N.C.G.S. Chapter 45: Selected Statutes

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Article 2. Right to Foreclose or Sell under Power

§ 45-4. Representative succeeds on death of mortgagee or trustee in deeds of trust; parties to action.
When the mortgagee in a mortgage, or the trustee in a deed in trust, executed for the purpose of securing a debt, containing a power of sale, dies before the payment of the debt secured in such mo45rtgage or deed in trust, all the title, rights, powers and duties of such mortgagee or trustee pass to and devolve upon the executor or administrator or collector of such mortgagee or trustee, including the right to bring an action of foreclosure in any of the courts of this State as prescribed for trustees or mortgagees, and in such action it is unnecessary to make the heirs at law of such deceased mortgagee or trustee parties thereto. (1887, c. 147; 1895, c. 431; 1901, c. 186; 1905, c. 425; Rev., s. 1031; C.S., s. 2578; 1933, c. 199.)

§ 45-5. Foreclosures by representatives validated.
In all actions which were brought or prosecuted prior to the fourth day of March, 1905, for the foreclosure of any mortgage or deed in trust by any executor or administrator of any deceased mortgagee or trustee where the heirs of the mortgagee were duly made parties and regular and orderly decrees of foreclosure entered by the court and sale had by a commissioner appointed by the court for that purpose and deed made after confirmation, the title so conveyed to purchaser at such judicial sale shall be deemed and held to be vested in such purchaser, whether the heir of such deceased mortgagee or trustee was a party to such foreclosure proceeding or not, and such heir of any deceased mortgagee is estopped to bring or prosecute any further action against such purchaser for the recovery of such property or foreclosure of such mortgage or deed in trust. (1905, c. 425, s. 2; Rev., s. 1032; C.S., s. 2579.)

§ 45-6. Renunciation by representative; clerk appoints trustee.
The executor or administrator of any deceased mortgagee or trustee in any mortgage or deed of trust heretofore or hereafter executed may renounce in writing, before the clerk of the superior court before whom he qualifies, the trust under the mortgage or deed of trust at the time he qualifies as executor or administrator, or at any time thereafter before he intermeddles with or exercises any of the duties under said mortgage or deed of trust, except to preserve the property until a trustee can be appointed. In every such case of renunciation the clerk of the superior court of any county wherein the said mortgage or deed of trust is registered has power and authority, upon proper proceedings instituted before him, as in other cases of special proceedings, to appoint some person to act as trustee and execute said mortgage or deed of trust. The clerk, in addition to recording his proceedings in his book of orders and decrees, shall record a separate instrument, as required by G.S. 161-14.1, containing the name of the substituted trustee or mortgagee, with the register of deeds of said county. (1905, c. 128; Rev., s. 1038; C.S., s. 2580; 1991, c. 114, s. 5; 2011-246, s. 1.)

§ 45-7. Agent to sell under power may be appointed by parol.
All sales of real property, under a power of sale contained in any mortgage or deed of trust to secure the payment of money, by any mortgagee or trustee, through an agent or attorney for that purpose, appointed orally or in writing by such mortgagee or trustee, whether such writing

has been or shall be registered or not, shall be valid, whether or not such mortgagee or trustee was or shall be present at such sale. (1895, c. 117; Rev., s. 1035; C.S., s. 2581; 1967, c. 562, s. 2.)

§ 45-8. Survivorship among donees of power of sale.

In all mortgages and deeds of trust of real property wherein two or more persons, as trustees or otherwise, are given power to sell the property therein conveyed or embraced, and one or more of such persons dies, any one of the persons surviving having such power may make sale of such property in the manner directed in such deed, and execute such assurances of title as are proper and lawful under the power so given; and the act of such person, in pursuance of said power, shall be as valid and binding as if the same had been done by all the persons on whom the power was conferred. (1885, c. 327, s. 2; Rev., s. 1033; C.S., s. 2582; 1967, c. 562, s. 2.)

§ 45-9. Clerk appoints successor to incompetent trustee.

When the sole or last surviving trustee named in a will or deed of trust dies, removes from the county where the will was probated or deed executed and/or recorded and from the State, or in any way becomes incompetent to execute the said trust, or is a nonresident of this State, or has disappeared from the community of his residence and his whereabouts remains unknown in such community for a period of three months and cannot, after diligent inquiry be ascertained, the clerk of the superior court of the county wherein the will was probated or deed of trust was executed and/or recorded is authorized and empowered, in proceedings to which all persons interested shall be made parties, to appoint some discreet and competent person to act as trustee and execute the trust according to its true intent and meaning, and as fully as if originally appointed: Provided, that in all actions or proceedings had under this section prior to January 1, 1900, before the clerks of the superior court in which any trustee was appointed to execute a deed of trust where any trustee of a deed of trust has died, removed from the county where the deed was executed and from the State, or in any way become incompetent to execute the said trust, whether such appointment of such trustee by order or decree, or otherwise, was made upon the application or petition of any person or persons ex parte, or whether made in proceedings where all the proper parties were made, are in all things confirmed and made valid so far as regards the parties to said actions and proceedings to the same extent as if all proper parties had originally been made in such actions or proceedings. (1869-70, c. 188; 1873-4, c. 126; Code, s. 1276; 1901, c. 576; Rev., s. 1037; C.S., s. 2583; 1933, c. 493.)

§ 45-10. Substitution of trustees in mortgages and deeds of trust.

(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.

(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.
(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.
(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. (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.)

§ 45-11. Appointment of substitute trustee upon application of subsequent or prior lienholders; effect of substitution.
When any person, firm, corporation, county, city or town holding a lien on real property upon which there is a subsequent or prior lien created by a mortgage, deed of trust or other instrument, the mortgagee or trustee therein named being dead or having otherwise become incompetent to act, files a written application with the clerk of the superior court of the county in which said property is located, setting forth the facts showing that said mortgagee or trustee is then dead or has become incompetent to act, the said clerk of the superior court, upon a proper finding of fact that said mortgagee or trustee is dead or has become incompetent to act, shall enter an order appointing some suitable and competent person, firm or corporation as substitute trustee upon whom service of process may be made, and said substitute trustee shall thereupon be vested with full power and authority to defend any action instituted to foreclose said property as fully as if he had been the original mortgagee or trustee named; but the substitute trustee shall have no power to cancel said mortgage or deed of trust without the joinder of the holder of the notes secured thereby. Said application shall not be made prior to the expiration of 30 days from the date the original mortgagee or trustee becomes incompetent to act. (1941, c. 115, s. 1; 1967, c. 562, s. 2.)

§ 45-12. Repealed by Session Laws 1973, c. 1208.

§ 45-13. Repealed by Session Laws 1981, c. 599, s. 12.

§ 45-14. Acts of trustee prior to removal not invalidated.
If any such trustee who has been substituted as provided in G.S. 45-10 or in G.S. 45-11 shall have performed any functions as such trustee and shall thereafter be removed as provided in G.S. 45-10 to 45-17, such removal shall not invalidate or affect the validity of such acts insofar as any purchaser or third person shall be affected or interested, and any conveyances made by such trustee before removal if otherwise valid, shall be and remain valid and effectual to all intents and purposes, but if any trustee upon such hearing is declared to have been wrongfully removed, he shall have his right of action against the substituted trustee for any compensation that he would have received in case he had not been wrongfully removed from such trust. (1931, c. 78, s. 5; 1941, c. 115, s. 3.)

§ 45-15. Registration of substitution constructive notice.
The registration of such paper-writing designating a new trustee under G.S. 45-10 or under G.S. 45-11 shall be from and after registration, constructive notice to all persons, and no appeal or other proceedings shall be instituted to contest the same after one year from and after such registration. (1931, c. 78, s. 6; 1941, c. 115, s. 4.)

§ 45-16: Repealed by Session Laws 2012-18, s. 1.2, effective July 1, 2012.

§ 45-17. Substitution made as often as justifiable.
The powers set out in G.S. 45-10 and in G.S. 45-11 may be exercised as often and as many times as the right to make such substitution may arise under the terms of such section, and all the privileges and requirements and rights to contest the same as set out in G.S. 45-10 to 45-17 shall apply to each deed of trust or mortgage and to each substitution. (1931, c. 78, s. 8; 1941, c. 115, s. 5.)

§ 45-18. Validation of certain acts of substituted trustees.
Whenever before January 1, 1979, a trustee has been substituted in a deed of trust in the manner provided by G.S. 45-10 to 45-17, but the instrument executed by the holder and/or owners of all or a majority in amount of the indebtedness, notes, bonds, or other instruments secured by said deed of trust, has not been registered as provided by said sections until after the substitute trustee has exercised some or all of the powers conferred by said deed of trust upon the trustee therein, including the advertising of the property conveyed by said deed of trust for sale, the sale thereof, and the execution of a deed by such substituted trustee to the purchaser at such sale, all such acts of said substituted trustee shall be deemed valid and effective in the same manner and to the same extent as if said instrument substituting said trustee, had been registered prior to the performance by said substituted trustee of any one or more of said acts, or other acts authorized by such deed of trust. (1939, c. 13; 1963, c. 241; 1967, c. 945; 1969, c. 477; 1971, c. 57; 1973, c. 20; 1979, c. 580.)

§ 45-19. Mortgage to guardian; powers pass to succeeding guardian.
When a guardian to whom a mortgage has been executed dies or is removed or resigns before the payment of the debt secured in such mortgage, all the rights, powers and duties of such mortgagee shall devolve upon the succeeding guardian. (1905, c. 433; Rev., s. 1034; C.S., s. 2584.)

§ 45-20. Sales by mortgagees and trustees confirmed.
All sales of real property made prior to February 10, 1905, by mortgagees and trustees under powers of sale contained in any mortgage or deed of trust in compliance with the powers, terms, conditions and advertisement set forth and required in any such mortgage or deed of trust, are hereby in all respects ratified and confirmed. (Ex. Sess. 1920, c. 27; C.S., s. 2584(a).)

§ 45-20.1. Validation of trustees' deeds where seals omitted.
All deeds executed prior to January 1, 1991, by any trustee or substitute trustee in the exercise of the power of sale vested in him under any deed, deed of trust, mortgage, will, or other instrument in which the trustee or substitute trustee has omitted to affix his seal after his signature are validated. (1943, c. 71; 1981, c. 183, s. 1; 1983, c. 398, s. 1; 1985, c. 70, s. 1; 1987, c. 277, s. 1; 1989, c. 390, s. 1; 1991, c. 489, s. 1.)

§ 45-20.2. Repealed by Session Laws 1981, c. 183, s. 2.

§ 45-20.3. Validation of deeds where seal omitted on power of attorney.
All deeds and other conveyances executed prior to January 1, 1991, by any attorney-in-fact in the exercise of a power of attorney are valid even though the signature of the principal was not affixed under seal on the instrument creating the power of attorney. (1991, c. 489, s. 1.1.)

§ 45-21. Validation of appointment of and conveyances to corporations as trustees.
In all deeds of trust made prior to March 15, 1941, wherein property has been conveyed to corporations as trustees to secure indebtedness, the appointment of said corporations as trustees, the conveyances to said corporate trustees, and the action taken under the powers of such deeds of trust by said corporate trustees are hereby confirmed and validated to the same extent as if such corporate trustees had been individual trustees. (1941, c. 245, s. 1.)

§ 45-21.01. Foreclosure of deeds of trust and mortgages on property affected by boundary certification.
(a) Foreclosure actions initiated on real property encumbered by a security instrument recorded in South Carolina wherein the real property is situated, in whole or in part, within the certified North Carolina boundaries shall be governed by the terms of the security instrument sought to be enforced for that portion of real property recognized as being in a different state. If the security instrument contains a power of sale clause, the party seeking to enforce the terms of the security instrument may initiate a foreclosure action in the county where the real property is situated pursuant to this Chapter. A party seeking to enforce the terms of the security instrument may also resort to judicial foreclosure, pursuant to Article 29A of Chapter 1 of the General Statutes, in accordance with the terms within the security instrument. Judgments or orders of foreclosure entered by courts of this State are binding and effective only with respect to the portion of real property situated within this State. Prior to initiating an action to enforce a security instrument, the security instrument or a certified copy shall be recorded in the office of the register of deeds for the county where the subject property is situated. The provisions of G.S. 45-10(a) shall apply with regard to the appointment or substitution of a trustee for any mortgage or deed of trust foreclosed pursuant to this section.
(b) Notwithstanding any other provision of law to the contrary, for mortgages foreclosed pursuant to subsection (a) of this section, a mortgagee or its successors or assigns shall be entitled to bid at a foreclosure sale conducted pursuant to a judgment or order of foreclosure entered by the courts of this State. (2016-23, ss. 4(a), (b).)

Article 2A.
Sales Under Power of Sale.
Part 1. General Provisions.

§ 45-21.1. Definitions; construction.
(a) The following definitions apply in this Article:
  (1) "Resale" means a resale of real property or a resale of any leasehold interest created by a lease of real property held pursuant to G.S. 45-21.30.
  (2) "Sale" means a sale of real property or a sale of any leasehold interest created by a lease of real property pursuant to (i) an express power of sale contained in a mortgage, deed of trust, leasehold mortgage, or leasehold deed of trust or (ii) a "power of sale", under this Article, authorized by other statutory provisions.
(b) The following constructions apply in this Article:
  (1) The terms "mortgage" or "deed of trust" include leasehold mortgages or leasehold deeds of trust.

(2) The terms "mortgagee" or "trustee" include any person or entity exercising a power of sale pursuant to this Article.
(3) The terms "real property" or "property" include any leasehold interest created by a lease of real property. (1949, c. 720, s. 1; 1967, c. 562, s. 2; 1991, c. 255; 1993, c. 305, s. 1.)

§ 45-21.2. Article not applicable to foreclosure by court action.
This Article does not affect any right to foreclosure by action in court, and is not applicable to any such action. (1949, c. 720, s. 1.)

§ 45-21.3. Repealed by Session Laws 1993, c. 305, s. 2.

§ 45-21.4. Place of sale of real property.
(a) Every sale of real property shall be held in the county where the property is situated unless the property consists of a single tract situated in two or more counties.
(b) A sale of a single tract of real property situated in two or more counties may be held in any one of the counties in which any part of the tract is situated. As used in this section, a "single tract" means any tract which has a continuous boundary, regardless of whether parts thereof may have been acquired at different times or from different persons, or whether it may have been subdivided into other units or lots, or whether it is sold as a whole or in parts.
(c) When a mortgage or deed of trust with power of sale of real property designates the place of sale within the county, the sale shall be held at the place so designated.
(d) When a mortgage or deed of trust with power of sale of real property confers upon the mortgagee or trustee the right to designate the place of sale, the sale shall be held at the place designated by the notice of sale, which place shall be either on the premises to be sold or as follows:
(1) Property situated wholly within a single county shall be sold at the courthouse door of the county in which the land is situated or at another public location within the county where the land is situated as designated by the mortgagee or trustee.
(2) A single tract of property situated in two or more counties may be sold at the courthouse door of any one of the counties in which some part of the real property is situated or at another public location within any one of the counties in which some part of the real property is situated as designated by the mortgagee or trustee.
(e) When a mortgage or deed of trust with power of sale of real property does not designate, or confer upon the mortgagee or trustee the right to designate, the place of sale, or when it designates as the place of sale some county in which no part of the property is situated, such real property shall be sold as follows:
(1) Property situated wholly within a single county shall be sold at the courthouse door of the county in which the land is situated or at another public location within the county where the land is situated as designated by the clerk of the superior court of the county where the land is situated.
(2) A single tract of property situated in two or more counties may be sold at the courthouse door of any one of the counties in which some part of the real property is situated or another public location within one of the counties in which some part of the real property is situated as designated by the clerk of the superior court of one of the counties in which some part of the real property is situated. (1949, c. 720, s. 1; 1975, c. 57, s. 1.; 2024-29).

§§ 45-21.5 through 45-21.6. Repealed by Session Laws 1967, c. 562, s. 2.

§ 45-21.7. Sale of separate tracts in different counties.

(a) When the property to be sold consists of separate tracts of real property situated in different counties, there shall be a separate advertisement, sale and report of sale of the property in each county. The report of sale for the property in any one county shall be filed with the clerk of the superior court of the county in which such property is situated. The sale of each such tract shall be subject to separate upset bids. The clerk of the superior court of the county where the property is situated has jurisdiction with respect to upset bids of property situated within his county. To the extent the clerk deems necessary, the sale of each separate tract within his county, with respect to which an upset bid is received, shall be treated as a separate sale for the purpose of determining the procedure applicable thereto.

(b) The exercise of the power of sale with respect to a separate tract of property in one county does not extinguish or otherwise affect the right to exercise the power of sale with respect to tracts of property in another county to satisfy the obligation secured by the mortgage or deed of trust. (1949, c. 720, s. 1; 1993, c. 305, s. 3.)

§ 45-21.8. Sale as a whole or in parts.

(a) When the instrument pursuant to which a sale is to be held contains provisions with respect to whether the property therein described is to be sold as a whole or in parts, the terms of the instrument shall be complied with.

(b) When the instrument contains no provisions with respect to whether the property therein described is to be sold as a whole or in parts, the person exercising the power of sale may, in his discretion, subject to the provisions of G.S. 45-21.9, sell the property as a whole or in such parts or parcels thereof as are separately described in the instrument, or he may offer the property for sale by each method and sell the property by the method which produces the highest price.

(b1) When real property is sold in parts, the sale of any such part is subject to a separate upset bid; and, to the extent the clerk of superior court having jurisdiction deems advisable, the sale of each such part shall thereafter be treated as a separate sale for the purpose of determining the procedure applicable thereto.

(c) This section does not affect the equitable principle of marshaling assets. (1949, c. 720, s. 1; 1993, c. 305, s. 4.)

§ 45-21.9. Amount to be sold when property sold in parts; sale of remainder if necessary.

(a) When a person exercising a power of sale sells property in parts pursuant to G.S. 45-21.8 he shall sell as many of such separately described units and parcels as in his judgment seems necessary to satisfy the obligation secured by the instrument pursuant to which the sale is being made, and the costs and expenses of the sale.

(b) If the proceeds of a sale of only a part of the property are insufficient to satisfy the obligation secured by the instrument pursuant to which the sale is made and the costs and expenses of the sale, the person authorized to exercise the power of sale may readvertise the unsold property and may sell as many additional units or parcels thereof as in his judgment seems necessary to satisfy the remainder of the secured obligation and the costs and expenses of the sale. As to any such sale, it shall not be necessary to comply with the provisions of G.S. 45-21.16 but the requirements of G.S. 45-21.17 relating to notices of sale shall be complied with.

(c) When the entire obligation has been satisfied by a sale of only a part of the property with respect to which a power of sale exists, the lien on the part of the property not so sold is discharged.

(d) The fact that more property is sold than is necessary to satisfy the obligation secured by the instrument pursuant to which the power of sale is exercised does not affect the validity of the title of any purchaser of property at any such sale. (1949, c. 720, s. 1; 1975, c. 492, s. 15.)

§ 45-21.9A. Simultaneous foreclosure of two or more instruments.

When two or more mortgages or deeds of trust held by the same person are secured in whole or in part by the same property, and there are no intervening liens, except for ad valorem taxes, between such mortgages or deeds of trust, the obligations secured by such mortgages or deeds of trust may be combined and the property sold once to satisfy the combined obligations if (i) powers of sale are provided in all such instruments; (ii) there is no provision in any such instrument which would not permit such a procedure; (iii) all the terms of all such instruments requiring compliance by the lender in connection with foreclosure sales are complied with; and (iv) all requirements of this Chapter governing power of sale foreclosures are met with respect to all such instruments. The proceeds of any sale shall be applied as provided in this Chapter. As between the combined obligations being foreclosed, proceeds shall be applied in the order of priority of the instruments securing them, and any deficiencies shall be determined accordingly. (1985, c. 515, s. 1; 1993, c. 305, s. 5.)

§ 45-21.10. Requirement of cash deposit at sale.

(a) If a mortgage or deed of trust contains provisions with respect to a cash deposit at the sale, the terms of the instrument shall be complied with.

(b) If the instrument contains no provision with respect to a cash deposit at the sale, the mortgagee or trustee may require the highest bidder immediately to make a cash deposit not to exceed the greater of five percent (5%) of the amount of the bid or seven hundred fifty dollars ($750.00).

(c) If the highest bidder fails to make the required deposit, the person holding the sale may at the same time and place immediately reoffer the property for sale. (1949, c. 720, s. 1; 1993, c. 305, s. 6.)

§ 45-21.11. Application of statute of limitations to serial notes.

When a series of notes maturing at different times is secured by a mortgage or deed of trust and the exercise of the power of sale for the satisfaction of one or more of the notes is barred by the statute of limitations, that fact does not bar the exercise of the power of sale for the satisfaction of indebtedness represented by other notes of the series not so barred. (1949, c. 720, s. 1; 1967, c. 562, s. 2.)

§ 45-21.12. Power of sale barred when foreclosure barred.

(a) Except as provided in subsection (b), no person shall exercise any power of sale contained in any mortgage or deed of trust, or provided by statute, when an action to foreclose the mortgage or deed of trust, is barred by the statute of limitations.

(b) If a sale pursuant to a power of sale contained in a mortgage or deed of trust, or provided by statute, is commenced within the time allowed by the statute of limitations to foreclose such mortgage or deed of trust, the sale may be completed although such completion is effected after the time when commencement of an action to foreclose would be barred by the statute. For the purpose of this section, a sale is commenced when the notice of hearing or the notice of sale is first filed, given, served, posted, or published, whichever occurs first, as provided by this Article or by the terms of the instrument pursuant to which the power of sale is being exercised. (1949, c. 720, s. 1; 1967, c. 562, s. 2; 1969, c. 984, s. 1; 1977, c. 359, s. 1.)

§ 45-21.12A. Power of sale barred during periods of military service.

(a) Power of Sale Barred. - A mortgagee, trustee, or other creditor shall not exercise a power of sale contained in a mortgage or deed of trust, or provided by statute, during, or within 90 days after, a mortgagor's, trustor's, or debtor's period of military service. The clerk of court shall not conduct a hearing pursuant to G.S. 45-21.16(d) unless the mortgagee, trustee or other creditor seeking to exercise a power of sale under a mortgage or deed of trust, or provided by statute, files with the clerk a certification that the hearing will take place at a time that is not during, or within 90 days after, a period of military service for the mortgagor, trustor or debtor. This subsection applies only to mortgages and deeds of trust that originated before the mortgagor's or trustor's period of military service.

