

How to Properly Close Equity Lines



CANCELLED

Points to Remember

- Equity lines of credit loans are governed by NCGS Chapter 45 Article 9.
- A security instrument (deed of trust) for an equity line of credit **must show on its face** that it is securing an Article 9 line of credit.
- Proper satisfaction of an equity line of credit deed of trust requires an additional action beyond paying the current balance due and requesting cancellation. **Failure** to comply with the statutory requirements in this regard allows the lender and borrower to maintain the lien position for future advances.
- The critical additional step which must be taken is the request and direction to **terminate** the line of credit.
- Pursuant to the 2011 amendments to Article 9, the **closing attorney** is now a person authorized to request termination (whereas under the prior provisions and practice only the borrower could do so).

The failure to properly block and close equity lines of credit secured by real estate has caused millions of dollars in claims for title insurers and malpractice carriers and continues to be a significant area of loss each year.

All of these claims can be easily prevented if certain procedures are incorporated in the closing process and strictly observed.

What You Can Do

1. Establish procedures to identify any liens found in the title examination which are Article 9 deeds of trust – remember that they must state that on the face of the instrument. You should consider a method to actually “flag” these liens so that different employees who are processing the transaction are all aware of the need for additional action.
2. Create and utilize a standard termination or “block” letter for each equity line deed of trust which has been flagged. A format for such a letter is set out in the statute at NCGS 45-82.2.
3. Incorporate these actions in a closing checklist for your office staff.
4. Create a procedure to follow up with any equity line lender who was paid off in the closing to insure that they proceed with cancellation. Many claims have arisen because the bank’s internal procedures will continue to invite the borrower to utilize the line of credit despite your efforts.
5. Additional tools available at: www.invtitle.com/resources/nc | Tools | Equity Line Resources.

Investors Title
INNOVATIVE BY INSTINCT

VIA FEDERAL EXPRESS

**REQUEST TO TERMINATE AN EQUITY LINE OF CREDIT
NCGS §45-82.2**

Re: Account/Loan Number:
Borrowers:
Property Address:

Dear Sir or Madam:

This is a request to terminate an equity line of credit submitted pursuant to NCGS §45-82.2. The Original Grantors are _____ and the Original Secured Party(ies) are _____. The Deed of Trust securing this loan, and to be cancelled, is recorded in Book _____, Page _____, _____ County Registry.

[Optional Sentence: Enclosed is a trust account check in the amount of \$_____.] I request and direct that you (i) terminate the borrower's right to obtain advances under the borrower's equity line of credit; (ii) apply any sums enclosed and/or subsequently paid by or on behalf of the borrower in connection with the equity line of credit to the satisfaction of the equity line of credit and other sums secured by the related security instrument; and (iii) when the balance of all outstanding sums secured by the related security instrument becomes zero, satisfy the security instrument identified above as a matter of public record pursuant to NCGS §45-37.

North Carolina General Statutes §45-36.9 requires that you must submit a satisfaction instrument to the _____ County Register of Deeds in a form which complies with Article 4 of Chapter 45 of the North Carolina General Statutes within thirty (30) days of receipt of full payment. North Carolina General Statutes §45-36.9 provides a penalty if you do not submit the satisfaction instrument within the thirty (30) day time period.

If any check enclosed is not sufficient to satisfy your loan in full, please treat the payment as a payment of all accrued interest and a prepayment of the principal and notify the undersigned immediately.

I certify that I am:

Borrower(s):

_____ Signature

_____ Signature

OR:

Attorney for the Borrower(s)

_____ Signature

NOTICE TO BORROWER
EQUITY LINE TERMINATION

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We were responsible for disbursing funds in connection with the sale of the property or a new loan secured by the property. A requirement of the sale or new loan transaction was that the property be conveyed or encumbered free and clear of the existing mortgage or deed of trust that secures your equity line of credit.

As permitted by North Carolina law, we are sending the (enclosed / attached / following / foregoing) request to your lender asking that your equity line of credit be terminated. Our reason for making this request is to ensure that the mortgage or deed of trust on the property will be cancelled once your equity line of credit is paid in full.

