

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 22

Short Title: Regulate Reverse Mortgages.

(Public)

Sponsors: Representatives Brubaker, Easterling, Hasty, Ligon, Lineberry, Privette, and Woodard.

Referred to: Commerce.

February 6, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO REGULATE REVERSE MORTGAGES.

3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 53 of the General Statutes is amended by adding a new  
5 Article to read:

6 **"ARTICLE 21.**  
7 **"REVERSE MORTGAGE ACT.**

8 **"§ 53-256. Title.**

9 This Article shall be known and may be cited as the Reverse Mortgage Act.

10 **"§ 53-257. Purpose.**

11 It is the intent of the General Assembly that reverse mortgage loans be available so  
12 that elderly homeowners may use the equity in their homes to meet their financial  
13 needs. The General Assembly recognizes that there may be restrictions and  
14 requirements that govern traditional mortgage transactions which should not be  
15 applicable to reverse mortgages. The purpose of this act is to authorize reverse mortgage  
16 transactions and to clarify other provisions of North Carolina law which might  
17 otherwise be applicable to reverse mortgage loans.

18 **"§ 53-258. Definitions.**

19 For purposes of this Article, unless the context clearly requires otherwise:

20 (1) 'Authorized lender', or 'lender', means any lender authorized to engage  
21 in business as a bank, savings institution, or credit union, under the  
22 laws of this State or of the United States, or any other person, firm, or

1 corporation authorized to make reverse mortgage loans by the  
2 Commissioner of Banks.

3 (2) 'Borrower' means a natural person 62 years of age or older, who  
4 occupies and owns, in fee simple individually, or with another  
5 borrower as tenants by the entireties or as joint tenants with right of  
6 survivorship, an interest in residential real property securing a reverse  
7 mortgage loan, and who borrows money under a reverse mortgage  
8 loan.

9 (3) 'Commissioner' means the Commissioner of Banks of this State.

10 (4) 'Counselor' means an individual who has completed a training course  
11 on reverse mortgage counseling provided or approved by the Division  
12 of Aging of the Department of Human Resources and whose name is  
13 maintained on the Commissioner's list of approved reverse mortgage  
14 counselors.

15 (5) 'Outstanding balance' means the current net amount of money owed by  
16 the borrower to the lender, calculated in accordance with G.S. 53-  
17 263(b), whether or not the sum is suspended pursuant to the terms of  
18 the reverse mortgage loan agreement or is immediately due and  
19 payable.

20 (6) 'Reverse mortgage loan', or 'loan', means a loan for a definite or  
21 indefinite term (i) secured by a first mortgage or first deed of trust on  
22 the principal residence of the mortgagor, (ii) the proceeds of which are  
23 disbursed to the mortgagor in one or more lump sums, or in equal or  
24 unequal installments, either directly by the lender or the lender's agent,  
25 and (iii) which requires no repayment until a future time, upon the  
26 earliest occurrence of one or more events specified in the reverse  
27 mortgage loan contract.

28 (7) 'Shared appreciation mortgage' means a reverse mortgage loan  
29 pursuant to which the lender and the borrower agree that, in addition to  
30 any interest accruing on the outstanding balance, the lender may  
31 collect an additional amount of interest equal to a percentage of any  
32 net appreciated value of the property during the term of the reverse  
33 mortgage.

34 (8) 'Total annual percentage rate' means the rate of interest, which  
35 provides the total amount that will be owed at loan maturity when all  
36 reverse mortgage fees and charges, including closing costs not paid to  
37 third parties, is applied to the loan advances over the term of the  
38 reverse mortgage loan.

39 **"§ 53-259. Authority and procedures governing reverse mortgage loans.**

40 (a) Effective January 1, 1992, no person, firm, or corporation shall engage in the  
41 business of making reverse mortgage loans without first being approved as an  
42 authorized lender by the Commissioner, unless the lender is the North Carolina Housing  
43 Finance Agency, or is a bank, savings and loan association, or credit union, authorized

1 to do business under the laws of this State or authorized to do business under the laws of  
2 the United States and chartered to do business in this State.

3 (b) An application for authorization to make reverse mortgage loans shall be in  
4 writing to the Commissioner and in such form as prescribed by the Commissioner.  
5 Such application shall contain the name and complete business address or addresses of  
6 the applicant. The application shall also include affirmation of financial solvency and  
7 such capitalization requirements as are required by the Commissioner. Such application  
8 shall be accompanied by a nonrefundable fee, payable to the Commissioner, of five  
9 hundred dollars (\$500.00).

