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SENATE BILL 679
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Short Title: Deeds of Trust/Modernize Procedures.

(Public)

Sponsors:

Referred to:

April 20, 2011

A BILL TO BE ENTITLED

AN ACT TO MODERNIZE AND ENACT CERTAIN PROVISIONS REGARDING DEEDS OF TRUST, INCLUDING RELEASES, SHORT SALES, FUTURE ADVANCE PROVISION TERMINATIONS AND SATISFACTIONS, TERMINATIONS AND SATISFACTIONS FOR EQUITY LINE LIENS, RELEASE OF ANCILLARY DOCUMENTS, ELIMINATING TRUSTEE OF DEED OF TRUST AS NECESSARY PARTY FOR CERTAIN TRANSACTIONS AND LITIGATION, AND INDEXING OF SUBSEQUENT INSTRUMENTS RELATED THERETO.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 24-9 reads as rewritten:

"§ 24-9. Loans exempt from rate and fee limitations.

...

(c) The provisions of G.S. 24-1.2A, 24-11, and 24-11.1 shall not apply to equity lines of credit offered by banks. Except as provided in this subsection and notwithstanding any other provision of this Chapter or any other provision of State law, any bank may charge and collect from any borrower interest at any rate and fees and other charges in any amount that the borrower agrees to pay in connection with an equity line of credit. However, an equity line of credit made by a bank shall be subject to the following, to the extent otherwise applicable:

...

(3) Notwithstanding the limitation against prepayment penalties contained in ~~G.S. 45-81(e)~~, G.S. 45-82.4, a bank may charge and collect prepayment fees or penalties following the borrower's voluntary exercise of a right or option to repay all or any portion of the outstanding balance of a variable interest rate equity line of credit at a fixed interest rate over a specified period of time, subject to the following limitations:

...."

SECTION 2. G.S. 45-10 reads as rewritten:

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

(a) In addition to the rights and remedies now provided by law, the holders or owners of a majority in amount of the indebtedness, notes, bonds, or other instruments evidencing a promise or promises to pay money and secured by mortgages, deeds of trust, or other instruments conveying real property, or creating a lien thereon, may, in their discretion, substitute a trustee whether the trustee then named in the instrument is the original or a substituted trustee, trustee or a holder or owner of any or all of the obligations secured thereby,



1 by the execution of a written document properly recorded pursuant to Chapter 47 of the North
2 Carolina General Statutes.

3 ...
4 (c) If the trustee named in a deed of trust is also the beneficiary named in that deed of
5 trust, the instrument shall be deemed to be a deed of trust, and any substitute trustee named
6 under the authority of subsection (a) of this section shall succeed to all the rights, titles,
7 authority, and duties of the trustee under the terms of the deed of trust."

8 **SECTION 3.** G.S. 45-36.4 reads as rewritten:

9 **"§ 45-36.4. Definitions.**

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

11 ...

12 (1a) Borrower. – A person primarily liable for payment or performance of the
13 obligation secured by the real property described in a security instrument.

14 (1b) Credit suspension directive. – A notification given to a secured creditor
15 pursuant to G.S. 45-36.7A directing the secured creditor to suspend
16 temporarily a borrower's right and ability to obtain additional credit
17 advances in anticipation of the imminent sale of, or the imminent making of
18 a new loan to be secured by, real property then encumbered by an existing
19 security instrument when the anticipated transaction will involve either the
20 satisfaction of the existing security instrument or the release of the real
21 property from the lien of the existing security instrument.

22 ...

23 (5) ~~Entitled person. – A person liable for payment or performance of the~~
24 ~~obligation secured by the real property described in a security instrument, or~~
25 ~~the landowner.~~ A person who:

26 a. Is a borrower;

27 b. Is a landowner;

28 c. Has contracted to purchase real property encumbered by an existing
29 security instrument;

30 d. Has made or has committed to make a loan that is secured or is to be
31 secured by real property encumbered by an existing security
32 instrument;

33 e. Is a title insurance company authorized pursuant to Article 26 of
34 Chapter 58 of the General Statutes to issue title insurance policies in
35 the State of North Carolina that has insured or has committed to
36 insure title to real property encumbered by an existing security
37 instrument;

38 f. Is the foreclosing trustee or the high bidder in a foreclosure sale
39 involving real property encumbered by an existing security
40 instrument;

41 g. Is a qualified lien holder; or

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

45 1. The attorney, bank, savings and loan association, savings
46 bank, or credit union is or will be responsible for the
47 disbursement of funds in connection with the sale of, or a new
48 loan secured by, property then encumbered by an existing
49 security instrument; and

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

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

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

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

(19a) Short-pay amount. – The sum necessary to obtain the release of all or a specific portion of the real property from the lien of a security instrument without satisfying the secured obligation in full.

(19b) Short-pay statement. – A document containing the information specified in G.S. 45-36.7(e1).

(23) Trustee. – The trustee or substitute then serving as such under the terms of a deed of trust."

SECTION 4. G.S. 45-36.6 reads as rewritten:

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

(a) ~~In this section, "document of rescission" means a document stating that an identified satisfaction or affidavit of satisfaction of a security instrument was recorded erroneously or that a security instrument was satisfied of record erroneously, the secured obligation remains unsatisfied, and the security instrument remains in force.~~Definitions. – The following definitions apply in this section:

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

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

(b) ~~If a person records a satisfaction or affidavit of satisfaction of a security instrument in error or if~~If a release is recorded in error or a security instrument is erroneously satisfied of record-record, erroneously by any other means, the person or then the secured creditor or the person who caused the release to be recorded in error or the security instrument to be erroneously satisfied of record may execute and record a document of rescission. The document of rescission must be duly acknowledged before an officer authorized to make acknowledgments. Upon recording, the document of rescission either (i) rescinds an erroneously recorded-rescinds a release that was recorded in error and deprives the release of any effect or (ii) satisfaction or affidavit and-rescinds the erroneous satisfaction of record of the security instrument and reinstates the security instrument.

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

- 1 (1) Records an interest in the real property described in a security instrument
2 after the recording of ~~the satisfaction or affidavit of satisfaction of the~~
3 ~~security instrument~~ a release that was recorded in error or the erroneous
4 satisfaction of record of the security instrument ~~by other means~~ and before
5 the recording of the document of rescission; and
- 6 (2) Would otherwise have priority over or take free of the lien created by the
7 security instrument as reinstated under Chapter 47 of the General Statutes.
- 8 (d) A person that erroneously or wrongfully records a document of rescission is liable
9 to any person injured thereby for the actual loss caused by the recording and reasonable
10 attorneys' fees and costs.
- 11 (e) A document is a document of rescission if it does all of the following:
- 12 (1) Identifies the related security instrument, including the type of security
13 instrument, the original parties to the security instrument, the recording data
14 for the security instrument, and the office in which the security instrument is
15 recorded.
- 16 (2) If the document of rescission is intended to rescind a release that was
17 recorded in error, (i) identifies the release that was recorded in error by its
18 recording data and the office in which it is recorded, (ii) states that the
19 release was recorded in error, and (iii) states that the release is rescinded.
- 20 (3) If the document of rescission is intended to rescind the erroneous satisfaction
21 of record of a security instrument, (i) identifies the satisfaction document
22 that was recorded in error by its recording data and the office in which it is
23 recorded, (ii) states that the security instrument was erroneously satisfied of
24 record, and (iii) states that the satisfaction of the security instrument is
25 rescinded and the security instrument reinstated.
- 26 (4) States that the person signing the document of rescission is either (i) the
27 secured creditor or (ii) the person who caused the release to be recorded in
28 error or the security instrument to be erroneously satisfied of record.
- 29 (5) Is signed and acknowledged as required by law for a conveyance of an
30 interest in real property.
- 31 (f) The register of deeds shall accept a document of rescission for recording unless one
32 of the following applies:
- 33 (1) The document is submitted by a method or in a medium not authorized for
34 registration by the register of deeds under applicable law.
- 35 (2) The required recording fee is not paid.
- 36 (3) The document is not signed and acknowledged as required by law for a
37 conveyance of an interest in real property by either the secured creditor or
38 the person who caused the release to be recorded in error or the security
39 instrument to be erroneously satisfied of record. The register of deeds shall
40 not be required to verify or make inquiry concerning (i) the truth of the
41 matters stated in any document of rescission or (ii) the authority of the
42 person executing any document of rescission to do so.
- 43 (g) No particular phrasing is required for a document of rescission that rescinds a
44 release that was recorded in error. The following form, when properly completed, is sufficient
45 to satisfy the requirements of subsection (e) of this section:

46
47 "DOCUMENT OF RESCISSION

48 (G.S. 45-36.6(e))

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

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

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

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

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of

Deeds for _____ County, North Carolina.

