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SENATE BILL 1015
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Short Title: Homeowner and Homebuyer Protection Act.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE HOMEOWNER AND HOMEBUYER PROTECTION ACT TO
3 PROHIBIT HOME FORECLOSURE RESCUE SCAMS AND OFFER PROTECTIONS
4 IN LAND INSTALLMENT SALES.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** This act shall be known and may be cited as the "Homeowner and
7 Homebuyer Protection Act."

8 **SECTION 2.** Chapter 75 of the General Statutes is amended by adding a new
9 Article to read:

10 "Article 6.

11 "Home Foreclosure Rescue Scams.

12 **"§ 75-120. Definitions.**

13 The following definitions shall apply in this Article:

- 14 (1) Exempt transaction. – A foreclosure rescue transaction in which the
15 transferee is any of the following:
16 a. A member of the transferor's family.
17 b. A bona fide nonprofit organization that regularly provides financial,
18 housing, or social services to individuals.
19 c. A state, federal, or local government agency or organization.
20 (2) Default. – Whenever a mortgagor misses two or more consecutive scheduled
21 payments on a mortgage.
22 (3) Foreclosure rescue transaction. – A transfer of residential real property,
23 including a manufactured home, which includes all of the following features:
24 a. The real property is the principal residence of the transferor.
25 b. The transferor is in default or has received written notification from
26 the lender of the intent to foreclose on a mortgage loan obligation
27 that is secured by the transferor's principal residence.
28 c. The transferee, an agent of the transferee, or others acting in concert
29 with the transferee make representations that the transfer of the
30 residential property will enable the transferor to prevent, postpone, or
31 reverse the effect of foreclosure and to remain in the residence.
32 d. By written or oral agreement, the transferor retains an interest in the
33 property conveyed, including a tenancy interest, an interest under a
34 lease-purchase agreement, an option to reacquire the property, or any



1 other legal, equitable, or possessory interest in the property
2 conveyed.

- 3 e. The transferee fails to pay consideration to the transferor in an
4 amount of at least 50 percent of the fair market value of the property.

5 **"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.**

6 It is unlawful for a person other than the transferor to engage in, promise to engage in,
7 arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for
8 financial gain or with the expectation of financial gain. This section does not apply to exempt
9 transactions. A violation of this section is an unfair trade practice under G.S. 75-1.1."

10 **SECTION 3.** The General Statutes are amended by adding a new Chapter to read:

11 **"Chapter 47G.**

12 **"Land Installment Contracts.**

13 **"§ 47G-1. Definitions.**

14 The following definitions apply in this Chapter, unless the context requires otherwise:

- 15 (1) Covered Lease Agreement—A residential lease agreement that is combined
16 with, or is executed concurrently with an option contract.
17 (2) Covered Option Contracts – An option contract for the purchase of real
18 property that includes or is combined with, or is executed concurrently with
19 a residential lease agreement.
20 (3) Forfeiture. – The termination of an option purchaser's rights to exercise an
21 option to purchase property that is the subject of the option contract, and
22 those rights of persons claiming by or through an option purchaser, to the
23 extent permitted by this Chapter, because of a breach of one or more of the
24 purchaser's obligations under the option contract and/or residential lease
25 agreement.
26 (4) Option Fee. – A payment made by the option purchaser to the option seller
27 that constitutes the price the option purchaser pays for the right to buy the
28 property at a specified price in the future.
29 (5) Option Purchaser, or Purchaser. – An individual who purchases an interest in
30 property under an option contract, or any legal successor in interest to that
31 individual.
32 (6) Option Seller, or Seller. – A person who makes a sale of an option by means
33 of an option contract, or the person's successor in interest.
34 (7) Property. – Either (i) real estate located in this State, upon which there is
35 located or there is to be located a structure or structures designed principally
36 for occupancy of from one to four families that is or will be occupied by the
37 purchaser as the purchaser's principal dwelling, or (ii) a manufactured home,
38 as that term is defined in G.S. 143-149.9, which is purchased with real estate
39 on which it is located or is to be located and that is or will be occupied by a
40 purchaser as the purchaser's principal dwelling, if the purchase price is
41 \$5,000 or more. Property does not include a manufactured home which is
42 purchased without real estate.

