

Article 5A.

Home Foreclosure Rescue Scams.

§ 75-120. Definitions.

The following definitions shall apply in this Article:

- (1) Repealed by Session Laws 2015-178, s. 5(a), effective October 1, 2015, and applicable to transactions entered into on or after that date.
- (2) Exempt transaction. – A foreclosure rescue transaction in which the transferee is any of the following:
 - a. A member of the transferor's immediate family as defined in G.S. 53-244-030(13).
 - b. A state, federal, or local government agency or organization.
 - c. A bank, savings institution, or credit union, including operating subsidiaries and affiliates, organized under the laws of the United States or any state.
 - d. A mortgage lender or mortgage servicer licensed by the Commissioner of Banks under Article 19B of Chapter 53 of the General Statutes.
- (3) Foreclosure rescue transaction. – A transfer of residential real property, including a manufactured home that is permanently attached to the real property, which includes all of the following features:
 - a. The real property is the principal residence of the transferor.
 - b. Repealed by Session Laws 2015-178, s. 5(a), effective October 1, 2015, and applicable to transactions entered into on or after that date.
 - c. The transferee, an agent of the transferee, or others acting in concert with the transferee make representations that the transfer of the residential property will enable the transferor to prevent, postpone, or reverse the effect of foreclosure and to remain in the residence.
 - d. The transferor retains a tenancy interest, an interest under a lease with option to purchase agreement, or an option to reacquire the property.
- (4) Property. – Real property upon which there is located one or more single-family dwellings, including an individual condominium unit, cooperative unit, manufactured home, or mobile home. (2010-164, s. 2; 2015-178, s. 5(a).)

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

(a) It is unlawful for a person or entity 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, unless prior to or at the time of transfer, the transferee pays the transferor at least fifty percent (50%) of the fair market value of the property as determined by a certified appraiser. An appraisal to determine the fair market value of the property must be performed no more than 120 days prior to the transfer. The appraisal shall be delivered to the transferor no less than seven days prior to the time the transferor becomes obligated to perform the agreement. This section does not apply to exempt transactions.

(b) Every contract to effectuate a foreclosure rescue transaction in which the transferee pays at least 50% of the fair market value of the property, shall be in writing, shall be signed and acknowledged by all parties to it, and shall contain all the terms to which the parties have agreed. The contract shall contain at least all of the following:

- (1) The names and addresses of all parties to the contract.

- (2) The legal description of the property being transferred.
- (3) Any financial obligation of the transferor that will be assumed by the transferee.
- (4) The total amount to be paid by the transferee in connection with the transaction.
- (5) The fair market value of the property as determined by a certified appraiser.
- (6) A description of the interest in the property retained by the transferor as provided in G.S. 75-120(3)d.
- (7) The terms of the transferor's right to any future possessory or ownership interest in the property. (2010-164, s. 2; 2015-178, s. 5(b).)

§ 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 provisions of this section shall not be enforceable against a bona fide purchaser for value. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence to liability under G.S. 75-1.1. (2010-164, s. 2; 2010-97, s. 15(a).)

§ 75-123: Reserved for future codification purposes.

§ 75-124: Reserved for future codification purposes.