



This Bill Analysis reflects the contents of the bill as it was presented in committee.

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

2015-2016 General Assembly

<b>Committee:</b>	House Judiciary IV	<b>Date:</b>	April 1, 2015
<b>Introduced by:</b>	Reps. Bradford, Stam	<b>Prepared by:</b>	Layla Cummings Committee Counsel
<b>Analysis of:</b>	PCS to First Edition H174-CSTS		

**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.

The PCS would make the following changes:

(1) Clarify the notice of sale to occupants of single-family residential real property of a residence in foreclosure and increase the time for termination of a lease by a tenant of residential property in foreclosure, while limiting terminations when the default is cured.

(2) Clarify the intent to allow certain tenants to remain in a residence if the purchaser will not use the property as a primary residence, clarify when tenants must be given 90 days' notice before application for an order of possession, limit application of the section to the lease portion of an option contract executed with a lease, and provide that the purchaser is not required to honor the lease if the property is not habitable at the time of purchase.

(3) Provide that the definition of option contract is limited to single-family residential real property under Chapter 47G.

(4) Make a technical correction to keep the existing exemptions from prohibited foreclosure rescue transactions.

### CURRENT LAW AND BILL ANALYSIS:

#### Section 1: Notice for Termination of Rental Agreements in Foreclosure

**CURRENT LAW:** – Tenants of residential real property with less 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 any occupant of single-family residential real property in foreclosure receives a notice of sale. Section 1(b) would allow tenants of residential real property with less than 15 rental units to provide the landlord with a written notice of termination is effective at least 10 days but no more than 90 days after the date contained in the notice of sale. The notice of termination would not be effective if the mortgagor has cured the default. Section 1(c) would make a conforming change.

#### 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 in foreclosure to remain in the residence until the end of the lease if the purchaser of the

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property did not use the property as his or her primary residence. If no lease existed, it provided the tenant with a 90 day notice before the purchaser could seek to evict the tenant. The federal law expired on December 31, 2014.

**BILL ANALYSIS:** Would require the following for 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 reduce by a federal or state subsidy.
- 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" at the time of purchase as defined by G.S. 42-42(a)(8) that would make the home uninhabitable .

## 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 which includes, or is combined with, or 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:** Would amend various provisions of Chapter 47G regarding option to purchase contracts executed with lease agreements as follows:

- Clarify that option contracts regulated by the Chapter are limited to single-family residential real property.
- Clarify that provisions of Chapter 42 (Landlord and Tenant Law) apply to covered lease agreements unless otherwise covered by the Chapter.
- 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 this Chapter 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

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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 the contents for 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 as follows:

- Modify the definition of "foreclosure rescue transaction" to eliminate the requirement that the transferor be in default or legal proceedings 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 fair market value of the property.
- Allow 120 days for the appraisal to be performed.
- 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 notice of sale issued on or after that date. Section 2 applies to orders for possession entered on or after that date. Sections 3, 4, and 5 apply to transactions entered into on or after that date.