When your lender receives our request, your lender will terminate and close your equity line of credit, and you will no longer be able to obtain credit advances. However, termination of your equity line of credit will not release you from liability for the account. All sums your lender subsequently receives in connection with your equity line of credit (including any sums we send to your lender in connection with the closing of the sale of the property or the new loan) will be applied by your lender to the satisfaction of your account. When the balance of your account becomes zero, your lender will be required to cancel the mortgage or deed of trust as a matter of public record.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

Sincerely,

(Name of attorney)

Date

Article 9

Instruments to Secure Equity Lines of Credit

§ 45-81. Definitions

The following definitions apply in this Article:

- (1) Authorized person. - Any borrower; the legal representative of any borrower; the attorney for any borrower; a title insurance company authorized pursuant to Article 26 of Chapter 58 of the General Statutes to issue title insurance policies in the State of North Carolina, but only when the company is acting in connection with a title insurance policy issued or to be issued with respect to property then encumbered by an existing equity line security instrument; or an attorney licensed to practice law in the State of North Carolina or a bank, savings and loan association, savings bank, or credit union, but only when (i) the attorney, bank, savings and loan association, savings bank, or credit union is or was responsible for the disbursement of funds in connection with the sale of, or a new loan secured by, property then encumbered by an existing equity line security instrument and (ii) a requirement of the sale or new loan transaction is or was that the property be conveyed or encumbered free and clear of the lien of the existing equity line security instrument.
- (2) Borrower. - A person primarily liable for payment or performance of an equity line of credit.
- (3) Equity line of credit. - An agreement in writing between a lender and a borrower for an extension of credit pursuant to which (i) at any time within a specified period not to exceed 30 years the borrower may request and the lender is obligated to provide advances up to an agreed aggregate limit; (ii) any repayments of principal by the borrower within the specified period will reduce the amount of advances counted against the aggregate limit; and (iii) the borrower's obligation to the lender is secured by an equity line security instrument.
- (4) Equity line security instrument. - An agreement, however denominated, that (i) creates or provides for an interest in real property to secure payment or performance of an equity line of credit, whether or not it also creates or provides for a lien on personal property; (ii) shows on its face the maximum principal amount which may be secured at any one time; and (iii) shows on its face that it secures an equity line of credit governed by the provisions of this Article. The term "equity line security instrument" includes a deed of trust and a mortgage.
- (5) Lender is obligated. - The lender is contractually bound to provide advances. The contract must set forth any events of default by the borrower, or other events not within the lender's control, which may relieve the lender from his obligation, and must state whether or not the lender has reserved the right to cancel or terminate the obligation.
- (6) Notice regarding future advances. - A written notice submitted under G.S. 45-82.3 to a lender that prevents certain advances made pursuant to an equity line of credit from being secured by the related equity line security instrument.
- (7) Owner. - Any person owning a present or future interest in the real property encumbered by an equity line security instrument, but does not mean the trustee in a deed of trust or the owner or holder

of a mortgage, deed of trust, mechanic's or materialman's lien, judgment lien, or any other lien on, or security interest in, the real property.

(8) Person. - An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) Qualified lien holder. - A person who has a mortgage or deed of trust on property already encumbered by an existing equity line security instrument, where that person's mortgage or deed of trust was recorded after the existing equity line security instrument and it appears from warranties or otherwise that the person's mortgage or deed of trust was not intended to be subordinate to the existing equity line security instrument. The term does not include a trustee under a deed of trust.

(10) Request to terminate an equity line of credit; and termination request. - A written request submitted under G.S. 45-82.2 to a lender to terminate an equity line of credit. Each of the following shall be deemed a termination request: (i) a notification given pursuant to G.S. 45-36.9(a) requesting the lender to terminate the equity line of credit, (ii) a notification given pursuant to G.S. 45-36.9(a) containing a statement sufficient to terminate the effectiveness of the provision for future advances in the equity line security instrument, and (iii) a written request made by or on behalf of a borrower to a lender pursuant to G.S. 45-37 to satisfy a related equity line security instrument as a matter of public record. (1985, c. 207, s. 2; 1995, c. 237, s. 1; 2011-312, s. 20.)

§ 45-82. Priority of equity line security instrument

An equity line security instrument shall, from the time and date of its registration, have the same priority to the extent of all advances secured by it as if the advances had been made at the time of the registration of the equity line security instrument, notwithstanding the fact that from time to time during the term of the equity line of credit no balance is outstanding. Interest that accrues on the equity line of credit and all payments made, sums advanced, and expenses incurred by the lender (i) for insurance, taxes, and assessments, (ii) to protect the lender's interest under the equity line security instrument, or (iii) to preserve and protect the value or condition of the property encumbered by the equity line security instrument shall be secured by the equity line security instrument and shall have the same priority as if they had been accrued, paid, advanced, and incurred at the time the equity line security instrument was registered. The accrued interest, payments, advances, and expenses shall not be considered in computing the principal amount that is secured by the equity line security instrument at any one time. (1985, c. 207, s. 2; 2011-312, s. 21.)

