

Chapter 47G.

Option to Purchase Contracts Executed With Lease Agreements.

§ 47G-1. Definitions.

The following definitions apply in this Chapter:

- (1) Covered lease agreement or lease agreement. – A residential lease agreement that is combined with, or is executed concurrently with, an option contract.
- (2) Cure the default. – To perform the obligations under the lease agreement and/or option contract that are described in the notice of default and intent to forfeit required by G.S. 47G-5 and that are necessary to reinstate the lease agreement and/or the option contract. This term is synonymous with the term "cure."
- (3) Forfeiture. – The termination of an option purchaser's rights to exercise an option to purchase property that is the subject of the option contract, and those rights of persons or entities claiming by or through an option purchaser, to the extent permitted by this Chapter, because of a breach of one or more of the purchaser's obligations under the option contract and/or covered lease agreement.
- (4) Option contract or contract. – An option contract for the purchase of single-family residential real property that includes or is combined with, or is executed in conjunction with, a covered lease agreement.
- (5) Option fee. – Any payment, however denominated, made by the option purchaser to the option seller that constitutes the price the option purchaser pays for the right to buy the property at a specified price in the future.
- (6) Option purchaser or purchaser. – An individual who purchases an interest in property under an option contract, or any legal successor in interest to that individual.
- (7) Option seller or seller. – A person or entity that makes a sale of an option by means of an option contract, or the person's or entity's successor in interest. If an option contract is subsequently assigned or sold to a third party, the assignor shall be deemed to be an option seller or seller for purposes of this Chapter.
- (8) Property. – Real property located in this State, upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families that is or will be occupied by the purchaser as the purchaser's principal dwelling. (2010-164, s. 3; 2015-178, s. 3.)

§ 47G-2. Minimum contents of option contracts; recordation.

(a) Writing Required. – Every option contract, including any assignment of an option contract, shall be evidenced by a contract signed and acknowledged by all parties to it and containing all the terms to which they have agreed. The seller shall deliver to the purchaser an exact copy of the contract, containing all the disclosures required by subsection (b) of this section, at the time the purchaser signs the contract.

(b) Contents. – An option contract shall contain at least all of the following:

- (1) The full names and addresses of all the parties to the contract.
- (2) The date the contract is signed by each party.
- (3) A legal description of the property to be conveyed subject to an option to purchase.

- (4) The sales price of the property to be conveyed subject to an option to purchase.
- (5) The option fee and any other fees or payments to be paid by each party to the contract.
- (6) All of the obligations that if breached by the purchaser will result in forfeiture of the option.
- (7) The time period during which the purchaser must exercise the option.
- (8) A statement of the rights of the purchaser to cure a default, including that the purchaser has the right to cure a default once in any 12-month period during the period of the covered lease agreement.
- (9) A conspicuous statement, in not less than 14-point boldface type, immediately above the purchaser's signature, that the purchaser has the right to cancel the contract at anytime until midnight of the third business day following execution of the option contract or delivery of the contract, whichever occurs last.

(c) **Right to Cancel.** – The purchaser may exercise the right to cancel the option contract until midnight of the third business day following execution of the option contract or delivery of a copy of the option contract, with the required minimum disclosures, whichever occurs last. If the purchaser cancels the option contract, the seller shall, not later than the tenth day after the date the seller receives the purchaser's notice of cancellation, return to the purchaser any and all property exchanged or payments made by the purchaser under the option contract minus an offset of an amount equal to the fair rental value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear.

(d) **Recordation.** – Within five business days after the option contract has been signed and acknowledged by both the seller and the purchaser, the seller shall cause a copy of the option contract or a memorandum of the option contract to be recorded in the office of the register of deeds in the county in which the property is located. If a memorandum of the contract is recorded, it shall be entitled "Memorandum of Option Contract" and shall contain, as a minimum, the names of the parties, the signatures of the parties, a description of the property, and applicable time periods as described in subdivisions (b)(7) and (8) of this section. A person other than a seller and purchaser may rely on the recorded materials in determining whether the requirements of this subsection have been met. The seller shall pay the fee to record the document unless the parties agree otherwise.

