

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 725
Committee Substitute Favorable 5/31/05

Short Title: Real Estate Resale Dealers.-AB

(Public)

Sponsors:

Referred to:

March 17, 2005

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

7 "Article 41.

8 "Real Estate Resale Dealers.

9 "**§ 66-340. Definitions; exemptions.**

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

- 11 (1) Due on sale clause. – A contract provision which authorizes a lender,
12 at its option, to declare due and payable sums secured by the lender's
13 security instrument if all or any part of the property, or an interest
14 therein, securing the real property loan is sold or transferred without
15 the lender's prior written consent.
- 16 (2) Person. – An individual, a corporation, business trust, estate, trust,
17 joint venture, partnership, association, two or more persons having a
18 joint or common interest, or any other legal or commercial entity.
- 19 (3) Real estate resale dealer. – Any person who advertises, initiates, or
20 structures a real estate resale transaction.
- 21 (4) Real estate resale transaction. – Any agreement however denominated
22 or structured with right of possession in the buyer through which a
23 person who is a buyer contracts with a person who is the owner and
24 seller of residential real property to transfer real or equitable title to the
25 residential real property to the person or the person's agent,
26 representative, or designee or into a trust for which the person or the
27 person's agent, representative, or designee serves as either trustee,
28 beneficiary, or both and that remains subject to an existing deed of
29 trust or mortgage.

1 (5) Real estate resale transaction seminar. – Any seminar, course,
2 materials, or similar commercial educational program that purports to
3 instruct how to become a real estate resale dealer or engage in real
4 estate resale transactions.

5 (6) Subject to. – Taking either legal or equitable title to real property
6 without extinguishing the existing deed of trust or mortgage before
7 assuming legal or equitable title. For purposes of this Article, the
8 phrase 'subject to' does not include a transaction involving a purchaser
9 who expressly assumes the deed of trust or mortgage at the time of the
10 transaction and promptly satisfies the requirements of the lender for
11 release from liability of the seller or original mortgagee.

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

13 (1) Any real estate resale transaction exempted from the preemption
14 provisions of the due on sale clause prohibitions pursuant to 12 U.S.C.
15 § 1701j-3(d).

16 (2) Any real estate resale transaction where the real estate resale dealer is
17 at the time of the real estate resale transaction licensed by the North
18 Carolina Real Estate Commission pursuant to Article 1 of Chapter 93A
19 of the General Statutes.

20 (3) Any real estate resale transaction where the real estate resale dealer has
21 engaged in no more than one real estate resale transaction in the
22 previous 12 months, including such transactions where the real estate
23 resale dealer, or any person that comprises the real estate resale dealer,
24 holds a majority of the beneficial interest in another real estate resale
25 dealer.

26 **§ 66-341. Required disclosure statement.**

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

39 (1) The following statement in at least 12-point boldface type: 'This
40 transaction does not extinguish your responsibility to pay your debt
41 secured by your mortgage or deed of trust. If the real estate resale
42 dealer fails to make payments to your lender, you will be held
43 responsible for any delinquencies or defaults.'

- 1 (2) The following statement in at least 12-point boldface type: 'Your
2 current mortgage loan or deed of trust or mortgage may contain a
3 due-on-sale clause which obligates you to inform your lender at any
4 time you transfer actual or equitable title to your property. If so, and if
5 you transfer actual or equitable title in your home to this real estate
6 resale dealer, you must notify your lender of this proposed transaction,
7 and your lender has the right to make you pay the entire amount of
8 your loan due at that time.'
- 9 (3) The following statement in at least 12-point boldface type: 'The
10 homeowner/seller should consult an attorney as to his or her liability
11 and obligations with respect to the property.'
- 12 (4) One of the following statements in at least 12-point boldface type,
13 whichever is appropriate:
- 14 a. 'As required by North Carolina law, this real estate resale dealer
15 has secured a bond by (name and address of surety company), a
16 surety authorized to do business in this State. Before signing a
17 contract with this real estate resale dealer, you should check
18 with the Secretary of State (telephone number) to determine the
19 bond's current status.'
- 20 b. 'As required by North Carolina law, this real estate resale dealer
21 has secured a letter of credit on file with the Secretary of State's
22 Office. Before signing a contract with this real estate resale
23 dealer you should check with the Secretary of State (telephone
24 number) to determine the current status of the letter of credit.'
- 25 (5) The name of the real estate resale dealer; whether the dealer is doing
26 business as an individual, partnership, or corporation; the name under
27 which the dealer has engaged in, is engaging in, or intends to engage in
28 business; and the name of any parent or affiliated companies.
- 29 (6) The names, addresses, and titles of the real estate resale dealer's
30 officers, directors, trustees, general partners, general managers,
31 principal executives, and any other persons charged with responsibility
32 for the real estate resale dealer's business activities.
- 33 (7) The length of time the real estate resale dealer has conducted business
34 as a real estate resale dealer.
- 35 (8) A full, detailed description of the actual services that the real estate
36 resale dealer undertakes to perform for the homeowner/seller,
37 including whether the real estate resale dealer intends to reside in the
38 property or have someone else reside in the property and in the event
39 someone else will reside in the property, the nature of that person's
40 tenancy.
- 41 (b) At least seven days before a real estate resale dealer enters into an installment
42 land sale contract with right of possession in the buyer, a contract or offer to purchase,
43 an option to buy contract, a lease option or lease purchase agreement, a rent-to-own
44 agreement, a land trust agreement, or other similar agreement however denominated or

1 structured with a tenant or buyer, the real estate resale dealer must provide to the tenant
2 or buyer a written disclosure, the cover sheet of which shall be entitled in at least
3 16-point boldface capital letters: 'IMPORTANT DISCLOSURES TO
4 TENANT/BUYER REQUIRED BY NORTH CAROLINA LAW'. Under this title shall
5 appear the following statement in at least 12-point boldface type: 'The State of North
6 Carolina has not reviewed and does not approve, recommend, endorse, or sponsor any
7 real estate resale transaction. The information contained in this disclosure has not been
8 verified by the State. If you have any questions about this transaction, consult an
9 attorney before you sign a contract or agreement.' Nothing except the title and required
10 statement shall appear on the cover sheet. The disclosure document shall contain the
11 following information:

- 12 (1) The following statement in 12-point boldface type: 'It is against North
13 Carolina law for a real estate resale dealer to charge a consumer a
14 nonrefundable deposit, payment, fee, or similar consideration on a
15 rent-to-own agreement, an option to buy contract, a contract or offer to
16 purchase, a lease option or lease purchase agreement, an installment
17 land sale contract with right of possession in the buyer, a land trust
18 agreement, or some similar arrangement if the real estate resale dealer
19 has taken control of the property while the property is subject to a deed
20 of trust or mortgage or mortgage securing the debt of another person.'
- 21 (2) The following statement in 12-point boldface type: 'The property you
22 are renting or may have contracted to purchase is subject to an
23 outstanding deed of trust or mortgage in another person's name. (Name
24 and address) is the person obligated to pay the deed of trust or
25 mortgage. If the person does not make the payments to the lender, the
26 lender may foreclose on the property and extinguish any rights you
27 may have in the property, even if you are current on your rent or
28 payments.'
- 29 (3) The following statement in 12-point boldface type: 'You may wish to
30 consult with a nonprofit consumer credit counseling agency to
31 determine whether or not you are a good candidate to get a mortgage
32 now or in the future.'
- 33 (4) A full, detailed description of the actual services that the resale dealer
34 undertakes to perform for the tenant or buyer.
- 35 (5) One of the following statements in at least 12-point boldface type,
36 whichever is appropriate:
 - 37 a. 'As required by North Carolina law, this real estate resale dealer
38 has secured a bond by (name and address of surety company), a
39 surety authorized to do business in this State. Before signing a
40 contract with this real estate resale dealer, you should check
41 with the Secretary of State (telephone number) to determine the
42 bond's current status.'
 - 43 b. 'As required by North Carolina law, this real estate resale
44 dealer, has secured a letter of credit on file with the Secretary of

1 State's Office. Before signing a contract with this real estate
2 resale dealer you should check with the Secretary of State
3 (telephone number) to determine the current status of the letter
4 of credit.'

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

11 **"§ 66-342. Bond or letter of credit required.**

12 (a) Every real estate resale dealer shall obtain a surety bond issued by a surety
13 company authorized to do business in this State or a letter of credit with a licensed and
14 insured financial institution located in this State in the amount of two hundred fifty
15 thousand dollars (\$250,000). The bond or letter of credit shall be in favor of this State.
16 Any person damaged by the real estate resale dealer's breach of a contract or any
17 obligation arising from the contract or by any violation of this Article may bring an
18 action against the bond or letter of credit to recover damages suffered. The aggregate
19 liability shall be only for actual damages and in no event shall exceed the amount of the
20 bond or letter of credit. The bond or letter of credit may not be used to pay any fine
21 imposed under this Article.

22 (b) Failure to comply with this section shall be punishable by a fine not to exceed
23 ten thousand dollars (\$10,000).

24 **"§ 66-343. Filing with the Secretary of State.**

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

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

30 (2) One of the following:

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

32 b. A copy of the letter of credit required by G.S. 66-342.

33 (b) These filings shall be updated when any material change occurs in the
34 required information or the status of the bond or letter of credit, but no less than
35 annually.

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

38 **"§ 66-344. Real estate resale transaction seminars.**

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

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

1 (c) Failure to comply with this section shall be punishable by a fine not to exceed
2 ten thousand dollars (\$10,000).

3 **"§ 66-345. Prohibited activities.**

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

- 5 (1) Fail to comply with any provision of this Article.
6 (2) Take legal or equitable title to real property subject to an outstanding
7 deed of trust or mortgage containing a due-on-sale clause.
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 or
11 mortgage.
12 (4) Collect a nonrefundable deposit, payment, fee, or similar consideration
13 on any agreement, however denominated or structured, to lease or
14 purchase the residential property if the property is subject to an
15 outstanding deed of trust or mortgage obligated by a third party unless
16 the money is maintained in a trust account with a licensed and insured
17 bank or savings institution located in the State of North Carolina. The
18 deposit money in the trust account must be fully refunded if any of the
19 following occur:
20 a. The purchaser fails to qualify for financing to purchase the
21 residential property.
22 b. The lender of the outstanding deed of trust or mortgage on the
23 residential property initiates foreclosure proceedings.
24 c. The real estate resale dealer fails to comply with the terms of
25 the contract resulting in financial harm to the purchaser.
26 (5) Make any misleading, untrue, unfair, or deceptive representations to a
27 seller or tenant or buyer.

28 **"§ 66-346. When mortgage broker license required.**

29 If a real estate resale dealer is selling or offering to sell property obtained by a real
30 estate resale transaction to a buyer and the real estate resale dealer offers to assist or
31 assists the buyer in securing financing to purchase the property, the real estate resale
32 dealer shall be licensed as a mortgage broker pursuant to Article 19A of Chapter 53 of
33 the General Statutes.

34 **"§ 66-347. Remedies.**

35 (a) If a real estate resale dealer fails to fully comply with the requirements of this
36 Article and upon written notice to the real estate resale dealer, the seller or tenant or
37 buyer may void his or her contract with the real estate resale dealer and shall be entitled
38 to receive all sums paid to the dealer and recover any additional damages.

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

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

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

3 **SECTION 2.** This act becomes effective October 1, 2005, and applies to
4 transactions on or after that date.