

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 1015

Judiciary I Committee Substitute Adopted 5/12/09
Third Edition Engrossed 5/13/09
House Committee Substitute Favorable 6/2/10

Short Title: Homeowner and Homebuyer Protection Act.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 **A BILL TO BE ENTITLED**

2 AN ACT TO ENACT THE HOMEOWNER AND HOMEBUYER PROTECTION ACT TO
3 PROHIBIT HOME FORECLOSURE RESCUE SCAMS AND OFFER PROTECTIONS
4 IN LEASE OPTION AND CONTRACT FOR DEED TRANSACTIONS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** This act shall be known and may be cited as the "Homeowner and
7 Homebuyer Protection Act."

8 **SECTION 2.** Chapter 75 of the General Statutes is amended by adding a new
9 Article to read:

10 "Article 6.

11 "Home Foreclosure Rescue Scams.

12 **"§ 75-120. Definitions.**

13 The following definitions shall apply in this Article:

14 (1) Exempt transaction. – A foreclosure rescue transaction in which the
15 transferee is any of the following:

16 a. A member of the transferor's immediate family as defined in
17 G.S. 53-244-030(13).

18 b. A bona fide nonprofit organization that regularly provides financial,
19 housing, or social services to individuals.

20 c. A state, federal, or local government agency or organization.

21 d. A bank, savings institution, or credit union organized under the laws
22 of the United States or any state.

23 e. A mortgage lender or mortgage servicer licensed by the
24 Commissioner of Banks under Article 19B of Chapter 53 of the
25 General Statutes.

26 (2) Default. – Whenever a property owner is more than 60 days delinquent on
27 any loan or debt that is secured by the property, including real estate taxes.

28 (3) Foreclosure rescue transaction. – A transfer of residential real property,

29 including a manufactured home, which includes all of the following features:

30 a. The real property is the principal residence of the transferor.

31 b. The transferor is in default or legal proceedings have been initiated to
32 foreclose on the transferor's property.

33 c. The transferee, an agent of the transferee, or others acting in concert
34 with the transferee make representations that the transfer of the



- 1 residential property will enable the transferor to prevent, postpone, or
2 reverse the effect of foreclosure and to remain in the residence.
3 d. By written or oral agreement, the transferor retains an interest in the
4 property conveyed, including a tenancy interest, an interest under a
5 lease-purchase agreement, an option to reacquire the property, or any
6 other legal, equitable, or possessory interest in the property
7 conveyed.
8 e. The transferee fails to pay to the transferor at least eighty-two
9 percent (82%) of the fair market value of the property. Fair market
10 value shall be determined by an appraisal performed by a licensed
11 appraiser. The appraisal must be performed no more than 60 days
12 prior to the transfer. The appraisal shall be delivered to the transferor
13 no more than three days after the appraisal is performed and no less
14 than seven days prior to the transfer of the property.
15 (4) Property. – Real property upon which there is located one or more
16 single-family dwellings, including an individual condominium unit,
17 cooperative unit, manufactured home, or mobile home.

"§ 75-121. Foreclosure rescue transactions prohibited; exceptions; violation.

It is unlawful for a person other than the transferor to engage in, promise to engage in, arrange, offer, promote, solicit, assist with, or carry out a foreclosure rescue transaction for financial gain or with the expectation of financial gain. This section does not apply to exempt transactions.

"§ 75-122. Remedies.

A violation of G.S. 75-121 is an unfair trade practice under G.S. 75-1.1. A homeowner may bring an action for the recovery of damages, to void a prohibited foreclosure rescue transaction, as well as for declaratory or equitable relief for a violation of this Article. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Any action brought pursuant to this section must be commenced within four years from the date of the alleged violation."

SECTION 3. The General Statutes are amended by adding a new Chapter to read:

"Chapter 47G.

"Option to Purchase Contracts Executed With Lease Agreements.

"§ 47G-1. Definitions.

