

Article 7.

Instruments to Secure Future Advances and Future Obligations.

**§ 45-67. Definitions.**

The following definitions apply in this Article:

- (1) Advance. – A disbursement of funds or other action that increases the outstanding principal balance owing on an obligation for the payment of money.
- (2) Security instrument. – A mortgage, deed of trust, or other instrument relating to real property securing an obligation or obligations to a person, firm, or corporation specifically named in such instrument for the payment of money. (1969, c. 736, s. 1; 1989, c. 496, s. 1; 2009-197, s. 1.)

**§ 45-68. Requirements.**

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

- (1) Recodified as subdivision (1b).
- (1a) Existing obligations that are specifically or generally identified, described, or referenced in the security instrument as being secured thereby, and all advances made at or prior to the registration of the security instrument.
- (1b) Future advances and future obligations that are specifically or generally identified, described, or referenced in the security instrument as being secured thereby that may from time to time be made or incurred, but only if the security instrument shows all of the following:
  - a. That the security instrument is given wholly or partly to secure future advances and/or future obligations.
  - b. The maximum principal amount that may be secured by the security instrument at any one time.
  - c. The period within which future advances may be made and future obligations may be incurred, which period shall not extend more than 30 years beyond the date of the security instrument or, if the security agreement is not dated, the date the security instrument is registered.
- (2), (3) Repealed by Session Laws 2009-197, s. 2, effective October 1, 2009. (1969, c. 736, s. 1; 1985, c. 457; 1989, c. 496, s. 2; 2009-197, s. 2; 2011-312, s. 16.)

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

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

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

(a) Subject to subsections (a1), (c), and (d) of this section, any security instrument that conforms to the requirements of this Article shall, from the time and date of registration thereof,

have the same priority to the extent of all future advances and future obligations secured by it, and all interest accruing thereon, as if all the advances had been made, all the obligations incurred, and all the interest accrued at the time the security instrument was registered.

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

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

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

(d) Notwithstanding any other provision of this Article, any security instrument hereafter executed which secures an obligation or obligations of an electric or telephone membership corporation incorporated or domesticated in North Carolina to the United States of America or any of its agencies, or to any other financing institution, or of an electric or gas utility operating in North Carolina, shall from the time and date of registration of said security instrument have the same priority to the extent of (i) all future obligations incurred by the membership corporation or utility to any mortgagee or beneficiary named in the security instrument, together with interest thereon, (ii) all future advances secured by it, together with interest thereon, and (iii) all payments made, sums advanced, and expenses incurred by the secured creditor of the types described in subsection (c) of this section, as if they all had been accrued, paid, made, advanced, and incurred at the time of the registration of the security instrument, regardless of whether the security instrument meets the requirements of G.S. 45-68. (1969, c. 736, s. 1; 1971, c. 565; 1979, c. 594; 1989, c. 496, s. 3; 2009-197, s. 4; 2011-312, s. 18.)

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

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

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

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

"This is to certify that the total outstanding balance of all obligations, the payment of which is secured by that certain instrument executed by \_\_\_\_\_, dated \_\_\_\_\_, recorded in book \_\_\_\_\_ at page \_\_\_\_\_ in the office of the Register of Deeds of \_\_\_\_\_ County, North Carolina, is \$ \_\_\_\_\_, of which amount \$ \_\_\_\_\_ represents principal.

No future advances will be made under the aforesaid instrument, except such expense as it may become necessary to advance to preserve the security now held.

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

(Signature and Acknowledgment)"

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

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

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

**§ 45-74. Article not exclusive.**

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

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