(b) Waiver. - This section shall not apply if the mortgagor, trustor, or debtor waives his or her rights under this section pursuant to a written agreement of the parties executed during or after the mortgagor's, trustor's, or debtor's period of military service, as an instrument separate from the obligation or liability to which the waiver applies. Any waiver in writing of a right or protection provided by this section must be in at least 12 point type and shall specify the legal instrument creating the obligation or liability to which the waiver applies.

(c) Purpose. - The purpose of this section is to supplement and complement the provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501, et seq., and to afford greater peace and security for persons in federal active duty.

(d) Definitions. - The following definitions apply in this section:

(1) Military service. -

a. In the case of a member of the United States Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard:

1. Active duty, as defined in 10 U.S.C. § 101(d)(1), and
2. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 U.S.C. § 502(f), for purposes of responding to a national emergency declared by the President and supported by federal funds.

b. In the case of a servicemember who is a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration, active service, and

c. Any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause.

(2) Period of military service. - The period beginning on the date on which a servicemember enters military service and ending on the date on which the servicemember is released from military service or dies while in military service.

(3) Servicemember. - A member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, or the commissioned corps of the Public Health Service. (2010-190, s. 1; 2011-183, s. 127(b); 2025-20, s. 2.3.)

§ 45-21.13. Repealed by Session Laws 1967, c. 562, s. 2.

§ 45-21.14. Clerk's authority to compel report or accounting; contempt proceeding. Whenever any person fails to file any report or account, as provided by this Article, or files an incorrect or incomplete report or account, the clerk of the superior court having jurisdiction on his own motion or the motion of any interested party, may issue an order directing such person to file a correct and complete report or account within 20 days after service of the order on him. If such person fails to comply with the order, the clerk may issue an attachment against him for contempt, and may commit him to jail until he files such correct and complete report or account. (1949, c. 720, s. 1.)

§ 45-21.15. Trustee's fees.

(a) When a sale has been held, the trustee is entitled to such compensation, if any, as is stipulated in the instrument.

(b) When no sale has actually been held, compensation for a trustee's services is determined as follows:

(1) If no compensation for the trustee's services in holding a sale is provided for in the instrument, the trustee is not entitled to any compensation;

(2) If compensation is specifically provided for the trustee's services when no sale is actually held, the trustee is entitled to such compensation;

(3) If the instrument provides for compensation for the trustee's services in actually holding a sale, but does not provide compensation for the trustee's services when no sale is actually held, the trustee is entitled to compensation as follows: (i) one-fourth of the completed sale compensation before the trustee files the notice of hearing; (ii) one-half after the filing of the notice of hearing; and (iii) three-fourths after the hearing.

(4) Repealed by Session Laws 1993, c. 305, s. 7. (1949, c. 720, s. 1; 1993, c. 305, s. 7.)

Part 2. Procedure for Sale.

§ 45-21.16. Notice and hearing.

(a) The mortgagee or trustee granted a power of sale under a mortgage or deed of trust who seeks to exercise such power of sale shall file with the clerk of court a notice of hearing in accordance with the terms of this section. After the notice of hearing is filed, the notice of hearing shall be served upon each party entitled to notice under this section. The notice shall specify a time and place for the hearing before the clerk of court and shall be served not less than 10 days prior to the date of such hearing. The notice shall be served and proof of service shall be made in any manner provided by the Rules of Civil Procedure for service of summons, including service by registered mail or certified mail, return receipt requested. However, in those instances that publication would be authorized, service may be made by posting a notice in a conspicuous place and manner upon the property not less than 20 days prior to the date of the hearing, and if service upon a party cannot be effected after a reasonable and diligent effort in a manner authorized above, notice to such party may be given by posting the notice in a conspicuous place and manner upon the property not less than 20 days prior to the date of hearing. Service by posting may run concurrently with any other effort to effect service. The notice shall be posted by the sheriff. In the event that the service is obtained by posting, an affidavit shall be filed with the clerk of court showing the circumstances warranting the use of service by posting.

If any party is not served or is not timely served prior to the date of the hearing, the clerk shall order the hearing continued to a date and time certain, not less than 10 days from the date scheduled for the original hearing. All notices already timely served remain effective. The mortgagee or trustee shall satisfy the notice requirement of this section with respect to those parties not served or not timely served with respect to the original hearing. Any party timely served, who has not received actual notice of the date to which the hearing has been continued, shall be sent the order of continuance by first-class mail at his last known address.

(b) Notice of hearing shall be served in a manner authorized in subsection (a) upon:

(1) Any person to whom the security interest instrument itself directs notice to be sent in case of default.

(2) Any person obligated to repay the indebtedness against whom the holder thereof intends to assert liability therefor, and any such person not notified shall not be liable for any deficiency remaining after the sale.

(3) Every record owner of the real estate whose interest is of record in the county where the real property is located at the time the notice of hearing is filed in that county. The term "record owner" means any person owning a present or future interest in the real property, which interest is of record at the time that the notice of hearing is filed and would be affected by the foreclosure proceeding, but does not mean or include the trustee in a deed of trust or the owner or holder of a mortgage, deed of trust, judgment, mechanic's or materialman's lien, or other lien or security interest in the real property. Tenants in possession under unrecorded leases or rental agreements shall not be considered record owners.

(c) Notice shall be in writing and shall state in a manner reasonably calculated to make the party entitled to notice aware of the following:

(1) The particular real estate security interest being foreclosed, with such a description as is necessary to identify the real property, including the date, original amount, original holder, and book and page of the security instrument.

(2) The name and address of the holder of the security instrument at the time that the notice of hearing is filed.

(3) The nature of the default claimed.

(4) The fact, if such be the case, that the secured creditor has accelerated the maturity of the debt.

(5) Any right of the debtor to pay the indebtedness or cure the default if such is permitted.

(5a) The holder has confirmed in writing to the person giving the notice, or if the holder is giving the notice, the holder shall confirm in the notice, that, within 30 days of the date of the notice, the debtor was sent by first-class mail at the debtor's last known address a detailed written statement of the amount of principal, interest, and any other fees, expenses, and disbursements that the holder in good faith is claiming to be due as of the date of the written statement, together with a daily interest charge based on the contract rate as of the date of the written statement. Nothing herein is intended to authorize any fees, charges, or methods of charging interest which is not otherwise permitted under contract between the parties and other applicable law.

(5b) To the knowledge of the holder, or the servicer acting on the holder's behalf, whether in the two years preceding the date of the statement any requests for information have been made by the borrower to the servicer pursuant to G.S. 45-93 and, if so, whether such requests have been complied with. If the time limits set forth in G.S. 45-93 for complying with any such requests for information have not yet expired as of the date of the notice, the notice shall so state. If the holder is not giving the notice, the holder shall confirm in writing to the person giving the notice the information required by this subsection to be stated in the notice.

(6) Repealed by Session Laws 1977, c. 359, s. 7.

(7) The right of the debtor (or other party served) to appear before the clerk of court at a time and on a date specified, at which appearance he shall be afforded the opportunity to show cause as to why the foreclosure should not be allowed to be held. The notice shall contain all of the following:

a. A statement that if the debtor does not intend to contest the creditor's allegations of default, the debtor does not have to appear at the hearing and that the debtor's failure to attend the hearing will not affect the debtor's right to pay the indebtedness and thereby prevent the proposed sale, or to attend the actual sale, should the debtor elect to do so.

b. A statement that the trustee, or substitute trustee, is a neutral party and, while holding that position in the foreclosure proceeding, may not advocate for the secured creditor or for the debtor in the foreclosure proceeding.

c. A statement that the debtor has the right to apply to a judge of the superior court pursuant to G.S. 45-21.34 to enjoin the sale, upon any legal or equitable ground that the court may deem sufficient prior to the time that the rights of the parties to the sale or resale become fixed, provided that the debtor complies with the requirements of G.S. 45-21.34.

d. A statement that the debtor has the right to appear at the hearing and contest the evidence that the clerk is to consider under G.S. 45-21.16(d), and that to authorize the foreclosure the clerk must find the existence of: (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, and (iv) notice to those entitled to notice.

e. A statement that if the debtor fails to appear at the hearing, the trustee will ask the clerk for an order to sell the real property being foreclosed.

f. A statement that the debtor has the right to seek the advice of an attorney and that free legal services may be available to the debtor by contacting Legal Aid of North Carolina or other legal services organizations.

(8) That if the foreclosure sale is consummated, the purchaser will be entitled to possession of the real estate as of the date of delivery of his deed, and that the debtor, if still in possession, can then be evicted.

(8a) The name, address, and telephone number of the trustee or mortgagee.

(9) That the debtor should keep the trustee or mortgagee notified in writing of his address so that he can be mailed copies of the notice of foreclosure setting forth the terms under which the sale will be held, and notice of any postponements or resales.

(10) If the notice of hearing is intended to serve also as a notice of sale, such additional information as is set forth in G.S. 45-21.16A.

(11) That the hearing may be held on a date later than that stated in the notice and that the party will be notified of any change in the hearing date.

(12) That if the debtor is currently on military duty the foreclosure may be prohibited by G.S. 45-21.12A.

(c1) The person giving the notice of hearing, if other than the holder, may rely on the written confirmation received from the holder under subdivisions (c)(5a) and (c)(5b) of this section and is not liable for inaccuracies in the written confirmation.

(c2) In any foreclosure filed on or after November 1, 2010, where the underlying mortgage debt is a home loan as defined in G.S. 45-101(1b), the notice required by subsection (b) of this section shall contain a certification by the filing party that the pre-foreclosure notice and information required by G.S. 45-102 and G.S. 45-103 were provided in all material respects and that the periods of time established by Article 11 of this Chapter have elapsed.

(d) The hearing provided by this section shall be held before the clerk of court in the county where the land, or any portion thereof, is situated. In the event that the property to be sold consists of separate tracts situated in different counties or a single tract in more than one county, only one hearing shall be necessary. However, prior to that hearing, the mortgagee or trustee shall file the notice of hearing in any other county where any portion of the property to be sold is located. Upon such hearing, the clerk shall consider the evidence of the parties and may consider, in addition to other forms of evidence required or permitted by law, affidavits and certified copies of documents. If the clerk finds the existence of (i) valid debt of which the party seeking to foreclose is the holder, (ii) default, (iii) right to foreclose under the instrument, (iv) notice to those entitled to such under subsection (b), (v) that the underlying mortgage debt is not a home loan as defined in G.S. 45-101(1b), or if the loan is a home loan under G.S. 45-101(1b), that the pre-foreclosure notice under G.S. 45-102 was provided in all material

respects, and that the periods of time established by Article 11 of this Chapter have elapsed, and (vi) that the sale is not barred by G.S. 45-21.12A, then the clerk shall authorize the mortgagee or trustee to proceed under the instrument, and the mortgagee or trustee can give notice of and conduct a sale pursuant to the provisions of this Article. A certified copy of any authorization or order by the clerk shall be filed in any other county where any portion of the property to be sold is located before the mortgagee or trustee may proceed to advertise and sell any property located in that county. In the event that sales are to be held in more than one county, the provisions of G.S. 45-21.7 apply.

