

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 794
Committee Substitute Favorable 4/15/09

Short Title: Substitution of Trustees.

(Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW GOVERNING SUBSTITUTION OF TRUSTEES IN
3 MORTGAGES AND DEEDS OF TRUST.

4 The General Assembly of North Carolina enacts:

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

6 "**§ 45-10. Substitution of trustees in mortgages and deeds of trust.**

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

14 (b) If the name of a trustee is omitted from an instrument that appears on its face to be
15 intended to be a deed of trust, the instrument shall be deemed to be a deed of trust, the owner or
16 owners executing the deed of trust and granting an interest in the real property shall be deemed
17 to be the constructive trustee or trustees of record for the secured party or parties named in the
18 instrument, and a substitution of trustee may be undertaken under subsection (a) of this section.
19 However, no such constructive trustee shall have the authority or power to take any of the
20 following actions without the consent and joinder of the holders or owners of a majority in
21 amount of the obligations secured by the deed of trust: (i) effect a substitution of trustee, (ii)
22 effect the satisfaction of the deed of trust, (iii) release any property or any interest therein from
23 the lien of the deed of trust, or (iv) modify or amend the terms of the deed of trust. Any
24 substitute trustee named under the authority of subsection (a) of this section shall succeed to all
25 the rights, titles, authority, and duties of the trustee under the terms of the deed of trust without
26 regard to the limitations imposed by this subsection on the authority of a constructive trustee."

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

