

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1023

Short Title: Provide Mortgage Cancellation.

(Public)

Sponsors: Representatives Rhyne; and Hall.

Referred to: Judiciary.

April 6, 1989

A BILL TO BE ENTITLED

AN ACT TO MAKE IT CLEAR THAT THE REGISTER OF DEEDS MAY CANCEL  
MORTGAGES UPON RECEIPT OF A NOTICE OF SATISFACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-37(a) reads as rewritten:

"(a) Subject to the provisions of G.S. 45-73 relating to secured instruments which secure future advances, any deed of trust or mortgage or other instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be discharged and released of record in the following manner:

(1) By acknowledgment of the satisfaction of the provisions of such deed of trust, mortgage or other instrument in the presence of the register of deeds by

- a. The trustee,
- b. The mortgagee,
- c. The legal representative of a trustee or mortgagee, or
- d. A duly authorized agent or attorney of any of the above.

Upon acknowledgment of satisfaction, the register of deeds shall forthwith make upon the margin of the record of such deed of trust, mortgage or other instrument an entry of such acknowledgment of satisfaction which shall be signed by the trustee, mortgagee, legal representative, agent or attorney and witnessed by the register of deeds, who shall also affix his name thereto.

(2) By exhibition of any deed of trust, mortgage or other instrument accompanied with the bond, note, or other instrument thereby secured

1 to the register of deeds, with the endorsement of payment and  
2 satisfaction appearing thereon by

- 3 a. The obligee,
- 4 b. The mortgagee,
- 5 c. The trustee,
- 6 d. An assignee of the obligee, mortgagee, or trustee, or
- 7 e. Any chartered banking institution, or savings and loan  
8 association, national or state, or credit union, qualified to do  
9 business in and having an office in the State of North Carolina,  
10 when so endorsed in the name of the institution by an officer  
11 thereof.

12 Upon exhibition of the instruments, the register of deeds shall cancel  
13 the mortgage, deed of trust or other instrument by entry of satisfaction  
14 on the margin of the record. The person so claiming satisfaction,  
15 performance or discharge of the debt or other obligation may retain  
16 possession of all of the instruments exhibited. The exhibition of the  
17 mortgage, deed of trust or other instrument alone to the register of  
18 deeds, with endorsement of payment, satisfaction, performance or  
19 discharge, shall be sufficient if the mortgage, deed of trust or other  
20 instrument itself sets forth the obligation secured or the performance of  
21 any other obligation and does not call for or recite any note, bond or  
22 other instrument secured by it. The register of deeds may require the  
23 person exhibiting the instruments for cancellation to furnish him an  
24 acknowledgment of cancellation of the mortgage, deed of trust or other  
25 instrument for the purpose of showing upon whose request and  
26 exhibition the mortgage, deed of trust or other instrument was  
27 canceled.

28 (3) By exhibiting to the register of deeds by:

- 29 a. The grantor,
- 30 b. The mortgagor, or
- 31 c. An agent, attorney or successor in title of the grantor or  
32 mortgagor of any mortgage, deed of trust or other  
33 instrument intended to secure the payment of money or  
34 the performance of any other obligation, together with  
35 the bond, note or other instrument secured thereby, or by  
36 exhibition of the mortgage, deed of trust or other  
37 instrument alone if such instrument itself sets forth the  
38 obligation secured or other obligation to be performed  
39 and does not call for or recite any note, bond or other  
40 instrument secured by it, if at the time of exhibition, all  
41 such instruments are more than 10 years old counting  
42 from the maturity date of the last obligation secured. If  
43 the instrument or instruments so exhibited have an  
44 endorsement of partial payment, satisfaction,

1 performance or discharge within the said period of 10  
2 years, the period of 10 years shall be counted from the  
3 date of the most recent endorsement.

4 The register of deeds shall make proper entry of cancellation  
5 and satisfaction of said instrument on the margin of the record  
6 where the same is recorded, whether there be any such entries  
7 on the original papers or not.

- 8 (4) By exhibition to the register of deeds of any deed of trust given  
9 to secure the bearer or holder of any negotiable instruments  
10 transferable by delivery, together with all the evidences of  
11 indebtedness secured thereby, marked paid and satisfied in full  
12 and signed by the bearer or holder thereof.

