

## Article 2B.

### Injunctions; Deficiency Judgments.

#### **§ 45-21.34. Enjoining mortgage sales on equitable grounds.**

Any owner of real estate, or other person, firm or corporation having a legal or equitable interest therein, may apply to a judge of the superior court, prior to the time that the rights of the parties to the sale or resale becoming fixed pursuant to G.S. 45-21.29A to enjoin such sale, upon the ground that the amount bid or price offered therefor is inadequate and inequitable and will result in irreparable damage to the owner or other interested person, or upon any other legal or equitable ground which the court may deem sufficient: Provided, that the court or judge enjoining such sale, whether by a temporary restraining order or injunction to the hearing, shall, as a condition precedent, require of the plaintiff or applicant such bond or deposit as may be necessary to indemnify and save harmless the mortgagee, trustee, cestui que trust, or other person enjoined and affected thereby against costs, depreciation, interest and other damages, if any, which may result from the granting of such order or injunction: Provided further, that in other respects the procedure shall be as is now prescribed by law in cases of injunction and receivership, with the right of appeal to the appellate division from any such order or injunction. (1933, c. 275, s. 1; 1949, c. 720, s. 3; 1969, c. 44, s. 50; 1993, c. 305, s. 22.)

#### **§ 45-21.35. Ordering resales; receivers for property; tax payments.**

The court or judge granting such order or injunction, or before whom the same is returnable, shall have the right before, but not after, the rights of the parties to the sale or resale becoming fixed pursuant to G.S. 45-21.29A to order a resale by the mortgagee, trustee, commissioner, or other person authorized to make the same in such manner and upon such terms as may be just and equitable: Provided, the rights of all parties in interest, or who may be affected thereby, shall be preserved and protected by bond or indemnity in such form and amount as the court may require, and the court or judge may also appoint a receiver of the property or the rents and proceeds thereof, pending any sale or resale, and may make such order for the payment of taxes or other prior lien as may be necessary, subject to the right of appeal to the appellate division in all cases. (1933, c. 275, s. 2; 1949, c. 720, s. 3; 1969, c. 44, s. 51; 1993, c. 305, s. 23.)

#### **§ 45-21.36. Right of mortgagor to prove in deficiency suits reasonable value of property by way of defense.**

When any sale of real estate has been made by a mortgagee, trustee, or other person authorized to make the same, at which the mortgagee, payee or other holder of the obligation thereby secured becomes the purchaser and takes title either directly or indirectly, and thereafter such mortgagee, payee or other holder of the secured obligation, as aforesaid, shall sue for and undertake to recover a deficiency judgment against the mortgagor, trustor or other maker of any such obligation whose property has been so purchased, it shall be competent and lawful for the defendant against whom such deficiency judgment is sought to allege and show as matter of defense and offset, but not by way of counterclaim, that the property sold was fairly worth the amount of the debt secured by it at the time and place of sale or that the amount bid was substantially less than its true value, and, upon such showing, to defeat or offset any deficiency judgment against him, either in whole or in part: Provided, this section shall not affect nor apply to the rights of other purchasers or of innocent third parties, nor shall it be held to affect or defeat the negotiability of any note, bond or other

obligation secured by such mortgage, deed of trust or other instrument: Provided, further, this section shall not apply to foreclosure sales made pursuant to an order or decree of court nor to any judgment sought or rendered in any foreclosure suit nor to any sale made and confirmed prior to April 18, 1933. (1933, c. 275, s. 3; 1949, c. 720, s. 3; 1967, c. 562, s. 2.)

**§ 45-21.37. Certain sections not applicable to tax suits.**

Sections 45-21.34 through 45-21.36 do not apply to tax foreclosure suits or tax sales. (1933, c. 275, s. 4; 1949, c. 720, s. 3.)

**§ 45-21.38. Deficiency judgments abolished where mortgage represents part of purchase price.**

In all sales of real property by mortgagees and/or trustees under powers of sale contained in any mortgage or deed of trust executed after February 6, 1933, or where judgment or decree is given for the foreclosure of any mortgage executed after February 6, 1933, to secure to the seller the payment of the balance of the purchase price of real property, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust or obligation secured by the same: Provided, said evidence of indebtedness shows upon the face that it is for balance of purchase money for real estate: Provided, further, that when said note or notes are prepared under the direction and supervision of the seller or sellers, he, it, or they shall cause a provision to be inserted in said note disclosing that it is for purchase money of real estate; in default of which the seller or sellers shall be liable to purchaser for any loss which he might sustain by reason of the failure to insert said provisions as herein set out. (1933, c. 36; 1949, c. 720, s. 3; c. 856; 1961, c. 604; 1967, c. 562, s. 2.)

**§ 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. (2009-441, s. 1.)

**§ 45-21.38B:** Reserved for future codification purposes.

**§ 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. (2009-441, s. 2.)