



HOUSE BILL 174: Landlord/Tenant-Foreclosure and Eviction Changes

2015-2016 General Assembly

Committee:
Introduced by:
Analysis of: S.L. 2015-178

Date:
Prepared by: Bill Patterson
Staff Attorney

SUMMARY: *S.L. 2015-178 (i) amends and enhances certain notice requirements and protections for tenants of real properties in foreclosure, (ii) allows sellers of real property under option contracts to initiate a summary ejectment action to recover damages and possession, (iii) permits the purchaser under an option contract to counterclaim for damages in the summary ejectment action, and (iv) provides that a judgment in an action to recover possession does not prevent either party from seeking monetary damages in a separate action. The act also amends the minimum requirements for a contract for deed, amends the law prohibiting foreclosure rescue transactions, and repeals provisions making a violation of the statutes governing option contracts or contracts for deed an unfair trade practice.*

This act became effective October 1, 2015.

Section 1: Notice of Termination of Rental Agreements in Foreclosure

CURRENT LAW: G.S. 45-21.17 provides that when property to be sold in foreclosure is residential comprising fewer than 15 rental units, the notice of sale must be mailed to any person who occupies the property pursuant to a residential rental agreement.

G.S. 42-45.2 provides that, for residential real property comprising fewer than 15 rental units that is being sold in foreclosure, any tenant residing in the property may terminate the rental agreement by giving the landlord written notice of termination stating an effective date of the termination that is least 10 days after the date of the notice of sale.

BILL ANALYSIS: Section 1.(a) of the act amends G.S. 45-21.17 to clarify that the notice of sale by foreclosure must be sent to any person occupying single-family residential real property pursuant to a residential rental agreement.

Section 1.(b) amends G.S. 42-45.2 to provide that the effective date of termination stated in the termination notice must be at least ten days, but not more than 90 days, after the sale date contained in the notice of sale, and that in order to be effective, the termination notice must be provided to the landlord before the mortgagor has cured the default. **Section 1.(c)** makes a conforming change to G.S. 45-21.16A(b) relating to the information the notice of sale must provide concerning the procedure by which a tenant can terminate the rental agreement after receiving the 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.



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BILL ANALYSIS: Section 2.(a) amends G.S. 45-21.29 to require that an order for possession cannot be issued in a foreclosure sale of a single-family residence occupied pursuant to a lease unless the requirements of G.S. 45-21.33A (enacted by Section 2.(b) of the act) have been met, and the occupant has been given at least ten days' notice.

Section 2.(b) enacts new G.S. 45-21.33A, which provides that when the purchaser at foreclosure of a single-family residence will not use the residence as his or her primary residence, a tenant can remain in the residence until the end of the term of the lease or one year, whichever is shorter, if the following conditions are met:

1. the tenant is not the debtor or the child, spouse or parent of the debtor; and
2. the lease is in writing, is not terminable at will, 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.

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, the tenant must be given 90 days' notice before the purchaser can apply for an order of possession.

This section does not apply to the option to purchase terms of an option contract, or to a lease of a residence with an imminently dangerous condition¹ on the premises as of the date of acquisition of title by the purchaser.

Section 3: Leases with Option to Purchase

CURRENT LAW: Option to purchase contracts executed with lease agreements 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 amends 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.

¹ Under applicable law an "imminently dangerous condition" means any of the following: unsafe wiring; unsafe flooring or steps; unsafe ceilings or roofs; unsafe chimneys or flues; lack of potable water; lack of operable locks on all doors leading to the outside; broken windows or lack of operable locks on all windows on the ground level; lack of operable heating facilities capable of heating living areas to 65 degrees Fahrenheit when it is 20 degrees Fahrenheit outside from November 1 through March 31; lack of an operable toilet; lack of an operable bathtub or shower; rat infestation as a result of defects in the structure that make the premises not impervious to rodents; excessive standing water, sewage, or flooding problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold. G.S. 42 42(a)(8).

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) amends G.S. 47H-2 regarding the minimum contents for a contract for deed to:

- 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, provided that the seller does not choose the option of making "no representation" as to any characteristic or condition of the property.
- 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) amends G.S. 47H-8 to eliminate the provision that a violation of Chapter 47H constitutes an unfair trade practice under G.S. 75-1.1.

Section 5: Foreclosure Rescue Transactions

CURRENT LAW: Article 5A of Chapter 75 of the General Statutes deals with home foreclosure rescue scams. G.S. 75-121 prohibits anyone other than the transferor from engaging in foreclosure rescue transactions 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, meeting all of the following conditions:

- 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) amends G.S. 75-120's 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, and to clarify that the definition of "foreclosure rescue transaction" applies only when the transferor retains a tenancy interest, an interest under a lease with option to purchase agreement, or an option to reacquire the property. Section 5.(a) also makes a conforming change to G.S. 75-120 by deleting the definition of "default."

Section 5.(b) amends G.S. 75-121 to:

- 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.

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- 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 became 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.

Staff Attorney Layla Cummings substantially contributed to this summary.