

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS35341-RU-8 (01/16)

Short Title: Real Estate Resale Dealers. (Public)

Sponsors: Senator Clodfelter.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REGULATE THE PRACTICE OF REAL ESTATE RESALE DEALERS
3 IN THE STATE.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 66 of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 43.

8 "Real Estate Resale Dealers.

9 "§ 66-370. Definitions.

10 As used in this Article, the following terms mean:

- 11 (1) Covered person. – Any person, whether acting as a principal, or as an
12 agent or employee of the principal, who advertises, initiates, or
13 structures a purchase of covered property by means of a covered
14 transaction where the covered property will not be used as that
15 person's primary residence and where the person is not acting as a real
16 estate broker subject to the provisions of Article 1 of Chapter 93A of
17 the General Statutes.
- 18 (2) Covered property. – Residential real property located in the State
19 containing not more than two dwelling units, at least one of which is
20 occupied as the owner's principal residence, and that is subject to a
21 mortgage or deed of trust containing a due on sale clause.
- 22 (3) Covered transaction. – Any transaction, however denominated or
23 structured, by which a buyer purchases or contracts to purchase
24 covered property from an owner and in which the mortgage or deed of
25 trust encumbering the covered property will not be extinguished at the
26 time title to the covered property passes from the owner to the buyer or
27 any nominee of the buyer in accordance with G.S. 66-374. The term

1 "covered transaction" shall also include any transaction in which the
2 owner of covered property agrees to convey covered property into a
3 grantor trust, where the trustee is either the buyer or any other person
4 affiliated with the buyer, and where the mortgage or deed of trust
5 encumbering the covered property will not be extinguished at the time
6 the property is conveyed into the grantor trust.

7 (4) Due on sale clause. – A contract provision that authorizes a lender, at
8 its option, to declare due and payable sums secured by the lender's
9 security instrument if all or any part of the property, or an interest
10 therein, securing the loan is sold or transferred without the lender's
11 prior written consent.

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

16 (6) Purchase. – Any agreement to take title to or to acquire an interest in
17 covered property, including an offer to purchase subject to an existing
18 mortgage or deed of trust, an option to purchase, an offer to purchase
19 pursuant to an installment land sale contract, a contract for deed, a land
20 sales contract, a lease with option to purchase, or any similarly
21 structured instrument.

22 (7) Real estate resale transaction seminar. – Any seminar, course,
23 materials, or similar commercial educational program that purports to
24 instruct how to become a resale dealer or engage in real estate resale
25 transactions.

26 (8) Resale dealer. – A covered person.

27 (9) Subject to. – Taking either legal or equitable title to real property
28 without extinguishing an existing deed of trust or mortgage before
29 assuming legal or equitable title.

30 **"§ 66-371. Real estate resale transactions regulated.**

31 (a) No covered person shall enter into, or assist in arranging another person to
32 enter into, a covered transaction with the owner of covered property, except in
33 accordance with this Article.

34 (b) A covered transaction entered into in violation of this Article is void and, if
35 willful, shall constitute a violation of Chapter 75 of the General Statutes.

36 **"§ 66-372. Prohibited sale of covered property.**

37 It is an unfair and deceptive trade practice for a person to willfully induce, counsel,
38 aid, or cause another person to take an action which has the effect of activating a due on
39 sale clause in a mortgage or deed of trust encumbering covered property without first
40 providing notice to the other person as required by G.S. 66-375.

41 **"§ 66-373. Right to cancel.**

42 (a) The seller of a covered property in a covered property transaction may cancel
43 the transaction by notifying the covered person in writing at any time prior to midnight
44 of the third day after the date of execution of the documents evidencing the covered

1 transaction, in a manner consistent with 12 C.F.R. Part 226 (Regulation Z) of the federal
2 Truth-In-Lending Act.

3 (b) Notice of cancellation need not take a particular form and is sufficient if it
4 indicates by any form of written expression the intention of the seller, buyer, or tenant
5 not to be bound by the covered transaction.

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

8 **"§ 66-374. Extinguishment of mortgage or deed of trust.**

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

11 (1) Satisfaction in full of the outstanding indebtedness on the covered
12 property with evidence of satisfaction from the lender recorded in the
13 county registry.

14 (2) Release of the covered property by the lender as security of the
15 outstanding indebtedness with evidence of the release from the lender
16 recorded in the county registry.

17 (3) Assumption of the outstanding indebtedness on the covered property
18 by another person with the consent of the lender and a release of
19 liability of the mortgagor by the lender with evidence of the lender's
20 consent to the assumption and release of the mortgagor's liability
21 furnished to the mortgagor.

