

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1997

SESSION LAW 1998-116  
HOUSE BILL 1075

AN ACT TO PERMIT LENDERS TO CONTRACT FOR AND RECEIVE SHARED  
APPRECIATION OR SHARED VALUE IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 53-270 reads as rewritten:

**"§ 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.~~ appreciation or shared value, except as provided in G.S. 53-270.1.
- (6) Closing a reverse mortgage loan without receiving certification from a ~~counselor~~ person who is certified as a reverse mortgage counselor by the State that the borrower has received counseling on the advisability of a reverse mortgage loan and the ~~appropriate~~ various types of reverse mortgage loan for the borrower. loans and the availability of other financial options and resources for the borrower, as well as potential tax consequences.
- (7) Failing to comply with this Article."

Section 2. Article 21 of Chapter 53 of the General Statutes is amended by adding a new section to read:

**"§ 53-270.1. Contracts for shared appreciation or shared value.**

(a) A lender and a borrower may agree, in writing, that in addition to the principal and any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may receive:

- (1) Shared appreciation if it is in an amount not exceeding ten percent (10%) of the increase in the value of the property from the date of origination of the reverse mortgage loan to the date of loan repayment;  
or

- (2) Shared value if it is in an amount not exceeding ten percent (10%) of the value of the property at the time of repayment of the reverse mortgage loan; and
- (3) The shared appreciation or shared value is paid in conjunction with a loan that:
  - a. Is outstanding for 24 months or longer; and
  - b. Either (i) is guaranteed or insured by an agency of the federal government, or (ii) has been originated under a reverse mortgage program approved by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, provided the loan is sold to one of those agencies or enterprises within 90 days of loan closing, or (iii) has been originated under a reverse mortgage program of a person, firm, or corporation approved as an authorized lender by the Commissioner; and
  - c. Provides that the borrower receives additional economic benefit in exchange for paying the shared appreciation or shared value, including, but not limited to, larger monthly payments or a larger line of credit. The specific nature of the economic benefit shall be provided to the Commissioner with the other information about the reverse mortgage program required under G.S. 53-264 for dissemination to the reverse mortgage counselors; and
  - d. At least 14 days prior to closing, the borrower receives a disclosure that explains the additional costs and benefits of shared appreciation or shared value and compares those costs and benefits with a comparable loan without shared appreciation or shared value. These costs and benefits shall also be included in the information required under G.S. 53-264.

(b) Under subdivisions (a)(1) and (2) of this section, in determining the value of the property at the time of origination of the reverse mortgage loan and at the time of repayment, if repayment is not in conjunction with the sale of the property, the lender and the borrower shall have the right to obtain an appraisal from an appraiser licensed or certified in accordance with G.S. 93E-1-6. If the appraisals differ, and the parties cannot agree on a value, an average of the appraisals shall determine the value. If the borrower does not desire an appraisal, the lender may obtain an appraisal, which shall be controlling. Notwithstanding the foregoing, the parties may agree in writing to waive these requirements and agree upon the value of the property.

(c) If repayment is made in conjunction with the sale of the property, the actual and reasonable costs of sale shall be deducted from the value of the property prior to the calculation of the amount of shared appreciation or shared value."

Section 3. G.S. 53-257(7) reads as rewritten:

"(7) Shared appreciation. – An agreement by the lender and the borrower that, in addition to the principal and 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.~~ the increase in the value of the property from the date of origination of the loan to the date of loan repayment.

(7a) Shared value. – An agreement by the lender and the borrower that, in addition to the principal and any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may collect an additional amount equal to a percentage of the value of the property at the time of loan repayment."

Section 4. G.S. 53-264(a) is amended by adding a new subdivision to read:

"(8) Information relating to contracts for shared appreciation or shared value, as required by G.S. 53-270.1."

Section 5. This act becomes effective October 1, 1998, and applies to contracts for loans entered into on or after that date.

In the General Assembly read three times and ratified this the 19th day of August, 1998.

s/ Dennis A. Wicker  
President of the Senate

s/ Harold J. Brubaker  
Speaker of the House of Representatives

s/ James B. Hunt, Jr.  
Governor

Approved 12:50 p.m. this 27th day of August, 1998