

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS35171-LU-53 (2/22)

Short Title: Consumer Real Est. Settlement Protection Act. (Public)

Sponsors: Senator Hagan.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT ESTABLISHING THE CONSUMER REAL ESTATE SETTLEMENT
3 PROTECTION ACT.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. The General Statutes are amended by adding a new Chapter to
6 read:

7 "Chapter 45B.

8 "Consumer Real Estate Settlement Protection Act.

9 "**§ 45B-10. Short title.**

10 This Chapter shall be known as the 'Consumer Real Estate Settlement Protection
11 Act'.

12 "**§ 45B-11. Findings; purpose.**

13 (a) The General Assembly finds that:

14 (1) A residential real estate transaction is the most significant transaction
15 in which many consumers are ever involved.

16 (2) It is in the best interest of consumers involved in residential real estate
17 transactions to be: (i) informed about the legal consequences inherent
18 in residential real estate transactions; and (ii) protected from potential
19 risks of harm from illegal or injurious practices.

20 (3) A residential real estate transaction is a process involving several
21 inseparable steps that necessarily involve the exercise of legal
22 judgment, the giving of legal advice or opinions, and other activities,
23 all of which steps require the involvement of an attorney.

24 Therefore, to protect consumers involved in real estate transactions, only attorneys
25 should be permitted to provide loan closing or settlement services.

26 (b) The purpose of this Chapter is to require attorneys and other settlement agents
27 permitted by this Chapter to provide loan closing or settlement services to comply with

1 certain consumer protection safeguards relating to the licensing, financial responsibility,
2 and the handling of settlement funds.

3 **"§ 45B-12. Applicability.**

4 This Chapter applies only to a purchase, sale, or loan involving real estate upon
5 which there is, or is intended to be, located a structure designed principally for
6 residential purposes or real estate that is zoned or restricted for residential use, and, in
7 either circumstance, is or will be occupied by the purchaser or borrower as the
8 purchaser's or borrower's dwelling. Real estate includes, but is not limited to, individual
9 units of townhouses, condominiums, and cooperatives.

10 **"§ 45B-13. Definitions.**

11 The following definitions apply in this Chapter:

- 12 (1) Attorney. – An individual licensed to practice law under Chapter 84 of
13 the General Statutes.
- 14 (2) Bank. – A financial institution, including a national bank, state
15 chartered bank, savings bank, or credit union that is insured by the
16 Federal Deposit Insurance Corporation or a comparable agency of the
17 federal or State government.
- 18 (3) Borrower. – The maker of the promissory note evidencing the loan to
19 be delivered at the closing.
- 20 (4) Cashier's check. – A check that is drawn on a bank, is signed by an
21 officer or employee of the bank on behalf of the bank as drawer, is a
22 direct obligation of the bank, and is provided to a customer of the bank
23 or acquired from the bank for remittance purposes.
- 24 (5) Certified check. – A check in which the drawee bank certifies by
25 signature of an officer or other authorized employee of the bank on the
26 check that: (i) the signature of the drawer on the check is genuine and
27 the bank has set aside funds that are equal to the amount of the check
28 and will be used to pay the check; or (ii) the bank will pay the check
29 upon presentment.
- 30 (6) Closing. – The time agreed upon by the parties to the residential real
31 estate transaction, when the execution and delivery of the documents
32 necessary to consummate the residential real estate transaction
33 contemplated by the parties occurs.
- 34 (7) Closing funds. – The gross or net proceeds of the residential real estate
35 transaction, including any loan funds, to be disbursed by the settlement
36 agent as part of the disbursement of settlement proceeds on behalf of
37 the parties at the closing.
- 38 (8) Collected funds. – Funds deposited and irrevocably credited to a
39 settlement agent's account used to fund the disbursement of settlement
40 proceeds which account is a trust account, escrow account, or an
41 account held by a company or its subsidiary that is licensed and
42 supervised by the North Carolina Commissioner of Banks.