The following definitions apply in this Chapter:

- (1) Covered lease agreement or lease agreement. – A residential lease agreement that is combined with, or is executed concurrently with, an option contract.
(2) Cure the default. – To perform the obligations under the lease agreement and/or option contract that are described in the notice of default and intent to forfeit required by G.S. 47G-5 and that are necessary to reinstate the lease agreement and/or the option contract. This term is synonymous with the term 'cure.'
(3) Forfeiture. – The termination of an option purchaser's rights to exercise an option to purchase property that is the subject of the option contract, and those rights of persons claiming by or through an option purchaser, to the extent permitted by this Chapter, because of a breach of one or more of the purchaser's obligations under the option contract and/or covered lease agreement.
(4) Option contract or contract. – An option contract for the purchase of real property that includes or is combined with, or is executed in conjunction with, a covered lease agreement.

- 1 (5) Option fee. – Any payment, however denominated, made by the option
2 purchaser to the option seller that constitutes the price the option purchaser
3 pays for the right to buy the property at a specified price in the future.
4 (6) Option purchaser or purchaser. – An individual who purchases an interest in
5 property under an option contract, or any legal successor in interest to that
6 individual.
7 (7) Option seller or seller. – A person that makes a sale of an option by means of
8 an option contract, or the person's successor in interest. If an option contract
9 is subsequently assigned or sold to a third party, the assignor shall be
10 deemed to be an option seller or seller for purposes of this Chapter.
11 (8) Property. – Real estate located in this State, upon which there is located or
12 there is to be located a structure or structures designed principally for
13 occupancy of from one to four families that is or will be occupied by the
14 purchaser as the purchaser's principal dwelling.

15 **"§ 47G-2. Minimum contents of option purchase contracts; recordation."**

16 (a) Writing Required. – Every option contract, including any assignment of same, shall
17 be evidenced by a contract signed by all parties to it and containing all the terms to which they
18 have agreed. The seller shall deliver to the purchaser an exact copy of the contract, containing
19 all the disclosures required by subsection (b) of this section, at the time the purchaser signs the
20 contract.

- 21 (b) Contents. – An option contract shall contain at least all of the following:
- 22 (1) The full names and addresses of all the parties to the contract.
23 (2) The date the contract is signed by each party.
24 (3) A legal description of the property to be conveyed subject to an option to
25 purchase.
26 (4) The sales price of the property to be conveyed subject to an option to
27 purchase.
28 (5) The option fee and any other fees or payments to be paid by each party to the
29 contract.
30 (6) All of the obligations that if breached by the purchaser will result in
31 forfeiture.
32 (7) The time period during which the purchaser must exercise the option.
33 (8) A statement of the rights of the purchaser to cure a default, including that the
34 purchaser has the right to cure a default only once in any 12-month period
35 during the period of the covered lease agreement.
36 (9) A conspicuous statement, in not less than 14-point boldface type,
37 immediately above the purchaser's signature, that the purchaser has the right
38 to cancel the contract at any time within three business days after receiving a
39 copy of the contract that contains all the disclosures required by this
40 subsection.

41 (c) The purchaser may exercise the right to cancel the option contract until midnight of
42 the third business day following execution of the option contract or delivery of a copy of the
43 option contract, with the required minimum disclosures, whichever occurs last. If the purchaser
44 cancels the option contract, the seller shall, not later than the tenth day after the date the seller
45 receives the purchaser's notice of cancellation, return to the purchaser any and all property
46 exchanged or payments made by the purchaser under the option contract minus an offset of an
47 amount equal to the fair market value of the use of the property during the duration of the
48 purchaser's possession of the property plus an amount necessary to compensate the seller for
49 any damages caused to the property by the purchaser beyond normal wear and tear.

50 (d) Recordation. – Within 20 days after the option contract has been signed by both the
51 seller and the purchaser, the seller shall cause a copy of the option contract or a memorandum

1 of the option contract to be recorded in the register of deeds in the county where the property
2 sold under the option contract is located. If a memorandum of the contract is recorded, it shall
3 be entitled "Memorandum of Option Contract" and shall contain, as a minimum, the names of
4 the parties, the signatures of the parties, a description of the property, and applicable time
5 periods. A person other than a seller and purchaser may rely on the recorded materials in
6 determining whether the requirements of this subsection have been met.

