

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 629
Judiciary I Committee Substitute Adopted 4/21/03
House Committee Substitute Favorable 5/27/03
Fourth Edition Engrossed 6/2/03

Short Title: Clarify Subordination Agreement Requirements.

(Public)

Sponsors:

Referred to:

April 1, 2003

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE REQUIREMENTS FOR SUBORDINATION AGREEMENTS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 1 of Chapter 39 of the General Statutes is amended by adding a new section to read:

"§ 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 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 agreement described in subsection (a) of this section is deemed a conveyance of an interest in real property.

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

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

"(a) No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv) lease of land for more than three years shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor,

1 bargainor or lessor but from the time of registration thereof in the county where the land
2 lies, or if the land is located in more than one county, then in each county where any
3 portion of the land lies to be effective as to the land in that county. Unless otherwise
4 stated either on the recorded instrument or on a separate recorded instrument duly
5 executed by the party whose priority interest is adversely affected, instruments
6 registered in the public record shall be presumed to have priority based on the order of
7 recordation as determined by the time of recordation. If instruments are recorded
8 simultaneously, then the order of recordation shall be presumed as follows, in order of
9 priority:

10 (1) The earliest document number set forth on the recorded instrument.

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

13 The presumptions created by this subsection are rebuttable."

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

15 "(a) No deed of trust or mortgage of real or personal property, or of a leasehold
16 interest or other chattel real, or conditional sales contract of personal property in which
17 the title is retained by the vendor, shall be valid to pass any property as against lien
18 creditors or purchasers for a valuable consideration from the grantor, mortgagor or
19 conditional sales vendee, but from the time of registration thereof as provided in this
20 Article; provided however that any transaction subject to the provisions of the Uniform
21 Commercial Code (Chapter 25 of the General Statutes) is controlled by the provisions
22 of that act and not by this section. Unless otherwise stated either on the recorded
23 instrument or on a separate recorded instrument duly executed by the party whose
24 priority interest is adversely affected, instruments registered in the public record shall be
25 presumed to have priority based on the order of recordation as determined by the time
26 of recordation. If instruments are recorded simultaneously, then the order of recordation
27 shall be presumed as follows, in order of priority:

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

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

31 The presumptions created by this subsection are rebuttable."

32 **SECTION 4.** Section 1 of this act becomes effective October 1, 2003, and
33 applies to subordination agreements filed or recorded on or after that date. Sections 2
34 and 3 of this act become effective October 1, 2003, and apply to all instruments filed or
35 recorded on or after that date. The remainder of this act is effective when it becomes
36 law.