10 (c) The North Carolina Housing Finance Agency, and any bank, savings and loan  
11 association, or credit union which is not required to obtain authorization to make reverse  
12 mortgage loans under subsection (a) of this section, shall, prior to making any reverse  
13 mortgage loan, notify the Commissioner of its intent to make such loan. Such  
14 notification shall be made on a form prescribed by the Commissioner and shall contain  
15 such information as required by the Commissioner.

16 (d) The Commissioner shall, upon determination that a lender is authorized to  
17 make reverse mortgage loans, issue notice of this authority to the lender, which  
18 authority shall be valid for a period of time specified by the Commissioner. The lender  
19 so notified shall display the notice prominently in any and all offices of the lender  
20 which make reverse mortgage loans. Authorizations issued pursuant to this section are  
21 nontransferable and subject to an annual fee of two hundred fifty dollars (\$250.00).

22 **"§ 53-260. Application of rules.**

23 In addition to the provisions of this Article, authorized lenders shall comply with  
24 rules and regulations promulgated by the Commissioner which are reasonable and  
25 necessary to effectuate the purposes of this Article and to protect the public interest.  
26 Provided, however, that provisions in Chapters 24 or 45 of the General Statutes and the  
27 rules promulgated thereunder that are in conflict with this Article shall not apply to  
28 reverse mortgage transactions governed by this Article.

29 **"§ 53-261. Interest.**

30 Notwithstanding any other provisions of law to the contrary, the parties to a reverse  
31 mortgage loan may contract for the payment of interest at a rate agreed to by the parties.  
32 Interest shall be deferred until the earliest occurrence of one or more events specified in  
33 the reverse mortgage loan contract. Payment of interest on deferred interest shall be as  
34 agreed upon by the parties to the contract. The parties may agree that the deferred  
35 interest may be added to the outstanding balance of the loan.

36 **"§ 53-262. Taxes, insurance, and assessment.**

37 Reverse mortgage loan contracts may provide that it is the primary obligation of the  
38 borrower to pay all property taxes, insurance premiums, and assessments in a timely  
39 manner, and that the failure of the borrower to make these payments, and to provide  
40 evidence of payment to the lender, may constitute grounds for default of the loan.  
41 Provided, however, that if a borrower fails to pay property taxes, insurance premiums,  
42 or assessments, the lender may pay the amounts due, charge them to the reverse  
43 mortgage loan, and recalculate regularly scheduled payments under the loan to account  
44 for the increased outstanding loan balance.

**"§ 53-263. Renegotiation of loan; calculation of outstanding balance; prepayment.**

(a) If the reverse mortgage loan contract allows for a change in the payments or payment options, the lender may charge a reasonable fee when payments are recalculated.

(b) The outstanding loan balance shall be calculated by adding the current totals of items described in subdivisions (1) through (4) below, and subtracting the current totals of all reverse mortgage loan payments made by the borrower to the lender:

(1) The sum of all disbursements made by the lender to the borrower, or to another party on the borrower's behalf;

(2) All taxes, assessments, insurance premiums, and other similar charges paid to date by the lender pursuant to G.S. 53-263, which charges were not reimbursed by the borrower within 60 days of the date payment was made by the lender;

(3) All actual closing costs which the borrower has deferred, if a deferral provision is contained in the loan agreement; and

(4) The total accrued interest to date.

(c) Prepayment of the reverse mortgage loan, in whole or part, shall be permitted without penalty at any time during the term of the loan.

**"§ 53-264. Limits on borrowers' liability.**

(a) When the reverse mortgage loan becomes due, if the borrower mortgaged one hundred percent (100%) of the full value of the house then the amount owed by the borrower shall not be greater than the outstanding balance of the loan, or the fair market value of the house, whichever amount is less. If the borrower mortgaged less than one hundred percent (100%) of the full value of the house, then the amount owed by the borrower shall not be greater than the outstanding balance of the loan, or the percentage of the full value as provided in the contract, whichever amount is less.

(b) The lender shall enforce the debt only through the sale of the property and shall not obtain a deficiency judgment against the borrower.