7 "**§ 47G-3. Application of Landlord Tenant Law.**

8 The provisions of Chapter 42 of the General Statutes apply to covered lease agreements.

9 "**§ 47G-4. Condition of forfeiture; right to cure.**

10 A purchaser's right to exercise an option to purchase property under an option contract
11 cannot be forfeited unless a breach has occurred in one or more of the purchaser's express
12 obligations under the option contract and the option contract provides that as a result of such
13 breach the seller is entitled to forfeit the contract. Notwithstanding any option contract or
14 covered lease agreement provisions to the contrary, the purchaser's rights shall not be forfeited
15 until the purchaser has been notified of the intent to forfeit in accordance with G.S. 47G-5 and
16 been given a right to cure the default and has failed to do so within the time period allowed.
17 The option purchaser is entitled to the right to cure a default at least once in every 12-month
18 period during the period of the covered lease agreement.

19 "**§ 47G-5. Notice of default and intent to forfeit.**

20 (a) A notice of default and intent to forfeit shall specify the nature of the default, the
21 amount of the default if the default is in the payment terms, the date after which the contract
22 will be forfeited if the purchaser does not cure the default, and the name and address of the
23 seller or the attorney for the seller. The period specified in the notice after which the contract
24 will be forfeited may not be less than 30 days after the notice of default and intent to forfeit is
25 sent, or before judgment is given in any action brought to recover the possession of the leased
26 premises pursuant to Article 3 of Chapter 42 of the General Statutes, whichever is earlier.

27 (b) Any notice of default and intent to forfeit must be delivered to the option purchaser
28 by hand delivery or by any manner authorized by G.S. 1A-1, Rule 4.

29 "**§ 47G-6. Title requirements.**

30 An option seller may not execute an option contract with an option purchaser unless, at the
31 time the option contract is entered into and recorded, (i) the option seller holds title to the
32 option property and is the mortgagor on any mortgage or deed of trust encumbering the option
33 property; or (ii) the option seller holds a real estate broker's license issued by the North
34 Carolina Real Estate Commission. An option contract executed in violation of this section is
35 voidable at the option of the option purchaser.

36 "**§ 47G-7. Encumbrances on title.**

37 (a) An option seller may not execute an option contract with an option purchaser if, at
38 the time the option contract is entered into and recorded, the property is encumbered by a lien,
39 mortgage, or encumbrance unless the seller notifies the purchaser in a separate written
40 disclosure:

- 41 (1) That the property is subject to one or more outstanding mortgages, liens, or
42 other encumbrances.
- 43 (2) In 14-point type, boldface, capital letters, the following statement: **THIS
44 PROPERTY HAS EXISTING LIENS ON IT. IF THE SELLER FAILS
45 TO MAKE TIMELY PAYMENTS TO THE LIEN HOLDER, THE
46 LIEN HOLDER MAY FORECLOSE ON THE PROPERTY, EVEN IF
47 YOU HAVE MADE ALL YOUR PAYMENTS. YOU HAVE THE
48 RIGHT TO HAVE YOUR ATTORNEY CONDUCT A TITLE
49 SEARCH.**

50 (b) If, at any time prior to the expiration of the time period in which the option
51 purchaser has a right to exercise the option to purchase, the option seller defaults on a loan

1 secured by a lien or mortgage on the property, the option purchaser may elect to exercise the
2 option or cancel and rescind the contract and, in addition to any other remedies available at law
3 or equity, seek the immediate return of all moneys paid by the option purchaser. If the
4 purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal to
5 the fair market value of the use of the property during the duration of the purchaser's possession
6 of the property plus an amount necessary to compensate the seller for any damages caused to
7 the property by the purchaser beyond normal wear and tear.

8 **"§ 47G-8. Remedies.**

9 A violation of any provision of this Chapter constitutes an unfair trade practice under
10 G.S. 75-1.1. An option purchaser may bring an action for the recovery of damages, to void a
11 prohibited transaction, as well as for declaratory or equitable relief for a violation of this
12 Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any
13 other rights and remedies provided by law or equity. Any action brought pursuant to this
14 section must be commenced within four years from the date of the alleged violation."