- 1 (9) Disbursement of settlement proceeds. – The payment of all closing
2 funds from the residential real estate transaction by the settlement
3 agent to the persons or entities entitled to that payment.
- 4 (10) Lender. – Any person or entity engaged in making or originating loans
5 secured by mortgages or deeds of trust in a residential real estate
6 transaction.
- 7 (11) Loan closing. – The time agreed upon by the borrower and lender, as
8 applicable, when the borrower executes and delivers the loan
9 documents and the acts of execution and delivery of loan documents
10 by the borrower.
- 11 (12) Loan documents. – The note evidencing the debt due to the lender, the
12 deed of trust or mortgage to secure that debt to the lender, and any
13 other documents the lender requires the borrower to execute in the
14 lender's favor as part of the loan closing.
- 15 (13) Loan funds. – The gross or net proceeds of the loan to be disbursed by
16 the settlement agent as part of the disbursement of settlement proceeds
17 on behalf of the borrower and lender.
- 18 (14) Official bank check. – A check that is drawn on a bank, is signed by an
19 officer or employee of the bank on behalf of the bank as drawer, is a
20 direct obligation of the bank, and is provided to a customer of the bank
21 or acquired from the bank for remittance purposes.
- 22 (15) Party. – The seller, purchaser, borrower, lender, or settlement agent, as
23 applicable to the subject residential real estate transaction.
- 24 (16) Residential property. – Any property to which this Chapter applies
25 pursuant to G.S. 45B-12.
- 26 (17) Residential real estate transaction. – Any transaction described in
27 G.S. 45B-12.
- 28 (18) Settlement. – The time when the settlement agent has received the duly
29 executed deed, deed of trust or mortgage, and other loan documents
30 and funds to accomplish closing and carry out the terms of the
31 residential real estate transaction between the parties and all acts
32 necessary to consummate the residential real estate transaction
33 contemplated by the parties.
- 34 (19) Settlement agent. – The person providing settlement services in
35 connection with a residential real estate transaction in this State
36 whether or not listed as the settlement agent on the settlement
37 statement for the transaction
- 38 (20) Settlement services. – All services, including the administrative,
39 clerical, and other services, required to accomplish a settlement
40 including: (i) presenting and identifying the documents necessary to
41 complete a residential real estate transaction, directing the parties
42 where to sign the documents or ensuring that the parties have properly
43 signed the documents; and (ii) receiving or handling the disbursement
44 of settlement proceeds. Settlement services shall not include; (i) the

1 listing and sale of residential property; (ii) the inspection, analysis, and
2 reporting on the physical condition of the residential property and
3 improvements thereon; (iii) the preparation, review, analysis, and
4 reporting on the financial credit of any party to a residential real estate
5 transaction; (iv) the performance, preparation, issuance, analysis,
6 review, and reporting on the value of the residential property and
7 improvements; (v) the provision of title opinions; or (vi) the
8 underwriting and issuance of insurance policies.

9 (21) Settlement statement. – The statement of receipts, disbursements,
10 credits, and debits for a residential real estate transaction including a
11 statement prescribed under the Real Estate Settlement Procedures Act
12 of 1974 (RESPA), 12 U.S.C. § 2601, et seq., as amended, and the
13 regulations promulgated thereunder.

14 (22) Teller's check. – A check provided to a customer of a bank or acquired
15 from a bank for remittance purposes, that is drawn by the bank, and
16 drawn on another bank or payable through or at a bank.

17 (23) Title opinions. – Abstracting or passing upon titles or any other
18 expression or confirmation of the existence or nonexistence of any fact
19 related to the status of title to any real property, including: (i) current
20 or past ownership; (ii) current or past exceptions to title, such as liens,
21 judgments, financing documents, easements, and restrictions; or (iii)
22 any other matter that addresses the scope, quality, or nature of an
23 interest in real property.

24 **"§ 45B-14. Licensing requirements; standards; financial responsibility.**

25 (a) A person or entity shall not act in the capacity of a settlement agent or
26 provide settlement services and a lender, seller, purchaser, or borrower may not contract
27 with any person or entity to act in the capacity of a settlement agent or for the provision
28 of settlement services regarding a residential real estate transaction in this State unless
29 the settlement agent is an attorney and is, among other parties involved in the residential
30 real estate transaction, at least representing the purchaser or borrower involved in the
31 residential real estate transaction.