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

The undersigned is: (check applicable box)

_____ The secured creditor in the security instrument identified above.

_____ The person who caused the release to be recorded in error.

Date: _____

Signature of secured creditor or
person who caused the release to be
recorded in error

[Acknowledgment before officer authorized to take acknowledgments]"

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

"DOCUMENT OF RESCISSION

(G.S. 45-36.6(e))

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

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

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

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

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of

Deeds for _____ County, North Carolina.

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

The undersigned is: (check applicable box)

_____ The secured creditor in the security instrument identified above.

_____ The person who caused the security instrument to be satisfied of record erroneously.

Date: _____

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

[Acknowledgment before officer authorized to take acknowledgments]"

SECTION 5. G.S. 45-36.7 reads as rewritten:

"§ 45-36.7. Payoff and short-pay statement: statements; request and content.

(a) An entitled person, or an agent authorized by an entitled person to request a payoff statement, or a short-pay statement, may give to the secured creditor a notification requesting a

1 ~~payoff statement for a specified payoff date not more than 30 days after the notification is~~
2 ~~given, or a short-pay statement.~~ The notification must contain all of the following:

3 ...

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

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

7 (8) If the request is for a short-pay statement, (i) the specified short-pay date,
8 which may not be more than 30 days after the notification is given, (ii) a
9 clear statement as to whether the request is for the short-pay amount required
10 to release all of the real property described in the security instrument or only
11 a portion of that property, and (iii) if the request is for the short-pay amount
12 required to release only a portion of the real property described in the
13 security instrument, a description of the specific real property to be released
14 upon payment of the short-pay amount.

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

19 (c) A person who gives to a secured creditor a notification requesting a payoff
20 statement or a short-pay statement thereby represents that the person is an entitled person or the
21 authorized agent of an entitled person. A secured creditor may rely on that representation in
22 providing a payoff statement or a short-pay statement unless the secured creditor knows that the
23 requesting person is neither an entitled person nor the authorized agent of an entitled person. A
24 secured creditor has no duty to make inquiry as to whether, or to verify that, the person
25 requesting a payoff statement or a short-pay statement is an entitled person or the authorized
26 agent of an entitled person.

27 (d) Within 10 days after the effective date of a notification that complies with
28 subsection (a) of this section, the secured creditor shall issue a payoff statement or a short-pay
29 statement and send it as directed pursuant to subdivision (a)(3) of this section in the manner
30 prescribed in G.S. 45-36.5 for giving a notification. A secured creditor that sends a payoff
31 statement or a short-pay statement to the entitled person or the authorized agent may not claim
32 that the notification did not satisfy subsection (a) of this section. If the person to whom the
33 notification is given once held an interest in the secured obligation but has since assigned that
34 interest, the person need not send a payoff statement or a short-pay statement but shall give (i) a
35 notification of the assignment to the person to whom the payoff statement or a short-pay
36 statement otherwise would have been sent, providing the name and address of the assignee, or
37 (ii) a notification to the person to whom the payoff statement or a short-pay statement
38 otherwise would have been sent, stating that the recipient claims no interest in the security
39 instrument or the secured obligation, that the secured obligation was assigned, but that the
40 identity and address of the assignee is not known.

41 ...

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

43 (1) The information reasonably necessary to calculate the short-pay amount as
44 of the requested short-pay date, including the per diem interest amount, if
45 any;

46 (2) The payment cutoff time, if any, the address or place where payment of the
47 short-pay amount must be made, and any limitation as to the authorized
48 method of payment;

49 (3) Any conditions precedent that must be satisfied to obtain the release of the
50 property identified in the request for the short-pay statement from the lien of
51 the security instrument; and

1 (4) Confirmation of the specific real property to be released from the lien of the
2 security instrument upon receipt of the timely payment of the short-pay
3 amount and satisfaction of the other conditions precedent to the release of
4 that property.

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

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

13 (g) A secured creditor may not qualify a payoff amount or state that it is subject to
14 change before the payoff date unless the payoff statement provides information sufficient to
15 permit the entitled person or the person's authorized agent to request an updated payoff amount
16 at no charge and to obtain that updated payoff amount during the secured creditor's normal
17 business hours on the payoff date or the immediately preceding business day. A secured
18 creditor may not qualify a short-pay amount or state that it is subject to change before the
19 short-pay date unless the short-pay statement provides information sufficient to permit the
20 entitled person or the person's authorized agent to request an updated short-pay amount at no
21 charge and to obtain that updated short-pay amount during the secured creditor's normal
22 business hours on the short-pay date or the immediately preceding business day.

23 (h) A secured creditor must provide upon request one payoff statement or one short-pay
24 statement without charge during any six-month period. A secured creditor may charge a fee of
25 twenty-five dollars (\$25.00) for each additional payoff statement and one hundred dollars
26 (\$100.00) for each additional short-pay statement requested during that six-month period.
27 However, a secured creditor may not charge a fee for providing an updated payoff amount or
28 short-pay amount under subsection (f)-(g) of this section or a corrected payoff statement or
29 short-pay statement under G.S. 45-36.8(a).

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

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

42 (k) This section does not apply unless (i) the notification requesting a payoff statement
43 is given on or after ~~October 1, 2005~~ October 1, 2005, and (ii) the notification requesting a
44 short-pay statement is given on or after October 1, 2011."

45 **SECTION 6.** Article 4 of Chapter 45 of the General Statutes is amended by adding
46 a new section to read as follows:

47 "**§ 45-36.7A. Credit suspension directives.**

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

50 (1) Any borrower.

51 (2) The legal representative of any borrower.

- 1 (3) The attorney for any borrower.
2 (4) An attorney licensed to practice law in the State of North Carolina or a bank,
3 savings and loan association, savings bank, or credit union, but only when
4 (i) the attorney, bank, savings and loan association, savings bank, or credit
5 union is responsible for the disbursement of funds in connection with the
6 sale of, or a new loan secured by, real property then encumbered by an
7 existing security instrument; (ii) a requirement of the sale or new loan
8 transaction is that the property be conveyed or encumbered free and clear of
9 the lien of the existing security instrument; and (iii) the credit suspension
10 directive is given to the secured creditor contemporaneously with a
11 notification requesting a payoff statement or a short-pay statement in
12 anticipation of and in preparation for the imminent settlement of the sale or
13 new loan transaction.
- 14 (b) A credit suspension directive must contain all of the following:
- 15 (1) The name and authority of the person giving the directive.
16 (2) Sufficient information to enable the creditor to identify the secured
17 obligation, the identity of the borrower, and the real property encumbered by
18 the security interest.
19 (3) The specified payoff date, which may not be more than 30 days after the
20 notification is given.
21 (4) A clear and unambiguous directive to the secured creditor to suspend
22 through and including the payoff date the borrower's right and ability to
23 obtain any additional credit advances which, if made, would be secured by
24 the security instrument.
- 25 (c) If the person who gives a credit suspension directive to a secured creditor is a
26 person listed in subdivision (a)(4) of this section, that person shall also (i) give a copy of the
27 credit suspension directive to the borrower and (ii) provide an additional notification to the
28 borrower that provides substantially as follows:

29
30 "NOTICE TO BORROWER

31
32 You have a loan with (name of lender) secured by a mortgage or deed of trust on
33 real property located at (address of property).

34
35 We will be responsible for disbursing funds in connection with a scheduled sale of
36 the property or a new loan that will be secured by the property. A requirement of the
37 sale or new loan transaction is that the property be conveyed or encumbered free
38 and clear of the existing mortgage or deed of trust that secures your loan.

39
40 As permitted by North Carolina law, we are sending the
41 (enclosed/attached/following/foregoing) notification to your lender directing that it
42 temporarily suspend your right and ability to obtain credit advances in anticipation
43 of the settlement of the sale or loan. The notification accompanies a request asking
44 the amount that must be sent to your lender to pay your loan in full and cancel the
45 mortgage or deed of trust that secures your loan (or, if your loan will not be paid in
46 full, to release the property from the mortgage or deed of trust that secures your
47 loan). The information your lender provides us may be inaccurate if you obtain
48 additional credit advances before the scheduled settlement date of the sale or new
49 loan transaction.
50

1 When your lender receives our directive, it will temporarily suspend your right and
2 ability to obtain credit advances. The period of suspension will continue through
3 and including (anticipated payoff date), the anticipated payoff date, regardless of
4 whether the settlement of the sale or new loan transaction occurs as scheduled. The
5 suspension will not affect your responsibility to continue making payments to your
6 lender during the suspension period. You should not attempt to obtain additional
7 credit advances from your lender during the suspension period.

8
9 You may instruct us at any time during the suspension period to withdraw the credit
10 suspension directive we are sending your lender, and we are required by law to
11 comply. However, if you do so, you may jeopardize the settlement of the sale or
12 new loan transaction because the payoff or release information provided by your
13 lender may become inaccurate.

14
15 When proceeds from a sale or new loan transaction are used to pay an existing loan
16 in full, lenders typically close the loan account, thereby terminating their borrower's
17 ability to obtain additional credit advances. You should contact your lender to
18 determine whether you will be able to obtain additional credit advances after the
19 settlement of the sale or new loan transaction.

20
21 If you have questions about this notice or our action, please contact (name of
22 contact person or department) by calling us at (phone number) or writing to us at
23 (mailing address).

24
25 (Name of attorney, bank, savings and loan association, savings bank, or credit
26 union)"

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

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

32 (2) Apply all sums subsequently paid during the period of suspension by or on
33 behalf of the borrower in connection with the secured obligation, including
34 sums paid to the secured creditor by a person responsible for the
35 disbursement of funds in connection with the sale of, or a new loan secured
36 by, real property then encumbered by a security instrument, to the
37 satisfaction of the secured obligation, regardless of whether the amount or
38 amounts paid are sufficient to pay the secured obligation and other sums
39 secured by the security instrument in full. Sums paid to the secured creditor
40 in excess of the amount required to pay the secured obligation and other
41 sums secured by the security instrument in full shall be refunded by the
42 secured creditor to or at the direction of the person who paid the excess
43 amount.

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

47 (1) The secured creditor may advance sums and incur expenses (i) for insurance,
48 taxes, and assessments, (ii) to protect the secured creditor's interest under the
49 security instrument, (iii) to preserve and protect the value or condition of the
50 real property encumbered by the security instrument, or (iv) to complete the

1 construction of improvements on the real property encumbered by the
2 security instrument.

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

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

10 (g) A credit suspension directive may be withdrawn at any time by the person who gave
11 the directive. If the person who gives a credit suspension directive to a secured creditor is a
12 person listed in subdivision (a)(4) of this section, that person shall promptly notify the secured
13 creditor that the credit suspension directive is withdrawn (i) if instructed by the borrower at any
14 time to withdraw the directive or (ii) if the anticipated sale or new loan transaction is cancelled.
15 Upon receipt of a notice from the person who originally gave the credit suspension directive
16 that the credit suspension directive is withdrawn, the secured creditor may reinstate the
17 borrower's right and ability to obtain credit advances."

18 **SECTION 7.** G.S. 45-36.8 reads as rewritten:

19 **"§ 45-36.8. Understated payoff ~~statement;~~statement or short-pay statement: correction;**
20 **effect.**

21 (a) If a secured creditor determines that the payoff amount it provided in a payoff
22 statement or the short-pay amount it provided in a short-pay statement was understated, the
23 creditor may send a corrected payoff ~~statement.~~statement or short-pay statement. If the entitled person or
24 the person's authorized agent receives and has a reasonable opportunity to act upon a corrected
25 payoff statement or short-pay statement before making payment, the corrected statement
26 supersedes an earlier statement.

27 (b) A secured creditor that sends a payoff statement containing an understated payoff
28 amount or a short-pay statement containing an understated short-pay amount may not deny the
29 accuracy of the payoff amount or short-pay amount as against any person that reasonably and
30 detrimentally relies upon the understated payoff ~~amount.~~amount or short-pay amount.

31 (c) This Article does not:

32 (1) Affect the right of a secured creditor to recover any sum that it did not
33 include in a payoff amount or a short-pay amount from any person liable for
34 payment of the secured obligation; or

35 (2) Limit any claim or defense that a person liable for payment of a secured
36 obligation may have under law other than this Article."

37 **SECTION 8.** G.S. 45-36.9 reads as rewritten:

38 **"§ 45-36.9. Secured creditor to submit satisfaction or release for recording; liability for**
39 **failure.**

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

50 (a1) If the conditions stated in a short-pay statement are fully satisfied on or before the
51 short-pay date stated in the short-pay statement, including the payment in full of the short-pay

1 amount and the satisfaction of all other conditions precedent to the release set forth in the
2 short-pay statement, then within 30 days after the short-pay date the secured creditor shall
3 release the property which is the subject of the short-pay statement from the lien of the security
4 instrument. The release of the property may be accomplished by a deed of release, an
5 instrument of full or partial reconveyance, a partial release recorded pursuant to G.S. 45-36.22,
6 the satisfaction of record of the security instrument by any of the means authorized in
7 G.S. 45-37(a), or by any other lawful means.

8"

9 **SECTION 9.** Article 4 of Chapter 45 of the General Statutes is amended by adding
10 a new section to read as follows:

11 **"§ 45-36.22. Partial release: content and effect; form.**

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

- 13 (1) Identifies the type of security instrument, the original parties to the security
14 instrument, the recording data for the security instrument, and the office in
15 which the security instrument is recorded.
- 16 (2) States that the person signing the partial release is the secured creditor or, if
17 the security instrument is a deed of trust, that the person or persons signing
18 the partial release is or are the secured creditor, the trustee, or both the
19 secured creditor and the trustee.
- 20 (3) Contains language releasing property or an interest in property from the lien
21 of the security instrument.
- 22 (4) Is signed and acknowledged as required by law for a conveyance of an
23 interest in real property by the secured creditor or, if the security instrument
24 is a deed of trust, by the secured creditor, the trustee, or both the secured
25 creditor and the trustee.

26 (b) The register of deeds shall accept a partial release for recording unless one of the
27 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 required recording fee is not paid.
- 31 (3) The document is not signed and acknowledged as required by law for a
32 conveyance of an interest in real property by the secured creditor or, if the
33 security instrument is a deed of trust, by the secured creditor, the trustee, or
34 both the secured creditor and the trustee. The register of deeds shall not be
35 required to verify or make inquiry concerning the truth of the matters stated
36 in any partial release or the authority of the person executing any partial
37 release to do so.

38 (c) Upon recording, a partial release shall release from the lien of the security
39 instrument the property or interest in property as is expressly described and released. With
40 respect only to the specific property or interest in property identified and released by a partial
41 release, the partial release shall (i) operate and have the same effect as a duly executed and
42 recorded deed of release or reconveyance of the property or interest in the property; (ii) release
43 and discharge all of the secured creditor's interest in the property or property interest arising
44 from the security instrument; and (iii) if the security instrument is a deed of trust, release and
45 discharge all the interest of the trustee in the property or property interest arising from the deed
46 of trust. The security instrument shall otherwise remain in full force and effect, and the
47 remainder of the property and interests in property described in and encumbered by the security
48 instrument shall remain subject to the lien of the security instrument.

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

(2) The required recording fee is not paid.

