

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE DRS15143-LKz-111A* (3/8)

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

Sponsors: Senator Hartsell.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO VALIDATE CERTAIN SUBORDINATION AGREEMENTS AND TO CLARIFY THE LAW ON THE PRIORITY OF INSTRUMENTS REGISTERED IN THE OFFICE OF THE REGISTER OF DEEDS, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

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

"§ 39-6.6. Subordination agreements.

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

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

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

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

1 (e) This section applies to a subordination agreement regardless of when the
2 agreement was signed by the party or parties thereto, except that this section does not
3 apply to an agreement that (i) is the subject of litigation pending on the effective date of
4 this subsection, and (ii) was filed or recorded before October 1, 2003.

5 (f) In this section:

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

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

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

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

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

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

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

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

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

1 registered instrument or on a separate ~~recorded~~ registered instrument duly executed by
2 the party whose priority interest is adversely affected, (i) instruments registered in the
3 ~~public record shall be presumed to~~ office of the register of deeds shall have priority
4 based on the order of ~~recording~~ registration as determined by the time of ~~recording~~.
5 ~~If registration,~~ and (ii) if instruments are ~~recorded~~ registered simultaneously, then ~~the~~
6 ~~order of recording~~ the instruments shall be presumed as follows, ~~in order of priority:~~
7 to have priority as determined by:

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

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

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

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