

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1432
Committee Substitute Favorable 5/11/05

Short Title: Register of Deeds-Certifications.

(Public)

Sponsors:

Referred to:

April 21, 2005

A BILL TO BE ENTITLED

AN ACT AFFECTING CERTIFICATIONS BY REGISTERS OF DEEDS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 47-14 reads as rewritten:

"§ 47-14. **Register of deeds to ~~pass on certificate~~ verify the presence of proof or acknowledgment and register instruments; order by judge; instruments to which register of deeds is a party.**

(a) ~~When the proof or acknowledgment of the execution of any instrument, required or permitted by law to be registered, is had before any other official than the register of deeds of the county in which the instrument is offered for registration, the register of deeds shall examine the certificate or certificates of proof or acknowledgment appearing upon the instrument, and if it appears on the face of the instrument that the execution thereof by one or more of the signers has been duly proved or acknowledged and the certificate or certificates to that effect are in due form, he shall so certify, and shall register the instrument, together with the certificates. No certification is required when the proof or acknowledgment is before the register of deeds of the county in which the instrument is offered for registration.~~

The register of deeds shall not accept for recording any instrument that requires proof or acknowledgment unless the execution by one or more of the signers has been proved or acknowledged as required before an officer authorized to take proofs or acknowledgments, and that the proof or acknowledgment includes the officer's signature, commission expiration date, and official seal, if required. The register of deeds shall not file the instruments that do not require proof or acknowledgment unless that instrument meets all other statutory requirements pursuant to G.S. 161-14. Any instrument previously recorded or a certified copy of any document previously recorded may be rerecorded without a statement of explanation if it is not being recorded pursuant to G.S. 47-36.1 and does not require further certification of proof or acknowledgment.

1 (b) If a register of deeds denies registration pursuant to subsection (a), the person
2 offering the instrument for registration may present the instrument to a judge, as
3 provided in subsection (c), and ~~he the court shall examine the certificate or certificates~~
4 ~~of proof or acknowledgment appearing upon the instrument, and if it appears on the face~~
5 ~~of the instrument that the execution thereof by one or more of the signers has been duly~~
6 ~~proved or acknowledged and the certificates to that effect are in due form, determine~~
7 ~~that if the instrument requires proof or acknowledgment and if the signature of one or~~
8 ~~more signers has been proved or acknowledged before an officer authorized to take~~
9 ~~proofs and acknowledgments, and if the proof or acknowledgment includes the officer's~~
10 ~~signature, commission expiration date, and official seal, if required, he the court shall so~~
11 ~~adjudge, and shall order the instrument to be registered, together with the certificates,~~
12 ~~and the register of deeds shall register them accordingly.~~

13 (c) When a district court has been established in the district including the county
14 in which the instrument is to be registered, application for an order for registration
15 pursuant to subsection (b) shall be made to any judge of the district court in the district
16 including the county in which the instrument is to be registered. ~~Until a district court has~~
17 ~~been established, application for an order for registration pursuant to subsection (b) may~~
18 ~~be made to a resident judge of superior court residing in the district including the county~~
19 ~~in which the instrument is to be registered, a judge regularly holding the superior courts~~
20 ~~of the district including the county in which the instrument is to be registered, any judge~~
21 ~~holding a session of superior court, either civil or criminal, in the district including the~~
22 ~~county in which the instrument is to be registered, or a special judge of superior court~~
23 ~~residing in the district including the county in which the instrument is to be registered.~~

24 (d) Registration of an instrument pursuant to this section is not effective with
25 regard to parties who have not executed the instrument or whose execution thereof has
26 not been duly proved or acknowledged.

27 (e) Any instrument required or permitted by law to be registered in which the
28 register of deeds of the county of registration is a party may be proved or acknowledged
29 before any magistrate or any notary public. Any such instrument presented for
30 registration shall be examined by the clerk of superior court of the county of registration
31 and if it appears that the execution and acknowledgment are in due form he shall so
32 certify and the instrument shall then be recorded in the office of the register of deeds."