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

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

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

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

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

"OBLIGATION RELEASE

(G.S. 45-36.23)

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

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

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

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

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

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

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

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

Date: _____

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

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

1 **SECTION 11.** Article 4 of Chapter 45 of the General Statutes is amended by
2 adding a new section to read as follows:

3 **"§ 45-36.24. Expiration of lien of security instrument.**

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

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

6 a. If all remaining sums owing on the secured obligation are due and
7 payable in full on a date specified in the secured obligation, the
8 maturity date of the secured obligation is the date so specified. If no
9 such date is specified in the secured obligation, the maturity date of
10 the secured obligation is the last date a payment on the secured
11 obligation is due and payable under the terms of the secured
12 obligation.

13 b. If all remaining sums owing on the secured obligation are due and
14 payable in full on demand or on a date specified in the secured
15 obligation, whichever first occurs, the maturity date of the secured
16 obligation is the date so specified. If all sums owing on the secured
17 obligation are due and payable in full on demand and no alternative
18 date is specified in the secured obligation for payment in full, the
19 maturity date of the secured obligation is the date of the secured
20 obligation.

21 c. The maturity date of the secured obligation is "stated" in a security
22 instrument if (i) the maturity date of the secured obligation is
23 specified as a date certain in the security instrument, (ii) the last date
24 a payment on the secured obligation is due and payable under the
25 terms of the secured obligation is specified in the security instrument,
26 or (iii) the maturity date of the secured obligation or the last date a
27 payment on the secured obligation is due and payable under the
28 terms of the secured obligation can be ascertained or determined
29 from information contained in the security instrument, such as, for
30 example, from a payment schedule contained in the security
31 instrument.

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

34 a. If the secured obligation is required to be performed by a date
35 specified in the secured obligation, the maturity date of the secured
36 obligation is the date so specified.

37 b. If the obligation is to be performed on demand or before a date
38 specified in the secured obligation, whichever first occurs, the
39 maturity date of the secured obligation is the date so specified. If the
40 obligation is to be performed on demand and no alternative date for
41 performance is specified in the secured obligation, the maturity date
42 of the secured obligation is the date of the secured obligation.

43 c. The maturity date of the secured obligation is "stated" in a security
44 instrument if (i) the maturity date of the secured obligation is
45 specified as a date certain in the security instrument or (ii) the
46 maturity date of the secured obligation can be ascertained or
47 determined from information contained in the security instrument.

48 (b) Automatic Lien Expiration. – Except as provided in subsection (g) of this section,
49 unless the lien of a security instrument has been extended in the manner prescribed in
50 subsection (c), (d), or (e) of this section, the security instrument has been foreclosed, or the
51 security instrument has been satisfied of record pursuant to G.S. 45-37, the lien of a security

1 instrument automatically expires, and the security instrument is conclusively deemed satisfied
2 of record pursuant to G.S. 45-37, at the earliest of the following times:

- 3 (1) If the security instrument was first recorded before October 1, 2011:
4 a. If the maturity date of the secured obligation is stated in the security
5 instrument, 15 years after the maturity date.
6 b. If the maturity date is not stated in the security instrument, 35 years
7 after the date the security instrument was recorded in the office of the
8 register of deeds or acknowledged as required by law for a
9 conveyance of an interest in real property, whichever is later.
10 c. Without regard to whether the maturity date of the secured obligation
11 is stated in the security instrument, 15 years from whichever of the
12 following occurs last:
13 1. The date when the conditions of the security instrument were
14 required by its terms to have been performed.
15 2. The date of maturity of the last installment of debt or interest
16 secured thereby.
17 3. The date an affidavit or separate instrument was recorded
18 pursuant to the provisions of G.S. 45-37(b), if any such
19 affidavit or separate instrument was recorded before October
20 1, 2011, and before the lien of the security instrument
21 expired.

- 22 (2) If the security instrument was first recorded on or after October 1, 2011:
23 a. If the maturity date of the secured obligation is stated in the security
24 instrument, 15 years after the maturity date.
25 b. If the maturity date of the secured obligation is not stated in the
26 security instrument, 35 years after the date the security instrument
27 was recorded in the office of the register of deeds or October 1, 2011,
28 whichever is later.

29 (c) Methods To Extend a Lien. – The lien of a recorded security instrument may be
30 extended one or more times by recording (i) a lien maturity extension agreement or (ii) a notice
31 of maturity date. If more than one lien maturity extension agreement or notice of maturity date
32 is recorded, the most recently recorded lien maturity extension agreement or notice of maturity
33 date controls in determining when the lien of a security instrument expires. A lien maturity
34 extension agreement or notice of maturity date is ineffective unless recorded before the lien
35 expires. The lien of the original security instrument may not be extended to a date more than 50
36 years after the date the security instrument was originally recorded in the office of the register
37 of deeds without the written agreement of the then owner of the property encumbered by the
38 lien of the security instrument.

39 (d) Lien Maturity Extension Agreement. –

- 40 (1) The lien of a recorded security instrument may be extended to a date
41 specified in a lien maturity extension agreement, provided the lien maturity
42 extension agreement is recorded before the lien expires. When a lien
43 maturity extension agreement has been duly recorded, the lien of the security
44 instrument will expire on the date specified in the lien maturity extension
45 agreement.
46 (2) A document (including any document that modifies, amends, or restates a
47 security instrument) is a lien maturity extension agreement if it does all of
48 the following:
49 a. Identifies the type of security instrument, the original parties to the
50 security instrument, the recording data for the security instrument,
51 and the office in which the security instrument is recorded.

- b. States the date to which the lien of the security instrument is extended.
 - 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.
- (3) No particular phrasing is required for a lien maturity extension agreement. The following form, when properly completed, is sufficient to satisfy the requirements for a lien maturity extension agreement:

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

_____ 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)

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

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

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

_____ is now the owner of the real property encumbered by the 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)

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

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

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

The maturity date of the secured obligation is _____ (specify date).

Date: _____

Signature(s) of secured creditor

[Acknowledgment before officer authorized to take acknowledgments]"

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

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

1 (g) Foreclosure Proceedings. – No proceeding may be commenced to foreclose the lien
2 of a security instrument unless the proceeding is commenced prior to the date on which the lien
3 of the security instrument expires. However, if a proceeding to foreclose the lien of a security
4 instrument is commenced before the lien of the security instrument expires, the lien created by
5 the security instrument shall continue until final disposition of the proceeding. This provision
6 shall not be construed as extending the lien or the right to bring or maintain any action for
7 which a shorter period may be provided by law.

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

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

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

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

21 (1) Any security instrument securing the payment of money or securing the
22 performance of any other obligation or obligations conclusively presumed to
23 have been fully paid and performed pursuant to the provisions of
24 G.S. 45-37(b) prior to October 1, 2011.

25 (2) Any security instrument made or given by any railroad company, or any
26 agreement of conditional sale, equipment trust agreement, lease, chattel
27 mortgage, or other instrument relating to the sale, purchase, or lease of
28 railroad equipment or rolling stock, or of other personal property."

29 **SECTION 12.** G.S. 45-37(b) reads as rewritten:

30 **"§ 45-37. Satisfaction of record of security instruments.**

31 ...

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

38 (1) The date when the conditions of the security instrument were required by its
39 terms to have been performed, or

40 (2) The date of maturity of the last installment of debt or interest secured
41 thereby;

42 provided that on or before October 1, 2011, and before the lien has expired pursuant to this
43 subsection, the holder of the indebtedness secured by the security instrument or party secured
44 by any provision thereof may file an affidavit with the register of deeds which affidavit shall
45 specifically state:

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

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

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

- 1 (1) Any payments that have been made on the indebtedness or other obligation
 2 secured by the security instrument including the date and amount of
 3 payments and
 4 (2) The amount still due or obligations not performed under the security
 5 instrument.

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

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

23 This subsection shall apply only to security instruments securing the payment of money or
 24 securing the performance of any other obligation or obligations that were conclusively
 25 presumed pursuant to this subsection to have been fully paid and performed prior to October 1,
 26 2011. All other security instruments shall be subject to the provisions of G.S. 45-36.24."