13 Upon exhibition of the deed of trust, and the evidences of  
14 indebtedness properly marked, the register of deeds shall cancel  
15 such deed of trust by entry of satisfaction upon the margin of  
16 the record, which entry shall be valid and binding upon all  
17 persons, if no person rightfully entitled to the deed of trust or  
18 evidences of indebtedness has previously notified the register of  
19 deeds in writing of the loss or theft of the instrument or  
20 evidences of indebtedness and has caused the register of deeds  
21 to record the notice or loss or theft on the margin of the record  
22 of the deed of trust.

23 Upon receipt of written notice of loss or theft of the deed of  
24 trust or evidences of indebtedness the register of deeds shall  
25 make on the record of the deed of trust concerned a marginal  
26 entry in writing thereof, with the date of receipt of the notice.  
27 The deed of trust shall not be canceled after such marginal entry  
28 until the ownership of said instrument shall have been lawfully  
29 determined. Nothing in this subdivision (4) shall be construed  
30 to impair the negotiability of any instrument otherwise properly  
31 negotiable, nor to impair the rights of any innocent purchaser  
32 for value thereof.

33 Every entry of acknowledgment of satisfaction or of  
34 satisfaction made or witnessed by the register of deeds as  
35 provided in subdivision (a)(1) shall operate and have the same  
36 effect to release and discharge all the interest of such trustee,  
37 mortgagee or representative in such deed or mortgage as if a  
38 deed of release or reconveyance thereof had been duly executed  
39 and recorded.

- 40 (5) By exhibition to the register of deeds of a notice of satisfaction  
41 of a deed of ~~trust~~ trust, mortgage, or other instrument which has  
42 been acknowledged by the trustee or the mortgagee before an  
43 officer authorized to take acknowledgments. The notice of  
44 satisfaction shall be substantially in the form set out in G.S. 47-

46.1. The notice of satisfaction shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied.

Upon exhibition of the notice of satisfaction and payment of the appropriate fee provided in G.S. 161-10, the register of deeds shall record the notice of satisfaction and cancel the deed of ~~trust~~ trust, mortgage, or other instrument by entry of satisfaction on the margin of the record or as provided in G.S. 45-37.2."

Sec. 2. G.S. 47-46.1 reads as rewritten:

"§ 47-46.1. Notice of satisfaction of deed of ~~trust~~ trust, mortgage, or other instrument.

The form of a notice of satisfaction of a deed of ~~trust~~ trust, mortgage, or other instrument pursuant to G.S. 45-37(a)(5) shall be substantially as follows:

North Carolina, \_\_\_\_\_ County.

I, \_\_\_\_\_ (name of ~~trustee~~ trustee or mortgagee), certify that the debt or other obligation in the amount of \_\_\_\_\_ secured by the (deed of trust) (mortgage) (other instrument) executed by \_\_\_\_\_ (~~grantor~~), (grantor) (mortgagor), \_\_\_\_\_ (~~trustee~~), (trustee) (leave blank if mortgage), and \_\_\_\_\_ (~~beneficiary~~), (beneficiary) (mortgagee), and recorded in \_\_\_\_\_ County at \_\_\_\_\_ (book and page) was satisfied on \_\_\_\_\_ (date of satisfaction).

\_\_\_\_\_  
(Signature of ~~trustee~~ trustee or mortgagee)

I, \_\_\_\_\_ (name of officer taking acknowledgment), \_\_\_\_\_ (official title of person taking acknowledgment) certify that \_\_\_\_\_ (name of ~~trustee~~ trustee or mortgagee) personally came before me this day and acknowledged the satisfaction of the provisions of the above-referenced (deed of trust) (mortgage) (other instrument).

Witness my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_ (month), \_\_\_\_\_ (year).

\_\_\_\_\_  
(Signature of officer taking acknowledgment)

My commission expires \_\_\_\_\_ (Date of expiration of official's commission).

North Carolina, \_\_\_\_\_ County.

The foregoing acknowledgment of \_\_\_\_\_ (name of officer that took acknowledgment), \_\_\_\_\_ (official title of person that took acknowledgment), is certified to be correct.

1       This \_\_\_\_\_(day) of \_\_\_\_\_(month), \_\_\_\_\_(year).

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\_\_\_\_\_”  
(Signature of Register of Deeds).”

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Sec. 3. This act is effective retroactively to June 18, 1987, and applies to all applications for notice of satisfaction of a deed of trust, mortgage, or other instrument made on or after that date.