

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1057\*  
Committee Substitute Favorable 4/30/09  
Third Edition Engrossed 5/12/09  
Senate Judiciary II Committee Substitute Adopted 7/21/09

Short Title: Abolish Certain Deficiency Judgments.

(Public)

Sponsors:

Referred to:

April 6, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO ABOLISH DEFICIENCY JUDGMENTS IN CERTAIN CASES WHERE THE  
3 MORTGAGE IS SECURED BY PRIMARY RESIDENCE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 2B of Chapter 45 of the General Statutes is amended by  
6 adding a new section to read:

7 "§ 45-21.38A. Deficiency judgments abolished where mortgage secured by primary  
8 residence.

9 (a) As used in this section, the term "nontraditional mortgage loan" means a loan in  
10 which all of the following apply:

11 (1) The borrower is a natural person.

12 (2) The debt is incurred by the borrower primarily for personal, family, or  
13 household purposes.

14 (3) The principal amount of the loan does not exceed the conforming loan size  
15 for a single family dwelling as established from time to time by Fannie Mae.

16 (4) The loan is secured by: (i) a security interest in a manufactured home, as  
17 defined in G.S. 143-145, in the State that is or will be occupied by the  
18 borrower as the borrower's principal dwelling; (ii) a mortgage or deed of  
19 trust on real property in the State upon which there is located an existing  
20 structure designed principally for occupancy of from one to four families  
21 that is or will be occupied by the borrower as the borrower's principal  
22 dwelling; or (iii) a mortgage or deed of trust on real property in the State  
23 upon which there is to be constructed using the loan proceeds a structure or  
24 structures designed principally for occupancy of from one to four families  
25 that, when completed, will be occupied by the borrower as the borrower's  
26 principal dwelling.

27 (5) The terms of the loan: (i) permit the borrower as a matter of right to defer  
28 payment of principal or interest; and (ii) allow or provide for the negative  
29 amortization of the loan balance.

30 (b) Except as provided in subdivision (6) of subsection (c) of this section, this section  
31 applies only to the following loans:

32 (1) A loan originated on or after January 1, 2005, that was at the time the loan  
33 was originated a rate spread home loan as defined in G.S. 24-1.1F.



- 1           (2) A loan secured by the borrower's principal dwelling, which loan was  
2 modified after January 1, 2005, and became at the time of such modification  
3 and as a consequence of such modification a rate spread home loan.
- 4           (3) A loan that was a nontraditional mortgage loan at the time the loan was  
5 originated.
- 6           (4) A loan secured by the borrower's principal dwelling, which loan was  
7 modified and became at the time of such modification and as a consequence  
8 of such modification a nontraditional mortgage loan.
- 9       (c) This section does not apply to any of the following:
- 10           (1) A home equity line of credit as defined in G.S. 45-81(a).
- 11           (2) A construction loan as defined in G.S. 24-10(c).
- 12           (3) A reverse mortgage as defined in G.S. 53-257 that complies with the  
13 provisions of Article 21 of Chapter 53 of the General Statutes.
- 14           (4) A bridge loan with a term of 12 months or less, such as a loan to purchase a  
15 new dwelling where the borrower plans to sell his or her current dwelling  
16 within 12 months.
- 17           (5) A loan made by a natural person who makes no more than one loan in a 12-  
18 month period and is not in the business of lending.
- 19           (6) A loan secured by a subordinate lien on the borrower's principal dwelling,  
20 unless the loan was made contemporaneously with a rate spread home loan  
21 or a nontraditional mortgage loan that is subject to the provisions of this  
22 section.
- 23       (d) In addition to any statutory or common law prohibition against deficiency  
24 judgments, the following shall apply to the foreclosure of mortgages and deeds of trust that  
25 secure loans subject to this section:
- 26           (1) For mortgages and deeds of trust recorded before January 1, 2010, the holder  
27 of the obligation secured by the foreclosed mortgage or deed of trust shall  
28 not be entitled to any deficiency judgment against the borrower for any  
29 balance owing on such obligation if: (i) the real property encumbered by the  
30 lien of the mortgage or deed of trust being foreclosed was sold by a  
31 mortgagee or trustee under a power of sale contained in the mortgage or  
32 deed of trust; and (ii) the real property sold was, at the time the foreclosure  
33 proceeding was commenced, occupied by the borrower as the borrower's  
34 principal dwelling.
- 35           (2) For mortgages and deeds of trust recorded on or after January 1, 2010, the  
36 holder of the obligation secured by the foreclosed mortgage or deed of trust  
37 shall not be entitled to any deficiency judgment against the borrower for any  
38 balance owing on such obligation if: (i) the real property encumbered by the  
39 lien of the mortgage or deed of trust being foreclosed was sold as a  
40 consequence of a judicial proceeding or by a mortgagee or trustee under a  
41 power of sale contained in the mortgage or deed of trust; and (ii) the real  
42 property sold was, at the time the judicial or foreclosure proceeding was  
43 commenced, occupied by the borrower as the borrower's principal dwelling.
- 44       (e) The court may, in its discretion, award to the borrower the reasonable attorneys' fees  
45 actually incurred by the borrower in the defense of an action for deficiency if: (i) the borrower  
46 prevails in an action brought by the holder of the obligation secured by the foreclosed mortgage  
47 or deed of trust to recover a deficiency judgment following the foreclosure of a loan to which  
48 this section applies; and (ii) the court rules that the holder of the obligation secured by the  
49 foreclosed mortgage or deed of trust is not entitled to a deficiency judgment under the  
50 provisions of this section. The amount of attorneys' fees to be awarded shall be determined

1 without regard to the provisions of the loan documents, the provisions of G.S. 6-21.2, or any  
2 statutory presumption as to the amount of such attorneys' fees."

3         **SECTION 2.** Article 2B of Chapter 45 of the General Statutes is amended by  
4 adding a new section to read:

5 **"§ 45-21.38C. Severability.**

6         The provisions of this Article shall be severable, and if any phrase, clause, sentence, or  
7 provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law  
8 or regulation, the validity of the remainder of this Article shall not be affected thereby."

9         **SECTION 3.** This act becomes effective October 1, 2009, and applies to actions  
10 filed on or after that date.