

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE DRS55288-MD-58 (2/12)

Short Title: Homeowner and Homebuyer Protection Act. (Public)

Sponsors: Senator Stein.

Referred to:

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 LAND INSTALLMENT SALES.

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 family.

17 b. A bona fide nonprofit organization that regularly provides financial,
18 housing, or social services to individuals.

19 c. A state, federal, or local government agency or organization.

20 (2) Foreclosure rescue transaction. – A transfer of residential real property,
21 including a manufactured home, which includes all of the following features:

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

23 b. The transferor is in default, or at imminent risk of being in default,
24 on a mortgage loan obligation which is secured by the transferor's
25 principal residence.

26 c. The transferor follows representations by the transferee, an agent of
27 the transferee, or others acting in concert with the transferee, that the
28 transfer of the residential property will enable the transferor to
29 prevent, postpone, or reverse the effect of foreclosure and to remain
30 in the residence.

31 d. By written or oral agreement, the transferor retains an interest in the
32 property conveyed, including a tenancy interest, an interest under a
33 lease-purchase agreement, an option to reacquire the property, or any
34 other legal, equitable, or possessory interest in the property
35 conveyed.



* D R S 5 5 2 8 8 - M D - 5 8 *

1 **"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.**

2 It is unlawful for a person other than the transferor to engage in, promise to engage in,
3 arrange, offer, promote, solicit, participate in, assist with, or carry out a foreclosure rescue
4 transaction for financial gain or with the expectation of financial gain. This section does not
5 apply to exempt transactions. A violation of this section is an unfair trade practice under
6 G.S. 75-1.1."

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

8 **"Chapter 47G.**

9 **"Land Installment Contracts.**

10 **"§ 47G-1. Definitions.**

11 The following definitions apply in this Chapter, unless the context requires otherwise:

- 12 (1) Cure the default. – To perform the obligations under the contract which are
13 described in the notice of intent to forfeit required by G.S. 47G-6 and which
14 are necessary to reinstate the contract. This term is synonymous with the
15 term 'cure.'
- 16 (2) Down payment. – A payment made by the purchaser to the vendor which
17 constitutes part of the purchase price of property that is the subject of a land
18 installment contract and which is made at or before the time of the execution
19 of that contract.
- 20 (3) Forfeiture. – The termination of all of a purchaser's rights, title, and interest,
21 and those of persons claiming by or through a purchaser, in property that is
22 the subject of a land installment contract, to the extent permitted by this
23 Chapter, because of a breach of one or more of the purchaser's obligations
24 under the contract. This term is synonymous with the term 'forfeiture.'
- 25 (4) Land installment contract. – An agreement in which the vendor agrees to sell
26 an interest in property to the purchaser and the purchaser agrees to pay the
27 purchase price in five or more payments exclusive of the down payment, if
28 any, and the vendor retains title to the property as security for the purchaser's
29 obligation under the agreement. Land installment contracts do not include (i)
30 option contracts for the purchase of real property unless the option to
31 purchase includes, or is combined with, or is executed concurrently with a
32 residential lease agreement, or (ii) purchase and sale agreements entered into
33 with the good faith expectation of a separate transaction in which a third
34 party or the vendor agrees to finance the purchase price.
- 35 (5) Property. – Either (i) real estate located in this State, upon which there is
36 located or there is to be located a structure or structures designed principally
37 for occupancy of from one to four families which is or will be occupied by
38 the purchaser as the purchaser's principal dwelling, or (ii) a manufactured
39 home, as that term is defined in G.S. 143-149.9, which is or will be occupied
40 by a purchaser as the purchaser's principal dwelling.
- 41 (6) Purchaser. – An individual who purchases an interest in property under a
42 land installment contract, or any legal successor in interest to that individual.
- 43 (7) Vendor. – A person who makes a sale of property by means of a land
44 installment contract, or the person's successor in interest.