(d1) The act of the clerk in so finding or refusing to so find is a judicial act and may be appealed to the judge of the district or superior court having jurisdiction at any time within 10 days after said act. Appeals from said act of the clerk shall be heard de novo. If an appeal is taken from the clerk's findings, the appealing party shall post a bond with sufficient surety as the clerk deems adequate to protect the opposing party from any probable loss by reason of appeal; and upon posting of the bond the clerk shall stay the foreclosure pending appeal. If the appealing party owns and occupies the property to be sold as his or her principal residence, the clerk shall require a bond in the amount of one percent (1%) of the principal balance due on the note or debt instrument, provided that the clerk, in the clerk's discretion, may require a lesser amount in cases of undue hardship or for other good cause shown; and further provided that the clerk, in the clerk's discretion, may require a higher bond if there is a likelihood of waste or damage to the property during the pendency of the appeal or for other good cause shown.

(e) In the event of an appeal, either party may demand that the matter be heard at the next succeeding term of the court to which the appeal is taken which convenes 10 or more days after the hearing before the clerk, and such hearing shall take precedence over the trial of other cases except cases of exceptions to homesteads and appeals in summary ejectment actions, provided the presiding judge may in his discretion postpone such hearing if the rights of the parties or the public in any other pending case require that such case be heard first. In those counties where no session of court is scheduled within 30 days from the date of hearing before the clerk, either party may petition any regular or special superior court judge resident in a district or assigned to hold courts in a district where any part of the real estate is located, or the chief district judge of a district where any part of the real estate is located, who shall be authorized to hear the appeal. A certified copy of any order entered as a result of the appeal shall be filed in all counties where the notice of hearing has been filed.

(f) Waiver of the right to notice and hearing provided herein shall not be permitted except as set forth herein. In any case in which the original principal amount of indebtedness secured was one hundred thousand dollars ($100,000), or more, any person entitled to notice and hearing may waive after default the right to notice and hearing by written instrument signed and duly acknowledged by such party. In all other cases, at any time subsequent to service of the notice of hearing provided above, the clerk, upon the request of the mortgagee or trustee, shall mail to all other parties entitled to notice of such hearing a form by which such parties may waive their rights to the hearing. Upon the return of the forms to the clerk bearing the signatures of each such party and that of a witness to each such party's signature (which witness shall not be an agent or employee of the mortgagee or trustee), the clerk in his discretion may dispense with the necessity of a hearing and proceed to issue the order authorizing sale as set forth above.

(g) Any notice, order, or other papers required by this Article to be filed in the office of the clerk of superior court shall be filed in the same manner as a special proceeding. (1975, c. 492, s. 2; 1977, c. 359, ss. 2-10; 1983, c. 335, s. 1; 1983 (Reg. Sess., 1984), c. 1108, ss. 1, 2; 1993, c. 305, s. 8; 1995, c. 509, s. 135.1(g); 1999-137, ss. 1, 2; 2007-351, s. 4; 2008-226, ss. 2, 3; 2009-573, s. 2; 2010-168, ss. 2, 3, 9; 2010-190, ss. 2, 3; 2012-79, s. 2.17(g).)

§ 45-21.16A. Contents of notice of sale.

(a) Except as provided in subsection (b) of this section, the notice of sale shall include all of the following:

(1) Describe the instrument pursuant to which the sale is held, by identifying the original mortgagors and recording data. If the record owner is different from the original mortgagors, the notice shall also list the record owner of the property, as reflected on the records of the register of deeds not more than 10 days prior to posting the notice. The notice may also reflect the owner not reflected on the records if known.

(2) Designate the date, hour and place of sale consistent with the provisions of the instrument and this Article.

(3) Describe the real property to be sold in a manner that is reasonably calculated to inform the public as to what is being sold. The description may be in general terms and may incorporate by reference the description used in the instrument containing the power of sale. Any property described in the instrument containing the power of sale which is not being offered for sale should also be described in a manner to enable prospective purchasers to determine what is and what is not being offered for sale.

(4) Repealed by Session Laws 1967, c. 562, s. 2.

(5) State the terms of the sale provided for by the instrument pursuant to which the sale is held, including the amount of the cash deposit, if any, to be made by the highest bidder at the sale.

(6) Include any other provisions required by the instrument to be included.

(7) State that the property will be sold subject to taxes and special assessments if it is to be so sold.

(8) State whether the property is being sold subject to or together with any subordinate rights or interests provided those rights and interests are sufficiently identified.

(b) In addition to the requirements contained in subsection (a) of this section, the notice of sale of residential real property with less than 15 rental units shall also state all of the following:

(1) That an order for possession of the property may be issued pursuant to G.S. 45-21.29 in favor of the purchaser and against the party or parties in possession by the clerk of superior court of the county in which the property is sold.

(2) Any person who occupies the property pursuant to a rental agreement entered into or renewed on or after October 1, 2007, may, after receiving the notice of sale, terminate the rental agreement by providing written notice of termination to the landlord, to be effective on a date stated in the notice that is at least 10 days, but no more than 90 days, after the sale date contained in the notice of sale, provided that the mortgagor has not cured the default at the time the tenant provides the notice of termination. The notice shall also state that upon termination of a rental agreement, the tenant is liable for rent due under the rental agreement prorated to the effective date of the termination. (1949, c. 720, s. 1; 1951, c. 252, s. 1; 1967, c. 562, s. 2; 1975, c. 492, s. 1; 1987, c. 493; 1993, c. 305, s. 9; 2007-353, s. 1; 2015-178, s. 1(c).)

§ 45-21.16B: Repealed by Session Laws 2013-412, s. 7, effective August 23, 2013.

§ 45-21.16C. Opportunity for parties to resolve foreclosure of owner-occupied residential property.

(a) At the commencement of the hearing, the clerk shall inquire as to whether the debtor occupies the real property at issue as his or her principal residence. If it appears that the debtor does currently occupy the property as a principal residence, the clerk shall further inquire as to

the efforts the mortgagee, trustee, or loan servicer has made to communicate with the debtor and to attempt to resolve the matter voluntarily before the foreclosure proceeding. The clerk's inquiry shall not be required if the mortgagee or trustee has submitted, at or before the hearing, an affidavit briefly describing any efforts that have been made to resolve the default with the debtor and the results of any such efforts.

(b) The clerk shall order the hearing continued if the clerk finds that there is good cause to believe that additional time or additional measures have a reasonable likelihood of resolving the delinquency without foreclosure. In determining whether to continue the hearing, the clerk may consider (i) whether the mortgagee, trustee, or loan servicer has offered the debtor an opportunity to resolve the foreclosure through forbearance, loan modification, or other commonly accepted resolution plan appropriate under the circumstances, (ii) whether the mortgagee, trustee, or loan servicer has engaged in actual responsive communication with the debtor, including telephone conferences or in-person meetings with the debtor or other actual two-party communications, (iii) whether the debtor has indicated that he or she has the intent and ability to resolve the delinquency by making future payments under a foreclosure resolution plan, and (iv) whether the initiation or continuance of good faith voluntary resolution efforts between the parties may resolve the matter without a foreclosure sale. Where good cause exists to continue the hearing, the clerk shall order the hearing continued to a date and time certain not more than 60 days from the date scheduled for the original hearing. Nothing in this part shall limit the authority of the clerk to continue a hearing for other good cause shown. (2009-573, s. 3.)

§ 45-21.17. Posting and publishing notice of sale of real property.

In addition to complying with such provisions with respect to posting or publishing notice of sale as are contained in the security instrument,

(1) Notice of sale of real property shall
   a. Be posted, in the area designated by the clerk of superior court for posting public notices in the county in which the property is situated, at least 20 days immediately preceding the sale.
   b. And in addition thereto,
      1. The notice shall be published once a week for at least two successive weeks in a newspaper published and qualified for legal advertising in the county in which the property is situated.
      2. If no such newspaper is published in the county, then notice shall be published once a week for at least two successive weeks in a newspaper having a general circulation in the county.
      3. In addition to the required newspaper advertisement, the clerk may in his discretion, on application of any interested party, authorize such additional advertisement as in the opinion of the clerk will serve the interest of the parties, and permit the charges for such further advertisement to be taxed as a part of the costs of the foreclosure.

(2) When the notice of sale is published in a newspaper,
   a. The period from the date of the first publication to the date of the last publication, both dates inclusive, shall not be less than seven days, including Sundays, and
   b. The date of the last publication shall be not more than 10 days preceding the date of the sale.

(3) When the real property to be sold is situated in more than one county, the provisions of subdivisions (1) and (2) shall be complied with in each county in which any part of the property is situated.

(4) The notice of sale shall be mailed by first-class mail at least 20 days prior to the date of sale to each party entitled to notice of the hearing provided by G.S. 45-21.16 whose address is known to the trustee or mortgagee and in addition shall also be mailed by first-class mail to any party desiring a copy of the notice of sale who has complied with G.S. 45-21.17A. If the property is residential and contains less than 15 rental units, including single-family residential real property, the notice of sale shall also be mailed to any person who occupies the property pursuant to a residential rental agreement by name, if known, at the address of the property to be sold. If the name of the person who occupies the property is not known, the notice shall be sent to "occupant" at the address of the property to be sold. Notice of the hearing required by G.S. 45-21.16 shall be sufficient to satisfy the requirement of notice under this section provided such notice contains the information required by G.S. 45-21.16A.

(5) Repealed by Session Laws 1993, c. 305, s. 10.

(6) Any time periods relating to notice of hearing or notice of sale that are provided in the security instrument may commence with and run concurrently with the time periods provided in G.S. 45-21.16, 45-21.17, or 45-21.17A. (1949, c. 720, s. 1; 1965, c. 41; 1967, c. 979, s. 3; 1975, c. 492, s. 3; 1977, c. 359, ss. 11-14; 1985, c. 567, s. 1; 1993, c. 305, s. 10; 2007-353, s. 2; 2015-178, s. 1(a).)

§ 45-21.17A. Requests for copies of notice.

(a) Any person desiring a copy of any notice of sale may, at any time subsequent to the recordation of the security instrument and prior to the filing of notice of hearing provided for in G.S. 45-21.16, cause to be filed for record in the office of the register of deeds of each county where all or any part of the real property is situated, a duly acknowledged request for a copy of such notice of sale. This request shall be a separate instrument entitled "Request for Notice" and shall be signed and acknowledged by the party making the request, shall specify the name and address of the party to whom the notice is to be mailed, shall identify the deed of trust or mortgage by stating the names of the parties thereto, the date of recordation, and the book and page where the same is recorded, and shall be in substantially the following form:

"REQUEST FOR NOTICE"

In accordance with the provisions of G.S. 45-21.17A, request is hereby made that a copy of any notice of sale under the deed of trust (mortgage) recorded on _____, _____, in Book ____, page ____, records of _____ County, North Carolina, executed by _____ as trustor (mortgagor), in which _____ is named as beneficiary (mortgagee), and _____ as trustee, be mailed to _____ at the following address: _____.

Signature:_____

__

[Acknowledgement]

(b) Register of Deeds' Duties. - Upon the filing for record of such request, the register of deeds shall index in the general index of grantors the names of the trustors (mortgagors) recited therein, and the names of the persons requesting copies, with a reference in the index of the book and page of the recorded security instrument to which the request refers.

(c) Mailing Notice. - The mortgagee, trustee, or other person authorized to conduct the sale shall at least 20 days prior to the date of the sale cause to be deposited in the United States mail an envelope with postage prepaid containing a copy of the notice of sale, addressed to each person whose name and address are set forth in the Request for Notice, and directed to the address designated in such request.

