

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

H

1

HOUSE BILL 764*

Short Title: Subordination Agreement/Registra. Amendments. (Public)

Sponsors: Representatives Culpepper; and LaRoque.

Referred to: Judiciary IV.

March 17, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO VALIDATE CERTAIN SUBORDINATION AGREEMENTS AND TO
3 CLARIFY THE LAW ON THE PRIORITY OF INSTRUMENTS REGISTERED
4 IN THE OFFICE OF THE REGISTER OF DEEDS, AS RECOMMENDED BY
5 THE GENERAL STATUTES COMMISSION.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. G.S. 39-6.6 reads as rewritten:

8 "§ 39-6.6. Subordination agreements.

9 (a) ~~A written commitment or agreement to subordinate or that subordinates an~~
10 ~~interest in real property signed by a person entitled to priority subordination agreement~~
11 ~~shall be given effect in accordance with its terms and is not required to state any interest~~
12 ~~rate, principal amount secured, or other financial terms. For purposes of this section, an~~
13 ~~"interest in real property" shall include all rights, title, and interest in and to land,~~
14 ~~buildings, and other improvements of an owner, tenant, subtenant, secured lender,~~
15 ~~materialman, judgment creditor, lienholder, or other person, whether the interest in real~~
16 ~~property is evidenced by a deed, easement, lease, sublease, deed of trust, mortgage,~~
17 ~~assignment of leases and rents, judgment, claim of lien, or any other record, instrument,~~
18 ~~document, or entry of court.~~

19 (b) The trustee of a deed of trust shall not be a necessary party to a subordination
20 agreement unless the deed of trust provides otherwise.

21 (c) For purposes of G.S. 1-47, a commitment or subordination agreement
22 ~~described in subsection (a) of this section~~ is deemed a conveyance of an interest in real
23 property.

24 (d) ~~The~~ This section is not exclusive. No subordination agreement that is
25 otherwise valid shall be invalidated by ~~failure to comply with the provisions of this~~
26 section.

27 (e) This section applies to a subordination agreement regardless of when the
28 agreement was signed by the party or parties thereto, except that this section does not

1 apply to an agreement that (i) is the subject of litigation pending on the effective date of
2 this subsection, and (ii) was filed or recorded before October 1, 2003.

3 (f) In this section:

4 (1) 'Interest in real property' includes all rights, title, and interest in and to
5 land, buildings, and other improvements of an owner, tenant,
6 subtenant, secured lender, materialman, judgment creditor, lienholder,
7 or other person, whether the interest in real property is evidenced by a
8 deed, easement, lease, sublease, deed of trust, mortgage, assignment of
9 leases and rents, judgment, claim of lien, or any other record,
10 instrument, document, or entry of court.

11 (2) 'Subordination agreement' means a written commitment or agreement
12 to subordinate or that subordinates an interest in real property signed
13 by a person entitled to priority."

14 **SECTION 2.** G.S. 47-18(a) reads as rewritten:

15 "(a) No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey,
16 or (iv) lease of land for more than three years shall be valid to pass any property interest
17 as against lien creditors or purchasers for a valuable consideration from the donor,
18 bargainer or lesser but from the time of registration thereof in the county where the land
19 lies, or if the land is located in more than one county, then in each county where any
20 portion of the land lies to be effective as to the land in that county. Unless otherwise
21 stated either on the ~~recorded~~ registered instrument or on a separate ~~recorded~~ registered
22 instrument duly executed by the party whose priority interest is adversely affected, (i)
23 instruments registered in the ~~public record shall be presumed to~~ office of the register of
24 deeds shall have priority based on the order of ~~recording~~ registration as determined by
25 the time of ~~recording~~ registration. If registration, and (ii) if instruments are ~~recorded~~ registered
26 simultaneously, then ~~the order of recording the instruments~~ shall be presumed as
27 follows, in order of priority: to have priority as determined by:

28 (1) The earliest document number set forth on the ~~recorded~~ registered
29 instrument.

30 (2) The sequential book and page number set forth on the ~~document~~
31 registered instrument if no document number is set forth on the
32 ~~recorded~~ registered instrument.

33 The ~~presumptions~~ presumption created by this subsection ~~are~~ is rebuttable."

34 **SECTION 3.** G.S. 47-20(a) reads as rewritten:

35 "(a) No deed of trust or mortgage of real or personal property, or of a leasehold
36 interest or other chattel real, or conditional sales contract of personal property in which
37 the title is retained by the vendor, shall be valid to pass any property as against lien
38 creditors or purchasers for a valuable consideration from the grantor, mortgagor or
39 conditional sales vendee, but from the time of registration thereof as provided in this
40 Article; provided however that any transaction subject to the provisions of the Uniform
41 Commercial Code (Chapter 25 of the General Statutes) is controlled by the provisions
42 of that act and not by this section. Unless otherwise stated either on the ~~recorded~~
43 registered instrument or on a separate ~~recorded~~ registered instrument duly executed by
44 the party whose priority interest is adversely affected, (i) instruments registered in the

1 ~~public record shall be presumed to~~ office of the register of deeds shall have priority
2 based on the order of ~~recording~~ registration as determined by the time of ~~recording~~.
3 If registration, and (ii) if instruments are ~~recorded~~ registered simultaneously, then ~~the~~
4 ~~order of recording~~ the instruments shall be presumed as follows, ~~in order of priority:~~
5 to have priority as determined by:

6 (1) The earliest document number set forth on the ~~recorded~~ registered
7 instrument.

8 (2) The sequential book and page number set forth on the ~~document~~
9 registered instrument if no document number is set forth on the
10 ~~recorded~~ registered instrument.

11 The ~~presumptions~~ presumption created by this subsection ~~are~~ is rebuttable."

12 **SECTION 4.** This act is effective when it becomes law.