(e) **Effect of Forfeiture.** – Upon default and forfeiture after proper notice of default and intent to forfeit and failure of the purchaser to substantially cure the default, the purchaser's equitable right of redemption shall be extinguished by:

- (1) A mutual termination executed by the parties and recorded in the office of the register of deeds of the county in which the property is located, or
- (2) A final judgment or court order entered by a court of competent jurisdiction that terminates the purchaser's rights to the property and extinguishes the equity of redemption. A certified copy of the order shall be recorded in the office of the register of deeds of the county in which the property is located pursuant to G.S. 1-228.

(f) **Instrument Ineffective.** – No instrument purporting to extinguish the equity of redemption that is executed as a condition of the transaction or prior to a default will be effective. (2010-164, s. 3; 2015-178, s. 3.)

§ 47G-3. Application of Landlord Tenant Law.

Unless otherwise provided for by this Chapter, the provisions of Chapter 42 of the General Statutes apply to covered lease agreements. (2010-164, s. 3; 2015-178, s. 3.)

§ 47G-4. Condition of forfeiture; right to cure.

A purchaser's right to exercise an option to purchase property under an option contract cannot be forfeited unless a breach has occurred in one or more of the purchaser's express obligations under the option contract and the option contract provides that as a result of such breach the seller is entitled to forfeit the contract. Notwithstanding any option contract or covered lease agreement provisions to the contrary, the purchaser's rights shall not be forfeited until the purchaser has been notified of the intent to forfeit in accordance with G.S. 47G-5 and been given a right to cure the default and has failed to do so within the time period allowed. The option purchaser is entitled to the right to cure a default once in every 12-month period during the period of the covered lease agreement. (2010-164, s. 3.)

§ 47G-5. Notice of default and intent to forfeit.

(a) A notice of default and intent to forfeit shall specify the nature of the default, the amount of the default if the default is in the payment terms, the date after which the contract will be forfeited if the purchaser does not cure the default, and the name and address of the seller or the attorney for the seller. The period specified in the notice after which the contract will be forfeited may not be less than 30 days after the notice of default and intent to forfeit is served, or before judgment is given in any action brought to recover the possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes, whichever is earlier. A judgment rendered in an action to recover possession of the premises shall not prejudice either party in a subsequent action to recover monetary damages or other remedies.

(b) Any notice of default and intent to forfeit must be delivered to the option purchaser by hand delivery or by any manner authorized by G.S. 1A-1, Rule 4. (2010-164, s. 3; 2015-178, s. 3.)

§ 47G-6. Effect of seller's default on loan secured by mortgage or lien on property.

If, at any time prior to the expiration of the time period in which the option purchaser has a right to exercise the option to purchase, a default occurs on a loan secured by a mortgage, security interest, or other lien on the property, the option purchaser may elect to exercise the option or cancel and rescind the contract and, in addition to any other remedies available at law or equity, seek the immediate return of all moneys paid by the option purchaser. If the purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal to the fair rental value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear. (2010-164, s. 3.)

§ 47G-7. Remedies.

(a) An option purchaser may bring an action for the recovery of damages, to void a transaction executed in violation of this Chapter, as well as for declaratory or equitable relief for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter

shall be construed to subject an individual homeowner selling his or her primary residence directly to an option purchaser to liability under G.S. 75-1.1.

(b) In the event of default by the option purchaser under the terms of the lease agreement, the option seller may initiate a summary ejectment action to recover damages and possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes. The magistrate shall retain jurisdiction over the summary ejectment proceeding.

(c) The option purchaser may counterclaim for damages in any summary ejectment proceeding. In accordance with G.S. 7A-219 of the General Statutes, no counterclaim which would make the amount in controversy exceed the jurisdictional limits shall be permitted. If a counterclaim in a summary ejectment proceeding is barred pursuant to G.S. 7A-219, the option purchaser shall not be estopped from asserting that claim in a separate action. (2010-164, s. 3; 2015-178, s. 3.)