45 **"§ 47G-2. Minimum contents of land installment sales contracts.**

46 (a) Writing Required. – Every land installment contract shall be evidenced by a contract
47 signed by all parties to it and containing all the terms to which they have agreed.

48 (b) Contents. – A land installment sales contract shall contain at least all of the
49 following:

- 50 (1) The full names and addresses of all the parties to the contract.
51 (2) The date the contract is signed by each party.

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

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

35 **"§ 47G-3. Escrow of down payment.**

36 (a) Any down payment that a purchaser provides pursuant to a land installment contract
37 shall be immediately deposited in a trust or escrow account in an insured bank, savings and
38 loan association, or credit union in this State and shall remain in the account until either the
39 vendor transfers ownership of the property or until the agreement is cancelled. Funds held in
40 the trust or escrow account shall be deemed to belong to the purchaser and not to the vendor.

41 (b) If a vendor fails to comply with subsection (a) of this section, and the contract is
42 cancelled or rescinded and the down payment not returned to the vendor within 10 business
43 days of notification to the vendor, the vendor shall be liable to the purchaser in an amount equal
44 to three times the amount of the down payment.

45 **"§ 47G-4. Protection of tenants' rights.**

46 An option to purchase real property that includes or is combined or executed concurrently
47 with a residential lease agreement, together with the lease, is considered a land installment
48 contract for purposes of this Chapter. The provisions of Chapter 42 of the General Statutes
49 apply to the portion of the contract that is a residential lease agreement. After a tenant exercises
50 an option to purchase leased property under a residential lease, Chapter 42 no longer applies to
51 the lease.

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

(a) A purchaser's rights under a land installment contract shall not be forfeited except as provided in this Chapter. A land installment contract cannot be forfeited unless a breach has occurred in one or more of the purchaser's obligations under the contract and the contract provides that as a result of such breach the vendor is entitled to forfeit the contract. Furthermore, the purchaser's rights shall not be forfeited until the purchaser has been notified of the intent to forfeit in accordance with G.S. 47G-6 and been given a right to cure the default and has failed to do so within the time period allowed. A timely tender of cure shall reinstate the contract.

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

"§ 47G-6. Notice of intent to forfeit.

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

- (1) The name, address, and telephone number of the vendor and the vendor's agent or attorney giving the notice, if any.
- (2) A description of the contract, including the names of the original parties to the contract.
- (3) A legal description of the property.
- (4) A description of each default under the contract on which the notice is based.
- (5) A statement that the contract will be forfeited if all defaults are not cured by a date stated in the notice which is not less than 90 days after the notice of intent to forfeit is sent or any longer period specified in the contract or other agreement with the vendor.
- (6) An itemized statement of, or to the extent not known at the time the notice of intent to forfeit is given or recorded, a reasonable estimate of, all payments of money in default and, for defaults not involving the failure to pay money, a statement of the action required to cure the default.
- (7) Any additional information required by the contract or other agreement with the vendor.

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

(c) In addition to any other remedies at law, a vendor's violation of this section entitles the purchaser to either a claim for damages or the right to rescind the contract and seek the return of all payments, deposits, and down payments that have been made under the contract. If the purchaser elects to rescind the contract, the vendor 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.

"§ 47G-7. Periodic statements of account.

The vendor shall provide the purchaser with a statement of account at least once every 12-month period for the term of a land installment contract. The statement must include at least the following information:

- (1) The amount paid under the contract.
- (2) The remaining amount owed under the contract.
- (3) The number of payments remaining under the contract.

- 1 (4) The amounts paid to taxing authorities on the purchaser's behalf, if collected
2 by the vendor.
- 3 (5) The amounts paid to insure the property on the purchaser's behalf, if
4 collected by the vendor.
- 5 (6) If the property has been damaged and the vendor has received insurance
6 proceeds, an accounting of the proceeds applied to the property.