33 **SECTION 2.** G.S. 47-37 is repealed.

34 **SECTION 3.** G.S. 45-36.2 reads as rewritten:

35 "**§ 45-36.2. Register of deeds includes assistants and ~~deputies~~deputies; recording**
36 **data.**

37 (a) The words "register of deeds" appearing in this Article shall be interpreted to
38 mean "register of deeds, assistant register of deeds, or deputy register of deeds."

39 (b) The words "recording data" appearing in this Article shall be interpreted to
40 mean the book and page or instrument number or any unique data that indicate where a
41 document is recorded in the office of the register of deeds."

42 **SECTION 4.** G.S. 45-37 reads as rewritten:

43 "**§ 45-37. Discharge of record of mortgages, deeds of trust, and other instruments.**

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

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

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

12 The register of deeds is not required to verify or make inquiry
 13 concerning the authority of the person acknowledging the satisfaction
 14 to do so. Upon acknowledgment of satisfaction, the register of deeds
 15 shall record a record of satisfaction as described in G.S. 45-37.2, ~~and~~
 16 ~~may forthwith make upon the margin of the record of such deed of~~
 17 ~~trust, mortgage or other instrument an entry of such acknowledgment~~
 18 ~~of satisfaction~~ which shall be signed by the trustee, mortgagee, legal
 19 representative, agent or attorney and witnessed by the register of
 20 deeds, who shall also affix his name thereto.

21 (2) By ~~exhibition~~ presentation of any original deed of trust, mortgage or
 22 other instrument accompanied with the original bond, note, or other
 23 instrument thereby secured to the register of deeds, with the
 24 endorsement of payment and satisfaction appearing thereon and made
 25 by:

- 26 a. The obligee,
- 27 b. The mortgagee,
- 28 c. The trustee,
- 29 d. An assignee of the obligee, mortgagee, or trustee, or
- 30 e. Any chartered banking institution, or savings and loan
 31 association, national or state, or credit union, qualified to do
 32 business in and having an office in the State of North Carolina,
 33 when so endorsed in the name of the institution by an officer
 34 thereof.

35 The register of deeds is not required to verify or make inquiry
 36 concerning the authority of the person making the endorsement of
 37 payment and satisfaction to do so. ~~Upon exhibition~~ Only upon
 38 presentation of the instruments, original instruments with the
 39 endorsement of payment and satisfaction appearing on them shall the
 40 register of deeds shall cancel the mortgage, deed of trust or other
 41 instrument by recording record a record of satisfaction as described in
 42 ~~G.S. 45-37.2, and may make an entry of satisfaction on the margin of~~
 43 ~~the record.~~ G.S. 45-37.2. The person so claiming satisfaction,
 44 performance or discharge of the debt or other obligation may retain

1 possession of all of the instruments exhibited. The ~~exhibition~~
 2 presentation of the mortgage, deed of trust or other instrument alone to
 3 the register of deeds, with endorsement of payment, satisfaction,
 4 performance or discharge, shall be sufficient if the mortgage, deed of
 5 trust or other instrument itself sets forth the obligation secured or the
 6 performance of any other obligation and does not call for or recite any
 7 note, bond or other instrument secured by it.

8 (3) By ~~exhibiting~~ presentation to the register of deeds by:

- 9 a. The grantor,
 10 b. The mortgagor, or
 11 c. An agent, attorney or successor in title of the grantor or
 12 mortgagor

13 of any mortgage, deed of trust or other instrument intended to secure
 14 the payment of money or the performance of any other obligation,
 15 together with the original bond, note or other instrument secured
 16 thereby, or by ~~exhibition~~ presentation of the original mortgage, deed of
 17 trust or other instrument alone if such instrument itself sets forth the
 18 obligation secured or other obligation to be performed and does not
 19 call for or recite any note, bond or other instrument secured by it, if at
 20 the time of exhibition, all such instruments are more than 10 years old
 21 counting from the maturity date of the last obligation secured. If the
 22 instrument or instruments so ~~exhibited~~ presented have an endorsement
 23 of partial payment, satisfaction, performance or discharge within the
 24 said period of 10 years, the period of 10 years shall be counted from
 25 the date of the most recent endorsement.

