

Article 2C.

Validating Sections; Limitation of Time for Attacking Certain Foreclosures.

§ 45-21.39. Limitation of time for attacking certain foreclosures on ground trustee was agent, etc., of owner of debt.

(a) No action or proceeding shall be brought or defense or counterclaim pleaded later than one year after March 14, 1941, in which a foreclosure sale which occurred prior to January 1, 1941, under a deed of trust conveying real estate as security for a debt is attacked or otherwise questioned upon the ground that the trustee was an officer, director, attorney, agent or employee of the owner of the whole or any part of the debt secured thereby, or upon the ground that the trustee and the owner of the debt or any part thereof have common officers, directors, attorneys, agents or employees.

(b) This section shall not be construed to give or create any cause of action where none existed before March 14, 1941, nor shall the limitation provided in subsection (a) hereof have the effect of barring any cause of action based upon grounds other than those mentioned in said subsection, unless the grounds set out in subsection (a) are an essential part thereof.

(c) This section shall not be construed to enlarge the time in which to bring any action or proceeding or to plead any defense or counterclaim; and the limitation hereby created is in addition to all other limitations now existing. (1941, c. 202; 1949, c. 720, s. 4.)

§ 45-21.40. Real property; validation of deeds made after expiration of statute of limitations where sales made prior thereto.

In all cases where sales of real property have been made under powers of sale contained in mortgages or deeds of trust and such sales have been made within the times which would have been allowed by the statute of limitations for the commencement of actions to foreclose such mortgages or deeds of trust, and the execution and delivery of deeds in consummation of such sales have been delayed until after the expiration of the period which would have been allowed by the statute of limitations for the commencement of actions to foreclose such mortgages or deeds of trust as a result of the filing of raised or increased bids, such deeds in the exercise of the power of sale are hereby validated and are declared to have the same effect as if they had been executed and delivered within the period allowed by the statute of limitations for the commencement of actions to foreclose such mortgages or deeds of trust. (1943, c. 16, s. 2; 1949, c. 720, s. 4.)

§ 45-21.41. Orders signed on days other than first and third Mondays validated; force and effect of deeds.

In all actions for the foreclosure of any mortgage or deed of trust which has heretofore been instituted and prosecuted before the clerk of the superior court of any county in North Carolina, wherein the judgment confirming the sale made by the commissioner appointed in said action, and ordering the said commissioner to execute a deed to the purchaser, was signed by such clerk on a day other than the first or third Monday of a month, such judgment of confirmation shall be and is hereby declared to be valid and of the same force and effect as though signed and docketed on the first or third Monday of any month, and any deed made by any commissioner or commissioners in any such action where the confirmation of sale was made on a day other than a first or third Monday of the month shall be and is hereby declared to have the same force and effect as if the same were executed and delivered pursuant to a judgment of confirmation properly signed and docketed by the clerk of the superior court on a first or third Monday of the month. (1923, c. 53, s. 1; C.S., s. 2593(a); 1949, c. 720, s. 4.)

§ 45-21.42. Validation of deeds where no order or record of confirmation can be found.

In all cases prior to the first day of March, 1974, where sales of property have been made under the power of sale contained in any deed of trust, mortgage or other instrument conveying

property to secure a debt or other obligation, or where such sales have been made pursuant to an order of court in foreclosure proceedings and deeds have been executed by any trustee, mortgagee, commissioner, or person appointed by the court, conveying the property, or security, described therein, and said deed, or other instrument so executed, containing the property described therein, to the highest bidder or purchaser of said sale and such deed, or other instrument, contains recitals to the effect that said sale was reported to the clerk of the superior court, or to the court, and/or such sale was duly confirmed by the clerk of the superior court, or court, then and in that event all such deeds, conveyances, or other instruments, containing such recitals are declared to be lawful, valid and binding upon all parties to the proceedings, or parties named in such deeds of trust, mortgages, or other orders or instruments, and are hereby declared to be effective and valid to pass title for the purpose of transferring title to the purchasers at such sales with the same force and effect as if an order of confirmation had been filed in the office of the clerk of the superior court, or with the court, together with necessary reports and other decrees and to the same effect as if a record had been made in the minutes of the court of such orders, decrees and confirmations, provided that nothing contained in this section shall be construed as applicable to or affecting pending litigation. (1945, c. 984; 1949, c. 720, s. 4; 1957, c. 505; 1979, c. 242.)

§ 45-21.43. Validation of certain foreclosure sales.

In all cases where mortgages or deeds of trust on real estate with power of sale have been foreclosed pursuant to said power by proper advertisement and sale in the county where such real estate is located, notwithstanding the wording of such mortgages or deeds of trust providing for advertisement or sale, or both, in some other county, or at some other particular place in the county in which the real estate is located, which place was in fact designated in the notice of sale, all such sales are hereby fully validated, ratified and confirmed and shall be as effective to pass title to the real estate described therein as fully and to the same extent as if such mortgages or deeds of trust had provided for advertisement and sale in the county where such real estate is actually situate. (1951, c. 220; 1961, c. 537.)

