

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 546
HOUSE BILL 22

AN ACT TO REGULATE REVERSE MORTGAGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 21.
"Reverse Mortgages.

"§ 53-255. Title.

This Article shall be known and may be cited as the Reverse Mortgage Act.

"§ 53-256. Purpose.

It is the intent of the General Assembly that reverse mortgage loans be available so that elderly homeowners may use the equity in their homes to meet their financial needs. The General Assembly recognizes that there may be restrictions and requirements governing traditional mortgage transactions that should not apply to reverse mortgages. The purpose of this Article is to authorize reverse mortgage transactions and to clarify other provisions of North Carolina law that might otherwise apply to reverse mortgage loans, and to provide protection for elderly homeowners who enter into reverse mortgage transactions.

"§ 53-257. Definitions.

The following definitions apply in this Article:

- (1) Authorized lender or lender. The North Carolina Housing Finance Agency, any lender authorized to engage in business as a bank, savings institution, or credit union under the laws of this State or of the United States, or any other person, firm, or corporation authorized to make reverse mortgage loans by the Commissioner of Banks.
- (2) Borrower. A natural person 62 years of age or older who occupies and owns, in fee simple individually, or with another borrower as tenants by the entireties or as joint tenants with right of survivorship, an interest in residential real property securing a reverse mortgage loan, and who borrows money under a reverse mortgage loan.
- (3) Commissioner. The Commissioner of Banks of this State.
- (4) Counselor. An individual who has completed a training curriculum on reverse mortgage counseling provided or approved by the North Carolina Housing Finance Agency and whose name is maintained on the Commissioner's list of approved reverse mortgage counselors.

- (5) Outstanding balance. The current net amount of money owed by the borrower to the lender, calculated in accordance with G.S. 53-262(b), whether or not the sum is suspended under the terms of the reverse mortgage loan agreement or is immediately due and payable.
- (6) Reverse mortgage loan or loan. A loan for a definite or indefinite term (i) secured by a first mortgage or first deed of trust on the principal residence of the mortgagor, (ii) the proceeds of which are disbursed to the mortgagor in one or more lump sums, or in equal or unequal installments, either directly by the lender or the lender's agent, and (iii) that requires no repayment until a future time, upon the earliest occurrence of one or more events specified in the reverse mortgage loan contract.
- (7) Shared appreciation. An agreement by the lender and the borrower that, in addition to any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may collect an additional amount equal to a percentage of any net appreciated value of the property during the term of the reverse mortgage loan.
- (8) Total annual percentage rate. The annual average rate of interest, which provides the total amount owed at loan maturity when this rate is applied to the loan advances, excluding closing costs not paid to third parties, over the term of the reverse mortgage loan.

"§ 53-258. Authority and procedures governing reverse mortgage loans.

(a) No person, firm, or corporation shall engage in the business of making reverse mortgage loans without first being approved as an authorized lender by the Commissioner, unless the lender is the North Carolina Housing Finance Agency, or is a bank, savings institution, or credit union authorized to do business under the laws of this State or authorized to do business under the laws of the United States and chartered to do business in this State.

(b) An application for authorization to make reverse mortgage loans shall be in writing to the Commissioner and in the form prescribed by the Commissioner. The application shall contain the name and complete business address or addresses of the applicant. The application shall also include affirmation of financial solvency and all capitalization requirements that are required by the Commissioner. The application shall be accompanied by a nonrefundable fee, payable to the Commissioner, of five hundred dollars (\$500.00).

(c) The North Carolina Housing Finance Agency, and any bank, savings institution, or credit union that is not required to obtain authorization to make reverse mortgage loans under subsection (a) of this section, shall, prior to making any reverse mortgage loan, notify the Commissioner of its intent to make reverse mortgage loans. This notification shall be made on a form prescribed by the Commissioner and shall contain all information required by the Commissioner.