26 ~~The Only upon presentation of the original instruments shall the~~
 27 ~~register of deeds shall cancel the mortgage, deed of trust, or other~~
 28 ~~instrument by recording record a record of satisfaction as described in~~
 29 ~~G.S. 45-37.2, and may make proper entry of cancellation and~~
 30 ~~satisfaction of said instrument on the margin of the record where the~~
 31 ~~same is recorded, whether there be any such entries on the original~~
 32 ~~papers or not.~~ G.S. 45-37.2(b)(2).

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

38 Upon ~~exhibition~~ presentation of the original deed of trust, and the
 39 originals of evidences of indebtedness properly marked, the register of
 40 deeds shall ~~cancel such deed of trust by recording record~~ a record of
 41 satisfaction as described in G.S. 45-37.2, and may make an entry of
 42 satisfaction upon the margin of the record, which record, or entry if
 43 made, G.S. 45-37.2(b)(2), shall be valid and binding upon all persons,
 44 if no person rightfully entitled to the deed of trust or evidences of

1 indebtedness has previously notified the register of deeds in writing of
2 the loss or theft of the instrument or evidences of indebtedness and has
3 caused the register of deeds to record the notice or loss or theft in a
4 separate document, as required by G.S. 161-14.1.

5 Upon receipt of ~~written notice~~ an affidavit of loss or theft of the
6 deed of trust or evidences of indebtedness which identifies the deed of
7 trust with names of the original parties to the document and recording
8 data for the deed of trust, the register of deeds shall record a record of
9 satisfaction, as described in G.S. 45-37.2, ~~which in this case shall~~
10 ~~consist of a rerecording of the record of the deed of trust containing the~~
11 ~~marginal entry and may make on the record of the deed of trust~~
12 ~~concerned a marginal entry in writing thereof, with the date of receipt~~
13 ~~of the notice.~~ G.S. 45-37.2(b)(2). The deed of trust shall not be
14 ~~anceled~~ presented for satisfaction after such recording of a record of
15 satisfaction ~~or marginal entry~~ until the ownership of said instrument
16 shall have been lawfully determined. Nothing in this subdivision (4)
17 shall be construed to impair the negotiability of any instrument
18 otherwise properly negotiable, nor to impair the rights of any innocent
19 purchaser for value thereof.

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

- 26 (5) By ~~exhibition~~ presentation to the register of deeds of a notice of
27 satisfaction of a deed of trust, mortgage, or other instrument which has
28 been acknowledged by the trustee or the mortgagee before an officer
29 authorized to take acknowledgments. The notice of satisfaction shall
30 be substantially in the form set out in G.S. 47-46.1. The notice of
31 satisfaction shall recite the names of all parties to the original
32 instrument, the amount of the obligation secured, the date of
33 satisfaction of the obligation, and a reference ~~by book and page~~
34 ~~number to the record~~ to the recording data of the instrument satisfied.
35 ~~The notice of satisfaction shall be accompanied by the deed of trust,~~
36 ~~mortgage, or other instrument, or a copy of the instrument, for~~
37 ~~verification and indexing purposes, which shall not be recorded with~~
38 ~~the notice.~~

39 Upon ~~exhibition~~ presentation of the notice of satisfaction, the
40 register of deeds shall record the notice of ~~satisfaction and cancel the~~
41 ~~deed of trust, mortgage, or other instrument as required by~~
42 ~~G.S. 45-37.2.~~ satisfaction. No fee shall be charged for recording any
43 documents or certifying any acknowledgments pursuant to this
44 subdivision. The register of deeds shall not be required to verify or

1 make inquiry concerning the authority of the person executing the
2 notice of satisfaction to do so.