**"§ 53-265. Shared appreciation mortgage.**

The parties to a reverse mortgage loan may agree to include shared appreciation as a method of allowing the lender to recover the costs and risks of reverse mortgage loans. If the reverse mortgage loan contract provides for shared appreciation, then the lender's share of the appreciation may not exceed the percentage agreed to by the parties.

**"§ 53-266. Disclosures of loan terms.**

(a) On forms prescribed by the Commissioner, all authorized lenders shall provide the following information to the Commissioner for dissemination to all counselors who provide counseling to prospective reverse mortgage borrowers:

(1) The borrower's rights, obligations, and remedies with respect to the borrower's temporary absence from the home, late payments by the lender, and payment default by the lender;

(2) Conditions or events which require the borrower to repay the loan obligation;

(3) The right of the borrower to mortgage less than the full value of the home, if permitted by the reverse mortgage loan contract;

- 1           (4) The projected total annual percentage rate applicable under various  
2           loan terms, interest rates applicable at sample ages of borrowers, and  
3           the financial effect of shared appreciation, if applicable;  
4           (5) Standard closing costs;  
5           (6) All service fees to be charged during the term of the loan;  
6           (7) Other information required by the Commissioner.

7           (b) Within 10 business days after application is made by a borrower, but not less  
8 than 20 business days before closing of the loan, lenders shall provide applicants with  
9 the same information required in subsection (a) of this section, shall inform applicants  
10 that reverse mortgage counseling is advisable, and shall provide the names and  
11 addresses of reverse mortgage counselors listed with the Commissioner's office.

12 **"§ 53-267. Information required of lender.**

13           (a) At the closing of the reverse mortgage loan, the lender shall provide to the  
14 borrower the name of the lender's employee or agent who has been designated  
15 specifically to respond to inquiries concerning reverse mortgages. Such information  
16 shall be provided by the lender to the borrower at least annually, and whenever the  
17 information concerning the designated employee or agent changes.

18           (b) On an annual basis and when the loan becomes due, the lender shall issue to  
19 the borrower, without charge, a statement of account regarding the activity of the  
20 mortgage for the preceding calendar year, or for the period since the last statement of  
21 account was provided. The statement shall include the following information for the  
22 preceding year:

- 23           (1) The outstanding balance of the loan at the beginning of the statement  
24           period;  
25           (2) Disbursements to the borrower;  
26           (3) The total amount of interest added to the outstanding balance of the  
27           loan;  
28           (4) Any property taxes, insurance premiums, or assessments, paid by the  
29           lender;  
30           (5) Payments made to the lender;  
31           (6) The total mortgage balance owed to date; and  
32           (7) The remaining amount available to the borrower in reverse mortgage  
33           loans wherein proceeds have been reserved to be disbursed in one or  
34           more lump sum amounts.

35 **"§ 53-268. Effects of lender's default.**

36           (a) A lender's failure to make loan advances to the borrower under the reverse  
37 mortgage loan contract shall be deemed the lender's default of the contract. Upon such  
38 default, the lender shall forfeit any right to collect interest or service charges under the  
39 contract. The lender's right to recovery at loan maturity shall be limited to the  
40 outstanding balance as of the date of default, minus all interest. Lenders may also be  
41 subject to other default penalties promulgated and imposed by the Commissioner.

42           (b) Subsection (a) of this section shall not apply if the lender has previously  
43 declared the borrower in default pursuant to G.S. 53-269, or if the lender makes the

1 required loan advance within the time stated in the mortgage contract or within 30 days  
2 of receipt of notice from the borrower that the loan advance was not received.

3 **"§ 53-269. Repayment upon borrower's default.**

4 A reverse mortgage loan contract may provide for a borrower's default, thereby  
5 triggering early repayment of the loan, based only upon one or more of the following  
6 terms and conditions:

- 7 (1) The borrower fails to maintain the residence as required by the  
8 contract;
- 9 (2) The borrower sells or otherwise conveys title to the home to a third  
10 party;
- 11 (3) The borrower dies, provided that the home is not the principal  
12 residence of the surviving borrower;
- 13 (4) The home is not the principal residence of at least one of the borrowers  
14 for a period of 12 consecutive months for reasons of physical or  
15 mental illness;
- 16 (5) For reasons other than physical or mental illness, the home ceases to  
17 be the principal residence of the borrower for a period of 180  
18 consecutive days and is not the principal residence of another borrower  
19 under the loan, without prior written permission from the lender;
- 20 (6) The borrower fails to pay property taxes, insurance premiums, and  
21 assessments pursuant to G.S. 53-262.

