

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 22  
Committee Substitute Favorable 5/9/91  
Committee Substitute #2 Favorable 6/18/91

Short Title: Regulate Reverse Mortgages.

(Public)

Sponsors:

Referred to:

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 MORTGAGES.

8 "§ 53-255. Title.

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

10 "§ 53-256. 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 governing traditional mortgage transactions that should not apply to  
15 reverse mortgages. The purpose of this Article is to authorize reverse mortgage  
16 transactions and to clarify other provisions of North Carolina law that might otherwise  
17 apply to reverse mortgage loans, and to provide protection for elderly homeowners who  
18 enter into reverse mortgage transactions.

19 "§ 53-257. Definitions.

20 The following definitions apply in this Article:

21 (1) Authorized lender or lender. The North Carolina Housing Finance  
22 Agency, any lender authorized to engage in business as a bank, savings

1 institution, or credit union under the laws of this State or of the United  
2 States, or any other person, firm, or corporation authorized to make  
3 reverse mortgage loans by the Commissioner of Banks.

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

9 (3) Commissioner. The Commissioner of Banks of this State.

10 (4) Counselor. An individual who has completed a training curriculum on  
11 reverse mortgage counseling provided or approved by the North  
12 Carolina Housing Finance Agency and whose name is maintained on  
13 the Commissioner's list of approved reverse mortgage counselors.

14 (5) Outstanding balance. The current net amount of money owed by the  
15 borrower to the lender, calculated in accordance with G.S. 53-262(b),  
16 whether or not the sum is suspended under the terms of the reverse  
17 mortgage loan agreement or is immediately due and payable.

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

26 (7) Shared appreciation. An agreement by the lender and the borrower  
27 that, in addition to any interest accruing on the outstanding balance of  
28 a reverse mortgage loan, the lender may collect an additional amount  
29 equal to a percentage of any net appreciated value of the property  
30 during the term of the reverse mortgage loan.

31 (8) Total annual percentage rate. The annual average rate of interest,  
32 which provides the total amount owed at loan maturity when this rate  
33 is applied to the loan advances, excluding closing costs not paid to  
34 third parties, over the term of the reverse mortgage loan.

35 **§ 53-258. Authority and procedures governing reverse mortgage loans.**

36 (a) No person, firm, or corporation shall engage in the business of making  
37 reverse mortgage loans without first being approved as an authorized lender by the  
38 Commissioner, unless the lender is the North Carolina Housing Finance Agency, or is a  
39 bank, savings institution, or credit union authorized to do business under the laws of this  
40 State or authorized to do business under the laws of the United States and chartered to  
41 do business in this State.

42 (b) An application for authorization to make reverse mortgage loans shall be in  
43 writing to the Commissioner and in the form prescribed by the Commissioner. The  
44 application shall contain the name and complete business address or addresses of the

1 applicant. The application shall also include affirmation of financial solvency and all  
2 capitalization requirements that are required by the Commissioner. The application  
3 shall be accompanied by a nonrefundable fee, payable to the Commissioner, of five  
4 hundred dollars (\$500.00).

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

11 (d) The Commissioner shall, upon determination that a lender should be  
12 authorized to make reverse mortgage loans, issue notice of this authority to the lender.  
13 The authority to issue reverse mortgage loans is valid for the period of time specified by  
14 the Commissioner. A lender to whom a notice of authority is issued shall display the  
15 notice prominently in any and all offices of the lender that make reverse mortgage  
16 loans. Authorizations issued under this section are nontransferable and subject to an  
17 annual fee of two hundred fifty dollars (\$250.00).

18 **"§ 53-259. Application of rules.**

19 In addition to the provisions of this Article, authorized lenders shall comply with  
20 rules adopted by the Commissioner that are reasonable and necessary to effectuate the  
21 purposes of this Article and to protect the public interest. Provided, however, that  
22 provisions in Chapters 24 or 45 of the General Statutes and the rules adopted under  
23 those Chapters that conflict with this Article shall not apply to reverse mortgage  
24 transactions governed by this Article.

