser and against any party or parties in possession at the time of application therefor, may
11 be issued by the clerk of the superior court of the county in which the property is sold if all of
12 the following apply:

- 13 (1) The property has been sold in the exercise of the power of sale contained in
14 any mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, or a
15 power of sale authorized by any other statutory provisions.
- 16 (2) Repealed by Session Laws 1993, c. 305, s. 18.
- 17 (2a) The provisions of this Article have been complied with.
- 18 (3) The sale has been consummated, and the purchase price has been paid.
- 19 (4) The purchaser has acquired title to and is entitled to possession of the real
20 property sold.
- 21 (5) Ten days' notice has been given to the party or parties who remain in
22 possession at the time application is made, or, in the case of residential
23 property containing 15 or more rental units, 30 days' notice has been given to
24 the party or parties who remain in possession at the time the application is
25 made.
- 26 (5a) If the property is single-family residential and occupied pursuant to a lease,
27 written or oral, the provisions of G.S. 45-21.33A have been satisfied.
- 28 (6) Application is made by petition to the clerk by the mortgagee, the trustee,
29 the purchaser of the property, or any authorized representative of the
30 mortgagee, trustee, or purchaser of the property."

31 **SECTION 2.(b)** Part 2 of Article 2A of Chapter 45 of the General Statutes is
32 amended by adding a new section to read:

33 **"§ 45-21.33A. Effect of foreclosure on preexisting tenancy.**

34 (a) Any purchaser or successor in interest who has acquired title to single-family
35 residential real property pursuant to this Article shall assume that interest subject to:

- 36 (1) The provision of a notice to vacate to any tenant at least 90 days before the
37 application for an order of possession pursuant to G.S. 45-21.29(k)(5).
- 38 (2) The rights of any tenant to occupy the premises until the end of the
39 remaining term of the lease; however, a purchaser or successor in interest
40 may terminate a lease effective at least 90 days after the bid amount has been
41 paid and the trustee has tendered the deed to the purchaser if the purchaser or
42 successor in interest will occupy the premises as a primary residence. In that
43 event, the purchaser or successor in interest shall provide to the tenant the
44 notice required under subdivision (1) of this subsection.

45 (b) Subsection (a) of this section shall apply only to a lease that meets all of the
46 following criteria:

- 47 (1) The tenant is not the debtor under the security instrument foreclosed, or the
48 child, spouse, or parent of the debtor.
- 49 (2) The lease is in writing and requires the receipt of rent that is not substantially
50 less than fair market rent for the property, provided that the rent has not been
51 reduced or subsidized due to a federal or State subsidy. A tenant in

possession of the property pursuant to an oral lease shall be entitled to the notice requirement contained in subdivision (1) of subsection (a) of this section.

(c) Nothing in this section shall be construed to limit the remedies available to the purchaser or successor in interest for breaches of the lease terms by the tenant."

SECTION 3. Chapter 47G of the General Statutes is rewritten to read:

"Chapter 47G.

Option to Purchase Contracts Executed With Lease Agreements.

"§ 47G-1. Definitions.

The following definitions apply in this Chapter:

...

(4) Option contract or contract. – An option contract for the purchase of property that includes or is combined with, or is executed in conjunction with, a covered lease agreement. The term does not include a contract which obligates the buyer to purchase the property even though the obligation may be subject to one or more contingencies or unilateral rights to terminate the contract.

...

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

...

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

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

~~The~~ Unless otherwise provided for by this Chapter, the provisions of Chapter 42 of the General Statutes apply to covered lease agreements.

...

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

(a) A notice of default and intent to forfeit shall specify the nature of the default, the amount of the default if the default is in the payment terms, the date after which the contract will be forfeited if the purchaser does not cure the default, and the name and address of the seller or the attorney for the seller. The period specified in the notice after which the contract will be forfeited may not be less than 30 days after the notice of default and intent to forfeit is served, or before judgment is given in any action brought to recover the possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes, whichever is earlier. A judgment rendered in an action to recover possession of the premises shall not prejudice either party in a subsequent action to recover monetary damages or other remedies.

...

"§ 47G-7. Remedies.

~~(a) 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 transaction executed in violation of this Chapter, 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. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to an option purchaser to liability under G.S. 75-1.1.

(b) In the event of default by the option purchaser under the terms of the lease agreement, the option seller may initiate a summary ejectment action to recover damages and possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes. The magistrate shall retain jurisdiction over the summary ejectment proceeding.