22 **"§ 53-270. Time for initiation of foreclosure.**

23 When a borrower's obligation to repay the reverse mortgage loan is triggered under  
24 G.S. 53-269, in addition to all rights conferred upon owners and borrowers under  
25 Chapter 45 of the General Statutes, the lender must give the borrower not less than 90  
26 days' notice of its intent to initiate foreclosure proceedings. If the contract so provides,  
27 interest will continue to accrue during the 90-day period.

28 **"§ 53-271. Counseling provisions.**

29 (a) Subject to the approval of the Secretary of Human Resources, the North  
30 Carolina Division of Aging shall adopt rules governing the certification of reverse  
31 mortgage counselors and necessary standards for counselors, and shall establish  
32 reasonable fees for certification. The Division of Aging shall forward the names of all  
33 persons satisfying counselor certification requirements to the Commissioner.

34 (b) The Commissioner shall maintain a list of certified counselors and shall  
35 periodically provide an up-to-date copy of the list to all authorized lenders.

36 (c) The Commissioner shall provide to all certified reverse mortgage counselors  
37 information provided to the Commissioner by authorized lenders under G.S. 53-267.

38 **"§ 53-272. Prohibited acts.**

39 Reverse mortgage lenders are prohibited from engaging in any of the following acts  
40 in connection with the making, servicing, or collecting of a reverse mortgage loan:

- 41 (1) Misrepresenting the material facts or making false promises or  
42 engaging in a course of misrepresentation through agents or otherwise;
- 43 (2) Failing to disburse funds in accordance with the terms of the reverse  
44 mortgage loan contract or other written commitment;

- 1           (3) Improperly refusing to issue a satisfaction of a mortgage;  
2           (4) Engaging in any action or practice which is unfair or deceptive, or  
3           which operates a fraud on any person;  
4           (5) Failing to comply with this Article.

5 **"§ 53-273. Commissioner's authority to enforce; penalties.**

6           (a) The Commissioner shall promulgate the rules and regulations necessary to  
7 implement and enforce the provisions of this Article. If the Commissioner finds  
8 probable cause to believe that an authorized lender is in violation of this Article, or of  
9 any law or regulation of this State or the United States, or an agency thereof, he shall,  
10 after affording reasonable notice and opportunity to be heard to the lender, order the  
11 lender to cease and desist from such violation.

12           (b) If a lender fails to comply with or appeal the Commissioner's cease and desist  
13 order, the lender shall be subject to a fine of one thousand dollars (\$1,000) for each  
14 violation that is the subject of the cease and desist order. The penalty imposed under this  
15 section shall be in addition to and not in lieu of penalties available under any other  
16 provision of law applicable to a reverse mortgage lender.

17           (c) Upon a finding that a reverse mortgage lender has violated this Article, the  
18 Commissioner may revoke, temporarily or permanently, the authority of the lender to  
19 make reverse mortgage loans.

20           (d) A person damaged by a lender's actions may file an action in civil court to  
21 recover actual and punitive damages. Attorneys' fees shall be awarded to a prevailing  
22 borrower. Nothing in this Article shall limit any statutory or common law right of a  
23 person to bring an action in court for any act, nor shall this Article limit the right of the  
24 State to punish a person for the violation of any law.

25 **"§ 53-274. Appeals.**

26           Notwithstanding any other provision of law, an aggrieved party may, within 30 days  
27 after final decision of the Commissioner, and by written notice to the Commissioner,  
28 appeal directly to the North Carolina Court of Appeals for judicial review of the record.  
29 In the event of such appeal the Commissioner shall certify the record to the Clerk of the  
30 Court of Appeals not later than 30 days after certification. Such record shall include all  
31 memoranda, briefs, and any other documents, data, information, or evidence submitted  
32 by any party to such proceeding. All factual information contained in a report of  
33 examination or investigation submitted to or otherwise obtained by the Commissioner  
34 or his staff shall be made a part of the record unless such information is deemed  
35 confidential by the Commissioner."

36           Sec. 2. This act is effective upon ratification.