

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 645

Short Title: Rents and Profits/Security Interests.

(Public)

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Sponsors: Senator Block.

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Referred to: Judiciary I.

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April 16, 1991

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES IN THE LAW RELATING TO THE CREATION  
AND PERFECTION OF SECURITY INTERESTS IN RENTS AND PROFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-20 reads as rewritten:

"§ 47-20. **Deeds of trust, ~~mortgages and mortgages,~~ conditional sales contracts;  
contracts, assignments of leases and rents; effect of registration.**

(a) No deed of trust or mortgage of real or personal property, or of a leasehold interest or other chattel real, or conditional sales contract of personal property in which the title is retained by the vendor, shall be valid to pass any property as against lien creditors or purchasers for a valuable consideration from the grantor, mortgagor or conditional sales vendee, but from the time of registration thereof as provided in this Article; provided however that any transaction subject to the provisions of the Uniform Commercial Code (Chapter 25 of the General Statutes) is controlled by the provisions of that act and not by this section.

(b) For purposes of this section and G.S. 47-20.1, the following definitions apply:

(1) 'Rents, issues, or profits' means all amounts payable by or on behalf of any lessee, tenant, or other person having a possessory interest in real estate on account of or pursuant to any written or oral lease or other instrument evidencing a possessory interest in real property or pursuant to any form of tenancy implied by law, and all amounts payable by or on behalf of any licensee or permittee or other person occupying or using real property under license or permission from the owner or person entitled to possession. The term shall not include

1 farm products as defined in G.S. 25-9-109(3), timber, the proceeds  
2 from the sale of farm products or timber, or the proceeds from the  
3 recovery or severance of any mineral deposits located on or under real  
4 property.

5 (2) 'Assignment of leases, rents, issues, or profits' means every document  
6 assigning, transferring, pledging, mortgaging, or conveying an interest  
7 in leases, licenses to real property, and rents, issues, or profits arising  
8 from real property, whether set forth in a separate instrument or  
9 contained in a mortgage, deed of trust, conditional sales contract, or  
10 other deed or instrument of conveyance.

11 (3) 'Collateral assignment' means any assignment of leases,  
12 rents, issues, or profits made and delivered in connection with the  
13 grant of any mortgage, or the execution of any conditional sales  
14 contract or deed of trust or in connection with any extension of  
15 credit made against the security of any interest in real property,  
16 where the assignor retains the right to collect or to apply such lease  
17 revenues, rents, issues, or profits after assignment and prior to  
18 default.

19 (c) The recording of a written document in accordance with G.S. 47-20.1  
20 containing an assignment of leases, rents, issues, or profits arising from real property  
21 shall be valid and enforceable from the time of recording to pass the interest granted,  
22 pledged, assigned, or transferred as against the assignor, and shall be perfected from the  
23 time of recording against subsequent assignees, lien creditors, and purchasers for a  
24 valuable consideration from the assignor.

25 (d) Where an assignment of leases, rents, issues, or profits is a collateral assignment,  
26 after a default under the mortgage, deed of trust, conditional sales contract, or evidence  
27 of indebtedness which such assignment secures, the assignee shall thereafter be entitled,  
28 but not required, to collect and receive any accrued and unpaid or subsequently accruing  
29 lease revenues, rents, issues, or profits subject to the assignment, without need for the  
30 appointment of a receiver, any act to take possession of the property, or any further  
31 demand on the assignor. Unless otherwise agreed, after default the assignee shall be  
32 entitled to notify the tenant or other obligor to make payment to him and shall also be  
33 entitled to take control of any proceeds to which he may be entitled. The assignee must  
34 proceed in a commercially reasonable manner and may deduct his reasonable expenses  
35 of realization from the collections.

36 (e) This section shall not exclude other methods of creating, perfecting,  
37 collecting, sequestering, or enforcing a security interest in rents, issues, or profits  
38 provided by the law of this State."

39 Sec. 2. This act is effective upon ratification, and applies to all assignments  
40 of leases, rents, issues, or profits, including collateral assignments, whether recorded  
41 prior to or after the effective date of this act.