

NORTH CAROLINA GENERAL ASSEMBLY  
1969 SESSION

CHAPTER 736  
SENATE BILL 76

1 AN ACT TO PROVIDE FOR INSTRUMENTS TO SECURE FUTURE ADVANCES AND  
2 FUTURE OBLIGATIONS.

3  
4 The General Assembly of North Carolina do enact:  
5

6 **Section 1.** Chapter 45 of the General Statutes, entitled "Mortgages and Deeds of  
7 Trust," is hereby amended by adding at the end thereof a new article to read as follows:

8 "Article 7. Instruments to Secure Future Advances and Future Obligations.

9 **"Sec. 45-67. Definition.** As used in this Article, 'security instrument' means a mortgage, deed  
10 of trust, or other instrument relating to real property securing an obligation or obligations to a  
11 person, firm, or corporation specifically named in such instrument, as distinguished from being  
12 included in a class of security holders referred to therein, for the payment of money.

13 **"Sec. 45-68. Requirements.** A security instrument, otherwise valid, shall secure future  
14 obligations which may from time to time be incurred thereunder so as to give priority thereto as  
15 provided in G.S. 45-70. if:

16 (1) Such security instrument shows:

- 17 a. That it is given wholly or partly to secure future obligations which  
18 may be incurred thereunder;  
19 b. The amount of present obligations secured, and the maximum  
20 amount, including present and future obligations, which may be  
21 secured thereby at any one time;  
22 c. The period within which such future obligations may be incurred,  
23 which period shall not extend more than ten years beyond the date of  
24 the security instrument; and

25 (2) At the time of incurring any such future obligations, each obligation is  
26 evidenced by a written instrument or notation, signed by the obligor and  
27 stipulating that such obligation is secured by such security instrument; and

28 (3) At any time a security instrument securing future advances is transferred or  
29 assigned by the owner thereof that the amount, date and due date of each  
30 note, bond, or other undertaking for the payment of money representing a  
31 future obligation secured by such security instrument be noted in writing  
32 thereon.

33 **"Sec. 45-69. Fluctuation of obligations within maximum amount.** Unless the security  
34 instrument provides to the contrary, if the maximum amount has not been advanced or if any  
35 obligation secured thereby is paid or is reduced by partial payment, further obligation may be  
36 incurred from time to time within the time limit fixed by the security instrument, provided the  
37 unpaid balance of principal outstanding shall never exceed the maximum amount authorized  
38 pursuant to G.S. 45-68(1)(b). Such further obligations shall be secured to the same extent as  
39 original obligations thereunder, if the provisions of G.S. 45-68(2) and (3) are complied with.

40 **"Sec. 45-70. Priority of security instrument.** (a) Any security instrument which conforms to  
41 the requirements of this Article and which on its face shows that the making of future advances  
42 is obligatory, shall, from the time and date of registration thereof, have the same priority to the

1 extent of all obligatory future advances secured by it, as if all the advances had been made at  
2 the time of the execution of the instrument.

3 "(b) Any security instrument which conforms to the requirements of this Article, which  
4 on its face does not show that the making of future advances is obligatory, shall, from the time  
5 and date of registration thereof, have the same priority to the extent of all obligations secured  
6 by it, as if all the advances had been made at the time of the execution of the instrument, except  
7 that when an intervening lienor or encumbrancer gives actual notice as hereinafter provided  
8 that an intervening lien or encumbrance has been perfected on the property covered by the  
9 security instrument, or is being incurred and when perfected will relate back to the time when  
10 incurred, any future advances made subsequent to the receipt of such notice shall not take  
11 priority over such intervening perfected lien or encumbrance. Such notice shall be in writing  
12 and shall be given to the secured creditor named in the security instrument; but if the security  
13 instrument is registered and if any assignment of the security instrument has been noted on the  
14 margin of the record showing the name and address of the assignee, such notice shall be given  
15 to the last assignee so noted at the address so shown.

