

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2009-441
HOUSE BILL 1057**

AN ACT TO ABOLISH DEFICIENCY JUDGMENTS IN CERTAIN CASES WHERE THE MORTGAGE IS SECURED BY PRIMARY RESIDENCE.

The General Assembly of North Carolina enacts:

SECTION 1. Article 2B of Chapter 45 of the General Statutes is amended by adding a new section to read:

"§ 45-21.38A. Deficiency judgments abolished where mortgage secured by primary residence.

(a) As used in this section, the term "nontraditional mortgage loan" means a loan in which all of the following apply:

- (1) The borrower is a natural person.
- (2) The debt is incurred by the borrower primarily for personal, family, or household purposes.
- (3) The principal amount of the loan does not exceed the conforming loan size for a single family dwelling as established from time to time by Fannie Mae.
- (4) The loan is secured by: (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State that is or will be occupied by the borrower as the borrower's principal dwelling; (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling; or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families that, when completed, will be occupied by the borrower as the borrower's principal dwelling.
- (5) The terms of the loan: (i) permit the borrower as a matter of right to defer payment of principal or interest; and (ii) allow or provide for the negative amortization of the loan balance.

(b) Except as provided in subdivision (6) of subsection (c) of this section, this section applies only to the following loans:

- (1) A loan originated on or after January 1, 2005, that was at the time the loan was originated a rate spread home loan as defined in G.S. 24-1.1F.
- (2) A loan secured by the borrower's principal dwelling, which loan was modified after January 1, 2005, and became at the time of such modification and as a consequence of such modification a rate spread home loan.
- (3) A loan that was a nontraditional mortgage loan at the time the loan was originated.
- (4) A loan secured by the borrower's principal dwelling, which loan was modified and became at the time of such modification and as a consequence of such modification a nontraditional mortgage loan.

(c) This section does not apply to any of the following:

- (1) A home equity line of credit as defined in G.S. 45-81(a).
- (2) A construction loan as defined in G.S. 24-10(c).
- (3) A reverse mortgage as defined in G.S. 53-257 that complies with the provisions of Article 21 of Chapter 53 of the General Statutes.



- (4) A bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell his or her current dwelling within 12 months.
- (5) A loan made by a natural person who makes no more than one loan in a 12-month period and is not in the business of lending.
- (6) A loan secured by a subordinate lien on the borrower's principal dwelling, unless the loan was made contemporaneously with a rate spread home loan or a nontraditional mortgage loan that is subject to the provisions of this section.

(d) In addition to any statutory or common law prohibition against deficiency judgments, the following shall apply to the foreclosure of mortgages and deeds of trust that secure loans subject to this section:

- (1) For mortgages and deeds of trust recorded before January 1, 2010, the holder of the obligation secured by the foreclosed mortgage or deed of trust shall not be entitled to any deficiency judgment against the borrower for any balance owing on such obligation if: (i) the real property encumbered by the lien of the mortgage or deed of trust being foreclosed was sold by a mortgagee or trustee under a power of sale contained in the mortgage or deed of trust; and (ii) the real property sold was, at the time the foreclosure proceeding was commenced, occupied by the borrower as the borrower's principal dwelling.
- (2) For mortgages and deeds of trust recorded on or after January 1, 2010, the holder of the obligation secured by the foreclosed mortgage or deed of trust shall not be entitled to any deficiency judgment against the borrower for any balance owing on such obligation if: (i) the real property encumbered by the lien of the mortgage or deed of trust being foreclosed was sold as a consequence of a judicial proceeding or by a mortgagee or trustee under a power of sale contained in the mortgage or deed of trust; and (ii) the real property sold was, at the time the judicial or foreclosure proceeding was commenced, occupied by the borrower as the borrower's principal dwelling.

(e) The court may, in its discretion, award to the borrower the reasonable attorneys' fees actually incurred by the borrower in the defense of an action for deficiency if: (i) the borrower prevails in an action brought by the holder of the obligation secured by the foreclosed mortgage or deed of trust to recover a deficiency judgment following the foreclosure of a loan to which this section applies; and (ii) the court rules that the holder of the obligation secured by the foreclosed mortgage or deed of trust is not entitled to a deficiency judgment under the provisions of this section. The amount of attorneys' fees to be awarded shall be determined without regard to the provisions of the loan documents, the provisions of G.S. 6-21.2, or any statutory presumption as to the amount of such attorneys' fees."

SECTION 2. Article 2B of Chapter 45 of the General Statutes is amended by adding a new section to read:

"§ 45-21.38C. Severability.

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, the validity of the remainder of this Article shall not be affected thereby."

SECTION 3. This act becomes effective October 1, 2009, and applies to actions filed on or after that date.
In the General Assembly read three times and ratified this the 3rd day of August, 2009.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:10 a.m. this 7th day of August, 2009