

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 22  
Committee Substitute Favorable 5/9/91

Short Title: Regulate Reverse Mortgages.

(Public)

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Sponsors:

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Referred to:

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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 the North Carolina Housing  
21 Finance Agency, any lender authorized to engage in business as a  
22 bank, savings institution, or credit union under the laws of this State or  
23 of the United States, or any other person, firm, or corporation

1 authorized to make reverse mortgage loans by the Commissioner of  
2 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 under the terms of the  
18 reverse mortgage loan agreement or is immediately due and payable.

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

27 (7) 'Total annual percentage rate' means the annual average rate of  
28 interest, which provides the total amount owed at loan maturity when  
29 this rate is applied to the loan advances, excluding closing costs not  
30 paid to third parties, over the term of the reverse mortgage loan.

31 **"§ 53-259. Authority and procedures governing reverse mortgage loans.**

32 (a) Effective January 1, 1992, no person, firm, or corporation shall engage in the  
33 business of making reverse mortgage loans without first being approved as an  
34 authorized lender by the Commissioner, unless the lender is the North Carolina Housing  
35 Finance Agency, or is a bank, savings and loan association, or credit union, authorized  
36 to do business under the laws of this State or authorized to do business under the laws of  
37 the United States and chartered to do business in this State.

38 (b) An application for authorization to make reverse mortgage loans shall be in  
39 writing to the Commissioner and in the form prescribed by the Commissioner. The  
40 application shall contain the name and complete business address or addresses of the  
41 applicant. The application shall also include affirmation of financial solvency and all  
42 capitalization requirements that are required by the Commissioner. The application  
43 shall be accompanied by a nonrefundable fee, payable to the Commissioner, of five  
44 hundred dollars (\$500.00).

1       (c) The North Carolina Housing Finance Agency, and any bank, savings and loan  
2 association, or credit union that is not required to obtain authorization to make reverse  
3 mortgage loans under subsection (a) of this section, shall, prior to making any reverse  
4 mortgage loan, notify the Commissioner of its intent to make the loan. This notification  
5 shall be made on a form prescribed by the Commissioner and shall contain all  
6 information required by the Commissioner.

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

13 **"§ 53-260. Application of rules.**

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

20 **"§ 53-261. Interest.**

21       Notwithstanding any other provisions of law to the contrary, the parties to a reverse  
22 mortgage loan may contract for the payment of interest at a rate agreed to by the parties.  
23 Interest shall be deferred until the earliest occurrence of one or more events specified in  
24 the reverse mortgage loan contract. Payment of interest on deferred interest shall be as  
25 agreed upon by the parties to the contract. The parties may agree that the deferred  
26 interest may be added to the outstanding balance of the loan. Provided, however, that  
27 the Commissioner may determine that the total annual percentage rate is excessive; if  
28 the Commissioner so determines, that finding shall be included in the information  
29 provided to counselors under G.S. 53-265(a)(7), and to applicants for reverse mortgage  
30 loans under G.S. 53-265(b).

31 **"§ 53-262. Taxes, insurance, and assessment.**

32       A reverse mortgage loan contract may provide that it is the primary obligation of the  
33 borrower to pay all property taxes, insurance premiums, and assessments in a timely  
34 manner, and that the failure of the borrower to make these payments, and to provide  
35 evidence of payment to the lender, may constitute grounds for default of the loan.  
36 Provided, however, that a reverse mortgage loan contract shall state that if a borrower  
37 fails to pay property taxes, insurance premiums, or assessments, the lender may choose,  
38 at the lender's option, to pay the amounts due, charge them to the reverse mortgage loan,  
39 and recalculate regularly scheduled payments under the loan to account for the  
40 increased outstanding loan balance.

41 **"§ 53-263. Renegotiation of loan; calculation of outstanding balance; prepayment.**

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

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

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

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

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

12          (4) The total accrued interest to date.

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

15 **"§ 53-264. Limits on borrowers' liability.**

16       (a) When the reverse mortgage loan becomes due, if the borrower mortgaged one  
17 hundred percent (100%) of the full value of the house then the amount owed by the  
18 borrower shall not be greater than (i) the fair market value of the house, minus sale  
19 costs, or (ii) the outstanding balance of the loan, whichever amount is less.

20       (b) If the borrower mortgaged less than one hundred percent (100%) of the full  
21 value of the house, the amount owed by the borrower shall not be greater than (i) the  
22 outstanding balance of the loan, or (ii) the percentage of the fair market value, minus  
23 sale costs, as provided in the contract, whichever amount is less.

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

26 **"§ 53-265. Disclosures of loan terms.**

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

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

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

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

37           (4) The projected total annual percentage rate applicable under various  
38 loan terms and appreciation rates, and interest rates applicable at  
39 sample ages of borrowers;

40           (5) Standard closing costs;

41           (6) All service fees to be charged during the term of the loan;

42           (7) Other information required by the Commissioner.

43       (b) Within 10 business days after application is made by a borrower, but not less  
44 than 20 business days before closing of the loan, lenders shall provide applicants with

1 the same information required in subsection (a) of this section, shall inform applicants  
2 that reverse mortgage counseling is advisable, and shall provide the names and  
3 addresses of reverse mortgage counselors listed with the Commissioner's office.