16 "(c) Payments made by the secured creditor for fire and extended coverage insurance,  
17 taxes, assessments, or other necessary expenditures for the preservation of the security shall be  
18 secured by the security instrument and shall have the same priority as if such payments had  
19 been made at the time of the execution of the instrument, whether or not notice has been given  
20 as provided in subsection (b) of this Section. The provisions of G.S. 45-68(2) and (3) shall not  
21 be applicable to such payments, nor shall such payments be considered in computing the  
22 maximum amount which may be secured by the instrument.

23 "**Sec. 45-71. Satisfaction of the security instrument.** Upon payment of all the obligations  
24 secured by a security instrument which conforms to the requirements of this Article and upon  
25 termination of all obligation to make advances, and upon written demand made by the maker of  
26 the security instrument, his successor in interest, or anyone claiming under him, the holder of  
27 the security instrument is hereby authorized to and shall make a written entry upon the security  
28 instrument showing payment and satisfaction of the instrument, which entry he shall date and  
29 sign. When the security instrument secures notes, bonds, or other undertakings for the payment  
30 of money which have not already been entered on the security instrument as paid, the holder of  
31 the security instrument, unless payment was made to him, may require the exhibition of all  
32 such evidences of indebtedness secured by the instrument marked paid before making his entry  
33 showing payment and satisfaction.

34 "**Sec. 45-72. Termination of future optional advances.** (a) The holder of a security  
35 instrument conforming to the provisions of this Article, which on its face does not show that  
36 the making of future advances is obligatory, shall, at the request of the maker of the security  
37 instrument or his successor in title promptly furnish to him a statement duly executed and  
38 acknowledged in such form as to meet the requirements for the execution and acknowledgment  
39 of deeds, setting forth in substance the following:

40 "This is to certify that the total outstanding balance of all obligations, the payment of which  
41 is secured by that certain instrument executed by \_\_\_\_\_, dated \_\_\_\_\_, recorded in  
42 book \_\_\_\_\_ at page \_\_\_\_\_ in the office of the Register of Deeds of \_\_\_\_\_ County,  
43 North Carolina, is \$\_\_\_\_, of which amount \$\_\_\_\_\_ represents principal.

44 'No future advances will be made under the aforesaid instrument, except such expense as it may  
45 become necessary to advance to preserve the security now held.

46 'This \_\_\_ day of \_\_\_, 19\_\_.

47 \_\_\_\_\_  
48 (Signature and Acknowledgment)'

49 "(b) Such statement, when duly executed and acknowledged, shall be entitled to probate  
50 and registration, and upon filing for registration shall be effective from the date of the  
51 statement. It shall have the effect of limiting the lien or encumbrance of the holder of the

1 security instrument to the amount therein stated, plus any necessary advances made to preserve  
2 the security, and interest on the unpaid principal. It shall bar any further advances under the  
3 security instrument therein referred to except such as may be necessary to preserve the security  
4 then held as provided in G.S. 45-70(c).

5 **"Sec. 45-73. Cancellation of record; presentation of notes described in security**  
6 **instrument sufficient.** The provisions of G.S. 45-37 apply to discharge of record of  
7 instruments executed under this Article except that in cases of cancellation by exhibition or  
8 presentation under G.S. 45-37(a)(2) or G.S. 45-37(a)(3), only notes or bonds described in the  
9 body of the instrument or noted in writing thereon as provided in G.S. 45-68(3) need be  
10 exhibited or presented.

11 **"Sec. 45-74. Article not exclusive.** The provisions of this Article shall not be deemed  
12 exclusive, and no security instrument securing future advances or future obligations which is  
13 otherwise valid shall be invalidated by failure to comply with the provisions of this Article."

14 **Sec. 2.** All laws and clauses of laws in conflict with this Act are hereby repealed.

15 **Sec. 3.** This Act shall become effective October 1, 1969.

16 In the General Assembly read three times and ratified, this the 9th day of June,  
17 1969.