

Article 5.

Miscellaneous Provisions.

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

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

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 Repealed by Session Laws 1971, c. 1229, s. 1.**

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

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

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

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

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

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

- (1) Whenever real property which is encumbered by a mortgage or deed of trust is sold and the grantee assumes and agrees to pay such mortgage or deed of trust,

and thereafter the mortgagee or secured creditor under the deed of trust gives the grantee a legally binding extension of time, or releases the grantee from liability on the obligation, the mortgagor or grantor of the deed of trust is released from any further liability on the obligation.

- (2) Whenever real property which is encumbered by a mortgage or deed of trust is sold and the grantee assumes and agrees to pay such mortgage or deed of trust, and thereafter the mortgagee or secured creditor under the deed of trust or trustee acting in his behalf releases any of the real property included in the mortgage or deed of trust, the mortgagor or grantor of the deed of trust is released to the extent of the value of the property released, which shall be the value at the time of the release or at the time an action is commenced on the obligation secured by the mortgage or deed of trust, whichever value is the greater.
- (3) Whenever real property which is encumbered by a mortgage or deed of trust is sold expressly subject to the mortgage or deed of trust, but the grantee does not assume the same, and thereafter the mortgagee or secured creditor under the deed of trust makes a binding extension of time of the mortgage or deed of trust, the mortgagor or grantor of the deed of trust is released to the extent of the value of the property at the time of the extension agreement.
- (4) Whenever real property which is encumbered by a mortgage or deed of trust is sold expressly subject to the mortgage or deed of trust, but the grantee does not assume the same, and thereafter the mortgagee or secured creditor under the deed of trust, or trustee acting in his behalf, releases any of the real property included in the mortgage or deed of trust, the mortgagor or grantor of the deed of trust is released to the extent of the value of the property released, which shall be the value at the time of the release or at the time an action is commenced on the obligation secured by the mortgage or deed of trust, whichever value is the greater. (1961, c. 356.)

#### **§ 45-45.2. Transfer taxes not applicable.**

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

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

- (a) The following definitions apply in this section:
  - (1) Secured creditor. – The holder, owner, or assignee of the obligation secured by a deed of trust.
  - (2) Trustee. – The trustee or substitute trustee then serving as such under the terms of a deed of trust.
- (b) Unless the deed of trust provides otherwise, all of the following may be done without the knowledge, consent, or joinder of the trustee:
  - (1) Pursuant to G.S. 45-36.23, an obligation may be declared by the owner and holder of the obligation to be no longer secured by the deed of trust.
  - (2) Property may be released from the lien of a deed of trust by the secured creditor.

- (3) The lien of a deed of trust may be released or subordinated by the secured creditor.
- (4) The terms of a deed of trust may be modified by the secured creditor and the then record owner of the property encumbered by the lien of the deed of trust.
- (5) The deed of trust may be satisfied of record by the secured creditor.

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

- (1) Condemnation.
- (2) Bankruptcy.
- (3) The establishment or correction of title to real property, including, but not limited to, actions to quiet title, reform land records, or resolve boundary line disputes.
- (4) Fraudulent conveyances.
- (5) The creation or enforcement of an attachment or judgment lien.
- (6) The foreclosure of a lien other than the lien of the deed of trust, regardless of whether the lien is superior or subordinate to the lien of the deed of trust, including, but not limited to, the foreclosure of mortgages, other deeds of trust, tax liens, and assessment liens.
- (7) The establishment, perfection, or enforcement of a mechanic's or materialman's lien.
- (8) The creation or enforcement of a constructive trust, resulting trust, or equitable lien relating to the property.
- (9) The partition of real property.
- (10) The interpretation or enforceability of a will, trust, or estate.
- (11) A subrogation claim or other equitable claim or defense involving the priority or enforceability of a deed of trust.
- (12) Determination or enforcement of rights and obligations involving easements or restrictive covenants.

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

- (1) Upon motion duly made by any party to the action or proceeding, the trustee shall be dismissed from the action or proceeding;
- (2) Regardless of whether the trustee makes an appearance in the action or proceeding, no entry of a default or default judgment shall be entered against the trustee; and
- (3) If the trustee makes an appearance in the action or proceeding, each person who improperly joined the trustee as a party to the action or proceeding shall be jointly and severally liable to the trustee for all the expenses and costs incurred by the trustee in the defense of the action or proceeding or in obtaining the trustee's dismissal from the action or proceeding, including the reasonable attorneys' fees actually incurred by the trustee.

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