43 **"§ 47G-2. Minimum contents of land installment sales contracts.**

44 (a) Writing Required. – Every option contract shall be evidenced by a contract signed
45 by all parties to it and containing all the terms to which they have agreed.

46 (b) At the time the purchaser signs the option contract, the seller shall deliver to him an
47 exact copy of the contract. If the seller fails to provide a copy of the option contract, the
48 contract signed by the purchaser is voidable at the option of the purchaser, and the seller, on
49 demand, shall immediately refund to the purchaser any and all payments that have been made.
50 However, the contract shall not be voidable simply as a result of clerical errors, momentary

1 delays in the provision of an exact copy of the contract to the purchaser, or other immaterial
2 errors.

3 (c) Recordation. Within 20 days after the contract has been signed by both the seller
4 and the purchaser, the seller shall cause a copy of the contract or a memorandum of the contract
5 to be recorded at the purchaser's expense in the register of deeds in the county where the
6 property sold under the contract is located. If a memorandum of the contract is recorded, it shall
7 be entitled "Memorandum of Option Contract" and shall contain, as a minimum, the names of
8 the parties, the signatures of the parties, a description of the property and applicable time
9 periods. A person other than a seller and purchaser may rely on the recorded materials in
10 determining whether the requirements of this subsection have been met.

11 **"§ 47G-3. Escrow of down payment.**

12 The provisions of Chapter 42 of the General Statutes apply to the portion of the contract
13 that is a residential lease agreement. After a tenant exercises an option to purchase leased
14 property under a residential lease, Chapter 42 of the General Statutes shall no longer apply to
15 the lease.

16 **"§ 47G-4. Protection of tenants' rights.**

17 (a) A purchaser's right to exercise an option to purchase property under an option
18 contract cannot be forfeited unless a breach has occurred in one or more of the purchaser's
19 obligations under the option contract and the option contract provides that as a result of such
20 breach the seller is entitled to forfeit the contract.

21 (b) In addition to any other remedies at law, a seller's violation of this section entitles
22 the purchaser to either a claim for damages or the right to rescind the contract and seek the
23 return of all payments that have been made under the option contract.

24 **"§ 47G-5. Conditions of forfeiture; right to cure.**

25 (a) An option seller may not execute an Option Contract with an option purchaser if, at
26 the time the option contract is entered into and recorded, the property is encumbered by a lien,
27 mortgage or encumbrance unless the vendor notifies the purchaser in a separate written
28 disclosure:

29 (1) That the property is subject to one or more outstanding mortgages, liens, or
30 other encumbrances.

31 (2) In 14-point type, of the fact that if the option seller fails to make timely
32 payments, the lien holder may attempt to collect the debt by foreclosing on
33 the lien and selling the property at a foreclosure sale.

34 (b) If, at any time prior to the expiration of the time period in which the option
35 purchaser has a right to exercise the option to purchase, the obligor defaults on a loan secured
36 by a lien or mortgage on the property, the option purchaser may elect to exercise the option or
37 cancel and rescind the contract.

38 (c) A violation of this section is a violation of G.S. 75-1.1 and in addition to other rights
39 or remedies provided by law, entitles the option purchaser to cancel and rescind the option
40 contract and/or lease agreement and receive from the option seller:

41 (1) The return of all payments of any kind made to the option seller under the
42 contract.

43 (2) Reimbursement for the value of any improvements made to the property by
44 the option purchaser."

