

TRADE REGULATION--VIOLATION--ISSUE OF TYING BETWEEN LENDER AND INSURER. N.C.G.S. § 75-17.<sup>1</sup>

The (*state number*) issue reads:

"Did the defendant require (*name borrower*) to deal with a particular insurer as part of a secured transaction?"

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the following two things:

First, that the defendant<sup>2</sup> was engaged in lending money on a secured basis. Money is loaned on a secured basis when

[property is sold on credit and payment is secured by a purchase money [mortgage] [deed of trust] [security agreement]]

[a loan is made and repayment is secured by a [mortgage] [deed of trust] [security agreement]]

[an existing secured [credit] [loan] is refinanced, renewed or extended].

Second, that the defendant directly or indirectly [required] [imposed as a precondition to the secured transaction] that (*name borrower*) [negotiate] [procure] [(*describe other method of obtaining*)] a [policy] [renewal] [extension] of insurance through

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<sup>1</sup>N.C.G.S. § 75-17.

<sup>2</sup>The defendant must be a person, firm, corporation or a trustee, director, officer, agent, employee, affiliate or associate of a person, firm or corporation engaged in lending money.

TRADE REGULATION--VIOLATION--ISSUE OF TYING BETWEEN LENDER AND  
INSURER. N.C.G.S. § 75-17. (Continued.)

a particular [insurance company] [agent] [broker] [(*identify other insurer*)] [specified] [(*describe other method of designation*)] by the defendant. It is not necessary that the secured transaction be completed.

A lender may require a borrower to obtain insurance as part of a secured transaction, and the lender may approve or disapprove of an insurer on a reasonable and nondiscriminatory basis related to the solvency of the insurer, and to the type and provisions of policy coverage.<sup>3</sup> A lender may not, however, require a borrower to [negotiate] [procure] [(*describe other means of obtaining*)] insurance from a particular insurer.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the defendant required (*name borrower*) to deal with a particular insurer as part of a secured transaction, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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<sup>3</sup>N.C.G.S. § 75-18.