(d) The Commissioner shall, upon determination that a lender should be authorized to make reverse mortgage loans, issue notice of this authority to the lender. The authority to issue reverse mortgage loans is valid for the period of time specified by

the Commissioner. A lender to whom a notice of authority is issued shall display the notice prominently in any and all offices of the lender that make reverse mortgage loans. Authorizations issued under this section are nontransferable and subject to an annual fee of two hundred fifty dollars (\$250.00).

"§ 53-259. Application of rules.

In addition to the provisions of this Article, authorized lenders shall comply with rules adopted by the Commissioner that are reasonable and necessary to effectuate the purposes of this Article and to protect the public interest. Provided, however, that provisions in Chapters 24 or 45 of the General Statutes and the rules adopted under those Chapters that conflict with this Article shall not apply to reverse mortgage transactions governed by this Article.

"§ 53-260. Interest.

Notwithstanding any other provisions of law to the contrary, the parties to a reverse mortgage loan may contract for the payment of interest at a rate agreed to by the parties. Interest shall be deferred until the earliest occurrence of one or more events specified in the reverse mortgage loan contract. Payment of interest on deferred interest shall be as agreed upon by the parties to the contract. The parties may agree that the deferred interest may be added to the outstanding balance of the loan. The Commissioner may determine that the total annual percentage rate is excessive. If the Commissioner determines the total annual percentage rate to be excessive, that determination shall be included in the information provided to counselors under G.S. 53-264(a)(7), and to applicants for reverse mortgage loans under G.S. 53-264(b).

"§ 53-261. Taxes, insurance, and assessments.

A reverse mortgage loan contract may provide that it is the primary obligation of the borrower to pay all property taxes, insurance premiums, and assessments in a timely manner, and that the failure of the borrower to make these payments and to provide evidence of payment to the lender may constitute grounds for default of the loan. A reverse mortgage loan contract shall state that if a borrower fails to pay property taxes, insurance premiums, or assessments, the lender may choose, at the lender's option, to pay the amounts due, charge them to the reverse mortgage loan, and recalculate regularly scheduled payments under the loan to account for the increased outstanding loan balance.

"§ 53-262. Renegotiation of loan; calculation of outstanding balance; prepayment.

(a) If a reverse mortgage loan contract allows for a change in the payments or payment options, the lender may charge a reasonable fee when payments are recalculated.

(b) The outstanding loan balance shall be calculated by adding the current totals of items described in subdivisions (1) through (4) below, and subtracting the current totals of all reverse mortgage loan payments made by the borrower to the lender:

- (1) The sum of all disbursements made by the lender to the borrower, or to another party on the borrower's behalf.
- (2) All taxes, assessments, insurance premiums, and other similar charges paid to date by the lender under G.S. 53-261 and not reimbursed by the borrower within 60 days of the date payment was made by the lender.

(3) All actual closing costs the borrower has deferred, if a deferral provision is contained in the loan agreement.

(4) The total accrued interest to date.

(c) Prepayment of the reverse mortgage loan, in whole or part, shall be permitted without penalty at any time during the term of the loan.

"§ 53-263. Limits on borrowers' liability.

(a) When a reverse mortgage loan becomes due, if the borrower mortgaged one hundred percent (100%) of the full value of the house then the amount owed by the borrower shall not be greater than (i) the fair market value of the house, minus sale costs, or (ii) the outstanding balance of the loan, whichever amount is less.

(b) If the borrower mortgaged less than one hundred percent (100%) of the full value of the house, the amount owed by the borrower shall not be greater than (i) the outstanding balance of the loan, or (ii) the percentage of the fair market value, minus sale costs, as provided in the contract, whichever amount is less.

(c) The lender shall enforce the debt only through the sale of the property and shall not obtain a deficiency judgment against the borrower.

"§ 53-264. Disclosures of loan terms.

(a) On forms prescribed by the Commissioner, all authorized lenders shall provide all of the following information to the Commissioner for dissemination to all counselors who provide counseling to prospective reverse mortgage borrowers:

(1) The borrower's rights, obligations, and remedies with respect to the borrower's temporary absence from the home, late payments by the lender, and payment default by the lender.

(2) Conditions or events that require the borrower to repay the loan obligation.