25 **"§ 53-260. Interest.**

26 Notwithstanding any other provisions of law to the contrary, the parties to a reverse  
27 mortgage loan may contract for the payment of interest at a rate agreed to by the parties.  
28 Interest shall be deferred until the earliest occurrence of one or more events specified in  
29 the reverse mortgage loan contract. Payment of interest on deferred interest shall be as  
30 agreed upon by the parties to the contract. The parties may agree that the deferred  
31 interest may be added to the outstanding balance of the loan. The Commissioner may  
32 determine that the total annual percentage rate is excessive. If the Commissioner  
33 determines the total annual percentage rate to be excessive, that determination shall be  
34 included in the information provided to counselors under G.S. 53-264(a)(7), and to  
35 applicants for reverse mortgage loans under G.S. 53-264(b).

36 **"§ 53-261. Taxes, insurance, and assessments.**

37 A reverse mortgage loan contract 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. A  
41 reverse mortgage loan contract shall state that if a borrower fails to pay property taxes,  
42 insurance premiums, or assessments, the lender may choose, at the lender's option, to  
43 pay the amounts due, charge them to the reverse mortgage loan, and recalculate

1 regularly scheduled payments under the loan to account for the increased outstanding  
2 loan balance.

3 **"§ 53-262. Renegotiation of loan; calculation of outstanding balance; prepayment.**

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

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

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

12 (2) All taxes, assessments, insurance premiums, and other similar charges  
13 paid to date by the lender under G.S. 53-261 and not reimbursed by the  
14 borrower within 60 days of the date payment was made by the lender.

15 (3) All actual closing costs the borrower has deferred, if a deferral  
16 provision is contained in the loan agreement.

17 (4) The total accrued interest to date.

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

20 **"§ 53-263. Limits on borrowers' liability.**

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

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

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

31 **"§ 53-264. Disclosures of loan terms.**

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

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

38 (2) Conditions or events that require the borrower to repay the loan  
39 obligation.

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

42 (4) The projected total annual percentage rate applicable under various  
43 loan terms and appreciation rates and interest rates applicable at  
44 sample ages of borrowers.

1           (5) Standard closing costs.

2           (6) All service fees to be charged during the term of the loan.

3           (7) Other information required by the Commissioner.

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

9 **"§ 53-265. Information required of lender.**

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

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

20           (1) The outstanding balance of the loan at the beginning of the statement  
21 period.

22           (2) Disbursements to the borrower.

23           (3) The total amount of interest added to the outstanding balance of the  
24 loan.

25           (4) Any property taxes, insurance premiums, or assessments paid by the  
26 lender.

27           (5) Payments made to the lender.

28           (6) The total mortgage balance owed to date.

29           (7) The remaining amount available to the borrower in reverse mortgage  
30 loans wherein proceeds have been reserved to be disbursed in one or  
31 more lump sum amounts.

32 **"§ 53-266. Effects of lender's default.**

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

39       (b) Subsection (a) of this section shall not apply if the lender has previously  
40 declared the borrower in default under G.S. 53-267, or if the lender makes the required  
41 loan advance within the time stated in the mortgage contract or within 30 days of receipt  
42 of notice from the borrower that the loan advance was not received.

43 **"§ 53-267. Repayment upon borrower's default.**

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

- 4            (1) The borrower fails to maintain the residence as required by the  
5 contract.
- 6            (2) The borrower sells or otherwise conveys title to the home to a third  
7 party.
- 8            (3) The borrower dies and the home is not the principal residence of the  
9 surviving borrower.
- 10           (4) The home is not the principal residence of at least one of the borrowers  
11 for a period of 12 consecutive months for reasons of physical or  
12 mental illness.
- 13           (5) For reasons other than physical or mental illness, the home ceases to  
14 be the principal residence of the borrower for a period of 180  
15 consecutive days and is not the principal residence of another borrower  
16 under the loan, without prior written permission from the lender.
- 17           (6) The borrower fails to pay property taxes, insurance premiums, and  
18 assessments under G.S. 53-261.

