A BILL TO BE ENTITLED

AN ACT AMENDING THE HOMEOWNER AND HOMEBUYER PROTECTION ACT.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47G-1 reads as rewritten:

"§ 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 in which all or some portion of the rental payments made are applied to the purchase price of the real property which is the subject of the covered lease agreement and the covered option contract.

(4) Option contract or contract. – An option contract for the purchase of property that includes or is combined with, or is executed in conjunction with, a covered lease agreement. The term does not include a contract which obligates the buyer to purchase the property even though the obligation may be subject to one or more contingencies or unilateral rights to terminate the contract.

(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. Such payment applied at the closing of the property shall not constitute equity and such payment shall not in and of itself create a right of equitable redemption.

SECTION 2. G.S. 47G-7 reads as rewritten:


A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1. 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, including G.S. 75-1.1. 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."

SECTION 3. G.S. 47H-8 reads as rewritten:
A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1. A purchaser may bring an action for the recovery of damages, to rescind a transaction, 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. Equity, including G.S. 75-1.1. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to a buyer to liability under G.S. 75-1.1.

SECTION 4. G.S. 47H-2 reads as rewritten:
§ 47H-2. Minimum contents for contracts for deed; recordation.
  …
  (b) Contents. – A contract for deed contract shall contain at least all of the following:
  …
  (14) A description of conditions of the property that includes whether the property, including any structures thereon, has water, sewer, septic, and electricity service, whether the property is in a floodplain, whether anyone else has a legal interest in the property, and whether restrictive covenants prevent building or installing a dwelling. If restrictive covenants are in place that affect the property, a copy of the restrictive covenants shall be made available to the purchaser at or before the execution of the contract.
  (14a) A completed residential property disclosure statement as provided in Chapter 47E of the General Statutes.
  …
  (16) If the property being sold is encumbered by a deed of trust, mortgage, or other encumbrance evidencing or securing a monetary obligation which constitutes a lien on the property, and the seller is not a licensed general contractor within the meaning of Chapter 87 of the General Statutes, or a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, a statement of the amount of the lien, and the amount and due date, if any, of any periodic payments.
  …"

SECTION 4. G.S. 47H-6 reads as rewritten:
§ 47H-6. Title requirements.
  (a) A seller may not execute a contract for deed with a purchaser if the seller does not hold title to the property. If the title is not held in fee simple, free from any deeds of trust, mortgages, or other encumbrances evidencing or securing a monetary obligation which constitutes a lien on the property, the seller may execute a contract for deed only if the mortgage or encumbrance is in the name of the seller and meets at least one of the following conditions:
  (1) It was agreed to by the purchaser, in writing, as a condition of a loan obtained to make improvements on the property.
  (2) It was placed on the property by the seller prior to the execution of the contract for deed if the seller is a licensed general contractor within the meaning of Chapter 87 of the General Statutes, a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, or a licensed real estate broker within the meaning of Chapter 93A of the General Statutes, provided that the general contractor, manufactured home dealer, or real estate broker continues to make timely payments on the outstanding mortgage or encumbrance.
  (3) It was placed on the property by the seller prior to the execution of the contract for deed, if the seller is not a licensed general contractor within the
meaning of Chapter 87 of the General Statutes, a licensed manufactured
home dealer within the meaning of Article 9A of Chapter 143 of the General
Statutes, or a licensed real estate broker within the meaning of Chapter 93A
of the General Statutes, if the lien is attached only to the property sold to the
purchaser under the contract for deed, Statutes, and the seller continues to
make timely payments on the outstanding mortgage or encumbrance.

(b) If the property being sold is encumbered by one or more deeds of trust, mortgages,
or other encumbrances evidencing or securing a monetary obligation which constitutes a lien
on the property, the seller must notify the purchaser in a separate
written disclosure, provided at or before the execution of the contract, in 14-point type,
boldface, capital letters, the following statement: THIS PROPERTY HAS EXISTING
LIENS ON IT. IF THE SELLER FAILS TO MAKE TIMELY PAYMENTS TO THE
LIEN HOLDER, THE LIEN HOLDER MAY FORECLOSE ON THE PROPERTY,
EVEN IF YOU HAVE MADE ALL YOUR PAYMENTS.

(c) In addition to any other remedies at law or equity, a seller’s violation of this section
entitles the purchaser to either a claim for damages or the right to rescind the contract and seek
the return of all payments, deposits, and down payments that have been made under the
contract. If the purchaser elects to rescind the contract, the seller is entitled to an offset of an
amount equal to the fair market 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."

SECTION 5. G.S. 47H-7 reads as rewritten:

"§ 47H-7. Late fees.

No seller may charge a late payment charge under a contract for deed in excess of four
percent (4%) five percent (5%) of the amount of the payment past due. A late fee may only be
charged on payments that are more than 15 days past due."

SECTION 6. G.S. 75-120 reads as rewritten:

"§ 75-120. Definitions.

The following definitions shall apply in this Article:

(1) Default. – Whenever a property owner is more than 60 days delinquent a
notice of default is filed in the county where the property is located on any
loan or debt that is secured by the property, including real estate taxes.

(3) Foreclosure rescue transaction. – A transfer of residential real property,
including a manufactured home that is permanently attached to the real
property, which includes all of the following features:

a. The real property is the principal residence of the transferor.
b. The transferor is in default or legal proceedings have been initiated to
foreclose on the transferor’s property.
c. The transferee, an agent of the transferee, or others acting in concert
with the transferee make representations that the transfer of the
residential property will enable the transferor to prevent, postpone, or
reverse the effect of foreclosure and to remain in the residence.
d. The transferor retains an interest in the property conveyed, including
a tenancy interest, an interest under a lease-purchase agreement,
lease with option to purchase agreement, or an option to reacquire the
property, or any other legal, equitable, or possessory interest in the
property conveyed.

..."

SECTION 7. G.S. 75-121 reads as rewritten:

"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.
(a) It is unlawful for a person or entity other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain, unless prior to or at the time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market value of the property as determined by a licensed appraiser. An appraisal to determine the fair market value of the property must be performed no more than 90 days prior to the transfer. The appraisal shall be delivered to the transferor no more than three days after the appraisal is performed and no less than seven days prior to the transfer of the property. This section does not apply to exempt transactions.

"...

SECTION 8. This act becomes effective October 1, 2011, and applies to transactions entered on or after that date.