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

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

- 41 (b) It shall be conclusively presumed that the conditions of any deed of trust,
42 mortgage or other instrument securing the payment of money or securing the
43 performance of any other obligation or obligations have been complied with or the debts
44 secured thereby paid or obligations performed, as against creditors or purchasers for

1 valuable consideration from the mortgagor or grantor, from and after the expiration of
2 15 years from whichever of the following occurs last:

3 (1) The date when the conditions of such instrument were required by its
4 terms to have been performed, or

5 (2) The date of maturity of the last installment of debt or interest secured
6 thereby;

7 provided that the holder of the indebtedness secured by such instrument or party secured
8 by any provision thereof may file an affidavit with the register of deeds which affidavit
9 shall specifically state:

10 (1) The amount of debt unpaid, which is secured by said instrument; or

11 (2) In what respect any other condition thereof shall not have been
12 complied with; or

13 may record a separate instrument signed by the holder or party secured and witnessed
14 by the register of deeds stating:

15 (1) Any payments that have been made on the indebtedness or other
16 obligation secured by such instrument including the date and amount
17 of payments and

18 (2) The amount still due or obligations not performed under the
19 instrument.

20 ~~Whenever practical, the register of deeds may also enter the information contained in~~
21 ~~the separate instrument on the margin of the record of the instrument.~~ The effect of the
22 filing of the affidavit or of the instrument recorded made as herein provided shall be to
23 postpone the effective date of the conclusive presumption of satisfaction to a date 15
24 years from the filing of the affidavit or from the recording of the ~~instrument or the~~
25 ~~making of the notation.~~ instrument. There shall be only one postponement of the
26 effective date of the conclusive presumption provided for herein. The register of deeds
27 shall record the affidavit provided for herein and shall record a separate instrument, as
28 required by G.S. 161-14.1, ~~making reference to the filing of such affidavit and to the~~
29 ~~book and page where the affidavit is recorded.~~ ~~Whenever practical, the register of deeds~~
30 ~~may also make such a reference on the margin of the record of the deed of trust,~~
31 ~~mortgage, or other instrument referred to, and index the affidavit or separate instrument~~
32 according to G.S. 161.14.1. This subsection shall not apply to any deed, mortgage, deed
33 of trust or other instrument made or given by any railroad company, or to any agreement
34 of conditional sale, equipment trust agreement, lease, chattel mortgage or other
35 instrument relating to the sale, purchase or lease of railroad equipment or rolling stock,
36 or of other personal property.

37 (c) Repealed by Session Laws 1991, c. 114, s. 4.

38 (d) For the purposes of this section "register of deeds" means the register of
39 deeds, his deputies or assistants of the county in which the mortgage, deed of trust, or
40 other instrument intended to secure the payment of money or performance of other
41 obligation is registered.

42 (e) Any transaction subject to the provisions of the Uniform Commercial Code,
43 Chapter 25 of the General Statutes, is controlled by the provisions of that act and not by
44 this section.

1 (f) Whenever this section requires a signature or endorsement, that signature or
2 endorsement shall be followed by the name of the person signing or endorsing the
3 document printed, stamped, or typed so as to be clearly legible. ~~The register of deeds~~
4 ~~may refuse to accept any document when the provisions of this subsection have not~~
5 ~~been met."~~

6 **SECTION 5.** G.S. 45-37.2 reads as rewritten:

7 "**§ 45-37.2. Recording satisfactions of deeds of trust and mortgages.**

8 (a) When a notice of satisfaction is recorded pursuant to G.S. 45-37(a)(5) or a
9 certificate of satisfaction is recorded pursuant to G.S. 45-37(a)(6), the register of deeds
10 shall ~~make an entry of satisfaction on the notice or certificate and record and index the~~
11 ~~instrument.~~instrument in the same manner as the deed of trust, mortgage, or other
12 security instrument in the names of the parties stated in the notice of satisfaction or the
13 certificate of satisfaction and reference the recording data of the original security
14 instrument as stated in the satisfaction document to each name indexed.

