

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 513

Judiciary II/Election Laws Committee Substitute Adopted 5/10/95

Third Edition Engrossed 5/11/95

Short Title: Antideficiency Judgment Amend.

(Public)

Sponsors:

Referred to:

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

1 money of real estate; in default of which the seller or sellers shall be liable to purchaser  
2 for any loss which he might sustain by reason of the failure to insert said provisions as  
3 herein set out.

4 (b) Subsection (a) of this section shall not apply to any mortgage or deed of trust  
5 executed on or after October 1, 1995, to secure to the seller the payment of the balance of  
6 the purchase price of real property unless:

7 (1) The mortgage or deed of trust was executed pursuant to a binding  
8 written agreement, such as a contract, an option to purchase, or a lease  
9 containing an option to purchase, to sell that real property entered into  
10 prior to October 1, 1995; and

11 (2) The mortgage or deed of trust shows on its face that it was executed  
12 pursuant to such a written agreement.

13 (c) A mortgagor and mortgagee, or a grantor and grantee, who are parties to a  
14 mortgage or deed of trust to which the mortgagor or grantor is entitled to protection  
15 against a deficiency judgment pursuant to subsection (a) or (b) of this section, may enter  
16 a written agreement signed by the mortgagor or grantor providing that the protection of  
17 those subsections shall not apply.

18 (d) In any action in which a deficiency judgment is sought as permitted in this  
19 section, the burden of proof shall be on the mortgagee, payee, or holder of the obligation  
20 secured by the purchase money mortgage or deed of trust to prove that the price received  
21 from the foreclosure sale was at least equal to the fair market value of the property on the  
22 day of the sale. The amount of the deficiency judgment may not exceed the difference  
23 between the amount of the debt and the greater of the fair market value of the property on  
24 the day of sale or the proceeds received from the foreclosure sale."

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