27 **SECTION 13.** G.S. 45-37.2 reads as rewritten:

28 "**§ 45-37.2. Recording satisfactions ~~of~~ and other documents relating to security**
 29 **instruments.**

30 (a) ~~When a satisfaction document, affidavit of satisfaction, or trustee's satisfaction is~~
 31 ~~recorded pursuant to G.S. 45-37(a)(7), the~~The register of deeds shall record and index the
 32 ~~instrument~~ following instruments in accordance with G.S. 161-14.1.G.S. 161-14.1:

- 33 (1) A substitution of trustee.
 34 (2) A document of rescission recorded pursuant to G.S. 45-36.6.
 35 (3) A deed of release or reconveyance.
 36 (4) A partial release recorded pursuant to G.S. 45-36.22.
 37 (5) An obligation release recorded pursuant to G.S. 45-36.23.
 38 (6) A satisfaction document, affidavit of satisfaction, or trustee's satisfaction
 39 recorded pursuant to G.S. 45-37(a)(7).
 40 (7) A lien maturity extension agreement or notice of maturity date recorded
 41 pursuant to G.S. 45-36.24.

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

44 (b) When a security instrument is satisfied of record by a method other than by means
 45 of recording a satisfaction document, satisfaction affidavit, or trustee's satisfaction pursuant to
 46 G.S. 45-37(a)(7), the register of deeds shall record and index in accordance with
 47 ~~G.S. 161-14.1~~G.S. 161-14.1 a record of satisfaction as provided for in this subsection. If the
 48 security instrument is being satisfied of record pursuant to G.S. 45-37(a)(2), the record of
 49 satisfaction may consist of either (i) all or a portion of the original security instrument
 50 rerecorded as described in subdivision (1) of this subsection or (ii) a separate instrument as
 51 described in subdivision (2) of this subsection. In all other cases, the record of satisfaction shall

1 consist of a separate instrument as described in subdivision (2) of this subsection. No fee shall
2 be charged by the register of deeds for recording a record of satisfaction.

3"

4 **SECTION 14.** Article 4 of Chapter 45 of the General Statutes is amended by
5 adding a new section to read as follows:

6 "**§ 45-42.3. Automatic release of real property from ancillary security instruments.**

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

8 (1) Ancillary security instrument. – An assignment of leases with respect to the
9 real property, an assignment of rents from or arising out of the real property,
10 a financing statement covering fixtures on the real property that is filed in
11 the office of the register of deeds in the county in which the real property is
12 located, and any other document or instrument that assigns, or creates a lien
13 on, an interest in the real property.

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

16 (b) Except as provided in subsection (c) of this section, (i) the expiration of the lien of a
17 security instrument pursuant to G.S. 45-36.24 or the satisfaction of a security instrument of
18 record pursuant to G.S. 45-37 shall be deemed automatically to release the real property from
19 the operation of all ancillary security instruments that secure the same obligation or obligations
20 secured by the security instrument and (ii) the recording of a partial release pursuant to
21 G.S. 45-36.22 or the recording of a deed of release shall be deemed automatically to release the
22 real property described in the partial release or deed of release from the operation of all
23 ancillary security instruments that secure the same obligation or obligations secured by the
24 security instrument.

25 (c) Subsection (b) of this section shall not apply to an ancillary security instrument if (i)
26 the ancillary security instrument secures obligations other than, or in addition to, the obligation
27 or obligations secured by the security instrument; (ii) the security instrument, the ancillary
28 security instrument, or the document recorded in the office of the register of deeds to satisfy the
29 security instrument of record expressly states that the satisfaction of the security instrument of
30 record shall not release the real property from the operation of that particular ancillary security
31 instrument or from ancillary security instruments in general; or (iii) the security instrument, the
32 ancillary security instrument, the partial release, or the deed of release expressly states that the
33 partial release or deed of release shall not release real property from the operation of that
34 particular ancillary security instrument or ancillary security instruments in general."

35 **SECTION 15.** Article 5 of Chapter 45 of the General Statutes is amended by
36 adding a new section to read as follows:

37 "**§ 45-45.3. Trustee in a deed of trust.**

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

39 (1) Secured creditor. – The holder, owner, or assignee of the obligation secured
40 by a deed of trust.

41 (2) Trustee. – The trustee or substitute trustee then serving as such under the
42 terms of a deed of trust.

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

45 (1) Pursuant to G.S. 45-36.23, an obligation may be declared by the owner and
46 holder of the obligation to be no longer secured by the deed of trust.

47 (2) Property may be released from the lien of a deed of trust by the secured
48 creditor.

49 (3) The lien of a deed of trust may be released or subordinated by the secured
50 creditor.

1 (4) The terms of a deed of trust may be modified by the secured creditor and the
2 then record owner of the property encumbered by the lien of the deed of
3 trust.

4 (5) The deed of trust may be satisfied of record by the secured creditor.

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

11 (1) Condemnation.

12 (2) Bankruptcy.

13 (3) The establishment or correction of title to real property, including, but not
14 limited to, actions to quiet title, reform land records, or resolve boundary
15 line disputes.

16 (4) Fraudulent conveyances.

17 (5) The creation or enforcement of an attachment or judgment lien.

18 (6) The foreclosure of a lien other than the lien of the deed of trust, regardless of
19 whether the lien is superior or subordinate to the lien of the deed of trust,
20 including, but not limited to, the foreclosure of mortgages, other deeds of
21 trust, tax liens, and assessment liens.

22 (7) The establishment, perfection, or enforcement of a mechanic's or
23 materialman's lien.

24 (8) The creation or enforcement of a constructive trust, resulting trust, or
25 equitable lien relating to the property.

26 (9) The partition of real property.

27 (10) The interpretation or enforceability of a will, trust, or estate.

28 (11) A subrogation claim or other equitable claim or defense involving the
29 priority or enforceability of a deed of trust.

30 (12) Determination or enforcement of rights and obligations involving easements
31 or restrictive covenants.

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

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

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

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

46 (e) Except as expressly provided in this section, this section is not in derogation of case
47 law and statutory provisions that vest legal title to property conveyed by a deed of trust in the
48 trustee named therein."

49 **SECTION 16.** G.S. 45-68 reads as rewritten:

50 **"§ 45-68. Requirements.**

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

3 ...
4 (1a) Existing obligations that are specifically or generally identified~~identified,~~
5 described, or referenced in the security instrument as being secured thereby,
6 and all advances made at or prior to the registration of the security
7 instrument.

8 (1b) Future advances and future obligations that are specifically or generally
9 identified, described, or referenced in the security instrument as being
10 secured thereby that may from time to time be made or incurred~~under the~~
11 security instrument, incurred, but only if the security instrument shows all of
12 the following:

13 a. That the security instrument is given wholly or partly to secure future
14 advances and/or future ~~obligations that may be made or incurred~~
15 under the security instrument.~~obligations.~~

16"

17 **SECTION 17.** G.S. 45-69 reads as rewritten:

18 **"§ 45-69. Fluctuation of obligations within maximum amount.**

19 Unless the security instrument provides to the contrary, if the maximum amount secured by
20 the security instrument has not been advanced or if any obligation secured thereby is paid or is
21 reduced by partial payment, further advances may be made and additional obligations secured
22 by the security instrument may be incurred from time to time within the time limit fixed by the
23 security instrument. Such further advances and ~~obligations~~obligations, together with interest
24 thereon, shall be secured to the same extent as original advances and obligations under the
25 security instrument, if the provisions of G.S. 45-68 are complied with.~~However, if at any time~~
26 ~~the aggregate outstanding principal balance of the obligation or obligations secured by the~~
27 ~~security instrument exceeds the maximum principal amount that may be secured by the security~~
28 ~~instrument at any one time, then the excess shall not be secured by the security instrument."~~

29 **SECTION 18.** G.S. 45-70 reads as rewritten:

30 **"§ 45-70. Priority of security instrument.**

31 (a) ~~Any~~Subject to subsections (a1), (c), and (d) of this section, any security instrument
32 that conforms to the requirements of this Article shall, from the time and date of registration
33 thereof, have the same priority to the extent of all future advances and future obligations
34 secured by it, and all interest accruing thereon, as if all the advances had been ~~made and~~made,
35 all the obligations ~~incurred~~incurred, and all the interest accrued at the time the security
36 instrument was registered.