(d) Effect of Request on Title. - No request for a copy of any notice filed pursuant to this section nor any statement or allegation in any such request nor any record thereof shall affect the title to real property, or be deemed notice to any person that the person requesting copies of

notice has any claim or any right, title or interest in, or lien or charge upon, the property described in the deed of trust or mortgage referred to therein.

(e) Evidence of Compliance. - The affidavit of the mortgagee, trustee, or other person authorized to conduct the sale that copies of the notice of sale have been mailed to all parties filing requests for the same hereunder shall be deemed prima facie true. If on hearing it is proven that a party seeking to have the foreclosure sale set aside or seeking damages resulting from the foreclosure sale was mailed notice in accordance with this section or had actual notice of the sale before it was held (or if a resale was involved, prior to the date of the last resale), then the party shall not prevail. Costs, expenses, and reasonable attorneys' fees incurred by the prevailing party in any action to set aside the foreclosure sale or for damages resulting from the foreclosure sale shall be allowed as of course to the prevailing party.

(f) Action to Set Foreclosure Sale Aside for Failure to Comply. - A person entitled to notice of sale by virtue of this section shall not bring any action to set the sale aside on grounds that he was not mailed the notice of sale unless such action is brought prior to the filing of the final report and account as provided in G.S. 45-21.33, if the property was purchased by someone other than the secured party; or if brought by the secured party, unless such action is brought within six months of the date of such filing and prior to the time the secured party sells the property to a bona fide purchaser for value, if the property was purchased by the secured party. In either event, the party bringing such an action shall also tender an amount exceeding the reported sale price or the amount of the secured party's interest in the property, including all expenses and accrued interest, whichever is greater. Such tender shall be irrevocable pending final adjudication of the action.

(g) Action for Damages from Foreclosure Sale for Failure to Comply. - A person entitled to notice of sale by virtue of this section shall not bring any action for damages resulting from the sale on grounds that he was not mailed the notice unless such action is brought within six months of the date of the filing of the final report and account as provided in G.S. 45-21.33. The party bringing such an action shall also deposit with the clerk a cash or surety bond approved by the clerk and in such amount as the clerk deems adequate to secure the party defending the action for such costs, expenses, and reasonable attorneys' fees to be incurred in the action. (1993, c. 305, s. 11; 1999-456, s. 59; 2011-246, s. 2; 2012-18, s. 1.3.)

§§ 45-21.18 through 45-21.19. Repealed by Session Laws 1967, c. 562, s. 2.

§ 45-21.20. Satisfaction of debt after publishing or posting notice, but before completion of sale.

A power of sale is terminated if, prior to the time fixed for a sale, or prior to the expiration of the time for submitting any upset bid after a sale or resale has been held, payment is made or tendered of -

(1) The obligation secured by the mortgage or deed of trust, and

(2) The expenses incurred with respect to the sale or proposed sale, which in the case of a deed of trust also include compensation for the trustee's services under the conditions set forth in G.S. 45-21.15. (1949, c. 720, s. 1; 1967, c. 562, s. 2.)

§ 45-21.21. Postponement of sale; notice of cancellation.

(a) Any person exercising a power of sale may postpone the sale to a day certain not later than 90 days after the original date for the sale if any of the following occurs:

(1) There are no bidders.

(2) In the sheriff's judgment, the number of prospective bidders at the sale is substantially decreased by inclement weather or by any casualty.

(3) There are so many other sales advertised to be held at the same time and place as to make it inexpedient and impracticable, in his judgment, to hold the sale on that day.
(4) The sheriff is unable to hold the sale because of illness or for other good reason.
(5) Other good cause exists.

The sheriff may postpone the sale more than once whenever any of these conditions are met, so long as the sale is held not later than 90 days after the original date for the sale, as computed pursuant to G.S. 1A-1, Rule 6.

(b) Upon each postponement of the sale, the sheriff shall do all of the following:
(1) At the time and place advertised for the sale, publicly announce the postponement of the sale.
(2) On the same day, attach to or enter on the notice of sale, posted at the courthouse door, as provided by G.S. 45-21.17, a notice of the postponement.
(3) Give written or oral notice of postponement to the judgment debtor. Written notice of postponement shall be served in any manner provided in G.S. 1A-1, Rule 5(b).

(c) The posted notice of postponement shall be signed by the sheriff and shall state the following:
(1) That the sale is postponed.
(2) The hour and date to which the sale is postponed.
(3) The reason for the postponement.

(d) If a sale is not held at the time fixed for the sale and is not postponed as provided by this section, or if on appeal, the appellate court orders a sale to be held, then prior to the sale taking place, G.S. 45-21.16 does not apply, but G.S. 45-21.16A, 45-21.17, and 45-21.17A again apply.

(e) Repealed, Session Law 2022-69.

(f) Repealed, Session Law 2019-243.

(g) If the sale is postponed pursuant to this section, then the person exercising the power of sale shall, immediately upon determining that the sale will not occur and prior to the scheduled time of the sale, deliver a written notice to the clerk of superior court that is to include all of the following:
(1) The case number assigned by the clerk.
(2) The name of each mortgagor and record owner.
(3) The United States Postal Service address of the property or, if no address has been assigned, a brief description of the location of the property.
(4) The originally scheduled date and time for the sale.
(5) A statement that the foreclosure sale has been withdrawn, rescheduled for a specific date and time, or postponed with no date yet set, as appropriate.

(h) If the notice required by subsection (g) of this section is not received by the clerk prior to the scheduled time of the sale, then the person exercising the power of sale shall personally, or through the person’s agent or attorney, do all of the following:
(1) At the time and place advertised for the sale, publicly announce the cancellation.
(2) On the same day, attach to or enter on the notice of sale, posted as provided by G.S. 45-21.17(1)a., a notice of the cancellation;
(3) Give written or oral notice of cancellation to each party entitled to notice of sale under G.S. 45-21.17.
(4) Hand-deliver the written notice required under subdivision (2) of this subsection to the clerk's office.

(i) So that the notice required by subsection (g) of this section may be delivered in the time frame required, the clerk's office shall, upon request, provide to the person exercising the power of sale an email address or fax telephone number, or both, to use for delivery of notices.
(j) Should the clerk's office be unexpectedly closed on the day of the sale or at the time designated for the sale to take place pursuant to G.S. 45-21.23, the requirements of this section related to notice to or filings with the clerk are delayed until the next day the clerk's office is open for transactions.
(k) All notices of a scheduled foreclosure sale, withdrawal of a scheduled sale, or postponement of a scheduled sale shall, on the day of receipt by the clerk, be posted by the person exercising the power of sale in the location at the county courthouse normally used for the posting of public notices. If a scheduled sale has been withdrawn, the notice shall remain in the location for no less than 30 days. If the sale has been postponed, the notice shall remain in the location until it is replaced by a notice of a rescheduled sale or of a withdrawn sale.
(*l*) The delivery of notices required by this section in no way removes any responsibility of any party to file documents with the clerk as required elsewhere by law.
(m) Repealed, Session Law 2022-69. (1949, c. 720, s. 1; 1967, c. 562, s. 2; 1975, c. 492, ss. 4-6; 1983, c. 335, s. 2; 1989, c. 257; 1991 (Reg. Sess., 1992), c. 777, s. 1; 1993, c. 305, s. 12; 1995, c. 509, s. 25; 2003-337, s. 3; 2018-40, s. 11.1; 2018-145, s. 16; 2022-60, s. 2.(b).)

§ 45-21.22. Procedure upon dissolution of order restraining or enjoining sale, or upon debtor's bankruptcy before completion of sale.
(a) When, before the date fixed for a sale, a judge dissolves an order restraining or enjoining the sale, he may, if the required notice of sale has been given, provide by order that the sale shall be held without additional notice at the time and place originally fixed therefor, or he may, in his discretion, make an order with respect thereto as provided in subsection (b).
(b) When, after the date fixed for a sale, a judge dissolves an order restraining or enjoining the sale, he shall by order fix the time and place for the sale to be held upon notice to be given in such manner and for such length of time as he deems advisable.
(c) When, after the entry of any authorization or order by the clerk of superior court pursuant to G.S. 45-21.16 and before the expiration of the 10-day upset bid period, the foreclosure sale is stayed pursuant to 11 U.S.C. § 105 or 362, and thereafter the stay is lifted, terminated, or dissolved, the trustee or mortgagee shall not be required to comply with the provisions of G.S. 45-21.16, but shall advertise and hold the sale in accordance with the provisions of G.S. 45-21.16A, 45-21.17, and 45-21.17A.
(d) In the event that completion of the foreclosure sale is stayed pursuant to 11 U.S.C. § 105 or 362, before the expiration of the 10-day upset bid period:
(1) The clerk of superior court who received a deposit from an upset bidder shall release any deposits held on behalf of the upset bidder to the upset bidder upon receipt of a certified copy of an order or notice from the bankruptcy court indicating that the debtor has filed a bankruptcy petition; or
(2) The trustee or mortgagee who received a cash deposit from the high bidder at the foreclosure sale, upon notification of the bankruptcy stay, shall release any deposits held on behalf of the high bidder to the high bidder. (1949, c. 720, s. 1; 1993, c. 305, s. 13; 2011-204, s. 1.)

§ 45-21.23. Time of sale.
A sale shall begin at the time designated in the notice of sale or as soon thereafter as practicable, but not later than three hours after the time fixed therefor unless it is delayed by other sales held at the same place. The sale shall be held between the hours of 10:00 A.M. and 4:00 P.M. on any day when the clerk’s office is normally open for transactions. (1949, c. 720, s. 1; 1993, c. 305, s. 14; 2003-337, s. 4.; 2019-243; 2024-29).

§ 45-21.24. Continuance of uncompleted sale.
A sale commenced but not completed within the time allowed by G.S. 45-21.23 shall be continued by the person holding the sale to a designated time between 10:00 o'clock A.M. and 4:00 o'clock P.M. the next following day, other than Sunday or a legal holiday when the courthouse is closed for transactions. In case such continuance becomes necessary, the person holding the sale shall publicly announce the time to which the sale is continued. (1949, c. 720, s. 1; 1993, c. 305, s. 15; 2003-337, s. 5.)

§ 45-21.25. Repealed by Session Laws 1967, c. 562, s. 2.

§ 45-21.25A. Bids placed remotely.
(a) The person exercising the power of sale of real property, or that person's agent, may accept remote bids from bidders not physically present at the place of sale, as designated pursuant to G.S. 45-21.4. All bids accepted at the sale must be clearly announced to all participating bidders, whether physically present or not.
(b) Prior to accepting a remote bid, the person exercising the power of sale of real property, or that person's agent, shall collect all funds required to be paid by the winning bidder in accordance with G.S. 45-21.10.
(c) Any charges incurred by the person exercising the power of sale of real property, or that person's agent, in connection with remote bidding authorized under this section shall not be chargeable to the mortgagor or otherwise recoverable as costs and expenses of the foreclosure. (2024-29.)

§ 45-21.26. Preliminary report of sale of real property.
(a) The person exercising a power of sale of real property, shall, within five days after the date of the sale, file a report thereof with the clerk of the superior court of the county in which the sale was had.
(b) The report shall be signed by the person authorized to hold the sale, or by his agent or attorney, and shall show -
(1) The authority under which the person making the sale acted;
(2) The name of the mortgagor or grantor;
(3) The name of the mortgagee or trustee;
(4) The date, time and place of the sale;
(5) A reference to the book and page in the office of the register of deeds, where the instrument is recorded or, if not recorded, a description of the property sold, sufficient to identify it, and, if sold in parts, a description of each part so sold;
(6) The name or names of the person or persons to whom the property was sold;
(7) The price at which the property, or each part thereof, was sold, and that such price was the highest bid therefor;
(8) The name of the person making the report; and
(9) The date of the report. (1949, c. 720, s. 1; 1951, c. 252, s. 2.)

§ 45-21.27. Upset bid on real property; compliance bonds.
(a) An upset bid is an advanced, increased, or raised bid whereby any person offers to purchase real property theretofore sold, for an amount exceeding the reported sale price or last upset bid by a minimum of five percent (5%) thereof, but in any event with a minimum increase of seven hundred fifty dollars ($750.00). Subject to the provisions of subsection (b) of this section, an upset bid shall be made by delivering to the clerk of superior court, with whom the report of sale or last notice of upset bid was filed, a deposit in cash or by certified check or cashier's check satisfactory to the clerk in an amount greater than or equal to five percent (5%)

of the amount of the upset bid but in no event less than seven hundred fifty dollars ($750.00). The deposit required by this section shall be filed with the clerk of the superior court, with whom the report of the sale or the last notice of upset bid was filed by the close of normal business hours on the tenth day after the filing of the report of the sale or the last notice of upset bid, and if the tenth day shall fall upon a Sunday or legal holiday when the courthouse is closed for transactions, or upon a day in which the office of the clerk is not open for the regular dispatch of its business, the deposit may be made and the notice of upset bid filed on the day following when said office is open for the regular dispatch of its business. Subject to the provisions of G.S. 45-21.30, there shall be no resales; rather, there may be successive upset bids each of which shall be followed by a period of 10 days for a further upset bid. When an upset bid is not filed following a sale, resale, or prior upset bid within the time specified, the rights of the parties to the sale or resale become fixed.

(b) The clerk of the superior court may require an upset bidder or the highest bidder at a resale held pursuant to G.S. 45-21.30 also to deposit with the clerk a cash bond, or, in lieu thereof at the option of the bidder, a surety bond, approved by the clerk. The compliance bond shall be in such amount as the clerk deems adequate, but in no case greater than the amount of the bid of the person being required to furnish the bond, less the amount of any required deposit. The compliance bond shall be payable to the State of North Carolina for the use of the parties in interest and shall be conditioned on the principal obligor's compliance with the bid.

(c), (d) Repealed by Session Laws 1993, c. 305, s. 16.

(e) At the same time that an upset bid on real property is submitted to the court as provided for in subsection (a) above, together with a compliance bond if one is required, the upset bidder shall simultaneously file with the clerk a notice of upset bid. The notice of upset bid shall:

(1) State the name, address, and telephone number of the upset bidder;
(2) Specify the amount of the upset bid;
(3) Provide that the sale shall remain open for a period of 10 days after the date on which the notice of upset bid is filed for the filing of additional upset bids as permitted by law; and
(4) Be signed by the upset bidder or the attorney or the agent of the upset bidder.

(e1) When an upset bid is made as provided in this section, the clerk shall notify the trustee or mortgagee who shall thereafter mail a written notice of upset bid by first-class mail to the last known address of the last prior bidder and the current record owner(s) of the property.

(f) When an upset bid is made as provided in this section, the last prior bidder, regardless of how the bid was made, shall be released from any further obligation on account of the bid and any deposit or bond provided by him shall be released.

(g) Any person offering to purchase real property by upset bid as permitted in this Article shall be subject to and bound by the terms of the original notice of sale except as modified by court order or the provisions of this Article.

(h) The clerk of superior court shall make all such orders as may be just and necessary to safeguard the interests of all parties, and shall have the authority to fix and determine all necessary procedural details with respect to upset bids in all instances in which this Article fails to make definite provisions as to that procedure. (1949, c. 720, s. 1; 1963, c. 377; 1967, c. 979, s. 3; 1993, c. 305, s. 16; 2003-337, s. 6.)

§ 45-21.28: Repealed by Session Laws 1993, c. 305, s. 17.

§ 45-21.29. Orders for possession.

(a) through (j) Repealed by Session Laws 1993, c. 305, s. 18.

(k) Orders for possession of real property sold pursuant to this Article, in favor of the purchaser and against any party or parties in possession at the time of application therefor, may

be issued by the clerk of the superior court of the county in which the property is sold if all of the following apply:

(1) The property has been sold in the exercise of the power of sale contained in any mortgage, deed of trust, leasehold mortgage, leasehold deed of trust, or a power of sale authorized by any other statutory provisions.

(2) Repealed by Session Laws 1993, c. 305, s. 18.

(2a) The provisions of this Article have been complied with.

(3) The sale has been consummated, and the purchase price has been paid.

(4) The purchaser has acquired title to and is entitled to possession of the real property sold.

(5) Ten days' notice has been given to the party or parties who remain in possession at the time application is made, or, in the case of residential property containing 15 or more rental units, 30 days' notice has been given to the party or parties who remain in possession at the time the application is made.

(5a) Repealed, Session Law 2019-243.

(6) Application is made by petition to the clerk by the mortgagee, the trustee, the purchaser of the property, or any authorized representative of the mortgagee, trustee, or purchaser of the property.

(l) An order for possession issued pursuant to G.S. 45-21.29(k) shall be directed to the sheriff and shall authorize the sheriff to remove all occupants and their personal property from the premises and to put the purchaser in possession, and shall be executed in accordance with the procedure for executing a writ or order for possession in a summary ejectment proceeding under G.S. 42-36.2. The purchaser shall have the same rights and remedies in connection with the execution of an order for possession and the disposition of personal property following execution as are provided to a landlord under North Carolina law, including Chapters 42 and 44A of the General Statutes.

(m) When the real property sold is situated in more than one county, the provisions of subsection (l) of this section shall be complied with in each county in which any part of the property is situated. (1949, c. 720, s. 1; 1951, c. 252, s. 3; 1965, c. 299; 1967, c. 979, s. 3; 1975, c. 492, ss. 7-9; 1987, c. 627, s. 3; 1993, c. 305, s. 18; 2007-353, s. 4; 2015-178, s. 2(a); 2019-53; 2019-243).

§ 45-21.29A. No necessity for confirmation of sale.

No confirmation of sales or resales of real property made pursuant to this Article shall be required. If an upset bid is not filed following a sale, resale, or prior upset bid within the period specified in this Article, the rights of the parties to the sale or resale become fixed. (1967, c. 979, s. 3; 1993, c. 305, s. 19.)

§ 45-21.30. Failure of bidder to make cash deposit or to comply with bid; resale.

(a) If the terms of a sale of real property require the highest bidder to make a cash deposit at the sale, and he fails to make such required deposit, the person holding the sale shall at the same time and place again offer the property for sale.

(b) Repealed by Session Laws 1967, c. 562, s. 2.

(c) When the highest bidder at a sale or resale or any upset bidder fails to comply with his bid upon tender to him of a deed for the real property or after a bona fide attempt to tender such a deed, the clerk of superior court may, upon motion, enter an order authorizing a resale of the real property. The procedure for such resale shall be the same in every respect as is provided by this Article in the case of an original sale of real property except that the provisions of G.S. 45-21.16 are not applicable to the resale.

(d) A defaulting bidder at any sale or resale or any defaulting upset bidder is liable on his bid, and in case a resale is had because of such default, he shall remain liable to the extent that

the final sale price is less than his bid plus all the costs of the resale. Any deposit or compliance bond made by the defaulting bidder shall secure payment of the amount, if any, for which the defaulting bidder remains liable under this section.

(e) Nothing in this section deprives any person of any other remedy against the defaulting bidder. (1949, c. 720, s. 1; 1967, c. 562, s. 2; 1975, c. 492, s. 10; 1977, c. 359, s, 15; 1993, c. 305, s. 20.)

§ 45-21.31. Disposition of proceeds of sale; payment of surplus to clerk.

(a) The proceeds of any sale shall be applied by the person making the sale, in the following order, to the payment of -

(1) Costs and expenses of the sale, including the trustee's commission, if any, and a reasonable auctioneer's fee if such expense has been incurred, and reasonable counsel fees for an attorney serving as a trustee if allowed pursuant to subsection (a1) of this section;

(2) Taxes due and unpaid on the property sold, as provided by G.S. 105-385, unless the notice of sale provided that the property be sold subject to taxes thereon and the property was so sold;

(3) Special assessments, or any installments thereof, against the property sold, which are due and unpaid, as provided by G.S. 105-385, unless the notice of sale provided that the property be sold subject to special assessments thereon and the property was so sold;

(4) The obligation secured by the mortgage, deed of trust or conditional sale contract.

(a1) The clerk of the superior court of the county where the sale was had may exercise discretion to allow reasonable counsel fees to an attorney serving as a trustee (in addition to the compensation allowed to the attorney as a trustee) where the attorney, on behalf of the trustee, renders professional services as an attorney that are different from the services normally performed by a trustee and of a type which would reasonably justify the retention of legal counsel by a trustee who is not licensed to practice law. Counsel fees are presumed reasonable if in compliance with G.S. 6-21.2(1) and (2). Nothing in this section, however, shall preclude the clerk of superior court from deeming a higher fee reasonable.

(b) Any surplus remaining after the application of the proceeds of the sale as set out in subsection (a) shall be paid to the person or persons entitled thereto, if the person who made the sale knows who is entitled thereto. Otherwise, the surplus shall be paid to the clerk of the superior court of the county where the sale was had -

(1) In all cases when the owner of the property sold is dead and there is no qualified and acting personal representative of his estate, and

(2) In all cases when he is unable to locate the persons entitled thereto, and

(3) In all cases when the mortgagee, trustee or vendor is, for any cause, in doubt as to who is entitled to such surplus money, and

(4) In all cases when adverse claims thereto are asserted.

(c) Such payment to the clerk discharges the mortgagee, trustee or vendor from liability to the extent of the amount so paid.

(d) The clerk shall receive such money from the mortgagee, trustee or vendor and shall execute a receipt therefor.

~~(e) The clerk is liable on his official bond for the safekeeping of money so received until it is paid to the party or parties entitled thereto, or until it is paid out under the order of a court of competent jurisdiction.~~ *(Subsection (e) repealed by Session Law 2024-33).* (1949, c. 720, s. 1; 1951, c. 252, s. 1; 1967, c. 562, s. 2; 1981, c. 682, s. 10; 2013-104, s. 1.)

§ 45-21.32. Special proceeding to determine ownership of surplus.

(a) A special proceeding may be instituted before the clerk of the superior court by any person claiming any money, or part thereof, paid into the clerk's office under G.S. 45-21.31, to determine who is entitled thereto.
(b) All other persons who have filed with the clerk notice of their claim to the money or any part thereof, or who, as far as the petitioner or petitioners know, assert any claim to the money or any part thereof, shall be made defendants in the proceeding.
(c) If any answer is filed raising issues of fact as to the ownership of the money, the proceeding shall be transferred to the civil issue docket of the superior court for trial. When a proceeding is so transferred, the clerk may require any party to the proceeding who asserts a claim to the fund by petition or answer to furnish a bond for costs in the amount of two hundred dollars ($200.00) or otherwise comply with the provisions of G.S. 1-109.
(d) The court may, in its discretion, allow a reasonable attorney's fee for any attorney appearing in behalf of the party or parties who prevail, to be paid out of the funds in controversy, and shall tax all costs against the losing party or parties who asserted a claim to the fund by petition or answer. (1949, c. 720, s. 1.)

