

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 654

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

Sponsors: Representatives McCormick and LaRoque (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Commerce and Job Development.

April 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT AMENDING THE HOMEOWNER AND HOMEBUYER PROTECTION ACT.  
3 The General Assembly of North Carolina enacts:

4 SECTION 1. G.S. 47G-1 reads as rewritten:

5 "§ 47G-1. Definitions.

6 The following definitions apply in this Chapter:

7 ...

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

14 ...."

15 SECTION 2. G.S. 47G-2 reads as rewritten:

16 "§ 47G-2. Minimum contents of option contracts; recordation.

17 ...

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

- 21 (1) A mutual termination executed by the parties and recorded in the office of  
22 the register of deeds of the county in which the property is located, or  
23 (2) ~~A final judgment or court order entered by a court of competent jurisdiction~~  
24 ~~that terminates the purchaser's rights to the property and extinguishes the~~  
25 ~~equity of redemption. A certified copy of the order shall be recorded in the~~  
26 ~~office of the register of deeds of the county in which the property is located~~  
27 ~~pursuant to G.S. 1-228.~~  
28 (3) The filing of a notarized memorandum of termination of option contract in  
29 the office of the register of deeds of the county in which the property is  
30 located.  
31 (4) Delivering to the option purchaser a written notice of cancellation of the  
32 option contract and specifying any material breach. Any notice of  
33 cancellation must be delivered to the option purchaser by hand delivery or  
34 any manner authorized by G.S. 1A-1, Rule 4.

35 ...."



1           **SECTION 3.** G.S. 47G-3 reads as rewritten:

2   "**§ 47G-3. Application of Landlord Tenant Law.**

3       The provisions of Chapter 42 of the General Statutes apply to covered lease  
4 ~~agreements.~~agreements, unless the parties agree otherwise. The magistrate shall have original  
5 jurisdiction over matters involving covered lease agreements."

6           **SECTION 4.** G.S. 47H-2 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 as provided in  
19       Chapter 47E of the General Statutes.

20       ...  
21       ~~(16)   If the property being sold is encumbered by a deed of trust, mortgage, or~~  
22       ~~other encumbrance evidencing or securing a monetary obligation which~~  
23       ~~constitutes a lien on the property, and the seller is not a licensed general~~  
24       ~~contractor within the meaning of Chapter 87 of the General Statutes, or a~~  
25       ~~licensed manufactured home dealer within the meaning of Article 9A of~~  
26       ~~Chapter 143 of the General Statutes, a statement of the amount of the lien,~~  
27       ~~and the amount and due date, if any, of any periodic payments.~~

28       ...."

29           **SECTION 5.** G.S. 47H-6 reads as rewritten:

30   "**§ 47H-6. Title requirements.**

31       (a)   A seller may not execute a contract for deed with a purchaser if the seller does not  
32 hold title to the property. If the title is not held in fee simple, free from any deeds of trust,  
33 mortgages, or other encumbrances evidencing or securing a monetary obligation which  
34 constitutes a lien on the property, the seller may execute a contract for deed only if the  
35 mortgage or encumbrance is in the name of the seller and meets at least one of the following  
36 conditions:

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

39       (2)   It was placed on the property by the seller prior to the execution of the  
40 contract for deed if the seller is a licensed general contractor within the  
41 meaning of Chapter 87 of the General Statutes, a licensed manufactured  
42 home dealer within the meaning of Article 9A of Chapter 143 of the General  
43 Statutes, or a licensed real estate broker within the meaning of Chapter 93A  
44 of the General Statutes, provided that the general contractor, manufactured  
45 home dealer, or real estate broker continues to make timely payments on the  
46 outstanding mortgage or encumbrance.

47       (3)   It was placed on the property by the seller prior to the execution of the  
48 contract for deed, if the seller is not a licensed general contractor within the  
49 meaning of Chapter 87 of the General Statutes, a licensed manufactured  
50 home dealer within the meaning of Article 9A of Chapter 143 of the General  
51 Statutes, or a licensed real estate broker within the meaning of Chapter 93A

of the General Statutes, if the lien is attached only to the property sold to the purchaser under the contract for deed, Statutes, and the seller continues to make timely payments on the outstanding mortgage or encumbrance.

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

(c) In addition to any other remedies at law or equity, a seller'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 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."

**SECTION 6.** G.S. 47H-7 reads as rewritten:

**"§ 47H-7. Late fees.**

No seller may charge a late payment charge under a contract for deed in excess of ~~four percent (4%)~~ five percent (5%) of the amount of the payment past due. A late fee may only be charged on payments that are more than 15 days past due."

**SECTION 7.** G.S. 75-120 reads as rewritten:

**"§ 75-120. Definitions.**

The following definitions shall apply in this Article:

(1) ~~Default. – Whenever a property owner is more than 60 days delinquent a~~ notice of default is filed in the county where the property is located on any loan or debt that is secured by the property, including real estate taxes.

...

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

- a. The real property is the principal residence of the transferor.
- b. The transferor is in default or legal proceedings have been initiated to 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.

...."

**SECTION 8.** 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

1 time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market  
2 value of the property as determined by a licensed appraiser. An appraisal to determine the fair  
3 market value of the property must be performed no more than 90 days prior to the transfer. ~~The~~  
4 ~~appraisal shall be delivered to the transferor no more than three days after the appraisal is~~  
5 ~~performed and no less than seven days prior to the transfer of the property. This section does~~  
6 ~~not apply to exempt transactions.~~

7       ...."

8               **SECTION 9.** This act becomes effective October 1, 2011, and applies to  
9 transactions entered on or after that date.