1 (c) The option purchaser may counterclaim for damages in any summary ejectment
 2 proceeding. In accordance with G.S. 7A-219 of the General Statutes, no counterclaim which
 3 would make the amount in controversy exceed the jurisdictional limits shall be permitted. If a
 4 counterclaim in a summary ejectment proceeding is barred pursuant to G.S. 7A-219, the option
 5 purchaser shall not be estopped from asserting that claim in a separate action."

6 **SECTION 4.(a)** G.S. 47H-2(b) reads as rewritten:

7 "**§ 47H-2. Minimum contents for contracts for deed; recordation.**

8 ...
 9 (b) Contents. – A contract for deed ~~contract~~ shall contain at least all of the following:

10 ...
 11 (14) ~~A description of conditions of the property that includes whether the~~
 12 ~~property, including any structures thereon, has water, sewer, septic, and~~
 13 ~~electricity service, whether the property is in a floodplain, whether anyone~~
 14 ~~else has a legal interest in the property, and whether restrictive covenants~~
 15 ~~prevent building or installing a dwelling. If restrictive covenants are in place~~
 16 ~~that affect the property, a copy of the restrictive covenants shall be made~~
 17 ~~available to the purchaser at or before the execution of the contract.~~

18 (14a) A completed residential property disclosure statement that complies with
 19 Chapter 47E of the General Statutes, provided that the seller does not choose
 20 the option of making "No Representation" as to any characteristic or
 21 condition of the property.

22 ...
 23 (16) ~~If the property being sold is encumbered by a deed of trust, mortgage, or~~
 24 ~~other encumbrance evidencing or securing a monetary obligation which~~
 25 ~~constitutes a lien on the property, and the seller is not a licensed general~~
 26 ~~contractor within the meaning of Chapter 87 of the General Statutes, or a~~
 27 ~~licensed manufactured home dealer within the meaning of Article 9A of~~
 28 ~~Chapter 143 of the General Statutes, a statement of the amount of the lien,~~
 29 ~~and the amount and due date, if any, of any periodic payments.~~

30 "

31 **SECTION 4.(b)** G.S. 47H-8 reads as rewritten:

32 "**§ 47H-8. Remedies.**

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

40 **SECTION 5.(a)** G.S. 75-120 reads as rewritten:

41 "**§ 75-120. Definitions.**

42 The following definitions shall apply in this Article:

43 (1) ~~Default.—Whenever a property owner is more than 60 days delinquent on~~
 44 ~~any loan or debt that is secured by the property, including real estate taxes.~~

45 ...
 46 (3) Foreclosure rescue transaction. – A transfer of residential real property,
 47 including a manufactured home that is permanently attached to the real
 48 property, which includes all of the following features:

49 a. The real property is the principal residence of the transferor.

50 b. ~~The transferor is in default or legal proceedings have been initiated to~~
 51 ~~foreclose on the transferor's property.~~

- c. The transferee, an agent of the transferee, or others acting in concert with the transferee make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence.
- d. The transferor retains ~~an interest in the property conveyed, including a tenancy interest, an interest under a lease purchase agreement, lease with option to purchase agreement, or an option to reacquire the property, or any other legal, equitable, or possessory interest in the property conveyed.~~ property.

...."

SECTION 5.(b) G.S. 75-121 reads as rewritten:

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

(a) It is unlawful for a person or entity other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain, unless prior to or at the time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market value of the property as determined by a ~~licensed-certified~~ appraiser. An appraisal to determine the fair market value of the property must be performed no more than ~~90-120~~ days prior to the transfer. The appraisal shall be delivered to the transferor ~~no more than three days after the appraisal is performed and~~ no less than seven days prior to the ~~transfer of the property.~~ This section does not apply to exempt transactions. time the transferor becomes obligated to perform the agreement.

(b) Every contract to effectuate a foreclosure rescue transaction in which the transferee pays at least 50% of the fair market value of the property, shall be in writing, shall be signed and acknowledged by all parties to it, and shall contain all the terms to which the parties have agreed. The contract shall contain at least all of the following:

...

- (5) The fair market value of the property as determined by a ~~licensed-certified~~ appraiser.

...."

SECTION 6. This act becomes effective October 1, 2015. Section 1 applies to upset bid periods expiring on or after that date. Section 2 applies to orders for possession entered on or after that date. Sections 3, 4, and 5 apply to transactions entered into on or after that date.