§ 45-82.1. Extension of period for advances

(a) The period for advances agreed to pursuant to G.S. 45-81(3) may be extended by written agreement of the lender and borrower executed and registered prior to expiration or termination of the equity line of credit or the borrower's obligation to repay any outstanding indebtedness. Any extended period shall not exceed 30 years from the end of the preceding period for advances.

(b) If a lender and borrower extend the period for advances by registering a certificate as described in subsection (c) of this section, advances that are made after the period for advances provided in the original recorded equity line security instrument or any previously recorded extension shall have priority from a date not later than the date of registration of the certificate described in subsection (c) of this section.

(c) The priority provided in subsection (b) of this section shall be accorded only if the lender, the borrower, and, if different than the borrower, the then owners of the real property encumbered by the equity line security instrument execute a certificate evidencing the extension and register the certificate in the office of the register of deeds where the equity line security instrument is registered. The failure of any owner to execute the certificate shall affect only that owner's interest in the property, and executions by other owners shall have full effect to the extent of their interests in the property.

(d) No particular phrasing is required for a certificate of extension under this section. The following form, when properly completed, is sufficient to satisfy the requirements of subsection (c) of this section:

"Certificate of Extension of Period for Advances Under Equity Line of Credit

(G.S. 45-82.1)

_____ is now the lender and secured creditor in the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

The borrower(s) is/are the following: _____.

The current owner(s) of the property described in the security instrument is/are:

_____.

The parties have agreed to extend to _____ (insert date) the period within which the borrower may request advances as set forth in G.S. 45-82.1.

Date: _____

Signature of secured creditor

Signature of borrower(s)

Signature of property owner(s) (if different)

[Acknowledgment before officer authorized to take acknowledgments]". (1995, c. 237, s. 2; 2011-312, s. 22.)

§ 45-82.2. Request to terminate an equity line of credit

(a) Upon receipt of a request from an authorized person to terminate an equity line of credit, the lender shall (i) terminate the borrower's right to obtain advances under the borrower's equity line of credit; (ii) apply all sums subsequently paid by or on behalf of the borrower in connection with the equity line of credit to the satisfaction of the equity line of credit and other sums secured by the related equity line security instrument; and (iii) when the balance of all outstanding sums secured by the related equity line security instrument becomes zero, satisfy the related equity line security instrument as a matter of public record pursuant to G.S. 45-37. A request to terminate an equity line of credit shall be conclusively deemed to have been submitted by or on behalf of a borrower if it is submitted by an authorized person.

(b) No particular phrasing is required for a request to terminate an equity line of credit. The following form, when properly completed, is sufficient to serve as a request to terminate an equity line of credit:

"REQUEST TO TERMINATE AN EQUITY LINE OF CREDIT

(G.S. 45-82.2)

To: (name of lender)

This is a request to terminate an equity line of credit submitted pursuant to G.S. 45-82.2. For purposes of this request:

1. The borrower(s) is/are: (identify one or more of the borrowers)
2. The account number of the equity line of credit is: (specify the account number of the equity line of credit, if known by the person submitting the request)
3. The street address of the property is: (provide the street address of the property encumbered by the security instrument identified in 4.)
4. The equity line of credit is secured by the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

I request and direct that you (i) terminate the borrower's right to obtain advances under the borrower's equity line of credit; (ii) apply all sums subsequently paid by or on behalf of the borrower in connection with the equity line of credit to the satisfaction of the equity line of credit and other sums secured by the related security instrument; and (iii) when the balance of all outstanding sums secured by the related security instrument becomes zero, satisfy the security instrument identified above as a matter of public record pursuant to G.S. 45-37.

I certify that I am:

- The borrower (or one of the borrowers, if there is more than one).
- The legal representative of a borrower.
- The attorney for a borrower.
- A title insurance company that satisfies the requirements of G.S. 45-81(1).
- An attorney licensed to practice law in the State of North Carolina that satisfies the requirements of G.S. 45-81(1).
- A bank, savings and loan association, savings bank, or credit union that satisfies the requirements of G.S. 45-81(1).

