

§ 45-45.3. Trustee in a deed of trust.

- (a) The following definitions apply in this section:
- (1) Secured creditor. – The holder, owner, or assignee of the obligation secured by a deed of trust.
 - (2) Trustee. – The trustee or substitute trustee then serving as such under the terms of a deed of trust.
- (b) Unless the deed of trust provides otherwise, all of the following may be done without the knowledge, consent, or joinder of the trustee:
- (1) Pursuant to G.S. 45-36.23, an obligation may be declared by the owner and holder of the obligation to be no longer secured by the deed of trust.
 - (2) Property may be released from the lien of a deed of trust by the secured creditor.
 - (3) The lien of a deed of trust may be released or subordinated by the secured creditor.
 - (4) The terms of a deed of trust may be modified by the secured creditor and the then record owner of the property encumbered by the lien of the deed of trust.
 - (5) The deed of trust may be satisfied of record by the secured creditor.
- (c) Except in matters relating to the foreclosure of the deed of trust or the exercise of a power of sale under the terms of the deed of trust, the trustee is neither a necessary nor a proper party to any civil action or proceeding involving (i) title to the real property encumbered by the lien of the deed of trust or (ii) the priority of the lien of the deed of trust. Examples of civil actions or proceedings in which the trustee is neither a necessary nor a proper party include, but are not limited to, civil actions or proceedings relating to:
- (1) Condemnation.
 - (2) Bankruptcy.
 - (3) The establishment or correction of title to real property, including, but not limited to, actions to quiet title, reform land records, or resolve boundary line disputes.
 - (4) Fraudulent conveyances.
 - (5) The creation or enforcement of an attachment or judgment lien.
 - (6) The foreclosure of a lien other than the lien of the deed of trust, regardless of whether the lien is superior or subordinate to the lien of the deed of trust, including, but not limited to, the foreclosure of mortgages, other deeds of trust, tax liens, and assessment liens.
 - (7) The establishment, perfection, or enforcement of a mechanic's or materialman's lien.
 - (8) The creation or enforcement of a constructive trust, resulting trust, or equitable lien relating to the property.
 - (9) The partition of real property.
 - (10) The interpretation or enforceability of a will, trust, or estate.
 - (11) A subrogation claim or other equitable claim or defense involving the priority or enforceability of a deed of trust.
 - (12) Determination or enforcement of rights and obligations involving easements or restrictive covenants.
- (d) If a trustee is improperly joined as a party to an action or proceeding when this section provides that the trustee is neither a necessary nor a proper party to that action or proceeding, then:

- (1) Upon motion duly made by any party to the action or proceeding, the trustee shall be dismissed from the action or proceeding;
 - (2) Regardless of whether the trustee makes an appearance in the action or proceeding, no entry of a default or default judgment shall be entered against the trustee; and
 - (3) If the trustee makes an appearance in the action or proceeding, each person who improperly joined the trustee as a party to the action or proceeding shall be jointly and severally liable to the trustee for all the expenses and costs incurred by the trustee in the defense of the action or proceeding or in obtaining the trustee's dismissal from the action or proceeding, including the reasonable attorneys' fees actually incurred by the trustee.
- (e) Except as expressly provided in this section, this section is not in derogation of case law and statutory provisions that vest legal title to property conveyed by a deed of trust in the trustee named therein. (2011-312, s. 15.)