

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 602

Short Title: Future Advances and Obligations.

(Public)

Sponsors: Representative Hall.

Referred to: Judiciary.

March 15, 1989

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW CONCERNING INSTRUMENTS TO SECURE FUTURE ADVANCES AND FUTURE OBLIGATIONS TO MAKE THAT LAW AVAILABLE FOR DEEDS OF TRUST SECURING BONDS; TO MAKE CLEAR THAT THE REQUIREMENT OF STATING THE MAXIMUM AMOUNT SECURED BY A FUTURE ADVANCE DEED OF TRUST MEANS THE MAXIMUM PRINCIPAL AMOUNT; TO EXTEND THE PERIOD WITHIN WHICH FUTURE OBLIGATIONS MAY BE INCURRED; AND TO ELIMINATE THE REQUIREMENT THAT FUTURE ADVANCES BE OBLIGATORY IN ORDER TO QUALIFY FOR THE PRIORITY PROTECTION AFFORDED BY THIS LAW AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-67 reads as rewritten:

"§ 45-67. Definition.

As used in this Article, 'security instrument' means 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, as distinguished from being included in a class of security holders referred to therein, instrument for the payment of money."

Sec. 2. G.S. 45-68 reads as rewritten:

"§ 45-68. Requirements.

1 A security instrument, otherwise valid, shall secure future obligations which may  
2 from time to time be incurred thereunder so as to give priority thereto as provided in  
3 G.S. 45-70, if:

- 4 (1) Such security instrument shows:
- 5 a. That it is given wholly or partly to secure future obligations  
6 which may be incurred thereunder;
  - 7 b. The amount of present obligations secured, and the maximum  
8 principal amount, including present and future obligations,  
9 which may be secured thereby at any one time;
  - 10 c. The period within which such future obligations may be  
11 incurred, which period shall not extend more than ~~40~~15 years  
12 beyond the date of the security instrument; and
- 13 (2) At the time of incurring any such future obligations, each obligation is  
14 evidenced by a written instrument or notation, signed by the obligor  
15 and stipulating that such obligation is secured by such security  
16 instrument; provided, however, that this subsection shall apply only if  
17 the obligor and obligee have contracted in writing that each future  
18 obligation shall be evidenced by a written instrument or notation; and
- 19 (3) At any time a security instrument securing future advances is  
20 transferred or assigned by the owner thereof that the amount, date and  
21 due date of each note, bond, or other undertaking for the payment of  
22 money representing a future obligation secured by such security  
23 instrument be noted in writing thereon."

24 Sec. 3. G.S. 45-70 reads as rewritten:

25 "**§ 45-70. Priority of security instrument.**

26 (a) Any security instrument which conforms to the requirements of this Article  
27 ~~and which on its face shows that the making of future advances is obligatory,~~ shall, from the  
28 time and date of registration thereof, have the same priority to the extent of all ~~obligatory~~  
29 future advances secured by it, as if all the advances had been made at the time of the  
30 ~~executions~~ execution of the instrument. ~~An advance shall be deemed obligatory if the~~  
31 ~~secured party has bound himself to make it, whether or not a subsequent event of default or~~  
32 ~~other event not within his control has relieved or may relieve him from his obligation.~~

33 (b) ~~Any security instrument which conforms to the requirements of this Article,~~  
34 ~~which on its face does not show that the making of future advances is obligatory,~~ shall,  
35 ~~from the time and date of registration thereof,~~ have the same priority to the extent of all  
36 ~~obligations secured by it, as if all the advances had been made at the time of the~~  
37 ~~execution of the instrument, except that when an intervening lienor or encumbrancer~~  
38 ~~gives actual notice as hereinafter provided that an intervening lien or encumbrance has~~  
39 ~~been perfected on the property covered by the security instrument, or is being incurred~~  
40 ~~and when perfected will relate back to the time when incurred, any future advances~~  
41 ~~made subsequent to the receipt of such notice shall not take priority over such~~  
42 ~~intervening perfected lien or encumbrance. Such notice shall be in writing and shall be~~  
43 ~~given to the secured creditor named in the security instrument; but if the security~~  
44 ~~instrument is registered and if any assignment of the security instrument has been noted~~

1 on the margin of the record showing the name and address of the assignee, such notice  
2 shall be given to the last assignee so noted at the address so shown.

3 (c) Payments made by the secured creditor for fire and extended coverage  
4 insurance, taxes, assessments, or other necessary expenditures for the preservation of  
5 the security shall be secured by the security instrument and shall have the same priority  
6 as if such payments had been made at the time of the execution of the ~~instrument,~~  
7 ~~whether or not notice has been given as provided in subsection (b) of this section.~~ instrument.  
8 The provisions of G.S. 45-68(2) and (3) shall not be applicable to such payments, nor  
9 shall such payments or accrued interest be considered in computing the maximum  
10 principal amount which may be secured by the instrument.

11 (d) Notwithstanding any other provision of this Article, any security instrument  
12 hereafter executed which secures an obligation or obligations of an electric or telephone  
13 membership corporation incorporated or domesticated in North Carolina to the United  
14 States of America or any of its agencies, or to any other financing institution, shall from  
15 the time and date of registration of said security instrument have the same priority to the  
16 extent of all future advances secured by it as if all the advances had been made at the  
17 time of the execution of the instrument, regardless of whether the making of such  
18 advances is obligatory or whether the security instrument meets the requirements of  
19 G.S. 45-68."

20 Sec. 4. G.S. 45-72(a) reads as rewritten:

21 "(a) The holder of a security instrument conforming to the provisions of this  
22 ~~Article, which on its face does not show that the making of future advances is obligatory,~~  
23 Article shall, at the request of the maker of the security instrument or his successor in  
24 title promptly furnish to him a statement duly executed and acknowledged in such form  
25 as to meet the requirements for the execution and acknowledgment of deeds, setting  
26 forth in substance the following:

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

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

33 This .....day of ....., 19.....

34 .....

35 (Signature and Acknowledgment)!"

36 Sec. 5. This act shall become effective October 1, 1989, and shall apply only  
37 to security instruments executed on or after that date.