§ 45-21.33. Final report of sale of real property.
(a) A person who holds a sale of real property pursuant to a power of sale shall file with the clerk of the superior court of the county where the sale is held a final report and account of his receipts and disbursements within 30 days after the receipt of the proceeds of such sale. Such report shall show whether the property was sold as a whole or in parts and whether all of the property was sold. The report shall also show whether all or only a part of the obligation was satisfied with respect to which the power of sale of property was exercised.
(b) The clerk shall audit the account and record it.
(c) The person who holds the sale shall also file with the clerk -
(1) A copy of the notices of sale and resale, if any, which were posted, and
(2) A copy of the notices of sale and resale, if any, which were published in a newspaper, together with an affidavit of publication thereof, if the notices were so published;
(3) Proof as required by the clerk, which may be by affidavit, that notices of hearing, sale and resale were served upon all parties entitled thereto under G.S. 45-21.16, 45-21.17, 45-21.17A, and 45-21.30. In the absence of an affidavit to the contrary filed with the clerk, an affidavit by the person holding the sale that the notice of sale was posted in the area designated by the clerk of superior court for posting public notices in the county or counties in which the property is situated 20 days prior to the sale shall be proof of compliance with the requirements of G.S. 45-21.17(1)a.
(d) The clerk's fee for auditing and recording the final account is a part of the expenses of the sale, and the person holding the sale shall pay the clerk's fee as part of such expenses. (1949, c. 720, s. 1; 1975, c. 492, s. 11; 1983, c. 799; 1993, c. 305, s. 21; 1995, c. 509, s. 26.)

§ 45-21.33A. Effect of foreclosure on preexisting tenancy.
Repealed, Session Law 2019-53.

Article 2B.
Injunctions; Deficiency Judgments.

§ 45-21.34. Enjoining mortgage sales on equitable grounds.
Any owner of real estate, or other person, firm or corporation having a legal or equitable interest therein, may apply to a judge of the superior court, prior to the time that the rights of the parties to the sale or resale becoming fixed pursuant to G.S. 45-21.29A to enjoin such sale,

upon the ground that the amount bid or price offered therefor is inadequate and inequitable and will result in irreparable damage to the owner or other interested person, or upon any other legal or equitable ground which the court may deem sufficient: Provided, that the court or judge enjoining such sale, whether by a temporary restraining order or injunction to the hearing, shall, as a condition precedent, require of the plaintiff or applicant such bond or deposit as may be necessary to indemnify and save harmless the mortgagee, trustee, cestui que trust, or other person enjoined and affected thereby against costs, depreciation, interest and other damages, if any, which may result from the granting of such order or injunction: Provided further, that in other respects the procedure shall be as is now prescribed by law in cases of injunction and receivership, with the right of appeal to the appellate division from any such order or injunction. (1933, c. 275, s. 1; 1949, c. 720, s. 3; 1969, c. 44, s. 50; 1993, c. 305, s. 22.)

§ 45-21.35. Ordering resales; receivers for property; tax payments.

The court or judge granting such order or injunction, or before whom the same is returnable, shall have the right before, but not after, the rights of the parties to the sale or resale becoming fixed pursuant to G.S. 45-21.29A to order a resale by the mortgagee, trustee, commissioner, or other person authorized to make the same in such manner and upon such terms as may be just and equitable: Provided, the rights of all parties in interest, or who may be affected thereby, shall be preserved and protected by bond or indemnity in such form and amount as the court may require, and the court or judge may also appoint a receiver of the property or the rents and proceeds thereof, pending any sale or resale, and may make such order for the payment of taxes or other prior lien as may be necessary, subject to the right of appeal to the appellate division in all cases. (1933, c. 275, s. 2; 1949, c. 720, s. 3; 1969, c. 44, s. 51; 1993, c. 305, s. 23.)

§ 45-21.36. Right of mortgagor to prove in deficiency suits reasonable value of property by way of defense.

When any sale of real estate has been made by a mortgagee, trustee, or other person authorized to make the same, at which the mortgagee, payee or other holder of the obligation thereby secured becomes the purchaser and takes title either directly or indirectly, and thereafter such mortgagee, payee or other holder of the secured obligation, as aforesaid, shall sue for and undertake to recover a deficiency judgment against the mortgagor, trustor or other maker of any such obligation whose property has been so purchased, it shall be competent and lawful for the defendant against whom such deficiency judgment is sought to allege and show as matter of defense and offset, but not by way of counterclaim, that the property sold was fairly worth the amount of the debt secured by it at the time and place of sale or that the amount bid was substantially less than its true value, and, upon such showing, to defeat or offset any deficiency judgment against him, either in whole or in part: Provided, this section shall not affect nor apply to the rights of other purchasers or of innocent third parties, nor shall it be held to affect or defeat the negotiability of any note, bond or other obligation secured by such mortgage, deed of trust or other instrument: Provided, further, this section shall not apply to foreclosure sales made pursuant to an order or decree of court nor to any judgment sought or rendered in any foreclosure suit nor to any sale made and confirmed prior to April 18, 1933. (1933, c. 275, s. 3; 1949, c. 720, s. 3; 1967, c. 562, s. 2.)

§ 45-21.37. Certain sections not applicable to tax suits.

Sections 45-21.34 through 45-21.36 do not apply to tax foreclosure suits or tax sales. (1933, c. 275, s. 4; 1949, c. 720, s. 3.)

§ 45-21.38. Deficiency judgments abolished where mortgage represents part of purchase price.

In all sales of real property by mortgagees and/or trustees under powers of sale contained in any mortgage or deed of trust executed after February 6, 1933, or where judgment or decree is given for the foreclosure of any mortgage executed after February 6, 1933, to secure to the seller the payment of the balance of the purchase price of real property, the mortgagee or trustee or holder of the notes secured by such mortgage or deed of trust shall not be entitled to a deficiency judgment on account of such mortgage, deed of trust or obligation secured by the same: Provided, said evidence of indebtedness shows upon the face that it is for balance of purchase money for real estate: Provided, further, that when said note or notes are prepared under the direction and supervision of the seller or sellers, he, it, or they shall cause a provision to be inserted in said note disclosing that it is for purchase money of real estate; in default of which the seller or sellers shall be liable to purchaser for any loss which he might sustain by reason of the failure to insert said provisions as herein set out. (1933, c. 36; 1949, c. 720, s. 3; c. 856; 1961, c. 604; 1967, c. 562, s. 2.)

§ 45-21.38A. Deficiency judgments abolished where mortgage secured by primary residence.

(a) As used in this section, the term "nontraditional mortgage loan" means a loan in which all of the following apply:

(1) The borrower is a natural person.

(2) The debt is incurred by the borrower primarily for personal, family, or household purposes.

(3) The principal amount of the loan does not exceed the conforming loan size for a single family dwelling as established from time to time by Fannie Mae.

(4) The loan is secured by: (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State that is or will be occupied by the borrower as the borrower's principal dwelling; (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling; or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families that, when completed, will be occupied by the borrower as the borrower's principal dwelling.

(5) The terms of the loan: (i) permit the borrower as a matter of right to defer payment of principal or interest; and (ii) allow or provide for the negative amortization of the loan balance.

(b) Except as provided in subdivision (6) of subsection (c) of this section, this section applies only to the following loans:

(1) A loan originated on or after January 1, 2005, that was at the time the loan was originated a rate spread home loan as defined in G.S. 24-1.1F.

(2) A loan secured by the borrower's principal dwelling, which loan was modified after January 1, 2005, and became at the time of such modification and as a consequence of such modification a rate spread home loan.

(3) A loan that was a nontraditional mortgage loan at the time the loan was originated.

(4) A loan secured by the borrower's principal dwelling, which loan was modified and became at the time of such modification and as a consequence of such modification a nontraditional mortgage loan.

(c) This section does not apply to any of the following:

(1) A home equity line of credit as defined in G.S. 45-81(a).

(2) A construction loan as defined in G.S. 24-10(c).

(3) A reverse mortgage as defined in G.S. 53-257 that complies with the provisions of Article 21 of Chapter 53 of the General Statutes.
(4) A bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell his or her current dwelling within 12 months.
(5) A loan made by a natural person who makes no more than one loan in a 12-month period and is not in the business of lending.
(6) A loan secured by a subordinate lien on the borrower's principal dwelling, unless the loan was made contemporaneously with a rate spread home loan or a nontraditional mortgage loan that is subject to the provisions of this section.

(d) In addition to any statutory or common law prohibition against deficiency judgments, the following shall apply to the foreclosure of mortgages and deeds of trust that secure loans subject to this section:

(1) For mortgages and deeds of trust recorded before January 1, 2010, the holder of the obligation secured by the foreclosed mortgage or deed of trust shall not be entitled to any deficiency judgment against the borrower for any balance owing on such obligation if: (i) the real property encumbered by the lien of the mortgage or deed of trust being foreclosed was sold by a mortgagee or trustee under a power of sale contained in the mortgage or deed of trust; and (ii) the real property sold was, at the time the foreclosure proceeding was commenced, occupied by the borrower as the borrower's principal dwelling.
(2) For mortgages and deeds of trust recorded on or after January 1, 2010, the holder of the obligation secured by the foreclosed mortgage or deed of trust shall not be entitled to any deficiency judgment against the borrower for any balance owing on such obligation if: (i) the real property encumbered by the lien of the mortgage or deed of trust being foreclosed was sold as a consequence of a judicial proceeding or by a mortgagee or trustee under a power of sale contained in the mortgage or deed of trust; and (ii) the real property sold was, at the time the judicial or foreclosure proceeding was commenced, occupied by the borrower as the borrower's principal dwelling.

(e) The court may, in its discretion, award to the borrower the reasonable attorneys' fees actually incurred by the borrower in the defense of an action for deficiency if: (i) the borrower prevails in an action brought by the holder of the obligation secured by the foreclosed mortgage or deed of trust to recover a deficiency judgment following the foreclosure of a loan to which this section applies; and (ii) the court rules that the holder of the obligation secured by the foreclosed mortgage or deed of trust is not entitled to a deficiency judgment under the provisions of this section. The amount of attorneys' fees to be awarded shall be determined without regard to the provisions of the loan documents, the provisions of G.S. 6-21.2, or any statutory presumption as to the amount of such attorneys' fees. (2009-441, s. 1.)

§ 45-21.38B: Reserved for future codification purposes.

§ 45-21.38C. Severability.

The provisions of this Article shall be severable, and if any phrase, clause, sentence, or provision is declared to be unconstitutional or otherwise invalid or is preempted by federal law or regulation, the validity of the remainder of this Article shall not be affected thereby. (2009-441, s. 2.)

Article 11.
Emergency Program to Reduce Home Foreclosures.

§ 45-100. Title.
This Article shall be known as the Emergency Program to Reduce Home Foreclosures Act. (2008-226, s. 1; 2010-168, s. 9; 2012-79, s. 2.17(g).)

§ 45-101. Definitions.
The following definitions apply throughout this Article:

(1) Act as a mortgage servicer. - To engage, whether for compensation or gain from another or on its own behalf, in the business of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the mortgage loan, the mortgage servicing loan documents, or servicing contract.

(1a) Repealed by Session Laws 2010-168, s. 1, effective November 1, 2010.

(1b) Home loan. - A loan that has all of the following characteristics:

a. The loan is not (i) an equity line of credit as defined in G.S. 24-9, (ii) a construction loan as defined in G.S. 24-10, (iii) a reverse mortgage transaction, or (iv) a bridge loan with a term of 12 months or less, such as a loan to purchase a new dwelling where the borrower plans to sell a current dwelling within 12 months.

b. The borrower is a natural person.

c. The debt is incurred by the borrower primarily for personal, family, or household purposes.

d. The principal amount of the loan does not exceed the conforming loan size limit for a single-family dwelling as established from time to time by Fannie Mae.

e. The loan is secured by (i) a security interest in a manufactured home, as defined in G.S. 143-145, in the State which is or will be occupied by the borrower as the borrower's principal dwelling, (ii) a mortgage or deed of trust on real property in the State upon which there is located an existing structure designed principally for occupancy of from one to four families that is or will be occupied by the borrower as the borrower's principal dwelling, or (iii) a mortgage or deed of trust on real property in the State upon which there is to be constructed using the loan proceeds a structure or structures designed principally for occupancy of from one to four families which, when completed, will be occupied by the borrower as the borrower's principal dwelling.

f. A purpose of the loan is to (i) purchase the dwelling, (ii) construct, repair, rehabilitate, remodel, or improve the dwelling or the real property on which it is located, (iii) satisfy and replace an existing obligation secured by the same real property, or (iv) consolidate existing consumer debts into a new home loan.

(1c) Housing Finance Agency. - The North Carolina Housing Finance Agency.

(2) Mortgage lender. - A person engaged in the business of making mortgage loans for compensation or gain.

(3) Mortgage servicer. - A person who directly or indirectly acts as a mortgage servicer as that term is defined in subdivision (1) of this section or who otherwise meets the definition of the term "servicer" in the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605(i), with respect to mortgage loans.

(4) (3a) Repealed by Session Laws 2010-168, s. 1, effective November 1, 2010.

(5) Repealed by Session Laws 2010-168, s. 1, effective November 1, 2010. (2008-226, s. 1; 2009-457, s. 3; 2010-168, ss. 1, 9; 2011-288, s. 1; 2012-79, s. 2.17(g).)

§ 45-102. Pre-foreclosure notice for home loans.

At least 45 days prior to the filing of a notice of hearing in a foreclosure proceeding on a primary residence, mortgage servicers of home loans shall send written notice by mail to the last known address of the borrower to inform the borrower of the availability of resources to avoid foreclosure, including:

(1) An itemization of all past due amounts causing the loan to be in default.
(2) An itemization of any other charges that must be paid in order to bring the loan current.
(3) A statement that the borrower may have options available other than foreclosure and that the borrower may discuss available options with the mortgage lender, the mortgage servicer, or a counselor approved by the U.S. Department of Housing and Urban Development.
(4) The address, telephone number, and other contact information for the mortgage lender, the mortgage servicer, or the agent for either of them who is authorized to attempt to work with the borrower to avoid foreclosure.
(5) The name, address, telephone number, and other contact information for one or more HUD-approved counseling agencies operating to assist borrowers in North Carolina to avoid foreclosure.
(6) The address, telephone number, and other contact information for the State Home Foreclosure Prevention Project of the Housing Finance Agency. (2008-226, s. 1; 2010-168, ss. 1, 9; 2012-79, s. 2.17(a), (g).)

§ 45-103. Pre-foreclosure information to be filed with the Administrative Office of the Courts for home loans.

(a) Within three business days of mailing the notice required by G.S. 45-102, the mortgage servicer shall file certain information with the Administrative Office of the Courts. The filing shall be in an electronic format, as designated by the Administrative Office of the Courts, and shall contain the name and address of the borrower, the due date of the last scheduled payment made by the borrower, and the date the notice was mailed to the borrower. The Administrative Office of the Courts shall establish an internal database to track information required by this section. The Housing Finance Agency shall design and develop the State Home Foreclosure Prevention Project database, in consultation with the Administrative Office of the Courts. Only the Administrative Office of the Courts, the Housing Finance Agency, and the clerk of court as provided by G.S. 45-107 shall have access to the database.

(b) As permitted by applicable State and federal law, optional information may be requested from the mortgage servicer to facilitate further review by the State Home Foreclosure Prevention Project described in G.S. 45-104. This optional information shall be used by the State Home Foreclosure Prevention Project to prioritize efforts to reach borrowers most likely to avoid foreclosure and to prevent delay for defaults where foreclosure is unavoidable.

(c) Repealed by Session Laws 2010-168, s. 1, effective November 1, 2010. (2008-226, s. 1; 2010-168, ss. 1, 9; 2011-288, s. 2; 2012-79, s. 2.17(b), (g).)

§ 45-104. State Home Foreclosure Prevention Project and Fund.

(a) The purpose of the State Home Foreclosure Prevention Project is to seek solutions to avoid foreclosures for home loans. The Project may include input from HUD-approved housing counselors, community organizations, the Credit Union Division and other State agencies, mortgage lenders, mortgage servicers, and other partners. The Housing Finance Agency shall administer the Project.

(b) There is established a State Home Foreclosure Prevention Trust Fund to be managed and maintained by the Housing Finance Agency. The funds shall be held separate from any other funds received by the Housing Finance Agency in trust for the operation of the State Home Foreclosure Prevention Project.

(c) Upon the filing of the information required under G.S. 45-103, the mortgage servicer shall pay a fee of seventy-five dollars ($75.00) to the State Home Foreclosure Prevention Trust Fund. The fee shall not be charged more than once for a home loan covered by this act. The Housing Finance Agency shall collect the fee. Upon receipt of the fee the Housing Finance Agency shall deposit the funds into the State Home Foreclosure Prevention Trust Fund. The Housing Finance Agency shall manage the State Home Foreclosure Prevention Trust Fund.

(d) The Housing Finance Agency shall use funds from the State Home Foreclosure Prevention Trust Fund to compensate performance-based service contracts or other contracts and grants necessary to implement the purposes of this act in the following manner:

(1) An amount, not to exceed the greater of two million two hundred thousand dollars ($2,200,000) or thirty percent (30%) of the funds per year, to cover the administrative costs of the operation of the program by the Housing Finance Agency, including managing on behalf of the Administrative Office of the Courts the database identified in G.S. 45-103, expenses associated with informing homeowners of State resources available for foreclosure prevention, expenses associated with connecting homeowners to available resources, and assistance to homeowners and counselors in communicating with mortgage servicers.

(2) An amount, not to exceed the greater of three million four hundred thousand dollars ($3,400,000) or forty percent (40%) per year, to make grants to or reimburse nonprofit housing counseling agencies for providing foreclosure prevention counseling services to homeowners involved in the State Home Foreclosure Prevention Project.

(3) An amount, not to exceed thirty percent (30%) of the total funds collected per year, to make grants to or reimburse nonprofit legal service providers for services rendered on behalf of homeowners in danger of defaulting on a home loan to avoid foreclosure, limited to legal representation such as negotiation of loan modifications or other loan work-out solutions, defending homeowners in foreclosure or representing homeowners in bankruptcy proceedings, and research and counsel to homeowners regarding the status of their home loans.

(4) Any funds remaining in the State Home Foreclosure Prevention Trust Fund as of June 30, 2011, and any funds remaining in the State Home Foreclosure Prevention Trust Fund upon the expiration of each subsequent fiscal year shall be directed to the North Carolina Housing Trust Fund.

(e) The Housing Finance Agency shall have the discretion to enter into an agreement to administer funds under subdivisions (2) and (3) of subsection (d) of this section in a manner that complements or supplements other State and federal programs directed to prevent foreclosures for homeowners participating in the State Home Foreclosure Prevention Project.

(f) As part of the report required under G.S. 122A-16, the Housing Finance Agency shall report on the operation of the program established by this act until the funds are completely disbursed from the State Home Foreclosure Prevention Trust Fund. Information in the report shall be presented in aggregate form and may include the number of clients helped, the effectiveness of the funds in preventing home foreclosure, recommendations for further efforts needed to reduce foreclosures, and provide any other aggregated information the Housing Finance Agency determines is pertinent or that the General Assembly requests. (2008-226, ss. 1, 5; 2010-168, ss. 1, 9; 2011-288, s. 3; 2012-79, s. 2.17(c), (f), (g).; 2023-134.)

§ 45-105. Extension of foreclosure process.

The Housing Finance Agency shall review information provided in the database created by G.S. 45-103 to determine which home loans are appropriate for efforts to avoid foreclosure. If the Housing Finance Agency reasonably believes, based on a full review of the loan information, the mortgage servicer's loss mitigation efforts, the borrower's capacity and interest in staying in the home, and other appropriate factors, that further efforts by the State Home Foreclosure Prevention Project offer a reasonable prospect to avoid foreclosure on primary residences, the Executive Director of the Housing Finance Agency shall have the authority to extend one time under this Article the allowable filing date for any foreclosure proceeding on a primary residence by up to 30 days beyond the earliest filing date established by the pre-foreclosure notice. If the Executive Director of the Housing Finance Agency makes the determination that a loan is subject to this section, the Housing Finance Agency shall notify the borrower, mortgage servicer, and the Administrative Office of the Courts. (2008-226, s. 1; 2010-168, ss. 1, 9; 2011-288, s. 4; 2012-79, s. 2.17(d), (g).)

§ 45-106. Use and privacy of records.

The data provided to the Administrative Office of the Courts pursuant to G.S. 45-103 shall be exclusively for the use and purposes of the State Home Foreclosure Prevention Project developed by the Commissioner of Banks and administered by the Housing Finance Agency in accordance with G.S. 45-104. The information provided to the database is not a public record, except that a mortgage lender and a mortgage servicer shall have access to the information submitted only with regard to its own loans. Provision of information to the Administrative Office of the Courts for use by the State Home Foreclosure Prevention Project shall not be considered a violation of G.S. 53B-8. A mortgage servicer shall be held harmless for any alleged breach of privacy rights of the borrower with respect to the information the mortgage servicer provides in accordance with this Article. (2008-226, s. 1; 2010-168, ss. 1, 9; 2011-288, s. 5; 2012-79, s. 2.17(e), (g).)

§ 45-107. Foreclosure filing.

(a) For the duration of the program authorized by this Article, foreclosure notices filed on home loans on or after November 1, 2010, shall contain a certification by the filing party that the pre-foreclosure notice required by G.S. 45-102 and the pre-foreclosure information required by G.S. 45-103 were provided in accordance with this Article and that the periods of time established by the Article have elapsed.

(b) The clerk of superior court or other judicial officer may have access to the pre-foreclosure database to confirm information provided in subsection (a) of this section. A materially inaccurate statement in the certification shall be cause for dismissal without prejudice of any foreclosure proceeding on a primary residence initiated by the mortgage servicer and for payment by the filing party of costs incurred by the borrower in defending the foreclosure proceeding. (2008-226, s. 1; 2010-168, ss. 1, 9; 2012-79, s. 2.17(g).)