

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

HOUSE BILL 174
RATIFIED BILL

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. 45-21.17 reads as rewritten:

"§ 45-21.17. Posting and publishing notice of sale of real property.

...

- (4) The notice of sale shall be mailed by first-class mail at least 20 days prior to the date of sale to each party entitled to notice of the hearing provided by G.S. 45-21.16 whose address is known to the trustee or mortgagee and in addition shall also be mailed by first-class mail to any party desiring a copy of the notice of sale who has complied with G.S. 45-21.17A. If the property is residential and contains less than 15 rental units, including single-family residential real property, the notice of sale shall also be mailed to any person who occupies the property pursuant to a residential rental agreement by name, if known, at the address of the property to be sold. If the name of the person who occupies the property is not known, the notice shall be sent to "occupant" at the address of the property to be sold. Notice of the hearing required by G.S. 45-21.16 shall be sufficient to satisfy the requirement of notice under this section provided such notice contains the information required by G.S. 45-21.16A.

...."

SECTION 1.(b) 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 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 of termination that is at least 10 ~~days~~ days, but no more than 90 days, after the sale date ~~of contained in the notice of sale~~ sale, provided that the mortgagor has not cured the default at the time the tenant provides the notice of termination. 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.(c) 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, terminate the rental agreement ~~upon 10 days' by providing~~ written notice of termination to the ~~landlord~~ landlord, to be effective on a date stated in the notice that is at least 10 days, but no more than 90 days, after the sale date contained in the notice of sale, provided that the mortgagor has not cured the default at the time the tenant provides the notice of termination. The notice shall also state that upon termination of a rental agreement, the tenant is liable for rent due under the rental agreement prorated to the effective date of the termination."

SECTION 2.(a) G.S. 45-21.29(k) reads as rewritten:

"§ 45-21.29. Orders for possession.

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

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

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

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

(a) For the purposes of this section, "purchaser" means any purchaser or successor in interest who has acquired title to single-family residential real property pursuant to this Article.

(b) Unless a purchaser will occupy the premises as a primary residence, the purchaser shall assume title subject to the rights of any tenant to occupy the premises until the end of the remaining term of the lease or one calendar year from the date the purchaser acquires title, whichever is shorter. In no event shall the purchaser be required to renew the existing lease.

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

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

(d) A purchaser shall provide a tenant in possession of the single-family residential real property notice to vacate at least 90 days before making an application for possession pursuant to G.S. 45-21.29(k) in any of the following circumstances:

- (1) The tenant has an oral lease or the lease is terminable at will.
- (2) The purchaser will occupy the premises as a primary residence.

(e) This section shall not apply to the following:

- (1) The option to purchase terms of an option contract as defined in G.S. 47G-1(4).
- (2) A lease of residential real property where there is an "imminently dangerous condition" as defined in G.S. 42-42(a)(8) on the premises as of the date of acquisition of title by the purchaser.

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

SECTION 3. Chapter 47G of the General Statutes reads as rewritten:

"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 single-family residential real property that includes or is combined with, or is executed in conjunction with, a covered lease agreement.

...

"§ 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.

(c) The option purchaser may counterclaim for damages in any summary ejectment proceeding. In accordance with G.S. 7A-219 of the General Statutes, no counterclaim which would make the amount in controversy exceed the jurisdictional limits shall be permitted. If a

counterclaim in a summary ejectment proceeding is barred pursuant to G.S. 7A-219, the option purchaser shall not be estopped from asserting that claim in a separate action."

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

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

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

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

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

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

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

"§ 47H-8. Remedies.

~~A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1. A purchaser may bring an action for the recovery of damages, to rescind a transaction, 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 a buyer to liability under G.S. 75-1.1."~~

SECTION 5.(a) 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 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 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.~~ time the transferor becomes obligated to perform the agreement. This section does not apply to exempt transactions.

(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 notice of sale issued 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.

In the General Assembly read three times and ratified this the 28th day of July, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____ .m. this _____ day of _____, 2015