4 **"§ 53-266. Information required of lender.**

5 (a) At the closing of the reverse mortgage loan, the lender shall provide to the  
6 borrower the name of the lender's employee or agent who has been designated  
7 specifically to respond to inquiries concerning reverse mortgages. This information  
8 shall be provided by the lender to the borrower at least annually, and whenever the  
9 information concerning the designated employee or agent changes.

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

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

27 **"§ 53-267. Effects of lender's default.**

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

34 (b) Subsection (a) of this section shall not apply if the lender has previously  
35 declared the borrower in default under G.S. 53-268, or if the lender makes the required  
36 loan advance within the time stated in the mortgage contract or within 30 days of receipt  
37 of notice from the borrower that the loan advance was not received.

38 **"§ 53-268. Repayment upon borrower's default.**

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

- 42 (1) The borrower fails to maintain the residence as required by the  
43 contract;

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

14 **"§ 53-269. Time for initiation of foreclosure.**

15 When a borrower's obligation to repay the reverse mortgage loan is triggered under  
16 G.S. 53-268, in addition to all rights conferred upon owners and borrowers under  
17 Chapter 45 of the General Statutes, the lender must give the borrower not less than 90  
18 days' notice of its intent to initiate foreclosure proceedings. If the contract so provides,  
19 interest will continue to accrue during the 90-day period.

20 **"§ 53-270. Counseling provisions.**

21 (a) The North Carolina Housing Finance Agency shall adopt rules governing the  
22 certification of reverse mortgage counselors and necessary standards for counselors and  
23 shall establish reasonable fees for certification. The North Carolina Housing Finance  
24 Agency shall forward the names of all persons satisfying counselor certification  
25 requirements to the Commissioner.

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

28 (c) The Commissioner shall provide to all certified reverse mortgage counselors  
29 information provided to the Commissioner by authorized lenders under G.S. 53-266.

30 **"§ 53-271. Prohibited acts.**

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

- 33           (1) Misrepresenting the material facts or making false promises or  
34 engaging in a course of misrepresentation through agents or otherwise;
- 35           (2) Failing to disburse funds in accordance with the terms of the reverse  
36 mortgage loan contract or other written commitment;
- 37           (3) Improperly refusing to issue a satisfaction of a mortgage;
- 38           (4) Engaging in any action or practice which is unfair or deceptive, or  
39 which operates a fraud on any person;
- 40           (5) Failing to comply with this Article.

41 **"§ 53-272. Commissioner's authority to enforce; penalties.**

42 (a) The Commissioner shall promulgate the rules and regulations necessary to  
43 implement and enforce the provisions of this Article. Upon finding probable cause to  
44 believe that an authorized lender is in violation of this Article, or of any law or

1 regulation of this State or the United States, or an agency thereof, the Commissioner  
2 shall, after affording reasonable notice and opportunity to be heard to the lender, order  
3 the lender to cease and desist from the violation.

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

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

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

17 **"§ 53-273. Appeals.**

18 Notwithstanding any other provision of law, an aggrieved party may, within 30 days  
19 after final decision of the Commissioner, and by written notice to the Commissioner,  
20 appeal directly to the North Carolina Court of Appeals for judicial review of the record.  
21 In the event of an appeal the Commissioner shall certify the record to the Clerk of the  
22 Court of Appeals no later than 30 days after receipt of the notice of appeal. The record  
23 shall include all memoranda, briefs, and any other documents, data, information, or  
24 evidence submitted by any party to the proceeding. All factual information contained in  
25 a report of examination or investigation submitted to or otherwise obtained by the  
26 Commissioner or the Commissioner's staff shall be made a part of the record unless the  
27 information is deemed confidential by the Commissioner."

28 Sec. 2. G.S. 7A-29 reads as rewritten:

29 **"§ 7A-29. Appeals of right from certain administrative agencies.**

30 (a) From any final order or decision of the North Carolina Utilities Commission  
31 not governed by subsection (b), the Department of Human Resources ~~pursuant to under~~  
32 G.S. 131E-188(b), the Commissioner of Banks ~~pursuant to under~~ Articles ~~17 and 18~~ 17,  
33 18, and 21 of Chapter 53 of the General Statutes, the Administrator of Savings and  
34 Loans ~~pursuant to under~~ Article 3A of Chapter 54B of the General Statutes, the North  
35 Carolina Industrial Commission, the North Carolina State Bar ~~pursuant to under~~ G.S. 84-  
36 28, the Property Tax Commission ~~pursuant to under~~ G.S. 105-290 and 105-342, the  
37 Board of State Contract Appeals ~~pursuant to under~~ G.S. 143-135.9, or an appeal from the  
38 Commissioner of Insurance ~~pursuant to under~~ G.S. 58-9.4, or from the Governor's Waste  
39 Management Board ~~pursuant to under~~ G.S. 130A-293 and G.S. 104E-6.2, appeal as of  
40 right lies directly to the Court of Appeals.

41 (b) From any final order or decision of the Utilities Commission in a general rate  
42 case, appeal as of right lies directly to the Supreme Court."

43 Sec. 3. This act is effective upon ratification.