45 **SECTION 4.** The General Statutes are amended by adding a new Chapter to read:

46 **"Chapter 47H.**

47 **"Contracts for Deed.**

48 **"§ 47H-1. Definitions.**

49 The following definitions apply in this Chapter, unless the context requires otherwise:

50 (1) Contract for Deed. – An agreement in which the seller agrees to sell an
51 interest in property to the purchaser and the purchaser agrees to pay the

1 purchase price in five or more payments exclusive of the down payment, if
2 any, and the seller retains title to the property as security for the purchaser's
3 obligation under the agreement. Contracts for deeds do not include purchase
4 and sale agreements entered into with the good faith expectation of a
5 separate transaction in which a third party or the seller agrees to finance the
6 purchase price.

7 (2) Cure the default. – To perform the obligations under the contract that are
8 described in the notice of intent to forfeit required by G.S. 47H-6 and that
9 are necessary to reinstate the contract. This term is synonymous with the
10 term 'cure.'

11 (3) Down payment. – A payment made by the purchaser to the seller that
12 constitutes part of the purchase price of property that is the subject of a
13 Contract for Deed and that is made at or before the time of the execution of
14 that contract.

15 (4) Forfeiture. – The termination of all of a purchaser's rights, title, and interest,
16 and those of persons claiming by or through a purchaser, in property that is
17 the subject of a contract for deed, to the extent permitted by this Chapter,
18 because of a breach of one or more of the purchaser's obligations under the
19 contract.

20 (5) Property. – Either (i) real estate located in this State, upon which there is
21 located or there is to be located a structure or structures designed principally
22 for occupancy of from one to four families that is or will be occupied by the
23 purchaser as the purchaser's principal dwelling, or (ii) a manufactured home,
24 as that term is defined in G.S. 143-149.9, which is purchased with real
25 property on which it is located or on which it is to be located and that is or
26 will be occupied by a purchaser as the purchaser's principal dwelling, if the
27 purchase price is \$5,000 or more. Property does not include a manufactured
28 home purchased without real estate.

29 (6) Purchaser. – An individual who purchases an interest in property under a
30 Contract for deed, or any legal successor in interest to that individual.

31 (7) Seller. – A person who makes a sale of property by means of a contract for
32 deed, or the person's successor in interest.

33 **"§ 47H-2. Minimum contents for contracts for deed; recordation.**

34 (a) Writing Required. – Every Contract for Deed shall be evidenced by a contract
35 signed by all parties to it and containing all the terms to which they have agreed.

36 (b) Contents. – A Contract for Deed contract shall contain at least all of the following:

37 (1) The full names and addresses of all the parties to the contract.

38 (2) The date the contract is signed by each party.

39 (3) A legal description of the property conveyed.

40 (4) The sales price of the property conveyed.

41 (5) Any charges or fees for services included in the contract separate from the
42 sale price.

43 (6) The amount of the purchaser's down payment.

44 (7) The principal balance owed by the purchaser, which is the sum of the
45 amounts stated in subdivisions (4) and (5) of this subsection, less the amount
46 stated in subdivision (6) of this subsection.

47 (8) The amount and due date of each installment payment and the total number
48 of installment payments.

49 (9) The interest rate on the unpaid balance, if any, and the method of
50 determining the interest rate.

- 1 (10) A conspicuous statement of any pending order of any public agency or other
2 matters of public record affecting the property.
- 3 (11) A statement of the rights of the purchaser to cure a default.
- 4 (12) A statement setting forth the obligation of each party who is responsible for
5 making repairs to the property, the payment of taxes, hazard insurance
6 assessments, homeowner association dues and other charges against the
7 property from the date of the contract.
- 8 (13) A provision that the purchaser has the right to accelerate or prepay any
9 installment payments without penalty.
- 10 (14) A description of conditions of the property that includes whether any
11 structure on the property has water, sewer, septic, and electricity service,
12 whether the property is in a floodplain, whether anyone else has a legal
13 interest in the property, and whether restrictive covenants prevent building
14 or installing a dwelling.
- 15 (15) A statement indicating the amount of any real estate taxes and/or
16 homeowner association dues, or special assessments owed on the property
17 that is the subject of the contract, and the amount of such taxes dues, or
18 assessments that are delinquent.
- 19 (16) A statement of the purchaser's right to cancel pursuant to G.S. 47G-7.

