

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH70185-LUqq-57 (3/7)

Short Title: Real Estate Resale Dealers.-AB (Public)

Sponsors: Representatives Ross, Howard, and Goforth (Primary Sponsors).

Referred to:

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

4 The General Assembly of North Carolina enacts:

5 "Article 41.

6 "Real Estate Resale Dealers.

7 **"§ 66-340. Definitions; exemptions.**

8 (a) For purposes of this Article, the following definitions apply:

9 (1) Due on sale clause. – A provision in a deed of trust that allows the
10 lender to accelerate payments of the secured debt when the borrower
11 makes a transfer of the real property without the consent of the lender.

12 (2) Real estate resale dealer. – Any person, firm, corporation, or other
13 related party who enters into a real estate resale transaction.

14 (3) Real estate resale transaction. – Any agreement, including an
15 installment land sale contract with right of possession in the buyer, a
16 contract or offer to purchase, an option to buy contract, a lease option
17 or lease purchase agreement, a rent-to-own agreement, a land trust
18 agreement, or some similar arrangement through which a person, firm,
19 or corporation contracts with an owner of real property to transfer real
20 or equitable title to the real property to the person, firm, or corporation
21 or the person, firm, or corporation's agent, representative, or designee
22 or into a trust for which the person, firm, or corporation or the person,
23 firm, corporation's agent, representative, or designee serves as either
24 trustee, beneficiary, or both and that remains subject to an existing
25 deed of trust.

26 (4) Real estate resale transaction seminar. – Any seminar, course,
27 materials, or similar commercial educational program that purports to

1 instruct how to become a real estate resale dealer or engage in real
2 estate resale transactions.

3 (5) Subject to. – Taking either legal or equitable title to real property
4 without extinguishing the existing deed of trust before assuming legal
5 or equitable title. For purposes of this Article, the phrase 'subject to'
6 does not include a transaction involving a purchaser who expressly
7 assumes the deed of trust at the time of the transaction.

8 (b) This Article shall not apply to the following:

9 (1) Any real estate transaction exempted from the preemption provisions
10 of the due on sale clause prohibitions pursuant to 12 U.S.C. §
11 1701j-3(d).

12 (2) Any individual who at the time of a transaction covered by this Article
13 is licensed by the North Carolina Real Estate Commission pursuant to
14 Article 1 of Chapter 93A of the General Statutes.

15 (3) Any real estate resale dealer as defined by this Article who, in one
16 calendar year, engages in no more than one real estate resale
17 transaction covered by this Article.

18 **"§ 66-341. Required disclosure statement.**

19 (a) At least seven days before a real estate resale dealer enters into a real estate
20 resale transaction with a homeowner/seller, the real estate resale dealer must provide to
21 the homeowner/seller a written disclosure, the cover sheet of which shall be entitled in
22 at least 16-point boldface capital letters: 'IMPORTANT DISCLOSURES TO
23 HOMEOWNER/SELLER REQUIRED BY NORTH CAROLINA LAW'. Under this
24 title shall appear the following statement in at least 12-point boldface type: 'The State
25 of North Carolina has not reviewed and does not approve, recommend, endorse, or
26 sponsor any real estate resale transaction. The information contained in this disclosure
27 has not been verified by the State. If you have any questions about this transaction,
28 consult an attorney before you sign a contract or agreement.' Nothing except the title
29 and required statement shall appear on the cover sheet. The disclosure document shall
30 contain the following information:

31 (1) The following statement in at least 12-point boldface type: 'This
32 transaction does not extinguish your responsibility to pay your
33 mortgage. If the real estate resale dealer fails to make payments to
34 your lender, you will be held responsible for any delinquencies or
35 defaults.'

36 (2) The following statement in at least 12-point boldface type: 'Your
37 current mortgage loan or deed of trust may contain a due-on-sale
38 clause which obligates you to inform your lender at any time you
39 transfer actual or equitable title to your property. If you transfer actual
40 or equitable title in your home to this real estate resale dealer and your
41 deed of trust contains a due on sale clause, you must notify your lender
42 of this proposed transaction, and your lender has the right to call the
43 entire amount of your loan due at that time.'

