

Chapter 47H.
Contracts for Deed.

§ 47H-1. Definitions.

The following definitions apply in this Chapter:

- (1) Contract for deed or contract. – An agreement, whether denominated a "contract for deed," "installment land contract," "land contract," "bond for title," or any other title or description in which the seller agrees to sell an interest in property to the purchaser and the purchaser agrees to pay the purchase price in five or more payments exclusive of the down payment, if any, and the seller retains title to the property as security for the purchaser's obligation under the agreement.
- (2) Cure the default. – To perform the obligations under the contract that are described in the notice of default and intent to forfeit required by G.S. 47H-4 and that are necessary to reinstate the contract. This term is synonymous with the term "cure."
- (3) Down payment. – A payment made by the purchaser to the seller that constitutes part of the purchase price of property that is the subject of a contract for deed and that is made or agreed to in connection with the execution of that contract.
- (4) Forfeiture. – The termination of all of a purchaser's rights, title, and interest, and those of persons or entities claiming by or through a purchaser, in property that is the subject of a contract for deed, to the extent permitted by this Chapter, because of a breach of one or more of the purchaser's obligations under the contract.
- (5) Property. – Either (i) real estate located in this State, upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families that is or will be occupied by the purchaser as the purchaser's principal dwelling, or (ii) a manufactured home, as that term is defined in G.S. 143-149.9, that is located in this State and is or will be occupied by a purchaser as the purchaser's principal dwelling, if the purchase price is five thousand dollars (\$5,000) or more.
- (6) Purchaser. – An individual or entity that purchases an interest in property under a contract for deed, or any legal successor in interest to that individual.
- (7) Seller. – A person or entity that makes a sale of property by means of a contract for deed, or the person's or entity's successor in interest. (2010-164, s. 4.)

§ 47H-2. Minimum contents for contracts for deed; recordation.

(a) Writing Required. – Every contract for deed shall be evidenced by a contract signed and acknowledged by all parties to it and containing all the terms to which they have agreed. The seller shall deliver to the purchaser an exact copy of the contract, containing all the disclosures required by subsection (b) of this section, at the time the purchaser signs the contract.

- (b) Contents. – A contract for deed contract shall contain at least all of the following:
- (1) The full names and addresses of all the parties to the contract.
 - (2) The date the contract is signed by each party.
 - (3) A legal description and the physical address of the property conveyed.
 - (4) The sales price of the property conveyed.
 - (5) Any charges or fees for services included in the contract separate from the sale price.
 - (6) The amount of the purchaser's down payment.

- (7) The principal balance owed by the purchaser, which is the sum of the amounts stated in subdivisions (4) and (5) of this subsection, less the amount stated in subdivision (6) of this subsection.
- (8) The amount and due date of each installment payment and the total number of installment payments.
- (9) The interest rate on the unpaid balance, if any, and the method of determining the interest rate.
- (10) A conspicuous statement of any pending order of any public agency or other matters of public record adversely affecting the property, provided the seller has actual knowledge of the pending order or matter.
- (11) A statement of the rights of the purchaser to cure a default.
- (12) A statement setting forth the obligation of each party who is responsible for making repairs to the property, the payment of taxes, hazard insurance premiums, flood insurance premiums, homeowner association dues, and other charges against the property from the date of the contract.
- (13) A provision that the purchaser has the right to accelerate or prepay any installment payments without penalty; unless the property is encumbered by a deed of trust as permitted by G.S. 47H-6 and the loan secured by the property contains a prepayment penalty, in which case the contract may specify that the purchaser will compensate the seller for the prepayment penalty.
- (14) A description of conditions of the property that includes whether the property, including any structures thereon, has water, sewer, septic, and electricity service, whether the property is in a floodplain, whether anyone else has a legal interest in the property, and whether restrictive covenants prevent building or installing a dwelling. If restrictive covenants are in place that affect the property, a copy of the restrictive covenants shall be made available to the purchaser at or before the execution of the contract.
- (15) A statement indicating the current amount of any real estate taxes and/or homeowner association dues, or special assessments required to be paid on the property, and the amount of such taxes, dues, or assessments that are delinquent. To the extent these amounts are not known at the time the contract is executed, a reasonable estimate shall be given.
- (16) If the property being sold is encumbered by a deed of trust, mortgage, or other encumbrance evidencing or securing a monetary obligation which constitutes a lien on the property, and the seller is not a licensed general contractor within the meaning of Chapter 87 of the General Statutes, or a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, a statement of the amount of the lien, and the amount and due date, if any, of any periodic payments.
- (17) A conspicuous statement, in not less than 14-point boldface type, immediately above the purchaser's signature, that the purchaser has the right to cancel the contract at any time until midnight of the third business day following execution of the contract, or delivery of the contract, whichever occurs later.

(c) Right to Cancel. – The purchaser may exercise the right to cancel the contract for deed until midnight of the third business day following execution of the contract for deed or delivery of a copy of the contract with the required minimum contents, whichever occurs later. If the purchaser cancels the contract, the seller shall, not later than the tenth day after the date the seller receives the purchaser's notice of cancellation, return to the purchaser any and all property exchanged or payments made by the purchaser under the contract minus an offset of

an amount equal to the fair rental value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear.

(d) **Recordation.** – Within five business days after the contract has been signed and acknowledged by both the seller and the purchaser, the seller shall cause a copy of the contract or a memorandum of the contract to be recorded in the office of the register of deeds in the county in which the property is located. If a memorandum of the contract is recorded, it shall be entitled "Memorandum of a Contract for Deed" and shall contain, as a minimum, the names of the parties, the signatures of the parties, a description of the property, and applicable time periods as described in subdivisions (b)(8) and (11) of this section. A person, other than a seller and purchaser may rely on the recorded materials in determining whether the requirements of this subsection have been met. The seller shall pay the fee to record the document unless the parties agree otherwise.

(e) **Effect of Forfeiture.** – Upon default and forfeiture after proper notice of default and intent to forfeit and failure of the purchaser to substantially cure the default, the purchaser's equitable right of redemption shall be extinguished by:

- (1) A mutual termination executed by the parties and recorded in the office of the register of deeds of the county in which the property is located, or
- (2) A final judgment or court order entered by a court of competent jurisdiction that terminates the purchaser's rights to the property and extinguishes the equity of redemption. A certified copy of the order shall be recorded in the office of the register of deeds of the county in which the property is located pursuant to G.S. 1-228.

(f) **[Instrument Ineffective.]** – No instrument purporting to extinguish the equity of redemption that is executed as a condition of the transaction or prior to a default will be effective. (2010-164, s. 4.)

§ 47H-3. Conditions of forfeiture; right to cure.

A purchaser's rights under a contract for deed shall not be forfeited except as provided in this Chapter. A contract for deed cannot be forfeited unless a breach has occurred in one or more of the purchaser's express obligations under the contract and the contract provides that as a result of such breach the seller is entitled to forfeit the contract. Furthermore, the purchaser's rights shall not be forfeited until the purchaser has been notified of the intent to forfeit in accordance with G.S. 47H-4 and been given a right to cure the default and has failed to do so within the time period allowed. A timely tender of cure shall reinstate the contract for deed. (2010-164, s. 4.)

§ 47H-4. Notice of default and intent to forfeit.

- (a) The notice of default and intent to forfeit shall contain all of the following:
- (1) The name, address, and telephone number of the seller and the seller's agent or attorney giving the notice, if any.
 - (2) A description of the contract, including the names of the original parties to the contract for deed.
 - (3) The physical address of the property.
 - (4) A description of each default under the contract on which the notice is based.
 - (5) A statement that the contract will be forfeited if all defaults are not cured by a date stated in the notice which is not less than 30 days after the notice of default and intent to forfeit is served or any longer period specified in the contract or other agreement with the seller.
 - (6) An itemized statement of, or to the extent not known at the time the notice of default and intent to forfeit is given or recorded, a reasonable estimate of, all

payments of money in default, and, for defaults not involving the failure to pay money, a statement of the action required to cure the default.

- (7) Any additional information required by the contract for deed or other agreement with the seller.

(b) Any notice of default and intent to forfeit must be delivered to the purchaser by hand or by any manner authorized in G.S. 1A-1, Rule 4. (2010-164, s. 4.)

§ 47H-5. Periodic statements of account.

The seller shall provide the purchaser with a statement of account at least once every 12-month period for the term of a contract for deed. The statement must include at least the following information:

- (1) The amount paid under the contract.
- (2) The remaining amount owed under the contract.
- (3) The number of payments remaining under the contract.
- (4) The amounts paid to taxing authorities, if paid or collected by the seller or the purchaser.
- (5) The amounts paid to insure the property on the purchaser's behalf, if collected by the seller.
- (6) If the property has been damaged and the seller has received insurance proceeds, an accounting of the proceeds applied to the property.
- (7) If the property is encumbered by a lien or mortgage pursuant to G.S. 47H-6, the outstanding balance of the loan that is secured by the property. (2010-164, s. 4.)

§ 47H-6. Title requirements.

(a) A seller may not execute a contract for deed with a purchaser if the seller does not hold title to the property. If the title is not held in fee simple, free from any deeds of trust, mortgages, or other encumbrances evidencing or securing a monetary obligation which constitutes a lien on the property, the seller may execute a contract for deed only if the mortgage or encumbrance is in the name of the seller and meets at least one of the following conditions:

- (1) It was agreed to by the purchaser, in writing, as a condition of a loan obtained to make improvements on the property.
- (2) It was placed on the property by the seller prior to the execution of the contract for deed if the seller is a licensed general contractor within the meaning of Chapter 87 of the General Statutes, a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, or a licensed real estate broker within the meaning of Chapter 93A of the General Statutes, provided that the general contractor, manufactured home dealer, or real estate broker continues to make timely payments on the outstanding mortgage or encumbrance.
- (3) It was placed on the property by the seller prior to the execution of the contract for deed, if the seller is not a licensed general contractor within the meaning of Chapter 87 of the General Statutes, a licensed manufactured home dealer within the meaning of Article 9A of Chapter 143 of the General Statutes, or a licensed real estate broker within the meaning of Chapter 93A of the General Statutes, if the lien is attached only to the property sold to the purchaser under the contract for deed, and the seller continues to make timely payments on the outstanding mortgage or encumbrance.

(b) If the property being sold is encumbered by one or more deeds of trust, mortgages, or other encumbrances evidencing or securing a monetary obligation which constitutes a lien

on the property, the seller must notify the purchaser in a separate written disclosure, provided at or before the execution of the contract, in 14-point type, boldface, capital letters, the following statement: **THIS PROPERTY HAS EXISTING LIENS ON IT. IF THE SELLER FAILS TO MAKE TIMELY PAYMENTS TO THE LIEN HOLDER, THE LIEN HOLDER MAY FORECLOSE ON THE PROPERTY, EVEN IF YOU HAVE MADE ALL YOUR PAYMENTS.**

(c) In addition to any other remedies at law or equity, a seller's violation of this section entitles the purchaser to either a claim for damages or the right to rescind the contract and seek the return of all payments, deposits, and down payments that have been made under the contract. If the purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal to the fair market value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear. (2010-164, s. 4.)

§ 47H-7. Late fees.

No seller may charge a late payment charge under a contract for deed in excess of four percent (4%) of the amount of the payment past due. A late fee may only be charged on payments that are more than 15 days past due. (2010-164, s. 4.)

§ 47H-8. Remedies.

A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1. A purchaser may bring an action for the recovery of damages, to rescind a transaction, as well as for declaratory or equitable relief, for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to a buyer to liability under G.S. 75-1.1. (2010-164, s. 4.)