

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1708
Committee Substitute Favorable 5/7/07

Short Title: "Subject to" Real Estate Transactions.

(Public)

Sponsors:

Referred to:

April 19, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE "SUBJECT TO" REAL ESTATE TRANSACTIONS.
3 The General Assembly of North Carolina enacts:

4 SECTION 1. Chapter 75 of the General Statutes is amended by adding a
5 new Article to read:

6 "Article 6.

7 "Regulation of "Subject to" Real Estate Transactions.

8 "§ 75-120. Definitions.

9 As used in this Article, the following terms mean:

- 10 (1) Covered person. – Any person, whether acting as a principal, or as an
11 agent or employee of the principal, who advertises, initiates, or
12 structures a purchase of covered property by means of a covered
13 transaction, provided it does not include a person acting as a real estate
14 broker as provided by Article 1 of Chapter 93A of the General Statutes
15 or a licensed attorney acting subject to the provisions of Chapter 84 of
16 the General Statutes.
- 17 (2) Covered property. – Residential real property located in the State
18 containing not more than two dwelling units, at least one of which is,
19 or in the last two months has been, occupied as the owner's principal
20 residence, and that is encumbered by a mortgage or deed of trust
21 containing a due on sale clause.
- 22 (3) Covered real estate seminar. – Any seminar, course, materials, or
23 similar commercial educational program concerning covered
24 transactions.
- 25 (4) Covered transaction. – Any transaction, however denominated or
26 structured, by which a covered person purchases or contracts to
27 purchase covered property encumbered by a mortgage or deed of trust
28 that will not be extinguished at the time title to the covered property

1 passes from the owner to the covered person or any nominee of the
2 covered person.

3 (5) Due on sale clause. – A contract provision that authorizes a lender, at
4 its option, to declare due and payable sums secured by the lender's
5 security instrument if all or any part of the property, or an interest
6 therein, securing the loan is sold or transferred without the lender's
7 prior consent.

8 (6) Person. – An individual, a corporation, limited liability company,
9 business trust, estate, trust, joint venture, partnership, association, or
10 any other entity with the capacity to hold title to real property.

11 (7) Purchase. – The acquisition of an interest in covered property,
12 however denominated or structured.

13 (8) Subject to. – Taking either legal or equitable title to real property
14 without extinguishing the lien of an existing deed of trust or mortgage.

15 **"§ 75-121. Certain real estate transactions regulated.**

16 No covered person shall engage in a covered transaction without the express consent
17 of the mortgagee or the beneficiary of the preexisting deed of trust, except as
18 enumerated in G.S. 75-127. A real estate transaction in which the original mortgage or
19 deed of trust is extinguished pursuant to G.S. 75-123 at the time title to the covered
20 property passes from an owner to a person or any nominee of a person is not a covered
21 transaction.

22 **"§ 75-122. Right to cancel.**

23 (a) The seller in a covered property transaction may cancel the transaction by
24 notifying the covered person and the settlement agent in writing at any time prior to
25 midnight of the third day after the date of execution of the documents evidencing the
26 covered transaction, in a manner consistent with 12 C.F.R. Part 226 (Regulation Z) of
27 the federal Truth-In-Lending Act.

28 (b) Notice of cancellation need not take a particular form and is sufficient if it
29 indicates by any form of written expression the intention of the seller not to be bound by
30 the covered transaction.

31 (c) Notice of cancellation, if given by mail, is given when it is deposited in the
32 United States mail properly addressed and postage prepaid.

33 **"§ 75-123. Extinguishment of mortgage or deed of trust.**

34 The extinguishment of a mortgage or deed of trust on a covered property may be
35 accomplished by any of the following:

36 (1) Satisfaction in full of the outstanding indebtedness on the covered
37 property with evidence of satisfaction from the lender recorded in the
38 county registry.

39 (2) Release of the covered property by the lender as security of the
40 outstanding indebtedness with evidence of the release from the lender
41 recorded in the county registry.

42 (3) Assumption of the outstanding indebtedness on the covered property
43 by another person with the consent of the lender and a release of
44 liability of the mortgagor by the lender with evidence of the lender's

1 consent to the assumption and release of the mortgagor's liability
2 furnished to the mortgagor.

3 **"§ 75-124. Notice requirements.**

4 Prior to the execution of a contract in which a covered person enters into a covered
5 transaction, the covered person shall provide to the owner of the covered property the
6 following statement in at least 12-point bold-faced type:

7 "Your current mortgage loan, deed of trust, or mortgage contains a due on sale
8 clause which obligates you to inform your lender at any time you transfer your home. If
9 you transfer your home, you must notify your lender of this proposed transaction, and
10 your lender has the right to make you pay the entire amount of your loan due at the time
11 of the transfer. Before signing this contract, you should check with your lender to see if
12 the lender will consent in writing not to enforce the provisions of the due on sale clause.

13 Once you have received the consent of your lender and if you enter into this
14 contract, you may cancel this contract at any time prior to midnight of the third day after
15 the date of the contract. To cancel, you must notify the covered person who
16 is _____ and the settlement agent who is _____ in writing no
17 later than midnight of the third day after the date of the contract. Notice of cancellation,
18 if given by mail, is given when it is deposited in the United States mail properly
19 addressed and postage prepaid. Notice of cancellation need not take a particular form
20 and is sufficient if it indicates by any form of written expression your intention not to be
21 bound by the contract."

22 **"§ 75-125. Deceptive advertising prohibited.**

23 No person shall advertise in any medium that the person will "take over payments",
24 "buy your house," or use other language which, to a reasonable person, would imply
25 that the person will pay an indebtedness in accordance with its terms, and then enter into
26 a real estate transaction for the purchase of covered property in which the person fails to
27 expressly agree to pay the indebtedness secured by the covered property or to extinguish
28 the mortgage or deed of trust in accordance with G.S. 75-123.

29 **"§ 75-126. Covered real estate seminars.**

30 (a) A person conducting a covered real estate seminar shall provide a copy of this
31 Article as part of its materials. The Article shall be printed in full in at least 12-point
32 bold-faced type.

33 (b) A person conducting a covered real estate seminar shall not instruct any
34 person to engage in any practice prohibited by this Article.

35 **"§ 75-127. Exclusions.**

36 This Article shall not apply to any of the following:

- 37 (1) Any covered transaction exempted from the preemption provisions of
38 the due on sale clause prohibitions pursuant to 12 U.S.C. § 1701j-3(d).
39 (2) Any covered transaction between a relocating employee and an
40 employer or its agent or contractor, or between the employer or its
41 agent or contractor and a buyer of a relocating employee's home
42 pursuant to an employer's relocation policy.

43 **"§ 75-128. Violations.**

44 A violation of this Article shall constitute a violation of G.S. 75-1.1."

1 **SECTION 2.** This act becomes effective October 1, 2007, and applies to
2 contracts for covered transactions entered into on or after that date.