

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE BILL 1035

Short Title: Bail Bonds/Real Estate as Security. (Public)

Sponsors: Representatives Kiser; Brubaker, Sherrill, and K. Williams.

Referred to: Judiciary IV.

April 10, 2003

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH ADDITIONAL REQUIREMENTS THAT MUST BE  
3 SATISFIED TO SECURE A CRIMINAL APPEARANCE BOND WITH REAL  
4 PROPERTY.

5 The General Assembly of North Carolina enacts:

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

7 "**§ 58-74-5. Mortgage in lieu of security for appearance, costs, or fine.**

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

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

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

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

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

28 (2) A copy of the valuation of the subject property from the county tax  
29 office is presented with the bond.

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

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

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

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