(3) The right of the borrower to mortgage less than the full value of the home, if permitted by the reverse mortgage loan contract.

(4) The projected total annual percentage rate applicable under various loan terms and appreciation rates and interest rates applicable at sample ages of borrowers.

(5) Standard closing costs.

(6) All service fees to be charged during the term of the loan.

(7) Other information required by the Commissioner.

(b) Within 10 business days after application is made by a borrower, but not less than 20 business days before closing of the loan, lenders shall provide applicants with the same information required in subsection (a) of this section, shall inform applicants that reverse mortgage counseling is required before the loan can be closed, and shall provide the names and addresses of counselors listed with the Commissioner's office.

"§ 53-265. Information required of lender.

(a) At the closing of the reverse mortgage loan, the lender shall provide to the borrower the name of the lender's employee or agent who has been designated specifically to respond to inquiries concerning reverse mortgage loans. This information shall be provided by the lender to the borrower at least annually, and whenever the information concerning the designated employee or agent changes.

(b) On an annual basis and when the loan becomes due, the lender shall issue to the borrower, without charge, a statement of account regarding the activity of the mortgage for the preceding calendar year, or for the period since the last statement of account was provided. The statement shall include all of the following information for the preceding year:

- (1) The outstanding balance of the loan at the beginning of the statement period.
- (2) Disbursements to the borrower.
- (3) The total amount of interest added to the outstanding balance of the loan.
- (4) Any property taxes, insurance premiums, or assessments paid by the lender.
- (5) Payments made to the lender.
- (6) The total mortgage balance owed to date.
- (7) The remaining amount available to the borrower in reverse mortgage loans wherein proceeds have been reserved to be disbursed in one or more lump sum amounts.

"§ 53-266. Effects of lender's default.

(a) A lender's failure to make loan advances to the borrower under the reverse mortgage loan contract shall be deemed the lender's default of the contract. Upon the lender's default, the lender shall forfeit any right to collect interest or service charges under the contract. The lender's right to recovery at loan maturity shall be limited to the outstanding balance as of the date of default, minus all interest. Lenders may also be subject to other default penalties established by the Commissioner.

(b) Subsection (a) of this section shall not apply if the lender has previously declared the borrower in default under G.S. 53-267, or if the lender makes the required loan advance within the time stated in the mortgage contract or within 30 days of receipt of notice from the borrower that the loan advance was not received.

"§ 53-267. Repayment upon borrower's default.

A reverse mortgage loan contract may provide for a borrower's default, thereby triggering early repayment of the loan, based only upon one or more of the following terms and conditions:

- (1) The borrower fails to maintain the residence as required by the contract.
- (2) The borrower sells or otherwise conveys title to the home to a third party.
- (3) The borrower dies and the home is not the principal residence of the surviving borrower.
- (4) The home is not the principal residence of at least one of the borrowers for a period of 12 consecutive months for reasons of physical or mental illness.
- (5) For reasons other than physical or mental illness, the home ceases to be the principal residence of the borrower for a period of 180

consecutive days and is not the principal residence of another borrower under the loan, without prior written permission from the lender.

- (6) The borrower fails to pay property taxes, insurance premiums, and assessments under G.S. 53-261.

"§ 53-268. Time for initiation of foreclosure.

When a borrower's obligation to repay the reverse mortgage loan is triggered under G.S. 53-267, in addition to all rights conferred upon owners and borrowers under Chapter 45 of the General Statutes, the lender must give the borrower not less than 90 days' notice of its intent to initiate foreclosure proceedings. If the contract so provides, interest will continue to accrue during the 90-day period.

"§ 53-269. Counseling provisions.

(a) The North Carolina Housing Finance Agency shall adopt rules governing the training of counselors and necessary standards for counselor training and shall establish reasonable fees for training. The North Carolina Housing Finance Agency shall forward the names of all persons satisfying counselor training requirements to the Commissioner.

(b) The Commissioner shall maintain a list of counselors who have satisfied training requirements and shall periodically provide an up-to-date copy of the list to all authorized lenders.

