

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 654  
Second Edition Engrossed 6/2/11

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 (1) Covered lease ~~agreement or lease agreement.~~ – A residential lease agreement  
8 ~~that is combined with, or is executed concurrently with, an option contract.~~  
9 in which all or some portion of the rental payments made are applied to the  
10 purchase price of the real property which is the subject of the covered lease  
11 agreement and the covered option contract.

12 ...

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

19 (5) Option fee. – Any payment, however denominated, made by the option  
20 purchaser to the option seller that constitutes the price the option purchaser  
21 pays for the right to buy the property at a specified price in the future. Such  
22 payment applied at the closing of the property shall not constitute equity and  
23 such payment shall not in and of itself create a right of equitable redemption.

24 ..."

25 **SECTION 2.** G.S. 47G-7 reads as rewritten:

26 "**§ 47G-7. Remedies.**

27 ~~A violation of any provision of this Chapter constitutes an unfair trade practice under G.S.~~  
28 ~~75-1.1.~~ An option purchaser may bring an action for the recovery of damages, to void a  
29 transaction executed in violation of this Chapter, as well as for declaratory or equitable relief  
30 for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and  
31 not a limitation of, any other rights and remedies provided by law or ~~equity.~~ equity, including  
32 G.S. 75-1.1. Nothing in this Chapter shall be construed to subject an individual homeowner  
33 selling his or her primary residence directly to an option purchaser to liability under G.S.  
34 75-1.1."

SECTION 3. G.S. 47H-8 reads as rewritten:



1 **"§ 47H-8. Remedies.**

2 ~~A violation of any provision of this Chapter constitutes an unfair trade practice under G.S.~~  
3 ~~75-1.1. A purchaser may bring an action for the recovery of damages, to rescind a transaction,~~  
4 ~~as well as for declaratory or equitable relief, for a violation of this Chapter. The rights and~~  
5 ~~remedies provided herein are cumulative to, and not a limitation of, any other rights and~~  
6 ~~remedies provided by law or equity. Equity, including G.S. 75-1.1. Nothing in this Chapter~~  
7 ~~shall be construed to subject an individual homeowner selling his or her primary residence~~  
8 ~~directly to a buyer to liability under G.S. 75-1.1."~~

9 **SECTION 4.** G.S. 47H-2 reads as rewritten:

10 **"§ 47H-2. Minimum contents for contracts for deed; recordation.**

11 ...  
12 (b) Contents. – A contract for deed contract shall contain at least all of the following:

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

21 (14a) A completed residential property disclosure statement as provided in  
22 Chapter 47E of the General Statutes.

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

31 ...."

32 **SECTION 4.** G.S. 47H-6 reads as rewritten:

33 **"§ 47H-6. Title requirements.**

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

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

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

50 (3) It was placed on the property by the seller prior to the execution of the  
51 contract for deed, if the seller is not a licensed general contractor within the

1 meaning of Chapter 87 of the General Statutes, a licensed manufactured  
 2 home dealer within the meaning of Article 9A of Chapter 143 of the General  
 3 Statutes, or a licensed real estate broker within the meaning of Chapter 93A  
 4 of the General Statutes, ~~if the lien is attached only to the property sold to the~~  
 5 ~~purchaser under the contract for deed, Statutes,~~ and the seller continues to  
 6 make timely payments on the outstanding mortgage or ~~encumbrance.~~

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

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

22 **SECTION 5.** G.S. 47H-7 reads as rewritten:

23 **"§ 47H-7. Late fees.**

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

27 **SECTION 6.** G.S. 75-120 reads as rewritten:

28 **"§ 75-120. Definitions.**

29 The following definitions shall apply in this Article:

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

33 ...

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

- 37 a. The real property is the principal residence of the transferor.  
 38 b. The transferor is in default or legal proceedings have been initiated to  
 39 foreclose on the transferor's property.  
 40 c. The transferee, an agent of the transferee, or others acting in concert  
 41 with the transferee make representations that the transfer of the  
 42 residential property will enable the transferor to prevent, postpone, or  
 43 reverse the effect of foreclosure and to remain in the residence.  
 44 d. The transferor retains ~~an interest in the property conveyed, including~~  
 45 a tenancy interest, an interest under a lease-purchase agreement,  
 46 lease with option to purchase agreement, or an option to reacquire the  
 47 property, or any other legal, equitable, or possessory interest in the  
 48 property conveyed property.

49 ...."

50 **SECTION 7.** G.S. 75-121 reads as rewritten:

51 **"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.**

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

10 ...."

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