20 (c) At the time the purchaser signs the contract, the seller shall deliver to him an exact
21 copy of the contract. If the seller fails to provide a copy of the contract, or the contract does not
22 contain the minimum provisions, the contract signed by the purchaser is voidable at the option
23 of the purchaser, and the seller, on demand, shall immediately refund to the purchaser all
24 payments and deposits that have been made. However, the contract shall not be voidable simply
25 as a result of clerical errors, momentary delays in the provision of an exact copy of the contract
26 to the purchaser, or other immaterial errors.

27 (d) Recordation. Within 20 days after the contract has been signed by both the seller
28 and the purchaser, the seller shall cause a copy of the contract or a memorandum of the contract
29 to be recorded at the purchaser's expense in the register of deeds in the county where the
30 property sold under the contract is located. If a memorandum of the contract is recorded, it shall
31 be entitled "Memorandum of a Contract for Deed" and shall contain, as a minimum, the names
32 of the parties, the signatures of the parties, a description of the property and applicable time
33 periods.

34 **"§ 47H-3. Escrow of down payment.**

35 (a) Any down payment that a purchaser provides pursuant to a contract for deed shall
36 be immediately deposited in a trust or escrow account in an insured bank, savings and loan
37 association, or credit union in this State within 3 business days of executing the contract and
38 shall remain in the account until either the seller transfers ownership of the property, until the
39 agreement is cancelled, or until 4 days after the purchaser takes possession of the property.
40 Funds held in the trust or escrow account shall be deemed to belong to the purchaser and not to
41 the seller.

42 (b) If a seller fails to comply with subsection (a) of this section, and the contract is
43 cancelled or rescinded and the down payment not returned to the seller per G.S. 47H-7(b), the
44 seller shall be liable to the purchaser in an amount equal to three times the amount of the down
45 payment.

46 **"§ 47H-4. Conditions of forfeiture; right to cure.**

47 (a) A purchaser's rights under a contract for deed shall not be forfeited except as
48 provided in this Chapter. A contract for deed cannot be forfeited unless a breach has occurred
49 in one or more of the purchaser's obligations under the contract and the contract provides that
50 as a result of such breach the seller is entitled to forfeit the contract. Furthermore, the
51 purchaser's rights shall not be forfeited until the purchaser has been notified of the intent to

1 forfeit in accordance with G.S. 47H-5 and been given a right to cure the default and has failed
2 to do so within the time period allowed. A timely tender of cure shall reinstate the contract.

3 (b) In addition to any other remedies at law, a seller's violation of this section entitles
4 the purchaser to either a claim for damages or the right to rescind the contract and seek the
5 return of all payments, deposits, and down payments that have been made under the contract. If
6 the purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal
7 to the fair market value of the use of the property during the duration of the purchaser's
8 possession of the property plus an amount necessary to compensate the seller for any damages
9 caused to the property by the purchaser beyond normal wear and tear.

10 **"§ 47H-5. Notice of default and intent to forfeit.**

11 (a) The notice of default and intent to forfeit shall contain all of the following:

- 12 (1) The name, address, and telephone number of the seller and the seller's agent
13 or attorney giving the notice, if any.
- 14 (2) A description of the contract, including the names of the original parties to
15 the contract.
- 16 (3) A legal description of the property.
- 17 (4) A description of each default under the contract on which the notice is based.
- 18 (5) A statement that the contract will be forfeited if all defaults are not cured by
19 a date stated in the notice which is not less than 45 days after the notice of
20 default and intent to forfeit is sent or any longer period specified in the
21 contract or other agreement with the seller.
- 22 (6) An itemized statement of, or to the extent not known at the time the notice of
23 default and intent to forfeit is given or recorded, a reasonable estimate of, all
24 payments of money in default and, for defaults not involving the failure to
25 pay money, a statement of the action required to cure the default.
- 26 (7) Any additional information required by the contract or other agreement with
27 the seller.