7 **"§ 47G-8. Purchaser's right to cancel contract.**

8 (a) In addition to any other rights or remedies provided by law, the purchaser may
9 cancel and rescind an installment land contract for any reason by sending by certified or
10 registered mail, return receipt requested, or by delivering in person a signed, written notice of
11 cancellation to the vendor not later than the fourteenth day after the date of the signing of the
12 contract.

13 (b) If the purchaser cancels the contract pursuant to subsection (a) of this section, the
14 vendor shall, not later than the tenth day after the date the vendor receives the purchaser's
15 notice of cancellation, return to the purchaser the executed contract and any property
16 exchanged or payments made by the purchaser under the contract.

17 **"§ 47G-9. Requirement that vendor hold unencumbered legal title.**

18 (a) A potential vendor may not execute a land installment contract with a potential
19 purchaser if the vendor does not own the property free from any liens, mortgages, or other
20 encumbrances.

21 (b) Except as provided in this subsection, a vendor, or the successors in interest of the
22 vendor, must maintain fee simple title free from any liens or other encumbrances to property
23 covered by a land installment contract for the entire duration of the contract. This subsection
24 does not apply to a lien or encumbrance placed on the property that is:

- 25 (1) Placed on the property because of the conduct of the purchaser.
- 26 (2) Agreed to by the purchaser as a condition of a loan obtained to place
27 improvements on the property, including utility and fire protection
28 improvements.
- 29 (3) Placed on the property by the vendor prior to the execution of the land
30 installment contract in exchange for a loan used only to purchase the
31 property if all of the requirements below are met:
- 32 a. The vendor, not later than the third day before the date the contract is
33 executed, notifies the purchaser in a separate written disclosure:
- 34 1. Of the name, address, and telephone number of the lienholder
35 or, if applicable, the servicer of the loan.
- 36 2. Of the loan number and outstanding balance of the loan.
- 37 3. Of the monthly payments due on the loan and the due date of
38 those payments.
- 39 4. In 14-point type, of the fact that if the vendor fails to make
40 timely payments to the lienholder, the lienholder may attempt
41 to collect the debt by foreclosing on the lien and selling the
42 property at a foreclosure sale.
- 43 b. The lien:
- 44 1. Is attached only to the property sold to the purchaser under
45 the contract.
- 46 2. Secures indebtedness that at no time is or will be greater in
47 amount than the amount of the total outstanding balance
48 owed by the purchaser under the installment land contract.
- 49 c. The lienholder:
- 50 1. Does not prohibit the property from being encumbered by a
51 land installment contract; and

1 2. Consents to verify the status of the loan on request of the
2 purchaser and to accept payments directly from the purchaser
3 if the vendor defaults on the loan.

4 (c) A violation of this section is a violation of G.S. 75-1.1 and in addition to other rights
5 or remedies provided by law, entitles the purchaser to cancel and rescind the contract and
6 receive from the vendor:

7 (1) The return of all payments of any kind made to the vendor under the
8 contract; and

9 (2) Reimbursement for any payments the purchaser made to a taxing authority
10 for the property, and the value of any improvements made to the property by
11 the purchaser.

12 (d) A vendor is not liable under this section if:

13 (1) A lien is placed on the property by a person other than the vendor; and

14 (2) Not later than the thirtieth day after the date the vendor receives notice of the
15 lien, the vendor takes all steps necessary to remove the lien and has the lien
16 removed from the property.

17 **"§ 47G-10. Late fees.**

18 No vendor may charge a late payment charge under a land installment contract in excess of
19 four percent (4%) of the amount of the payment past due. A late payment charge that violates
20 this section is hereby declared usurious.

21 **"§ 47G-11. Attorneys' fees.**

22 A vendor shall be liable for the purchaser's attorneys' fees and costs if the purchaser
23 prevails in a lawsuit to enforce the provisions of this Chapter."

24 **SECTION 4.** This act becomes effective October 1, 2009.