15 **SECTION 4.** The General Statutes are amended by adding a new Chapter to read:

16 **"Chapter 47H.**

17 **"Contracts for Deed.**

18 **"§ 47H-1. Definitions.**

19 The following definitions apply in this Chapter:

- 20 (1) Contract for deed or contract. – An agreement, whether denominated a
21 "contract for deed," "installment land contract," "land contract," "bond for
22 title," or any other title or description in which the seller agrees to sell an
23 interest in property to the purchaser and the purchaser agrees to pay the
24 purchase price in five or more payments exclusive of the down payment, if
25 any, and the seller retains title to the property as security for the purchaser's
26 obligation under the agreement.
- 27 (2) Cure the default. – To perform the obligations under the contract that are
28 described in the notice of default and intent to forfeit required by G.S. 47H-4
29 and that are necessary to reinstate the contract. This term is synonymous
30 with the term 'cure.'
- 31 (3) Down payment. – A payment made by the purchaser to the seller that
32 constitutes part of the purchase price of property that is the subject of a
33 contract for deed and that is made or agreed to in connection with the
34 execution of that contract.
- 35 (4) Forfeiture. – The termination of all of a purchaser's rights, title, and interest,
36 and those of persons claiming by or through a purchaser, in property that is
37 the subject of a contract for deed, to the extent permitted by this Chapter,
38 because of a breach of one or more of the purchaser's obligations under the
39 contract.
- 40 (5) Property. – Either (i) real estate located in this State, upon which there is
41 located or there is to be located a structure or structures designed principally
42 for occupancy of from one to four families that is or will be occupied by the
43 purchaser as the purchaser's principal dwelling, or (ii) a manufactured home,
44 as that term is defined in G.S. 143-149.9, that is located in this State and is
45 or will be occupied by a purchaser as the purchaser's principal dwelling, if
46 the purchase price is five thousand dollars (\$5,000) or more.
- 47 (6) Purchaser. – An individual or entity that purchases an interest in property
48 under a contract for deed, or any legal successor in interest to that individual.
- 49 (7) Seller. – A person who makes a sale of property by means of a contract for
50 deed, or the person's successor in interest.

51 **"§ 47H-2. Minimum contents for contracts for deed; recordation.**

1 (a) Writing Required. – Every contract for deed shall be evidenced by a contract signed
2 by all parties to it and containing all the terms to which they have agreed. The seller shall
3 deliver to the purchaser an exact copy of the contract, containing all the disclosures required by
4 subsection (b) of this section, at the time the purchaser signs the contract.

5 (b) Contents. – A contract for deed contract shall contain at least all of the following:

- 6 (1) The full names and addresses of all the parties to the contract.
 - 7 (2) The date the contract is signed by each party.
 - 8 (3) A legal description of the property conveyed.
 - 9 (4) The sales price of the property conveyed.
 - 10 (5) Any charges or fees for services included in the contract separate from the
11 sale price.
 - 12 (6) The amount of the purchaser's down payment.
 - 13 (7) The principal balance owed by the purchaser, which is the sum of the
14 amounts stated in subdivisions (4) and (5) of this subsection, less the amount
15 stated in subdivision (6) of this subsection.
 - 16 (8) The amount and due date of each installment payment and the total number
17 of installment payments.
 - 18 (9) The interest rate on the unpaid balance, if any, and the method of
19 determining the interest rate.
 - 20 (10) A conspicuous statement of any pending order of any public agency or other
21 matters of public record affecting the property.
 - 22 (11) A statement of the rights of the purchaser to cure a default.
 - 23 (12) A statement setting forth the obligation of each party who is responsible for
24 making repairs to the property, the payment of taxes, hazard insurance
25 assessments, homeowner association dues, and other charges against the
26 property from the date of the contract.
 - 27 (13) A provision that the purchaser has the right to accelerate or prepay any
28 installment payments without penalty; unless the property is encumbered by
29 a mortgage and the seller will be liable for paying a prepayment penalty on
30 the mortgage in order to deliver title to the buyer, in which case the contract
31 may specify that the buyer will compensate the seller for the prepayment
32 penalty.
 - 33 (14) A description of conditions of the property that includes whether the
34 property, including any structures thereon, has water, sewer, septic, and
35 electricity service, whether the property is in a floodplain, whether anyone
36 else has a legal interest in the property, and whether restrictive covenants
37 prevent building or installing a dwelling. If restrictive covenants are in place
38 that affect the property, a copy of the restrictive covenants shall be made
39 available to the purchaser.
 - 40 (15) A statement indicating the amount of any real estate taxes and/or
41 homeowner association dues, or special assessments owed on the property
42 that is the subject of the contract, and the amount of such taxes, dues, or
43 assessments that are delinquent.
 - 44 (16) A conspicuous statement, in not less than 14-point boldface type,
45 immediately above the purchaser's signature, that the purchaser has the right
46 to cancel the contract at any time within three business days after receiving a
47 copy of the contract that contains all the disclosures required by this
48 subsection.
- 49 (c) The purchaser may exercise the right to cancel the contract for deed until midnight
50 of the third business day following consummation of the contract for deed or delivery of a copy
51 of the contract with the required minimum contents, whichever occurs last. If the purchaser

