

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

SESSION LAW 2005-212  
SENATE BILL 667

AN ACT TO VALIDATE CERTAIN SUBORDINATION AGREEMENTS AND TO  
CLARIFY THE LAW ON THE PRIORITY OF INSTRUMENTS REGISTERED  
IN THE OFFICE OF THE REGISTER OF DEEDS, AS RECOMMENDED BY  
THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 39-6.6 reads as rewritten:

**"§ 39-6.6. Subordination agreements.**

(a) ~~A written commitment or agreement to subordinate or that subordinates an interest in real property signed by a person entitled to priority subordination agreement shall be given effect in accordance with its terms and is not required to state any interest rate, principal amount secured, or other financial terms. For purposes of this section, an "interest in real property" shall include all rights, title, and interest in and to land, buildings, and other improvements of an owner, tenant, subtenant, secured lender, materialman, judgment creditor, lienholder, or other person, whether the interest in real property is evidenced by a deed, easement, lease, sublease, deed of trust, mortgage, assignment of leases and rents, judgment, claim of lien, or any other record, instrument, document, or entry of court.~~

(b) The trustee of a deed of trust shall not be a necessary party to a subordination agreement unless the deed of trust provides otherwise.

(c) For purposes of G.S. 1-47, a commitment or subordination agreement described in subsection (a) of this section is deemed a conveyance of an interest in real property.

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

(e) This section applies to a subordination agreement regardless of when the agreement was signed by the party or parties thereto, except that this section does not apply to an agreement that (i) is the subject of litigation pending on the effective date of this subsection, and (ii) was filed or recorded before October 1, 2003.

(f) In this section:

(1) 'Interest in real property' includes all rights, title, and interest in and to land, buildings, and other improvements of an owner, tenant, subtenant, secured lender, materialman, judgment creditor, lienholder, or other person, whether the interest in real property is evidenced by a deed, easement, lease, sublease, deed of trust, mortgage, assignment of

leases and rents, judgment, claim of lien, or any other record, instrument, document, or entry of court.

- (2) 'Subordination agreement' means a written commitment or agreement to subordinate or that subordinates an interest in real property signed by a person entitled to priority."

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

"(a) No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv) lease of land for more than three years shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor, bargainer or lesser but from the time of registration thereof in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county. Unless otherwise stated either on the ~~recorded~~ registered instrument or on a separate ~~recorded~~ registered instrument duly executed by the party whose priority interest is adversely affected, (i) ~~instruments registered in the public record shall be presumed to~~ office of the register of deeds shall have priority based on the order of ~~recording~~ registration as determined by the time of ~~recording~~ registration, and (ii) if instruments are ~~recorded~~ registered simultaneously, then ~~the order of recording the instruments~~ shall be presumed as follows, in order of priority: to have priority as determined by:

- (1) The earliest document number set forth on the ~~recorded~~ registered instrument.
- (2) The sequential book and page number set forth on the ~~document~~ registered instrument if no document number is set forth on the ~~recorded~~ registered instrument.

The ~~presumptions~~ presumption created by this subsection ~~are~~ is rebuttable."

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

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

- (1) The earliest document number set forth on the ~~recorded~~ registered instrument.

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

The ~~presumptions~~ presumption created by this subsection ~~are~~ is rebuttable."

**SECTION 4.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11<sup>th</sup> day of July, 2005.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ James B. Black  
Speaker of the House of Representatives

s/ Michael F. Easley  
Governor

Approved 1:59 p.m. this 20<sup>th</sup> day of July, 2005