§ 45-21.44. Validation of foreclosure sales when provisions of G.S. 45-21.17(2) not complied with.

In all cases prior to May 1, 1990, where mortgages or deeds of trust on real estate with power of sale have been foreclosed pursuant to said power by proper advertisement except that the date of the last publication was from seven to 20 days preceding the date of sale, all such sales are fully validated, ratified, and confirmed and shall be as effective to pass title to the real estate described therein as fully and to the same extent as if the provisions of G.S. 45-21.17(2) had been fully complied with. (1959, c. 52; 1963, c. 1157; 1971, c. 879, s. 1; 1975, c. 454, s. 2; 1985, c. 689, s. 15; 1989 (Reg. Sess., 1990), c. 1024, s. 11.1.)

§ 45-21.45. Validation of foreclosure sales where notice and hearing not provided.

In all cases where mortgages or deeds of trust on real estate with power of sale have been foreclosed pursuant to said power by proper advertisement and sale, but the mortgagor or grantor under such mortgage or deed of trust did not receive actual notice of such foreclosure or have the opportunity of a hearing prior to such foreclosure, all such sales are hereby fully validated, ratified and confirmed and shall be as effective to pass title to the real estate described therein as fully and to the same extent as if such notice and opportunity for hearing had been given, unless an action to set aside such foreclosure is commenced within one year from June 6, 1975. (1975, c. 492, s. 12.)

§ 45-21.46. Validation of foreclosure sales where posting and publication not complied with.

(a) In all cases of foreclosure of mortgages or deeds of trust secured by real estate pursuant to power of sale which foreclosures were commenced on or subsequent to June 6, 1975, and consummated prior to June 1, 1983, in which foreclosure sales the requirements for posting and publication of notice of sale set forth in G.S. 45-21.17 were complied with but the requirements of the mortgage or deed of trust as to posting and publication of notice of sale were not complied with, are validated, ratified and confirmed and shall be effective to pass title to real estate to the same extent as though all requirements of the mortgage or deed of trust respecting posting and publication of notice of sale were complied with; unless an action to set aside such foreclosure is commenced before January 1, 1984.

(b) All foreclosures of mortgages or deeds of trust secured by real estate pursuant to power of sale, which foreclosures were commenced on or subsequent to June 1, 1983, and consummated prior to April 1, 1985, in which foreclosure sales the requirements for posting and publication of notice of sale set forth in G.S. 45-21.17 were complied with but the requirements of the mortgage or deed of trust as to posting and publication of notice of sale were not complied with, are validated, ratified and confirmed and shall be effective to pass title to real estate to the same extent as though all requirements of the mortgage or deed of trust respecting posting and publication of notice of sale were complied with; unless an action to set aside such foreclosure is commenced in the period beginning January 1, 1984, and ending January 1, 1986. (1983, c. 582, s. 1; c. 738, s. 1; 1985, c. 341.)

§ 45-21.47. Validation of foreclosure sales when trustee is officer of owner of debt.

All sales of real property made prior to January 1, 1991, under a power of sale contained in a mortgage or deed of trust for which the trustee was an officer, director, attorney, agent, or employee of the owner of all or part of the debt secured by the mortgage or deed of trust are validated and have the same effect as if the trustee had not been an officer, director, attorney, agent, or employee of the owner of the debt unless an action to set aside the foreclosure is commenced within one year after January 1, 1991. (1983, c. 582, s. 1; 1985, c. 604; 1987, c. 277, s. 10; 1989, c. 390, s. 10; 1991, c. 489, s. 10.)

§ 45-21.48. Validation of certain foreclosure sales that did not comply with posting requirement.

A sale of real property made on or before July 2, 1985, under a power of sale contained in a mortgage or deed of trust, for which a notice of the sale was not posted at the courthouse door for 20 days immediately preceding the sale, as required by G.S. 45-21.17(1), but was posted at the courthouse door for at least 15 days immediately preceding the sale, is declared to be a valid sale to the same extent as if the notice of the sale had been posted for 20 days; unless an action to set aside the foreclosure sale is not barred by the statute of limitations and is commenced on or before October 1, 1985. (1985, c. 567, s. 2.)

§ 45-21.49. Validation of foreclosure sales when provisions of § 45-21.16A(3) not complied with.

(a) Whenever any real property was sold under a power of sale as provided in Article 2A of Chapter 45, and the notice of sale did not describe the improvements on the property to be sold, as required under G.S. 45-21.16A(3), the sale shall not be invalidated because of such omission.

(b) This section shall apply to all sales completed prior to June 1, 1987. (1987, c. 277, s. 10a.)

BLUE SHEET