1 cancels the contract, the seller shall, not later than the tenth day after the date the seller receives
2 the purchaser's notice of cancellation, return to the purchaser any and all property exchanged or
3 payments made by the purchaser under the contract minus an offset of an amount equal to the
4 fair market value of the use of the property during the duration of the purchaser's possession of
5 the property plus an amount necessary to compensate the seller for any damages caused to the
6 property by the purchaser beyond normal wear and tear.

7 (d) Recordation. – Within 20 days after the contract has been signed by both the seller
8 and the purchaser, the seller shall cause a copy of the contract or a memorandum of the contract
9 to be recorded in the register of deeds in the county where the property sold under the contract
10 is located. If a memorandum of the contract is recorded, it shall be entitled "Memorandum of a
11 Contract for Deed" and shall contain, as a minimum, the names of the parties, the signatures of
12 the parties, a description of the property, and applicable time periods.

13 "**§ 47H-3. Conditions of forfeiture; right to cure.**

14 A purchaser's rights under a contract for deed shall not be forfeited except as provided in
15 this Chapter. A contract for deed cannot be forfeited unless a breach has occurred in one or
16 more of the purchaser's express obligations under the contract and the contract provides that as
17 a result of such breach the seller is entitled to forfeit the contract. Furthermore, the purchaser's
18 rights shall not be forfeited until the purchaser has been notified of the intent to forfeit in
19 accordance with G.S. 47H-4 and been given a right to cure the default and has failed to do so
20 within the time period allowed. A timely tender of cure shall reinstate the contract for deed.

21 "**§ 47H-4. Notice of default and intent to forfeit.**

- 22 (a) The notice of default and intent to forfeit shall contain all of the following:
- 23 (1) The name, address, and telephone number of the seller and the seller's agent
24 or attorney giving the notice, if any.
- 25 (2) A description of the contract, including the names of the original parties to
26 the contract for deed.
- 27 (3) The physical address of the property.
- 28 (4) A description of each default under the contract on which the notice is based.
- 29 (5) A statement that the contract will be forfeited if all defaults are not cured by
30 a date stated in the notice which is not less than 30 days after the notice of
31 default and intent to forfeit is sent or any longer period specified in the
32 contract or other agreement with the seller.
- 33 (6) An itemized statement of, or to the extent not known at the time the notice of
34 default and intent to forfeit is given or recorded, a reasonable estimate of, all
35 payments of money in default, and, for defaults not involving the failure to
36 pay money, a statement of the action required to cure the default.
- 37 (7) Any additional information required by the contract for deed or other
38 agreement with the seller.

39 (b) Any notice of default and intent to forfeit must be delivered to the purchaser by
40 hand or by any manner authorized in G.S. 1A-1, Rule 4. Any notice of default and intent to
41 forfeit must also be delivered to the occupant of the dwelling that is the subject of the contract
42 for deed, if different from the purchaser.

43 "**§ 47H-5. Periodic statements of account.**

44 The seller shall provide the purchaser with a statement of account at least once every
45 12-month period for the term of a contract for deed. The statement must include at least the
46 following information:

- 47 (1) The amount paid under the contract.
- 48 (2) The remaining amount owed under the contract.
- 49 (3) The number of payments remaining under the contract.
- 50 (4) The amounts paid to taxing authorities, if paid or collected by the seller or
51 the purchaser.