37 (a1) Subject to subsections (c) and (d) of this section, if at any time the aggregate
38 outstanding principal balance of the obligation or obligations secured by a security instrument
39 that conforms to the requirements of this Article exceeds the maximum principal amount that
40 may be secured by the security instrument at any one time, then, unless the security instrument
41 provides otherwise, the amount in excess and the interest accrued on the amount in excess shall
42 be secured by the security instrument, but (i) the amount in excess and the interest accrued on
43 the amount in excess shall not be afforded the priority provided in subsection (a) of this section
44 and (ii) the priority of the lien of the security instrument with respect to the amount in excess
45 and the interest accrued on the amount in excess shall be determined by other applicable law.

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

47 (c) ~~Payments made by the secured creditor for fire and extended coverage insurance,~~
48 ~~taxes, assessments, or other necessary expenditures for the preservation of the security~~All
49 payments made, sums advanced, and expenses incurred by the secured creditor (i) for
50 insurance, taxes, and assessments, (ii) to protect the secured creditor's interest under the
51 security instrument, or (iii) to preserve and protect the value or condition of the real property

1 encumbered by the security instrument shall be secured by the security instrument and shall
2 have the same priority as if such payments had been made they had been paid, advanced, or
3 incurred at the time the security instrument was registered. The provisions of G.S. 45-68 shall
4 not be applicable to such payments, advances, or expenses, nor shall accrued interest or such
5 payments payments, advances, or accrued interest expenses be considered in computing the
6 maximum principal amount which may be that is secured by the security instrument-instrument
7 at any one time.

8 (d) Notwithstanding any other provision of this Article, any security instrument
9 hereafter executed which secures an obligation or obligations of an electric or telephone
10 membership corporation incorporated or domesticated in North Carolina to the United States of
11 America or any of its agencies, or to any other financing institution, or of an electric or gas
12 utility operating in North Carolina, shall from the time and date of registration of said security
13 instrument have the same priority to the extent of (i) all future obligations incurred by the
14 membership corporation or utility to any mortgagee or beneficiary named in the security
15 instrument, together with interest thereon, (ii) all future advances secured by it-it, together with
16 interest thereon, and (iii) all payments made, sums advanced, and expenses incurred by the
17 secured creditor of the types described in subsection (c) of this section, as if all the advances
18 had been made they all had been accrued, paid, made, advanced, and incurred at the time of the
19 execution-registration of the security instrument, regardless of whether the making of such
20 advances is obligatory or whether the security instrument meets the requirements of
21 G.S. 45-68."

22 **SECTION 19.** G.S. 45-74 reads as rewritten:

23 **"§ 45-74. Article not exclusive.**

24 The provisions of this Article shall not be deemed ~~exclusive, and no security instrument~~
25 ~~securing future advances or future obligations which is otherwise valid shall be invalidated by~~
26 ~~failure to comply with the provisions of this Article-exclusive. Nothing in this Article shall~~
27 ~~invalidate or overrule any rule of validity or priority applicable to any security instrument~~
28 ~~failing to comply with the provisions of this Article."~~

29 **SECTION 20.** G.S. 45-81 reads as rewritten:

30 **"§ 45-81. Definition-Definitions.**

31 (a) The term "equity line of credit" means ~~an agreement in writing between a lender and~~
32 ~~a borrower for an extension of credit pursuant to which:~~

- 33 (1) ~~At any time within a specified period not to exceed 30 years the borrower~~
34 ~~may request and the lender is obligated to provide, by honoring negotiable~~
35 ~~instruments drawn by the borrower or otherwise, advances up to an agreed~~
36 ~~aggregate limit;~~
- 37 (2) ~~Any repayments of principal by the borrower within the specified period will~~
38 ~~reduce the amount of advances counted against the aggregate limit; and~~
- 39 (3) ~~The borrower's obligation to the lender is secured by a mortgage or deed of~~
40 ~~trust relating to real property which mortgage or deed of trust shows on its~~
41 ~~face the maximum principal amount which may be secured at any one time~~
42 ~~and that it secures an equity line of credit governed by the provisions of this~~
43 ~~Article.~~

44 (b) ~~As used in subdivision (a)(1) of this section, "lender is obligated" means that the~~
45 ~~lender is contractually bound to provide advances. The contract must set forth any events of~~
46 ~~default by the borrower, or other events not within the lender's control, which may relieve the~~
47 ~~lender from his obligation, and must state whether or not the lender has reserved the right to~~
48 ~~cancel or terminate the obligation.~~

49 (c) ~~At any time when the balance of all outstanding sums secured by a mortgage or~~
50 ~~deed of trust pursuant to the provisions of this Article is zero, the lender shall, upon the request~~
51 ~~of the borrower, make written entry upon the security instrument showing payment and~~

1 satisfaction of the instrument; provided, however, that such security instrument shall remain in
2 full force and effect for the term set forth therein absent the borrower's request for such written
3 entry. No prepayment penalty may be charged with respect to an equity line of credit loan.

4 The following definitions apply in this Article:

- 5 (1) Authorized person. – Any borrower; the legal representative of any
6 borrower; the attorney for any borrower; a title insurance company
7 authorized pursuant to Article 26 of Chapter 58 of the General Statutes to
8 issue title insurance policies in the State of North Carolina, but only when
9 the company is acting in connection with a title insurance policy issued or to
10 be issued with respect to property then encumbered by an existing equity
11 line security instrument; or an attorney licensed to practice law in the State
12 of North Carolina or a bank, savings and loan association, savings bank, or
13 credit union, but only when (i) the attorney, bank, savings and loan
14 association, savings bank, or credit union is or was responsible for the
15 disbursement of funds in connection with the sale of, or a new loan secured
16 by, property then encumbered by an existing equity line security instrument
17 and (ii) a requirement of the sale or new loan transaction is or was that the
18 property be conveyed or encumbered free and clear of the lien of the existing
19 equity line security instrument.
- 20 (2) Borrower. – A person primarily liable for payment or performance of an
21 equity line of credit.
- 22 (3) Equity line of credit. – An agreement in writing between a lender and a
23 borrower for an extension of credit pursuant to which (i) at any time within a
24 specified period not to exceed 30 years the borrower may request and the
25 lender is obligated to provide advances up to an agreed aggregate limit; (ii)
26 any repayments of principal by the borrower within the specified period will
27 reduce the amount of advances counted against the aggregate limit; and (iii)
28 the borrower's obligation to the lender is secured by an equity line security
29 instrument.
- 30 (4) Equity line security instrument. – An agreement, however denominated, that
31 (i) creates or provides for an interest in real property to secure payment or
32 performance of an equity line of credit, whether or not it also creates or
33 provides for a lien on personal property; (ii) shows on its face the maximum
34 principal amount which may be secured at any one time; and (iii) shows on
35 its face that it secures an equity line of credit governed by the provisions of
36 this Article. The term "equity line security instrument" includes a deed of
37 trust and a mortgage.
- 38 (5) Lender is obligated. – The lender is contractually bound to provide
39 advances. The contract must set forth any events of default by the borrower,
40 or other events not within the lender's control, which may relieve the lender
41 from his obligation, and must state whether or not the lender has reserved the
42 right to cancel or terminate the obligation.
- 43 (6) Notice regarding future advances. – A written notice submitted under
44 G.S. 45-82.3 to a lender that prevents certain advances made pursuant to an
45 equity line of credit from being secured by the related equity line security
46 instrument.
- 47 (7) Owner. – Any person owning a present or future interest in the real property
48 encumbered by an equity line security instrument, but does not mean the
49 trustee in a deed of trust or the owner or holder of a mortgage, deed of trust,
50 mechanic's or materialman's lien, judgment lien, or any other lien on, or
51 security interest in, the real property.