19 **"§ 53-268. Time for initiation of foreclosure.**

20        When a borrower's obligation to repay the reverse mortgage loan is triggered under  
21 G.S. 53-267, in addition to all rights conferred upon owners and borrowers under  
22 Chapter 45 of the General Statutes, the lender must give the borrower not less than 90  
23 days' notice of its intent to initiate foreclosure proceedings. If the contract so provides,  
24 interest will continue to accrue during the 90-day period.

25 **"§ 53-269. Counseling provisions.**

26        (a) The North Carolina Housing Finance Agency shall adopt rules governing the  
27 training of counselors and necessary standards for counselor training and shall establish  
28 reasonable fees for training. The North Carolina Housing Finance Agency shall  
29 forward the names of all persons satisfying counselor training requirements to the  
30 Commissioner.

31        (b) The Commissioner shall maintain a list of counselors who have satisfied  
32 training requirements and shall periodically provide an up-to-date copy of the list to all  
33 authorized lenders.

34        (c) The Commissioner shall provide to all counselors who have satisfied training  
35 requirements information provided to the Commissioner by authorized lenders under  
36 G.S. 53-265.

37 **"§ 53-270. Prohibited acts.**

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

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

- 1           (4) Engaging in any action or practice that is unfair or deceptive, or that  
2           operates a fraud on any person.  
3           (5) Contracting for or receiving shared appreciation.  
4           (6) Closing a reverse mortgage loan without receiving certification from a  
5           counselor that the borrower has received counseling on the advisability  
6           of a reverse mortgage loan and the appropriate reverse mortgage loan  
7           for the borrower.  
8           (7) Failing to comply with this Article.

9 **"§ 53-271. Commissioner's authority to enforce; penalties.**

10       (a) The Commissioner shall adopt rules necessary to implement and enforce the  
11 provisions of this Article. Upon finding probable cause to believe that an authorized  
12 lender is in violation of this Article, or of any law or any rule or regulation of this State,  
13 the United States, or an agency of the State or the United States, the Commissioner  
14 shall, after affording reasonable notice and opportunity to be heard to the lender, order  
15 the lender to cease and desist from the violation.

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

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

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

29 **"§ 53-272. Appeals.**

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

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

41 **"§ 7A-29. Appeals of right from certain administrative agencies.**

42       (a) From any final order or decision of the North Carolina Utilities Commission  
43 not governed by subsection (b), the Department of Human Resources pursuant to under  
44 G.S. 131E-188(b), the Commissioner of Banks pursuant to under Articles 17 and 18-17,

1 18, and 21 of Chapter 53 of the General Statutes, the Administrator of Savings and  
2 Loans ~~pursuant to~~under Article 3A of Chapter 54B of the General Statutes, the North  
3 Carolina Industrial Commission, the North Carolina State Bar ~~pursuant to~~under G.S. 84-  
4 28, the Property Tax Commission ~~pursuant to~~under G.S. 105-290 and 105-342, ~~the Board~~  
5 ~~of State Contract Appeals pursuant to G.S. 143-135.9,~~ or an appeal from the Commissioner  
6 of Insurance ~~pursuant to~~under G.S. 58-9.4, or from the Governor's Waste Management  
7 Board ~~pursuant to~~under G.S. 130A-293 and G.S. 104E-6.2, appeal as of right lies  
8 directly to the Court of Appeals.

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

11 Sec. 3. This act becomes effective October 1, 1991. This act expires October  
12 1, 1995. No reverse mortgage loan may be made on or after the date the act expires.  
13 The expiration of the act does not affect the validity of a reverse mortgage loan made  
14 before the date of expiration.