- (5) The amounts paid to insure the property on the purchaser's behalf, if collected by the seller.

(6) If the property has been damaged and the seller has received insurance proceeds, an accounting of the proceeds applied to the property.

(7) If the property is encumbered by a lien or mortgage pursuant to G.S. 47H-6 (b), the outstanding balance of the loan that is secured by the property.

§ 47H-6. Title requirements.

- (a) A seller may not execute a contract for deed with a purchaser if the seller does not hold title to the property. If the title is not held in fee simple, free from any liens, mortgages, or other encumbrances, the seller may execute a contract for deed only if the mortgage or encumbrance is in the name of the seller and meets at least one of the following conditions:

- (1) It was placed on the property because of the conduct of the purchaser.
 - (2) It was agreed to by the purchaser as a condition of a loan obtained to place improvements on the property, including utility and fire protection improvements.
 - (3) It was placed on the property by the seller prior to the execution of the contract for deed if the seller is a licensed general contractor within the meaning of Chapter 87 of the General Statutes, a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, or a licensed real estate broker within the meaning of Chapter 93A of the General Statutes, provided that the general contractor, manufactured home dealer, or real estate broker continues to make timely payments on the outstanding mortgage or encumbrance.
 - (4) It was placed on the property by the seller prior to the execution of the contract for deed, if the seller is not a licensed general contractor within the meaning of Chapter 87 of the General Statutes, a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, or a licensed real estate broker within the meaning of Chapter 93A of the General Statutes, if the lien is attached only to the property sold to the purchaser under the contract for deed, and the seller continues to make timely payments on the outstanding mortgage or encumbrance.

- (b)** If the property being sold is encumbered by one or more mortgages, and the seller is not a licensed general contractor within the meaning of Chapter 87 of the General Statutes, a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, or a licensed real estate broker within the meaning of Chapter 93A of the General Statutes, the seller must notify the purchaser in a separate written disclosure of all of the following:

- (1) The amount of the outstanding balance of the loan.

(2) The amount of the monthly payments due on the loan and the due date of those payments.

(3) In 14-point type, boldface, capital letters, the following statement: **THIS PROPERTY HAS EXISTING LIENS ON IT. IF THE SELLER FAILS TO MAKE TIMELY PAYMENTS TO THE LIEN HOLDER, THE LIEN HOLDER MAY FORECLOSE ON THE PROPERTY, EVEN IF YOU HAVE MADE ALL YOUR PAYMENTS. YOU HAVE THE RIGHT TO HAVE YOUR ATTORNEY CONDUCT A TITLE SEARCH.**

- (c) In addition to any other remedies at law or equity, a seller's violation of this section entitles the purchaser to either a claim for damages or the right to rescind the contract and seek the return of all payments, deposits, and down payments that have been made under the contract. If the purchaser elects to rescind the contract, the seller is entitled to an offset of an

1 amount equal to the fair market value of the use of the property during the duration of the
2 purchaser's possession of the property plus an amount necessary to compensate the seller for
3 any damages caused to the property by the purchaser beyond normal wear and tear.

4 **"§ 47H-7. Late fees.**

5 No seller may charge a late payment charge under a contract for deed in excess of four
6 percent (4%) of the amount of the payment past due.

7 **"§ 47H-8. Remedies.**

8 A violation of any provision of this Chapter constitutes an unfair trade practice under
9 G.S. 75-1.1. A purchaser may bring an action for the recovery of damages, to rescind a
10 transaction, as well as for declaratory or equitable relief, for a violation of this Chapter. The
11 rights and remedies provided herein are cumulative to, and not a limitation of, any other rights
12 and remedies provided by law or equity. Any action brought pursuant to this section must be
13 commenced within four years from the date of the alleged violation."

14 **SECTION 5.** G.S. 143-143.13(a) is amended by adding a new subdivision to read:

15 "15) Failure to comply with the provisions of Chapters 47G and 47H of the
16 General Statutes."

17 **SECTION 6.** This act becomes effective October 1, 2010, and applies to

18 transactions on or after that date.