

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

SESSION LAW 2009-176  
HOUSE BILL 794

AN ACT TO AMEND THE LAW GOVERNING SUBSTITUTION OF TRUSTEES IN  
MORTGAGES AND DEEDS OF TRUST.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 45-10 reads as rewritten:

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

(a) In addition to the rights and remedies now provided by law, the holders or owners of a majority in amount of the indebtedness, notes, bonds, or other instruments evidencing a promise or promises to pay money and secured by mortgages, deeds of trust, or other instruments conveying real property, or creating a lien thereon, may, in their discretion, substitute a trustee whether the trustee then named in the instrument is the original or a substituted trustee, by the execution of a written document properly recorded pursuant to Chapter 47 of the North Carolina General Statutes.

(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.

**SECTION 2.** This act is effective when it becomes law and applies to all instruments recorded before, on, or after that date.

In the General Assembly read three times and ratified this the 16<sup>th</sup> day of June, 2009.

s/ Marc Basnight  
President Pro Tempore of the Senate

s/ Joe Hackney  
Speaker of the House of Representatives

s/ Beverly E. Perdue



Governor

Approved 11:30 a.m. this 26<sup>th</sup> day of June, 2009