- 1 (8) Person. – An individual, corporation, business trust, estate, trust, partnership,
 2 limited liability company, association, joint venture, public corporation,
 3 government, or governmental subdivision, agency, or instrumentality, or any
 4 other legal or commercial entity.
- 5 (9) Qualified lien holder. – A person who has a mortgage or deed of trust on
 6 property already encumbered by an existing equity line security instrument,
 7 where that person's mortgage or deed of trust was recorded after the existing
 8 equity line security instrument and it appears from warranties or otherwise
 9 that the person's mortgage or deed of trust was not intended to be
 10 subordinate to the existing equity line security instrument. The term does not
 11 include a trustee under a deed of trust.
- 12 (10) Request to terminate an equity line of credit; and termination request. – A
 13 written request submitted under G.S. 45-82.2 to a lender to terminate an
 14 equity line of credit. Each of the following shall be deemed a termination
 15 request: (i) a notification given pursuant to G.S. 45-36.9(a) requesting the
 16 lender to terminate the equity line of credit, (ii) a notification given pursuant
 17 to G.S. 45-36.9(a) containing a statement sufficient to terminate the
 18 effectiveness of the provision for future advances in the equity line security
 19 instrument, and (iii) a written request made by or on behalf of a borrower to
 20 a lender pursuant to G.S. 45-37 to satisfy a related equity line security
 21 instrument as a matter of public record."

22 **SECTION 21.** G.S. 45-82 reads as rewritten:

23 **"§ 45-82. Priority of equity line security instrument.**

24 ~~A mortgage or deed of trust which~~ An equity line security instrument shows on its face that
 25 it secures an equity line of credit governed by the provisions of this Article, shall, from the time
 26 and date of its registration, have the same priority to the extent of all advances secured by it as
 27 if the advances had been made at the time of the execution-registration of the equity line
 28 mortgage or deed of trust, security instrument, notwithstanding the fact that from time to time
 29 during the term of the loan-equity line of credit no balance is outstanding. Payments made by
 30 the lender for insurance, taxes, and assessments and other payments made by the lender
 31 pursuant to the deed of trust shall have the same priority as if made at the time of the execution
 32 of the mortgage or deed of trust, notwithstanding the maximum principal amount set forth in
 33 the mortgage or deed of trust. Interest that accrues on the equity line of credit and all payments
 34 made, sums advanced, and expenses incurred by the lender (i) for insurance, taxes, and
 35 assessments, (ii) to protect the lender's interest under the equity line security instrument, or (iii)
 36 to preserve and protect the value or condition of the property encumbered by the equity line
 37 security instrument shall be secured by the equity line security instrument and shall have the
 38 same priority as if they had been accrued, paid, advanced, and incurred at the time the equity
 39 line security instrument was registered. The accrued interest, payments, advances, and expenses
 40 shall not be considered in computing the principal amount that is secured by the equity line
 41 security instrument at any one time."

42 **SECTION 22.** G.S. 45-82.1 reads as rewritten:

43 **"§ 45-82.1. Extension of period for advances.**

44 (a) The period for advances agreed to pursuant to ~~G.S. 45-81(a)(1)~~ G.S. 45-81(3) may
 45 be extended by written agreement of the lender and borrower executed and registered prior to
 46 expiration or termination of the equity line of credit or the borrower's obligation to repay any
 47 outstanding indebtedness. Any extended period shall not exceed 30 years from the end of the
 48 preceding period for advances.

49 (b) If a lender and borrower extend the period for advances by registering a certificate
 50 as described in subsection (c) of this section, ~~A mortgage or deed of trust that secures an equity~~
 51 ~~line of credit to which the lender and borrower have agreed to an extended period for advances~~

1 shall have priority with respect to advances that are made after the preceding loan period period
2 for advances provided in the original recorded equity line security instrument or any previously
3 recorded extension shall have priority from a date not later than the date of registration of the
4 certificate described in subsection (c) of this section.

5 (c) The priority provided in subsection (b) of this section shall be accorded only if the
6 ~~grantor of the mortgage or the deed of trust securing the obligation, lender, the borrower, and, if~~
7 ~~different than the borrower, the then owners of the real property encumbered by the equity line~~
8 ~~security instrument and other record owners of the real property therein conveyed,~~ execute a
9 certificate evidencing the extension and register the certificate in the office of the register of
10 deeds where the equity line mortgage or deed of trust security instrument is registered. The
11 failure of any ~~record~~ owner to execute the certificate shall affect only that ~~record~~ owner's
12 interest in the property, and executions by other owners shall have full effect to the extent of
13 their interests in the property. ~~For purposes of this section, the term "record owner" means any~~
14 ~~person owning a present or future interest of record in the real property which would be~~
15 ~~affected by the lien of the mortgage or deed of trust, but does not mean the trustee in a deed of~~
16 ~~trust or the owner or holder of a mortgage, deed of trust, mechanic's or materialman's lien, or~~
17 ~~any other lien or security interest in the real property.~~

18 (d) The ~~certificate described in subsection (c) of this section may be in any form that~~
19 ~~fulfills the requirements of subsection (c) of this section, including the following:~~ No particular
20 phrasing is required for a certificate of extension under this section. The following form, when
21 properly completed, is sufficient to satisfy the requirements of subsection (c) of this section:

22
23 "Certificate of Extension of Period for Advances Under Home Equity Line of Credit

24
25 Please take notice that the borrower and lender under the home equity line of credit secured
26 by the ~~(deed of trust) (mortgage)~~ recorded on _____ in Book _____, at
27 Page _____, records of this County, have agreed to extend the period within which the
28 borrower may request advances as set forth in G.S. 45-82.1. The borrower's obligations to
29 repay advances and related undertakings are secured by the ~~(deed of trust) (mortgage)~~.

30
31 WITNESS the signatures and seals of the undersigned, this _____ day of
32 _____, _____.

33
34 (SEAL)

35 (Grantor (s))

36
37 (SEAL)

38 Other record owner(s)

39
40 (SEAL)

41 (Mortgagee or Beneficiary)

42 (Acknowledgment as required by law)."

43 "Certificate of Extension of Period for Advances Under Equity Line of Credit

44 (G.S. 45-82.1)

45 _____ is now the lender and secured creditor in the security instrument identified
46 as follows:

47 Type of Security Instrument: (identify type of security instrument, such as deed
48 of 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),
51 or secured party(ies) in the security instrument)

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

The borrower(s) is/are the following: _____.

The current owner(s) of the property described in the security instrument is/are: _____.

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

Date: _____

Signature of secured creditor

Signature of borrower(s)

Signature of property owner(s) (if different)

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

SECTION 23. Article 9 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"§ 45-82.2. Request to terminate an equity line of credit.

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

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

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

To: (name of lender)

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

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

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

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

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

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

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

I certify that I am:

- The borrower (or one of the borrowers, if there is more than one).
- The legal representative of a borrower.
- The attorney for a borrower.
- A title insurance company that satisfies the requirements of G.S. 45-81(1).
- An attorney licensed to practice law in the State of North Carolina that satisfies the requirements of G.S. 45-81(1).
- A bank, savings and loan association, savings bank, or credit union that satisfies the requirements of G.S. 45-81(1).

Date: _____

Signature of person submitting the request"

(c) If the person who gives a lender a request to terminate an equity line of credit is a title insurance company described in G.S. 45-81(1), that person shall give a copy of the request to the borrower accompanied by a notice that provides substantially as follows:

"NOTICE TO BORROWER

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We are a title insurance company that has issued or has agreed to issue a title insurance policy on that property. As permitted by North Carolina law, we are sending the (enclosed / attached / following / foregoing) request to your lender asking that your equity line of credit be terminated. Our reason for making this request is:

(specify reason it is appropriate for the title insurance company to request the termination of the borrower's equity line of credit)

When your lender receives our request, your lender will terminate and close your equity line of credit, and you will no longer be able to obtain credit advances. However, termination of your equity line of credit will not release you from liability for the account. All sums your lender subsequently receives in connection with your equity line of credit (including any sums we may send to your lender) will be applied by your lender to the satisfaction of your account. When the balance of your account becomes zero, your lender will be required to cancel the mortgage or deed of trust as a matter of public record.

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

(Name of title insurance company)"

(d) If the person who gives a lender a request to terminate an equity line of credit is an attorney, bank, savings and loan association, savings bank, or credit union described in G.S. 45-81(1), that person shall give a copy of the request to the borrower accompanied by a notice that provides substantially as follows:

"NOTICE TO BORROWER

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We were responsible for disbursing funds in connection with the sale of the property or a new loan secured by the property. A requirement of the sale or new loan transaction was that the property be conveyed or encumbered free and clear of the existing mortgage or deed of trust that secures your equity line of credit.