Date: _____

Signature of person submitting the request"

(c) If the person who gives a lender a request to terminate an equity line of credit is a title insurance company described in G.S. 45-81(1), that person shall give a copy of the request to the borrower accompanied by a notice that provides substantially as follows:

"NOTICE TO BORROWER

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We are a title insurance company that has issued or has agreed to issue a title insurance policy on that property. As permitted by North Carolina law, we are sending the

(enclosed/attached/following/foregoing) request to your lender asking that your equity line of credit be terminated. Our reason for making this request is:

(specify reason it is appropriate for the title insurance company to request the termination of the borrower's equity line of credit)

When your lender receives our request, your lender will terminate and close your equity line of credit, and you will no longer be able to obtain credit advances. However, termination of your equity line of credit will not release you from liability for the account. All sums your lender subsequently receives in connection with your equity line of credit (including any sums we may send to your lender) will be applied by your lender to the satisfaction of your account. When the balance of your account becomes zero, your lender will be required to cancel the mortgage or deed of trust as a matter of public record.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of title insurance company)"

(d) If the person who gives a lender a request to terminate an equity line of credit is an attorney, bank, savings and loan association, savings bank, or credit union described in G.S. 45-81(1), that person shall give a copy of the request to the borrower accompanied by a notice that provides substantially as follows:

"NOTICE TO BORROWER

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

We were responsible for disbursing funds in connection with the sale of the property or a new loan secured by the property. A requirement of the sale or new loan transaction was that the property be conveyed or encumbered free and clear of the existing mortgage or deed of trust that secures your equity line of credit.

As permitted by North Carolina law, we are sending the (enclosed/attached/following/foregoing) request to your lender asking that your equity line of credit be terminated. Our reason for making this request is to ensure that the mortgage or deed of trust on the property will be cancelled once your equity line of credit is paid in full.

When your lender receives our request, your lender will terminate and close your equity line of credit, and you will no longer be able to obtain credit advances. However, termination of your equity line of credit will not release you from liability for the account. All sums your lender subsequently receives in connection with your equity line of credit (including any sums we send to your lender in connection with the closing of the sale of the property or the new loan) will be applied by your lender to the satisfaction of your account. When the balance of your account becomes zero, your lender will be required to cancel the mortgage or deed of trust as a matter of public record.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of attorney, bank, savings and loan association, savings bank, or credit union)" (2011-312, s. 23.)

§ 45-82.3. Notice regarding future advances

- (a) A notice regarding future advances may be submitted to a lender by an authorized person, an owner of the property, or a qualified lien holder.
- (b) Except as provided in subsection (c) of this section, an advance made by a lender to a borrower pursuant to an equity line of credit will not be secured by the related equity line security instrument if the advance occurs after the lender receives and has had not less than one complete business day to act on a notice regarding future advances.
- (c) Notwithstanding a lender's receipt of a notice regarding future advances, the following shall be secured by the equity line security instrument and shall have the same priority as if they had been owing, accrued, paid, advanced, or incurred at the time the equity line security instrument was registered:
 - (1) Sums owing to the lender under the equity line of credit at the time the lender receives the notice regarding future advances (including accrued interest), all interest that thereafter accrues on the equity line of credit, and all payments made, sums advanced, and expenses incurred by the lender before or after the lender receives the notice regarding future advances (i) for insurance, taxes, and assessments, (ii) to protect the lender's interest under the equity line security instrument, or (iii) to preserve and protect the value or condition of the real property encumbered by the equity line security instrument.
 - (2) Any advance made by the lender to a borrower pursuant to an equity line of credit that occurs within one complete business day after the lender receives the notice regarding future advances.
 - (3) Any advance made by the lender to a borrower pursuant to an equity line of credit that occurs more than one complete business day after the lender receives the notice regarding future advances, but only if the advance was initiated or approved before the lender received the notice regarding future advances.
- (d) Receipt by a lender of a notice regarding future advances shall be conclusively deemed to be an action by the borrower adversely affecting the lender's security for the equity line of credit. Upon receipt of a notice regarding future advances, the lender may terminate the borrower's right and ability to obtain additional advances under the equity line of credit.
- (e) No particular phrasing is required for a notice regarding future advances. The following form, when properly completed, is sufficient to serve as a notice regarding future advances:

