

**AN ACT TO AMEND THE LAWS GOVERNING SUBSTITUTION OF
TRUSTEES IN MORTGAGES AND DEEDS OF TRUST**

G.S. § 45 – 10

Proposed by the North Carolina Bar Association Real Property Section

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Executive Summary.

Increasingly frequently deeds of trust are recorded without inserting a trustee. At common law, a trust will not fail solely because of failure to name the trustee. However, the Uniform Trust Code specifically does not apply to deeds of trust. So this revision would clarify that the deed of trust should not fail solely because of the missing trustee and clearly authorize a holder to include a trustee as a “substitution” even if no trustee was originally named in any situation in which the beneficiary-holder could otherwise substitute a trustee.

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2009

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

The General Assembly of North Carolina enacts:

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 appearing 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 a 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).

Effective date: This act shall be effective for all instruments recorded before, on or after this act becomes law.