28 (b) Any notice of default and intent to forfeit must be served on the purchaser in
29 accordance with the provisions for service of process set forth in G.S. 1A-1, Rule 4. Any notice
30 of default and intent to forfeit must also be served on the occupant of the dwelling that is the
31 subject of the contract for deed, if different from the purchaser.

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

39 **"§ 47H-6. Periodic statements of account.**

40 The seller shall provide the purchaser with a statement of account at least once every
41 12-month period for the term of a Contract for Deed. The statement must include at least the
42 following information:

- 43 (1) The amount paid under the contract.
- 44 (2) The remaining amount owed under the contract.
- 45 (3) The number of payments remaining under the contract.
- 46 (4) The amounts paid to taxing authorities on the purchaser's behalf, if collected
47 by the seller.
- 48 (5) The amounts paid to insure the property on the purchaser's behalf, if
49 collected by the seller.
- 50 (6) If the property has been damaged and the seller has received insurance
51 proceeds, an accounting of the proceeds applied to the property.

1 (7) If the property is encumbered by a lien or mortgage pursuant to
2 G.S. 47G-8(b), the outstanding balance of the loan that is secured by the
3 property.

4 **"§ 47H-7. Purchaser's right to cancel contract.**

5 (a) In addition to any other rights or remedies provided by law, the purchaser may
6 cancel and rescind an Contract for Deed for any reason by sending by certified or registered
7 mail, return receipt requested, or by delivering in person a signed, written notice of cancellation
8 to the seller not later than the third day after taking possession of the property or the fourteenth
9 day after the date of the signing of the contract, whichever is earlier.

10 (b) If the purchaser cancels the contract pursuant to subsection (a) of this section, the
11 seller shall, not later than the tenth day after the date the seller receives the purchaser's notice of
12 cancellation, or the tenth day after the property is vacated, whichever occurs the latest, inspect
13 the subject property. Within five days of inspection, the vendor shall return to the purchaser
14 any and all property exchanged or payments made by the purchaser under the contract minus an
15 offset of an amount equal to the fair market value of the use of the property during the duration
16 of the purchaser's possession of the property plus an amount necessary to compensate the seller
17 for any damages caused to the property by the purchaser beyond normal wear and tear.

18 **"§ 47H-8. Requirement that seller hold unencumbered legal title.**

19 (a) A seller may not execute a contract for deed with a purchaser if the seller does not
20 own the property in fee simple, free from any liens, mortgages, or other encumbrances, except
21 as provided in subsection (b) of this section.

22 (b) Subsection (a) of this section does not apply to a lien, mortgage or encumbrance
23 place on the property that is any of the following:

24 (1) Placed on the property because of the conduct of the purchaser.

25 (2) Agreed to by the purchaser as a condition of a loan obtained to place
26 improvements on the property, including utility and fire protection
27 improvements.

28 (3) Placed on the property by the seller prior to the execution of the contract for
29 deed if the seller notifies the purchaser in a separate written disclosure of all
30 of the following:

31 a. The amount of the outstanding balance of the loan.

32 b. The amount of the monthly payments due on the loan and the due
33 date of those payments.

34 c. In 14-point type, a statement that if the seller fails to make timely
35 payments to the lien holder, the lien holder may attempt to collect the
36 debt by foreclosing on the lien and selling the property at a
37 foreclosure sale.

38 **"§ 47H-9. Late fees.**

39 No seller may charge a late payment charge under a contract for deed in excess of five
40 percent (5%) of the amount of the payment past due. A late payment charge that violates this
41 section is hereby declared usurious.

42 **SECTION 5.** This act becomes effective October 1, 2009, and applies to
43 transactions on or after that date.