

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 513

Short Title: Antideficiency Judgment Amend.

(Public)

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Sponsors: Senator Ballantine.

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Referred to: Judiciary II/Election Laws

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March 28, 1995

A BILL TO BE ENTITLED

AN ACT TO LIMIT THE APPLICABILITY OF THE ANTIDEFICIENCY  
JUDGMENT STATUTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-21.38 reads as rewritten:

"§ 45-21.38. ~~Deficiency judgments abolished where mortgage represents~~ Purchase money mortgages which represent part of purchase price.

(a) 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, but before October 1, 1995, or where judgment or decree is given for the foreclosure of any mortgage executed after February 6, 1933, but before October 1, 1995, 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

1 for any loss which he might sustain by reason of the failure to insert said provisions as  
2 herein set out.

3 (b) Subsection (a) of this section also applies to any mortgage or deed of trust  
4 executed on or after October 1, 1995, to secure to the seller the payment of the balance of  
5 the purchase price of real property, if:

6 (1) The mortgage or deed of trust was executed pursuant to a binding  
7 written agreement, such as, but not limited to, a contract, an option to  
8 purchase, or a lease containing an option to purchase, to sell that real  
9 property entered into prior to October 1, 1995; and

10 (2) The evidence of indebtedness shows upon its face the fact that it is for  
11 the balance of purchase money for real estate given pursuant to G.S. 45-  
12 21.38(b).

13 The mortgagor or grantor may elect to waive the protection of subsection (a) of this  
14 section in any mortgage or deed of trust executed on or after October 1, 1995, if the  
15 statement required in subdivision (2) of this subsection is omitted from the evidence of  
16 indebtedness.

17 (c) On and after October 1, 1995, the mortgagor and mortgagee, or the grantor and  
18 grantee, who are parties to a mortgage or deed of trust to which subsection (a) of this  
19 section shall otherwise be applicable, may by written agreement, signed by the mortgagor  
20 and mortgagee or the grantor and grantee, agree that subsection (a) of this section shall  
21 not apply to that mortgage or deed of trust.

22 (d) Except as provided in subsection (b) of this section, subsection (a) of this  
23 section shall not apply to any mortgage or deed of trust executed after October 1, 1995, to  
24 secure the balance of the purchase price of real property."

25 Sec. 2. This act becomes effective October 1, 1995.