



CHAPTER 45

ARTICLE 2 - RIGHT TO FORECLOSE OR SELL UNDER POWER

N.C.G.S. § 45-10.

Substitution of trustees in mortgages and deeds of trust.

SOURCE	LAST AMENDMENT IN THIS TEXT	RETRIEVED	SOURCE FINGERPRINT
General Statutes of North Carolina, as published by the General Assembly	S.L. 2017-206, s. 6 — tenth act in the lineage	21 September 2026, 03:30 UTC	3127f67331c2afc9bb9e1b2d - c465aa26e63b7699de8c6d45 - 8004ffb0ab860134

§ 45-10(a)

In addition to the rights and remedies now provided by law, the noteholders may, in their discretion, substitute a trustee whether the trustee then named in the instrument is the original or a substituted trustee or a holder or owner of any or all of the obligations secured thereby, by the execution of a written document properly recorded pursuant to Chapter 47 of the North Carolina General Statutes. An attorney who serves as the trustee or substitute trustee shall not represent either the noteholders or the interests of the borrower while initiating a foreclosure proceeding. Notwithstanding this restriction, an attorney may serve as the trustee in a foreclosure proceeding while simultaneously representing the noteholders on unrelated matters and others within the attorney's firm may also continue to represent the noteholders on unrelated matters. Additionally, an attorney who has as trustee initiated a foreclosure proceeding may resign as trustee after the foreclosure is contested and act as counsel to the noteholders.

§ 45-10(b)

If the name of a trustee is omitted from an instrument that appears on its face to be intended to be a deed of trust, the instrument shall be deemed to be a deed of trust, the owner or owners executing the deed of trust and granting an interest in the real property shall be deemed to be the constructive trustee or trustees of record for the secured party or parties named in the instrument, and a substitution of trustee may be undertaken under subsection (a) of this section. However, no such constructive trustee shall have the authority or power to take any of the following actions without the consent and joinder of the holders or owners of a majority in amount of the obligations secured by the deed of trust: (i) effect a substitution of trustee, (ii) effect the satisfaction

of the deed of trust, (iii) release any property or any interest therein from the lien of the deed of trust, or (iv) modify or amend the terms of the deed of trust. Any substitute trustee named under the authority of subsection (a) of this section shall succeed to all the rights, titles, authority, and duties of the trustee under the terms of the deed of trust without regard to the limitations imposed by this subsection on the authority of a constructive trustee.

§ 45-10(c)

If the trustee named in a deed of trust is also the beneficiary named in that deed of trust, the instrument shall be deemed to be a deed of trust, and any substitute trustee named under the authority of subsection (a) of this section shall succeed to all the rights, titles, authority, and duties of the trustee under the terms of the deed of trust.

§ 45-10(d)

In this section, the term "noteholders" means the holders or owners of a majority in the amount of the indebtedness, notes, bonds, or other instruments evidencing a promise to pay money and secured by mortgages, deeds of trust, or other instruments conveying real property, or creating a lien thereon.

END OF SECTION TEXT

APPARATUS FOLLOWS — DERIVED, NOT ENACTED

APPARATUS I
10 ACTS

Amendment lineage

The State prints this history as a single parenthetical at the foot of the section. It is reproduced verbatim in the colophon and unpacked below in order of enactment.



A horizontal timeline from 1931 to 2017 with vertical tick marks. A red line runs above the timeline, with a dashed segment between 1974 and 2017.

Nº	YEAR	ACT	CHARACTER
01	1931	c. 78, ss. 1, 2	ENACTED
02	1935	c. 227	AMENDED
03	1943	c. 543	AMENDED
04	1967	c. 562, s. 2	AMENDED
05	1975	c. 66	AMENDED
06	1985	c. 320	AMENDED
07	1985	c. 689, s. 14	AMENDED
08	2009	S.L. 2009-176, s. 1	AMENDED

09	2011	S.L. 2011-312, s. 2	AMENDED
10	2017	S.L. 2017-206, s. 6	AMENDED

APPARATUS III

Citation

FULL SECTION

N.C. Gen. Stat. § 45-10 (2017).

PINPOINT

N.C. Gen. Stat. § 45-10(a) (2017).

Pinpoint keys are set in the left margin of the text rather than line numbers: subsection designators are stable across editions and paper sizes, line numbers are not.

COLOPHON

Provenance

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This is not the official text. The official text is published by the General Assembly of North Carolina.

HISTORY PARENTHETICAL, AS PRINTED BY THE STATE

(1931, c. 78, ss. 1, 2; 1935, c. 227; 1943, c. 543; 1967, c. 562, s. 2; 1975, c. 66; 1985, c. 320; c. 689, s. 14; 2009-176, s. 1; 2011-312, s. 2; 2017-206, s. 6.)

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