"NOTICE REGARDING FUTURE ADVANCES

(G.S. 45-82.3)

To: (name of lender)

This is a notice regarding future advances submitted pursuant to G.S. 45-82.3. For purposes of this notice:

1. The borrower(s) is/are: (identify borrower(s))
2. The account number of the equity line of credit is: (specify the account number of the equity line of credit, if known by the person submitting the notice)
3. The street address of the property is: (provide the street address of the property encumbered by the security instrument identified in 4.)
4. The equity line of credit is secured by the security instrument identified as follows:

Type of Security Instrument: (identify type of security instrument, such as deed of trust or mortgage)

Original Grantor(s): (identify original grantor(s), trustor(s), or mortgagor(s))

Original Secured Party(ies): (identify the original beneficiary(ies), mortgagee(s), or secured party(ies) in the security instrument)

Recording Data: The security instrument is recorded in Book ____ at Page ____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

Except as provided in G.S. 45-82.3(c), subsequent advances made by you under the equity line of credit will not be secured by the security instrument identified above.

I certify that I am:

- The borrower (or one of the borrowers, if there is more than one).
- The legal representative of a borrower.
- The attorney for a borrower.
- An owner of the property encumbered by the security instrument identified above.
- A title insurance company that satisfies the requirements of G.S. 45-81(1).

- An attorney licensed to practice law in the State of North Carolina that satisfies the requirements of G.S. 45-81(1).
- A bank, savings and loan association, savings bank, or credit union that satisfies the requirements of G.S. 45-81(1).
- A qualified lien holder as defined in G.S. 45-81(9).

Date: _____

Signature of person submitting the request"

(f) If the person who gives a lender a notice regarding future advances is (i) a title insurance company described in G.S. 45-81(1); (ii) an attorney, bank, savings and loan association, savings bank, or credit union described in G.S. 45-81(1), (iii) an owner as defined in G.S. 45-81(7), other than an owner who is also a borrower, or (iv) a qualified lien holder described in G.S. 45-81(9), then that person shall give a copy of the notice regarding future advances to the borrower accompanied by a notice that provides substantially as follows:

"NOTICE TO BORROWER

You have an equity line of credit with (name of lender) secured by a mortgage or deed of trust on real property located at (address of property).

As permitted by North Carolina law, we are sending the (enclosed/attached/following/foregoing) Notice Regarding Future Advances to your lender. Subject to certain exceptions, the notice prevents any new credit advances you obtain under your equity line of credit from being secured by the mortgage or deed of trust that currently secures its repayment. Our reason for giving your lender the notice is to limit the amount secured by the mortgage or deed of trust that secures your equity line of credit and to prevent that amount from increasing.

When your lender receives our notice, your lender may elect to terminate your right and ability to obtain additional advances under your equity line of credit. However, termination of your right and ability to obtain additional advances will not release you from liability for the account. You should contact your lender to determine whether you will be able to obtain additional credit advances from your lender.

If you have questions about this notice or our action, please contact (name of contact person or department) by calling us at (phone number) or writing to us at (mailing address).

(Name of insurance company, attorney, bank, savings and loan association, savings bank, credit union, owner, or qualified lien holder)". (2011-312, s. 24.)

§ 45-82.4. Prepayment penalty

Except as provided in G.S. 24-9(c), no prepayment penalty may be charged with respect to an equity line of credit. (2011-312, s. 25.)

§ 45-83. Future advances statute shall not apply

The provisions of Article 7 of this Chapter shall not apply to an equity line of credit or the equity line security instrument securing it, if the equity line security instrument shows on its face that it secures an equity line of credit governed by the provisions of this Article. (1985, c. 207, s. 2; 2011-312, s. 26.)

§ 45-84. Article not exclusive.

Except as otherwise provided in G.S. 45-83, the provisions of this Article are not exclusive. Nothing in this Article shall invalidate or overrule any rule of validity or priority applicable to any mortgage, deed of trust, or other security instrument failing to comply with the provisions of this Article. (1985, c. 207, s. 2; 2011-312, s. 27.)

§ 45-85. Reserved for future codification purposes

§ 45-86. Reserved for future codification purposes

§ 45-87. Reserved for future codification purposes

§ 45-88. Reserved for future codification purposes

§ 45-89. Reserved for future codification purposes