15 (b) When a deed of trust, mortgage, or other instrument is satisfied by a method
16 other than by means of a notice of satisfaction or certificate of satisfaction, the register
17 of deeds shall record a record of satisfaction consisting of either a separate instrument or
18 all or a portion of the original deed of trust or mortgage ~~rerecorded, and shall make the~~
19 ~~appropriate entry of satisfaction as provided in G.S. 45-37 on each record of~~
20 ~~satisfaction.~~rerecorded. A separate instrument or original deed of trust or mortgage
21 rerecorded pursuant to this subsection shall contain (i) names of all parties to the
22 original instrument, (ii) the amount of the obligation secured, (iii) the date of
23 satisfaction of the obligation, (iv) a reference by book and page number to the record to
24 the recording data of the instrument satisfied, and (v) the date of recording the notice of
25 ~~satisfaction.~~satisfaction, and when rerecording an original deed of trust or mortgage, the
26 record of satisfaction shall also contain (vi) an endorsement of payment and satisfaction,
27 and (vii) signatures of parties to the original security instrument. The register of deeds
28 shall index the record of satisfaction in the same manner as the deed of trust, mortgage,
29 or other instrument in the names of the parties on the satisfaction document and
30 reference the recording data of the original security instrument as stated in the
31 satisfaction document to each name indexed.

32 (b1) The following form, when properly completed, is sufficient to satisfy the
33 requirements of this section:

34 "RECORD OF SATISFACTION

35 (G.S. 45-37.2)

36 This Record of Satisfaction applies to the following deed of trust,
37 mortgage, or other security instrument.

38
39 Type of Security Instrument: (Identify type of security instrument,
40 such as deed of trust or mortgage)

41
42 Original Grantor(s): (Identify original grantor(s), trustor(s), or
43 mortgagor(s))

44

Original Trustee(s): (Identify trustee on original deed of trust)

Original Secured Party(ies): (Identify the original beneficiary(ies), mortgage(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.

This Record of Satisfaction is recorded pursuant to the following statutory authority: (check applicable box)

G.S. 45-37(a)(2), the original security instrument and secured obligations having been presented to me with appropriate endorsement of payment and satisfaction appearing thereon as required by law.

G.S. 45-37(a)(3), the original security instrument and secured obligations having been presented to me, each such instrument being more than 10 years old as provided by law.

G.S. 45-37(a)(4), the original security instrument and all negotiable instruments transferable by delivery secured thereby having been presented to me, each having been marked paid and satisfied in full by the bearer or holder thereof.

Other: (specify)

Date: _____

(Signature of Register of Deeds)

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

SECTION 6. G.S. 45-38 reads as rewritten:

"§ 45-38. Recording of foreclosure.

In case of foreclosure of any deed of trust, or mortgage, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall record a notice of foreclosure ~~and, whenever it is practical to do so, may also enter upon the margin of the record of the deed of trust or mortgage of the fact that such foreclosure and that includes~~ the date when, and the person to whom, a conveyance was made by reason of the foreclosure. In the event the entire obligation secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property embraced within the terms of the mortgage or deed of trust, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall indicate in the notice of

1 foreclosure which property was sold and which was not sold, and may make an
2 additional notation indicating the same, whenever practical, sold.

3 A notice of foreclosure shall consist of a separate instrument, or that part of the
4 original deed of trust or mortgage rerecorded, reciting the information required
5 hereinabove, the names of all parties to the original instrument, the amount of the
6 obligation secured, a reference by book and page number to the record-recording data of
7 the instrument foreclosed, and the date of recording the notice of foreclosure."

8 **SECTION 7.** G.S. 45-40 is repealed.

9 **SECTION 8.** G.S. 45-42.1 reads as rewritten:

10 **"§ 45-42.1. Corporate cancellation of lost mortgages by register of deeds.**

