

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1368
PROPOSED COMMITTEE SUBSTITUTE H1368-PCS70410-RN-17

Short Title: Amend Future Advances Statutes.

(Public)

Sponsors:

Referred to:

April 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE FUTURE ADVANCES STATUTES BY DISTINGUISHING
3 BETWEEN A FUTURE ADVANCE AND A FUTURE OBLIGATION AND BY
4 MAKING VARIOUS OTHER CHANGES.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 45-67 reads as rewritten:

7 "**§ 45-67. Definition. Definitions.**

8 ~~As used in this Article, The following definitions apply in this Article:~~

- 9 (1) Advance. – A disbursement of funds or other action that increases the
10 outstanding principal balance owing on an obligation for the payment of
11 money.
12 (2) ~~"security instrument" means a~~ Security instrument. – A mortgage, deed of
13 trust, or other instrument relating to real property securing an obligation or
14 obligations to a person, firm, or corporation specifically named in such
15 instrument for the payment of money."

16 SECTION 2. G.S. 45-68 reads as rewritten:

17 "**§ 45-68. Requirements.**

18 A security instrument, otherwise valid, shall secure ~~future obligations which may from time~~
19 ~~to time be incurred thereunder~~ the following so as to give priority ~~thereto~~ as provided in
20 ~~G.S. 45-70, if: G.S. 45-70:~~

- 21 (1a) Existing obligations identified in the security instrument and all advances
22 made at or prior to the registration of the security instrument.
23 (1)(1b) ~~Such security instrument shows:~~ Future advances and future obligations that
24 may from time to time be made or incurred under the security instrument,
25 but only if the security instrument shows all of the following:
26 a. That ~~it~~ the security instrument is given wholly or partly to secure
27 future advances and/or future obligations ~~which that~~ may be made or
28 incurred thereunder; under the security instrument.
29 b. The ~~amount of present obligations secured, and the maximum~~
30 ~~principal amount, including present and future obligations, which~~
31 amount that may be secured thereby by the security instrument at any
32 ~~one time; time.~~
33 c. The period within which ~~such~~ future advances may be made and
34 future obligations may be incurred, which period incurred, which



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1 period shall not extend more than ~~15~~ 30 years beyond the date of the
2 security ~~instrument~~; and instrument or, if the security agreement is
3 not dated, the date the security instrument is registered.

4 (2) ~~At the time of incurring any such future obligations, each obligation is~~
5 ~~evidenced by a written instrument or notation, signed by the obligor and~~
6 ~~stipulating that such obligation is secured by such security instrument;~~
7 ~~provided, however, that this subsection shall apply only if the obligor and~~
8 ~~obligee have contracted in writing that each future obligation shall be~~
9 ~~evidenced by a written instrument or notation; and~~

10 (3) ~~At any time a security instrument securing future advances is transferred or~~
11 ~~assigned by the owner thereof that the amount, date and due date of each~~
12 ~~note, bond, or other undertaking for the payment of money representing a~~
13 ~~future obligation secured by such security instrument be noted in writing~~
14 ~~thereon."~~

15 **SECTION 3.** G.S. 45-69 reads as rewritten:

16 "**§ 45-69. Fluctuation of obligations within maximum amount.**

17 Unless the security instrument provides to the contrary, if the maximum amount secured by
18 the security instrument has not been advanced or if any obligation secured thereby is paid or is
19 reduced by partial payment, further advances may be made and additional ~~obligation~~
20 obligations secured by the security instrument may be incurred from time to time within the
21 time limit fixed by the security instrument, ~~provided the unpaid balance of principal~~
22 ~~outstanding shall never exceed the maximum amount authorized pursuant to G.S. 45-68(1)b.~~
23 instrument. Such further advances and obligations shall be secured to the same extent as
24 original advances and obligations thereunder, under the security instrument, if the provisions of
25 ~~G.S. 45-68(2) and (3)~~ G.S. 45-68 are complied with. However, if at any time the aggregate
26 outstanding principal balance of the obligation or obligations secured by the security instrument
27 exceeds the maximum principal amount that may be secured by the security instrument at any
28 one time, then the excess shall not be secured by the security instrument."

29 **SECTION 4.** G.S. 45-70 reads as rewritten:

30 "**§ 45-70. Priority of security instrument.**

31 (a) Any security instrument ~~which~~ that conforms to the requirements of this Article
32 shall, from the time and date of registration thereof, have the same priority to the extent of all
33 future advances and future obligations secured by it, as if all the advances had been made and
34 all the obligations incurred at the time ~~of the execution of the instrument~~. the security
35 instrument was registered.

36 (b) Repealed by Session Laws 1989, c. 496, s. 3.

37 (c) Payments made by the secured creditor for fire and extended coverage insurance,
38 taxes, assessments, or other necessary expenditures for the preservation of the security shall be
39 secured by the security instrument and shall have the same priority as if such payments had
40 been made at the time ~~of the execution of the instrument~~. the security instrument was
41 registered. The provisions of ~~G.S. 45-68(2) and (3)~~ G.S. 45-68 shall not be applicable to such
42 payments, nor shall such payments or accrued interest be considered in computing the
43 maximum principal amount which may be secured by the instrument.

44 (d) Notwithstanding any other provision of this Article, any security instrument
45 hereafter executed which secures an obligation or obligations of an electric or telephone
46 membership corporation incorporated or domesticated in North Carolina to the United States of
47 America or any of its agencies, or to any other financing institution, or of an electric or gas
48 utility operating in North Carolina, shall from the time and date of registration of said security
49 instrument have the same priority to the extent of all future advances secured by it as if all the
50 advances had been made at the time of the execution of the instrument, regardless of whether

1 the making of such advances is obligatory or whether the security instrument meets the
2 requirements of G.S. 45-68."

3 **SECTION 5.** This act applies to all security instruments, whether registered before,
4 after, or on the effective date of this act. Any security instrument registered before the effective
5 date of this act shall be conclusively presumed to comply with the provisions of G.S. 45-68, as
6 enacted by this act, if the security instrument either (i) complies with the provisions of
7 G.S. 45-68, as enacted by this act, or (ii) complied with the provisions of G.S. 45-68 in effect
8 prior to the effective date of this act.

9 **SECTION 6.** This act becomes effective October 1, 2009.