

*Date*

*Name*

*Address*

*City, State, Zip*

Re: *(Identify pending proceeding)*

Dear \_\_\_\_\_:

I understand that I have been named as a party to the civil action or proceeding identified above because I am the trustee or substitute trustee now serving as such under the terms of the following deed of trust:

Original Grantor(s): \_\_\_\_\_

Original Secured Party(ies): \_\_\_\_\_

Recording Data: The Deed of Trust is recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ (or as Document No. \_\_\_\_\_) in the Office of the Register of Deeds for \_\_\_\_\_ County, North Carolina.

You may be unaware of § 45-45.3 of the North Carolina General Statutes, which became effective October 1, 2011. As defined in the statute, the term “trustee” includes the “trustee or substitute then serving as such under the terms of a deed of trust.”

According to the provisions of G.S. 45-45.3, 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 under a deed of trust 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. By way of example, G.S. 45-45.3 provides that the trustee is neither a necessary nor a proper party to civil actions or proceedings relating to: (i) condemnation; (ii) bankruptcy; (iii) the establishment or correction of title to real property (including, for example, actions to quiet title, reform land records, or resolve boundary line disputes); (iv) fraudulent conveyances; (v) the creation or enforcement of an attachment or judgment lien; (vi) the foreclosure of a lien other than the lien of the deed of trust in question, 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); (vii) the establishment, perfection or enforcement of a mechanic’s or materialman’s lien; (viii) the creation or enforcement of a

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constructive trust, resulting trust, or equitable lien relating to the property; (ix) the partition of the property; (x) the interpretation or enforceability of a will, trust, or estate; (xi) a subrogation claim or other equitable claim or defense involving the priority or enforceability of a deed of trust; and (xii) determination or enforcement of rights and obligations involving easements or restrictive covenants.

Subsection (d) of G.S. 45-45.3 describes what happens when, as in this instance, a trustee or substitute trustee is improperly joined as a party to an action or proceeding when the statute provides that the trustee is neither a necessary nor a proper party to that action or proceeding:

- If a motion to dismiss the trustee from the proceeding is filed by any party to the proceeding, the trustee *must* be dismissed.
- Regardless of whether the trustee makes an appearance in the proceeding, no entry of default or default judgment may be entered against the trustee.
- If the trustee makes an appearance in the proceeding, each person who improperly joined the trustee as a party becomes jointly and severally liable to the trustee for all of the expenses and costs incurred by the trustee in the defense of the proceeding or in obtaining the trustee's dismissal from the proceeding, including reasonable attorneys' fees actually incurred by the trustee.

I believe that I should not have been joined in this litigation in my capacity as a trustee or substitute trustee. Accordingly, I respectfully request that you voluntarily dismiss me from these proceedings and send a copy of the filed voluntary dismissal to me within \_\_\_\_\_ days of the date of this letter.

Thank you in advance for your prompt attention to this matter.

Yours very truly,

*Signature of Trustee Here*

*(Typed Named of Trustee)*