As permitted by North Carolina law, we are sending the (enclosed / attached / following / foregoing) request to your lender asking that your equity line of credit be terminated. Our reason for making this request is to ensure that the mortgage or deed of trust on the property will be cancelled once your equity line of credit is paid in full.

When your lender receives our request, your lender will terminate and close your equity line of credit, and you will no longer be able to obtain credit advances. However, termination of your equity line of credit will not release you from liability for the account. All sums your lender subsequently receives in connection with your equity line of credit (including any sums we send to your lender in connection with the closing of the sale of the property or the new loan) will be applied by your lender to the satisfaction of your account. When the balance of your account becomes zero, your lender will be required to cancel the mortgage or deed of trust as a matter of public record.

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

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

SECTION 24. Article 9 of Chapter 45 of the General Statutes is amended by adding a new section to read as follows:

"§ 45-82.3. Notice regarding future advances.

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

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

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

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

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

(3) Any advance made by the lender to a borrower pursuant to an equity line of credit that occurs more than one complete business day after the lender

receives the notice regarding future advances, but only if the advance was initiated or approved before the lender received the notice regarding future advances.

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

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

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

To: (name of lender)

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

- 1. The borrower(s) is/are: (identify borrower(s))
2. The account number of the equity line of credit is: (specify the account number of the equity line of credit, if known by the person submitting the notice)
3. The street address of the property is: (provide the street address of the property encumbered by the security instrument identified in 4.)
4. The equity line of credit is secured by the security instrument identified as follows:

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

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

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

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

Except as provided in G.S. 45-82.3(c), subsequent advances made by you under the equity line of credit will not be secured by the security instrument identified above.

I certify that I am:

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

Date: _____

Signature of person submitting the request"

1 (f) If the person who gives a lender a notice regarding future advances is (i) a title
2 insurance company described in G.S. 45-81(1); (ii) an attorney, bank, savings and loan
3 association, savings bank, or credit union described in G.S. 45-81(1), (iii) an owner as defined
4 in G.S. 45-81(7), other than an owner who is also a borrower, or (iv) a qualified lien holder
5 described in G.S. 45-81(9), then that person shall give a copy of the notice regarding future
6 advances to the borrower accompanied by a notice that provides substantially as follows:
7

8 "NOTICE TO BORROWER

9 You have an equity line of credit with (name of lender) secured by a mortgage or deed
10 of trust on real property located at (address of property).

11 As permitted by North Carolina law, we are sending the (enclosed / attached / following
12 / foregoing) Notice Regarding Future Advances to your lender. Subject to
13 certain exceptions, the notice prevents any new credit advances you obtain under
14 your equity line of credit from being secured by the mortgage or deed of trust
15 that currently secures its repayment. Our reason for giving your lender the notice
16 is to limit the amount secured by the mortgage or deed of trust that secures your
17 equity line of credit and to prevent that amount from increasing.

18 When your lender receives our notice, your lender may elect to terminate your right and
19 ability to obtain additional advances under your equity line of credit. However,
20 termination of your right and ability to obtain additional advances will not
21 release you from liability for the account. You should contact your lender to
22 determine whether you will be able to obtain additional credit advances from
23 your lender.

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

27 (Name of insurance company, attorney, bank, savings and loan association, savings
28 bank, credit union, owner, or qualified lien holder)".

29 **SECTION 25.** Article 9 of Chapter 45 of the General Statutes is amended by
30 adding a new section to read as follows:

31 **"§ 45-82.4. Prepayment penalty.**

32 Except as provided in G.S. 24-9(c), no prepayment penalty may be charged with respect to
33 an equity line of credit."

34 **SECTION 26.** G.S. 45-83 reads as rewritten:

35 **"§ 45-83. Future advances statute shall not apply.**

36 The provisions of Article 7 of this Chapter shall not apply to an equity line of credit or the
37 equity line security instrument securing it, if the equity line security instrument shows on its
38 face that it secures an equity line of credit governed by the provisions of this Article."

39 **SECTION 27.** G.S. 45-84 reads as rewritten:

40 **"§ 45-84. Article not exclusive.**

41 Except as otherwise provided in G.S. 45-83, the provisions of this Article are not exclusive,
42 and no mortgage or deed of trust which secures a line of credit or other obligation shall be
43 invalidated by failure to comply with the provisions of this Article-exclusive. Nothing in this
44 Article shall invalidate or overrule any rule of validity or priority applicable to any mortgage,
45 deed of trust, or other security instrument failing to comply with the provisions of this Article."

46 **SECTION 28.** G.S. 161-14.1 reads as rewritten:

47 **"§ 161-14.1. Recording subsequent entries as separate instruments.**

48 (a) As used in this section, the following terms mean:

49 ...

50 (3) Subsequent instrument. – Any instrument presented for registration that
51 indicates in its title or within the first two pages of its text that it is intended

1 or purports to modify, amend, supplement, assign, satisfy, terminate, revoke,
 2 or cancel a previously registered instrument. Examples of subsequent
 3 instruments include the ~~appointment or designation of a substitute trustee in~~
 4 ~~a deed of trust; an affidavit extending the life of a deed of trust; the~~
 5 ~~cancellation of a Notice of Inactive Hazardous Substance or Waste Disposal~~
 6 ~~Site registered pursuant to G.S. 130A-310.8(f); a record of satisfaction or~~
 7 ~~other instrument purporting to satisfy a security instrument registered~~
 8 ~~pursuant to G.S. 45-37 or G.S. 45-37.2; a notice of foreclosure registered~~
 9 ~~pursuant to G.S. 45-38; an assignment of a security instrument or lease; a~~
 10 ~~modification agreement; a release or partial release of property from the lien~~
 11 ~~of a security instrument; an assumption agreement; a subordination~~
 12 ~~agreement; an instrument terminating future optional advances registered~~
 13 ~~pursuant to G.S. 45-72; the revocation of a power of attorney; any~~
 14 ~~instrument authorized or directed by law to be indexed under the provisions~~
 15 ~~of this section; and any instrument for which the register of deeds is~~
 16 ~~authorized or directed by law to make a subsequent entry upon the margin of~~
 17 ~~the record of an original instrument.~~following:

- 18 a. The appointment or designation of a substitute trustee in a deed of
 19 trust.
- 20 b. A corrective affidavit registered pursuant to G.S. 45-36.1.
- 21 c. A lien maturity extension agreement or notice of maturity date
 22 registered pursuant to G.S. 45-36.1.
- 23 d. A document of rescission registered pursuant to G.S. 45-36.6.
- 24 e. The cancellation of a Notice of Inactive Hazardous Substance or
 25 Waste Disposal Site registered pursuant to G.S. 130A-310.8(f).
- 26 f. A record of satisfaction or other instrument purporting to satisfy a
 27 security instrument registered pursuant to G.S. 45-37 or
 28 G.S. 45-37.2.
- 29 g. A notice of foreclosure registered pursuant to G.S. 45-38.
- 30 h. An assignment of a security instrument or lease.
- 31 i. An amendment or modification agreement.
- 32 j. A release or partial release of property from the lien of a security
 33 instrument, including a partial release registered pursuant to
 34 G.S. 45-36.22 or a deed of release or reconveyance.
- 35 k. An obligation release registered pursuant to G.S. 45-36.23.
- 36 l. An assumption agreement.
- 37 m. A subordination agreement.
- 38 n. An instrument terminating future optional advances registered
 39 pursuant to G.S. 45-72.
- 40 o. A certificate of extension extending the period for advances under an
 41 equity line of credit registered pursuant to G.S. 45-82.1.
- 42 p. A notice of extension relating to after-acquired property registered
 43 pursuant to G.S. 47-20.5.
- 44 q. The revocation of a power of attorney.
- 45 r. Any instrument authorized or directed by law to be indexed under the
 46 provisions of this section.
- 47 s. Any instrument for which the register of deeds is authorized or
 48 directed by law to make a subsequent entry upon the margin of the
 49 record of an original instrument.

50"

51 **SECTION 29.** This act becomes effective October 1, 2011.