

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 459

Short Title: Deed of Trust Cancellation.

(Public)

Sponsors: Representatives Sutton; Neely and Buchanan.

Referred to: Financial Institutions.

March 9, 1995

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE CANCELLATION OF A NOTE OR OTHER INDEBTEDNESS SECURED BY A DEED OF TRUST OR MORTGAGE BY EXECUTION OF A CERTIFICATE OF SATISFACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S 45-37(a)(5) reads as rewritten:

"(5) By exhibition to the register of deeds of a notice of satisfaction of a deed of trust, mortgage, or other instrument which has been acknowledged by the trustee or the mortgagee before an officer authorized to take acknowledgments. The notice of 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, satisfaction, the register of deeds shall record the notice of satisfaction and cancel the deed of trust, mortgage, or other instrument by recording a record of satisfaction as described in G.S. 45-37.2, may make an entry of satisfaction on the margin of

1 ~~the record~~, as required by G.S. 45-37.2. No fee shall be charged for  
2 recording any documents or certifying any acknowledgments pursuant  
3 to this subdivision. The register of deeds shall not be required to verify  
4 or make inquiry concerning the authority of the person executing the  
5 notice of satisfaction to do so."

6 Sec. 2. G.S. 45-37(a) is amended by adding a new subdivision to read:

7 "(6) By exhibition to the register of deeds of a certificate of satisfaction  
8 of a deed of trust, mortgage, or other instrument that has been  
9 acknowledged before an officer authorized to take acknowledgments  
10 by the owner of the note, bond, or other evidence of indebtedness  
11 secured by the deed of trust or mortgage. The certificate of  
12 satisfaction shall be accompanied by the note, bond, or other  
13 evidence of indebtedness, if available, with an endorsement of  
14 payment and satisfaction by the owner of the note, bond, or other  
15 evidence of indebtedness. If such evidence of indebtedness cannot  
16 be produced, an affidavit, hereafter referred to as an 'affidavit of lost  
17 note', signed by the owner of the note, bond, or other evidence of  
18 indebtedness, shall be delivered to the register of deeds in lieu of the  
19 evidence of indebtedness certifying that the debt has been satisfied  
20 and stating: (i) the date of satisfaction; (ii) that the note, bond, or  
21 other evidence of indebtedness cannot be found; and (iii) that the  
22 person signing the affidavit is the current owner of the note, bond, or  
23 other evidence of indebtedness. The certificate of satisfaction shall  
24 be substantially in the form set out in G.S. 47-46.2 and shall recite  
25 the names of all parties to the original instrument, the amount of the  
26 obligation secured, the date of satisfaction of the obligation, and a  
27 reference by book and page number to the record of the instrument  
28 satisfied. The affidavit of lost note, if necessary, shall be  
29 substantially in the form set out in G.S. 47-46.3.

30 Upon exhibition of the certificate of satisfaction and accompanying  
31 evidence of indebtedness endorsed paid and satisfied, or upon exhibition  
32 of an affidavit of lost note, the register of deeds shall record either the  
33 certificate of satisfaction and the accompanying evidence of  
34 indebtedness or the affidavit of lost note, and shall cancel the deed of  
35 trust, mortgage, or other instrument as required by G.S. 45-37.2. No fee  
36 shall be charged for recording any documents or certifying any  
37 acknowledgments pursuant to this subdivision. The register of deeds  
38 shall not be required to verify or make inquiry concerning the authority  
39 of the person executing the certificate of satisfaction to do so."

40 Sec. 3. Chapter 47 of the General Statutes is amended by adding a new section  
41 to read:

42 "§ 47-46.2. Certificate of satisfaction of deed of trust, mortgage, or other  
43 instrument.

The form of a notice of satisfaction of a deed of trust, mortgage, or other instrument pursuant to G.S. 45-37(a)(6) shall be substantially as follows:

**CERTIFICATE OF SATISFACTION**

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

I, \_\_\_\_\_ (name of owner of the note or other indebtedness secured by the deed of trust or mortgage), certify that I am the owner of the indebtedness secured by the hereafter described deed of trust or mortgage and that the debt or other obligation in the amount of \_\_\_\_\_ secured by the (deed of trust) (mortgage) (other instrument) executed by \_\_\_\_\_ (grantor) (mortgagor), \_\_\_\_\_ (trustee) (leave blank if mortgage), and \_\_\_\_\_ (beneficiary) (mortgagee), and recorded in \_\_\_\_\_ County at \_\_\_\_\_ (book and page) was satisfied on \_\_\_\_\_ (date of satisfaction). I request that this certificate of satisfaction be recorded and the above-referenced security instrument be canceled of record.

\_\_\_\_\_  
(Signature of owner of note)

[Acknowledgment before officer authorized to take acknowledgments]."