32 (b) A settlement agent who is an attorney shall:

33 (1) Provide any party represented by the attorney with a reasonable
34 opportunity to request and receive legal advice from the attorney
35 concerning the settlement and the documents required to accomplish
36 the settlement.

37 (2) Maintain at all times a malpractice insurance policy providing the
38 minimum limits of liability of two hundred fifty thousand dollars
39 (\$250,000) for any individual claim and two hundred fifty thousand
40 dollars (\$250,000) in the aggregate for all claims and damages.

41 (3) Satisfy the requirements to be considered an attorney under the Rules
42 Governing the Administration of the Client Security Fund of the North
43 Carolina State Bar promulgated by the North Carolina State Bar.

1 (c) Notwithstanding any rule of court or any authorized practice advisory opinion
2 of the North Carolina State Bar, only a settlement agent operating in compliance with
3 the requirements of this Chapter may provide settlement services or receive
4 compensation for the services. The requirements of this Chapter regulating the provision
5 of settlement services by a settlement agent shall be in addition to any other laws or
6 rules of this State regulating the particular settlement service being provided, including
7 licensure requirements and standards of conduct.

8 (d) A settlement agent shall exercise reasonable care in providing settlement
9 services.

10 (e) This Chapter shall not prohibit any party from representing himself, herself,
11 or itself in a residential real estate transaction to the extent otherwise permitted by
12 applicable State law.

13 **"§ 45B-15. Bank as settlement agent.**

14 (a) Notwithstanding any other provision of this Chapter, a bank may act as a
15 settlement agent and provide settlement services in connection with the closing of a loan
16 to the extent otherwise permitted by applicable State law.

17 (b) A bank that acts as a settlement agent and provides settlement services shall,
18 before the closing, provide the borrower with a written disclosure which contains the
19 following statement:

20 'Pursuant to the North Carolina Real Estate Protection
21 Act under Chapter 45B of the General Statutes, we, the
22 lender, are acting as your settlement agent, but cannot
23 provide you with any legal advice or legal services
24 relating to the closing of your loan.'

25 (c) For purposes of this section, the term 'bank' means a bank, savings and loan
26 association, savings bank, or credit union chartered under the laws of North Carolina or
27 the United States. However, the term 'bank' does not include any subsidiary or affiliate
28 of a bank, savings and loan association, savings bank, or credit union chartered under
29 the laws of North Carolina or the United States. The term 'loan' means any advance of
30 money or any extension of credit that is made by a bank to or on behalf of a borrower in
31 connection with a residential real estate transaction, the principal amount of which the
32 borrower has an obligation to pay the bank.

33 **"§ 45B-16. Duty of settlement agent.**

34 (a) The settlement agent shall cause recordation of the deed, if any, the deed of
35 trust or mortgage, or other loan documents required to be recorded at settlement. The
36 settlement agent shall not disburse any of the closing funds before: (i) the recordation
37 of any deeds, deeds of trust, or mortgages, if any, or other loan documents to the extent
38 the other loan documents are required to be recorded by the lender, if applicable; and
39 (ii) verification that the closing funds used to fund disbursement are deposited in the
40 settlement agent's trust or escrow account in one or more forms prescribed by this
41 Chapter. Unless otherwise provided in this Chapter, a settlement agent shall not cause a
42 disbursement of settlement proceeds unless those settlement proceeds are collected
43 funds.

1 (b) Notwithstanding that a deposit made by a settlement agent to its trust or
2 escrow account does not constitute collected funds, the settlement agent may cause a
3 disbursement of settlement proceeds from its trust or escrow account in reliance on that
4 deposit if the deposit is in one or more of the following forms:

5 (1) A certified check.

6 (2) A check issued by the State, a political subdivision of the State, the
7 United States, or an agency or instrumentality of the United States,
8 including an agricultural credit association.

9 (3) A cashier's check, teller's check, or official bank check drawn on or
10 issued by a financial institution insured by the Federal Deposit
11 Insurance Corporation or a comparable agency of the federal or State
12 government or wire transfer of funds from the institutions.

13 (4) A check drawn on the trust account of an attorney licensed to practice
14 in this State.

15 (5) A check drawn on the trust or escrow account of a real estate broker
16 licensed under Chapter 93A of the General Statutes.

17 (6) A personal or commercial check or checks in an aggregate amount not
18 exceeding five thousand dollars (\$5,000) per closing if the settlement
19 agent making the deposit has reasonable and prudent grounds
20 to believe that the deposit will be irrevocably credited to the settlement
21 agent's trust or escrow account.

22 (7) A check drawn on the account of or issued by a mortgage banker
23 licensed under Article 19A of Chapter 53 of the General Statutes that
24 has posted with the Commissioner of Banks a surety bond in the
25 amount of at least three hundred thousand dollars (\$300,000). The
26 surety bond shall be in a form satisfactory to the Commissioner and
27 shall run to the State for the benefit of any settlement agent with a
28 claim against the licensee for a dishonored check.

29 **"§ 45B-17. Duty of lender, purchaser, or seller.**

30 The lender, purchaser, or seller shall, at or before closing, deliver closing funds,
31 including the gross or net loan funds, if applicable, to the settlement agent either in the
32 form of collected funds or in the form of a negotiable instrument described in
33 G.S. 45B-16(b)(1) through (7), provided that the lender, purchaser, or seller, as
34 applicable, shall cause that negotiable instrument to be honored upon presentment for
35 payment to the bank or other depository institution upon which the instrument is drawn.
36 However, in the case of a refinancing or any other loan where a right of rescission
37 applies, the lender shall, no later than the business day after the expiration of the
38 rescission period required under the federal Truth-in-Lending Act, 15 U.S.C. § 1601, et
39 seq., cause disbursement of loan funds to the settlement agent in one or more of the
40 forms prescribed by provisions in this Chapter.

41 **"§ 45B-18. Validity of loan documents.**

42 Failure to comply with the provisions of this Chapter shall not govern the validity or
43 enforceability of any document, including a deed or any loan document, executed and
44 delivered at any settlement occurring after October 1, 1996.

1 **"§ 45B-19. Direct payments to non-attorneys prohibited.**

2 To protect consumers against the risk of substantial harm occurring from unqualified
3 parties performing settlement services or providing title opinions in connection with
4 residential real estate transactions, unless otherwise provided in this section, no
5 settlement agent in any residential real estate transaction shall pay any party other than
6 an attorney or the attorney's law firm for any settlement service or title opinion on any
7 residential property located in this State. A bank, acting as a settlement agent and
8 providing settlement services, to the extent permitted by applicable State law, shall not
9 be prohibited from paying an employee of the bank for settlement services. An attorney
10 who provides settlement services or a title opinion in connection with a residential real
11 estate transaction for which the attorney is also the settlement agent may pay a fee to a
12 non-attorney who is trained, directed, and supervised by the attorney in accordance with
13 the standards established by the North Carolina State Bar.

14 **"§ 45B-20. Penalty.**

15 Any party violating any provision of this Chapter is liable to any other party
16 suffering a loss due to that violation for that other party's actual damages plus
17 reasonable attorneys' fees. Any party violating any provision of this Chapter shall forfeit
18 to the payor all fees for any settlement services or title opinion collected, received, or
19 charged in violation of this Chapter and pay to the party suffering a loss an amount
20 equal to one thousand dollars (\$1,000) or double the amount of interest payable on any
21 loan for the first 60 days after the loan closing, whichever amount is greater.

22 **"§ 45B-21. Severability.**

23 If any provision of this Chapter or application of the provision to any person or
24 circumstance is held invalid, the remainder of the Chapter and the application of the
25 provision to persons or circumstances other than those to which it is invalid shall not be
26 affected."

27 **SECTION 2.** A settlement agent operating in this State on or before October
28 1, 2007, shall have 90 days after that date to comply with the applicable requirements of
29 G.S. 45B-14(b)(2) and G.S. 45B-15(b).

30 **SECTION 3.** This act becomes effective October 1, 2007.