

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE DRH30224-LH-154 (03/27)

Short Title: Bail Bonds/Real Estate as Security.

(Public)

Sponsors: Representative Kiser.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH ADDITIONAL REQUIREMENTS THAT MUST BE SATISFIED TO SECURE A CRIMINAL APPEARANCE BOND WITH REAL PROPERTY.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 58-74-5 reads as rewritten:

**"§ 58-74-5. Mortgage in lieu of security for appearance, costs, or fine.**

(a) Any person required to give a bond or undertaking, or required to enter into a recognizance for his appearance at any court, in any criminal proceeding, or for the security of any costs or fine in any criminal action, may also execute a mortgage on ~~real~~ ~~or~~-personal property of the value of such bond or recognizance, payable to the State of North Carolina, conditioned as such bond or recognizance would be required, with power of sale, which power shall be executed by the clerk in whose court said mortgage is executed, upon a breach of any of the conditions of said mortgage.

(b) Any person required to give a bond or undertaking, or required to enter into a recognizance for the person's appearance at any court, in any criminal proceeding, or for the security of any costs or fine in any criminal action, may also execute a mortgage on real property of the value of the bond or recognizance. The clerk of the court shall accept a bond on real property only if all of the following conditions are satisfied:

(1) An attorney's preliminary certificate of title is presented with the bond:

a. If the bond is for less than five thousand dollars (\$5,000), the title search may be limited to the period of time since the last deed of trust of the owner to a trustee for a regulated lender.

b. If the bond is for five thousand dollars (\$5,000) or more, the surety must provide title insurance payable to the State of North Carolina as mortgagee in the amount of the bond and in a form acceptable to the clerk.

- 1           (2)    A copy of the valuation of the subject property from the county tax  
2           office is presented with the bond.
- 3           (3)    A letter from the lienholder on the lienholder's official stationery  
4           indicating the balance of the indebtedness for which the property  
5           stands as collateral is provided to the clerk of court. Only first  
6           mortgages made by the owners of the property to regulated lending  
7           institutions shall be allowed to have priority over the bond lien.
- 8           (4)    A written computation indicating the tax valuation less any amounts  
9           due on any prior judgments or indebtedness resulting from a first  
10           mortgage shall be provided with the bond. The amount of equity for  
11           which the real property may be used to secure an appearance bond is  
12           the tax valuation less any amounts due on any prior judgments or  
13           indebtedness resulting from a first mortgage.
- 14           (5)    A promissory note and deed of trust to the clerk of court as trustee for  
15           the State of North Carolina and is written to comply with the  
16           requirements of Chapter 15A of the General Statutes.
- 17           (6)    If there is a first mortgage, a Request for Notice of Sale is required.
- 18           (7)    A final certificate of title at the time of the filing of the deed of trust is  
19           required.
- 20           (8)    If the owner/surety is married, the spouse of the owner/surety must  
21           appear in person and sign the note and deed of trust. If the  
22           owner/surety is married and has a property settlement that is in  
23           accordance with Chapter 50 of the General Statutes and the property  
24           settlement includes the nonowner/surety spouse's waiver of all rights  
25           in the property of the owner/surety, then the owner/surety's spouse  
26           need not sign the note and deed of trust and a copy of the duly  
27           recorded property settlement shall be placed in the court file.
- 28           (9)    If there are multiple deeds of trust, they shall be recorded when all  
29           necessary deeds of trust have been obtained, signed, and approved by  
30           the clerk of court.
- 31           (10)   At the time of recording of the deed or deeds of trust and any notices,  
32           the surety shall pay all filing fees.

33           (c)    No ~~such~~ mortgage on real property executed for the security for costs or fine  
34 shall allow a longer time for payment of ~~said~~ the costs or fine than six months from the  
35 execution thereof, and no mortgage on personal property a longer time than three  
36 months, except in cases of appeal, when the time allowed shall be counted from the date  
37 of the final decision in the cause.

38           All legitimate expenses of sale, which shall only be made after due advertisement  
39 according to law, shall be paid out of the proceeds of the sale."

40           **SECTION 2.** This act becomes effective December 1, 2003, and applies to  
41 criminal appearance bonds posted on or after that date.