Sec. 4. Chapter 47 of the General Statutes is amended by adding a new section to read:

**"§ 47-46.3. Affidavit of lost note.**

The form of an affidavit of lost note, if required pursuant to G.S. 45-37(a)(6), shall be substantially as follows:

**AFFIDAVIT OF LOST NOTE**

[Name of affiant] personally appeared before me in \_\_\_\_\_ County, State of \_\_\_\_\_, and having been duly sworn (or affirmed) made the following affidavit:

1. The affiant is the owner of the note or other indebtedness secured by the deed of trust, mortgage, or other instrument executed by \_\_\_\_\_ (grantor, mortgagor), \_\_\_\_\_ (trustee), and \_\_\_\_\_ (beneficiary, mortgagee), and recorded in \_\_\_\_\_ County at \_\_\_\_\_ (book and page); and

2. The note or other indebtedness has been lost and after the exercise of due diligence cannot be located.

3. The affiant certifies that all indebtedness secured by the deed of trust, mortgage, or other instrument has been satisfied and the affiant is responsible for cancellation of the same.

\_\_\_\_\_  
(Signature of affiant)

1 Sworn to (or affirmed) and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_  
2 \_\_\_\_\_, 19\_\_\_\_.

3  
4 [Signature and seal of notary public or other official authorized to administer oaths]."

5 Sec. 5. G.S. 45-37(a)(2) reads as rewritten:

6 "(2) By exhibition of any deed of trust, mortgage or other instrument  
7 accompanied with the bond, note, or other instrument thereby  
8 secured to the register of deeds, with the endorsement of payment  
9 and satisfaction appearing ~~thereon~~ thereon, dated on or before  
10 December 31, 1995, and made by:

- 11 a. The obligee,  
12 b. The mortgagee,  
13 c. The trustee,  
14 d. An assignee of the obligee, mortgagee, or trustee, or  
15 e. Any chartered banking institution, or savings and loan  
16 association, national or state, or credit union, qualified to do  
17 business in and having an office in the State of North Carolina,  
18 when so endorsed in the name of the institution by an officer  
19 thereof. If the endorsement of payment and satisfaction is  
20 undated, no cancellation may be made pursuant to this  
21 subdivision.

22 Upon exhibition of the instruments, the register of deeds shall cancel  
23 the mortgage, deed of trust or other instrument by recording a record of  
24 satisfaction as described in G.S. 45-37.2, and may make an entry of  
25 satisfaction on the margin of the record. The person so claiming  
26 satisfaction, performance or discharge of the debt or other obligation  
27 may retain possession of all of the instruments exhibited. The  
28 exhibition of the mortgage, deed of trust or other instrument alone to the  
29 register of deeds, with endorsement of payment, satisfaction,  
30 performance or discharge, shall be sufficient if the mortgage, deed of  
31 trust or other instrument itself sets forth the obligation secured or the  
32 performance of any other obligation and does not call for or recite any  
33 note, bond or other instrument secured by it. The register of deeds may  
34 require the person exhibiting the instruments for cancellation to furnish  
35 him an acknowledgment of cancellation of the mortgage, deed of trust  
36 or other instrument for the purpose of showing upon whose request and  
37 exhibition the mortgage, deed of trust or other instrument was  
38 canceled."

39 Sec. 6. G.S. 45-37.2 reads as rewritten:

40 "**§ 45-37.2. Recording satisfactions of deeds of trust and mortgages.**

41 (a) When a notice of satisfaction is recorded pursuant to G.S. 45-37(a)(5) or a  
42 certificate of satisfaction is recorded pursuant to G.S. 45-37(a)(6), the register of deeds

1 shall make an entry of satisfaction on the notice or certificate and record and index the  
2 instrument.

3 (b) When a deed of trust, mortgage, or other instrument is satisfied by a method  
4 other than by means of a notice of satisfaction or certificate of satisfaction, the ~~The~~  
5 register of deeds shall record ~~the~~ a record of satisfaction and ~~cancel the record of every deed~~  
6 of trust or mortgage satisfied by recording a record of satisfaction which shall consist ~~consisting~~  
7 of either a separate instrument, instrument or that part all or a portion of the original deed  
8 of trust or mortgage rerecorded, and shall make the appropriate entry of satisfaction as  
9 provided in G.S. 45-37 on each record of satisfaction. A separate instrument or original  
10 deed of trust or mortgage rerecorded pursuant to this subsection shall contain ~~reciting the~~  
11 (i) names of all parties to the original instrument, (ii) the amount of the obligation  
12 secured, (iii) the date of satisfaction of the obligation, ~~the appropriate entry of satisfaction as~~  
13 provided in G.S. 45-37, (iv) a reference by book and page number to the record of the  
14 instrument satisfied, and (v) the date of recording the notice of satisfaction.

15 (c) Whenever it is practical to do so, the register of deeds may make a marginal  
16 notation of satisfaction in addition to making the recordation required by this section."

17 Sec. 7. Section 5 of this act becomes effective January 1, 1996. The  
18 remainder of this act becomes effective July 1, 1995.