(c) The Commissioner shall provide to all counselors who have satisfied training requirements information provided to the Commissioner by authorized lenders under G.S. 53-265.

"§ 53-270. Prohibited acts.

Reverse mortgage lenders are prohibited from engaging in any of the following acts in connection with the making, servicing, or collecting of a reverse mortgage loan:

- (1) Misrepresenting material facts, making false promises, or engaging in a course of misrepresentation through agents or otherwise.
- (2) Failing to disburse funds in accordance with the terms of the reverse mortgage loan contract or other written commitment.
- (3) Improperly refusing to issue a satisfaction of a mortgage.
- (4) Engaging in any action or practice that is unfair or deceptive, or that operates a fraud on any person.
- (5) Contracting for or receiving shared appreciation.
- (6) Closing a reverse mortgage loan without receiving certification from a counselor that the borrower has received counseling on the advisability of a reverse mortgage loan and the appropriate reverse mortgage loan for the borrower.
- (7) Failing to comply with this Article.

"§ 53-271. Commissioner's authority to enforce; penalties.

(a) The Commissioner shall adopt rules necessary to implement and enforce the provisions of this Article. Upon finding probable cause to believe that an authorized lender is in violation of this Article, or of any law or any rule or regulation of this State, the United States, or an agency of the State or the United States, the Commissioner

shall, after affording reasonable notice and opportunity to be heard to the lender, order the lender to cease and desist from the violation.

(b) If a lender fails to comply with or appeal the Commissioner's cease and desist order, the lender shall be subject to a civil penalty of one thousand dollars (\$1,000) for each violation that is the subject of the cease and desist order. The penalty imposed under this section shall be in addition to and not in lieu of penalties available under any other provision of law applicable to a reverse mortgage lender.

(c) Upon a finding that a reverse mortgage lender has violated this Article, the Commissioner may revoke, temporarily or permanently, the authority of the lender to make reverse mortgage loans.

(d) A person damaged by a lender's actions may file an action in civil court to recover actual and punitive damages. Attorneys' fees shall be awarded to a prevailing borrower. Nothing in this Article shall limit any statutory or common law right of a person to bring an action in court for any act, nor shall this Article limit the right of the State to punish a person for the violation of any law.

"§ 53-272. Appeals.

Notwithstanding any other provision of law, an aggrieved party may, within 30 days after final decision of the Commissioner, and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review of the record. In the event of an appeal the Commissioner shall certify the record to the Clerk of the Court of Appeals no later than 30 days after receipt of the notice of appeal. The record shall include all memoranda, briefs, and any other documents, data, information, or evidence submitted by any party to the proceeding. All factual information contained in a report of examination or investigation submitted to or otherwise obtained by the Commissioner or the Commissioner's staff shall be made a part of the record unless the information is deemed confidential by the Commissioner."

Sec. 2. G.S. 7A-29 reads as rewritten:

"§ 7A-29. Appeals of right from certain administrative agencies.

(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b), the Department of Human Resources pursuant to under G.S. 131E-188(b), the Commissioner of Banks pursuant to under Articles 17 and 18-17, 18, and 21 of Chapter 53 of the General Statutes, the Administrator of Savings and Loans pursuant to under Article 3A of Chapter 54B of the General Statutes, the North Carolina Industrial Commission, the North Carolina State Bar pursuant to under G.S. 84-28, the Property Tax Commission pursuant to under G.S. 105-290 and 105-342, the Board of State Contract Appeals pursuant to G.S. 143-135.9, or an appeal from the Commissioner of Insurance pursuant to under G.S. 58-9.4, or from the Governor's Waste Management Board pursuant to under G.S. 130A-293 and G.S. 104E-6.2, appeal as of right lies directly to the Court of Appeals.

(b) From any final order or decision of the Utilities Commission in a general rate case, appeal as of right lies directly to the Supreme Court."

Sec. 3. This act becomes effective October 1, 1991. This act expires October 1, 1995. No reverse mortgage loan may be made on or after the date the act expires.

The expiration of the act does not affect the validity of a reverse mortgage loan made before the date of expiration.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives