

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 629
Judiciary I Committee Substitute Adopted 4/21/03.
House Committee Substitute Favorable 5/27/03

Short Title: Clarify Subordination Agreement Requirements.

(Public)

Sponsors:

Referred to:

April 1, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE REQUIREMENTS FOR SUBORDINATION
3 AGREEMENTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 1 of Chapter 39 of the General Statutes is amended by
6 adding a new section to read:

7 "**§ 39-6.6. Subordination agreements.**

8 (a) A written commitment or agreement to subordinate or that subordinates an
9 interest in real property signed by a person entitled to priority shall be given effect in
10 accordance with its terms and is not required to state any interest rate, principal amount
11 secured, or other financial terms. For purposes of this section, an "interest in real
12 property" shall include all rights, title, and interest in and to land, buildings, and other
13 improvements of an owner, tenant, subtenant, secured lender, materialman, judgment
14 creditor, lienholder, or other person, whether the interest in real property is evidenced
15 by a deed, easement, lease, sublease, deed of trust, mortgage, assignment of leases and
16 rents, judgment, claim of lien, or any other record, instrument, document, or entry of
17 court.

18 (b) The trustee of a deed of trust shall not be a necessary party to a subordination
19 agreement unless the deed of trust provides otherwise.

20 (c) For purposes of G.S. 1-47, a commitment or agreement described in
21 subsection (a) of this section is deemed a conveyance of an interest in real property.

22 (d) The section is not exclusive. No agreement that is otherwise valid shall be
23 invalidated by failure to comply with the provisions of this section."

24 SECTION 2. G.S. 47-18(a) reads as rewritten:

25 "(a) No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey,
26 or (iv) lease of land for more than three years shall be valid to pass any property interest
27 as against lien creditors or purchasers for a valuable consideration from the donor,
28 bargainor or lessor but from the time of registration thereof in the county where the land

1 lies, or if the land is located in more than one county, then in each county where any
2 portion of the land lies to be effective as to the land in that county. Unless otherwise
3 stated either on the recorded instrument or on a separate recorded instrument duly
4 executed by the party whose priority interest is adversely affected, instruments
5 registered in the public record shall be presumed to have priority based on the order of
6 recordation as determined by the time of recordation. If instruments are recorded
7 simultaneously, then the order of recordation shall be presumed as follows, in order of
8 priority:

9 (1) The earliest document number set forth on the recorded instrument.

10 (2) The sequential book and page number set forth on the document if no
11 document number is set forth on the recorded instrument.

12 The presumptions created by this subsection are rebuttable."

13 **SECTION 3.** G.S. 47-20(a) reads as rewritten:

14 "(a) No deed of trust or mortgage of real or personal property, or of a leasehold
15 interest or other chattel real, or conditional sales contract of personal property in which
16 the title is retained by the vendor, shall be valid to pass any property as against lien
17 creditors or purchasers for a valuable consideration from the grantor, mortgagor or
18 conditional sales vendee, but from the time of registration thereof as provided in this
19 Article; provided however that any transaction subject to the provisions of the Uniform
20 Commercial Code (Chapter 25 of the General Statutes) is controlled by the provisions
21 of that act and not by this section. Unless otherwise stated either on the recorded
22 instrument or on a separate recorded instrument duly executed by the party whose
23 priority interest is adversely affected, instruments registered in the public record shall be
24 presumed to have priority based on the order of recordation as determined by the time
25 of recordation. If instruments are recorded simultaneously, then the order of recordation
26 shall be presumed as follows, in order of priority:

27 (1) The earliest document number set forth on the recorded instrument.

28 (2) The sequential book and page number set forth on the document if no
29 document number is set forth on the recorded instrument.

30 The presumptions created by this subsection are rebuttable."

31 **SECTION 4.** This act becomes effective October 1, 2003, and applies to all
32 instruments filed or recorded on or after that date.