



HOUSE BILL 174: Landlord/Tenant-Foreclosure & Evict. Changes

2015-2016 General Assembly

Committee: Senate Judiciary II	Date: July 20, 2015
Introduced by: Reps. Bradford, Stam	Prepared by: Bill Patterson
Analysis of: Third Edition	Committee Counsel

SUMMARY: *House Bill 174 would amend and enhance certain notice requirements and protections for tenants of real properties in foreclosure, allow for purchasers of real property under option contracts to pursue monetary damages separately from summary ejectment proceedings, and make other changes to the Homeowner and Homebuyer Protection Act.*

Section 1: Notice for Termination of Rental Agreements in Foreclosure

CURRENT LAW: Tenants of residential real property with fewer than 15 rental units may terminate the lease early if the residence is in foreclosure, by providing notice of termination effective at least 10 days after the notice of sale. An occupant will receive the notice of sale 20 days in advance of a foreclosure sale.

BILL ANALYSIS: **Section 1(a)** would clarify that the required notice of sale by foreclosure must go to any person occupying single-family residential real property pursuant to a residential rental agreement. **Section 1(b)** would require tenants of residential real property containing fewer than 15 rental units wishing to terminate the rental agreement after receiving a notice of sale to provide the landlord with a written notice of termination not more than 90 days after the sale date contained in the notice of sale, and would provide that the termination would not be effective if the mortgagor has cured the default at the time the tenant provides notice of termination. **Section 1(c)** would make a conforming change to the statute governing the contents of a notice of sale.

Section 2: Effect of Foreclosure on Preexisting Tenancy

CURRENT LAW: The federal Protecting Tenants at Foreclosure Act of 2009 allowed a tenant in a residence sold at foreclosure to remain in the residence until the end of the lease if the purchaser of the property did not use the property as his or her primary residence. A tenant without a lease or with a lease terminable at will under State law was entitled to a 90 day notice before the purchaser could seek possession. The federal law expired on December 31, 2014.

BILL ANALYSIS: **Section 2** would enact the following provisions applicable to foreclosures on preexisting tenancies in single-family residences:

- Allow a tenant with a lease meeting certain conditions to remain in the residence unless the purchaser will use the residence as his or her primary residence.
 - The tenant may remain until the end of the term of the lease or one year, whichever is shorter.
 - The lease must meet the following conditions: (1) the tenant is not the debtor or the child, spouse or parent of the debtor; and (2) the lease is in writing and requires the receipt of rent that is not substantially below fair market value if the rent has not been reduced by a federal or state subsidy.



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- Requires the tenant be provided with a 90-day notice before the purchaser can apply for an order of possession if the tenant does not have a lease that conforms to the criteria above or if the purchaser will occupy the property as his or her primary residence.
- This section does not apply to the option to purchase terms of a lease or to a lease of a residence with "imminently dangerous conditions" that would make the home uninhabitable at the time of purchase as defined by G.S. 42-42(a)(8).

Section 3: Leases with Option to Purchase

CURRENT LAW: Option contracts are regulated by Chapter 47G of the General Statutes and are defined as contracts containing an option to purchase real property that includes, is combined with, or is executed in conjunction with a residential lease agreement. Every option contract must be in writing and contain all the terms agreed to by the parties.

BILL ANALYSIS: Section 3 would amend various provisions of Chapter 47G regarding option to purchase contracts executed with lease agreements to do the following:

- Limit the application of Chapter 47G to option contracts for the purchase of single-family residential real property.
- Clarify that provisions of Chapter 42 (Landlord and Tenant Law) apply to covered lease agreements except as otherwise provided for by Chapter 47G.
- Provide that the judgment in an action to recover possession of the property does not prejudice either party in a subsequent action for monetary damages or other remedies related to default and forfeit of an option contract.
- Provide that an option seller may initiate an action for summary ejectment if an option purchaser defaults on the lease and the option purchaser may counterclaim for damages in the summary ejectment proceeding.
- Eliminate the provision that a violation of Chapter 47G constitutes an unfair trade practice under G.S. 75-1.1.

Section 4: Contracts for Deed

CURRENT LAW: A contract for deed is an agreement in which the seller agrees to sell an interest in property to the purchaser, the purchaser agrees to pay the purchase price in five or more payments exclusive of the down payment, and the seller retains title to the property as security for the purchaser's obligation under the agreement. Chapter 47H specifies the minimum required contents of a contract for deed and requires that the contract be recorded with the register of deeds in the county in which the property is located.

BILL ANALYSIS: Section 4(a) would amend G.S. 47H-2 regarding the minimum contents for a contract for deed as follows:

- Eliminate the requirement that a contract for deed contain a description of conditions of property by replacing it with a new requirement that a contract for deed include a completed residential property disclosure statement.
- Eliminate the requirement that a contract for deed include a statement of the amount of the lien, and the amount and due date of periodic payments if the property being sold is encumbered by a lien.

Section 4(b) would amend G.S. 47H-8 to eliminate the provision that a violation of this Chapter constitutes an unfair trade practice under G.S. 75-1.1.

Section 5: Foreclosure Rescue Transactions

CURRENT LAW: G.S. 75-120 prohibits foreclosure rescue transactions by anyone other than the transferor for financial gain or with the expectation of financial gain. A foreclosure rescue transaction is a transfer of residential real property, including a manufactured home, which includes all of the following:

- The real property is the principal residence of the transferor.
- The transferor is in default or legal proceedings have been initiated on a mortgage loan obligation secured by the transferor's principal residence.
- The transferor follows the representations of the transferee that the transfer of the residential property will allow the transferor to prevent, postpone, or reverse the effect of foreclosure. The transferor retains an interest in the property conveyed by written or oral agreement, including any legal, equitable, or possessory interest.

The prohibition against foreclosure rescue transactions does not apply to (i) a member of the transferor's family; (ii) a state, federal or local government agency or organization; (iii) a bank, savings institution, or credit union; or a (iv) a licensed mortgage lender or mortgage servicer.

BILL ANALYSIS: Section 5(a) would amend G.S. 75-120 to do the following:

- Modify the definition of "foreclosure rescue transaction" to eliminate the requirement that the transferor must be in default or that legal proceedings must have been initiated to foreclose on transferor's property.
- Make a conforming change to delete the definition of "default."
- Clarify the definition of "foreclosure rescue transaction" so that it applies expressly in instances in which the transferor retains a tenancy interest, lease with option to purchase agreement, or an option to reacquire the property.

Section 5(b) would amend G.S. 75-121 as follows:

- Provide that a certified appraiser must determine the fair market value of the property.
- Extend the time within which the appraisal must be performed from 90 days to 120 days prior to the transfer.
- Change the delivery requirement for the appraisal to no less than 7 days prior to the time the transferor becomes obligated to perform the agreement.

EFFECTIVE DATE: This act becomes effective October 1, 2015. Section 1 applies to a notice of sale issued on or after that date, Section 2 applies to orders for possession entered on or after that date, and Sections 3, 4, and 5 apply to transactions entered into on or after that date.

Layla Cummings, counsel to House Judiciary IV, substantially contributed to this summary.