

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1708

Short Title: "Subject To " Real Estate Transactions. (Public)

Sponsors: Representatives Stam and Ross (Primary Sponsors).

Referred to: Judiciary I.

April 19, 2007

A BILL TO BE ENTITLED
AN ACT TO REGULATE "SUBJECT TO" REAL ESTATE TRANSACTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 75 of the General Statutes is amended by adding a new Article to read:

"Article 6.

"Regulation of "Subject To" Real Estate Transactions.

"§ 75-120. Definitions.

As used in this Article, the following terms mean:

- (1) Covered person. – Any person, whether acting as a principal, or as an agent or employee of the principal, who advertises, initiates, or structures a purchase of covered property by means of a covered transaction where the covered property will not be used as that person's primary residence and where the person is not acting as a real estate broker subject to the provisions of Article 1 of Chapter 93A of the General Statutes.
- (2) Covered property. – Residential real property located in the State containing not more than two dwelling units, at least one of which is occupied as the owner's principal residence, and that is subject to a mortgage or deed of trust containing a due on sale clause.
- (3) Covered transaction. – Any transaction, however denominated or structured, by which a buyer purchases or contracts to purchase covered property from an owner and in which the mortgage or deed of trust encumbering the covered property will not be extinguished at the time title to the covered property passes from the owner to the buyer or any nominee of the buyer.
- (4) Due on sale clause. – A contract provision that authorizes a lender, at its option, to declare due and payable sums secured by the lender's security instrument if all or any part of the property, or an interest

1 therein, securing the loan is sold or transferred without the lender's
2 prior consent.

3 (5) Person. – An individual, a corporation, limited liability company,
4 business trust, estate, trust, joint venture, partnership, association, two
5 or more persons having a joint or common interest, or any other legal
6 or commercial entity with the capacity to hold title to real property.

7 (6) Purchase. – Any agreement to take title to or to acquire an interest in
8 covered property, including an offer to purchase subject to an existing
9 mortgage or deed of trust, an option to purchase, an offer to purchase
10 pursuant to an installment land sale contract, a contract for deed, a land
11 sales contract, a lease with option to purchase, or any similarly
12 structured instrument.

13 (7) Subject to. – Taking either legal or equitable title to real property
14 without extinguishing, or making reasonable efforts to extinguish, an
15 existing deed of trust or mortgage before assuming legal or equitable
16 title.

17 **"§ 75-121. Activate due on sale clause without notice.**

18 It is an unfair and deceptive trade practice for a person to willfully induce, counsel,
19 aid, or cause another person to take an action which has the effect of activating a due on
20 sale clause in a mortgage or deed of trust encumbering covered property without first
21 providing notice to the other person as required by G.S. 75-124.

22 **"§ 75-122. Right to cancel.**

23 (a) The seller of a covered property in a covered property transaction may cancel
24 the transaction by notifying the covered person in writing at any time prior to midnight
25 of the third day after the date of execution of the documents evidencing the covered
26 transaction, in a manner consistent with 12 C.F.R. Part 226 (Regulation Z) of the federal
27 Truth-In-Lending Act.

28 (b) Notice of cancellation need not take a particular form and is sufficient if it
29 indicates by any form of written expression the intention of the seller not to be bound by
30 the covered transaction.

31 (c) Notice of cancellation, if given by mail, is given when it is deposited in the
32 United States mail properly addressed and postage prepaid.

33 **"§ 75-123. Extinguishment of mortgage or deed of trust.**

34 The extinguishment of a mortgage or deed of trust on a covered property may be
35 accomplished in any of the following manners:

36 (1) Satisfaction in full of the outstanding indebtedness on the covered
37 property with evidence of satisfaction from the lender recorded in the
38 county registry.

39 (2) Release of the covered property by the lender as security of the
40 outstanding indebtedness with evidence of the release from the lender
41 recorded in the county registry.

42 (3) Assumption of the outstanding indebtedness on the covered property
43 by another person with the consent of the lender and a release of
44 liability of the mortgagor by the lender with evidence of the lender's

1 consent to the assumption and release of the mortgagor's liability
2 furnished to the mortgagor.

3 **"§ 75-124. Notice requirements.**

4 Prior to the execution of a contract in which a covered person enters into a covered
5 transaction, the covered person shall provide to the owner of the covered property the
6 following statement in at least 12-point boldface type:

7 "Your current mortgage loan, deed of trust, or mortgage contains a due on sale
8 clause which obligates you to inform your lender at any time you transfer your home. If
9 you transfer your home, you must notify your lender of this proposed transaction, and
10 your lender has the right to make you pay the entire amount of your loan due at the time
11 of the transfer. Before signing this contract, you should check with your lender to see if
12 the lender will consent in writing not to enforce the provisions of the due on sale clause.

13 You may cancel this contract at any time prior to midnight of the third day after the
14 date of the contract. To cancel, you must notify the settlement agent who is _____ in
15 writing no later than midnight of the third day after the date of the contract. Notice of
16 cancellation, if given by mail, is given when it is deposited in the United States mail
17 properly addressed and postage prepaid. Notice of cancellation need not take a
18 particular form and is sufficient if it indicates by any form of written expression your
19 intention not to be bound by the contract."

20 **"§ 75-125. Deceptive advertising prohibited.**

21 It is an unfair and deceptive trade practice for a person to advertise in any medium
22 that the advertiser will "take over payments", "buy your house", or use other language
23 which, to a reasonable person, would imply that the advertiser will pay an indebtedness
24 in accordance with its terms, and then for the advertiser to enter into a real estate
25 transaction for the purchase of covered property in which the advertiser fails to
26 expressly agree to pay the indebtedness secured on the covered property or extinguish
27 the mortgage or deed of trust in accordance with G.S. 75-123.

28 **"§ 75-126. Exclusions.**

29 This Article shall not apply to any of the following:

- 30 (1) Any covered transaction exempted from the preemption provisions of
31 the due on sale clause prohibitions pursuant to 12 U.S.C. § 1701j-3(d).
32 (2) Any covered transaction between a relocating employee and an
33 employer or its agent or contractor, or between the employer or its
34 agent or contractor and a buyer of a relocating employee's home
35 pursuant to an employer's relocation policy.

36 **"§ 75-127. Violations.**

37 A violation of this Article shall constitute a violation of G.S. 75-1.1.

38 **"§§ 75-128 through 75-129: Reserved for future codification purposes."**

39 **SECTION 2.** This act becomes effective October 1, 2007, and applies to
40 contracts for covered transactions entered into on or after that date.