

## **Chapter 45A.**

### **Consumer Real Estate Settlement Protection Act.**

#### **§ 45A-1. Short title.**

This Chapter shall be known as the Consumer Real Estate Settlement Protection Act.

#### **§ 45A-2. Purpose.**

A residential real estate transaction is the most significant transaction in which many consumers are ever involved. It is in the best interest of consumers involved in residential real estate transactions to be informed about the legal consequences inherent in residential real estate transactions and protected from potential risks of harm from illegal or injurious practices. A residential real estate transaction is a process which involves several inseparable steps which necessarily involve the exercise of legal judgment, the giving of legal advice or opinions and other activities, all of which steps require the involvement of an attorney. In order to protect consumers involved in real estate transactions, only attorneys shall be permitted to provide loan closing or settlement services except as otherwise provided in this Act.

The purpose of this Act is to require attorneys and other settlement agents permitted by this Act to provide loan closing or settlement services to comply with certain consumer protection safeguards relating to the licensing, financial responsibility and the handling of settlement funds.

#### **§ 45A-3. Applicability.**

This Act applies only to a purchase, sale or loan involving either (i) real estate upon which there is, or is intended to be, located a structure or structures designed principally for residential purposes or (ii) real estate which is zoned or restricted for residential use, and, in either such circumstance, also is or will be occupied by the purchaser or borrower as the purchaser's or borrower's dwelling (including, without limitation, individual units of townhouses, condominiums and cooperatives).

#### **§ 45A-4. Definitions.**

As used in this Act, unless the context otherwise requires:

- (1) "Attorney" means an attorney licensed under Chapter 84 of the General Statutes.
- (2) "Bank" means a financial institution, including but not limited to a national bank, state chartered bank, savings bank, or credit union that is insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government.

- (3) "Borrower" means the maker of the promissory note evidencing the loan to be delivered at the closing.
- (4) "Cashier's check" means a check that is drawn on a bank, is signed by an officer or employee of the bank on behalf of the bank as drawer, is a direct obligation of the bank, and is provided to a customer of the bank or acquired from the bank for remittance purposes.
- (5) "Certified check" means a check with respect to which the drawee bank certifies by signature on the check of an officer or other authorized employee of the bank that (i) the signature of the drawer on the check is genuine and the bank has set aside funds that are equal to the amount of the check and will be used to pay the check or (ii) the bank will pay the check upon presentment.
- (6) "Closing" means the time agreed upon by the parties to the residential real estate transaction, when the execution and delivery of the documents necessary to consummate the residential real estate transaction contemplated by the parties occurs.
- (7) "Closing funds" means the gross or net proceeds of the residential real estate transaction, including any loan funds, to be disbursed by the settlement agent as part of the disbursement of settlement proceeds on behalf of the parties.
- (8) "Collected funds" means funds deposited and irrevocably credited to a settlement agent's account used to fund the disbursement of settlement proceeds which account is a trust account, escrow account, or an account held by a company or its subsidiary which is licensed and supervised by the North Carolina Commissioner of Banks.
- (9) "Disbursement of settlement proceeds" means the payment of all closing funds from the residential real estate transaction by the settlement agent to the persons or entities entitled to that payment.
- (10) "Lender" means any person or entity engaged in making or originating loans secured by mortgages or deeds of trust in a residential real estate transaction.
- (11) "Loan closing" means (i) the time agreed upon by the borrower and lender, as applicable, when the execution and delivery of loan documents by the borrower occurs and (ii) the acts of execution and delivery of loan documents by the borrower.
- (12) "Loan documents" means the note evidencing the debt due to the lender, the deed of trust or mortgage to secure that debt to the lender, and any other documents required by the lender to be executed by the borrower in favor of the lender as part of the loan closing.
- (13) "Loan funds" means the gross or net proceeds of the loan to be disbursed by the settlement agent as part of the disbursement of settlement proceeds on behalf of the borrower and lender.

(14) "Official bank check" means a check that is drawn on a bank, is signed by an officer or employee of the bank on behalf of the bank as drawer, is a direct obligation of the bank, and is provided to a customer of the bank or acquired from the bank for remittance purposes.

(15) "Party" or "parties" means the seller, purchaser, borrower, lender, and settlement agent, as applicable to the subject residential real estate transaction.

(16) "Residential property" means any property to which this Act is applicable pursuant to G.S. 45A-3.

(17) "Residential real estate transaction" means any transaction described in G.S. 45A-3.

(18) "Settlement" means (i) the time when the settlement agent has received the duly executed deed, deed of trust or mortgage, and other loan documents and funds to accomplish closing and to carry out the terms of the residential real estate transaction between the parties and (ii) all acts necessary to consummate the residential real estate transaction contemplated by the parties.

(19) "Settlement agent" means the person or persons who provide settlement services in connection with a residential real estate transaction in this State whether or not listed as the settlement agent on the settlement statement for such transaction

(20) "Settlement services" means all services, including, without limitation, the administrative, clerical and other services, required to accomplish a settlement including, without limitation, the administrative, clerical and other services required to accomplish a settlement including, without limitation, the (i) presentation and identification of the documents necessary to complete a residential real estate transaction, directing the parties where to sign the documents or ensuring that the parties have properly signed the documents, and (ii) receiving or handling the disbursement of settlement proceeds, but expressly excluding services for the (i) the listing and sale of residential property, (ii) inspection, analysis and reporting on the physical condition of the residential property and improvements thereon, (iii) the preparation, review, analysis and reporting on the financial credit of any party to a residential real estate transaction, (iv) the performance, preparation, issuance, analysis, review and reporting on the value of the residential property and improvements, (v) providing title opinions, and (vi) underwriting and issuance of insurance policies.

(21) "Settlement statement" means the statement of receipts, disbursements, credits and debits for a residential real estate transaction including, but not limited to, a statement prescribed under the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. §2601 et seq., as amended, and the regulations promulgated thereunder.

(22) "Teller's check" means a check provided to a customer of a bank or acquired from a bank for remittance purposes, that is drawn by the bank, and drawn on another bank or payable through or at a bank.

(23) "Title opinion" means abstracting or passing upon titles or any other expression or confirmation of the existence or non-existence of any fact related to the status of title to any real property including, without limitation (i) current or past ownership, or (ii) current or past exceptions to title such as, without limitation, liens, judgments, financing documents, easements and restrictions or (ii) any other matter that addresses the scope, quality or nature of an interest in real property.

**§45A-5. Licensing requirements, standards and financial responsibility.**

(1) A person or entity shall not act in the capacity of a settlement agent or provide settlement services, and a lender, seller, purchaser or borrower may not contract with any person or entity to act in the capacity of a settlement agent or for the provision of settlement services with respect to a residential real estate transaction in this State, unless the settlement agent is an attorney and is, among other parties involved in the residential real estate transaction, at least representing the purchaser or borrower involved in the residential real estate transaction.

(2) A settlement agent who is an attorney shall (i) provide any party represented by such attorney with a reasonable opportunity to request and receive legal advice from the attorney concerning the settlement and the documents required to accomplish the settlement; (ii) maintain at all times a malpractice insurance policy providing a minimum limits of liability of \$250,000 for any individual claim, and \$250,000 in the aggregate for all claims and damages; and (iii) satisfy the requirements to be considered an attorney under the Rules Governing the Administration of the Client Security Fund of the North Carolina State Bar promulgated by the North Carolina State Bar.

(3) Notwithstanding any rule of court or any authorized practice advisory opinion of the North Carolina State Bar to the contrary, only a settlement agent operating in compliance with the requirements of this Act may provide settlement services or receive compensation for such services. The requirements of this Act regulating the provision of settlement services by a settlement agent shall be in addition to any other laws, rules or regulations of this State regulating the particular settlement service being provided including, without limitation, licensure requirements and standards of conduct.

(4) A settlement agent shall exercise reasonable care in providing settlement services.

(5) This Act shall not prohibit any party from representing himself, herself or itself in a residential real estate transaction to the extent otherwise permitted by applicable State law.

**§ 45A-6. Bank as settlement agent.**

(a) As used in this section, the following definitions apply:

(1) "Bank" means a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States. However, the term "bank" does not include any subsidiary or affiliate of a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or the United States.

(2) "Loan" means any advance of money or any extension of credit that is made by a bank to or on behalf of a borrower in connection with a residential real estate transaction, the principal amount of which the borrower has an obligation to pay the bank.

(b) Notwithstanding any other provision of this Act, a bank may act as a settlement agent and provide settlement services in connection with the closing of a loan to the extent otherwise permitted by applicable State law.

(c) A bank which acts as a settlement agent and provides settlement services shall, prior to the closing, provide the borrower with a written disclosure which contains the following statement:

Pursuant to the North Carolina Consumer Real Estate Settlement Protection Act, we, as your lender, are acting as your settlement agent, but we cannot provide you with any legal advice or legal services relating to the closing of your loan.

**§ 45A-7. Duty of settlement agent.**

The settlement agent shall cause recordation of the deed, if any, the deed of trust or mortgage, or other loan documents required to be recorded at settlement. The settlement agent shall not disburse any of the closing funds prior to the recordation of any (i) deeds, deeds of trust or mortgages, if any, or (iii) other loan documents to the extent such other loan documents are required to be recorded by the lender, if applicable, and verification that the closing funds used to fund disbursement are deposited in the settlement agent's trust or escrow account in one or more forms prescribed by this Act. Unless otherwise provided in this Act, a settlement agent shall not cause a disbursement of settlement proceeds unless those settlement proceeds are collected funds. Notwithstanding that a deposit made by a settlement agent to its trust or escrow account does not constitute collected funds, the settlement agent may cause a disbursement of settlement proceeds from its trust or escrow account in reliance on that deposit if the deposit is in one or more of the following forms:

(1) A certified check;

(2) A check issued by the State, the United States, a political subdivision of the State, or an agency or instrumentality of the United States, including an agricultural credit association;

(3) A cashier's check, teller's check, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government or wire transfer of funds from such institutions;

(4) A check drawn on the trust account of an attorney licensed to practice in the State of North Carolina;

(5) A check or checks drawn on the trust or escrow account of a real estate broker licensed under Chapter 93A of the General Statutes;

(6) A personal or commercial check or checks in an aggregate amount not exceeding five thousand dollars (\$5,000) per closing if the settlement agent making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the settlement agent's trust or escrow account;

(7) A check drawn on the account of or issued by a mortgage banker licensed under Article 19A of Chapter 53 of the General Statutes that has posted with the Commissioner of Banks a surety bond in the amount of at least three hundred thousand dollars (\$300,000). The surety bond shall be in a form satisfactory to the Commissioner and shall run to the State for the benefit of any settlement agent with a claim against the licensee for a dishonored check.

**§ 45A-8. Duty of lender, purchaser, or seller.**

The lender, purchaser, or seller shall, at or before closing, deliver closing funds, including the gross or net loan funds, if applicable, to the settlement agent either in the form of collected funds or in the form of a negotiable instrument described in G.S. 45A-7(1) through (7), provided that the lender, purchaser, or seller, as applicable, shall cause that negotiable instrument to be honored upon presentment for payment to the bank or other depository institution upon which the instrument is drawn. However, in the case of a refinancing, or any other loan where a right of rescission applies, the lender shall, no later than the business day after the expiration of the rescission period required under the federal Truth-in-Lending Act, 15 U.S.C. § 1601, et seq., cause disbursement of loan funds to the settlement agent in one or more of the forms prescribed by provisions in this Act.

**§ 45A-9. Validity of loan documents.**

Failure to comply with the provisions of this Act shall not govern the validity or enforceability of any document, including a deed or any loan document, executed and delivered at any settlement occurring after October 1, 1996.

**§ 45A-10. Direct payments to non-attorneys prohibited.**

In order to protect consumers against the risk of substantial harm occurring from unqualified parties performing settlement services or providing title opinions in connection with residential real estate transactions, unless otherwise provided in this section, no settlement agent in any residential real estate transaction shall pay any party other than an attorney or such attorney's law firm for any settlement service or title opinion on any residential property located in this State. A bank, acting as a settlement agent and providing settlement services, to the extent permitted by applicable State law, shall not be prohibited from paying an employee of such bank for such settlement services. An attorney who provides settlement services or a title opinion in connection with a residential real estate transaction for which the attorney is also the settlement agent may pay a fee to a non-attorney who is trained, directed and supervised by such attorney in accordance with the standards established by the North Carolina State Bar.

**§ 45A-11. Penalty.**

Any party violating any provision of this Act is liable to any other party suffering a loss due to that violation for that other party's actual damages plus reasonable attorneys' fees. In addition, any party violating any provision of this Act shall forfeit to the payor all fees for any settlement services or title opinion collected, received or charged in violation of this Act, and shall pay to the party or parties suffering a loss an amount equal to one thousand dollars (\$1,000) or double the amount of interest payable on any loan for the first 60 days after the loan closing, whichever amount is greater.

**§ 45A-12. Severability.**

If any provision of this Act, or the application of the provision to any person or circumstance, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is invalid, shall not be affected.

**§ 45A-13. Compliance.**

A settlement agent operating in this State prior to \_\_\_\_\_, 2007, shall have ninety days after \_\_\_\_\_, 2007 to comply with the applicable requirements of G.S. 45A-5(2)(ii) and G.S.45A-6(c).