- 1 (3) The following statement in at least 12-point boldface type: 'The
2 homeowner/seller should consult an attorney as to his or her liability
3 and obligations for providing insurance and for maintenance of the
4 property.'
- 5 (4) One of the following statements in at least 12-point boldface type,
6 whichever is appropriate:
- 7 a. 'As required by North Carolina law, this real estate resale dealer
8 has secured a bond by (name and address of surety company), a
9 surety authorized to do business in this State. Before signing a
10 contract with this real estate resale dealer, you should check
11 with the surety company to determine the bond's current status.'
- 12 b. 'As required by North Carolina law, this real estate resale dealer
13 has established a trust account (number of account) with (name
14 and address of financial institution). Before signing a contract
15 with this real estate resale dealer you should check with the
16 financial institution to determine the current status of the trust
17 account.'
- 18 (5) The name of the real estate resale dealer; whether the dealer is doing
19 business as an individual, partnership, or corporation; the name under
20 which the dealer has engaged in, is engaging in, or intends to engage in
21 business; and the name of any parent or affiliated companies.
- 22 (6) The names, addresses, and titles of the real estate resale dealer's
23 officers, directors, trustees, general partners, general managers,
24 principal executives, and any other persons charged with responsibility
25 for the real estate resale dealer's business activities.
- 26 (7) The length of time the real estate resale dealer has conducted business
27 as a real estate resale dealer.
- 28 (8) The total number of real estate resale dealer transactions the dealer has
29 entered into within the past 12 months and the number of transactions
30 within the last 12 months that the real estate resale dealer has
31 successfully sold a property in fee simple for a homeowner/seller and
32 had the existing deed of trust on that property extinguished.
- 33 (9) A full, detailed description of the actual services that the real estate
34 resale dealer undertakes to perform for the homeowner/seller,
35 including whether the real estate resale dealer intends to reside in the
36 property or have someone else reside in the property and in the event
37 someone else will reside in the property, the nature of that person's
38 tenancy.
- 39 (b) At least seven days before a real estate resale dealer enters into an installment
40 land sale contract with right of possession in the buyer, a contract or offer to purchase,
41 an option to buy contract, a lease option or lease purchase agreement, a rent-to-own
42 agreement, a land trust agreement, or some similar arrangement with a tenant/buyer, the
43 real estate resale dealer must provide to the tenant/buyer a written disclosure, the cover
44 sheet of which shall be entitled in at least 16-point boldface capital letters:

1 'IMPORTANT DISCLOSURES TO TENANT/BUYER REQUIRED BY NORTH
2 CAROLINA LAW'. Under this title shall appear the following statement in at least
3 12-point boldface type: 'The State of North Carolina has not reviewed and does not
4 approve, recommend, endorse, or sponsor any real estate resale transaction. The
5 information contained in this disclosure has not been verified by the State. If you have
6 any questions about this transaction, consult an attorney before you sign a contract or
7 agreement.' Nothing except the title and required statement shall appear on the cover
8 sheet. The disclosure document shall contain the following information:

9 (1) The following statement in 12-point boldface type: 'It is against North
10 Carolina law for a real estate resale dealer to charge a consumer a
11 nonrefundable deposit, payment, fee, or similar consideration on a
12 rent-to-own agreement, an option to buy contract, a contract or offer to
13 purchase, a lease option or lease purchase agreement, an installment
14 land sale contract with right of possession in the buyer, a land trust
15 agreement, or some similar arrangement if the real estate resale dealer
16 has taken control of the property while the property is subject to a deed
17 of trust in someone else's name.'

18 (2) The following statement in 12-point boldface type: 'The property you
19 are renting or may have contracted to purchase is subject to an
20 outstanding deed of trust in another person's name. (Name and
21 address) is the person obligated to pay the deed of trust. If the person
22 does not make the payments to the lender, the lender may foreclose on
23 the property and extinguish any rights you may have in the property,
24 even if you are current on your rent or payments.'

25 (3) The following statement in 12-point boldface type: 'Consult a
26 nonprofit credit counseling agency to determine whether or not you are
27 a good candidate to get a mortgage now or in the future.'

28 (4) The total number of real estate resale transactions the real estate resale
29 dealer has entered into within the past 12 months and the number of
30 those transactions where the tenant/buyer has taken title to the real
31 property and had the original deed of trust satisfied.

32 (5) A full, detailed description of the actual services that the resale dealer
33 undertakes to perform for the tenant/buyer.

34 (6) One of the following statements in at least 12-point boldface type,
35 whichever is appropriate:

36 a. 'As required by North Carolina law, this real estate resale dealer
37 has secured a bond by (name and address of surety company), a
38 surety authorized to do business in this State. Before signing a
39 contract with this real estate resale dealer, you should check
40 with the surety company to determine the bond's current status.'

41 b. 'As required by North Carolina law, this real estate resale dealer
42 has established a trust account (number of account) with (name
43 and address of financial institution). Before signing a contract
44 with this real estate resale dealer, you should check with the

1 financial institution to determine the current status of the trust
2 account.'

3 (c) The real estate resale dealer shall provide the homeowner/seller with a copy
4 of the disclosures required in subsection (b) of this section at the time the real estate
5 resale dealer provides the disclosures required in subsection (a) of this section. The real
6 estate resale dealer shall provide the tenant/buyer with a copy of the disclosures
7 required in subsection (a) of this section at the time the real estate resale dealer provides
8 the disclosures required in subsection (b) of this section.

9 **"§ 66-342. Bond or trust account required.**

10 (a) Every real estate resale dealer shall obtain a surety bond issued by a surety
11 company authorized to do business in this State or establish a trust account with a
12 licensed and insured financial institution located in this State. The amount of the bond
13 or trust account shall be two hundred thousand dollars (\$200,000). The bond or trust
14 account shall be in favor of this State. Any person damaged by the real estate resale
15 dealer's breach of a contract or any obligation arising from the contract or by any
16 violation of this Article may bring an action against the bond or trust account to recover
17 damages suffered. The aggregate liability of the surety or trustee shall be only for actual
18 damages and in no event shall exceed the amount of the bond or trust account.

19 (b) Failure to comply with subsection (a) of this section shall be a Class 1
20 misdemeanor.

21 **"§ 66-343. Filing with the Secretary of State.**

22 (a) Before placing any advertisement or making any representations to a
23 prospective homeowner/seller or tenant/buyer in this State, each real estate resale dealer
24 shall file with the Secretary of State the following:

25 (1) Two copies of the disclosure statements required by G.S. 66-341(a)
26 and (b).

27 (2) One of the following:

28 a. A copy of the bond required by G.S. 66-342.

29 b. A copy of the formal notification of establishment by the
30 depository of the trust account required by G.S. 66-342.

31 (b) These filings shall be updated when any material change occurs in the
32 required information or the status of the bond or trust account, but no less than annually.

33 (c) Failure to comply with subsection (a) of this section shall be a Class 1
34 misdemeanor.

35 **"§ 66-344. Real estate resale transaction seminars.**

36 (a) All real estate resale transaction seminars shall provide a copy of this Article
37 as part of its materials. The Article shall be printed in full in at least 12-point boldface
38 type. A real estate resale dealer providing only a citation to this Article shall not satisfy
39 this section.

40 (b) A real estate resale transaction seminar shall not instruct consumers to engage
41 in any practice prohibited by this Article.

42 **"§ 66-345. Prohibited activities.**

43 A real estate resale dealer shall not do any of the following:

44 (1) Fail to comply with any provision of this Article.

- 1 (2) Take legal or equitable title to real property where an outstanding deed
2 of trust containing a due-on-sale clause remains on the property at the
3 time of the execution of the resale transaction, unless before entering
4 into the real estate resale transaction, the homeowner/seller obligated
5 by that outstanding deed of trust obtains from the lender written
6 consent to transfer legal or equitable title to the property to the real
7 estate resale dealer without paying off the outstanding deed of trust.
- 8 (3) Advertise his or her services by using the terms 'buy' or 'purchase' or
9 any similar term or phrase indicating that the real estate resale dealer
10 will take title to the property and extinguish the deed of trust.
- 11 (4) Collect a nonrefundable deposit, payment, fee, or similar consideration
12 on a rent-to-own agreement, an option to buy contract, a contract or
13 offer to purchase, a lease option or lease purchase agreement, an
14 installment land sale contract with right of possession in the buyer, a
15 land trust agreement, or some similar arrangement if the property is
16 subject to an outstanding deed of trust obligated by a third party.
- 17 (5) Make any misleading, untrue, unfair, or deceptive representations to a
18 homeowner/seller or tenant/buyer.

19 **"§ 66-346. When mortgage broker license required.**

20 If a real estate resale dealer is selling or offering to sell property obtained by a real
21 estate resale transaction to a tenant/buyer and the real estate resale dealer offers to assist
22 or assists the purchaser in securing financing to purchase the property, the real estate
23 resale dealer shall be licensed as a mortgage broker pursuant to Article 19A of Chapter
24 53 of the General Statutes.

25 **"§ 66-347. Remedies.**

26 (a) If a real estate resale dealer fails to fully comply with the requirements of this
27 Article and upon written notice to the real estate resale dealer, the homeowner/seller or
28 tenant/buyer may void his or her contract with the real estate resale dealer and shall be
29 entitled to receive all sums paid to the dealer and recover any additional damages,
30 including attorneys' fees.

31 (b) Upon complaint of any person that a real estate resale dealer or any person
32 who performs a real estate resale transaction seminar has violated the provisions of this
33 Article, the superior court shall have jurisdiction to enjoin the defendant from further
34 violations.

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

37 (d) The violation of any provision of this Article shall constitute an unfair or
38 deceptive practice under G.S. 75-1.1."

39 **SECTION 2.** This act is effective when it becomes law.