11 Upon affidavit of the secretary and treasurer of a corporation showing that the
12 records of such corporation show that such corporation has fully paid and satisfied all of
13 the notes secured by a mortgage or deed of trust executed by such corporation and such
14 payment and satisfaction was made more than 25 years ago, and that such mortgage or
15 deed of trust was made to a corporation which ceased to exist more than 25 years ago,
16 and such affidavit shall further state that the records of such corporation show that no
17 payments have been made on such mortgage by the corporation executing such
18 mortgage or deed of trust for 25 years, the register of deeds of the county in which such
19 mortgage or deed of trust is recorded ~~is authorized and empowered to file such affidavit
20 and record the same in his office and to record a separate instrument making reference
21 to the filing of such affidavit and to the book and page where the affidavit is recorded.~~
22 may record the affidavit. The register of deeds shall index the affidavit according to
23 G.S. 161-22 using the names of parties stated in the affidavit and shall may also make
24 reference to the recording data of the original security instrument as stated in the
25 affidavit opposite each party indexed. thereto on the margin of the record in which the
26 said mortgage or deed of trust is recorded, and, upon Upon recording such instrument
27 an affidavit, or making such entry, the said mortgage or deed of trust shall be deemed to
28 be cancelled and satisfied ~~and the said register of deeds is hereby authorized to cancel~~
29 ~~the same of record: Provided, that this satisfied.~~ This section shall not apply to any
30 mortgagor corporation except those in which the State of North Carolina owns more
31 than a majority of the capital stock and shall not apply to any mortgage or deed of trust
32 in which the principal amount secured thereby exceeds the sum of fifteen thousand
33 dollars (\$15,000): Provided, such cancellation shall not bar any action to foreclose such
34 mortgage or deed of trust instituted within 90 days after the same is cancelled."

35 **SECTION 9.** G.S. 161-14.1 reads as rewritten:

36 **"§ 161-14.1. Recording subsequent entries as separate instruments.**

37 (a) In all cases in which the register of deeds is authorized or directed by law to
38 make a subsequent entry upon the margin of the record of a deed of trust, mortgage, or
39 other instrument, the register of deeds shall, except as provided in G.S. 45-37.2 and
40 45-38, record all subsequent entries as separate instruments. The register of deeds shall
41 index the parties to the original instruments as stated on the subsequent instrument and
42 reference the recording data of the original security instrument as stated in the
43 subsequent document to each name indexed. Such instruments shall contain the
44 information and notations required by law ~~for the appropriate marginal entry, law, a~~

1 reference by book and page number to the record recording data of the instrument
 2 modified, and the date of recording the subsequent modifying instrument. ~~There shall~~
 3 ~~also be entered in the alphabetical indexes kept by the register of deeds, opposite the~~
 4 ~~name of each indexed party to the original instrument, a reference by book and page to~~
 5 ~~the record of the subsequent modifying instrument.~~ In the recording of satisfactions or
 6 foreclosures of deeds of trust and mortgages, the register of deeds shall comply with the
 7 provisions of G.S. 45-37.2 and 45-38. ~~Whenever it is practical to do so, the register of~~
 8 ~~deeds may continue making marginal notations in addition to making the recordation~~
 9 ~~required by this section.~~

10 (b) For the purposes of this section, "recording data" means the book and page or
 11 instrument number or any unique data that indicate where a document is recorded in the
 12 office of the register of deeds."

13 **SECTION 10.** G.S. 47-46 is repealed.

14 **SECTION 11.** G.S. 47-46.3 reads as rewritten:

15 **"§ 47-46.3. Affidavit of lost note.**

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

18 **AFFIDAVIT OF LOST NOTE**

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

- 22 1. The affiant is the owner of the note or other indebtedness secured by
 23 the deed of trust, mortgage, or other instrument executed by
 24 _____ (grantor, mortgagor), _____
 25 (trustee), and _____ (beneficiary, mortgagee), and
 26 recorded in _____ County at _____ (book and
 27 page); and
- 28 2. The note or other indebtedness ~~has been lost and after the exercise of~~
 29 ~~due diligence cannot be located.~~ produced.
- 30 3. The affiant certifies that all indebtedness secured by the deed of trust,
 31 mortgage, or other instrument was satisfied on
 32 _____, _____ (date of satisfaction), and
 33 the affiant is responsible for cancellation of the same.

34 _____
 35 (Signature of affiant)

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

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

39 **SECTION 12.** This act becomes effective October 1, 2005.