

1 **Chapter 45.**  
2 **Mortgages and Deeds of Trust.**

3 Article 1.

4 Chattel Securities.

5 **§§ 45-1 through 45-3.1:** Repealed by Sessions Laws 1967, c. 562, s. 2.

6  
7 Article 2.

8 Right to Foreclose or Sell under Power.

9 **§ 45-4. Representative succeeds on death of mortgagee or trustee in deeds of trust;**  
10 **parties to action.**

11 When the mortgagee in a mortgage, or the trustee in a deed in trust, executed for the  
12 purpose of securing a debt, containing a power of sale, dies before the payment of the debt  
13 secured in such mortgage or deed in trust, all the title, rights, powers and duties of such  
14 mortgagee or trustee pass to and devolve upon the executor or administrator or collector of  
15 such mortgagee or trustee, including the right to bring an action of foreclosure in any of the  
16 courts of this State as prescribed for trustees or mortgagees, and in such action it is  
17 unnecessary to make the heirs at law of such deceased mortgagee or trustee parties thereto.  
18 (1887, c. 147; 1895, c. 431; 1901, c. 186; 1905, c. 425; Rev., s. 1031; C.S., s. 2578; 1933, c.  
19 199.)

20  
21 **§ 45-5. Foreclosures by representatives validated.**

22 In all actions which were brought or prosecuted prior to the fourth day of March, 1905, for  
23 the foreclosure of any mortgage or deed in trust by any executor or administrator of any  
24 deceased mortgagee or trustee where the heirs of the mortgagee were duly made parties and  
25 regular and orderly decrees of foreclosure entered by the court and sale had by a commissioner  
26 appointed by the court for that purpose and deed made after confirmation, the title so conveyed  
27 to purchaser at such judicial sale shall be deemed and held to be vested in such purchaser,  
28 whether the heir of such deceased mortgagee or trustee was a party to such foreclosure  
29 proceeding or not, and such heir of any deceased mortgagee is estopped to bring or prosecute  
30 any further action against such purchaser for the recovery of such property or foreclosure of  
31 such mortgage or deed in trust. (1905, c. 425, s. 2; Rev., s. 1032; C.S., s. 2579.)

32  
33 **§ 45-6. Renunciation by representative; clerk appoints trustee.**

34 The executor or administrator of any deceased mortgagee or trustee in any mortgage or  
35 deed of trust heretofore or hereafter executed may renounce in writing, before the clerk of the  
36 superior court before whom he qualifies, the trust under the mortgage or deed of trust at the  
37 time he qualifies as executor or administrator, or at any time thereafter before he intermeddles  
38 with or exercises any of the duties under said mortgage or deed of trust, except to preserve the  
39 property until a trustee can be appointed. In every such case of renunciation the clerk of the  
40 superior court of any county wherein the said mortgage or deed of trust is registered has power  
41 and authority, upon proper proceedings instituted before him, as in other cases of special  
42 proceedings, to appoint some person to act as trustee and execute said mortgage or deed of  
43 trust. The clerk, in addition to recording his proceedings in his book of orders and decrees, shall  
44 record a separate instrument, as required by G.S. 161-14.1, containing the name of the  
45 substituted trustee or mortgagee, with the register of deeds of said county. (1905, c. 128; Rev.,  
46 s. 1038; C.S., s. 2580; 1991, c. 114, s. 5; 2011-246, s. 1.)

47  
48 **§ 45-7. Agent to sell under power may be appointed by parol.**

49 All sales of real property, under a power of sale contained in any mortgage or deed of trust  
50 to secure the payment of money, by any mortgagee or trustee, through an agent or attorney for  
51 that purpose, appointed orally or in writing by such mortgagee or trustee, whether such writing

1 has been or shall be registered or not, shall be valid, whether or not such mortgagee or trustee  
2 was or shall be present at such sale. (1895, c. 117; Rev., s. 1035; C.S., s. 2581; 1967, c. 562, s.  
3 2.)  
4

5 **§ 45-8. Survivorship among donees of power of sale.**

6 In all mortgages and deeds of trust of real property wherein two or more persons, as trustees  
7 or otherwise, are given power to sell the property therein conveyed or embraced, and one or  
8 more of such persons dies, any one of the persons surviving having such power may make sale  
9 of such property in the manner directed in such deed, and execute such assurances of title as are  
10 proper and lawful under the power so given; and the act of such person, in pursuance of said  
11 power, shall be as valid and binding as if the same had been done by all the persons on whom  
12 the power was conferred. (1885, c. 327, s. 2; Rev., s. 1033; C.S., s. 2582; 1967, c. 562, s. 2.)  
13

14 **§ 45-9. Clerk appoints successor to incompetent trustee.**

15 When the sole or last surviving trustee named in a will or deed of trust dies, removes from  
16 the county where the will was probated or deed executed and/or recorded and from the State, or  
17 in any way becomes incompetent to execute the said trust, or is a nonresident of this State, or  
18 has disappeared from the community of his residence and his whereabouts remains unknown in  
19 such community for a period of three months and cannot, after diligent inquiry be ascertained,  
20 the clerk of the superior court of the county wherein the will was probated or deed of trust was  
21 executed and/or recorded is authorized and empowered, in proceedings to which all persons  
22 interested shall be made parties, to appoint some discreet and competent person to act as trustee  
23 and execute the trust according to its true intent and meaning, and as fully as if originally  
24 appointed: Provided, that in all actions or proceedings had under this section prior to January 1,  
25 1900, before the clerks of the superior court in which any trustee was appointed to execute a  
26 deed of trust where any trustee of a deed of trust has died, removed from the county where the  
27 deed was executed and from the State, or in any way become incompetent to execute the said  
28 trust, whether such appointment of such trustee by order or decree, or otherwise, was made  
29 upon the application or petition of any person or persons ex parte, or whether made in  
30 proceedings where all the proper parties were made, are in all things confirmed and made valid  
31 so far as regards the parties to said actions and proceedings to the same extent as if all proper  
32 parties had originally been made in such actions or proceedings. (1869-70, c. 188; 1873-4, c.  
33 126; Code, s. 1276; 1901, c. 576; Rev., s. 1037; C.S., s. 2583; 1933, c. 493.)  
34

35 **§ 45-10. Substitution of trustees in mortgages and deeds of trust.**

36 (a) In addition to the rights and remedies now provided by law, the holders or owners of  
37 a majority in amount of the indebtedness, notes, bonds, or other instruments evidencing a  
38 promise or promises to pay money and secured by mortgages, deeds of trust, or other  
39 instruments conveying real property, or creating a lien thereon, may, in their discretion,  
40 substitute a trustee whether the trustee then named in the instrument is the original or a  
41 substituted trustee or a holder or owner of any or all of the obligations secured thereby, by the  
42 execution of a written document properly recorded pursuant to Chapter 47 of the North  
43 Carolina General Statutes.

44 (b) If the name of a trustee is omitted from an instrument that appears on its face to be  
45 intended to be a deed of trust, the instrument shall be deemed to be a deed of trust, the owner or  
46 owners executing the deed of trust and granting an interest in the real property shall be deemed  
47 to be the constructive trustee or trustees of record for the secured party or parties named in the  
48 instrument, and a substitution of trustee may be undertaken under subsection (a) of this section.  
49 However, no such constructive trustee shall have the authority or power to take any of the  
50 following actions without the consent and joinder of the holders or owners of a majority in  
51 amount of the obligations secured by the deed of trust: (i) effect a substitution of trustee, (ii)

1 effect the satisfaction of the deed of trust, (iii) release any property or any interest therein from  
2 the lien of the deed of trust, or (iv) modify or amend the terms of the deed of trust. Any  
3 substitute trustee named under the authority of subsection (a) of this section shall succeed to all  
4 the rights, titles, authority, and duties of the trustee under the terms of the deed of trust without  
5 regard to the limitations imposed by this subsection on the authority of a constructive trustee.

6 (c) If the trustee named in a deed of trust is also the beneficiary named in that deed of  
7 trust, the instrument shall be deemed to be a deed of trust, and any substitute trustee named  
8 under the authority of subsection (a) of this section shall succeed to all the rights, titles,  
9 authority, and duties of the trustee under the terms of the deed of trust. (1931, c. 78, ss. 1, 2;  
10 1935, c. 227; 1943, c. 543; 1967, c. 562, s. 2; 1975, c. 66; 1985, c. 320; c. 689, s. 14; 2009-176,  
11 s. 1; 2011-312, s. 2.)  
12

13 **§ 45-11. Appointment of substitute trustee upon application of subsequent or prior**  
14 **lienholders; effect of substitution.**

15 When any person, firm, corporation, county, city or town holding a lien on real property  
16 upon which there is a subsequent or prior lien created by a mortgage, deed of trust or other  
17 instrument, the mortgagee or trustee therein named being dead or having otherwise become  
18 incompetent to act, files a written application with the clerk of the superior court of the county  
19 in which said property is located, setting forth the facts showing that said mortgagee or trustee  
20 is then dead or has become incompetent to act, the said clerk of the superior court, upon a  
21 proper finding of fact that said mortgagee or trustee is dead or has become incompetent to act,  
22 shall enter an order appointing some suitable and competent person, firm or corporation as  
23 substitute trustee upon whom service of process may be made, and said substitute trustee shall  
24 thereupon be vested with full power and authority to defend any action instituted to foreclose  
25 said property as fully as if he had been the original mortgagee or trustee named; but the  
26 substitute trustee shall have no power to cancel said mortgage or deed of trust without the  
27 joinder of the holder of the notes secured thereby. Said application shall not be made prior to  
28 the expiration of 30 days from the date the original mortgagee or trustee becomes incompetent  
29 to act. (1941, c. 115, s. 1; 1967, c. 562, s. 2.)  
30

31 **§ 45-12.** Repealed by Session Laws 1973, c. 1208.  
32

33 **§ 45-13.** Repealed by Session Laws 1981, c. 599, s. 12.  
34

35 **§ 45-14. Acts of trustee prior to removal not invalidated.**

36 If any such trustee who has been substituted as provided in G.S. 45-10 or in G.S. 45-11  
37 shall have performed any functions as such trustee and shall thereafter be removed as provided  
38 in G.S. 45-10 to 45-17, such removal shall not invalidate or affect the validity of such acts  
39 insofar as any purchaser or third person shall be affected or interested, and any conveyances  
40 made by such trustee before removal if otherwise valid, shall be and remain valid and effectual  
41 to all intents and purposes, but if any trustee upon such hearing is declared to have been  
42 wrongfully removed, he shall have his right of action against the substituted trustee for any  
43 compensation that he would have received in case he had not been wrongfully removed from  
44 such trust. (1931, c. 78, s. 5; 1941, c. 115, s. 3.)  
45

46 **§ 45-15. Registration of substitution constructive notice.**

47 The registration of such paper-writing designating a new trustee under G.S. 45-10 or under  
48 G.S. 45-11 shall be from and after registration, constructive notice to all persons, and no appeal  
49 or other proceedings shall be instituted to contest the same after one year from and after such  
50 registration. (1931, c. 78, s. 6; 1941, c. 115, s. 4.)  
51

1 **§ 45-16. Register of deeds to make marginal entry of substituted trustee.**

2 Whenever any substituted trustee shall be appointed as provided in G.S. 45-10 through G.S.  
3 45-17 and such designation of such substituted trustee shall have been registered, then it shall  
4 be the duty of the register of deeds to index the substitution of trustee as required by G.S.  
5 161-14.1, indicating the place of registration of such appointment of a substituted trustee, and  
6 this shall be done as many times as a trustee may be substituted as provided for in G.S. 45-10  
7 through G.S. 45-17. Whenever practical, the register of deeds may also make an appropriate  
8 notation on the margin of the registration of the mortgage, deed of trust, or other instrument  
9 securing the payment of money. It shall be competent for the holder of such deed of trust, or  
10 deeds of trust, mortgage or mortgages, wherein the same trustee is named, to execute one  
11 instrument applying to all such deeds of trust or mortgages, in the substitution of a trustee for  
12 any of the causes set forth in G.S. 45-10, and in said instrument to recite and name the  
13 mortgages and/or deeds of trust affected by giving the names of the grantors, the trustee and, if  
14 registered, the book and page of such registration. This may be done as many times as a trustee  
15 may be substituted as provided for in G.S. 45-10 through G.S. 45-17, and in which cases the  
16 register of deeds shall make, as to each recited instrument, mortgage or deed of trust, the  
17 notation provided for in this section. (1931, c. 78, s. 7; 1991, c. 114, s. 6; 1993, c. 425, s. 2.)  
18

19 **§ 45-17. Substitution made as often as justifiable.**

20 The powers set out in G.S. 45-10 and in G.S. 45-11 may be exercised as often and as many  
21 times as the right to make such substitution may arise under the terms of such section, and all  
22 the privileges and requirements and rights to contest the same as set out in G.S. 45-10 to 45-17  
23 shall apply to each deed of trust or mortgage and to each substitution. (1931, c. 78, s. 8; 1941,  
24 c. 115, s. 5.)  
25

26 **§ 45-18. Validation of certain acts of substituted trustees.**

27 Whenever before January 1, 1979, a trustee has been substituted in a deed of trust in the  
28 manner provided by G.S. 45-10 to 45-17, but the instrument executed by the holder and/or  
29 owners of all or a majority in amount of the indebtedness, notes, bonds, or other instruments  
30 secured by said deed of trust, has not been registered as provided by said sections until after  
31 the substitute trustee has exercised some or all of the powers conferred by said deed of trust  
32 upon the trustee therein, including the advertising of the property conveyed by said deed of  
33 trust for sale, the sale thereof, and the execution of a deed by such substituted trustee to the  
34 purchaser at such sale, all such acts of said substituted trustee shall be deemed valid and  
35 effective in the same manner and to the same extent as if said instrument substituting said  
36 trustee, had been registered prior to the performance by said substituted trustee of any one or  
37 more of said acts, or other acts authorized by such deed of trust. (1939, c. 13; 1963, c. 241;  
38 1967, c. 945; 1969, c. 477; 1971, c. 57; 1973, c. 20; 1979, c. 580.)  
39

40 **§ 45-19. Mortgage to guardian; powers pass to succeeding guardian.**

41 When a guardian to whom a mortgage has been executed dies or is removed or resigns  
42 before the payment of the debt secured in such mortgage, all the rights, powers and duties of  
43 such mortgagee shall devolve upon the succeeding guardian. (1905, c. 433; Rev., s. 1034; C.S.,  
44 s. 2584.)  
45

46 **§ 45-20. Sales by mortgagees and trustees confirmed.**

47 All sales of real property made prior to February 10, 1905, by mortgagees and trustees  
48 under powers of sale contained in any mortgage or deed of trust in compliance with the powers,  
49 terms, conditions and advertisement set forth and required in any such mortgage or deed of  
50 trust, are hereby in all respects ratified and confirmed. (Ex. Sess. 1920, c. 27; C.S., s. 2584(a).)  
51

1 **§ 45-20.1. Validation of trustees' deeds where seals omitted.**

2 All deeds executed prior to January 1, 1991, by any trustee or substitute trustee in the  
3 exercise of the power of sale vested in him under any deed, deed of trust, mortgage, will, or  
4 other instrument in which the trustee or substitute trustee has omitted to affix his seal after his  
5 signature are validated. (1943, c. 71; 1981, c. 183, s. 1; 1983, c. 398, s. 1; 1985, c. 70, s. 1;  
6 1987, c. 277, s. 1; 1989, c. 390, s. 1; 1991, c. 489, s. 1.)  
7

8 **§ 45-20.2. Repealed by Session Laws 1981, c. 183, s. 2.**

9  
10 **§ 45-20.3. Validation of deeds where seal omitted on power of attorney.**

11 All deeds and other conveyances executed prior to January 1, 1991, by any attorney-in-fact  
12 in the exercise of a power of attorney are valid even though the signature of the principal was  
13 not affixed under seal on the instrument creating the power of attorney. (1991, c. 489, s. 1.1.)  
14

15 **§ 45-21. Validation of appointment of and conveyances to corporations as trustees.**

16 In all deeds of trust made prior to March 15, 1941, wherein property has been conveyed to  
17 corporations as trustees to secure indebtedness, the appointment of said corporations as  
18 trustees, the conveyances to said corporate trustees, and the action taken under the powers of  
19 such deeds of trust by said corporate trustees are hereby confirmed and validated to the same  
20 extent as if such corporate trustees had been individual trustees. (1941, c. 245, s. 1.)  
21

22 Article 2A.

23 Sales under Power of Sale.

24 Part 1. General Provisions.

25 **§ 45-21.1. Definitions; construction.**

26 (a) The following definitions apply in this Article:

- 27 (1) "Resale" means a resale of real property or a resale of any leasehold interest  
28 created by a lease of real property held pursuant to G.S. 45-21.30.  
29 (2) "Sale" means a sale of real property or a sale of any leasehold interest  
30 created by a lease of real property pursuant to (i) an express power of sale  
31 contained in a mortgage, deed of trust, leasehold mortgage, or leasehold  
32 deed of trust or (ii) a "power of sale", under this Article, authorized by other  
33 statutory provisions.

34 (b) The following constructions apply in this Article:

- 35 (1) The terms "mortgage" or "deed of trust" include leasehold mortgages or  
36 leasehold deeds of trust.  
37 (2) The terms "mortgagee" or "trustee" include any person or entity exercising a  
38 power of sale pursuant to this Article.  
39 (3) The terms "real property" or "property" include any leasehold interest  
40 created by a lease of real property. (1949, c. 720, s. 1; 1967, c. 562, s. 2;  
41 1991, c. 255; 1993, c. 305, s. 1.)  
42

43 **§ 45-21.2. Article not applicable to foreclosure by court action.**

44 This Article does not affect any right to foreclosure by action in court, and is not applicable  
45 to any such action. (1949, c. 720, s. 1.)  
46

47 **§ 45-21.3. Repealed by Session Laws 1993, c. 305, s. 2.**

48  
49 **§ 45-21.4. Place of sale of real property.**

50 (a) Every sale of real property shall be held in the county where the property is situated  
51 unless the property consists of a single tract situated in two or more counties.

1 (b) A sale of a single tract of real property situated in two or more counties may be held  
2 in any one of the counties in which any part of the tract is situated. As used in this section, a  
3 "single tract" means any tract which has a continuous boundary, regardless of whether parts  
4 thereof may have been acquired at different times or from different persons, or whether it may  
5 have been subdivided into other units or lots, or whether it is sold as a whole or in parts.

6 (c) When a mortgage or deed of trust with power of sale of real property designates the  
7 place of sale within the county, the sale shall be held at the place so designated.

8 (d) When a mortgage or deed of trust with power of sale of real property confers upon  
9 the mortgagee or trustee the right to designate the place of sale, the sale shall be held at the  
10 place designated by the notice of sale, which place shall be either on the premises to be sold or  
11 as follows:

12 (1) Property situated wholly within a single county shall be sold at the  
13 courthouse door of the county in which the land is situated.

14 (2) A single tract of property situated in two or more counties may be sold at the  
15 courthouse door of any one of the counties in which some part of the real  
16 property is situated.

17 (e) When a mortgage or deed of trust with power of sale of real property does not  
18 designate, or confer upon the mortgagee or trustee the right to designate, the place of sale, or  
19 when it designates as the place of sale some county in which no part of the property is situated,  
20 such real property shall be sold as follows:

21 (1) Property situated wholly within a single county shall be sold at the  
22 courthouse door of the county in which the land is situated.

23 (2) A single tract of property situated in two or more counties may be sold at the  
24 courthouse door of any one of the counties in which some part of the real  
25 property is situated. (1949, c. 720, s. 1; 1975, c. 57, s. 1.)  
26

27 **§§ 45-21.5 through 45-21.6. Repealed by Session Laws 1967, c. 562, s. 2.**

28  
29 **§ 45-21.7. Sale of separate tracts in different counties.**

30 (a) When the property to be sold consists of separate tracts of real property situated in  
31 different counties, there shall be a separate advertisement, sale and report of sale of the  
32 property in each county. The report of sale for the property in any one county shall be filed  
33 with the clerk of the superior court of the county in which such property is situated. The sale of  
34 each such tract shall be subject to separate upset bids. The clerk of the superior court of the  
35 county where the property is situated has jurisdiction with respect to upset bids of property  
36 situated within his county. To the extent the clerk deems necessary, the sale of each separate  
37 tract within his county, with respect to which an upset bid is received, shall be treated as a  
38 separate sale for the purpose of determining the procedure applicable thereto.

39 (b) The exercise of the power of sale with respect to a separate tract of property in one  
40 county does not extinguish or otherwise affect the right to exercise the power of sale with  
41 respect to tracts of property in another county to satisfy the obligation secured by the mortgage  
42 or deed of trust. (1949, c. 720, s. 1; 1993, c. 305, s. 3.)  
43

44 **§ 45-21.8. Sale as a whole or in parts.**

45 (a) When the instrument pursuant to which a sale is to be held contains provisions with  
46 respect to whether the property therein described is to be sold as a whole or in parts, the terms  
47 of the instrument shall be complied with.

48 (b) When the instrument contains no provisions with respect to whether the property  
49 therein described is to be sold as a whole or in parts, the person exercising the power of sale  
50 may, in his discretion, subject to the provisions of G.S. 45-21.9, sell the property as a whole or  
51 in such parts or parcels thereof as are separately described in the instrument, or he may offer

1 the property for sale by each method and sell the property by the method which produces the  
2 highest price.

3 (b1) When real property is sold in parts, the sale of any such part is subject to a separate  
4 upset bid; and, to the extent the clerk of superior court having jurisdiction deems advisable, the  
5 sale of each such part shall thereafter be treated as a separate sale for the purpose of  
6 determining the procedure applicable thereto.

7 (c) This section does not affect the equitable principle of marshaling assets. (1949, c.  
8 720, s. 1; 1993, c. 305, s. 4.)

9  
10 **§ 45-21.9. Amount to be sold when property sold in parts; sale of remainder if necessary.**

11 (a) When a person exercising a power of sale sells property in parts pursuant to G.S.  
12 45-21.8 he shall sell as many of such separately described units and parcels as in his judgment  
13 seems necessary to satisfy the obligation secured by the instrument pursuant to which the sale  
14 is being made, and the costs and expenses of the sale.

15 (b) If the proceeds of a sale of only a part of the property are insufficient to satisfy the  
16 obligation secured by the instrument pursuant to which the sale is made and the costs and  
17 expenses of the sale, the person authorized to exercise the power of sale may readvertise the  
18 unsold property and may sell as many additional units or parcels thereof as in his judgment  
19 seems necessary to satisfy the remainder of the secured obligation and the costs and expenses  
20 of the sale. As to any such sale, it shall not be necessary to comply with the provisions of G.S.  
21 45-21.16 but the requirements of G.S. 45-21.17 relating to notices of sale shall be complied  
22 with.

23 (c) When the entire obligation has been satisfied by a sale of only a part of the property  
24 with respect to which a power of sale exists, the lien on the part of the property not so sold is  
25 discharged.

26 (d) The fact that more property is sold than is necessary to satisfy the obligation secured  
27 by the instrument pursuant to which the power of sale is exercised does not affect the validity  
28 of the title of any purchaser of property at any such sale. (1949, c. 720, s. 1; 1975, c. 492, s.  
29 15.)

30  
31 **§ 45-21.9A. Simultaneous foreclosure of two or more instruments.**

32 When two or more mortgages or deeds of trust held by the same person are secured in  
33 whole or in part by the same property, and there are no intervening liens, except for ad valorem  
34 taxes, between such mortgages or deeds of trust, the obligations secured by such mortgages or  
35 deeds of trust may be combined and the property sold once to satisfy the combined obligations  
36 if (i) powers of sale are provided in all such instruments; (ii) there is no provision in any such  
37 instrument which would not permit such a procedure; (iii) all the terms of all such instruments  
38 requiring compliance by the lender in connection with foreclosure sales are complied with; and  
39 (iv) all requirements of this Chapter governing power of sale foreclosures are met with respect  
40 to all such instruments. The proceeds of any sale shall be applied as provided in this Chapter.  
41 As between the combined obligations being foreclosed, proceeds shall be applied in the order  
42 of priority of the instruments securing them, and any deficiencies shall be determined  
43 accordingly. (1985, c. 515, s. 1; 1993, c. 305, s. 5.)

44  
45 **§ 45-21.10. Requirement of cash deposit at sale.**

46 (a) If a mortgage or deed of trust contains provisions with respect to a cash deposit at  
47 the sale, the terms of the instrument shall be complied with.

48 (b) If the instrument contains no provision with respect to a cash deposit at the sale, the  
49 mortgagee or trustee may require the highest bidder immediately to make a cash deposit not to  
50 exceed the greater of five percent (5%) of the amount of the bid or seven hundred fifty dollars  
51 (\$750.00).

1 (c) If the highest bidder fails to make the required deposit, the person holding the sale  
2 may at the same time and place immediately reoffer the property for sale. (1949, c. 720, s. 1;  
3 1993, c. 305, s. 6.)  
4

5 **§ 45-21.11. Application of statute of limitations to serial notes.**

6 When a series of notes maturing at different times is secured by a mortgage or deed of trust  
7 and the exercise of the power of sale for the satisfaction of one or more of the notes is barred by  
8 the statute of limitations, that fact does not bar the exercise of the power of sale for the  
9 satisfaction of indebtedness represented by other notes of the series not so barred. (1949, c.  
10 720, s. 1; 1967, c. 562, s. 2.)  
11

12 **§ 45-21.12. Power of sale barred when foreclosure barred.**

13 (a) Except as provided in subsection (b), no person shall exercise any power of sale  
14 contained in any mortgage or deed of trust, or provided by statute, when an action to foreclose  
15 the mortgage or deed of trust, is barred by the statute of limitations.

16 (b) If a sale pursuant to a power of sale contained in a mortgage or deed of trust, or  
17 provided by statute, is commenced within the time allowed by the statute of limitations to  
18 foreclose such mortgage or deed of trust, the sale may be completed although such completion  
19 is effected after the time when commencement of an action to foreclose would be barred by the  
20 statute. For the purpose of this section, a sale is commenced when the notice of hearing or the  
21 notice of sale is first filed, given, served, posted, or published, whichever occurs first, as  
22 provided by this Article or by the terms of the instrument pursuant to which the power of sale is  
23 being exercised. (1949, c. 720, s. 1; 1967, c. 562, s. 2; 1969, c. 984, s. 1; 1977, c. 359, s. 1.)  
24

25 **§ 45-21.12A. Power of sale barred during periods of military service.**

26 (a) Power of Sale Barred. – A mortgagee, trustee, or other creditor shall not exercise a  
27 power of sale contained in a mortgage or deed of trust, or provided by statute, during, or within  
28 90 days after, a mortgagor's, trustor's, or debtor's period of military service. The clerk of court  
29 shall not conduct a hearing pursuant to G.S. 45-21.16(d) unless the mortgagee, trustee or other  
30 creditor seeking to exercise a power of sale under a mortgage or deed of trust, or provided by  
31 statute, files with the clerk a certification that the hearing will take place at a time that is not  
32 during, or within 90 days after, a period of military service for the mortgagor, trustor or debtor.  
33 This subsection applies only to mortgages and deeds of trust that originated before the  
34 mortgagor's or trustor's period of military service.

35 (b) Waiver. – This section shall not apply if the mortgagor, trustor, or debtor waives his  
36 or her rights under this section pursuant to a written agreement of the parties executed during or  
37 after the mortgagor's, trustor's, or debtor's period of military service, as an instrument separate  
38 from the obligation or liability to which the waiver applies. Any waiver in writing of a right or  
39 protection provided by this section must be in at least 12 point type and shall specify the legal  
40 instrument creating the obligation or liability to which the waiver applies.

41 (c) Purpose. – The purpose of this section is to supplement and complement the  
42 provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501, et seq., and to afford  
43 greater peace and security for persons in federal active duty.

44 (d) Definitions. – The following definitions apply in this section:

45 (1) Military service. –

46 a. In the case of a member of the United States Army, Navy, Air Force,  
47 Marine Corps, or Coast Guard:

48 1. Active duty, as defined in 10 U.S.C. § 101(d)(1), and

49 2. In the case of a member of the National Guard, includes  
50 service under a call to active service authorized by the  
51 President or the Secretary of Defense for a period of more

1 than 30 consecutive days under 32 U.S.C. § 502(f), for  
2 purposes of responding to a national emergency declared by  
3 the President and supported by federal funds.

4 b. In the case of a servicemember who is a commissioned officer of the  
5 Public Health Service or the National Oceanic and Atmospheric  
6 Administration, active service, and

7 c. Any period during which a servicemember is absent from duty on  
8 account of sickness, wounds, leave, or other lawful cause.

9 (2) Period of military service. – The period beginning on the date on which a  
10 servicemember enters military service and ending on the date on which the  
11 servicemember is released from military service or dies while in military  
12 service.

13 (3) Servicemember. – A member of the United States Army, Navy, Air Force,  
14 Marine Corps, Coast Guard, the commissioned corps of the National  
15 Oceanic and Atmospheric Administration, or the commissioned corps of the  
16 Public Health Service. (2010-190, s. 1; 2011-183, s. 127(b).)  
17

18 **§ 45-21.13. Repealed by Session Laws 1967, c. 562, s. 2.**  
19

20 **§ 45-21.14. Clerk's authority to compel report or accounting; contempt proceeding.**

21 Whenever any person fails to file any report or account, as provided by this Article, or files  
22 an incorrect or incomplete report or account, the clerk of the superior court having jurisdiction  
23 on his own motion or the motion of any interested party, may issue an order directing such  
24 person to file a correct and complete report or account within 20 days after service of the order  
25 on him. If such person fails to comply with the order, the clerk may issue an attachment against  
26 him for contempt, and may commit him to jail until he files such correct and complete report or  
27 account. (1949, c. 720, s. 1.)  
28

29 **§ 45-21.15. Trustee's fees.**

30 (a) When a sale has been held, the trustee is entitled to such compensation, if any, as is  
31 stipulated in the instrument.

32 (b) When no sale has actually been held, compensation for a trustee's services is  
33 determined as follows:

34 (1) If no compensation for the trustee's services in holding a sale is provided  
35 for in the instrument, the trustee is not entitled to any compensation;

36 (2) If compensation is specifically provided for the trustee's services when  
37 no sale is actually held, the trustee is entitled to such compensation;

38 (3) If the instrument provides for compensation for the trustee's services in  
39 actually holding a sale, but does not provide compensation for the trustee's  
40 services when no sale is actually held, the trustee is entitled to compensation  
41 as follows: (i) one-fourth of the completed sale compensation before the  
42 trustee files the notice of hearing; (ii) one-half after the filing of the notice of  
43 hearing; and (iii) three-fourths after the hearing.

44 (4) Repealed by Session Laws 1993, c. 305, s. 7. (1949, c. 720, s. 1; 1993, c.  
45 305, s. 7.)  
46

47 **§ 45-21.16. Notice and hearing.**

48 (a) The mortgagee or trustee granted a power of sale under a mortgage or deed of trust  
49 who seeks to exercise such power of sale shall file with the clerk of court a notice of hearing in  
50 accordance with the terms of this section. After the notice of hearing is filed, the notice of  
51 hearing shall be served upon each party entitled to notice under this section. The notice shall

1 specify a time and place for the hearing before the clerk of court and shall be served not less  
2 than 10 days prior to the date of such hearing. The notice shall be served and proof of service  
3 shall be made in any manner provided by the Rules of Civil Procedure for service of summons,  
4 including service by registered mail or certified mail, return receipt requested. However, in  
5 those instances that publication would be authorized, service may be made by posting a notice  
6 in a conspicuous place and manner upon the property not less than 20 days prior to the date of  
7 the hearing, and if service upon a party cannot be effected after a reasonable and diligent effort  
8 in a manner authorized above, notice to such party may be given by posting the notice in a  
9 conspicuous place and manner upon the property not less than 20 days prior to the date of  
10 hearing. Service by posting may run concurrently with any other effort to effect service. The  
11 notice shall be posted by the sheriff. In the event that the service is obtained by posting, an  
12 affidavit shall be filed with the clerk of court showing the circumstances warranting the use of  
13 service by posting.

14 If any party is not served or is not timely served prior to the date of the hearing, the clerk  
15 shall order the hearing continued to a date and time certain, not less than 10 days from the date  
16 scheduled for the original hearing. All notices already timely served remain effective. The  
17 mortgagee or trustee shall satisfy the notice requirement of this section with respect to those  
18 parties not served or not timely served with respect to the original hearing. Any party timely  
19 served, who has not received actual notice of the date to which the hearing has been continued,  
20 shall be sent the order of continuance by first-class mail at his last known address.

21 (b) Notice of hearing shall be served in a manner authorized in subsection (a) upon:

- 22 (1) Any person to whom the security interest instrument itself directs notice to  
23 be sent in case of default.
- 24 (2) Any person obligated to repay the indebtedness against whom the holder  
25 thereof intends to assert liability therefor, and any such person not notified  
26 shall not be liable for any deficiency remaining after the sale.
- 27 (3) Every record owner of the real estate whose interest is of record in the  
28 county where the real property is located at the time the notice of hearing is  
29 filed in that county. The term "record owner" means any person owning a  
30 present or future interest in the real property, which interest is of record at  
31 the time that the notice of hearing is filed and would be affected by the  
32 foreclosure proceeding, but does not mean or include the trustee in a deed of  
33 trust or the owner or holder of a mortgage, deed of trust, judgment,  
34 mechanic's or materialman's lien, or other lien or security interest in the real  
35 property. Tenants in possession under unrecorded leases or rental  
36 agreements shall not be considered record owners.

37 (c) Notice shall be in writing and shall state in a manner reasonably calculated to make  
38 the party entitled to notice aware of the following:

- 39 (1) The particular real estate security interest being foreclosed, with such a  
40 description as is necessary to identify the real property, including the date,  
41 original amount, original holder, and book and page of the security  
42 instrument.
- 43 (2) The name and address of the holder of the security instrument at the time  
44 that the notice of hearing is filed.
- 45 (3) The nature of the default claimed.
- 46 (4) The fact, if such be the case, that the secured creditor has accelerated the  
47 maturity of the debt.
- 48 (5) Any right of the debtor to pay the indebtedness or cure the default if such is  
49 permitted.
- 50 (5a) The holder has confirmed in writing to the person giving the notice, or if the  
51 holder is giving the notice, the holder shall confirm in the notice, that, within

1 30 days of the date of the notice, the debtor was sent by first-class mail at the  
2 debtor's last known address a detailed written statement of the amount of  
3 principal, interest, and any other fees, expenses, and disbursements that the  
4 holder in good faith is claiming to be due as of the date of the written  
5 statement, together with a daily interest charge based on the contract rate as  
6 of the date of the written statement. Nothing herein is intended to authorize  
7 any fees, charges, or methods of charging interest which is not otherwise  
8 permitted under contract between the parties and other applicable law.

9 (5b) To the knowledge of the holder, or the servicer acting on the holder's behalf,  
10 whether in the two years preceding the date of the statement any requests for  
11 information have been made by the borrower to the servicer pursuant to G.S.  
12 45-93 and, if so, whether such requests have been complied with. If the time  
13 limits set forth in G.S. 45-93 for complying with any such requests for  
14 information have not yet expired as of the date of the notice, the notice shall  
15 so state. If the holder is not giving the notice, the holder shall confirm in  
16 writing to the person giving the notice the information required by this  
17 subsection to be stated in the notice.

18 (6) Repealed by Session Laws 1977, c. 359, s. 7.

19 (7) The right of the debtor (or other party served) to appear before the clerk of  
20 court at a time and on a date specified, at which appearance he shall be  
21 afforded the opportunity to show cause as to why the foreclosure should not  
22 be allowed to be held. The notice shall contain all of the following:

23 a. A statement that if the debtor does not intend to contest the creditor's  
24 allegations of default, the debtor does not have to appear at the  
25 hearing and that the debtor's failure to attend the hearing will not  
26 affect the debtor's right to pay the indebtedness and thereby prevent  
27 the proposed sale, or to attend the actual sale, should the debtor elect  
28 to do so.

29 b. A statement that the trustee, or substitute trustee, is a neutral party  
30 and, while holding that position in the foreclosure proceeding, may  
31 not advocate for the secured creditor or for the debtor in the  
32 foreclosure proceeding.

33 c. A statement that the debtor has the right to apply to a judge of the  
34 superior court pursuant to G.S. 45-21.34 to enjoin the sale, upon any  
35 legal or equitable ground that the court may deem sufficient prior to  
36 the time that the rights of the parties to the sale or resale become  
37 fixed, provided that the debtor complies with the requirements of  
38 G.S. 45-21.34.

39 d. A statement that the debtor has the right to appear at the hearing and  
40 contest the evidence that the clerk is to consider under G.S.  
41 45-21.16(d), and that to authorize the foreclosure the clerk must find  
42 the existence of: (i) valid debt of which the party seeking to foreclose  
43 is the holder, (ii) default, (iii) right to foreclose under the instrument,  
44 and (iv) notice to those entitled to notice.

45 e. A statement that if the debtor fails to appear at the hearing, the  
46 trustee will ask the clerk for an order to sell the real property being  
47 foreclosed.

48 f. A statement that the debtor has the right to seek the advice of an  
49 attorney and that free legal services may be available to the debtor by  
50 contacting Legal Aid of North Carolina or other legal services  
51 organizations.

- 1 (8) That if the foreclosure sale is consummated, the purchaser will be entitled to  
2 possession of the real estate as of the date of delivery of his deed, and that  
3 the debtor, if still in possession, can then be evicted.  
4 (8a) The name, address, and telephone number of the trustee or mortgagee.  
5 (9) That the debtor should keep the trustee or mortgagee notified in writing of  
6 his address so that he can be mailed copies of the notice of foreclosure  
7 setting forth the terms under which the sale will be held, and notice of any  
8 postponements or resales.  
9 (10) If the notice of hearing is intended to serve also as a notice of sale, such  
10 additional information as is set forth in G.S. 45-21.16A.  
11 (11) That the hearing may be held on a date later than that stated in the notice and  
12 that the party will be notified of any change in the hearing date.  
13 (12) That if the debtor is currently on military duty the foreclosure may be  
14 prohibited by G.S. 45-21.12A.

15 (c1) The person giving the notice of hearing, if other than the holder, may rely on the  
16 written confirmation received from the holder under subdivisions (c)(5a) and (c)(5b) of this  
17 section and is not liable for inaccuracies in the written confirmation.

18 (c2) **(Expires May 31, 2013)** In any foreclosure filed on or after November 1, 2010,  
19 where the underlying mortgage debt is a home loan as defined in G.S. 45-101(1b), the notice  
20 required by subsection (b) of this section shall contain a certification by the filing party that the  
21 pre-foreclosure notice and information required by G.S. 45-102 and G.S. 45-103 were provided  
22 in all material respects and that the periods of time established by Article 11 of this Chapter  
23 have elapsed.

24 (d) **(Effective until May 31, 2013)** The hearing provided by this section shall be held  
25 before the clerk of court in the county where the land, or any portion thereof, is situated. In the  
26 event that the property to be sold consists of separate tracts situated in different counties or a  
27 single tract in more than one county, only one hearing shall be necessary. However, prior to  
28 that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where  
29 any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the  
30 evidence of the parties and may consider, in addition to other forms of evidence required or  
31 permitted by law, affidavits and certified copies of documents. If the clerk finds the existence  
32 of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to  
33 foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), (v)  
34 that the underlying mortgage debt is not a home loan as defined in G.S. 45-101(1b), or if the  
35 loan is a home loan under G.S. 45-101(1b), that the pre-foreclosure notice under G.S. 45-102  
36 was provided in all material respects, and that the periods of time established by Article 11 of  
37 this Chapter have elapsed, and (vi) that the sale is not barred by G.S. 45-21.12A, then the clerk  
38 shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or  
39 trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A  
40 certified copy of any authorization or order by the clerk shall be filed in any other county where  
41 any portion of the property to be sold is located before the mortgagee or trustee may proceed to  
42 advertise and sell any property located in that county. In the event that sales are to be held in  
43 more than one county, the provisions of G.S. 45-21.7 apply.

44 (d) **(Effective May 31, 2013)** The hearing provided by this section shall be held before  
45 the clerk of court in the county where the land, or any portion thereof, is situated. In the event  
46 that the property to be sold consists of separate tracts situated in different counties or a single  
47 tract in more than one county, only one hearing shall be necessary. However, prior to that  
48 hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any  
49 portion of the property to be sold is located. Upon such hearing, the clerk shall consider the  
50 evidence of the parties and may consider, in addition to other forms of evidence required or  
51 permitted by law, affidavits and certified copies of documents. If the clerk finds the existence

1 of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to  
2 foreclose under the instrument, and (iv) notice to those entitled to such under subsection (b),  
3 and (v) that the sale is not barred by G.S. 45-21.12A, and (vi) that the sale is not barred by G.S.  
4 45-21.12A, then the clerk shall authorize the mortgagee or trustee to proceed under the  
5 instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the  
6 provisions of this Article. A certified copy of any authorization or order by the clerk shall be  
7 filed in any other county where any portion of the property to be sold is located before the  
8 mortgagee or trustee may proceed to advertise and sell any property located in that county. In  
9 the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7  
10 apply.

11 (d1) The act of the clerk in so finding or refusing to so find is a judicial act and may be  
12 appealed to the judge of the district or superior court having jurisdiction at any time within 10  
13 days after said act. Appeals from said act of the clerk shall be heard de novo. If an appeal is  
14 taken from the clerk's findings, the appealing party shall post a bond with sufficient surety as  
15 the clerk deems adequate to protect the opposing party from any probable loss by reason of  
16 appeal; and upon posting of the bond the clerk shall stay the foreclosure pending appeal. If the  
17 appealing party owns and occupies the property to be sold as his or her principal residence, the  
18 clerk shall require a bond in the amount of one percent (1%) of the principal balance due on the  
19 note or debt instrument, provided that the clerk, in the clerk's discretion, may require a lesser  
20 amount in cases of undue hardship or for other good cause shown; and further provided that the  
21 clerk, in the clerk's discretion, may require a higher bond if there is a likelihood of waste or  
22 damage to the property during the pendency of the appeal or for other good cause shown.

23 (e) In the event of an appeal, either party may demand that the matter be heard at the  
24 next succeeding term of the court to which the appeal is taken which convenes 10 or more days  
25 after the hearing before the clerk, and such hearing shall take precedence over the trial of other  
26 cases except cases of exceptions to homesteads and appeals in summary ejectment actions,  
27 provided the presiding judge may in his discretion postpone such hearing if the rights of the  
28 parties or the public in any other pending case require that such case be heard first. In those  
29 counties where no session of court is scheduled within 30 days from the date of hearing before  
30 the clerk, either party may petition any regular or special superior court judge resident in a  
31 district or assigned to hold courts in a district where any part of the real estate is located, or the  
32 chief district judge of a district where any part of the real estate is located, who shall be  
33 authorized to hear the appeal. A certified copy of any order entered as a result of the appeal  
34 shall be filed in all counties where the notice of hearing has been filed.

35 (f) Waiver of the right to notice and hearing provided herein shall not be permitted  
36 except as set forth herein. In any case in which the original principal amount of indebtedness  
37 secured was one hundred thousand dollars (\$100,000), or more, any person entitled to notice  
38 and hearing may waive after default the right to notice and hearing by written instrument  
39 signed and duly acknowledged by such party. In all other cases, at any time subsequent to  
40 service of the notice of hearing provided above, the clerk, upon the request of the mortgagee or  
41 trustee, shall mail to all other parties entitled to notice of such hearing a form by which such  
42 parties may waive their rights to the hearing. Upon the return of the forms to the clerk bearing  
43 the signatures of each such party and that of a witness to each such party's signature (which  
44 witness shall not be an agent or employee of the mortgagee or trustee), the clerk in his  
45 discretion may dispense with the necessity of a hearing and proceed to issue the order  
46 authorizing sale as set forth above.

47 (g) Any notice, order, or other papers required by this Article to be filed in the office of  
48 the clerk of superior court shall be filed in the same manner as a special proceeding. (1975, c.  
49 492, s. 2; 1977, c. 359, ss. 2-10; 1983, c. 335, s. 1; 1983 (Reg. Sess., 1984), c. 1108, ss. 1, 2;  
50 1993, c. 305, s. 8; 1995, c. 509, s. 135.1(g); 1999-137, ss. 1, 2; 2007-351, s. 4; 2008-226, ss. 2,  
51 3; 2009-573, s. 2; 2010-168, ss. 2, 3, 9; 2010-190, ss. 2, 3.)

1  
2 **§ 45-21.16A. Contents of notice of sale.**

3 (a) Except as provided in subsection (b) of this section, the notice of sale shall include  
4 all of the following:

- 5 (1) Describe the instrument pursuant to which the sale is held, by identifying the  
6 original mortgagors and recording data. If the record owner is different from  
7 the original mortgagors, the notice shall also list the record owner of the  
8 property, as reflected on the records of the register of deeds not more than 10  
9 days prior to posting the notice. The notice may also reflect the owner not  
10 reflected on the records if known.
- 11 (2) Designate the date, hour and place of sale consistent with the provisions of  
12 the instrument and this Article.
- 13 (3) Describe the real property to be sold in a manner that is reasonably  
14 calculated to inform the public as to what is being sold. The description may  
15 be in general terms and may incorporate by reference the description used in  
16 the instrument containing the power of sale. Any property described in the  
17 instrument containing the power of sale which is not being offered for sale  
18 should also be described in a manner to enable prospective purchasers to  
19 determine what is and what is not being offered for sale.
- 20 (4) Repealed by Session Laws 1967, c. 562, s. 2.
- 21 (5) State the terms of the sale provided for by the instrument pursuant to which  
22 the sale is held, including the amount of the cash deposit, if any, to be made  
23 by the highest bidder at the sale.
- 24 (6) Include any other provisions required by the instrument to be included.
- 25 (7) State that the property will be sold subject to taxes and special assessments if  
26 it is to be so sold.
- 27 (8) State whether the property is being sold subject to or together with any  
28 subordinate rights or interests provided those rights and interests are  
29 sufficiently identified.

30 (b) In addition to the requirements contained in subsection (a) of this section, the notice  
31 of sale of residential real property with less than 15 rental units shall also state all of the  
32 following:

- 33 (1) That an order for possession of the property may be issued pursuant to G.S.  
34 45-21.29 in favor of the purchaser and against the party or parties in  
35 possession by the clerk of superior court of the county in which the property  
36 is sold.
- 37 (2) Any person who occupies the property pursuant to a rental agreement  
38 entered into or renewed on or after October 1, 2007, may, after receiving the  
39 notice of sale, terminate the rental agreement upon 10 days' written notice to  
40 the landlord. The notice shall also state that upon termination of a rental  
41 agreement, the tenant is liable for rent due under the rental agreement  
42 prorated to the effective date of the termination. (1949, c. 720, s. 1; 1951, c.  
43 252, s. 1; 1967, c. 562, s. 2; 1975, c. 492, s. 1; 1987, c. 493; 1993, c. 305, s.  
44 9; 2007-353, s. 1.)

45  
46 **§ 45-21.16B. Suspension of foreclosure proceedings.**

47 (a) The Clerk of Superior Court shall suspend foreclosure proceedings, including any  
48 hearing or order for sale, for 60 days if notified by the Commissioner of Banks as provided in  
49 G.S. 53-243.12(n). During the suspension period, all deadlines under this Article are tolled.

50 (b) When a clerk enters a suspension order pursuant to subsection (a) of this section  
51 prior to a hearing required under G.S. 45-21.16, upon completion of the 60-day suspension

1 period, the trustee or mortgagee may proceed with the hearing by providing written notice to all  
2 parties of the new hearing date, not less than 10 days prior to the hearing date.

3 (c) When a clerk enters a suspension order pursuant to subsection (a) of this section,  
4 after entry of any authorization by the clerk pursuant to G.S. 45-21.16 and before the expiration  
5 of the 10-day upset bid period, the trustee or mortgagee shall not be required to comply with  
6 the provisions of G.S. 45-21.16, but shall advertise and hold the sale in accordance with G.S.  
7 45-21.16A, 45-21.17, and 45-21.17A. (2008-228, s. 18.)  
8

9 **§ 45-21.16C. Opportunity for parties to resolve foreclosure of owner-occupied residential**  
10 **property.**

11 (a) At the commencement of the hearing, the clerk shall inquire as to whether the  
12 debtor occupies the real property at issue as his or her principal residence. If it appears that the  
13 debtor does currently occupy the property as a principal residence, the clerk shall further  
14 inquire as to the efforts the mortgagee, trustee, or loan servicer has made to communicate with  
15 the debtor and to attempt to resolve the matter voluntarily before the foreclosure proceeding.  
16 The clerk's inquiry shall not be required if the mortgagee or trustee has submitted, at or before  
17 the hearing, an affidavit briefly describing any efforts that have been made to resolve the  
18 default with the debtor and the results of any such efforts.

19 (b) The clerk shall order the hearing continued if the clerk finds that there is good cause  
20 to believe that additional time or additional measures have a reasonable likelihood of resolving  
21 the delinquency without foreclosure. In determining whether to continue the hearing, the clerk  
22 may consider (i) whether the mortgagee, trustee, or loan servicer has offered the debtor an  
23 opportunity to resolve the foreclosure through forbearance, loan modification, or other  
24 commonly accepted resolution plan appropriate under the circumstances, (ii) whether the  
25 mortgagee, trustee, or loan servicer has engaged in actual responsive communication with the  
26 debtor, including telephone conferences or in-person meetings with the debtor or other actual  
27 two-party communications, (iii) whether the debtor has indicated that he or she has the intent  
28 and ability to resolve the delinquency by making future payments under a foreclosure  
29 resolution plan, and (iv) whether the initiation or continuance of good faith voluntary resolution  
30 efforts between the parties may resolve the matter without a foreclosure sale. Where good  
31 cause exists to continue the hearing, the clerk shall order the hearing continued to a date and  
32 time certain not more than 60 days from the date scheduled for the original hearing. Nothing in  
33 this part shall limit the authority of the clerk to continue a hearing for other good cause shown.  
34 (2009-573, s. 3.)  
35

36 **§ 45-21.17. Posting and publishing notice of sale of real property.**

37 In addition to complying with such provisions with respect to posting or publishing notice  
38 of sale as are contained in the security instrument,

- 39 (1) Notice of sale of real property shall
- 40 a. Be posted, in the area designated by the clerk of superior court for  
41 posting public notices in the county in which the property is situated,  
42 at least 20 days immediately preceding the sale.
  - 43 b. And in addition thereto,
    - 44 1. The notice shall be published once a week for at least two  
45 successive weeks in a newspaper published and qualified for  
46 legal advertising in the county in which the property is  
47 situated.
    - 48 2. If no such newspaper is published in the county, then notice  
49 shall be published once a week for at least two successive  
50 weeks in a newspaper having a general circulation in the  
51 county.



1 (mortgagor), in which \_\_\_\_\_ is named as beneficiary (mortgagee), and \_\_\_\_\_ as  
2 trustee, be mailed to \_\_\_\_\_ at the following address: \_\_\_\_\_.

3 Signature: \_\_\_\_\_

4 [Acknowledgement]

5 (b) Register of Deeds' Duties. – Upon the filing for record of such request, the register  
6 of deeds shall index in the general index of grantors the names of the trustors (mortgagors)  
7 recited therein, and the names of the persons requesting copies, with a reference in the index of  
8 the book and page of the recorded security instrument to which the request refers; or upon the  
9 filing for record of such request, the register of deeds may, instead of indexing such request on  
10 the general index of grantors, stamp upon the face of the security instrument referred to in the  
11 request the book and page of each request for notice thereunder.

12 (c) Mailing Notice. – The mortgagee, trustee, or other person authorized to conduct the  
13 sale shall at least 20 days prior to the date of the sale cause to be deposited in the United States  
14 mail an envelope with postage prepaid containing a copy of the notice of sale, addressed to  
15 each person whose name and address are set forth in the Request for Notice, and directed to the  
16 address designated in such request.

17 (d) Effect of Request on Title. – No request for a copy of any notice filed pursuant to  
18 this section nor any statement or allegation in any such request nor any record thereof shall  
19 affect the title to real property, or be deemed notice to any person that the person requesting  
20 copies of notice has any claim or any right, title or interest in, or lien or charge upon, the  
21 property described in the deed of trust or mortgage referred to therein.

22 (e) Evidence of Compliance. – The affidavit of the mortgagee, trustee, or other person  
23 authorized to conduct the sale that copies of the notice of sale have been mailed to all parties  
24 filing requests for the same hereunder shall be deemed prima facie true. If on hearing it is  
25 proven that a party seeking to have the foreclosure sale set aside or seeking damages resulting  
26 from the foreclosure sale was mailed notice in accordance with this section or had actual notice  
27 of the sale before it was held (or if a resale was involved, prior to the date of the last resale),  
28 then the party shall not prevail. Costs, expenses, and reasonable attorneys' fees incurred by the  
29 prevailing party in any action to set aside the foreclosure sale or for damages resulting from the  
30 foreclosure sale shall be allowed as of course to the prevailing party.

31 (f) Action to Set Foreclosure Sale Aside for Failure to Comply. – A person entitled to  
32 notice of sale by virtue of this section shall not bring any action to set the sale aside on grounds  
33 that he was not mailed the notice of sale unless such action is brought prior to the filing of the  
34 final report and account as provided in G.S. 45-21.33, if the property was purchased by  
35 someone other than the secured party; or if brought by the secured party, unless such action is  
36 brought within six months of the date of such filing and prior to the time the secured party sells  
37 the property to a bona fide purchaser for value, if the property was purchased by the secured  
38 party. In either event, the party bringing such an action shall also tender an amount exceeding  
39 the reported sale price or the amount of the secured party's interest in the property, including all  
40 expenses and accrued interest, whichever is greater. Such tender shall be irrevocable pending  
41 final adjudication of the action.

42 (g) Action for Damages from Foreclosure Sale for Failure to Comply. – A person  
43 entitled to notice of sale by virtue of this section shall not bring any action for damages  
44 resulting from the sale on grounds that he was not mailed the notice unless such action is  
45 brought within six months of the date of the filing of the final report and account as provided in  
46 G.S. 45-21.33. The party bringing such an action shall also deposit with the clerk a cash or  
47 surety bond approved by the clerk and in such amount as the clerk deems adequate to secure  
48 the party defending the action for such costs, expenses, and reasonable attorneys' fees to be  
49 incurred in the action. (1993, c. 305, s. 11; 1999-456, s. 59; 2011-246, s. 2.)

50  
51 **§§ 45-21.18 through 45-21.19. Repealed by Session Laws 1967, c. 562, s. 2.**

1  
2 **§ 45-21.20. Satisfaction of debt after publishing or posting notice, but before completion**  
3 **of sale.**

4 A power of sale is terminated if, prior to the time fixed for a sale, or prior to the expiration  
5 of the time for submitting any upset bid after a sale or resale has been held, payment is made or  
6 tendered of –

- 7 (1) The obligation secured by the mortgage or deed of trust, and  
8 (2) The expenses incurred with respect to the sale or proposed sale, which in the  
9 case of a deed of trust also include compensation for the trustee's services  
10 under the conditions set forth in G.S. 45-21.15. (1949, c. 720, s. 1; 1967, c.  
11 562, s. 2.)  
12

13 **§ 45-21.21. Postponement of sale.**

14 (a) Any person exercising a power of sale may postpone the sale to a day certain not  
15 later than 90 days, exclusive of Sunday, after the original date for the sale –

- 16 (1) When there are no bidders, or  
17 (2) When, in his judgment, the number of prospective bidders at the sale is  
18 substantially decreased by inclement weather or by any casualty, or  
19 (3) When there are so many other sales advertised to be held at the same time  
20 and place as to make it inexpedient and impracticable, in his judgment, to  
21 hold the sale on that day, or  
22 (4) When he is unable to hold the sale because of illness or for other good  
23 reason, or  
24 (5) When other good cause exists.

25 The person exercising a power of sale may postpone the sale more than once whenever any of  
26 the above conditions are met, so long as the sale is held not later than 90 days after the original  
27 date for the sale.

28 (b) Upon postponement of a sale, the person exercising the power of sale shall  
29 personally, or through his agent or attorney –

- 30 (1) At the time and place advertised for the sale, publicly announce the  
31 postponement thereof;  
32 (2) On the same day, attach to or enter on the original notice of sale or a copy  
33 thereof, posted at the courthouse door, as provided by G.S. 45-21.17, a  
34 notice of the postponement; and  
35 (3) Give written or oral notice of postponement to each party entitled to notice  
36 of sale under G.S. 45-21.17.

37 (c) The posted notice of postponement shall –

- 38 (1) State that the sale is postponed,  
39 (2) State the hour and date to which the sale is postponed,  
40 (3) State the reason for the postponement, and  
41 (4) Be signed by the person authorized to hold the sale, or by his agent or  
42 attorney.

43 (d) If a sale is not held at the time fixed therefor and is not postponed as provided by  
44 this section, or if a postponed sale is not held at the time fixed therefor or within 90 days of the  
45 date originally fixed for the sale, then prior to such sale taking place the provisions of G.S.  
46 45-21.16 need not be complied with but the provisions of G.S. 45-21.16A, 45-21.17, and  
47 45-21.17A shall be again complied with, or if on appeal, the appellate court orders the sale to  
48 be held, as to such sale so authorized the provisions of G.S. 45-21.16 need not be complied  
49 with again but those of G.S. 45-21.16A, 45-21.17, and 45-21.17A shall be.

50 (e) A sale may be postponed more than once provided the final postponed sale date is  
51 not later than 90 days, exclusive of Sunday and legal holidays when the courthouse is closed

1 for transactions, after the original date for the sale. (1949, c. 720, s. 1; 1967, c. 562, s. 2; 1975,  
2 c. 492, ss. 4-6; 1983, c. 335, s. 2; 1989, c. 257; 1991 (Reg. Sess., 1992), c. 777, s. 1; 1993, c.  
3 305, s. 12; 1995, c. 509, s. 25; 2003-337, s. 3.)  
4

5 **§ 45-21.22. Procedure upon dissolution of order restraining or enjoining sale, or upon**  
6 **debtor's bankruptcy before completion of sale.**

7 (a) When, before the date fixed for a sale, a judge dissolves an order restraining or  
8 enjoining the sale, he may, if the required notice of sale has been given, provide by order that  
9 the sale shall be held without additional notice at the time and place originally fixed therefor, or  
10 he may, in his discretion, make an order with respect thereto as provided in subsection (b).

11 (b) When, after the date fixed for a sale, a judge dissolves an order restraining or  
12 enjoining the sale, he shall by order fix the time and place for the sale to be held upon notice to  
13 be given in such manner and for such length of time as he deems advisable.

14 (c) When, after the entry of any authorization or order by the clerk of superior court  
15 pursuant to G.S. 45-21.16 and before the expiration of the 10-day upset bid period, the  
16 foreclosure sale is stayed pursuant to 11 U.S.C. § 105 or 362, and thereafter the stay is lifted,  
17 terminated, or dissolved, the trustee or mortgagee shall not be required to comply with the  
18 provisions of G.S. 45-21.16, but shall advertise and hold the sale in accordance with the  
19 provisions of G.S. 45-21.16A, 45-21.17, and 45-21.17A.

20 (d) In the event that completion of the foreclosure sale is stayed pursuant to 11 U.S.C. §  
21 105 or 362, before the expiration of the 10-day upset bid period:

22 (1) The clerk of superior court who received a deposit from an upset bidder shall  
23 release any deposits held on behalf of the upset bidder to the upset bidder  
24 upon receipt of a certified copy of an order or notice from the bankruptcy  
25 court indicating that the debtor has filed a bankruptcy petition; or

26 (2) The trustee or mortgagee who received a cash deposit from the high bidder  
27 at the foreclosure sale, upon notification of the bankruptcy stay, shall release  
28 any deposits held on behalf of the high bidder to the high bidder. (1949, c.  
29 720, s. 1; 1993, c. 305, s. 13; 2011-204, s. 1.)  
30

31 **§ 45-21.23. Time of sale.**

32 A sale shall begin at the time designated in the notice of sale or as soon thereafter as  
33 practicable, but not later than one hour after the time fixed therefor unless it is delayed by other  
34 sales held at the same place. The sale shall be held between the hours of 10:00 A.M. and 4:00  
35 P.M. on any day other than Sunday or a legal holiday when the courthouse is closed for  
36 transactions. (1949, c. 720, s. 1; 1993, c. 305, s. 14; 2003-337, s. 4.)  
37

38 **§ 45-21.24. Continuance of uncompleted sale.**

39 A sale commenced but not completed within the time allowed by G.S. 45-21.23 shall be  
40 continued by the person holding the sale to a designated time between 10:00 o'clock A.M. and  
41 4:00 o'clock P.M. the next following day, other than Sunday or a legal holiday when the  
42 courthouse is closed for transactions. In case such continuance becomes necessary, the person  
43 holding the sale shall publicly announce the time to which the sale is continued. (1949, c. 720,  
44 s. 1; 1993, c. 305, s. 15; 2003-337, s. 5.)  
45

46 **§ 45-21.25. Repealed by Session Laws 1967, c. 562, s. 2.**

47 **§ 45-21.26. Preliminary report of sale of real property.**

48 (a) The person exercising a power of sale of real property, shall, within five days after  
49 the date of the sale, file a report thereof with the clerk of the superior court of the county in  
50 which the sale was had.  
51

1 (b) The report shall be signed by the person authorized to hold the sale, or by his agent  
2 or attorney, and shall show –

- 3 (1) The authority under which the person making the sale acted;
- 4 (2) The name of the mortgagor or grantor;
- 5 (3) The name of the mortgagee or trustee;
- 6 (4) The date, time and place of the sale;
- 7 (5) A reference to the book and page in the office of the register of deeds, where  
8 the instrument is recorded or, if not recorded, a description of the property  
9 sold, sufficient to identify it, and, if sold in parts, a description of each part  
10 so sold;
- 11 (6) The name or names of the person or persons to whom the property was sold;
- 12 (7) The price at which the property, or each part thereof, was sold, and that such  
13 price was the highest bid therefor;
- 14 (8) The name of the person making the report; and
- 15 (9) The date of the report. (1949, c. 720, s. 1; 1951, c. 252, s. 2.)

16  
17 **§ 45-21.27. Upset bid on real property; compliance bonds.**

18 (a) An upset bid is an advanced, increased, or raised bid whereby any person offers to  
19 purchase real property theretofore sold, for an amount exceeding the reported sale price or last  
20 upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum  
21 increase of seven hundred fifty dollars (\$750.00). Subject to the provisions of subsection (b) of  
22 this section, an upset bid shall be made by delivering to the clerk of superior court, with whom  
23 the report of sale or last notice of upset bid was filed, a deposit in cash or by certified check or  
24 cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%)  
25 of the amount of the upset bid but in no event less than seven hundred fifty dollars (\$750.00).  
26 The deposit required by this section shall be filed with the clerk of the superior court, with  
27 whom the report of the sale or the last notice of upset bid was filed by the close of normal  
28 business hours on the tenth day after the filing of the report of the sale or the last notice of upset  
29 bid, and if the tenth day shall fall upon a Sunday or legal holiday when the courthouse is closed  
30 for transactions, or upon a day in which the office of the clerk is not open for the regular  
31 dispatch of its business, the deposit may be made and the notice of upset bid filed on the day  
32 following when said office is open for the regular dispatch of its business. Subject to the  
33 provisions of G.S. 45-21.30, there shall be no resales; rather, there may be successive upset  
34 bids each of which shall be followed by a period of 10 days for a further upset bid. When an  
35 upset bid is not filed following a sale, resale, or prior upset bid within the time specified, the  
36 rights of the parties to the sale or resale become fixed.

37 (b) The clerk of the superior court may require an upset bidder or the highest bidder at a  
38 resale held pursuant to G.S. 45-21.30 also to deposit with the clerk a cash bond, or, in lieu  
39 thereof at the option of the bidder, a surety bond, approved by the clerk. The compliance bond  
40 shall be in such amount as the clerk deems adequate, but in no case greater than the amount of  
41 the bid of the person being required to furnish the bond, less the amount of any required  
42 deposit. The compliance bond shall be payable to the State of North Carolina for the use of the  
43 parties in interest and shall be conditioned on the principal obligor's compliance with the bid.

44 (c), (d) Repealed by Session Laws 1993, c. 305, s. 16.

45 (e) At the same time that an upset bid on real property is submitted to the court as  
46 provided for in subsection (a) above, together with a compliance bond if one is required, the  
47 upset bidder shall simultaneously file with the clerk a notice of upset bid. The notice of upset  
48 bid shall:

- 49 (1) State the name, address, and telephone number of the upset bidder;
- 50 (2) Specify the amount of the upset bid;

1 (3) Provide that the sale shall remain open for a period of 10 days after the date  
2 on which the notice of upset bid is filed for the filing of additional upset bids  
3 as permitted by law; and

4 (4) Be signed by the upset bidder or the attorney or the agent of the upset bidder.

5 (e1) When an upset bid is made as provided in this section, the clerk shall notify the  
6 trustee or mortgagee who shall thereafter mail a written notice of upset bid by first-class mail to  
7 the last known address of the last prior bidder and the current record owner(s) of the property.

8 (f) When an upset bid is made as provided in this section, the last prior bidder,  
9 regardless of how the bid was made, shall be released from any further obligation on account of  
10 the bid and any deposit or bond provided by him shall be released.

11 (g) Any person offering to purchase real property by upset bid as permitted in this  
12 Article shall be subject to and bound by the terms of the original notice of sale except as  
13 modified by court order or the provisions of this Article.

14 (h) The clerk of superior court shall make all such orders as may be just and necessary  
15 to safeguard the interests of all parties, and shall have the authority to fix and determine all  
16 necessary procedural details with respect to upset bids in all instances in which this Article fails  
17 to make definite provisions as to that procedure. (1949, c. 720, s. 1; 1963, c. 377; 1967, c. 979,  
18 s. 3; 1993, c. 305, s. 16; 2003-337, s. 6.)  
19

20 **§ 45-21.28: Repealed by Session Laws 1993, c. 305, s. 17.**

21  
22 **§ 45-21.29. Orders for possession.**

23 (a)-(j) Repealed by Session Laws 1993, c. 305, s. 18.

24 (k) Orders for possession of real property sold pursuant to this Article, in favor of the  
25 purchaser and against any party or parties in possession at the time of application therefor, may  
26 be issued by the clerk of the superior court of the county in which the property is sold if all of  
27 the following apply:

28 (1) The property has been sold in the exercise of the power of sale contained in  
29 any mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, or a  
30 power of sale authorized by any other statutory provisions.

31 (2) Repealed by Session Laws 1993, c. 305, s. 18.

32 (2a) The provisions of this Article have been complied with.

33 (3) The sale has been consummated, and the purchase price has been paid.

34 (4) The purchaser has acquired title to and is entitled to possession of the real  
35 property sold.

36 (5) Ten days' notice has been given to the party or parties who remain in  
37 possession at the time application is made, or, in the case of residential  
38 property containing 15 or more rental units, 30 days' notice has been given to  
39 the party or parties who remain in possession at the time the application is  
40 made.

41 (6) Application is made by petition to the clerk by the mortgagee, the trustee,  
42 the purchaser of the property, or any authorized representative of the  
43 mortgagee, trustee, or purchaser of the property.

44 (l) An order for possession issued pursuant to G.S. 45-21.29(k) shall be directed to the  
45 sheriff and shall authorize the sheriff to remove all occupants and their personal property from  
46 the premises and to put the purchaser in possession, and shall be executed in accordance with  
47 the procedure for executing a writ or order for possession in a summary ejectment proceeding  
48 under G.S. 42-36.2. The purchaser shall have the same rights and remedies in connection with  
49 the execution of an order for possession and the disposition of personal property following  
50 execution as are provided to a landlord under North Carolina law, including Chapters 42 and  
51 44A of the General Statutes.

1 (m) When the real property sold is situated in more than one county, the provisions of  
2 subsection (l) of this section shall be complied with in each county in which any part of the  
3 property is situated. (1949, c. 720, s. 1; 1951, c. 252, s. 3; 1965, c. 299; 1967, c. 979, s. 3; 1975,  
4 c. 492, ss. 7-9; 1987, c. 627, s. 3; 1993, c. 305, s. 18; 2007-353, s. 4.)  
5

6 **§ 45-21.29A. No necessity for confirmation of sale.**

7 No confirmation of sales or resales of real property made pursuant to this Article shall be  
8 required. If an upset bid is not filed following a sale, resale, or prior upset bid within the period  
9 specified in this Article, the rights of the parties to the sale or resale become fixed. (1967, c.  
10 979, s. 3; 1993, c. 305, s. 19.)  
11

12 **§ 45-21.30. Failure of bidder to make cash deposit or to comply with bid; resale.**

13 (a) If the terms of a sale of real property require the highest bidder to make a cash  
14 deposit at the sale, and he fails to make such required deposit, the person holding the sale shall  
15 at the same time and place again offer the property for sale.

16 (b) Repealed by Session Laws 1967, c. 562, s. 2.

17 (c) When the highest bidder at a sale or resale or any upset bidder fails to comply with  
18 his bid upon tender to him of a deed for the real property or after a bona fide attempt to tender  
19 such a deed, the clerk of superior court may, upon motion, enter an order authorizing a resale of  
20 the real property. The procedure for such resale shall be the same in every respect as is  
21 provided by this Article in the case of an original sale of real property except that the  
22 provisions of G.S. 45-21.16 are not applicable to the resale.

23 (d) A defaulting bidder at any sale or resale or any defaulting upset bidder is liable on  
24 his bid, and in case a resale is had because of such default, he shall remain liable to the extent  
25 that the final sale price is less than his bid plus all the costs of the resale. Any deposit or  
26 compliance bond made by the defaulting bidder shall secure payment of the amount, if any, for  
27 which the defaulting bidder remains liable under this section.

28 (e) Nothing in this section deprives any person of any other remedy against the  
29 defaulting bidder. (1949, c. 720, s. 1; 1967, c. 562, s. 2; 1975, c. 492, s. 10; 1977, c. 359, s. 15;  
30 1993, c. 305, s. 20.)  
31

32 **§ 45-21.31. Disposition of proceeds of sale; payment of surplus to clerk.**

33 (a) The proceeds of any sale shall be applied by the person making the sale, in the  
34 following order, to the payment of –

- 35 (1) Costs and expenses of the sale, including the trustee's commission, if any,  
36 and a reasonable auctioneer's fee if such expense has been incurred;
- 37 (2) Taxes due and unpaid on the property sold, as provided by G.S. 105-385,  
38 unless the notice of sale provided that the property be sold subject to taxes  
39 thereon and the property was so sold;
- 40 (3) Special assessments, or any installments thereof, against the property sold,  
41 which are due and unpaid, as provided by G.S. 105-385, unless the notice of  
42 sale provided that the property be sold subject to special assessments thereon  
43 and the property was so sold;
- 44 (4) The obligation secured by the mortgage, deed of trust or conditional sale  
45 contract.

46 (b) Any surplus remaining after the application of the proceeds of the sale as set out in  
47 subsection (a) shall be paid to the person or persons entitled thereto, if the person who made the  
48 sale knows who is entitled thereto. Otherwise, the surplus shall be paid to the clerk of the  
49 superior court of the county where the sale was had–

- 50 (1) In all cases when the owner of the property sold is dead and there is no  
51 qualified and acting personal representative of his estate, and

- 1 (2) In all cases when he is unable to locate the persons entitled thereto, and
- 2 (3) In all cases when the mortgagee, trustee or vendor is, for any cause, in doubt
- 3 as to who is entitled to such surplus money, and
- 4 (4) In all cases when adverse claims thereto are asserted.

5 (c) Such payment to the clerk discharges the mortgagee, trustee or vendor from liability  
6 to the extent of the amount so paid.

7 (d) The clerk shall receive such money from the mortgagee, trustee or vendor and shall  
8 execute a receipt therefor.

9 (e) The clerk is liable on his official bond for the safekeeping of money so received  
10 until it is paid to the party or parties entitled thereto, or until it is paid out under the order of a  
11 court of competent jurisdiction. (1949, c. 720, s. 1; 1951, c. 252, s. 1; 1967, c. 562, s. 2; 1981,  
12 c. 682, s. 10.)

13  
14 **§ 45-21.32. Special proceeding to determine ownership of surplus.**

15 (a) A special proceeding may be instituted before the clerk of the superior court by any  
16 person claiming any money, or part thereof, paid into the clerk's office under G.S. 45-21.31, to  
17 determine who is entitled thereto.

18 (b) All other persons who have filed with the clerk notice of their claim to the money or  
19 any part thereof, or who, as far as the petitioner or petitioners know, assert any claim to the  
20 money or any part thereof, shall be made defendants in the proceeding.

21 (c) If any answer is filed raising issues of fact as to the ownership of the money, the  
22 proceeding shall be transferred to the civil issue docket of the superior court for trial. When a  
23 proceeding is so transferred, the clerk may require any party to the proceeding who asserts a  
24 claim to the fund by petition or answer to furnish a bond for costs in the amount of two hundred  
25 dollars (\$200.00) or otherwise comply with the provisions of G.S. 1-109.

26 (d) The court may, in its discretion, allow a reasonable attorney's fee for any attorney  
27 appearing in behalf of the party or parties who prevail, to be paid out of the funds in  
28 controversy, and shall tax all costs against the losing party or parties who asserted a claim to  
29 the fund by petition or answer. (1949, c. 720, s. 1.)

30  
31 **§ 45-21.33. Final report of sale of real property.**

32 (a) A person who holds a sale of real property pursuant to a power of sale shall file with  
33 the clerk of the superior court of the county where the sale is held a final report and account of  
34 his receipts and disbursements within 30 days after the receipt of the proceeds of such sale.  
35 Such report shall show whether the property was sold as a whole or in parts and whether all of  
36 the property was sold. The report shall also show whether all or only a part of the obligation  
37 was satisfied with respect to which the power of sale of property was exercised.

38 (b) The clerk shall audit the account and record it.

39 (c) The person who holds the sale shall also file with the clerk –

- 40 (1) A copy of the notices of sale and resale, if any, which were posted, and
- 41 (2) A copy of the notices of sale and resale, if any, which were published in a  
42 newspaper, together with an affidavit of publication thereof, if the notices  
43 were so published;
- 44 (3) Proof as required by the clerk, which may be by affidavit, that notices of  
45 hearing, sale and resale were served upon all parties entitled thereto under  
46 G.S. 45-21.16, 45-21.17, 45-21.17A, and 45-21.30. In the absence of an  
47 affidavit to the contrary filed with the clerk, an affidavit by the person  
48 holding the sale that the notice of sale was posted in the area designated by  
49 the clerk of superior court for posting public notices in the county or  
50 counties in which the property is situated 20 days prior to the sale shall be  
51 proof of compliance with the requirements of G.S. 45-21.17(1)a.

1 (d) The clerk's fee for auditing and recording the final account is a part of the expenses  
2 of the sale, and the person holding the sale shall pay the clerk's fee as part of such expenses.  
3 (1949, c. 720, s. 1; 1975, c. 492, s. 11; 1983, c. 799; 1993, c. 305, s. 21; 1995, c. 509, s. 26.)  
4

5 Article 2B.

6 Injunctions; Deficiency Judgments.

7 **§ 45-21.34. Enjoining mortgage sales on equitable grounds.**

8 Any owner of real estate, or other person, firm or corporation having a legal or equitable  
9 interest therein, may apply to a judge of the superior court, prior to the time that the rights of  
10 the parties to the sale or resale becoming fixed pursuant to G.S. 45-21.29A to enjoin such sale,  
11 upon the ground that the amount bid or price offered therefor is inadequate and inequitable and  
12 will result in irreparable damage to the owner or other interested person, or upon any other  
13 legal or equitable ground which the court may deem sufficient: Provided, that the court or judge  
14 enjoining such sale, whether by a temporary restraining order or injunction to the hearing, shall,  
15 as a condition precedent, require of the plaintiff or applicant such bond or deposit as may be  
16 necessary to indemnify and save harmless the mortgagee, trustee, cestui que trust, or other  
17 person enjoined and affected thereby against costs, depreciation, interest and other damages, if  
18 any, which may result from the granting of such order or injunction: Provided further, that in  
19 other respects the procedure shall be as is now prescribed by law in cases of injunction and  
20 receivership, with the right of appeal to the appellate division from any such order or  
21 injunction. (1933, c. 275, s. 1; 1949, c. 720, s. 3; 1969, c. 44, s. 50; 1993, c. 305, s. 22.)  
22

23 **§ 45-21.35. Ordering resales; receivers for property; tax payments.**

24 The court or judge granting such order or injunction, or before whom the same is  
25 returnable, shall have the right before, but not after, the rights of the parties to the sale or resale  
26 becoming fixed pursuant to G.S. 45-21.29A to order a resale by the mortgagee, trustee,  
27 commissioner, or other person authorized to make the same in such manner and upon such  
28 terms as may be just and equitable: Provided, the rights of all parties in interest, or who may be  
29 affected thereby, shall be preserved and protected by bond or indemnity in such form and  
30 amount as the court may require, and the court or judge may also appoint a receiver of the  
31 property or the rents and proceeds thereof, pending any sale or resale, and may make such order  
32 for the payment of taxes or other prior lien as may be necessary, subject to the right of appeal to  
33 the appellate division in all cases. (1933, c. 275, s. 2; 1949, c. 720, s. 3; 1969, c. 44, s. 51; 1993,  
34 c. 305, s. 23.)  
35

36 **§ 45-21.36. Right of mortgagor to prove in deficiency suits reasonable value of property  
37 by way of defense.**

38 When any sale of real estate has been made by a mortgagee, trustee, or other person  
39 authorized to make the same, at which the mortgagee, payee or other holder of the obligation  
40 thereby secured becomes the purchaser and takes title either directly or indirectly, and  
41 thereafter such mortgagee, payee or other holder of the secured obligation, as aforesaid, shall  
42 sue for and undertake to recover a deficiency judgment against the mortgagor, trustor or other  
43 maker of any such obligation whose property has been so purchased, it shall be competent and  
44 lawful for the defendant against whom such deficiency judgment is sought to allege and show  
45 as matter of defense and offset, but not by way of counterclaim, that the property sold was  
46 fairly worth the amount of the debt secured by it at the time and place of sale or that the amount  
47 bid was substantially less than its true value, and, upon such showing, to defeat or offset any  
48 deficiency judgment against him, either in whole or in part: Provided, this section shall not  
49 affect nor apply to the rights of other purchasers or of innocent third parties, nor shall it be held  
50 to affect or defeat the negotiability of any note, bond or other obligation secured by such  
51 mortgage, deed of trust or other instrument: Provided, further, this section shall not apply to

1 foreclosure sales made pursuant to an order or decree of court nor to any judgment sought or  
2 rendered in any foreclosure suit nor to any sale made and confirmed prior to April 18, 1933.  
3 (1933, c. 275, s. 3; 1949, c. 720, s. 3; 1967, c. 562, s. 2.)  
4

5 **§ 45-21.37. Certain sections not applicable to tax suits.**

6 Sections 45-21.34 through 45-21.36 do not apply to tax foreclosure suits or tax sales. (1933,  
7 c. 275, s. 4; 1949, c. 720, s. 3.)  
8

9 **§ 45-21.38. Deficiency judgments abolished where mortgage represents part of purchase**  
10 **price.**

11 In all sales of real property by mortgagees and/or trustees under powers of sale contained in  
12 any mortgage or deed of trust executed after February 6, 1933, or where judgment or decree is  
13 given for the foreclosure of any mortgage executed after February 6, 1933, to secure to the  
14 seller the payment of the balance of the purchase price of real property, the mortgagee or  
15 trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a  
16 deficiency judgment on account of such mortgage, deed of trust or obligation secured by the  
17 same: Provided, said evidence of indebtedness shows upon the face that it is for balance of  
18 purchase money for real estate: Provided, further, that when said note or notes are prepared  
19 under the direction and supervision of the seller or sellers, he, it, or they shall cause a provision  
20 to be inserted in said note disclosing that it is for purchase money of real estate; in default of  
21 which the seller or sellers shall be liable to purchaser for any loss which he might sustain by  
22 reason of the failure to insert said provisions as herein set out. (1933, c. 36; 1949, c. 720, s. 3; c.  
23 856; 1961, c. 604; 1967, c. 562, s. 2.)  
24

25 **§ 45-21.38A. Deficiency judgments abolished where mortgage secured by primary**  
26 **residence.**

27 (a) As used in this section, the term "nontraditional mortgage loan" means a loan in  
28 which all of the following apply:

- 29 (1) The borrower is a natural person.
- 30 (2) The debt is incurred by the borrower primarily for personal, family, or  
31 household purposes.
- 32 (3) The principal amount of the loan does not exceed the conforming loan size  
33 for a single family dwelling as established from time to time by Fannie Mae.
- 34 (4) The loan is secured by: (i) a security interest in a manufactured home, as  
35 defined in G.S. 143-145, in the State that is or will be occupied by the  
36 borrower as the borrower's principal dwelling; (ii) a mortgage or deed of  
37 trust on real property in the State upon which there is located an existing  
38 structure designed principally for occupancy of from one to four families  
39 that is or will be occupied by the borrower as the borrower's principal  
40 dwelling; or (iii) a mortgage or deed of trust on real property in the State  
41 upon which there is to be constructed using the loan proceeds a structure or  
42 structures designed principally for occupancy of from one to four families  
43 that, when completed, will be occupied by the borrower as the borrower's  
44 principal dwelling.
- 45 (5) The terms of the loan: (i) permit the borrower as a matter of right to defer  
46 payment of principal or interest; and (ii) allow or provide for the negative  
47 amortization of the loan balance.

48 (b) Except as provided in subdivision (6) of subsection (c) of this section, this section  
49 applies only to the following loans:

- 50 (1) A loan originated on or after January 1, 2005, that was at the time the loan  
51 was originated a rate spread home loan as defined in G.S. 24-1.1F.

- 1 (2) A loan secured by the borrower's principal dwelling, which loan was  
2 modified after January 1, 2005, and became at the time of such modification  
3 and as a consequence of such modification a rate spread home loan.
- 4 (3) A loan that was a nontraditional mortgage loan at the time the loan was  
5 originated.
- 6 (4) A loan secured by the borrower's principal dwelling, which loan was  
7 modified and became at the time of such modification and as a consequence  
8 of such modification a nontraditional mortgage loan.
- 9 (c) This section does not apply to any of the following:
- 10 (1) A home equity line of credit as defined in G.S. 45-81(a).
- 11 (2) A construction loan as defined in G.S. 24-10(c).
- 12 (3) A reverse mortgage as defined in G.S. 53-257 that complies with the  
13 provisions of Article 21 of Chapter 53 of the General Statutes.
- 14 (4) A bridge loan with a term of 12 months or less, such as a loan to purchase a  
15 new dwelling where the borrower plans to sell his or her current dwelling  
16 within 12 months.
- 17 (5) A loan made by a natural person who makes no more than one loan in a  
18 12-month period and is not in the business of lending.
- 19 (6) A loan secured by a subordinate lien on the borrower's principal dwelling,  
20 unless the loan was made contemporaneously with a rate spread home loan  
21 or a nontraditional mortgage loan that is subject to the provisions of this  
22 section.
- 23 (d) In addition to any statutory or common law prohibition against deficiency  
24 judgments, the following shall apply to the foreclosure of mortgages and deeds of trust that  
25 secure loans subject to this section:
- 26 (1) For mortgages and deeds of trust recorded before January 1, 2010, the holder  
27 of the obligation secured by the foreclosed mortgage or deed of trust shall  
28 not be entitled to any deficiency judgment against the borrower for any  
29 balance owing on such obligation if: (i) the real property encumbered by the  
30 lien of the mortgage or deed of trust being foreclosed was sold by a  
31 mortgagee or trustee under a power of sale contained in the mortgage or  
32 deed of trust; and (ii) the real property sold was, at the time the foreclosure  
33 proceeding was commenced, occupied by the borrower as the borrower's  
34 principal dwelling.
- 35 (2) For mortgages and deeds of trust recorded on or after January 1, 2010, the  
36 holder of the obligation secured by the foreclosed mortgage or deed of trust  
37 shall not be entitled to any deficiency judgment against the borrower for any  
38 balance owing on such obligation if: (i) the real property encumbered by the  
39 lien of the mortgage or deed of trust being foreclosed was sold as a  
40 consequence of a judicial proceeding or by a mortgagee or trustee under a  
41 power of sale contained in the mortgage or deed of trust; and (ii) the real  
42 property sold was, at the time the judicial or foreclosure proceeding was  
43 commenced, occupied by the borrower as the borrower's principal dwelling.
- 44 (e) The court may, in its discretion, award to the borrower the reasonable attorneys' fees  
45 actually incurred by the borrower in the defense of an action for deficiency if: (i) the borrower  
46 prevails in an action brought by the holder of the obligation secured by the foreclosed mortgage  
47 or deed of trust to recover a deficiency judgment following the foreclosure of a loan to which  
48 this section applies; and (ii) the court rules that the holder of the obligation secured by the  
49 foreclosed mortgage or deed of trust is not entitled to a deficiency judgment under the  
50 provisions of this section. The amount of attorneys' fees to be awarded shall be determined

1 without regard to the provisions of the loan documents, the provisions of G.S. 6-21.2, or any  
2 statutory presumption as to the amount of such attorneys' fees. (2009-441, s. 1.)

3  
4 **§ 45-21.38B:** Reserved for future codification purposes.

5  
6 **§ 45-21.38C. Severability.**

7 The provisions of this Article shall be severable, and if any phrase, clause, sentence, or  
8 provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law  
9 or regulation, the validity of the remainder of this Article shall not be affected thereby.  
10 (2009-441, s. 2.)

11  
12 Article 2C.

13 Validating Sections; Limitation of Time for Attacking Certain Foreclosures.

14 **§ 45-21.39. Limitation of time for attacking certain foreclosures on ground trustee was  
15 agent, etc., of owner of debt.**

16 (a) No action or proceeding shall be brought or defense or counterclaim pleaded later  
17 than one year after March 14, 1941, in which a foreclosure sale which occurred prior to January  
18 1, 1941, under a deed of trust conveying real estate as security for a debt is attacked or  
19 otherwise questioned upon the ground that the trustee was an officer, director, attorney, agent  
20 or employee of the owner of the whole or any part of the debt secured thereby, or upon the  
21 ground that the trustee and the owner of the debt or any part thereof have common officers,  
22 directors, attorneys, agents or employees.

23 (b) This section shall not be construed to give or create any cause of action where none  
24 existed before March 14, 1941, nor shall the limitation provided in subsection (a) hereof have  
25 the effect of barring any cause of action based upon grounds other than those mentioned in said  
26 subsection, unless the grounds set out in subsection (a) are an essential part thereof.

27 (c) This section shall not be construed to enlarge the time in which to bring any action  
28 or proceeding or to plead any defense or counterclaim; and the limitation hereby created is in  
29 addition to all other limitations now existing. (1941, c. 202; 1949, c. 720, s. 4.)

30  
31 **§ 45-21.40. Real property; validation of deeds made after expiration of statute of  
32 limitations where sales made prior thereto.**

33 In all cases where sales of real property have been made under powers of sale contained in  
34 mortgages or deeds of trust and such sales have been made within the times which would have  
35 been allowed by the statute of limitations for the commencement of actions to foreclose such  
36 mortgages or deeds of trust, and the execution and delivery of deeds in consummation of such  
37 sales have been delayed until after the expiration of the period which would have been allowed  
38 by the statute of limitations for the commencement of actions to foreclose such mortgages or  
39 deeds of trust as a result of the filing of raised or increased bids, such deeds in the exercise of  
40 the power of sale are hereby validated and are declared to have the same effect as if they had  
41 been executed and delivered within the period allowed by the statute of limitations for the  
42 commencement of actions to foreclose such mortgages or deeds of trust. (1943, c. 16, s. 2;  
43 1949, c. 720, s. 4.)

44  
45 **§ 45-21.41. Orders signed on days other than first and third Mondays validated; force  
46 and effect of deeds.**

47 In all actions for the foreclosure of any mortgage or deed of trust which has heretofore been  
48 instituted and prosecuted before the clerk of the superior court of any county in North Carolina,  
49 wherein the judgment confirming the sale made by the commissioner appointed in said action,  
50 and ordering the said commissioner to execute a deed to the purchaser, was signed by such  
51 clerk on a day other than the first or third Monday of a month, such judgment of confirmation

1 shall be and is hereby declared to be valid and of the same force and effect as though signed  
2 and docketed on the first or third Monday of any month, and any deed made by any  
3 commissioner or commissioners in any such action where the confirmation of sale was made on  
4 a day other than a first or third Monday of the month shall be and is hereby declared to have the  
5 same force and effect as if the same were executed and delivered pursuant to a judgment of  
6 confirmation properly signed and docketed by the clerk of the superior court on a first or third  
7 Monday of the month. (1923, c. 53, s. 1; C.S., s. 2593(a); 1949, c. 720, s. 4.)

8  
9 **§ 45-21.42. Validation of deeds where no order or record of confirmation can be found.**

10 In all cases prior to the first day of March, 1974, where sales of property have been made  
11 under the power of sale contained in any deed of trust, mortgage or other instrument conveying  
12 property to secure a debt or other obligation, or where such sales have been made pursuant to  
13 an order of court in foreclosure proceedings and deeds have been executed by any trustee,  
14 mortgagee, commissioner, or person appointed by the court, conveying the property, or  
15 security, described therein, and said deed, or other instrument so executed, containing the  
16 property described therein, to the highest bidder or purchaser of said sale and such deed, or  
17 other instrument, contains recitals to the effect that said sale was reported to the clerk of the  
18 superior court, or to the court, and/or such sale was duly confirmed by the clerk of the superior  
19 court, or court, then and in that event all such deeds, conveyances, or other instruments,  
20 containing such recitals are declared to be lawful, valid and binding upon all parties to the  
21 proceedings, or parties named in such deeds of trust, mortgages, or other orders or instruments,  
22 and are hereby declared to be effective and valid to pass title for the purpose of transferring title  
23 to the purchasers at such sales with the same force and effect as if an order of confirmation had  
24 been filed in the office of the clerk of the superior court, or with the court, together with  
25 necessary reports and other decrees and to the same effect as if a record had been made in the  
26 minutes of the court of such orders, decrees and confirmations, provided that nothing contained  
27 in this section shall be construed as applicable to or affecting pending litigation. (1945, c. 984;  
28 1949, c. 720, s. 4; 1957, c. 505; 1979, c. 242.)

29  
30 **§ 45-21.43. Validation of certain foreclosure sales.**

31 In all cases where mortgages or deeds of trust on real estate with power of sale have been  
32 foreclosed pursuant to said power by proper advertisement and sale in the county where such  
33 real estate is located, notwithstanding the wording of such mortgages or deeds of trust  
34 providing for advertisement or sale, or both, in some other county, or at some other particular  
35 place in the county in which the real estate is located, which place was in fact designated in the  
36 notice of sale, all such sales are hereby fully validated, ratified and confirmed and shall be as  
37 effective to pass title to the real estate described therein as fully and to the same extent as if  
38 such mortgages or deeds of trust had provided for advertisement and sale in the county where  
39 such real estate is actually situate. (1951, c. 220; 1961, c. 537.)

40  
41 **§ 45-21.44. Validation of foreclosure sales when provisions of G.S. 45-21.17(2) not  
42 complied with.**

43 In all cases prior to May 1, 1990, where mortgages or deeds of trust on real estate with  
44 power of sale have been foreclosed pursuant to said power by proper advertisement except that  
45 the date of the last publication was from seven to 20 days preceding the date of sale, all such  
46 sales are fully validated, ratified, and confirmed and shall be as effective to pass title to the real  
47 estate described therein as fully and to the same extent as if the provisions of G.S. 45-21.17(2)  
48 had been fully complied with. (1959, c. 52; 1963, c. 1157; 1971, c. 879, s. 1; 1975, c. 454, s. 2;  
49 1985, c. 689, s. 15; 1989 (Reg. Sess., 1990), c. 1024, s. 11.1.)

50  
51 **§ 45-21.45. Validation of foreclosure sales where notice and hearing not provided.**

1 In all cases where mortgages or deeds of trust on real estate with power of sale have been  
2 foreclosed pursuant to said power by proper advertisement and sale, but the mortgagor or  
3 grantor under such mortgage or deed of trust did not receive actual notice of such foreclosure or  
4 have the opportunity of a hearing prior to such foreclosure, all such sales are hereby fully  
5 validated, ratified and confirmed and shall be as effective to pass title to the real estate  
6 described therein as fully and to the same extent as if such notice and opportunity for hearing  
7 had been given, unless an action to set aside such foreclosure is commenced within one year  
8 from June 6, 1975. (1975, c. 492, s. 12.)  
9

10 **§ 45-21.46. Validation of foreclosure sales where posting and publication not complied**  
11 **with.**

12 (a) In all cases of foreclosure of mortgages or deeds of trust secured by real estate  
13 pursuant to power of sale which foreclosures were commenced on or subsequent to June 6,  
14 1975, and consummated prior to June 1, 1983, in which foreclosure sales the requirements for  
15 posting and publication of notice of sale set forth in G.S. 45-21.17 were complied with but the  
16 requirements of the mortgage or deed of trust as to posting and publication of notice of sale  
17 were not complied with, are validated, ratified and confirmed and shall be effective to pass title  
18 to real estate to the same extent as though all requirements of the mortgage or deed of trust  
19 respecting posting and publication of notice of sale were complied with; unless an action to set  
20 aside such foreclosure is commenced before January 1, 1984.

21 (b) All foreclosures of mortgages or deeds of trust secured by real estate pursuant to  
22 power of sale, which foreclosures were commenced on or subsequent to June 1, 1983, and  
23 consummated prior to April 1, 1985, in which foreclosure sales the requirements for posting  
24 and publication of notice of sale set forth in G.S. 45-21.17 were complied with but the  
25 requirements of the mortgage or deed of trust as to posting and publication of notice of sale  
26 were not complied with, are validated, ratified and confirmed and shall be effective to pass title  
27 to real estate to the same extent as though all requirements of the mortgage or deed of trust  
28 respecting posting and publication of notice of sale were complied with; unless an action to set  
29 aside such foreclosure is commenced in the period beginning January 1, 1984, and ending  
30 January 1, 1986. (1983, c. 582, s. 1; c. 738, s. 1; 1985, c. 341.)  
31

32 **§ 45-21.47. Validation of foreclosure sales when trustee is officer of owner of debt.**

33 All sales of real property made prior to January 1, 1991, under a power of sale contained in  
34 a mortgage or deed of trust for which the trustee was an officer, director, attorney, agent, or  
35 employee of the owner of all or part of the debt secured by the mortgage or deed of trust are  
36 validated and have the same effect as if the trustee had not been an officer, director, attorney,  
37 agent, or employee of the owner of the debt unless an action to set aside the foreclosure is  
38 commenced within one year after January 1, 1991. (1983, c. 582, s. 1; 1985, c. 604; 1987, c.  
39 277, s. 10; 1989, c. 390, s. 10; 1991, c. 489, s. 10.)  
40

41 **§ 45-21.48. Validation of certain foreclosure sales that did not comply with posting**  
42 **requirement.**

43 A sale of real property made on or before July 2, 1985, under a power of sale contained in a  
44 mortgage or deed of trust, for which a notice of the sale was not posted at the courthouse door  
45 for 20 days immediately preceding the sale, as required by G.S. 45-21.17(1), but was posted at  
46 the courthouse door for at least 15 days immediately preceding the sale, is declared to be a  
47 valid sale to the same extent as if the notice of the sale had been posted for 20 days; unless an  
48 action to set aside the foreclosure sale is not barred by the statute of limitations and is  
49 commenced on or before October 1, 1985. (1985, c. 567, s. 2.)  
50

1 **§ 45-21.49. Validation of foreclosure sales when provisions of § 45-21.16A(3) not**  
2 **complied with.**

3  
4 (a) Whenever any real property was sold under a power of sale as provided in Article  
5 2A of Chapter 45, and the notice of sale did not describe the improvements on the property to  
6 be sold, as required under G.S. 45-21.16A(3), the sale shall not be invalidated because of such  
7 omission.

8 (b) This section shall apply to all sales completed prior to June 1, 1987. (1987, c. 277, s.  
9 10a.)

10  
11 Article 3.

12 Mortgage Sales.

13 **§ 45-22: Transferred to G.S. 45-21.39 by Session Laws 1949, c. 720, s. 4.**

14  
15 **§§ 45-23 through 45-26. Repealed by Session Laws 1949, c. 720, s. 5.**

16  
17 **§ 45-26.1. Transferred to G.S. 45-21.40 by Session Laws 1949, c. 720, s. 4.**

18  
19 **§§ 45-27 through 45-30. Repealed by Session Laws 1949, c. 720, s. 5.**

20  
21 **§ 45-31. Transferred to G.S. 45-21.41 by Session Laws 1949, c. 720, s. 4.**

22  
23 **§§ 45-32 through 45-36. Transferred to G.S. 45-21.34 to 45-21.38 by Session Laws 1949, c.**  
24 **720, s. 3.**

25  
26 **§ 45-36.1. Transferred to G.S. 45-21.42 by Session Laws 1949, c. 720, s. 4.**

27  
28 Article 4.

29 Satisfaction.

30 **§ 45-36.2. Obligation of good faith.**

31 Every action or duty within this Article imposes an obligation of good faith in its  
32 performance or enforcement. (1953, c. 848; 2005-123, s. 1.)

33  
34 **§ 45-36.3. Notification by mortgagee of satisfaction of provisions of deed of trust or**  
35 **mortgage, or other instrument; civil penalty.**

36 (a) After the satisfaction of the provisions of any deed of trust or mortgage, or other  
37 instrument intended to secure with real property the payment of money or the performance of  
38 any other obligation and registered as required by law, the holder of the evidence of the  
39 indebtedness, if it is a single instrument, or a duly authorized agent or attorney of such holder  
40 shall within 60 days:

41 (1) Discharge and release of record such documents and forward the cancelled  
42 documents to the grantor, trustor or mortgagor; or,

43 (2) Alternatively, the holder of the evidence of the indebtedness or a duly  
44 authorized agent or attorney of such holder, at the request of the grantor,  
45 trustor or mortgagor, shall forward said instrument and the deed of trust or  
46 mortgage instrument, with payment and satisfaction acknowledged in  
47 accordance with the requirements of G.S. 45-37, to the grantor, trustor or  
48 mortgagor.

49 (b) Any person, institution or agent who fails to comply with this section may be  
50 required to pay a civil penalty of not more than one thousand dollars (\$1,000) in addition to  
51 reasonable attorneys' fees and any other damages awarded by the court to the grantor, trustor or

1 mortgagor, or to a subsequent purchaser of the property from the grantor, trustor or mortgagor.  
2 A five hundred dollar (\$500.00) civil penalty may be recovered by the grantor, trustor or  
3 mortgagor, and a five hundred dollar (\$500.00) penalty may be recovered by the purchaser of  
4 the property from the grantor, trustor or mortgagor. If that purchaser of the property consists of  
5 more than a single grantee, then the civil penalty will be divided equally among all of the  
6 grantees. A petitioner may recover damages under this section only if he has given the  
7 mortgagee, obligee, beneficiary or other responsible party written notice of his intention to  
8 bring an action pursuant to this section. Upon receipt of this notice, the mortgagee, obligee,  
9 beneficiary or other responsible party shall have 30 days, in addition to the initial 60-day  
10 period, to fulfill the requirements of this section.

11 (c) Should any person, institution or agent who is not the present holder of the evidence  
12 of indebtedness be required to pay a civil penalty, attorneys' fees, or other damages under this  
13 section, they will have an action against the holder of the evidence of indebtedness for all sums  
14 they were required to pay.

15 (d) This section applies only if the provisions of the deed of trust, mortgage, or other  
16 instrument are satisfied before October 1, 2005. (1979, c. 681, s. 1; 1987, c. 662, ss. 1-3;  
17 2005-123, s. 1.)  
18

#### 19 **§ 45-36.4. Definitions.**

20 As used in this Article, the following terms mean:

- 21 (1) Address for giving a notification. – For the purpose of a particular type of  
22 notification, the most recent address provided in a document by the intended  
23 recipient of the notification to the person giving the notification, unless the  
24 person giving the notification knows of a more accurate address, in which  
25 case the term means that address.
- 26 (1a) Borrower. – A person primarily liable for payment or performance of the  
27 obligation secured by the real property described in a security instrument.
- 28 (1b) Credit suspension directive. – A notification given to a secured creditor  
29 pursuant to G.S. 45-36.7A directing the secured creditor to suspend  
30 temporarily a borrower's right and ability to obtain additional credit  
31 advances in anticipation of the imminent sale of, or the imminent making of  
32 a new loan to be secured by, real property then encumbered by an existing  
33 security instrument when the anticipated transaction will involve either the  
34 satisfaction of the existing security instrument or the release of the real  
35 property from the lien of the existing security instrument.
- 36 (2) Day. – Calendar day.
- 37 (3) Document. – Information that is inscribed on a tangible medium or that is  
38 stored in an electronic or other medium and is retrievable in perceivable  
39 form.
- 40 (4) Electronic. – Relating to technology having electrical, digital, magnetic,  
41 wireless, optical, electromagnetic, or similar capabilities.
- 42 (5) Entitled person. – A person who:  
43 a. Is a borrower;  
44 b. Is a landowner;  
45 c. Has contracted to purchase real property encumbered by an existing  
46 security instrument;  
47 d. Has made or has committed to make a loan that is secured or is to be  
48 secured by real property encumbered by an existing security  
49 instrument;  
50 e. Is a title insurance company authorized pursuant to Article 26 of  
51 Chapter 58 of the General Statutes to issue title insurance policies in

1 the State of North Carolina that has insured or has committed to  
2 insure title to real property encumbered by an existing security  
3 instrument;

4 f. Is the foreclosing trustee or the high bidder in a foreclosure sale  
5 involving real property encumbered by an existing security  
6 instrument;

7 g. Is a qualified lien holder; or

8 h. Is an attorney licensed to practice law in the State of North Carolina  
9 or a bank, savings and loan association, savings bank, or credit  
10 union, but only when:

11 1. The attorney, bank, savings and loan association, savings  
12 bank, or credit union is or will be responsible for the  
13 disbursement of funds in connection with the sale of, or a new  
14 loan secured by, property then encumbered by an existing  
15 security instrument; and

16 2. A requirement of the sale or new loan transaction is or will be  
17 that the property be conveyed or encumbered free and clear of  
18 the lien of the existing security instrument.

19 (6) Good faith. – Honesty in fact and the observance of reasonable commercial  
20 standards of fair dealing.

21 (7) Landowner. – A person that, before foreclosure, has the right of redemption  
22 in the real property described in a security instrument. The term does not  
23 include a person that holds only a lien on the real property or the trustee  
24 under a deed of trust.

25 (8) Notification. – A document containing information required under this  
26 Article and signed by the person required to provide the information.

27 (9) Original parties. – With respect to a security instrument, each person named  
28 as a party to the security instrument on the face thereof as originally  
29 recorded. In identifying the original parties to a deed of trust for purposes of  
30 this Article, it is not necessary to include the original trustee or trustees  
31 named therein.

32 (10) Payoff amount. – The sum necessary to satisfy a secured obligation.

33 (11) Payoff statement. – A document containing the information specified in G.S.  
34 45-36.7(e).

35 (12) Person. – An individual, corporation, business trust, estate, trust, partnership,  
36 limited liability company, association, joint venture, public corporation,  
37 government, or governmental subdivision, agency, or instrumentality, or any  
38 other legal or commercial entity.

39 (12a) Qualified lien holder. – A person who holds or is the beneficiary of a  
40 security interest in or lien on real property encumbered by an existing  
41 security instrument, but only if that person's security interest in or lien on the  
42 real property arises from a mortgage or deed of trust that is subordinate in  
43 priority to the lien of the existing security instrument. The term does not  
44 include a trustee under a deed of trust.

45 (13) Recording data. – The book and page number or document number that  
46 indicates where a document is recorded in the office of the register of deeds.

47 (14) Register of deeds. – Includes the register of deeds, assistant register of  
48 deeds, or deputy register of deeds.

49 (15) Satisfy. – With respect to a security instrument, to terminate the  
50 effectiveness of the security instrument.

- 1 (16) Secured creditor. – A person that holds or is the beneficiary of a security  
2 interest or that is authorized both to receive payments on behalf of a person  
3 that holds a security interest and to record a satisfaction of the security  
4 instrument upon receiving full performance of the secured obligation. The  
5 term does not include a trustee under a security instrument.
- 6 (17) Secured obligation. – An obligation the payment or performance of which is  
7 secured by a security interest.
- 8 (18) Security instrument. – An agreement, however denominated, that creates or  
9 provides for an interest in real property to secure payment or performance of  
10 an obligation, whether or not it also creates or provides for a lien on personal  
11 property. The term includes a deed of trust and a mortgage.
- 12 (19) Security interest. – An interest in real property created by a security  
13 instrument.
- 14 (19a) Short-pay amount. – The sum necessary to obtain the release of all or a  
15 specific portion of the real property from the lien of a security instrument  
16 without satisfying the secured obligation in full.
- 17 (19b) Short-pay statement. – A document containing the information specified in  
18 G.S. 45-36.7(e1).
- 19 (20) Sign. – With present intent to authenticate or adopt a document:  
20 a. To execute or adopt a tangible symbol; or  
21 b. To attach to or logically associate with the document an electronic  
22 sound, symbol, or process.
- 23 (21) State. – A state of the United States, the District of Columbia, Puerto Rico,  
24 the United States Virgin Islands, or any territory or insular possession  
25 subject to the jurisdiction of the United States.
- 26 (22) Submit for recording. – To deliver, with required fees and taxes, a document  
27 sufficient to be recorded under this Article to the register of deeds in the  
28 county in which the real property described in the related security instrument  
29 is located.
- 30 (23) Trustee. – The trustee or substitute then serving as such under the terms of a  
31 deed of trust. (2005-123, s. 1; 2011-312, s. 3.)  
32

33 **§ 45-36.5. Notification: manner of giving and effective date.**

- 34 (a) A person gives a notification by any of the following:  
35 (1) Depositing it with the United States Postal Service with first-class postage  
36 paid or with a commercially reasonable delivery service with cost of  
37 delivery provided, properly addressed to the recipient's address for giving a  
38 notification.  
39 (2) Sending it by facsimile transmission, electronic mail, or other electronic  
40 transmission to the recipient's address for giving a notification, but only if  
41 the recipient agreed to receive notification in that manner.  
42 (3) Causing it to be received at the address for giving a notification within the  
43 time that it would have been received if given pursuant to subdivision (1) of  
44 this subsection.
- 45 (b) A notification is effective on any of the following:  
46 (1) The day after it is deposited with a commercially reasonable delivery service  
47 for overnight delivery.  
48 (2) Three days after it is deposited with the United States Postal Service,  
49 first-class mail with postage prepaid, or with a commercially reasonable  
50 delivery service for delivery other than by overnight delivery.  
51 (3) The day it is given, if given pursuant to subdivision (a)(2) of this section.

1 (4) The day it is received, if given by a method other than as provided in  
2 subdivision (a)(1) or (a)(2) of this section.

3 (c) If this Article or a notification given pursuant to this Article requires performance  
4 on or by a certain day and that day is a Saturday, Sunday, or legal holiday under the laws of this  
5 State or the United States, the performance is sufficient if performed on the next day that is not  
6 a Saturday, Sunday, or legal holiday. (2005-123, s. 1.)  
7

8 **§ 45-36.6. Document of rescission: effect; liability for wrongful recording.**

9 (a) Definitions. – The following definitions apply in this section:

10 (1) Document of rescission. – A document that rescinds either (i) a release that  
11 was recorded in error or (ii) the erroneous satisfaction of a security  
12 instrument.

13 (2) Release. – A document that either (i) releases property from the lien of a  
14 security instrument or (ii) indicates that an obligation is no longer secured by  
15 a security instrument.

16 (b) If a release is recorded in error or a security instrument is erroneously satisfied of  
17 record, then the secured creditor or the person who caused the release to be recorded in error or  
18 the security instrument to be erroneously satisfied of record may execute and record a  
19 document of rescission. The document of rescission must be duly acknowledged before an  
20 officer authorized to make acknowledgments. Upon recording, the document of rescission  
21 either (i) rescinds a release that was recorded in error and deprives the release of any effect or  
22 (ii) rescinds the erroneous satisfaction of record of the security instrument and reinstates the  
23 security instrument.

24 (c) A recorded document of rescission has no effect on the rights of a person that:

25 (1) Records an interest in the real property described in a security instrument  
26 after the recording of a release that was recorded in error or the erroneous  
27 satisfaction of record of the security instrument and before the recording of  
28 the document of rescission; and

29 (2) Would otherwise have priority over or take free of the lien created by the  
30 security instrument as reinstated under Chapter 47 of the General Statutes.

31 (d) A person that erroneously or wrongfully records a document of rescission is liable  
32 to any person injured thereby for the actual loss caused by the recording and reasonable  
33 attorneys' fees and costs.

34 (e) A document is a document of rescission if it does all of the following:

35 (1) Identifies the related security instrument, including the type of security  
36 instrument, the original parties to the security instrument, the recording data  
37 for the security instrument, and the office in which the security instrument is  
38 recorded.

39 (2) If the document of rescission is intended to rescind a release that was  
40 recorded in error, (i) identifies the release that was recorded in error by its  
41 recording data and the office in which it is recorded, (ii) states that the  
42 release was recorded in error, and (iii) states that the release is rescinded.

43 (3) If the document of rescission is intended to rescind the erroneous satisfaction  
44 of record of a security instrument, (i) identifies the satisfaction document  
45 that was recorded in error by its recording data and the office in which it is  
46 recorded, (ii) states that the security instrument was erroneously satisfied of  
47 record, and (iii) states that the satisfaction of the security instrument is  
48 rescinded and the security instrument reinstated.

49 (4) States that the person signing the document of rescission is either (i) the  
50 secured creditor or (ii) the person who caused the release to be recorded in  
51 error or the security instrument to be erroneously satisfied of record.

- 1 (5) Is signed and acknowledged as required by law for a conveyance of an  
2 interest in real property.
- 3 (f) The register of deeds shall accept a document of rescission for recording unless one  
4 of the following applies:
- 5 (1) The document is submitted by a method or in a medium not authorized for  
6 registration by the register of deeds under applicable law.
- 7 (2) The required recording fee is not paid.
- 8 (3) The document is not signed and acknowledged as required by law for a  
9 conveyance of an interest in real property by either the secured creditor or  
10 the person who caused the release to be recorded in error or the security  
11 instrument to be erroneously satisfied of record. The register of deeds shall  
12 not be required to verify or make inquiry concerning (i) the truth of the  
13 matters stated in any document of rescission or (ii) the authority of the  
14 person executing any document of rescission to do so.
- 15 (g) No particular phrasing is required for a document of rescission that rescinds a  
16 release that was recorded in error. The following form, when properly completed, is sufficient  
17 to satisfy the requirements of subsection (e) of this section:

18 "DOCUMENT OF RESCISSION  
19 (G.S. 45-36.6(e))

20 The security instrument to which this Document of Rescission relates is identified as follows:

21 Type of Security Instrument: (identify type of security instrument, such as deed of  
22 trust or mortgage)

23 Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

24 Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or  
25 secured party(ies) in the security instrument)

26 Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page  
27 \_\_\_\_ or as document number \_\_\_\_ in the office of the Register of Deeds for  
28 \_\_\_\_\_ County, North Carolina.

29 This Document of Rescission rescinds the release recorded in Book \_\_\_\_\_ at Page \_\_\_\_ or  
30 as document number \_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County, North  
31 Carolina. The release was recorded in error, is hereby rescinded, and is declared to be of no  
32 effect.

33 The undersigned is: (check applicable box)

34 \_\_\_\_\_ The secured creditor in the security instrument identified above.

35 \_\_\_\_\_ The person who caused the release to be recorded in error.

36 Date: \_\_\_\_\_

37 \_\_\_\_\_  
38 Signature of secured creditor or person  
39 who caused the release to be recorded in  
error

40 [Acknowledgment before officer authorized to take acknowledgments]"

41 (h) No particular phrasing is required for a document of rescission that rescinds the  
42 erroneous satisfaction of a security instrument. The following form, when properly completed,  
43 is sufficient to satisfy the requirements of G.S. 45-36.6(e):

44 "DOCUMENT OF RESCISSION  
45 (G.S. 45-36.6(e))

46 The security instrument to which this Document of Rescission relates is identified as follows:

47 Type of Security Instrument: (identify type of security instrument, such as deed of  
48 trust or mortgage)

49 Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

50 Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or  
51 secured party(ies) in the security instrument)

1 Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page  
2 \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for  
3 \_\_\_\_\_ County, North Carolina.

4 The security instrument was erroneously satisfied of record by that satisfaction document  
5 recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the  
6 Register of Deeds for \_\_\_\_\_ County, North Carolina. The satisfaction of the security  
7 instrument is hereby rescinded, the security instrument is reinstated, and the security instrument  
8 is declared to be in full force and effect.

9 The undersigned is: (check applicable box)

10 \_\_\_\_\_ The secured creditor in the security instrument identified above.

11 \_\_\_\_\_ The person who caused the security instrument to be satisfied of record  
12 erroneously.

13 Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of secured creditor or person  
who caused the security instrument to be  
satisfied of record erroneously

17 [Acknowledgment before officer authorized to take acknowledgments]".

18 (2005-123, s. 1; 2006-259, s. 52(b); 2006-264, s. 40(a); 2011-312, s. 4.)

19  
20 **§ 45-36.7. Payoff and short-pay statements; request and content.**

21 (a) An entitled person, or an agent authorized by an entitled person to request a payoff  
22 or a short-pay statement, may give to the secured creditor a notification requesting a payoff  
23 statement or a short-pay statement. The notification must contain all of the following:

24 (1) The entitled person's name.

25 (2) If given by a person other than an entitled person, the name of the person  
26 giving the notification and a statement that the person is an authorized agent  
27 of the entitled person.

28 (3) A direction whether the statement is to be sent to the entitled person or that  
29 person's authorized agent.

30 (4) The address to which the creditor must send the statement.

31 (5) Sufficient information to enable the creditor to identify the secured  
32 obligation and the real property encumbered by the security interest.

33 (6) Whether the request is for a payoff statement or a short-pay statement.

34 (7) If the request is for a payoff statement, the specified payoff date, which may  
35 not be more than 30 days after the notification is given.

36 (8) If the request is for a short-pay statement, (i) the specified short-pay date,  
37 which may not be more than 30 days after the notification is given, (ii) a  
38 clear statement as to whether the request is for the short-pay amount required  
39 to release all of the real property described in the security instrument or only  
40 a portion of that property, and (iii) if the request is for the short-pay amount  
41 required to release only a portion of the real property described in the  
42 security instrument, a description of the specific real property to be released  
43 upon payment of the short-pay amount.

44 (b) If a notification under subsection (a) of this section directs the secured creditor to  
45 send the payoff statement or a short-pay statement to a person identified as an authorized agent  
46 of the entitled person, the secured creditor must send the statement to the agent, unless the  
47 secured creditor knows that the entitled person has not authorized the request.

48 (c) A person who gives to a secured creditor a notification requesting a payoff  
49 statement or a short-pay statement thereby represents that the person is an entitled person or the  
50 authorized agent of an entitled person. A secured creditor may rely on that representation in  
51 providing a payoff statement or a short-pay statement unless the secured creditor knows that the

1 requesting person is neither an entitled person nor the authorized agent of an entitled person. A  
2 secured creditor has no duty to make inquiry as to whether, or to verify that, the person  
3 requesting a payoff statement or a short-pay statement is an entitled person or the authorized  
4 agent of an entitled person.

5 (d) Within 10 days after the effective date of a notification that complies with  
6 subsection (a) of this section, the secured creditor shall issue a payoff statement or a short-pay  
7 statement and send it as directed pursuant to subdivision (a)(3) of this section in the manner  
8 prescribed in G.S. 45-36.5 for giving a notification. A secured creditor that sends a payoff  
9 statement or a short-pay statement to the entitled person or the authorized agent may not claim  
10 that the notification did not satisfy subsection (a) of this section. If the person to whom the  
11 notification is given once held an interest in the secured obligation but has since assigned that  
12 interest, the person need not send a payoff statement or a short-pay statement but shall give (i) a  
13 notification of the assignment to the person to whom the payoff statement or a short-pay  
14 statement otherwise would have been sent, providing the name and address of the assignee, or  
15 (ii) a notification to the person to whom the payoff statement or a short-pay statement  
16 otherwise would have been sent, stating that the recipient claims no interest in the security  
17 instrument or the secured obligation, that the secured obligation was assigned, but that the  
18 identity and address of the assignee is not known.

19 (e) A payoff statement must contain:

- 20 (1) The date on which it was prepared and the payoff amount as of that date,  
21 including the amount by type of each fee, charge, or other sum included  
22 within the payoff amount;
- 23 (2) The information reasonably necessary to calculate the payoff amount as of  
24 the requested payoff date, including the per diem interest amount; and
- 25 (3) The payment cutoff time, if any, the address or place where payment must  
26 be made, and any limitation as to the authorized method of payment.

27 (e1) A short-pay statement must contain:

- 28 (1) The information reasonably necessary to calculate the short-pay amount as  
29 of the requested short-pay date, including the per diem interest amount, if  
30 any;
- 31 (2) The payment cutoff time, if any, the address or place where payment of the  
32 short-pay amount must be made, and any limitation as to the authorized  
33 method of payment;
- 34 (3) Any conditions precedent that must be satisfied to obtain the release of the  
35 property identified in the request for the short-pay statement from the lien of  
36 the security instrument; and
- 37 (4) Confirmation of the specific real property to be released from the lien of the  
38 security instrument upon receipt of the timely payment of the short-pay  
39 amount and satisfaction of the other conditions precedent to the release of  
40 that property.

41 Unless the short-pay statement expressly provides otherwise, all persons liable for payment  
42 or performance of the obligations secured by the security instrument will remain liable for the  
43 secured obligations to the extent the short-pay amount is not sufficient to satisfy the secured  
44 obligations in full.

45 (f) A payoff statement or a short-pay statement may contain the amount of any fees  
46 authorized under this section not included in the payoff amount. A secured creditor may require  
47 the payment in full of any fees authorized under this section before issuing a payoff statement  
48 or a short-pay statement.

49 (g) A secured creditor may not qualify a payoff amount or state that it is subject to  
50 change before the payoff date unless the payoff statement provides information sufficient to  
51 permit the entitled person or the person's authorized agent to request an updated payoff amount

1 at no charge and to obtain that updated payoff amount during the secured creditor's normal  
2 business hours on the payoff date or the immediately preceding business day. A secured  
3 creditor may not qualify a short-pay amount or state that it is subject to change before the  
4 short-pay date unless the short-pay statement provides information sufficient to permit the  
5 entitled person or the person's authorized agent to request an updated short-pay amount at no  
6 charge and to obtain that updated short-pay amount during the secured creditor's normal  
7 business hours on the short-pay date or the immediately preceding business day.

8 (h) A secured creditor must provide upon request one payoff statement or one short-pay  
9 statement without charge during any six-month period. A secured creditor may charge a fee of  
10 twenty-five dollars (\$25.00) for each additional payoff statement and one hundred dollars  
11 (\$100.00) for each additional short-pay statement requested during that six-month period.  
12 However, a secured creditor may not charge a fee for providing an updated payoff amount or  
13 short-pay amount under subsection (g) of this section or a corrected payoff statement or  
14 short-pay statement under G.S. 45-36.8(a).

15 (i) Unless the security instrument provides otherwise, a secured creditor is not required  
16 to send a payoff statement or a short-pay statement by means other than first-class mail. If the  
17 creditor agrees to send a statement by another means, it may charge a reasonable fee for  
18 complying with the requested manner of delivery.

19 (j) Except as otherwise provided in G.S. 45-36.12, if a secured creditor to which a  
20 notification has been given pursuant to subsection (a) of this section does not send a timely  
21 payoff statement that substantially complies with subsection (e) of this section or a short-pay  
22 statement that substantially complies with subsection (e1) of this section, the creditor is liable  
23 to the entitled person for any actual damages caused by the failure, but not punitive damages. A  
24 creditor that does not pay the damages provided in this subsection within 30 days after receipt  
25 of a notification demanding payment shall also be liable for reasonable attorneys' fees and  
26 costs.

27 (k) This section does not apply unless (i) the notification requesting a payoff statement  
28 is given on or after October 1, 2005, and (ii) the notification requesting a short-pay statement is  
29 given on or after October 1, 2011. (2005-123, s. 1; 2011-312, s. 5.)  
30

### 31 **§ 45-36.7A. Credit suspension directives.**

32 (a) A credit suspension directive may be given to a secured creditor by any of the  
33 following:

- 34 (1) Any borrower.
- 35 (2) The legal representative of any borrower.
- 36 (3) The attorney for any borrower.
- 37 (4) An attorney licensed to practice law in the State of North Carolina or a bank,  
38 savings and loan association, savings bank, or credit union, but only when (i)  
39 the attorney, bank, savings and loan association, savings bank, or credit  
40 union is responsible for the disbursement of funds in connection with the  
41 sale of, or a new loan secured by, real property then encumbered by an  
42 existing security instrument; (ii) a requirement of the sale or new loan  
43 transaction is that the property be conveyed or encumbered free and clear of  
44 the lien of the existing security instrument; and (iii) the credit suspension  
45 directive is given to the secured creditor contemporaneously with a  
46 notification requesting a payoff statement or a short-pay statement in  
47 anticipation of and in preparation for the imminent settlement of the sale or  
48 new loan transaction.

49 (b) A credit suspension directive must contain all of the following:

- 50 (1) The name and authority of the person giving the directive.

- 1 (2) Sufficient information to enable the creditor to identify the secured  
2 obligation, the identity of the borrower, and the real property encumbered by  
3 the security interest.  
4 (3) The specified payoff date, which may not be more than 30 days after the  
5 notification is given.  
6 (4) A clear and unambiguous directive to the secured creditor to suspend  
7 through and including the payoff date the borrower's right and ability to  
8 obtain any additional credit advances which, if made, would be secured by  
9 the security instrument.

10 (c) If the person who gives a credit suspension directive to a secured creditor is a  
11 person listed in subdivision (a)(4) of this section, that person shall also (i) give a copy of the  
12 credit suspension directive to the borrower and (ii) provide an additional notification to the  
13 borrower that provides substantially as follows:  
14

15 "NOTICE TO BORROWER  
16

17 You have a loan with (name of lender) secured by a mortgage or deed of trust on  
18 real property located at (address of property).  
19

20 We will be responsible for disbursing funds in connection with a scheduled sale of  
21 the property or a new loan that will be secured by the property. A requirement of the  
22 sale or new loan transaction is that the property be conveyed or encumbered free  
23 and clear of the existing mortgage or deed of trust that secures your loan.  
24

25 As permitted by North Carolina law, we are sending the  
26 (enclosed/attached/following/foregoing) notification to your lender directing that it  
27 temporarily suspend your right and ability to obtain credit advances in anticipation  
28 of the settlement of the sale or loan. The notification accompanies a request asking  
29 the amount that must be sent to your lender to pay your loan in full and cancel the  
30 mortgage or deed of trust that secures your loan (or, if your loan will not be paid in  
31 full, to release the property from the mortgage or deed of trust that secures your  
32 loan). The information your lender provides us may be inaccurate if you obtain  
33 additional credit advances before the scheduled settlement date of the sale or new  
34 loan transaction.  
35

36 When your lender receives our directive, it will temporarily suspend your right and  
37 ability to obtain credit advances. The period of suspension will continue through  
38 and including (anticipated payoff date), the anticipated payoff date, regardless of  
39 whether the settlement of the sale or new loan transaction occurs as scheduled. The  
40 suspension will not affect your responsibility to continue making payments to your  
41 lender during the suspension period. You should not attempt to obtain additional  
42 credit advances from your lender during the suspension period.  
43

44 You may instruct us at any time during the suspension period to withdraw the credit  
45 suspension directive we are sending your lender, and we are required by law to  
46 comply. However, if you do so, you may jeopardize the settlement of the sale or  
47 new loan transaction because the payoff or release information provided by your  
48 lender may become inaccurate.  
49

50 When proceeds from a sale or new loan transaction are used to pay an existing loan  
51 in full, lenders typically close the loan account, thereby terminating their borrower's

1 ability to obtain additional credit advances. You should contact your lender to  
2 determine whether you will be able to obtain additional credit advances after the  
3 settlement of the sale or new loan transaction.  
4

5 If you have questions about this notice or our action, please contact (name of  
6 contact person or department) by calling us at (phone number) or writing to us at  
7 (mailing address).  
8

9 (Name of attorney, bank, savings and loan association, savings bank, or credit  
10 union)"

11 (d) Upon receipt of a credit suspension directive, a secured creditor shall:

12 (1) Subject to subsection (e) of this section, suspend the borrower's right and  
13 ability to obtain credit advances which, if made, would be secured by the  
14 security instrument. The period of suspension shall continue through and  
15 including the payoff date stated in the credit suspension directive.

16 (2) Apply all sums subsequently paid during the period of suspension by or on  
17 behalf of the borrower in connection with the secured obligation, including  
18 sums paid to the secured creditor by a person responsible for the  
19 disbursement of funds in connection with the sale of, or a new loan secured  
20 by, real property then encumbered by a security instrument, to the  
21 satisfaction of the secured obligation, regardless of whether the amount or  
22 amounts paid are sufficient to pay the secured obligation and other sums  
23 secured by the security instrument in full. Sums paid to the secured creditor  
24 in excess of the amount required to pay the secured obligation and other  
25 sums secured by the security instrument in full shall be refunded by the  
26 secured creditor to or at the direction of the person who paid the excess  
27 amount.

28 (e) Notwithstanding a secured creditor's receipt of a credit suspension directive, a  
29 secured creditor may do any of the following, all of which shall be secured by the security  
30 instrument:

31 (1) The secured creditor may advance sums and incur expenses (i) for insurance,  
32 taxes, and assessments, (ii) to protect the secured creditor's interest under the  
33 security instrument, (iii) to preserve and protect the value or condition of the  
34 real property encumbered by the security instrument, or (iv) to complete the  
35 construction of improvements on the real property encumbered by the  
36 security instrument.

37 (2) The secured creditor may permit the borrower to obtain a credit advance, but  
38 only if the credit advance was initiated or approved before the secured  
39 creditor received the credit suspension directive.

40 (f) If the person giving a credit suspension directive is not a borrower, then the person  
41 giving a credit suspension directive shall be conclusively deemed the borrower's agent acting  
42 with full authority from the borrower to issue the credit suspension directive on the borrower's  
43 behalf.

44 (g) A credit suspension directive may be withdrawn at any time by the person who gave  
45 the directive. If the person who gives a credit suspension directive to a secured creditor is a  
46 person listed in subdivision (a)(4) of this section, that person shall promptly notify the secured  
47 creditor that the credit suspension directive is withdrawn (i) if instructed by the borrower at any  
48 time to withdraw the directive or (ii) if the anticipated sale or new loan transaction is cancelled.  
49 Upon receipt of a notice from the person who originally gave the credit suspension directive  
50 that the credit suspension directive is withdrawn, the secured creditor may reinstate the  
51 borrower's right and ability to obtain credit advances. (2011-312, s. 6.)

1  
2 **§ 45-36.8. Understated payoff statement or short-pay statement: correction; effect.**

3 (a) If a secured creditor determines that the payoff amount it provided in a payoff  
4 statement or the short-pay amount it provided in a short-pay statement was understated, the  
5 creditor may send a corrected payoff or short-pay statement. If the entitled person or the  
6 person's authorized agent receives and has a reasonable opportunity to act upon a corrected  
7 payoff statement or short-pay statement before making payment, the corrected statement  
8 supersedes an earlier statement.

9 (b) A secured creditor that sends a payoff statement containing an understated payoff  
10 amount or a short-pay statement containing an understated short-pay amount may not deny the  
11 accuracy of the payoff amount or short-pay amount as against any person that reasonably and  
12 detrimentally relies upon the understated payoff amount or short-pay amount.

13 (c) This Article does not:

- 14 (1) Affect the right of a secured creditor to recover any sum that it did not  
15 include in a payoff amount or a short-pay amount from any person liable for  
16 payment of the secured obligation; or  
17 (2) Limit any claim or defense that a person liable for payment of a secured  
18 obligation may have under law other than this Article. (2005-123, s. 1;  
19 2011-312, s. 7.)  
20

21 **§ 45-36.9. Secured creditor to submit satisfaction or release for recording; liability for**  
22 **failure.**

23 (a) A secured creditor shall submit for recording a satisfaction of a security instrument  
24 within 30 days after the creditor receives full payment or performance of the secured  
25 obligation. If a security instrument secures a line of credit or future advances, the secured  
26 obligation is fully performed only if, in addition to full payment, the secured creditor has  
27 received (i) a notification requesting the creditor to terminate the line of credit, (ii) a credit  
28 suspension directive, or (iii) a notification containing a clear and unambiguous statement  
29 sufficient to terminate the effectiveness of the provision for future advances in the security  
30 instrument including, but not limited to, a request to terminate an equity line of credit given  
31 pursuant to G.S. 45-82.2 or a notice regarding future advances given pursuant to G.S. 45-82.3.

32 (a1) If the conditions stated in a short-pay statement are fully satisfied on or before the  
33 short-pay date stated in the short-pay statement, including the payment in full of the short-pay  
34 amount and the satisfaction of all other conditions precedent to the release set forth in the  
35 short-pay statement, then within 30 days after the short-pay date the secured creditor shall  
36 release the property which is the subject of the short-pay statement from the lien of the security  
37 instrument. The release of the property may be accomplished by a deed of release, an  
38 instrument of full or partial reconveyance, a partial release recorded pursuant to G.S. 45-36.22,  
39 the satisfaction of record of the security instrument by any of the means authorized in G.S.  
40 45-37(a), or by any other lawful means.

41 (b) Except as otherwise provided in G.S. 45-36.12, a secured creditor that is required to  
42 submit a satisfaction of a security instrument for recording and does not do so by the end of the  
43 period specified in subsection (a) of this section is liable to the landowner for any actual  
44 damages caused by the failure, but not punitive damages.

45 (c) Except as otherwise provided in subsection (d) of this section and in G.S. 45-36.12,  
46 a secured creditor that is required to submit a satisfaction of a security instrument for recording  
47 and does not do so by the end of the period specified in subsection (a) of this section is also  
48 liable to the landowner for one thousand dollars (\$1,000) and any reasonable attorneys' fees and  
49 court costs incurred if, after the expiration of the period specified in subsection (a) of this  
50 section, all of the following occur:

- 1 (1) The landowner gives the secured creditor a notification, by any method  
2 authorized by G.S. 45-36.5 that provides proof of receipt, demanding that  
3 the secured creditor submit a satisfaction for recording.
- 4 (2) The secured creditor does not submit a satisfaction for recording within 30  
5 days after the secured creditor's receipt of the notification.
- 6 (3) The security instrument is not satisfied of record by any of the methods  
7 provided in G.S. 45-37(a) within 30 days after the secured creditor's receipt  
8 of the notification.

9 The right to receive the additional one thousand dollars (\$1,000) is personal to the landowner  
10 who gives the secured creditor notification under this subsection and may not be assigned.

11 (d) Subsection (c) of this section does not apply if the secured creditor received full  
12 payment or performance of the secured obligation before October 1, 2005.

13 (e) Repealed by Session Laws 2011-246, s. 3, effective October 1, 2011. (2005-123, s.  
14 1; 2011-246, s. 3; 2011-312, s. 8.)

15  
16 **§ 45-36.10. Content and effect of satisfaction.**

17 (a) A document is a satisfaction of a security instrument if it does all of the following:

- 18 (1) Identifies the type of security instrument, the original parties to the security  
19 instrument, the recording data for the security instrument, and the office in  
20 which the security instrument is recorded.
- 21 (2) States that the person signing the satisfaction is the secured creditor.
- 22 (3) Reserved.
- 23 (4) Contains language terminating the effectiveness of the security instrument.
- 24 (5) Is signed by the secured creditor and acknowledged as required by law for a  
25 conveyance of an interest in real property.

26 (b) The register of deeds shall accept for recording a satisfaction of a security  
27 instrument, unless one of the following applies:

- 28 (1) The document is submitted by a method or in a medium not authorized for  
29 registration by the register of deeds under applicable law.
- 30 (2) The document is not signed by the secured creditor and acknowledged as  
31 required by law for a conveyance of an interest in real property. The register  
32 of deeds shall not be required to verify or make inquiry concerning (i) the  
33 truth of the matters stated in any satisfaction document, or (ii) the authority  
34 of the person executing any satisfaction document to do so.

35 (c) The recording of a satisfaction of a security instrument does not by itself extinguish  
36 any liability of a person for payment or performance of the secured obligation. (2005-123, s. 1.)  
37

38 **§ 45-36.11. Satisfaction: form.**

39 No particular phrasing is required for a satisfaction of a security instrument. The following  
40 form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.10(a):

41  
42 "SATISFACTION OF SECURITY INSTRUMENT

43  
44 (G.S. 45-36.10; G.S. 45-37(a)(7))  
45

46 The undersigned is now the secured creditor in the security instrument identified as follows:

47 Type of Security Instrument: (identify type of security instrument, such as deed of trust or  
48 mortgage)

49 Original Grantor(s): (Identify original grantor(s), trustor(s), or mortgagor(s))

50 Original Secured Party(ies): (Identify the original beneficiary(ies), mortgagee(s), or secured  
51 party(ies) in the security instrument)

1 Recording Data: The security instrument is recorded in Book \_\_\_\_ at Page \_\_\_\_ or as  
2 document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County,  
3 North Carolina.

4 This satisfaction terminates the effectiveness of the security instrument.

5 Date: \_\_\_\_\_

6 \_\_\_\_\_  
7 (Signature of secured creditor)

8 [Acknowledgment before officer authorized to take acknowledgments]".  
9 (2005-123, s. 1.)

10  
11 **§ 45-36.12. Limitation of secured creditor's liability.**

12 A secured creditor is not liable under this Article if it:

- 13 (1) Established a reasonable procedure to achieve compliance with its  
14 obligations under this Article;
- 15 (2) Complied with that procedure in good faith; and
- 16 (3) Was unable to comply with its obligations because of circumstances beyond  
17 its control. (2005-123, s. 1.)

18  
19 **§ 45-36.13. Eligibility to serve as satisfaction agent.**

20 No person other than an attorney licensed to practice law in the State of North Carolina may  
21 serve as a satisfaction agent under this Article. (2005-123, s. 1.)

22  
23 **§ 45-36.14. Affidavit of satisfaction: notification to secured creditor.**

24 (a) If a secured creditor has not submitted for recording a satisfaction of a security  
25 instrument and the security instrument has not been satisfied of record by any of the methods  
26 provided by G.S. 45-37(a) within the period specified in G.S. 45-36.9(a), a satisfaction agent  
27 acting for and with authority from the landowner may give the secured creditor a notification  
28 that the satisfaction agent intends to submit for recording an affidavit of satisfaction of the  
29 security instrument. The notification must include all of the following:

- 30 (1) The identity and mailing address of the satisfaction agent.
- 31 (2) Identification of the security instrument for which a recorded satisfaction is  
32 sought, including the names of the original parties to, and the recording data  
33 for, the security instrument.
- 34 (3) A statement that the satisfaction agent has reasonable grounds to believe  
35 that:
  - 36 a. The person to whom the notification is being given is the secured  
37 creditor; and
  - 38 b. The secured creditor has received full payment or performance of the  
39 secured obligation.
- 40 (4) A statement that the security instrument has not been satisfied of record.
- 41 (5) A statement that the satisfaction agent, acting with the authorization of the  
42 owner of the real property described in the security instrument, intends to  
43 sign and submit for recording an affidavit of satisfaction of the security  
44 instrument unless, within 30 days after the effective date of the notification:
  - 45 a. The secured creditor submits a satisfaction of the security instrument  
46 for recording;
  - 47 b. The satisfaction agent receives from the secured creditor a  
48 notification stating that the secured obligation remains unsatisfied;
  - 49 c. The satisfaction agent receives from the secured creditor a  
50 notification stating that the secured creditor has assigned the security  
51 instrument and identifying the name and address of the assignee; or

1 d. The security instrument is satisfied of record by any of the methods  
2 provided in G.S. 45-37(a).

3 (b) A notification under subsection (a) of this section must be sent by a method  
4 authorized by G.S. 45-36.5 that provides proof of receipt to the secured creditor's address for  
5 giving a notification for the purpose of requesting a payoff statement or, if the satisfaction  
6 agent cannot ascertain that address, to the secured creditor's address for notification for any  
7 other purpose.

8 (c) This Article does not require a person to agree to serve as a satisfaction agent.  
9 (2005-123, s. 1.)

10  
11 **§ 45-36.15. Affidavit of satisfaction: authorization to submit for recording.**

12 (a) Subject to subsections (b) and (c) of this section, a satisfaction agent may sign and  
13 submit for recording an affidavit of satisfaction of a security instrument complying with G.S.  
14 45-36.16 if:

15 (1) The secured creditor has not, to the knowledge of the satisfaction agent,  
16 submitted for recording a satisfaction of a security instrument or otherwise  
17 caused the security instrument to be satisfied of record pursuant to any of the  
18 methods provided in G.S. 45-37(a) within 30 days after the effective date of  
19 a notification complying with G.S. 45-36.14(a); or

20 (2) The secured creditor authorizes the satisfaction agent to do so.

21 (b) A satisfaction agent may not sign and submit for recording an affidavit of  
22 satisfaction of a security instrument if it has received a notification under G.S. 45-36.14(a)(5)b.  
23 stating that the secured obligation remains unsatisfied.

24 (c) If a satisfaction agent receives a notification under G.S. 45-36.14(a)(5)c. stating that  
25 the security instrument has been assigned, the satisfaction agent may not submit for recording  
26 an affidavit of satisfaction of the security instrument without:

27 (1) Giving a notification of intent to submit for recording an affidavit of  
28 satisfaction to the identified assignee at the identified address; and

29 (2) Complying with G.S. 45-36.14 with respect to the identified assignee.  
30 (2005-123, s. 1.)

31  
32 **§ 45-36.16. Affidavit of satisfaction: content.**

33 An affidavit of satisfaction of a security instrument must comply with all of the following:

34 (1) Identify the type of security instrument, the original parties to the security  
35 instrument, the secured creditor, the recording data for the security  
36 instrument, and the office in which the security instrument is recorded.

37 (2) State the basis upon which the person signing the affidavit is a satisfaction  
38 agent.

39 (3) Reserved.

40 (4) State that the person signing the affidavit has reasonable grounds to believe  
41 that the secured creditor has received full payment or performance of the  
42 secured obligation.

43 (5) State that the person signing the affidavit, acting with the authority of the  
44 owner of the real property described in the security instrument, gave  
45 notification to the secured creditor of its intention to sign and submit for  
46 recording an affidavit of satisfaction.

47 (6) Describe the method by which the person signing the affidavit gave  
48 notification in compliance with this Article.

49 (7) State that:

50 a. More than 30 days have elapsed since the effective date of that  
51 notification, and the person signing the affidavit has no knowledge

1 that the secured creditor has submitted a satisfaction for recording  
2 and has not received a notification that the secured obligation  
3 remains unsatisfied; or

4 b. The secured creditor authorized the person signing the affidavit to  
5 sign and record an affidavit of satisfaction.

6 (8) Be signed and acknowledged as required by law for a conveyance of an  
7 interest in real property. (2005-123, s. 1.)  
8

9 **§ 45-36.17. Affidavit of satisfaction: form.**

10 No particular phrasing of an affidavit of satisfaction is required. The following form of  
11 affidavit, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.16:  
12

13 **"AFFIDAVIT OF SATISFACTION**

14 \_\_\_\_\_  
15 (Date of Affidavit)

16 The undersigned hereby states as follows:

17 1. I am an attorney licensed to practice law in the State of North Carolina.

18 2. I am signing this Affidavit of Satisfaction to evidence full payment or performance  
19 of the obligations secured by real property covered by the following security instrument (the  
20 "security instrument") currently held by \_\_\_\_\_ (the "secured creditor"):

21 Type of security instrument:  
22

23 Original parties to security instrument:  
24

25 County and state of recording:  
26

27 Recording data for security instrument:  
28

29 3. I have reasonable grounds to believe that the secured creditor has received full  
30 payment or performance of the balance of the obligations secured by the security instrument.

31 4. With the authorization of the owner of the real property described in the security  
32 instrument, I gave notification to the secured creditor by method authorized by G.S. 45-36.5  
33 that provides proof of receipt that I would sign and record an affidavit of satisfaction of the  
34 security instrument if, within 30 days after the effective date of the notification, the secured  
35 creditor did not submit a satisfaction of the security interest for recording or give notification  
36 that the secured obligation remains unsatisfied.

37 5. [Check appropriate box]

38 [ ] The 30-day period identified in paragraph 4 has elapsed, I have no knowledge  
39 that the secured creditor has submitted a satisfaction for recording, and I have not received  
40 notification that the secured obligation remains unsatisfied.  
41

42 [ ] The secured creditor responded to the notification in paragraph 4 by authorizing  
43 me to execute and record this Affidavit of Satisfaction.  
44

45 \_\_\_\_\_  
46 (Signature of Satisfaction Agent)

47 [Acknowledgment before officer authorized to take acknowledgments]"

48 (2005-123, s. 1.)  
49

50 **§ 45-36.18. Affidavit of satisfaction: effect.**

1 (a) Upon recording, an affidavit substantially complying with the requirements of G.S.  
2 45-36.16 constitutes a satisfaction of the security instrument described in the affidavit.

3 (b) The recording of an affidavit of satisfaction of a security instrument does not by  
4 itself extinguish any liability of a person for payment or performance of the secured obligation.

5 (c) The register of deeds may not refuse to accept for recording an affidavit of  
6 satisfaction of a security instrument unless:

7 (1) The affidavit is submitted by a method or in a medium not authorized for  
8 registration by the register of deeds under applicable law; or

9 (2) The affidavit is not signed by the satisfaction agent and acknowledged as  
10 required by law for a conveyance of an interest in real property. The register  
11 of deeds shall not be required to verify or make inquiry concerning (i) the  
12 truth of the matters stated in any affidavit of satisfaction, or (ii) the authority  
13 of the person executing any affidavit of satisfaction to do so. (2005-123, s.  
14 1.)  
15

16 **§ 45-36.19. Liability of satisfaction agent.**

17 (a) Except as otherwise provided in subsection (b) of this section, a satisfaction agent or  
18 any person purporting to be a satisfaction agent that records or submits for recording an  
19 affidavit of satisfaction of a security instrument erroneously or with knowledge that the  
20 statements contained in the affidavit are false is liable to the secured creditor for any actual  
21 damages caused by the recording and reasonable attorneys' fees and costs.

22 (b) A satisfaction agent that records or submits for recording an affidavit of satisfaction  
23 of a security instrument erroneously is not liable if the agent properly complied with this  
24 Article and the secured creditor did not respond in a timely manner to the notification pursuant  
25 to G.S. 45-36.14(a)(5).

26 (c) If a satisfaction agent or any person purporting to be a satisfaction agent records or  
27 submits for recording an affidavit of satisfaction of a security instrument with knowledge that  
28 the statements contained in the affidavit are false, this section does not preclude any of the  
29 following:

30 (1) A court from awarding punitive damages on account of the conduct.

31 (2) The secured creditor from proceeding against the satisfaction agent or person  
32 purporting to be a satisfaction agent under law of this State other than this  
33 Article.

34 (3) The enforcement of any criminal statute prohibiting the conduct. (2005-123,  
35 s. 1.)  
36

37 **§ 45-36.20. Trustee's satisfaction of deed of trust: content and effect.**

38 (a) Upon recording, a trustee's satisfaction substantially complying with the  
39 requirements of this section constitutes a satisfaction of the deed of trust described in the  
40 trustee's satisfaction.

41 (b) The recording of a trustee's satisfaction does not by itself extinguish any liability of  
42 a person for payment or performance of the secured obligation.

43 (c) This section applies only if the security instrument is a deed of trust. This section is  
44 not exclusive. Deeds of trust may also be satisfied of record by methods other than the filing of  
45 a trustee's satisfaction.

46 (d) Document is a trustee's satisfaction of a deed of trust if it complies with all of the  
47 following:

48 (1) Identifies the original parties to the deed of trust, the recording data for the  
49 deed of trust, and the office in which the deed of trust is recorded.

50 (2) States that the person signing the trustee's satisfaction is then serving as  
51 trustee or substitute trustee under the terms of the deed of trust.

- 1 (3) Contains language terminating the effectiveness of the deed of trust.  
2 (4) Is signed by the trustee or substitute trustee then serving under the terms of  
3 the deed of trust and acknowledged as required by law for a conveyance of  
4 an interest in real property.

5 (e) The register of deeds shall accept for recording a trustee's satisfaction of a deed of  
6 trust, unless:

- 7 (1) The trustee's satisfaction is submitted by a method or in a medium not  
8 authorized for registration by the register of deeds under applicable law; or  
9 (2) The trustee's satisfaction is not signed by the trustee or substitute trustee and  
10 acknowledged as required by law for a conveyance of an interest in real  
11 property. The register of deeds shall not be required to verify or make  
12 inquiry concerning (i) the truth of the matters stated in any trustee's  
13 satisfaction, or (ii) the authority of the person executing any trustee's  
14 satisfaction to do so. (2005-123, s. 1.)  
15

16 **§ 45-36.21. Trustee's satisfaction of deed of trust: form.**

17 No particular phrasing is required for a trustee's satisfaction of a deed of trust. The  
18 following form, when properly completed, is sufficient to satisfy the requirements of G.S.  
19 45-36.20:  
20

21 "TRUSTEE'S SATISFACTION OF DEED OF TRUST  
22 (G.S. 45-36.20; G.S. 45-37(a)(7))  
23

24 The undersigned is now serving as the trustee or substitute trustee under the terms of the deed  
25 of trust identified as follows:

26 Original Grantor(s): (Identify original grantor(s) or trustor(s))  
27

28 Original Secured Party(ies): (Identify the original beneficiary(ies) or secured  
29 party(ies) in the deed of trust)  
30

31 Recording Data: The deed of trust is recorded in Book \_\_\_\_ at Page \_\_\_\_ or as  
32 document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_ County,  
33 North Carolina.  
34

35 This satisfaction terminates the effectiveness of the deed of trust.  
36

37 Date: \_\_\_\_\_  
38

39 (Signature of trustee or substitute trustee)  
40

41 [Acknowledgment before officer authorized to take acknowledgments]"  
42 (2005-123, s. 1.)  
43

44 **§ 45-36.22. Partial release: content and effect; form.**

45 (a) A document is a partial release if it does all of the following:

- 46 (1) Identifies the type of security instrument, the original parties to the security  
47 instrument, the recording data for the security instrument, and the office in  
48 which the security instrument is recorded.  
49 (2) States that the person signing the partial release is the secured creditor or, if  
50 the security instrument is a deed of trust, that the person or persons signing

1 the partial release is or are the secured creditor, the trustee, or both the  
2 secured creditor and the trustee.

3 (3) Contains language releasing property or an interest in property from the lien  
4 of the security instrument.

5 (4) Is signed and acknowledged as required by law for a conveyance of an  
6 interest in real property by the secured creditor or, if the security instrument  
7 is a deed of trust, by the secured creditor, the trustee, or both the secured  
8 creditor and the trustee.

9 (b) The register of deeds shall accept a partial release for recording unless one of the  
10 following applies:

11 (1) The document is submitted by a method or in a medium not authorized for  
12 registration by the register of deeds under applicable law.

13 (2) The required recording fee is not paid.

14 (3) The document is not signed and acknowledged as required by law for a  
15 conveyance of an interest in real property by the secured creditor or, if the  
16 security instrument is a deed of trust, by the secured creditor, the trustee, or  
17 both the secured creditor and the trustee. The register of deeds shall not be  
18 required to verify or make inquiry concerning the truth of the matters stated  
19 in any partial release or the authority of the person executing any partial  
20 release to do so.

21 (c) Upon recording, a partial release shall release from the lien of the security  
22 instrument the property or interest in property as is expressly described and released. With  
23 respect only to the specific property or interest in property identified and released by a partial  
24 release, the partial release shall (i) operate and have the same effect as a duly executed and  
25 recorded deed of release or reconveyance of the property or interest in the property; (ii) release  
26 and discharge all of the secured creditor's interest in the property or property interest arising  
27 from the security instrument; and (iii) if the security instrument is a deed of trust, release and  
28 discharge all the interest of the trustee in the property or property interest arising from the deed  
29 of trust. The security instrument shall otherwise remain in full force and effect, and the  
30 remainder of the property and interests in property described in and encumbered by the security  
31 instrument shall remain subject to the lien of the security instrument.

32 (d) The recording of a partial release does not by itself extinguish any liability of a  
33 person for payment or performance of the secured obligation.

34 (e) The provisions of this section are not exclusive. Property and interests in property  
35 may be released from the lien of a security instrument by methods other than the filing of a  
36 partial release.

37 (f) Unless the deed of trust provides otherwise, the trustee in a deed of trust is not a  
38 necessary party to a partial release.

39 (g) No particular phrasing is required for a partial release. The following form, when  
40 properly completed, is sufficient to satisfy the requirements of G.S. 45-36.22(a):

41 "PARTIAL RELEASE

42 (G.S. 45-36.22)

43 The security instrument that is the subject of this Partial Release is identified as follows:

44 Type of Security Instrument: (identify type of security instrument, such as deed of trust  
45 or mortgage)

46 Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

47 Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or  
48 secured party(ies) in the security instrument)

49 Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page  
50 \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the Register of Deeds for  
51 \_\_\_\_\_ County, North Carolina.

1 The person or persons signing this Partial Release is/are: (check appropriate box)

2  The secured creditor.

3  The trustee or substitute trustee.

4  The secured creditor and the trustee or substitute trustee.

5 The following described property or interest in property (and no other) is released from the lien  
6 of the security instrument: (identify legal description of property or interest in property to be  
7 released)

8 Date: \_\_\_\_\_

\_\_\_\_\_  
Signature(s) of secured creditor  
and/or trustee

11 [Acknowledgment before officer authorized to take acknowledgments]". (2011-312, s. 9.)

12  
13 **§ 45-36.23. Obligation release: content and effect.**

14 (a) A document is an obligation release if it does all of the following:

15 (1) Identifies the type of security instrument, the original parties to the security  
16 instrument, the recording data for the security instrument, and the office in  
17 which the security instrument is recorded.

18 (2) States that the person signing the obligation release is the owner and holder  
19 of the obligation or obligations to be released.

20 (3) Identifies one or more of the specific obligations that are secured by the  
21 security instrument and contains language confirming that, with respect to  
22 each such secured obligation, the obligation is no longer secured by the  
23 security instrument.

24 (4) Is signed and acknowledged as required by law for a conveyance of an  
25 interest in real property by the owner and holder of the specific obligation or  
26 obligations to be released.

27 (b) The register of deeds shall accept an obligation release for recording unless one of  
28 the following applies:

29 (1) The document is submitted by a method or in a medium not authorized for  
30 registration by the register of deeds under applicable law.

31 (2) The required recording fee is not paid.

32 (3) The document is not signed and acknowledged as required by law for a  
33 conveyance of an interest in real property by the owner and holder of the  
34 obligation or obligations to be released. The register of deeds shall not be  
35 required to verify or make inquiry concerning (i) the truth of the matters  
36 stated in any obligation release or (ii) the authority of the person executing  
37 any obligation release to do so.

38 (c) From and after the date an obligation release is recorded, the obligation or  
39 obligations specifically identified and released in the obligation release (and only such  
40 obligation or obligations) shall no longer be secured by the security instrument, without regard  
41 to whether the obligation has been paid in full and satisfied. Unless the obligation release states  
42 that the secured obligation has been paid in full and satisfied, the recording of an obligation  
43 release does not by itself extinguish any liability of a person for payment or performance of the  
44 obligation or obligations released.

45 (d) Secured obligations that are not specifically identified and released in an obligation  
46 release remain secured by the security instrument, and the recording of an obligation release  
47 does not extinguish any liability of a person for payment or performance of the remaining  
48 secured obligation or obligations. The recording of an obligation release has no effect on the  
49 lien of the security instrument on the real property described in the security instrument.

50 (e) Unless the deed of trust provides otherwise, the trustee in a deed of trust is not a  
51 necessary party to an obligation release.

1 (f) No particular phrasing is required for an obligation release. The following form,  
2 when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.23(a):

3 "OBLIGATION RELEASE

4 (G.S. 45-36.23)

5 The undersigned is now the owner and holder of the obligation(s) to be released by this  
6 instrument. As used in this release, the term "Security Instrument" refers to the security  
7 instrument identified as follows:

8 Type of Security Instrument: (identify type of security instrument, such as deed of trust  
9 or mortgage)

10 Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

11 Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or  
12 secured party(ies) in the security instrument)

13 Recording Data: The security instrument is recorded in Book \_\_\_\_ at Page \_\_\_\_ or as  
14 document number \_\_\_\_\_ in the office of the Register of Deeds for \_\_\_\_\_  
15 County, North Carolina.

16 Secured obligations that are no longer secured. Each of the following obligations is no longer  
17 secured by the Security Instrument, without regard to whether the obligation has been paid in  
18 full and satisfied: (identify with particularity each secured obligation that will no longer be  
19 secured by the Security Instrument)

20 (Optional provision which may be used in addition to or in lieu of the paragraph above:)

21 Secured obligations that have been paid in full and satisfied. Each of the following obligations  
22 has been paid in full and satisfied and is consequently no longer secured by the Security  
23 Instrument: (identify with particularity each secured obligation that has been paid in full and  
24 satisfied and is consequently no longer secured by the Security Instrument)

25 Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of owner and holder of  
the obligation(s) to be released

28 [Acknowledgment before officer authorized to take acknowledgments]". (2011-312, s. 10.)  
29

30 **§ 45-36.24. Expiration of lien of security instrument.**

31 (a) Maturity Date. – For purposes of this section:

32 (1) If a secured obligation is for the payment of money:

33 a. If all remaining sums owing on the secured obligation are due and  
34 payable in full on a date specified in the secured obligation, the  
35 maturity date of the secured obligation is the date so specified. If no  
36 such date is specified in the secured obligation, the maturity date of  
37 the secured obligation is the last date a payment on the secured  
38 obligation is due and payable under the terms of the secured  
39 obligation.

40 b. If all remaining sums owing on the secured obligation are due and  
41 payable in full on demand or on a date specified in the secured  
42 obligation, whichever first occurs, the maturity date of the secured  
43 obligation is the date so specified. If all sums owing on the secured  
44 obligation are due and payable in full on demand and no alternative  
45 date is specified in the secured obligation for payment in full, the  
46 maturity date of the secured obligation is the date of the secured  
47 obligation.

48 c. The maturity date of the secured obligation is "stated" in a security  
49 instrument if (i) the maturity date of the secured obligation is  
50 specified as a date certain in the security instrument, (ii) the last date  
51 a payment on the secured obligation is due and payable under the

1 terms of the secured obligation is specified in the security instrument,  
2 or (iii) the maturity date of the secured obligation or the last date a  
3 payment on the secured obligation is due and payable under the  
4 terms of the secured obligation can be ascertained or determined  
5 from information contained in the security instrument, such as, for  
6 example, from a payment schedule contained in the security  
7 instrument.

8 (2) If the secured obligation is for the performance of some obligation other than  
9 the payment of money:

10 a. If the secured obligation is required to be performed by a date  
11 specified in the secured obligation, the maturity date of the secured  
12 obligation is the date so specified.

13 b. If the obligation is to be performed on demand or before a date  
14 specified in the secured obligation, whichever first occurs, the  
15 maturity date of the secured obligation is the date so specified. If the  
16 obligation is to be performed on demand and no alternative date for  
17 performance is specified in the secured obligation, the maturity date  
18 of the secured obligation is the date of the secured obligation.

19 c. The maturity date of the secured obligation is "stated" in a security  
20 instrument if (i) the maturity date of the secured obligation is  
21 specified as a date certain in the security instrument or (ii) the  
22 maturity date of the secured obligation can be ascertained or  
23 determined from information contained in the security instrument.

24 (b) Automatic Lien Expiration. – Except as provided in subsection (g) of this section,  
25 unless the lien of a security instrument has been extended in the manner prescribed in  
26 subsection (c), (d), or (e) of this section, the security instrument has been foreclosed, or the  
27 security instrument has been satisfied of record pursuant to G.S. 45-37, the lien of a security  
28 instrument automatically expires, and the security instrument is conclusively deemed satisfied  
29 of record pursuant to G.S. 45-37, at the earliest of the following times:

30 (1) If the security instrument was first recorded before October 1, 2011:

31 a. If the maturity date of the secured obligation is stated in the security  
32 instrument, 15 years after the maturity date.

33 b. If the maturity date is not stated in the security instrument, 35 years  
34 after the date the security instrument was recorded in the office of the  
35 register of deeds or acknowledged as required by law for a  
36 conveyance of an interest in real property, whichever is later.

37 c. Without regard to whether the maturity date of the secured obligation  
38 is stated in the security instrument, 15 years from whichever of the  
39 following occurs last:

40 1. The date when the conditions of the security instrument were  
41 required by its terms to have been performed.

42 2. The date of maturity of the last installment of debt or interest  
43 secured thereby.

44 3. The date an affidavit or separate instrument was recorded  
45 pursuant to the provisions of G.S. 45-37(b), if any such  
46 affidavit or separate instrument was recorded before October  
47 1, 2011, and before the lien of the security instrument  
48 expired.

49 (2) If the security instrument was first recorded on or after October 1, 2011:

50 a. If the maturity date of the secured obligation is stated in the security  
51 instrument, 15 years after the maturity date.

1                   b.     If the maturity date of the secured obligation is not stated in the  
2                             security instrument, 35 years after the date the security instrument  
3                             was recorded in the office of the register of deeds or October 1, 2011,  
4                             whichever is later.

5           (c)     Methods To Extend a Lien. – The lien of a recorded security instrument may be  
6     extended one or more times by recording (i) a lien maturity extension agreement or (ii) a notice  
7     of maturity date. If more than one lien maturity extension agreement or notice of maturity date  
8     is recorded, the most recently recorded lien maturity extension agreement or notice of maturity  
9     date controls in determining when the lien of a security instrument expires. A lien maturity  
10    extension agreement or notice of maturity date is ineffective unless recorded before the lien  
11    expires. The lien of the original security instrument may not be extended to a date more than 50  
12    years after the date the security instrument was originally recorded in the office of the register  
13    of deeds without the written agreement of the then owner of the property encumbered by the  
14    lien of the security instrument.

15    (d)     Lien Maturity Extension Agreement. –

16           (1)     The lien of a recorded security instrument may be extended to a date  
17                     specified in a lien maturity extension agreement, provided the lien maturity  
18                     extension agreement is recorded before the lien expires. When a lien  
19                     maturity extension agreement has been duly recorded, the lien of the security  
20                     instrument will expire on the date specified in the lien maturity extension  
21                     agreement.

22           (2)     A document (including any document that modifies, amends, or restates a  
23                     security instrument) is a lien maturity extension agreement if it does all of  
24                     the following:

- 25           a.     Identifies the type of security instrument, the original parties to the  
26                     security instrument, the recording data for the security instrument,  
27                     and the office in which the security instrument is recorded.  
28           b.     States the date to which the lien of the security instrument is  
29                     extended.  
30           c.     Is signed and acknowledged as required by law for a conveyance of  
31                     an interest in real property by the secured creditor and the then owner  
32                     of the property encumbered by the lien of the security instrument.

33           (3)     No particular phrasing is required for a lien maturity extension agreement.  
34                     The following form, when properly completed, is sufficient to satisfy the  
35                     requirements for a lien maturity extension agreement:

36                     "LIEN MATURITY EXTENSION AGREEMENT  
37   (G.S. 45-36.24(d))

38     \_\_\_\_\_ is now the secured creditor under the security instrument identified as  
39     follows:

40                     Type of Security Instrument: (identify type of security instrument, such  
41                     as deed of trust or mortgage)

42                     Original Grantor(s): (identify original grantor(s), trustor(s), or  
43                     mortgagor(s))

44                     Original Secured Party(ies): (identify the original beneficiary(ies),  
45                     mortgagee(s), or secured party(ies) in the security instrument)

46                     Recording Data: The security instrument is recorded in Book \_\_\_\_ at  
47                     Page \_\_\_\_ or as document number \_\_\_\_ in the office of the Register of  
48                     Deeds for \_\_\_\_\_ County, North Carolina.

49                     \_\_\_\_\_ is now the owner of the real property encumbered by the  
50                     lien of the security instrument.

Pursuant to G.S. 45-36.24(d), the lien of the security instrument is extended to and including \_\_\_\_\_ (specify date).

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Current Owner  
of Real Property

\_\_\_\_\_  
Signature of Secured Creditor

[Acknowledgments before officer authorized to take acknowledgments]"

(e) Notice of Maturity Date. –

- (1) The lien of a recorded security instrument may be extended by a notice of maturity date, provided the notice of maturity date is recorded before the lien expires.
- (2) When a notice of maturity date signed only by the secured creditor has been duly recorded, the lien of the security instrument will expire at the earliest of the following times: (i) 15 years after the maturity of the secured obligation as stated in the notice of maturity date or (ii) 50 years after the date the security instrument was originally recorded in the office of the register of deeds. A document signed only by the secured creditor is a notice of maturity date if it does all of the following:
  - a. Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
  - b. States that the person signing the notice of maturity date is the secured creditor.
  - c. States the maturity date of the secured obligation.
  - d. Is signed and acknowledged as required by law for a conveyance of an interest in real property by the secured creditor.
- (3) When a notice of maturity date signed by the secured creditor and by the then owner of the property encumbered by the lien of the security instrument has been duly recorded, the lien of the security instrument will expire 15 years after the maturity date of the secured obligation as stated in the notice of maturity. A document (including any document that modifies, amends, or restates a security instrument) signed by the secured creditor and by the then owner of the property encumbered by the lien of the security instrument is a notice of maturity date if it:
  - a. Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
  - b. States the maturity date of the secured obligation.
  - c. Is signed and acknowledged as required by law for a conveyance of an interest in real property by the secured creditor and the then owner of the property encumbered by the lien of the security instrument.
- (4) No particular phrasing is required for a notice of maturity date. The following form, when properly completed, is sufficient to satisfy the requirements for a notice of maturity date signed only by the secured creditor:

"NOTICE OF MATURITY DATE

(G.S. 45-36.24(e))

The undersigned is now the secured creditor under the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

1 Original Grantor(s): (identify original grantor(s), trustor(s), or  
2 mortgagor(s))

3 Original Secured Party(ies): (identify the original beneficiary(ies),  
4 mortgagee(s), or secured party(ies) in the security instrument)

5 Recording Data: The security instrument is recorded in Book \_\_\_\_ at  
6 Page \_\_\_\_ or as document number \_\_\_\_ in the office of the Register of  
7 Deeds for \_\_\_\_\_ County, North Carolina.

8 The maturity date of the secured obligation is \_\_\_\_\_ (specify date).

9 Date: \_\_\_\_\_

10 \_\_\_\_\_  
Signature(s) of secured creditor

11 [Acknowledgment before officer authorized to take acknowledgments]"

12 (f) Exception. – The register of deeds shall accept a lien maturity extension agreement  
13 or a notice of maturity date for recording and index the document as a subsequent instrument in  
14 accordance with G.S. 161-14.1, unless one of the following applies:

- 15 (1) The document is submitted by a method or in a medium not authorized for  
16 registration by the register of deeds under applicable law.  
17 (2) The required recording fee is not paid.  
18 (3) The document is not signed and acknowledged as required by law for a  
19 conveyance of an interest in real property. The register of deeds shall not be  
20 required to verify or make inquiry concerning (i) the truth of the matters  
21 stated in the document, (ii) whether the parties to the document are in fact  
22 the secured creditor and the then owner of the real property encumbered by  
23 the lien of the security instrument, or (iii) the authority of any person  
24 executing the document to do so.

25 (g) Foreclosure Proceedings. – No proceeding may be commenced to foreclose the lien  
26 of a security instrument unless the proceeding is commenced prior to the date on which the lien  
27 of the security instrument expires. However, if a proceeding to foreclose the lien of a security  
28 instrument is commenced before the lien of the security instrument expires, the lien created by  
29 the security instrument shall continue until final disposition of the proceeding. This provision  
30 shall not be construed as extending the lien or the right to bring or maintain any action for  
31 which a shorter period may be provided by law.

32 (h) No Shortening of Lien Without Secured Creditor's Consent. – Subject to the  
33 provisions of G.S. 45-37, the duration of the lien of a security instrument may not be shortened  
34 without the consent of the secured creditor.

35 (i) No Release or Satisfaction Necessary. – No release, satisfaction, or other instrument  
36 is necessary to discharge the lien of a security instrument that has expired; however, nothing in  
37 this section shall be construed as affecting or preventing the execution and recordation of any  
38 such release, satisfaction, or other document.

39 (j) Trustee in a Deed of Trust. – For purposes of this section, the trustee or substitute  
40 trustee in a deed of trust (i) shall not be considered the owner of the property encumbered by  
41 the lien of the deed of trust and (ii) shall not be a necessary party to a lien maturity extension  
42 agreement or notice of maturity date.

43 (k) Applicability. – This section applies to all security instruments, whether recorded  
44 before, on, or after October 1, 2011, except the following:

- 45 (1) Any security instrument securing the payment of money or securing the  
46 performance of any other obligation or obligations conclusively presumed to  
47 have been fully paid and performed pursuant to the provisions of G.S.  
48 45-37(b) prior to October 1, 2011.  
49 (2) Any security instrument made or given by any railroad company, or any  
50 agreement of conditional sale, equipment trust agreement, lease, chattel  
51 mortgage, or other instrument relating to the sale, purchase, or lease of

1 railroad equipment or rolling stock, or of other personal property.  
2 (2011-312, s. 11.)  
3

4 **§ 45-37. Satisfaction of record of security instruments.**

5 (a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to security  
6 instruments which secure future advances, any security instrument intended to secure the  
7 payment of money or the performance of any other obligation registered as required by law  
8 may be satisfied of record and thereby discharged and released of record in the following  
9 manner:

- 10 (1) Security instruments satisfied of record prior to October 1, 2005, pursuant to  
11 this subdivision as it was in effect prior to October 1, 2005, shall be deemed  
12 satisfied of record, discharged, and released.
- 13 (2) Security instruments satisfied of record prior to October 1, 2011, pursuant to  
14 this subdivision as it was in effect prior to October 1, 2011, shall be deemed  
15 satisfied of record, discharged, and released.
- 16 (3) Security instruments satisfied of record prior to October 1, 2011, pursuant to  
17 this subdivision as it was in effect prior to October 1, 2011, shall be deemed  
18 satisfied of record, discharged, and released.
- 19 (4) Security instruments satisfied of record prior to October 1, 2011, pursuant to  
20 this subdivision as it was in effect prior to October 1, 2011, shall be deemed  
21 satisfied of record, discharged, and released.
- 22 (5) Security instruments satisfied of record prior to October 1, 2005, pursuant to  
23 this subdivision as it was in effect prior to October 1, 2005, shall be deemed  
24 satisfied of record, discharged, and released.
- 25 (6) Security instruments satisfied of record prior to October 1, 2005, pursuant to  
26 this subdivision as it was in effect prior to October 1, 2005, shall be deemed  
27 satisfied of record, discharged, and released.
- 28 (7) By recording:
  - 29 a. A satisfaction document that satisfies the requirements of G.S.  
30 45-36.10,
  - 31 b. An affidavit of satisfaction that satisfies the requirements of G.S.  
32 45-36.16, or
  - 33 c. A trustee's satisfaction that satisfies the requirements of G.S.  
34 45-36.20, but only if the security instrument is a deed of trust.

35 The register of deeds shall not be required to verify or make inquiry  
36 concerning (i) the truth of the matters stated in any satisfaction document,  
37 affidavit of satisfaction, or trustee's satisfaction, or (ii) the authority of the  
38 person executing any satisfaction document, affidavit, or trustee's  
39 satisfaction to do so.

40 (b) It shall be conclusively presumed that the conditions of any security instrument  
41 recorded before October 1, 2011, securing the payment of money or securing the performance  
42 of any other obligation or obligations have been complied with or the debts secured thereby  
43 paid or obligations performed, as against creditors or purchasers for valuable consideration  
44 from the mortgagor or grantor, from and after the expiration of 15 years from whichever of the  
45 following occurs last:

- 46 (1) The date when the conditions of the security instrument were required by its  
47 terms to have been performed, or
- 48 (2) The date of maturity of the last installment of debt or interest secured  
49 thereby;

50 provided that on or before October 1, 2011, and before the lien has expired pursuant to this  
51 subsection, the holder of the indebtedness secured by the security instrument or party secured

1 by any provision thereof may file an affidavit with the register of deeds which affidavit shall  
2 specifically state:

3 (1) The amount of debt unpaid, which is secured by the security instrument; or

4 (2) In what respect any other condition thereof shall not have been complied  
5 with; or

6 may record a separate instrument signed by the secured creditor and witnessed by the register  
7 of deeds stating:

8 (1) Any payments that have been made on the indebtedness or other obligation  
9 secured by the security instrument including the date and amount of  
10 payments and

11 (2) The amount still due or obligations not performed under the security  
12 instrument.

13 The effect of the filing of the affidavit or the recording of a separate instrument made as herein  
14 provided shall be to postpone the effective date of the conclusive presumption of satisfaction to  
15 a date 15 years from the filing of the affidavit or from the recording of the separate instrument.  
16 There shall be only one postponement of the effective date of the conclusive presumption  
17 provided for herein. The register of deeds shall record and index the affidavit provided for  
18 herein or the separate instrument made as herein provided as a subsequent instrument in  
19 accordance with G.S. 161-14.1. This subsection shall not apply to any security instrument made  
20 or given by any railroad company, or to any agreement of conditional sale, equipment trust  
21 agreement, lease, chattel mortgage or other instrument relating to the sale, purchase or lease of  
22 railroad equipment or rolling stock, or of other personal property.

23 The lien of any security instrument that secured the payment of money or the performance  
24 of any other obligation or obligations and that was conclusively presumed to have been fully  
25 paid and performed prior to October 1, 2011, pursuant to the provisions of this subsection is  
26 conclusively deemed to have expired and shall be of no further force or effect. No release,  
27 satisfaction, or other instrument is necessary to discharge the lien of a security instrument that  
28 has expired; however, nothing in this section shall be construed as affecting or preventing the  
29 execution and recordation of any such release, satisfaction, or other document.

30 This subsection shall apply only to security instruments securing the payment of money or  
31 securing the performance of any other obligation or obligations that were conclusively  
32 presumed pursuant to this subsection to have been fully paid and performed prior to October 1,  
33 2011. All other security instruments shall be subject to the provisions of G.S. 45-36.24.

34 (c) Repealed by Session Laws 1991, c. 114, s. 4.

35 (d) Repealed by Session Laws 2005-123, s. 1.

36 (e) Any transaction subject to the provisions of the Uniform Commercial Code, Chapter  
37 25 of the General Statutes, is controlled by the provisions of that act and not by this section.

38 (f) Whenever this section requires a signature or endorsement, that signature or  
39 endorsement shall be followed by the name of the person signing or endorsing the document  
40 printed, stamped, or typed so as to be clearly legible.

41 (g) The satisfaction of record of a security instrument pursuant to this section shall  
42 operate and have the same effect as a duly executed and recorded deed of release or  
43 reconveyance of the property described in the security instrument and shall release and  
44 discharge (i) all the interest of the secured creditor in the real property arising from the security  
45 instrument and, (ii) if the security instrument is a deed of trust, all the interest of the trustee or  
46 substitute trustee in the real property arising from the deed of trust. (1870-1, c. 217; Code, s.  
47 1271; 1891, c. 180; 1893, c. 36; 1901, c. 46; Rev., s. 1046; 1917, c. 49, s. 1; c. 50, s. 1; C.S., s.  
48 2594; 1923, c. 192, s. 1; c. 195; 1935, c. 47; 1945, c. 988; 1947, c. 880; 1951, c. 292, s. 1; 1967,  
49 c. 765, ss. 1-5; 1969, c. 746; 1975, c. 305; 1985, c. 219; 1987, c. 405, s. 1; c. 620, s. 1; 1989, c.  
50 434, s. 1; 1991, c. 114, s. 4; 1995, c. 292, ss. 1, 2, 5; 1995 (Reg. Sess., 1996), c. 604, s. 1;

1 2005-123, s. 1; 2006-226, s. 12; 2006-259, s. 2; 2006-264, s. 40(b); 2011-246, s. 4; 2011-312, s.  
2 12.)

3  
4 **§ 45-37.1. Validation of certain entries of cancellation made by beneficiary or assignee**  
5 **instead of trustee.**

6 In all cases where, prior to January 1, 1930, it appears from the margin or face of the record  
7 in the office of the register of deeds of any county in this State that the original beneficiary  
8 named in any deed of trust, trust indenture, or other instrument intended to secure the payment  
9 of money and constituting a lien on real estate, or his assignee of record, shall have made an  
10 entry purporting to fully satisfy and discharge the lien of such instrument, and such entry has  
11 been signed by the original payee and beneficiary in said deed of trust, or other security  
12 instrument, or by his assignee of record, or by his or their properly constituted officer, agent,  
13 attorney, or legal representatives, and has been duly witnessed by the register of deeds or his  
14 deputy, all such entries of cancellation and satisfaction are hereby validated and made full,  
15 sufficient and complete to release, satisfy and discharge the lien of such instrument, and shall  
16 have the same effect as if such entry had been made and signed by the trustee named in said  
17 deed of trust, or other security instrument, or by his duly appointed successor or substitute.  
18 (1945, c. 986.)

19  
20 **§ 45-37.2. Indexing satisfactions and other documents relating to security instruments.**

21 (a) The register of deeds shall record and index the following instruments in accordance  
22 with G.S. 161-14.1:

- 23 (1) A substitution of trustee.  
24 (2) A document of rescission recorded pursuant to G.S. 45-36.6.  
25 (3) A deed of release or reconveyance.  
26 (4) A partial release recorded pursuant to G.S. 45-36.22.  
27 (5) An obligation release recorded pursuant to G.S. 45-36.23.  
28 (6) A satisfaction document, affidavit of satisfaction, or trustee's satisfaction  
29 recorded pursuant to G.S. 45-37(a)(7).  
30 (7) A lien maturity extension agreement or notice of maturity date recorded  
31 pursuant to G.S. 45-36.24.

32 No fee shall be charged by the register of deeds for recording a satisfaction document,  
33 affidavit of satisfaction, or a trustee's satisfaction.

34 (b) G.S. 161-14.1 (1963, c. 1021, s. 1; 1967, c. 765, s. 6; 1987, c. 620, s. 2; 1991, c.  
35 114, s. 2; 1993, c. 425, s. 3; 1995, c. 292, s. 6; 2005-123, s. 1; 2011-246, s. 5; 2011-312, s. 13.)

36  
37 **§ 45-38. Recording of foreclosure.**

38 In case of foreclosure of any deed of trust, or mortgage, the trustee, mortgagee, or the  
39 trustee's or mortgagee's attorney shall record a notice of foreclosure that includes the date  
40 when, and the person to whom, a conveyance was made by reason of the foreclosure. In the  
41 event the entire obligation secured by a mortgage or deed of trust is satisfied by a sale of only a  
42 part of the property embraced within the terms of the mortgage or deed of trust, the trustee,  
43 mortgagee, or the trustee's or mortgagee's attorney shall indicate in the notice of foreclosure  
44 which property was sold.

45 A notice of foreclosure shall consist of a separate instrument, or that part of the original  
46 deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names  
47 of the original parties to the original instrument foreclosed, and the recording data for the  
48 instrument foreclosed. A notice of foreclosure shall be indexed by the register of deeds in  
49 accordance with G.S. 161-14.1. (1923, c. 192, s. 2; C.S., s. 2594(a); 1949, c. 720, s. 2; 1963, c.  
50 1021, s. 2; 1971, c. 985; 1991, c. 114, s. 3; 1993, c. 305, s. 24; 2005-123, s. 1; 2006-226, s. 13.)

1 **§ 45-39: Repealed by Session Laws 1949, c. 720, s. 5.**

2  
3 **§ 45-40:** Repealed by Session Laws 2005-123, s. 1, effective October 1, 2005.  
4

5 **§ 45-41. Recorded deed of release of mortgagee's representative.**

6 The personal representative of any mortgagee or trustee in any mortgage or deed of trust  
7 which has heretofore or which may hereafter be registered in the manner required by the laws  
8 of this State may satisfy of record, discharge and release the same and all property thereby  
9 conveyed by deed of quitclaim, release or conveyance executed, acknowledged and recorded as  
10 is now prescribed by law for the execution, acknowledgment and registration of deeds and  
11 mortgages in this State. (1909, c. 283, s. 1; C.S., s. 2596; 2005-123, s. 1.)  
12

13 **§ 45-42. Satisfaction of corporate mortgages by corporate officers.**

14 All security instruments executed to a corporation may be satisfied and so marked of record  
15 as by law provided for the satisfaction of security instruments, by any officer of the corporation  
16 indicating the office held. For the purposes of recordation and satisfaction, such signature shall  
17 be deemed to be a certification by the signer that he is an officer and is authorized to execute  
18 the satisfaction on behalf of such corporation. Where security instruments were marked  
19 "satisfied" on the records before the twenty-third day of February, 1909, by any president,  
20 secretary, treasurer or cashier of any corporation by such officer writing his own name and  
21 affixing thereto the title of his office in such corporation, such satisfaction is validated, and is  
22 as effective to all intents and purposes as if a deed of release duly executed by such corporation  
23 had been made, acknowledged and recorded. (1909, c. 283, ss. 2, 3; C.S., s. 2597; 1935, c. 271;  
24 1963, c. 193; 1991, c. 647, s. 6; 2005-123, s. 1.)  
25

26 **§ 45-42.1. Corporate cancellation of lost mortgages by register of deeds.**

27 Upon affidavit of the secretary and treasurer of a corporation showing that the records of  
28 such corporation show that such corporation has fully paid and satisfied all of the notes secured  
29 by a security instrument executed by such corporation and such payment and satisfaction was  
30 made more than 25 years ago, and that such security instrument was made to a corporation  
31 which ceased to exist more than 25 years ago, and such affidavit shall further state that the  
32 records of such corporation show that no payments have been made on such secured obligation  
33 by the corporation executing such security instrument for 25 years, the register of deeds of the  
34 county in which such security instrument is recorded is authorized to record the affidavit. The  
35 register of deeds shall index the affidavit according to G.S. 161-22 using the names of parties  
36 stated in the affidavit and shall make reference to the recording data of the original security  
37 instrument as stated in the affidavit opposite the name of each party so indexed. Upon  
38 recording such affidavit, the said security instrument shall be deemed to be cancelled and  
39 satisfied of record: Provided, that this section shall not apply to any mortgagor corporation  
40 except those in which the State of North Carolina owns more than a majority of the capital  
41 stock and shall not apply to any security instrument in which the principal amount secured  
42 thereby exceeds the sum of fifteen thousand dollars (\$15,000): Provided, such cancellation  
43 shall not bar any action to foreclose such security instrument instituted within 90 days after the  
44 same is cancelled. (1945, c. 1090; 1991, c. 114, s. 7; 2005-123, s. 1.)  
45

46 **§ 45-42.3. Automatic release of real property from ancillary security instruments.**

47 (a) The following definitions shall apply in this section:

48 (1) Ancillary security instrument. – An assignment of leases with respect to the  
49 real property, an assignment of rents from or arising out of the real property,  
50 a financing statement covering fixtures on the real property that is filed in  
51 the office of the register of deeds in the county in which the real property is

1 located, and any other document or instrument that assigns, or creates a lien  
2 on, an interest in the real property.

3 (2) Real property. – The real property described in and encumbered by the lien  
4 of a security instrument.

5 (b) Except as provided in subsection (c) of this section, (i) the expiration of the lien of a  
6 security instrument pursuant to G.S. 45-36.24 or the satisfaction of a security instrument of  
7 record pursuant to G.S. 45-37 shall be deemed automatically to release the real property from  
8 the operation of all ancillary security instruments that secure the same obligation or obligations  
9 secured by the security instrument and (ii) the recording of a partial release pursuant to G.S.  
10 45-36.22 or the recording of a deed of release shall be deemed automatically to release the real  
11 property described in the partial release or deed of release from the operation of all ancillary  
12 security instruments that secure the same obligation or obligations secured by the security  
13 instrument.

14 (c) Subsection (b) of this section shall not apply to an ancillary security instrument if (i)  
15 the ancillary security instrument secures obligations other than, or in addition to, the obligation  
16 or obligations secured by the security instrument; (ii) the security instrument, the ancillary  
17 security instrument, or the document recorded in the office of the register of deeds to satisfy the  
18 security instrument of record expressly states that the satisfaction of the security instrument of  
19 record shall not release the real property from the operation of that particular ancillary security  
20 instrument or from ancillary security instruments in general; or (iii) the security instrument, the  
21 ancillary security instrument, the partial release, or the deed of release expressly states that the  
22 partial release or deed of release shall not release real property from the operation of that  
23 particular ancillary security instrument or ancillary security instruments in general. (2011-312,  
24 s. 14.)  
25

## 26 Article 5.

### 27 Miscellaneous Provisions.

#### 28 **§ 45-43. Real estate mortgage loans; commissions.**

29 Any individual or corporation authorized by law to do a real estate mortgage loan business  
30 may make or negotiate loans of money on notes secured by mortgages or deeds of trust on real  
31 estate bearing legal interest payable semiannually at maturity or otherwise, and in addition  
32 thereto, may charge, collect and receive such commission or fee as may be agreed upon for  
33 making or negotiation of any such loan, not exceeding, however, an amount equal to one and  
34 one-half percent (1 1/2%) of the principal amount of the loan for each year over which the  
35 repayment of the said loan is extended: Provided, however, the repayment of such loan shall be  
36 in annual installments extending over a period of not less than three nor more than 15 years,  
37 and that no annual installment, other than the last, shall exceed thirty-three and one-third  
38 percent (33 1/3%) of the principal amount of loans which are payable in installments extending  
39 over a period of as much as three years and less than four years, twenty-five percent (25%) of  
40 the principal amount of loans which are payable in installments extending over a period of not  
41 less than four years nor more than five years, and fifteen percent (15%) of the principal amount  
42 of loans which are payable in installments extending over a period of more than five years and  
43 not more than 15 years. This section shall only apply to the counties of Ashe, Buncombe,  
44 Caldwell, Forsyth, Gaston, Henderson, McDowell, Madison, Rutherford, Watauga, and  
45 Yancey. (Ex. Sess. 1924, c. 35; 1925, cc. 28, 209; Pub. Loc. 1925, c. 592, modified by 1927, c.  
46 5; Pub. Loc. 1927, c. 187.)  
47

48 **§§ 45-43.1 through 45-43.5. Repealed by Session Laws 1971, c. 1229, s. 1.**

49  
50 **§ 45-44. Mortgages held by insurance companies, banks, building and loan associations,**  
51 **or other lending institutions.**

1 A mortgage or deed of trust held by an insurance company, bank, building and loan  
2 association, or other lending institution shall be deemed, for the purposes of any regulatory  
3 statute applicable to such institutions, to be a first lien on the property despite the existence of  
4 prior mortgages or other liens on the same property in all cases where sufficient funds for the  
5 discharge of such prior mortgages or other liens shall have been deposited with such lending  
6 institution in trust solely for such purpose. Such funds may be deposited either in cash or in  
7 obligations of the State of North Carolina or of the United States maturing in sufficient amount  
8 on or before the date or dates that the indebtedness secured by such prior mortgages or other  
9 liens is to be paid. (1957, c. 1350.)

10  
11 **§ 45-45. Spouse of mortgagor included among those having right to redeem real**  
12 **property.**

13 Any married person has the right to redeem real property conveyed by his or her spouse's  
14 mortgages, deeds of trust and like security instruments and upon such redemption, to have an  
15 assignment of the security instrument and the uncanceled obligation secured thereby. (1959, c.  
16 879, s. 13.)

17  
18 **§ 45-45.1. Release of mortgagor by dealings between mortgagee and assuming grantee.**

19 Except where otherwise provided in the mortgage or deed of trust or in the note or other  
20 instrument secured thereby, or except where the mortgagor, or grantor of a deed of trust  
21 otherwise consents:

- 22 (1) Whenever real property which is encumbered by a mortgage or deed of trust  
23 is sold and the grantee assumes and agrees to pay such mortgage or deed of  
24 trust, and thereafter the mortgagee or secured creditor under the deed of trust  
25 gives the grantee a legally binding extension of time, or releases the grantee  
26 from liability on the obligation, the mortgagor or grantor of the deed of trust  
27 is released from any further liability on the obligation.
- 28 (2) Whenever real property which is encumbered by a mortgage or deed of trust  
29 is sold and the grantee assumes and agrees to pay such mortgage or deed of  
30 trust, and thereafter the mortgagee or secured creditor under the deed of trust  
31 or trustee acting in his behalf releases any of the real property included in the  
32 mortgage or deed of trust, the mortgagor or grantor of the deed of trust is  
33 released to the extent of the value of the property released, which shall be  
34 the value at the time of the release or at the time an action is commenced on  
35 the obligation secured by the mortgage or deed of trust, whichever value is  
36 the greater.
- 37 (3) Whenever real property which is encumbered by a mortgage or deed of trust  
38 is sold expressly subject to the mortgage or deed of trust, but the grantee  
39 does not assume the same, and thereafter the mortgagee or secured creditor  
40 under the deed of trust makes a binding extension of time of the mortgage or  
41 deed of trust, the mortgagor or grantor of the deed of trust is released to the  
42 extent of the value of the property at the time of the extension agreement.
- 43 (4) Whenever real property which is encumbered by a mortgage or deed of trust  
44 is sold expressly subject to the mortgage or deed of trust, but the grantee  
45 does not assume the same, and thereafter the mortgagee or secured creditor  
46 under the deed of trust, or trustee acting in his behalf, releases any of the real  
47 property included in the mortgage or deed of trust, the mortgagor or grantor  
48 of the deed of trust is released to the extent of the value of the property  
49 released, which shall be the value at the time of the release or at the time an  
50 action is commenced on the obligation secured by the mortgage or deed of  
51 trust, whichever value is the greater. (1961, c. 356.)

1  
2 **§ 45-45.2. Transfer taxes not applicable.**

3 Notwithstanding any other provision of law, no excise tax on instruments conveying an  
4 interest in real property, except that levied by Article 8E of Chapter 105 of the General  
5 Statutes, shall apply to instruments conveying an interest in property as the result of foreclosure  
6 or in lieu of foreclosure to the holder of the security interest being foreclosed or subject to  
7 being foreclosed. (1987, c. 685.)  
8

9 **§ 45-45.3. Trustee in a deed of trust.**

10 (a) The following definitions apply in this section:

- 11 (1) Secured creditor. – The holder, owner, or assignee of the obligation secured  
12 by a deed of trust.  
13 (2) Trustee. – The trustee or substitute trustee then serving as such under the  
14 terms of a deed of trust.

15 (b) Unless the deed of trust provides otherwise, all of the following may be done  
16 without the knowledge, consent, or joinder of the trustee:

- 17 (1) Pursuant to G.S. 45-36.23, an obligation may be declared by the owner and  
18 holder of the obligation to be no longer secured by the deed of trust.  
19 (2) Property may be released from the lien of a deed of trust by the secured  
20 creditor.  
21 (3) The lien of a deed of trust may be released or subordinated by the secured  
22 creditor.  
23 (4) The terms of a deed of trust may be modified by the secured creditor and the  
24 then record owner of the property encumbered by the lien of the deed of  
25 trust.  
26 (5) The deed of trust may be satisfied of record by the secured creditor.

27 (c) Except in matters relating to the foreclosure of the deed of trust or the exercise of a  
28 power of sale under the terms of the deed of trust, the trustee is neither a necessary nor a proper  
29 party to any civil action or proceeding involving (i) title to the real property encumbered by the  
30 lien of the deed of trust or (ii) the priority of the lien of the deed of trust. Examples of civil  
31 actions or proceedings in which the trustee is neither a necessary nor a proper party include, but  
32 are not limited to, civil actions or proceedings relating to:

- 33 (1) Condemnation.  
34 (2) Bankruptcy.  
35 (3) The establishment or correction of title to real property, including, but not  
36 limited to, actions to quiet title, reform land records, or resolve boundary  
37 line disputes.  
38 (4) Fraudulent conveyances.  
39 (5) The creation or enforcement of an attachment or judgment lien.  
40 (6) The foreclosure of a lien other than the lien of the deed of trust, regardless of  
41 whether the lien is superior or subordinate to the lien of the deed of trust,  
42 including, but not limited to, the foreclosure of mortgages, other deeds of  
43 trust, tax liens, and assessment liens.  
44 (7) The establishment, perfection, or enforcement of a mechanic's or  
45 materialman's lien.  
46 (8) The creation or enforcement of a constructive trust, resulting trust, or  
47 equitable lien relating to the property.  
48 (9) The partition of real property.  
49 (10) The interpretation or enforceability of a will, trust, or estate.  
50 (11) A subrogation claim or other equitable claim or defense involving the  
51 priority or enforceability of a deed of trust.

1 (12) Determination or enforcement of rights and obligations involving easements  
2 or restrictive covenants.

3 (d) If a trustee is improperly joined as a party to an action or proceeding when this  
4 section provides that the trustee is neither a necessary nor a proper party to that action or  
5 proceeding, then:

6 (1) Upon motion duly made by any party to the action or proceeding, the trustee  
7 shall be dismissed from the action or proceeding;

8 (2) Regardless of whether the trustee makes an appearance in the action or  
9 proceeding, no entry of a default or default judgment shall be entered against  
10 the trustee; and

11 (3) If the trustee makes an appearance in the action or proceeding, each person  
12 who improperly joined the trustee as a party to the action or proceeding shall  
13 be jointly and severally liable to the trustee for all the expenses and costs  
14 incurred by the trustee in the defense of the action or proceeding or in  
15 obtaining the trustee's dismissal from the action or proceeding, including the  
16 reasonable attorneys' fees actually incurred by the trustee.

17 (e) Except as expressly provided in this section, this section is not in derogation of case  
18 law and statutory provisions that vest legal title to property conveyed by a deed of trust in the  
19 trustee named therein. (2011-312, s. 15.)  
20

21 Article 6.

22 Uniform Trust Receipts Act.

23 **§§ 45-46 through 45-66: Repealed by Session Laws 1965, c. 700, s. 2.**  
24

25 Article 7.

26 Instruments to Secure Future Advances and Future Obligations.

27 **§ 45-67. Definitions.**

28 The following definitions apply in this Article:

29 (1) Advance. – A disbursement of funds or other action that increases the  
30 outstanding principal balance owing on an obligation for the payment of  
31 money.

32 (2) Security instrument. – A mortgage, deed of trust, or other instrument relating  
33 to real property securing an obligation or obligations to a person, firm, or  
34 corporation specifically named in such instrument for the payment of  
35 money. (1969, c. 736, s. 1; 1989, c. 496, s. 1; 2009-197, s. 1.)  
36

37 **§ 45-68. Requirements.**

38 A security instrument, otherwise valid, shall secure the following so as to give priority as  
39 provided in G.S. 45-70:

40 (1) Recodified as subdivision (1b).

41 (1a) Existing obligations that are specifically or generally identified, described,  
42 or referenced in the security instrument as being secured thereby, and all  
43 advances made at or prior to the registration of the security instrument.

44 (1b) Future advances and future obligations that are specifically or generally  
45 identified, described, or referenced in the security instrument as being  
46 secured thereby that may from time to time be made or incurred, but only if  
47 the security instrument shows all of the following:

48 a. That the security instrument is given wholly or partly to secure future  
49 advances and/or future obligations.

50 b. The maximum principal amount that may be secured by the security  
51 instrument at any one time.

1 c. The period within which future advances may be made and future  
2 obligations may be incurred, which period shall not extend more than  
3 30 years beyond the date of the security instrument or, if the security  
4 agreement is not dated, the date the security instrument is registered.

5 (2), (3) Repealed by Session Laws 2009-197, s. 2, effective October 1, 2009.  
6 (1969, c. 736, s. 1; 1985, c. 457; 1989, c. 496, s. 2; 2009-197, s. 2; 2011-312,  
7 s. 16.)  
8

9 **§ 45-69. Fluctuation of obligations within maximum amount.**

10 Unless the security instrument provides to the contrary, if the maximum amount secured by  
11 the security instrument has not been advanced or if any obligation secured thereby is paid or is  
12 reduced by partial payment, further advances may be made and additional obligations secured  
13 by the security instrument may be incurred from time to time within the time limit fixed by the  
14 security instrument. Such further advances and obligations, together with interest thereon, shall  
15 be secured to the same extent as original advances and obligations under the security  
16 instrument, if the provisions of G.S. 45-68 are complied with. (1969, c. 736, s. 1; 2009-197, s.  
17 3; 2011-312, s. 17.)  
18

19 **§ 45-70. Priority of security instrument.**

20 (a) Subject to subsections (a1), (c), and (d) of this section, any security instrument that  
21 conforms to the requirements of this Article shall, from the time and date of registration  
22 thereof, have the same priority to the extent of all future advances and future obligations  
23 secured by it, and all interest accruing thereon, as if all the advances had been made, all the  
24 obligations incurred, and all the interest accrued at the time the security instrument was  
25 registered.

26 (a1) Subject to subsections (c) and (d) of this section, if at any time the aggregate  
27 outstanding principal balance of the obligation or obligations secured by a security instrument  
28 that conforms to the requirements of this Article exceeds the maximum principal amount that  
29 may be secured by the security instrument at any one time, then, unless the security instrument  
30 provides otherwise, the amount in excess and the interest accrued on the amount in excess shall  
31 be secured by the security instrument, but (i) the amount in excess and the interest accrued on  
32 the amount in excess shall not be afforded the priority provided in subsection (a) of this section  
33 and (ii) the priority of the lien of the security instrument with respect to the amount in excess  
34 and the interest accrued on the amount in excess shall be determined by other applicable law.

35 (b) Repealed by Session Laws 1989, c. 496, s. 3.

36 (c) All payments made, sums advanced, and expenses incurred by the secured creditor  
37 (i) for insurance, taxes, and assessments, (ii) to protect the secured creditor's interest under the  
38 security instrument, or (iii) to preserve and protect the value or condition of the real property  
39 encumbered by the security instrument shall be secured by the security instrument and shall  
40 have the same priority as if they had been paid, advanced, or incurred at the time the security  
41 instrument was registered. The provisions of G.S. 45-68 shall not be applicable to such  
42 payments, advances, or expenses, nor shall accrued interest or such payments, advances, or  
43 expenses be considered in computing the principal amount that is secured by the security  
44 instrument at any one time.

45 (d) Notwithstanding any other provision of this Article, any security instrument  
46 hereafter executed which secures an obligation or obligations of an electric or telephone  
47 membership corporation incorporated or domesticated in North Carolina to the United States of  
48 America or any of its agencies, or to any other financing institution, or of an electric or gas  
49 utility operating in North Carolina, shall from the time and date of registration of said security  
50 instrument have the same priority to the extent of (i) all future obligations incurred by the  
51 membership corporation or utility to any mortgagee or beneficiary named in the security

1 instrument, together with interest thereon, (ii) all future advances secured by it, together with  
2 interest thereon, and (iii) all payments made, sums advanced, and expenses incurred by the  
3 secured creditor of the types described in subsection (c) of this section, as if they all had been  
4 accrued, paid, made, advanced, and incurred at the time of the registration of the security  
5 instrument, regardless of whether the security instrument meets the requirements of G.S. 45-68.  
6 (1969, c. 736, s. 1; 1971, c. 565; 1979, c. 594; 1989, c. 496, s. 3; 2009-197, s. 4; 2011-312, s.  
7 18.)  
8

9 **§ 45-71. Satisfaction of the security instrument.**

10 Upon payment of all the obligations secured by a security instrument which conforms to the  
11 requirements of this Article and upon termination of all obligation to make advances, and upon  
12 written demand made by the maker of the security instrument, his successor in interest, or  
13 anyone claiming under him, the holder of the security instrument is hereby authorized to and  
14 shall make a written entry upon the security instrument showing payment and satisfaction of  
15 the instrument, which entry he shall date and sign. When the security instrument secures notes,  
16 bonds, or other undertakings for the payment of money which have not already been entered on  
17 the security instrument as paid, the holder of the security instrument, unless payment was made  
18 to him, may require the exhibition of all such evidences of indebtedness secured by the  
19 instrument marked paid before making his entry showing payment and satisfaction. (1969, c.  
20 736, s. 1.)  
21

22 **§ 45-72. Termination of future optional advances.**

23 (a) The holder of a security instrument conforming to the provisions of this Article  
24 shall, at the request of the maker of the security instrument or his successor in title promptly  
25 furnish to him a statement duly executed and acknowledged in such form as to meet the  
26 requirements for the execution and acknowledgment of deeds, setting forth in substance the  
27 following:

28 "This is to certify that the total outstanding balance of all obligations, the payment of which  
29 is secured by that certain instrument executed by \_\_\_\_\_, dated \_\_\_\_\_,  
30 recorded in book \_\_\_\_\_ at page \_\_\_\_ in the office of the Register of Deeds of \_\_\_\_\_  
31 County, North Carolina, is \$ \_\_\_\_\_, of which amount \$ \_\_\_\_\_ represents principal.  
32 No future advances will be made under the aforesaid instrument, except such expense as it  
33 may become necessary to advance to preserve the security now held.

34 This \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_ .  
35

36 \_\_\_\_\_  
(Signature and Acknowledgment)"

37 (b) Such statement, when duly executed and acknowledged, shall be entitled to probate  
38 and registration, and upon filing for registration shall be effective from the date of the  
39 statement. It shall have the effect of limiting the lien or encumbrance of the holder of the  
40 security instrument to the amount therein stated, plus any necessary advances made to preserve  
41 the security, and interest on the unpaid principal. It shall bar any further advances under the  
42 security instrument therein referred to except such as may be necessary to preserve the security  
43 then held as provided in G.S. 45-70(c). (1969, c. 736, s. 1; 1989, c. 496, s. 4; 1999-456, s. 59.)  
44

45 **§ 45-73. Cancellation of record; presentation of notes described in security instrument**  
46 **sufficient.**

47 The provisions of G.S. 45-37 apply to discharge of record of instruments executed under  
48 this Article. (1969, c. 736, s. 1; 2011-246, s. 6.)  
49

50 **§ 45-74. Article not exclusive.**

1 The provisions of this Article shall not be deemed exclusive. Nothing in this Article shall  
2 invalidate or overrule any rule of validity or priority applicable to any security instrument  
3 failing to comply with the provisions of this Article. (1969, c. 736, s. 1; 2011-312, s. 19.)  
4

5 **§§ 45-75 through 45-79. Reserved for future codification purposes.**  
6

7 Article 8.

8 Instruments to Secure Certain Home Loans.

9 **§ 45-80. Priority of security instruments securing certain home loans.**

10 (a) Notwithstanding any other provision of law, a deed of trust or mortgage which  
11 secures a loan that complies with subsection (b) below shall have priority and continue to have  
12 priority from the time and date of registration thereof to the extent of all principal and interest  
13 secured by said deed of trust or mortgage notwithstanding that the loan may be renewed or  
14 extended one or more times and notwithstanding that the interest rate may be increased or  
15 decreased from time to time. Interest which accrues pursuant to changes in the interest rate  
16 made pursuant to a method agreed to as provided in subsection (b) below (whenever such  
17 changes are made) shall be secured and have priority from the registration of the deed of trust  
18 or mortgage and not from the time changes are made.

19 (b) With respect to a loan referred to in subsection (a) above:

20 (1) The parties must provide in a written instrument agreed to by the borrower at  
21 or before registration of the deed of trust or mortgage that the loan may be  
22 renewed or extended in accordance with stated terms and that the interest  
23 rate may be increased or decreased according to a stated method; and

24 (2) The loan must be a loan described in G.S. 24-1.1A(a)(1) or (2).

25 (c) The provisions of this section shall not be deemed exclusive and no deed of trust or  
26 mortgage or other security instrument which is otherwise valid shall be invalidated by failure to  
27 comply with the provisions of this section. (1979, 2nd Sess., c. 1182.)  
28

29 Article 9.

30 Instruments to Secure Equity Lines of Credit.

31 **§ 45-81. Definitions.**

32 The following definitions apply in this Article:

33 (1) Authorized person. – Any borrower; the legal representative of any  
34 borrower; the attorney for any borrower; a title insurance company  
35 authorized pursuant to Article 26 of Chapter 58 of the General Statutes to  
36 issue title insurance policies in the State of North Carolina, but only when  
37 the company is acting in connection with a title insurance policy issued or to  
38 be issued with respect to property then encumbered by an existing equity  
39 line security instrument; or an attorney licensed to practice law in the State  
40 of North Carolina or a bank, savings and loan association, savings bank, or  
41 credit union, but only when (i) the attorney, bank, savings and loan  
42 association, savings bank, or credit union is or was responsible for the  
43 disbursement of funds in connection with the sale of, or a new loan secured  
44 by, property then encumbered by an existing equity line security instrument  
45 and (ii) a requirement of the sale or new loan transaction is or was that the  
46 property be conveyed or encumbered free and clear of the lien of the existing  
47 equity line security instrument.

48 (2) Borrower. – A person primarily liable for payment or performance of an  
49 equity line of credit.

50 (3) Equity line of credit. – An agreement in writing between a lender and a  
51 borrower for an extension of credit pursuant to which (i) at any time within a

1 specified period not to exceed 30 years the borrower may request and the  
2 lender is obligated to provide advances up to an agreed aggregate limit; (ii)  
3 any repayments of principal by the borrower within the specified period will  
4 reduce the amount of advances counted against the aggregate limit; and (iii)  
5 the borrower's obligation to the lender is secured by an equity line security  
6 instrument.

- 7 (4) Equity line security instrument. – An agreement, however denominated, that  
8 (i) creates or provides for an interest in real property to secure payment or  
9 performance of an equity line of credit, whether or not it also creates or  
10 provides for a lien on personal property; (ii) shows on its face the maximum  
11 principal amount which may be secured at any one time; and (iii) shows on  
12 its face that it secures an equity line of credit governed by the provisions of  
13 this Article. The term "equity line security instrument" includes a deed of  
14 trust and a mortgage.
- 15 (5) Lender is obligated. – The lender is contractually bound to provide  
16 advances. The contract must set forth any events of default by the borrower,  
17 or other events not within the lender's control, which may relieve the lender  
18 from his obligation, and must state whether or not the lender has reserved the  
19 right to cancel or terminate the obligation.
- 20 (6) Notice regarding future advances. – A written notice submitted under G.S.  
21 45-82.3 to a lender that prevents certain advances made pursuant to an  
22 equity line of credit from being secured by the related equity line security  
23 instrument.
- 24 (7) Owner. – Any person owning a present or future interest in the real property  
25 encumbered by an equity line security instrument, but does not mean the  
26 trustee in a deed of trust or the owner or holder of a mortgage, deed of trust,  
27 mechanic's or materialman's lien, judgment lien, or any other lien on, or  
28 security interest in, the real property.
- 29 (8) Person. – An individual, corporation, business trust, estate, trust, partnership,  
30 limited liability company, association, joint venture, public corporation,  
31 government, or governmental subdivision, agency, or instrumentality, or any  
32 other legal or commercial entity.
- 33 (9) Qualified lien holder. – A person who has a mortgage or deed of trust on  
34 property already encumbered by an existing equity line security instrument,  
35 where that person's mortgage or deed of trust was recorded after the existing  
36 equity line security instrument and it appears from warranties or otherwise  
37 that the person's mortgage or deed of trust was not intended to be  
38 subordinate to the existing equity line security instrument. The term does not  
39 include a trustee under a deed of trust.
- 40 (10) Request to terminate an equity line of credit; and termination request. – A  
41 written request submitted under G.S. 45-82.2 to a lender to terminate an  
42 equity line of credit. Each of the following shall be deemed a termination  
43 request: (i) a notification given pursuant to G.S. 45-36.9(a) requesting the  
44 lender to terminate the equity line of credit, (ii) a notification given pursuant  
45 to G.S. 45-36.9(a) containing a statement sufficient to terminate the  
46 effectiveness of the provision for future advances in the equity line security  
47 instrument, and (iii) a written request made by or on behalf of a borrower to  
48 a lender pursuant to G.S. 45-37 to satisfy a related equity line security  
49 instrument as a matter of public record. (1985, c. 207, s. 2; 1995, c. 237, s.  
50 1; 2011-312, s. 20.)  
51

1 **§ 45-82. Priority of equity line security instrument.**

2 An equity line security instrument shall, from the time and date of its registration, have the  
3 same priority to the extent of all advances secured by it as if the advances had been made at the  
4 time of the registration of the equity line security instrument, notwithstanding the fact that from  
5 time to time during the term of the equity line of credit no balance is outstanding. Interest that  
6 accrues on the equity line of credit and all payments made, sums advanced, and expenses  
7 incurred by the lender (i) for insurance, taxes, and assessments, (ii) to protect the lender's  
8 interest under the equity line security instrument, or (iii) to preserve and protect the value or  
9 condition of the property encumbered by the equity line security instrument shall be secured by  
10 the equity line security instrument and shall have the same priority as if they had been accrued,  
11 paid, advanced, and incurred at the time the equity line security instrument was registered. The  
12 accrued interest, payments, advances, and expenses shall not be considered in computing the  
13 principal amount that is secured by the equity line security instrument at any one time. (1985,  
14 c. 207, s. 2; 2011-312, s. 21.)

15  
16 **§ 45-82.1. Extension of period for advances.**

17 (a) The period for advances agreed to pursuant to G.S. 45-81(3) may be extended by  
18 written agreement of the lender and borrower executed and registered prior to expiration or  
19 termination of the equity line of credit or the borrower's obligation to repay any outstanding  
20 indebtedness. Any extended period shall not exceed 30 years from the end of the preceding  
21 period for advances.

22 (b) If a lender and borrower extend the period for advances by registering a certificate  
23 as described in subsection (c) of this section, advances that are made after the period for  
24 advances provided in the original recorded equity line security instrument or any previously  
25 recorded extension shall have priority from a date not later than the date of registration of the  
26 certificate described in subsection (c) of this section.

27 (c) The priority provided in subsection (b) of this section shall be accorded only if the  
28 lender, the borrower, and, if different than the borrower, the then owners of the real property  
29 encumbered by the equity line security instrument execute a certificate evidencing the  
30 extension and register the certificate in the office of the register of deeds where the equity line  
31 security instrument is registered. The failure of any owner to execute the certificate shall affect  
32 only that owner's interest in the property, and executions by other owners shall have full effect  
33 to the extent of their interests in the property.

34 (d) No particular phrasing is required for a certificate of extension under this section.  
35 The following form, when properly completed, is sufficient to satisfy the requirements of  
36 subsection (c) of this section:

37 "Certificate of Extension of Period for Advances Under Equity Line of Credit  
38 (G.S. 45-82.1)

39 \_\_\_\_\_ is now the lender and secured creditor in the security instrument identified  
40 as follows:

41 Type of Security Instrument: (identify type of security instrument, such as deed  
42 of trust or mortgage)

43 Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

44 Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s),  
45 or secured party(ies) in the security instrument)

46 Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at Page  
47 \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the  
48 Register of Deeds for \_\_\_\_\_ County, North Carolina.

49 The borrower(s) is/are the following: \_\_\_\_\_.

50 The current owner(s) of the property described in the security instrument is/are:  
51 \_\_\_\_\_.

1 The parties have agreed to extend to \_\_\_\_\_ (insert date) the period within  
2 which the borrower may request advances as set forth in G.S. 45-82.1.

3 Date: \_\_\_\_\_

4 \_\_\_\_\_  
Signature of secured creditor

5 \_\_\_\_\_  
6 Signature of borrower(s)

Signature of property owner(s) (if different)

7 [Acknowledgment before officer authorized to take acknowledgments]". (1995,  
8 c. 237, s. 2; 2011-312, s. 22.)

9  
10 **§ 45-82.2. Request to terminate an equity line of credit.**

11 (a) Upon receipt of a request from an authorized person to terminate an equity line of  
12 credit, the lender shall (i) terminate the borrower's right to obtain advances under the borrower's  
13 equity line of credit; (ii) apply all sums subsequently paid by or on behalf of the borrower in  
14 connection with the equity line of credit to the satisfaction of the equity line of credit and other  
15 sums secured by the related equity line security instrument; and (iii) when the balance of all  
16 outstanding sums secured by the related equity line security instrument becomes zero, satisfy  
17 the related equity line security instrument as a matter of public record pursuant to G.S. 45-37.  
18 A request to terminate an equity line of credit shall be conclusively deemed to have been  
19 submitted by or on behalf of a borrower if it is submitted by an authorized person.

20 (b) No particular phrasing is required for a request to terminate an equity line of credit.  
21 The following form, when properly completed, is sufficient to serve as a request to terminate an  
22 equity line of credit:

23 "REQUEST TO TERMINATE AN EQUITY LINE OF CREDIT  
24 (G.S. 45-82.2)

25 To: (name of lender)

26 This is a request to terminate an equity line of credit submitted pursuant to  
27 G.S. 45-82.2. For purposes of this request:

- 28 1. The borrower(s) is/are: (identify one or more of the borrowers)
- 29 2. The account number of the equity line of credit is: (specify the account  
30 number of the equity line of credit, if known by the person submitting the  
31 request)
- 32 3. The street address of the property is: (provide the street address of the property  
33 encumbered by the security instrument identified in 4.)
- 34 4. The equity line of credit is secured by the security instrument identified as  
35 follows:

36 Type of Security Instrument: (identify type of security instrument, such as  
37 deed of trust or mortgage)

38 Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

39 Original Secured Party(ies): (identify the original beneficiary(ies),  
40 mortgagee(s), or secured party(ies) in the security instrument)

41 Recording Data: The security instrument is recorded in Book \_\_\_\_\_ at  
42 Page \_\_\_\_\_ or as document number \_\_\_\_\_ in the office of the  
43 Register of Deeds for \_\_\_\_\_ County, North Carolina.

44 I request and direct that you (i) terminate the borrower's right to obtain advances under the  
45 borrower's equity line of credit; (ii) apply all sums subsequently paid by or on behalf of the  
46 borrower in connection with the equity line of credit to the satisfaction of the equity line of  
47 credit and other sums secured by the related security instrument; and (iii) when the balance of  
48 all outstanding sums secured by the related security instrument becomes zero, satisfy the  
49 security instrument identified above as a matter of public record pursuant to G.S. 45-37.

50 I certify that I am:

51 [ ] The borrower (or one of the borrowers, if there is more than one).



1 we send to your lender in connection with the closing of the sale of the property or the new  
2 loan) will be applied by your lender to the satisfaction of your account. When the balance of  
3 your account becomes zero, your lender will be required to cancel the mortgage or deed of trust  
4 as a matter of public record.

5 If you have questions about this notice or our action, please contact (name of contact person  
6 or department) by calling us at (phone number) or writing to us at (mailing address).

7 (Name of attorney, bank, savings and loan association, savings bank, or credit union)"  
8 (2011-312, s. 23.)

9  
10 **§ 45-82.3. Notice regarding future advances.**

11 (a) A notice regarding future advances may be submitted to a lender by an authorized  
12 person, an owner of the property, or a qualified lien holder.

13 (b) Except as provided in subsection (c) of this section, an advance made by a lender to  
14 a borrower pursuant to an equity line of credit will not be secured by the related equity line  
15 security instrument if the advance occurs after the lender receives and has had not less than one  
16 complete business day to act on a notice regarding future advances.

17 (c) Notwithstanding a lender's receipt of a notice regarding future advances, the  
18 following shall be secured by the equity line security instrument and shall have the same  
19 priority as if they had been owing, accrued, paid, advanced, or incurred at the time the equity  
20 line security instrument was registered:

21 (1) Sums owing to the lender under the equity line of credit at the time the  
22 lender receives the notice regarding future advances (including accrued  
23 interest), all interest that thereafter accrues on the equity line of credit, and  
24 all payments made, sums advanced, and expenses incurred by the lender  
25 before or after the lender receives the notice regarding future advances (i) for  
26 insurance, taxes, and assessments, (ii) to protect the lender's interest under  
27 the equity line security instrument, or (iii) to preserve and protect the value  
28 or condition of the real property encumbered by the equity line security  
29 instrument.

30 (2) Any advance made by the lender to a borrower pursuant to an equity line of  
31 credit that occurs within one complete business day after the lender receives  
32 the notice regarding future advances.

33 (3) Any advance made by the lender to a borrower pursuant to an equity line of  
34 credit that occurs more than one complete business day after the lender  
35 receives the notice regarding future advances, but only if the advance was  
36 initiated or approved before the lender received the notice regarding future  
37 advances.

38 (d) Receipt by a lender of a notice regarding future advances shall be conclusively  
39 deemed to be an action by the borrower adversely affecting the lender's security for the equity  
40 line of credit. Upon receipt of a notice regarding future advances, the lender may terminate the  
41 borrower's right and ability to obtain additional advances under the equity line of credit.

42 (e) No particular phrasing is required for a notice regarding future advances. The  
43 following form, when properly completed, is sufficient to serve as a notice regarding future  
44 advances:

45 "NOTICE REGARDING FUTURE ADVANCES  
46 (G.S. 45-82.3)

47 To: (name of lender)

48 This is a notice regarding future advances submitted pursuant to G.S. 45-82.3. For purposes of  
49 this notice:

50 1. The borrower(s) is/are: (identify borrower(s))

- 1        2. The account number of the equity line of credit is: (specify the account number of the
- 2        equity line of credit, if known by the person submitting the notice)
- 3        3. The street address of the property is: (provide the street address of the property
- 4        encumbered by the security instrument identified in 4.)
- 5        4. The equity line of credit is secured by the security instrument identified as follows:
- 6            Type of Security Instrument: (identify type of security instrument, such as deed of
- 7            trust or mortgage)
- 8            Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))
- 9            Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s),
- 10          or secured party(ies) in the security instrument)
- 11          Recording Data: The security instrument is recorded in Book \_\_\_\_ at Page \_\_\_\_
- 12          or as document number \_\_\_\_\_ in the office of the Register of Deeds for
- 13          \_\_\_\_\_ County, North Carolina.

14 Except as provided in G.S. 45-82.3(c), subsequent advances made by you under the equity line

15 of credit will not be secured by the security instrument identified above.

16 I certify that I am:

- 17         The borrower (or one of the borrowers, if there is more than one).
- 18         The legal representative of a borrower.
- 19         The attorney for a borrower.
- 20         An owner of the property encumbered by the security instrument
- 21        identified above.
- 22         A title insurance company that satisfies the requirements of
- 23        G.S. 45-81(1).
- 24         An attorney licensed to practice law in the State of North Carolina that
- 25        satisfies the requirements of G.S. 45-81(1).
- 26         A bank, savings and loan association, savings bank, or credit union that
- 27        satisfies the requirements of G.S. 45-81(1).
- 28         A qualified lien holder as defined in G.S. 45-81(9).

29 Date: \_\_\_\_\_

30 \_\_\_\_\_  
Signature of person submitting the request"

31 (f) If the person who gives a lender a notice regarding future advances is (i) a title

32 insurance company described in G.S. 45-81(1); (ii) an attorney, bank, savings and loan

33 association, savings bank, or credit union described in G.S. 45-81(1), (iii) an owner as defined

34 in G.S. 45-81(7), other than an owner who is also a borrower, or (iv) a qualified lien holder

35 described in G.S. 45-81(9), then that person shall give a copy of the notice regarding future

36 advances to the borrower accompanied by a notice that provides substantially as follows:

37 "NOTICE TO BORROWER

38 You have an equity line of credit with (name of lender) secured by a mortgage or deed of

39 trust on real property located at (address of property).

40 As permitted by North Carolina law, we are sending the

41 (enclosed/attached/following/foregoing) Notice Regarding Future Advances to your lender.

42 Subject to certain exceptions, the notice prevents any new credit advances you obtain under

43 your equity line of credit from being secured by the mortgage or deed of trust that currently

44 secures its repayment. Our reason for giving your lender the notice is to limit the amount

45 secured by the mortgage or deed of trust that secures your equity line of credit and to prevent

46 that amount from increasing.

47 When your lender receives our notice, your lender may elect to terminate your right and

48 ability to obtain additional advances under your equity line of credit. However, termination of

49 your right and ability to obtain additional advances will not release you from liability for the

50 account. You should contact your lender to determine whether you will be able to obtain

51 additional credit advances from your lender.

1 If you have questions about this notice or our action, please contact (name of contact person  
2 or department) by calling us at (phone number) or writing to us at (mailing address).  
3 (Name of insurance company, attorney, bank, savings and loan association, savings bank,  
4 credit union, owner, or qualified lien holder)". (2011-312, s. 24.)  
5

6 **§ 45-82.4. Prepayment penalty.**

7 Except as provided in G.S. 24-9(c), no prepayment penalty may be charged with respect to  
8 an equity line of credit. (2011-312, s. 25.)  
9

10 **§ 45-83. Future advances statute shall not apply.**

11 The provisions of Article 7 of this Chapter shall not apply to an equity line of credit or the  
12 equity line security instrument securing it, if the equity line security instrument shows on its  
13 face that it secures an equity line of credit governed by the provisions of this Article. (1985, c.  
14 207, s. 2; 2011-312, s. 26.)  
15

16 **§ 45-84. Article not exclusive.**

17 Except as otherwise provided in G.S. 45-83, the provisions of this Article are not exclusive.  
18 Nothing in this Article shall invalidate or overrule any rule of validity or priority applicable to  
19 any mortgage, deed of trust, or other security instrument failing to comply with the provisions  
20 of this Article. (1985, c. 207, s. 2; 2011-312, s. 27.)  
21

22 **§ 45-85. Reserved for future codification purposes.**

23  
24 **§ 45-86. Reserved for future codification purposes.**

25  
26 **§ 45-87. Reserved for future codification purposes.**

27  
28 **§ 45-88. Reserved for future codification purposes.**

29  
30 **§ 45-89. Reserved for future codification purposes.**  
31

32 Article 10.

33 Mortgage Debt Collection and Servicing.

34 **§ 45-90. Definitions.**

35 As used in this Article, the following definitions apply:

- 36 (1) Home loan. – A loan secured by real property located in this State used, or  
37 intended to be used, by an individual borrower or individual borrowers in  
38 this State as a dwelling, regardless of whether the loan is used to purchase  
39 the property or refinance the prior purchase of the property or whether the  
40 proceeds of the loan are used for personal, family, or business purposes.  
41 (2) Servicer. – A "servicer" as defined in the Real Estate Settlement Procedures  
42 Act, 12 U.S.C. § 2605(i). A licensed attorney, who in the practice of law or  
43 performing as a trustee, accepts payments related to a loan closing, default,  
44 foreclosure, or settlement of a dispute or legal claim related to a loan, shall  
45 not be considered a servicer for the purposes of this Article. (2007-351, s. 5.)  
46

47 **§ 45-91. Assessment of fees; processing of payments; publication of statements.**

48 A servicer must comply as to every home loan, regardless of whether the loan is considered  
49 in default or the borrower is in bankruptcy or the borrower has been in bankruptcy, with the  
50 following requirements:

- 51 (1) Any fee that is incurred by a servicer shall be both:

- 1 a. Assessed within 45 days of the date on which the fee was incurred.  
2 Provided, however, that attorney or trustee fees and costs incurred as  
3 a result of a foreclosure action shall be assessed within 45 days of the  
4 date they are charged by either the attorney or trustee to the servicer.  
5 b. Explained clearly and conspicuously in a statement mailed to the  
6 borrower at the borrower's last known address within 30 days after  
7 assessing the fee, provided the servicer shall not be required to take  
8 any action in violation of the provisions of the federal bankruptcy  
9 code. The servicer shall not be required to send such a statement for a  
10 fee that: (i) results from a service that is affirmatively requested by  
11 the borrower, (ii) is paid for by the borrower at the time the service is  
12 provided, and (iii) is not charged to the borrower's loan account.

13 (2) All amounts received by a servicer on a home loan at the address where the  
14 borrower has been instructed to make payments shall be accepted and  
15 credited, or treated as credited, within one business day of the date received,  
16 provided that the borrower has made the full contractual payment and has  
17 provided sufficient information to credit the account. If a servicer uses the  
18 scheduled method of accounting, any regularly scheduled payment made  
19 prior to the scheduled due date shall be credited no later than the due date.  
20 Provided, however, that if any payment is received and not credited, or  
21 treated as credited, the borrower shall be notified within 10 business days by  
22 mail at the borrower's last known address of the disposition of the payment,  
23 the reason the payment was not credited, or treated as credited to the  
24 account, and any actions necessary by the borrower to make the loan current.

25 (2a) The notification required by subdivision (2) of this section is not necessary if  
26 (i) the servicer complies with the terms of any agreement or plan made with  
27 the borrower and has applied and credited payments received in the manner  
28 required, and (ii) the servicer is applying and crediting payments to the  
29 borrower's account in compliance with all applicable State and federal laws,  
30 including bankruptcy laws, and if at least one of the following occurs:

- 31 a. The borrower has entered into a written loss mitigation, loan  
32 modification, or forbearance agreement with the servicer that  
33 itemizes all amounts due and specifies how payments will be applied  
34 and credited;  
35 b. The borrower has elected to participate in an alternative payment  
36 plan, such as a biweekly payment plan, that specifies as part of a  
37 written agreement how payments will be applied and credited; or  
38 c. The borrower is making payments pursuant to a bankruptcy plan.

39 (3) Failure to charge the fee or provide the information within the allowable  
40 time and in the manner required under subdivision (1) of subsection (a) of  
41 this section constitutes a waiver of such fee.

42 (4) All fees charged by a servicer must be otherwise permitted under applicable  
43 law and the contracts between the parties. Nothing herein is intended to  
44 permit the application of payments or method of charging interest which is  
45 less protective of the borrower than the contracts between the parties and  
46 other applicable law.

47 (5) The obligations of mortgage servicers set forth in G.S. 53-243.11.  
48 (2007-351, s. 5; 2008-227, s. 1; 2008-228, s. 19.)  
49

50 **§ 45-92. Obligation of servicer to handle escrow funds.**

1 Any servicer that exercises the authority to collect escrow amounts on a home loan held or  
2 to be held for the borrower for insurance, taxes, and other charges with respect to the property  
3 shall collect and make all payments from the escrow account, so as to ensure that no late  
4 penalties are assessed or other negative consequences result. The provisions of this section shall  
5 apply regardless of whether the loan is delinquent or in default unless the servicer has a  
6 reasonable basis to believe that recovery of these funds will not be possible or the loan is more  
7 than 90 days in default. (2007-351, s. 5.)  
8

9 **§ 45-93. Borrower requests for information.**

10 The servicer shall make reasonable attempts to comply with a borrower's request for  
11 information about the home loan account and to respond to any dispute initiated by the  
12 borrower about the loan account, as provided in this section. The servicer shall maintain, until  
13 the home loan is paid in full, otherwise satisfied, or sold, written or electronic records of each  
14 written request for information regarding a dispute or error involving the borrower's account.  
15 Specifically, the servicer is required to do all of the following:

- 16 (1) Provide a written statement to the borrower within 10 business days of  
17 receipt of a written request from the borrower that includes or otherwise  
18 enables the servicer to identify the name and account of the borrower and  
19 includes a statement that the account is or may be in error or otherwise  
20 provides sufficient detail to the servicer regarding information sought by the  
21 borrower. The borrower is entitled to one such statement in any six-month  
22 period free of charge, and additional statements shall be provided if the  
23 borrower pays the servicer a reasonable charge for preparing and furnishing  
24 the statement not to exceed twenty-five dollars (\$25.00). The statement shall  
25 include the following information if requested:
  - 26 a. Whether the account is current or, if the account is not current, an  
27 explanation of the default and the date the account went into default.
  - 28 b. The current balance due on the loan, including the principal due, the  
29 amount of funds (if any) held in a suspense account, the amount of  
30 the escrow balance (if any) known to the servicer, and whether there  
31 are any escrow deficiencies or shortages known to the servicer.
  - 32 c. The identity, address, and other relevant information about the  
33 current holder, owner, or assignee of the loan.
  - 34 d. The telephone number and mailing address of a servicer  
35 representative with the information and authority to answer questions  
36 and resolve disputes.
- 37 (2) Provide the following information and/or documents within 25 business days  
38 of receipt of a written request from the borrower that includes or otherwise  
39 enables the servicer to identify the name and account of the borrower and  
40 includes a statement that the account is or may be in error or otherwise  
41 provides sufficient detail to the servicer regarding information sought by the  
42 borrower:
  - 43 a. A copy of the original note, or if unavailable, an affidavit of lost  
44 note.
  - 45 b. A statement that identifies and itemizes all fees and charges assessed  
46 under the loan transaction and provides a full payment history  
47 identifying in a clear and conspicuous manner all of the debits,  
48 credits, application of and disbursement of all payments received  
49 from or for the benefit of the borrower, and other activity on the  
50 home loan including escrow account activity and suspense account  
51 activity, if any. The period of the account history shall cover at a

1 minimum the two-year period prior to the date of the receipt of the  
2 request for information. If the servicer has not serviced the home  
3 loan for the entire two-year time period the servicer shall provide the  
4 information going back to the date on which the servicer began  
5 servicing the home loan. For purposes of this subsection, the date of  
6 the request for the information shall be presumed to be no later than  
7 30 days from the date of the receipt of the request. If the servicer  
8 claims that any delinquent or outstanding sums are owed on the  
9 home loan prior to the two-year period or the period during which the  
10 servicer has serviced the loan, the servicer shall provide an account  
11 history beginning with the month that the servicer claims any  
12 outstanding sums are owed on the loan up to the date of the request  
13 for the information. The borrower is entitled to one such statement in  
14 any six-month period free of charge. Additional statements shall be  
15 provided if the borrower pays the servicer a reasonable charge for  
16 preparing and furnishing the statement not to exceed fifty dollars  
17 (\$50.00).

- 18 (3) Promptly correct errors relating to the allocation of payments, the statement  
19 of account, or the payoff balance identified in any notice from the borrower  
20 provided in accordance with subdivision (2) of this section, or discovered  
21 through the due diligence of the servicer or other means. (2007-351, s. 5.)  
22

23 **§ 45-94. Remedies.**

24 In addition to any equitable remedies and any other remedies at law, any borrower injured  
25 by any violation of this Article may bring an action for recovery of actual damages, including  
26 reasonable attorneys' fees. The Commissioner of Banks, the Attorney General, or any party to a  
27 home loan may enforce the provisions of this section. The Clerk of Superior Court shall also  
28 suspend foreclosure proceedings for 60 days if notified by the Commissioner of Banks as  
29 provided in G.S. 53-243.12(n). With the exception of an action by the Commissioner of Banks  
30 or the Attorney General, at least 30 days before a borrower or a borrower's representative  
31 institutes a civil action for damages against a servicer for a violation of this Article, the  
32 borrower or a borrower's representative shall notify the servicer in writing of any claimed errors  
33 or disputes regarding the borrower's home loan that forms the basis of the civil action. The  
34 notice must be sent to the address as designated on any of the servicer's bills, statements,  
35 invoices, or other written communication, and must enable the servicer to identify the name and  
36 loan account of the borrower. For purposes of this section, notice shall not include a complaint  
37 or summons. Nothing in this section shall limit the rights of a borrower to enjoin a civil action,  
38 or make a counterclaim, cross-claim, or plead a defense in a civil action. A servicer will not be  
39 in violation of this Article if the servicer shows by a preponderance of evidence that:

- 40 (1) The violation was not intentional or the result of bad faith; and  
41 (2) Within 30 days after discovering or being notified of an error, and prior to  
42 the institution of any legal action by the borrower against the servicer under  
43 this section, the servicer corrected the error and compensated the borrower  
44 for any fees or charges incurred by the borrower as a result of the violation.  
45 (2007-351, s. 5; 2008-228, s. 20.)  
46

47 **§ 45-95. Severability.**

48 The provisions of this Article shall be severable, and if any phrase, clause, sentence, or  
49 provision is declared to be invalid or is preempted by federal law or regulation, the validity of  
50 the remainder of this section shall not be affected thereby. If any provision of this Article is  
51 declared to be inapplicable to any specific category, type, or kind of points and fees, the

1 provisions of this Article shall nonetheless continue to apply with respect to all other points and  
2 fees. (2007-351, s. 5.)

3  
4 **§ 45-96:** Reserved for future codification purposes.

5  
6 **§ 45-97:** Reserved for future codification purposes.

7  
8 **§ 45-98:** Reserved for future codification purposes.

9  
10 **§ 45-99:** Reserved for future codification purposes.

11  
12 Article 11.

13 Emergency Program to Reduce Home Foreclosures.

14 **§ 45-100. (For expiration date, see note) Title.**

15 This Article shall be known as the Emergency Program to Reduce Home Foreclosures Act.  
16 (2008-226, s. 1; 2010-168, s. 9.)

17  
18 **§ 45-101. (For expiration date, see note) Definitions.**

19 The following definitions apply throughout this Article:

20 (1) Act as a mortgage servicer. – To engage, whether for compensation or gain  
21 from another or on its own behalf, in the business of receiving any scheduled  
22 periodic payments from a borrower pursuant to the terms of any mortgage  
23 loan, including amounts for escrow accounts, and making the payments of  
24 principal and interest and such other payments with respect to the amounts  
25 received from the borrower as may be required pursuant to the mortgage  
26 loan, the mortgage servicing loan documents, or servicing contract.

27 (1a) Repealed by Session Laws 2010-168, s. 1, effective November 1, 2010.

28 (1b) Home loan. – A loan that has all of the following characteristics:

29 a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii)  
30 a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage  
31 transaction, or (iv) a bridge loan with a term of 12 months or less,  
32 such as a loan to purchase a new dwelling where the borrower plans  
33 to sell a current dwelling within 12 months.

34 b. The borrower is a natural person.

35 c. The debt is incurred by the borrower primarily for personal, family,  
36 or household purposes.

37 d. The principal amount of the loan does not exceed the conforming  
38 loan size limit for a single-family dwelling as established from time  
39 to time by Fannie Mae.

40 e. The loan is secured by (i) a security interest in a manufactured home,  
41 as defined in G.S. 143-145, in the State which is or will be occupied  
42 by the borrower as the borrower's principal dwelling, (ii) a mortgage  
43 or deed of trust on real property in the State upon which there is  
44 located an existing structure designed principally for occupancy of  
45 from one to four families that is or will be occupied by the borrower  
46 as the borrower's principal dwelling, or (iii) a mortgage or deed of  
47 trust on real property in the State upon which there is to be  
48 constructed using the loan proceeds a structure or structures designed  
49 principally for occupancy of from one to four families which, when  
50 completed, will be occupied by the borrower as the borrower's  
51 principal dwelling.

1 f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct,  
2 repair, rehabilitate, remodel, or improve the dwelling or the real  
3 property on which it is located, (iii) satisfy and replace an existing  
4 obligation secured by the same real property, or (iv) consolidate  
5 existing consumer debts into a new home loan.

6 (1c) Housing Finance Agency. – The North Carolina Housing Finance Agency.

7 (2) Mortgage lender. – A person engaged in the business of making mortgage  
8 loans for compensation or gain.

9 (3) Mortgage servicer. – A person who directly or indirectly acts as a mortgage  
10 servicer as that term is defined in subdivision (1) of this section or who  
11 otherwise meets the definition of the term "servicer" in the Real Estate  
12 Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage  
13 loans.

14 (3a) Repealed by Session Laws 2010-168, s. 1, effective November 1, 2010.

15 (4) Repealed by Session Laws 2010-168, s. 1, effective November 1, 2010.  
16 (2008-226, s. 1; 2009-457, s. 3; 2010-168, ss. 1, 9; 2011-288, s. 1.)  
17

18 **§ 45-102. (For expiration date, see note) Pre-foreclosure notice for home loans.**

19 At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding on a  
20 primary residence, mortgage servicers of home loans shall send written notice by mail to the  
21 last known address of the borrower to inform the borrower of the availability of resources to  
22 avoid foreclosure, including:

23 (1) An itemization of all past due amounts causing the loan to be in default.

24 (2) An itemization of any other charges that must be paid in order to bring the  
25 loan current.

26 (3) A statement that the borrower may have options available other than  
27 foreclosure and that the borrower may discuss available options with the  
28 mortgage lender, the mortgage servicer, or a counselor approved by the U.S.  
29 Department of Housing and Urban Development.

30 (4) The address, telephone number, and other contact information for the  
31 mortgage lender, the mortgage servicer, or the agent for either of them who  
32 is authorized to attempt to work with the borrower to avoid foreclosure.

33 (5) The name, address, telephone number, and other contact information for one  
34 or more HUD-approved counseling agencies operating to assist borrowers in  
35 North Carolina to avoid foreclosure.

36 (6) The address, telephone number, and other contact information for the  
37 consumer complaint section of the Office of Commissioner of Banks, or,  
38 alternatively, if the loan is serviced by a credit union, the address, telephone  
39 number, and other contact information for the consumer complaint section of  
40 the Credit Union Division. (2008-226, s. 1; 2010-168, ss. 1, 9.)  
41

42 **§ 45-103. (For expiration date, see note) Pre-foreclosure information to be filed with the  
43 Administrative Office of the Courts for home loans.**

44 (a) Within three business days of mailing the notice required by G.S. 45-102, the  
45 mortgage servicer shall file certain information with the Administrative Office of the Courts.  
46 The filing shall be in an electronic format, as designated by the Administrative Office of the  
47 Courts, and shall contain the name and address of the borrower, the due date of the last  
48 scheduled payment made by the borrower, and the date the notice was mailed to the borrower.  
49 The Administrative Office of the Courts shall establish an internal database to track  
50 information required by this section. The Commissioner of Banks shall design and develop the  
51 database, in consultation with the Administrative Office of the Courts. Only the Administrative

1 Office of the Courts, the Office of Commissioner of Banks, the Housing Finance Agency, and  
2 the clerk of court as provided by G.S. 45-107 shall have access to the database.

3 (b) As permitted by applicable State and federal law, optional information may be  
4 requested from the mortgage servicer to facilitate further review by the State Home Foreclosure  
5 Prevention Project described in G.S. 45-104. This optional information shall be used by the  
6 State Home Foreclosure Prevention Project to prioritize efforts to reach borrowers most likely  
7 to avoid foreclosure and to prevent delay for defaults where foreclosure is unavoidable.

8 (c) Repealed by Session Laws 2010-168, s. 1, effective November 1, 2010. (2008-226,  
9 s. 1; 2010-168, ss. 1, 9; 2011-288, s. 2.)

10  
11 **§ 45-104. (For expiration date, see note) State Home Foreclosure Prevention Project and**  
12 **Fund.**

13 (a) The Commissioner of Banks is authorized to establish the State Home Foreclosure  
14 Prevention Project. The purpose of the Project is to seek solutions to avoid foreclosures for  
15 home loans. In developing the Project, the Commissioner may include input from  
16 HUD-approved housing counselors, community organizations, the Credit Union Division and  
17 other State agencies, mortgage lenders, mortgage servicers, and other partners. The Housing  
18 Finance Agency shall administer the Project.

19 (b) There is established a State Home Foreclosure Prevention Trust Fund to be managed  
20 and maintained by the Housing Finance Agency. The funds shall be held separate from any  
21 other funds received by either the Office of the Commissioner of Banks or the Housing Finance  
22 Agency in trust for the operation of the State Home Foreclosure Prevention Project.

23 (c) Upon the filing of the information required under G.S. 45-103, the mortgage  
24 servicer shall pay a fee of seventy-five dollars (\$75.00) to the State Home Foreclosure  
25 Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered  
26 by this act. The Office of the Commissioner of Banks shall collect the fee. Upon receipt of the  
27 fee the Commissioner shall deposit the funds into a separate account. The funds shall be  
28 transferred no less than monthly into the State Home Foreclosure Prevention Trust Fund. The  
29 Housing Finance Agency shall manage the State Home Foreclosure Prevention Trust Fund.

30 (d) The Housing Finance Agency shall use funds from the State Home Foreclosure  
31 Prevention Trust Fund to compensate performance-based service contracts or other contracts  
32 and grants necessary to implement the purposes of this act in the following manner:

33 (1) An amount, not to exceed the greater of two million two hundred thousand  
34 dollars (\$2,200,000) or thirty percent (30%) of the funds per year, to cover  
35 the administrative costs of the operation of the program by the Office of the  
36 Commissioner of Banks and the Housing Finance Agency, including  
37 managing on behalf of the Administrative Office of the Courts the database  
38 identified in G.S. 45-103, expenses associated with informing homeowners  
39 of State resources available for foreclosure prevention, expenses associated  
40 with connecting homeowners to available resources, and assistance to  
41 homeowners and counselors in communicating with mortgage servicers.

42 (2) An amount, not to exceed the greater of three million four hundred thousand  
43 dollars (\$3,400,000) or forty percent (40%) per year, to make grants to or  
44 reimburse nonprofit housing counseling agencies for providing foreclosure  
45 prevention counseling services to homeowners involved in the State Home  
46 Foreclosure Prevention Project.

47 (3) An amount, not to exceed thirty percent (30%) of the total funds collected  
48 per year, to make grants to or reimburse nonprofit legal service providers for  
49 services rendered on behalf of homeowners in danger of defaulting on a  
50 home loan to avoid foreclosure, limited to legal representation such as  
51 negotiation of loan modifications or other loan work-out solutions,

1 defending homeowners in foreclosure or representing homeowners in  
2 bankruptcy proceedings, and research and counsel to homeowners regarding  
3 the status of their home loans.

4 (4) Any funds remaining in the State Home Foreclosure Prevention Trust Fund  
5 as of June 30, 2011, and any funds remaining in the State Home Foreclosure  
6 Prevention Trust Fund upon the expiration of each subsequent fiscal year  
7 shall be directed to the North Carolina Housing Trust Fund.

8 (e) The Housing Finance Agency shall have the discretion to enter into an agreement to  
9 administer funds under subdivisions (2) and (3) of subsection (d) of this section in a manner  
10 that complements or supplements other State and federal programs directed to prevent  
11 foreclosures for homeowners participating in the State Home Foreclosure Prevention Project.  
12 (2008-226, s. 1; 2010-168, ss. 1, 9; 2011-288, s. 3.)  
13

14 **§ 45-105. (For expiration date, see note) Extension of foreclosure process.**

15 The Commissioner of Banks upon referral from the Housing Finance Agency shall review  
16 information provided in the database created by G.S. 45-103 to determine which home loans  
17 are appropriate for efforts to avoid foreclosure. If the Commissioner reasonably believes, based  
18 on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the  
19 borrower's capacity and interest in staying in the home, and other appropriate factors, that  
20 further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to  
21 avoid foreclosure on primary residences, the Commissioner shall have the authority to extend  
22 one time under this Article the allowable filing date for any foreclosure proceeding on a  
23 primary residence by up to 30 days beyond the earliest filing date established by the  
24 pre-foreclosure notice. If the Commissioner makes the determination that a loan is subject to  
25 this section, the Commissioner shall notify the borrower, mortgage servicer, and the  
26 Administrative Office of the Courts. If the mortgage servicer is a state or federally chartered  
27 credit union, the Commissioner shall also notify the Administrator of the Credit Union Division  
28 of the determination. (2008-226, s. 1; 2010-168, ss. 1, 9; 2011-288, s. 4.)  
29

30 **§ 45-106. (For expiration date, see note) Use and privacy of records.**

31 The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall  
32 be exclusively for the use and purposes of the State Home Foreclosure Prevention Project  
33 developed by the Commissioner of Banks and administered by the Housing Finance Agency in  
34 accordance with G.S. 45-104. The information provided to the database is not a public record,  
35 except that a mortgage lender and a mortgage servicer shall have access to the information  
36 submitted only with regard to its own loans. Any notice provided by the Commissioner to the  
37 Administrator of the Credit Union Division under G.S. 45-105 is not a public record. Provision  
38 of information to the Administrative Office of the Courts for use by the State Home  
39 Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage  
40 servicer shall be held harmless for any alleged breach of privacy rights of the borrower with  
41 respect to the information the mortgage servicer provides in accordance with this Article.  
42 (2008-226, s. 1; 2010-168, ss. 1, 9; 2011-288, s. 5.)  
43

44 **§ 45-107. (For expiration date, see note) Foreclosure filing.**

45 (a) For the duration of the program authorized by this Article, foreclosure notices filed  
46 on home loans on or after November 1, 2010, shall contain a certification by the filing party  
47 that the pre-foreclosure notice required by G.S. 45-102 and the pre-foreclosure information  
48 required by G.S. 45-103 were provided in accordance with this Article and that the periods of  
49 time established by the Article have elapsed.

50 (b) The clerk of superior court or other judicial officer may have access to the  
51 pre-foreclosure database to confirm information provided in subsection (a) of this section. A

1 materially inaccurate statement in the certification shall be cause for dismissal without  
2 prejudice of any foreclosure proceeding on a primary residence initiated by the mortgage  
3 servicer and for payment by the filing party of costs incurred by the borrower in defending the  
4 foreclosure proceeding. (2008-226, s. 1; 2010-168, ss. 1, 9.)