22 **"§ 66-375. Notice requirements.**

23 (a) Prior to the execution of a contract in which a covered person enters into a
24 covered transaction, the covered person shall provide to the owner of the covered
25 property, and all lenders with a security interest in the covered property, all of the
26 following disclosures:

27 (1) To the owner, the following statement in at least 12-point boldface
28 type:

29 "Your current mortgage loan, deed of trust, or mortgage contains a
30 due-on-sale clause which obligates you to inform your lender at any
31 time you transfer actual or equitable title to your property. If you
32 transfer actual or equitable title in your home to this resale dealer, you
33 must notify your lender of this proposed transaction, and your lender
34 has the right to make you pay the entire amount of your loan due at
35 that time. Before signing a contract with a resale dealer, you should
36 check with your lender to see if the lender will enforce the provisions
37 of the due-on-sale clause to make your entire loan due if you enter into
38 a contract with the resale dealer."

39 (2) To the owner, buyer, and tenant the following statement in at least
40 12-point boldface type:

41 "You may cancel this contract at any time prior to midnight of the
42 third day after the date of the real estate resale transaction. To cancel,
43 you must notify the resale dealer in writing no later than midnight of
44 the third day after the date of the real estate resale transaction. Notice

1 of cancellation, if given by mail, is given when it is deposited in the
2 United States mail properly addressed and postage prepaid. Notice of
3 cancellation need not take a particular form and is sufficient if it
4 indicates by any form of written expression the intention of the seller
5 not to be bound by the contract."

6 (3) To the buyer and tenant, the following statement in 12-point boldface
7 type:

8 "You may wish to consult with a nonprofit consumer credit counseling
9 agency to determine whether or not you are a good candidate to get a
10 mortgage now or in the future."

11 (5) To the owner, buyer, and tenant, a full, detailed description of the
12 actual services that the covered person undertakes to perform for the
13 owner, tenant, or buyer.

14 **"§ 66-376. Filing requirements.**

15 (a) Before placing any advertisement of covered property that would be subject
16 to a covered transaction, or before making any representations to a prospective seller,
17 tenant, or buyer in this State with regards to a covered transaction, each covered person
18 shall file with the Attorney General a notice of the covered person's intent to engage in
19 covered transactions.

20 (b) Failure to comply with this section shall be punishable by a fine assessed by
21 the Attorney General not to exceed ten thousand dollars (\$10,000).

22 **"§ 66-377. Deceptive advertising prohibited.**

23 It is an unfair and deceptive trade practice for a person to advertise in any medium
24 that the advertiser will "take over payments", "buy your house", or use other language
25 which, to a reasonable person, would imply that the advertiser will pay an indebtedness
26 in accordance with its terms, and then for the advertiser to enter into a real estate
27 transaction for the purchase of covered property in which the advertiser fails to
28 expressly agree to pay the indebtedness secured on the covered property or extinguish
29 the mortgage or deed of trust in accordance with G.S. 66-374.

30 **"§ 66-378. Real estate resale transaction seminars.**

31 (a) All real estate resale transaction seminars shall provide a copy of this Article
32 as part of its materials. The Article shall be printed in full in at least 12-point boldface
33 type. A person conducting a real estate resale transaction seminar providing only a
34 citation to this Article shall not satisfy this section.

35 (b) A real estate resale transaction seminar shall not instruct any person to engage
36 in any practice prohibited by this Article.

37 (c) Failure to comply with this section shall be punishable by a fine assessed by
38 the Attorney General not to exceed ten thousand dollars (\$10,000).

39 **"§ 66-379. Mortgage broker license required.**

40 A resale dealer who offers to assist or assists the buyer in securing financing to
41 purchase the covered property shall be licensed as a mortgage broker under Article 19A
42 of Chapter 53 of the General Statutes.

43 **"§ 66-380. Remedies.**

44 (a) A violation of G.S. 66-372 is deemed to be a violation of G.S. 75-1.1.

1 (b) The court shall have jurisdiction to enjoin the defendant from further
2 violations of this Article upon complaint of any person that a covered person or any
3 person who performs a real estate resale transaction seminar has violated the provisions
4 of this Article.

5 (c) The remedies provided in this section shall be in addition to any other
6 remedies provided for by law or in equity.

7 **"§ 66-381. Exclusions.**

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

9 (1) Any covered transaction exempted from the preemption provisions of
10 the due on sale clause prohibitions pursuant to 12 U.S.C. § 1701j-3(d).

11 (2) Any covered transaction between a relocating employee and an
12 employer or its agent or contractor, or between the employer or its
13 agent or contractor and a buyer of a relocating employee's home
14 pursuant to an employer's relocation policy."

15 **SECTION 2.** This act becomes effective October 1, 2007, and applies to real
16 estate resale transactions entered into on or after that date.