

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 604
SENATE BILL 125

AN ACT TO ALLOW CANCELLATION BY EXHIBITION OF A NOTE SECURED
BY A DEED OF TRUST OR MORTGAGE REGARDLESS OF THE DATE OF
ENDORSEMENT.

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.

The register of deeds is not required to verify or make inquiry concerning the authority of the person acknowledging the satisfaction to do so. Upon acknowledgment of satisfaction, the register of deeds shall record a record of satisfaction as described in G.S. 45-37.2, and may 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 to the register of deeds, with the endorsement of payment and satisfaction appearing ~~thereon, dated on or before December 31, 1995,~~ thereon and made by:
 - a. The obligee,
 - b. The mortgagee,
 - c. The trustee,
 - d. An assignee of the obligee, mortgagee, or trustee, or

- e. Any chartered banking institution, or savings and loan association, national or state, or credit union, qualified to do business in and having an office in the State of North Carolina, when so endorsed in the name of the institution by an officer thereof. ~~If the endorsement of payment and satisfaction is undated, no cancellation may be made pursuant to this subdivision.~~

The register of deeds is not required to verify or make inquiry concerning the authority of the person making the endorsement of payment and satisfaction to do so. Upon exhibition of the instruments, the register of deeds shall cancel the mortgage, deed of trust or other instrument by recording a record of satisfaction as described in G.S. 45-37.2, and may make an entry of satisfaction on the margin of the record. The person so claiming satisfaction, performance or discharge of the debt or other obligation may retain possession of all of the instruments exhibited. The exhibition of the mortgage, deed of trust or other instrument alone to the register of deeds, with endorsement of payment, satisfaction, performance or discharge, shall be sufficient if the mortgage, deed of trust or other instrument itself sets forth the obligation secured or the performance of any other obligation and does not call for or recite any note, bond or other instrument secured by it. ~~The register of deeds may require the person exhibiting the instruments for cancellation to furnish him an acknowledgment of cancellation of the mortgage, deed of trust or other instrument for the purpose of showing upon whose request and exhibition the mortgage, deed of trust or other instrument was canceled.~~

- (3) By exhibiting to the register of deeds by:
 - a. The grantor,
 - b. The mortgagor, or
 - c. An agent, attorney or successor in title of the grantor or mortgagor

of any mortgage, deed of trust or other instrument intended to secure the payment of money or the performance of any other obligation, together with the bond, note or other instrument secured thereby, or by exhibition of the mortgage, deed of trust or other instrument alone if such instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond or other instrument secured by it, if at the time of exhibition, all such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments so exhibited have an endorsement of partial payment,

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

The register of deeds shall cancel the mortgage, deed of trust, or other instrument by recording a record of satisfaction as described in G.S. 45-37.2, and may make proper entry of cancellation and satisfaction of said instrument on the margin of the record where the same is recorded, whether there be any such entries on the original papers or not.

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

Upon exhibition of the deed of trust, and the evidences of indebtedness properly marked, the register of deeds shall cancel such deed of trust by recording a record of satisfaction as described in G.S. 45-37.2, and may make an entry of satisfaction upon the margin of the record, which record, or entry if made, shall be valid and binding upon all persons, if no person rightfully entitled to the deed of trust or evidences of indebtedness has previously notified the register of deeds in writing of the loss or theft of the instrument or evidences of indebtedness and has caused the register of deeds to record the notice or loss or theft in a separate document, as required by G.S. 161-14.1.

Upon receipt of written notice of loss or theft of the deed of trust or evidences of indebtedness the register of deeds shall record a record of satisfaction, as described in G.S. 45-37.2, which in this case shall consist of a rerecording of the record of the deed of trust containing the marginal entry and may make on the record of the deed of trust concerned a marginal entry in writing thereof, with the date of receipt of the notice. The deed of trust shall not be canceled after such recording of a record of satisfaction or marginal entry until the ownership of said instrument shall have been lawfully determined. Nothing in this subdivision (4) shall be construed to impair the negotiability of any instrument otherwise properly negotiable, nor to impair the rights of any innocent purchaser for value thereof.

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

- (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. The notice of satisfaction shall be accompanied by the deed of trust, mortgage, or other instrument, or a copy of the instrument, for verification and indexing purposes, which shall not be recorded with the notice.

Upon exhibition of the notice of satisfaction, the register of deeds shall record the notice of satisfaction and cancel the deed of trust, mortgage, or other instrument as required by G.S. 45-37.2. No fee shall be charged for recording any documents or certifying any acknowledgments pursuant to this subdivision. The register of deeds shall not be required to verify or make inquiry concerning the authority of the person executing the notice of satisfaction to do so.

- (6) By exhibition to the register of deeds of a certificate of satisfaction of a deed of trust, mortgage, or other instrument that has been acknowledged before an officer authorized to take acknowledgments by the owner of the note, bond, or other evidence of indebtedness secured by the deed of trust or mortgage. The certificate of satisfaction shall be accompanied by the note, bond, or other evidence of indebtedness, if available, with an endorsement of payment and satisfaction by the owner of the note, bond, or other evidence of indebtedness. If such evidence of indebtedness cannot be produced, an affidavit, hereafter referred to as an 'affidavit of lost note', signed by the owner of the note, bond, or other evidence of indebtedness, shall be delivered to the register of deeds in lieu of the evidence of indebtedness certifying that the debt has been satisfied and stating: (i) the date of satisfaction; (ii) that the note, bond, or other evidence of indebtedness cannot be found; and (iii) that the person signing the affidavit is the current owner of the note, bond, or other evidence of indebtedness. The certificate of satisfaction shall be substantially in the form set out in G.S. 47-46.2 and 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. The affidavit of lost note, if necessary, shall be substantially in the form set out in G.S. 47-46.3. The certificate of satisfaction shall be accompanied by the deed of trust, mortgage, or other instrument, or a copy of the instrument, for verification and indexing purposes, which shall not be recorded with the certificate.

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

Sec. 2. G.S. 47-46.3 reads as rewritten:

"§ 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~~ was satisfied on _____, 19____, and the affiant is responsible for cancellation of the same.

(Signature of affiant)

Sworn to (or affirmed) and subscribed before me this _____ day of _____, 19____.

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

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives