

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

SENATE BILL 734
RATIFIED BILL

AN ACT TO AMEND ARTICLE 4 OF CHAPTER 45 OF THE GENERAL STATUTES RELATING TO THE SATISFACTION OF MORTGAGES AND DEEDS OF TRUST AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 4 of Chapter 45 of the General Statutes reads as rewritten:

"Article 4.

~~"Discharge and Release. Satisfaction.~~

"§ 45-36.2. Register of deeds includes assistants and deputies. Obligation of good faith.

~~The words "register of deeds" appearing in this Article shall be interpreted to mean "register of deeds, assistant register of deeds, or deputy register of deeds. Every action or duty within this Article imposes an obligation of good faith in its performance or enforcement.~~

"§ 45-36.3. Notification by mortgagee of satisfaction of provisions of deed of trust or mortgage, or other instrument; civil penalty.

(a) After the satisfaction of the provisions of any deed of trust or mortgage, or other instrument intended to secure with real property the payment of money or the performance of any other obligation and registered as required by law, the holder of the evidence of the indebtedness, if it is a single instrument, or a duly authorized agent or attorney of such holder shall within 60 days:

- (1) Discharge and release of record such documents and forward the cancelled documents to the grantor, trustor or mortgagor; or,
- (2) Alternatively, the holder of the evidence of the indebtedness or a duly authorized agent or attorney of such holder, at the request of the grantor, trustor or mortgagor, shall forward said instrument and the deed of trust or mortgage instrument, with payment and satisfaction acknowledged in accordance with the requirements of G.S. 45-37, to the grantor, trustor or mortgagor.

(b) Any person, institution or agent who fails to comply with this section may be required to pay a civil penalty of not more than one thousand dollars (\$1,000) in addition to reasonable attorneys' fees and any other damages awarded by the court to the grantor, trustor or mortgagor, or to a subsequent purchaser of the property from the grantor, trustor or mortgagor. A five hundred dollar (\$500.00) civil penalty may be recovered by the grantor, trustor or mortgagor, and a five hundred dollar (\$500.00) penalty may be recovered by the purchaser of the property from the grantor, trustor or mortgagor. If that purchaser of the property consists of more than a single grantee, then the civil penalty will be divided equally among all of the grantees. A petitioner may recover damages under this section only if he has given the mortgagee, obligee, beneficiary or other responsible party written notice of his intention to bring an action pursuant to this section. Upon receipt of this notice, the mortgagee, obligee, beneficiary or other responsible party shall have 30 days, in addition to the initial 60-day period, to fulfill the requirements of this section.

(c) Should any person, institution or agent who is not the present holder of the evidence of indebtedness be required to pay a civil penalty, attorneys' fees, or other damages under this section, they will have an action against the holder of the evidence of indebtedness for all sums they were required to pay.

(d) This section applies only if the provisions of the deed of trust, mortgage, or other instrument are satisfied before October 1, 2005.

"§ 45-36.4. Definitions.

As used in this Article, the following terms mean:

- (1) Address for giving a notification. – For the purpose of a particular type of notification, the most recent address provided in a document by the intended recipient of the notification to the person giving the notification, unless the person giving the notification knows of a more accurate address, in which case the term means that address.
- (2) Day. – Calendar day.
- (3) Document. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (4) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (5) Entitled person. – A person liable for payment or performance of the obligation secured by the real property described in a security instrument, or the landowner.
- (6) Good faith. – Honesty in fact and the observance of reasonable commercial standards of fair dealing.
- (7) Landowner. – A person that, before foreclosure, has the right of redemption in the real property described in a security instrument. The term does not include a person that holds only a lien on the real property.
- (8) Notification. – A document containing information required under this Article and signed by the person required to provide the information.
- (9) Original parties. – With respect to a security instrument, each person named as a party to the security instrument on the face thereof as originally recorded. In identifying the original parties to a deed of trust for purposes of this Article, it is not necessary to include the original trustee or trustees named therein.
- (10) Payoff amount. – The sum necessary to satisfy a secured obligation.
- (11) Payoff statement. – A document containing the information specified in G.S. 45-36.7(d).
- (12) 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.
- (13) Recording data. – The book and page number or document number that indicates where a document is recorded in the office of the register of deeds.
- (14) Register of deeds. – Includes the register of deeds, assistant register of deeds, or deputy register of deeds.
- (15) Satisfy. – With respect to a security instrument, to terminate the effectiveness of the security instrument.
- (16) Secured creditor. – A person that holds or is the beneficiary of a security interest or that is authorized both to receive payments on behalf of a person that holds a security interest and to record a satisfaction of the security instrument upon receiving full performance of the secured obligation. The term does not include a trustee under a security instrument.

- (17) Secured obligation. – An obligation the payment or performance of which is secured by a security interest.
- (18) Security instrument. – An agreement, however denominated, that creates or provides for an interest in real property to secure payment or performance of an obligation, whether or not it also creates or provides for a lien on personal property. The term includes a deed of trust and a mortgage.
- (19) Security interest. – An interest in real property created by a security instrument.
- (20) Sign. – With present intent to authenticate or adopt a document:
 - a. To execute or adopt a tangible symbol; or
 - b. To attach to or logically associate with the document an electronic sound, symbol, or process.
- (21) State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (22) Submit for recording. – To deliver, with required fees and taxes, a document sufficient to be recorded under this Article to the register of deeds in the county in which the real property described in the related security instrument is located.

"§ 45-36.5. Notification: manner of giving and effective date.

- (a) A person gives a notification by any of the following:
 - (1) Depositing it with the United States Postal Service with first-class postage paid or with a commercially reasonable delivery service with cost of delivery provided, properly addressed to the recipient's address for giving a notification.
 - (2) Sending it by facsimile transmission, electronic mail, or other electronic transmission to the recipient's address for giving a notification, but only if the recipient agreed to receive notification in that manner.
 - (3) Causing it to be received at the address for giving a notification within the time that it would have been received if given pursuant to subdivision (1) of this subsection.
- (b) A notification is effective on any of the following:
 - (1) The day after it is deposited with a commercially reasonable delivery service for overnight delivery.
 - (2) Three days after it is deposited with the United States Postal Service, first-class mail with postage prepaid, or with a commercially reasonable delivery service for delivery other than by overnight delivery.
 - (3) The day it is given, if given pursuant to subdivision (a)(2) of this section.
 - (4) The day it is received, if given by a method other than as provided in subdivision (a)(1) or (a)(2) of this section.
- (c) If this Article or a notification given pursuant to this Article requires performance on or by a certain day and that day is a Saturday, Sunday, or legal holiday under the laws of this State or the United States, the performance is sufficient if performed on the next day that is not a Saturday, Sunday, or legal holiday.

"§ 45-36.6. Document of rescission: effect; liability for wrongful recording.

- (a) In this section, "document of rescission" means a document stating that an identified satisfaction or affidavit of satisfaction of a security instrument was recorded erroneously or that a security instrument was satisfied of record erroneously, the secured obligation remains unsatisfied, and the security instrument remains in force.
- (b) If a person records a satisfaction or affidavit of satisfaction of a security instrument in error or if a security instrument is satisfied of record erroneously by any

other means, the person or the secured creditor may execute and record a document of rescission. Upon recording, the document rescinds an erroneously recorded satisfaction or affidavit and the erroneous satisfaction of record of the security instrument and reinstates the security instrument.

(c) A recorded document of rescission has no effect on the rights of a person that:

- (1) Records an interest in the real property described in a security instrument after the recording of the satisfaction or affidavit of satisfaction of the security instrument or the erroneous satisfaction of record of the security instrument by other means and before the recording of the document of rescission; and
- (2) Would otherwise have priority over or take free of the lien created by the security instrument as reinstated under Chapter 47 of the General Statutes.

(d) A person that erroneously or wrongfully records a document of rescission is liable to any person injured thereby for the actual loss caused by the recording and reasonable attorneys' fees and costs.

"§ 45-36.7. Payoff statement: request and content.

(a) An entitled person, or an agent authorized by an entitled person to request a payoff statement, may give to the secured creditor a notification requesting a payoff statement for a specified payoff date not more than 30 days after the notification is given. The notification must contain all of the following:

- (1) The entitled person's name.
- (2) If given by a person other than an entitled person, the name of the person giving the notification and a statement that the person is an authorized agent of the entitled person.
- (3) A direction whether the statement is to be sent to the entitled person or that person's authorized agent.
- (4) The address to which the creditor must send the statement.
- (5) Sufficient information to enable the creditor to identify the secured obligation and the real property encumbered by the security interest.

(b) If a notification under subsection (a) of this section directs the secured creditor to send the payoff statement to a person identified as an authorized agent of the entitled person, the secured creditor must send the statement to the agent, unless the secured creditor knows that the entitled person has not authorized the request.

(c) A person who gives to a secured creditor a notification requesting a payoff statement thereby represents that the person is an entitled person or the authorized agent of an entitled person. A secured creditor may rely on that representation in providing a payoff statement unless the secured creditor knows that the requesting person is neither an entitled person nor the authorized agent of an entitled person. A secured creditor has no duty to make inquiry as to whether, or to verify that, the person requesting a payoff statement is an entitled person or the authorized agent of an entitled person.

(d) Within 10 days after the effective date of a notification that complies with subsection (a) of this section, the secured creditor shall issue a payoff statement and send it as directed pursuant to subdivision (a)(3) of this section in the manner prescribed in G.S. 45-36.5 for giving a notification. A secured creditor that sends a payoff statement to the entitled person or the authorized agent may not claim that the notification did not satisfy subsection (a) of this section. If the person to whom the notification is given once held an interest in the secured obligation but has since assigned that interest, the person need not send a payoff statement but shall give (i) a notification of the assignment to the person to whom the payoff statement otherwise would have been sent, providing the name and address of the assignee, or (ii) a notification to the person to whom the payoff statement otherwise would have been sent, stating that the recipient claims no interest in the security instrument or the secured obligation, that the secured obligation was assigned, but that the identity and address of the assignee is not known.

(e) A payoff statement must contain:

- (1) The date on which it was prepared and the payoff amount as of that date, including the amount by type of each fee, charge, or other sum included within the payoff amount;
- (2) The information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest amount; and
- (3) The payment cutoff time, if any, the address or place where payment must be made, and any limitation as to the authorized method of payment.

(f) A payoff statement may contain the amount of any fees authorized under this section not included in the payoff amount. A secured creditor may require the payment in full of any fees authorized under this section before issuing a payoff statement.

(g) A secured creditor may not qualify a payoff amount or state that it is subject to change before the payoff date unless the payoff statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated payoff amount at no charge and to obtain that updated payoff amount during the secured creditor's normal business hours on the payoff date or the immediately preceding business day.

(h) A secured creditor must provide upon request one payoff statement without charge during any six-month period. A secured creditor may charge a fee of twenty-five dollars (\$25.00) for each additional payoff statement requested during that six-month period. However, a secured creditor may not charge a fee for providing an updated payoff amount under subsection (f) of this section or a corrected payoff statement under G.S. 45-36.8(a).

(i) Unless the security instrument provides otherwise, a secured creditor is not required to send a payoff statement by means other than first-class mail. If the creditor agrees to send a statement by another means, it may charge a reasonable fee for complying with the requested manner of delivery.

(j) Except as otherwise provided in G.S. 45-36.12, if a secured creditor to which a notification has been given pursuant to subsection (a) of this section does not send a timely payoff statement that substantially complies with subsection (d) of this section, the creditor is liable to the entitled person for any actual damages caused by the failure, but not punitive damages. A creditor that does not pay the damages provided in this subsection within 30 days after receipt of a notification demanding payment shall also be liable for reasonable attorneys' fees and costs.

(k) This section does not apply unless the notification requesting a payoff statement is given on or after October 1, 2005.

"§ 45-36.8. Understated payoff statement: correction; effect.

(a) If a secured creditor determines that the payoff amount it provided in a payoff statement was understated, the creditor may send a corrected payoff statement. If the entitled person or the person's authorized agent receives and has a reasonable opportunity to act upon a corrected payoff statement before making payment, the corrected statement supersedes an earlier statement.

(b) A secured creditor that sends a payoff statement containing an understated payoff amount may not deny the accuracy of the payoff amount as against any person that reasonably and detrimentally relies upon the understated payoff amount.

(c) This Article does not:

- (1) Affect the right of a secured creditor to recover any sum that it did not include in a payoff amount from any person liable for payment of the secured obligation; or
- (2) Limit any claim or defense that a person liable for payment of a secured obligation may have under law other than this Article.

"§ 45-36.9. Secured creditor to submit satisfaction for recording; liability for failure.

(a) A secured creditor shall submit for recording a satisfaction of a security instrument within 30 days after the creditor receives full payment or performance of the secured obligation. If a security instrument secures a line of credit or future advances, the secured obligation is fully performed only if, in addition to full payment, the secured creditor has received a notification requesting the creditor to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument.

(b) Except as otherwise provided in G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security instrument for recording and does not do so by the end of the period specified in subsection (a) of this section is liable to the landowner for any actual damages caused by the failure, but not punitive damages.

(c) Except as otherwise provided in subsection (d) of this section and in G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security instrument for recording and does not do so by the end of the period specified in subsection (a) of this section is also liable to the landowner for one thousand dollars (\$1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) of this section, all of the following occur:

- (1) The landowner gives the secured creditor a notification, by any method authorized by G.S. 45-36.5 that provides proof of receipt, demanding that the secured creditor submit a satisfaction for recording.
- (2) The secured creditor does not submit a satisfaction for recording within 30 days after the secured creditor's receipt of the notification.
- (3) The security instrument is not satisfied of record by any of the methods provided in G.S. 45-37(a) within 30 days after the secured creditor's receipt of the notification.

The right to receive the additional one thousand dollars (\$1,000) is personal to the landowner who gives the secured creditor notification under this subsection and may not be assigned.

(d) Subsection (c) of this section does not apply if the secured creditor received full payment or performance of the secured obligation before October 1, 2005.

(e) This section does not apply if the security instrument is satisfied of record by any of the methods provided in G.S. 45-37(a) within 30 days after the secured creditor receives full payment or performance of the secured obligation.

"§ 45-36.10. Content and effect of satisfaction.

(a) A document is a satisfaction of a security instrument if it does all of the following:

- (1) Identifies the type of security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
- (2) States that the person signing the satisfaction is the secured creditor.
- (3) Reserved.
- (4) Contains language terminating the effectiveness of the security instrument.
- (5) Is signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property.

(b) The register of deeds shall accept for recording a satisfaction of a security instrument, unless one of the following applies:

- (1) The document is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law.
- (2) The document is not signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any satisfaction

document, or (ii) the authority of the person executing any satisfaction document to do so.

(c) The recording of a satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

"§ 45-36.11. Satisfaction: form.

No particular phrasing is required for a satisfaction of a security instrument. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.10(a):

"SATISFACTION OF SECURITY INSTRUMENT

(G.S. 45-36.10; G.S. 45-37(a)(7))

The undersigned is now the 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.

This satisfaction terminates the effectiveness of the security instrument.

Date: _____

(Signature of secured creditor)

[Acknowledgment before officer authorized to take acknowledgments]".

"§ 45-36.12. Limitation of secured creditor's liability.

A secured creditor is not liable under this Article if it:

- (1) Established a reasonable procedure to achieve compliance with its obligations under this Article;
- (2) Complied with that procedure in good faith; and
- (3) Was unable to comply with its obligations because of circumstances beyond its control.

"§ 45-36.13. Eligibility to serve as satisfaction agent.

No person other than an attorney licensed to practice law in the State of North Carolina may serve as a satisfaction agent under this Article.

"§ 45-36.14. Affidavit of satisfaction: notification to secured creditor.

(a) If a secured creditor has not submitted for recording a satisfaction of a security instrument and the security instrument has not been satisfied of record by any of the methods provided by G.S. 45-37(a) within the period specified in G.S. 45-36.9(a), a satisfaction agent acting for and with authority from the landowner may give the secured creditor a notification that the satisfaction agent intends to submit for recording an affidavit of satisfaction of the security instrument. The notification must include all of the following:

- (1) The identity and mailing address of the satisfaction agent.
- (2) Identification of the security instrument for which a recorded satisfaction is sought, including the names of the original parties to, and the recording data for, the security instrument.
- (3) A statement that the satisfaction agent has reasonable grounds to believe that:
 - a. The person to whom the notification is being given is the secured creditor; and
 - b. The secured creditor has received full payment or performance of the secured obligation.

- (4) A statement that the security instrument has not been satisfied of record.
- (5) A statement that the satisfaction agent, acting with the authorization of the owner of the real property described in the security instrument, intends to sign and submit for recording an affidavit of satisfaction of the security instrument unless, within 30 days after the effective date of the notification:
 - a. The secured creditor submits a satisfaction of the security instrument for recording;
 - b. The satisfaction agent receives from the secured creditor a notification stating that the secured obligation remains unsatisfied;
 - c. The satisfaction agent receives from the secured creditor a notification stating that the secured creditor has assigned the security instrument and identifying the name and address of the assignee; or
 - d. The security instrument is satisfied of record by any of the methods provided in G.S. 45-37(a).

(b) A notification under subsection (a) of this section must be sent by a method authorized by G.S. 45-36.5 that provides proof of receipt to the secured creditor's address for giving a notification for the purpose of requesting a payoff statement or, if the satisfaction agent cannot ascertain that address, to the secured creditor's address for notification for any other purpose.

(c) This Article does not require a person to agree to serve as a satisfaction agent.
"§ 45-36.15. Affidavit of satisfaction: authorization to submit for recording.

(a) Subject to subsections (b) and (c) of this section, a satisfaction agent may sign and submit for recording an affidavit of satisfaction of a security instrument complying with G.S. 45-36.16 if:

- (1) The secured creditor has not, to the knowledge of the satisfaction agent, submitted for recording a satisfaction of a security instrument or otherwise caused the security instrument to be satisfied of record pursuant to any of the methods provided in G.S. 45-37(a) within 30 days after the effective date of a notification complying with G.S. 45-36.14(a); or
- (2) The secured creditor authorizes the satisfaction agent to do so.

(b) A satisfaction agent may not sign and submit for recording an affidavit of satisfaction of a security instrument if it has received a notification under G.S. 45-36.14(a)(5)b. stating that the secured obligation remains unsatisfied.

(c) If a satisfaction agent receives a notification under G.S. 45-36.14(a)(5)c. stating that the security instrument has been assigned, the satisfaction agent may not submit for recording an affidavit of satisfaction of the security instrument without:

- (1) Giving a notification of intent to submit for recording an affidavit of satisfaction to the identified assignee at the identified address; and
- (2) Complying with G.S. 45-36.14 with respect to the identified assignee.

"§ 45-36.16. Affidavit of satisfaction: content.

An affidavit of satisfaction of a security instrument must comply with all of the following:

- (1) Identify the type of security instrument, the original parties to the security instrument, the secured creditor, the recording data for the security instrument, and the office in which the security instrument is recorded.
- (2) State the basis upon which the person signing the affidavit is a satisfaction agent.
- (3) Reserved.

- (4) State that the person signing the affidavit has reasonable grounds to believe that the secured creditor has received full payment or performance of the secured obligation.
- (5) State that the person signing the affidavit, acting with the authority of the owner of the real property described in the security instrument, gave notification to the secured creditor of its intention to sign and submit for recording an affidavit of satisfaction.
- (6) Describe the method by which the person signing the affidavit gave notification in compliance with this Article.
- (7) State that:
 - a. More than 30 days have elapsed since the effective date of that notification, and the person signing the affidavit has no knowledge that the secured creditor has submitted a satisfaction for recording and has not received a notification that the secured obligation remains unsatisfied; or
 - b. The secured creditor authorized the person signing the affidavit to sign and record an affidavit of satisfaction.
- (8) Be signed and acknowledged as required by law for a conveyance of an interest in real property.

"§ 45-36.17. Affidavit of satisfaction: form.

No particular phrasing of an affidavit of satisfaction is required. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.16:

"AFFIDAVIT OF SATISFACTION

(Date of Affidavit)

The undersigned hereby states as follows:

1. I am an attorney licensed to practice law in the State of North Carolina.

2. I am signing this Affidavit of Satisfaction to evidence full payment or performance of the obligations secured by real property covered by the following security instrument (the "security instrument") currently held by _____ (the "secured creditor"):

Type of security instrument:

Original parties to security instrument:

County and state of recording:

Recording data for security instrument:

3. I have reasonable grounds to believe that the secured creditor has received full payment or performance of the balance of the obligations secured by the security instrument.

4. With the authorization of the owner of the real property described in the security instrument, I gave notification to the secured creditor by method authorized by G.S. 45-36.5 that provides proof of receipt that I would sign and record an affidavit of satisfaction of the security instrument if, within 30 days after the effective date of the notification, the secured creditor did not submit a satisfaction of the security interest for recording or give notification that the secured obligation remains unsatisfied.

5. [Check appropriate box]

□ The 30-day period identified in paragraph 4 has elapsed, I have no knowledge that the secured creditor has submitted a satisfaction for recording, and I have not received notification that the secured obligation remains unsatisfied.

□ The secured creditor responded to the notification in paragraph 4 by authorizing me to execute and record this Affidavit of Satisfaction.

(Signature of Satisfaction Agent)

[Acknowledgment before officer authorized to take acknowledgments]"

"§ 45-36.18. Affidavit of satisfaction: effect.

(a) Upon recording, an affidavit substantially complying with the requirements of G.S. 45-36.16 constitutes a satisfaction of the security instrument described in the affidavit.

(b) The recording of an affidavit of satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

(c) The register of deeds may not refuse to accept for recording an affidavit of satisfaction of a security instrument unless:

- (1) The affidavit is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law; or
- (2) The affidavit is not signed by the satisfaction agent and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any affidavit of satisfaction, or (ii) the authority of the person executing any affidavit of satisfaction to do so.

"§ 45-36.19. Liability of satisfaction agent.

(a) Except as otherwise provided in subsection (b) of this section, a satisfaction agent or any person purporting to be a satisfaction agent that records or submits for recording an affidavit of satisfaction of a security instrument erroneously or with knowledge that the statements contained in the affidavit are false is liable to the secured creditor for any actual damages caused by the recording and reasonable attorneys' fees and costs.

(b) A satisfaction agent that records or submits for recording an affidavit of satisfaction of a security instrument erroneously is not liable if the agent properly complied with this Article and the secured creditor did not respond in a timely manner to the notification pursuant to G.S. 45-36.14(a)(5).

(c) If a satisfaction agent or any person purporting to be a satisfaction agent records or submits for recording an affidavit of satisfaction of a security instrument with knowledge that the statements contained in the affidavit are false, this section does not preclude any of the following:

- (1) A court from awarding punitive damages on account of the conduct.
- (2) The secured creditor from proceeding against the satisfaction agent or person purporting to be a satisfaction agent under law of this State other than this Article.
- (3) The enforcement of any criminal statute prohibiting the conduct.

"§ 45-36.20. Trustee's satisfaction of deed of trust: content and effect.

(a) Upon recording, a trustee's satisfaction substantially complying with the requirements of this section constitutes a satisfaction of the deed of trust described in the trustee's satisfaction.

(b) The recording of a trustee's satisfaction does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

(c) This section applies only if the security instrument is a deed of trust. This section is not exclusive. Deeds of trust may also be satisfied of record by methods other than the filing of a trustee's satisfaction.

(d) Document is a trustee's satisfaction of a deed of trust if it complies with all of the following:

- (1) Identifies the original parties to the deed of trust, the recording data for the deed of trust, and the office in which the deed of trust is recorded.
- (2) States that the person signing the trustee's satisfaction is then serving as trustee or substitute trustee under the terms of the deed of trust.
- (3) Contains language terminating the effectiveness of the deed of trust.
- (4) Is signed by the trustee or substitute trustee then serving under the terms of the deed of trust and acknowledged as required by law for a conveyance of an interest in real property.

(e) The register of deeds shall accept for recording a trustee's satisfaction of a deed of trust, unless:

- (1) The trustee's satisfaction is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law; or
- (2) The trustee's satisfaction is not signed by the trustee or substitute trustee and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any trustee's satisfaction, or (ii) the authority of the person executing any trustee's satisfaction to do so.

"§ 45-36.21. Trustee's satisfaction of deed of trust: form.

No particular phrasing is required for a trustee's satisfaction of a deed of trust. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.20:

"TRUSTEE'S SATISFACTION OF DEED OF TRUST
(G.S. 45-36.20; G.S. 45-37(a)(7))

The undersigned is now serving as the trustee or substitute trustee under the terms of the deed of trust identified as follows:

Original Grantor(s): (Identify original grantor(s) or trustor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies) or secured party(ies) in the deed of trust)

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

This satisfaction terminates the effectiveness of the deed of trust.

Date: _____

(Signature of trustee or substitute trustee)

[Acknowledgment before officer authorized to take acknowledgments]"

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

(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to secured security instruments which secure future advances, any deed of trust or

~~mortgage or other any security instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby 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.~~

Security instruments satisfied of record pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

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

- ~~a. The obligee, secured creditor,~~
- ~~b. The mortgagee, trustee or substitute trustee, if the security instrument is a deed of trust,~~
- ~~c. The trustee,~~
- ~~d. c. An assignee of the obligee, mortgagee, or trustee, or secured creditor, or~~
- ~~e. d. Any chartered banking institution, or Any bank, savings and loan association, national or state, or credit union, qualified to do business in and having an office savings bank, or credit union chartered under the laws of this or any other state or the United States having an office or branch in the State of North Carolina, when so endorsed in the name of the institution by an officer thereof.~~

~~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, Only upon presentation of the original instruments with endorsement of payment and satisfaction appearing thereon shall the register of deeds shall cancel the mortgage, deed of trust or other instrument by recording record 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. G.S. 45-37.2(b). The person so claiming satisfaction, performance or discharge of the debt or other obligation may retain possession of all of the instruments exhibited. presented. The exhibition of the mortgage, deed of trust or other security 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 security 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.

- (3) By ~~exhibiting presentation~~ presentation 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 original security~~ original security instrument intended to secure the payment of money or the performance of any other obligation, together with the original bond, note or other instrument secured thereby, or by ~~exhibition of the mortgage, deed of trust or other presentation of the original security~~ presentation of the original security 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, presentation,~~ presentation, 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—presented~~ presented 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. Only upon presentation of the original instruments shall the register of deeds record 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. G.S. 45-37.2(b).~~

- (4) By ~~exhibition presentation~~ presentation to the register of deeds of any ~~deed of trust original security instrument~~ original security instrument 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, Only upon presentation of the original security instruments, and the originals of evidences of indebtedness properly marked, marked shall the register of deeds shall cancel such deed of trust by recording record 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, G.S. 45-37.2(b), which record of satisfaction shall be valid and binding upon all persons, if no person rightfully entitled to the deed of trust security instrument or evidences of indebtedness has previously notified the register of deeds in writing by means of a written affidavit of the loss or theft of the security instrument or evidences of indebtedness and has caused the register of deeds to record the notice or affidavit of loss or theft in as a separate document, as required by G.S. 161-14.1.~~

Upon receipt of ~~written notice~~ written notice an affidavit of loss or theft of the ~~deed of trust security instrument~~ security instrument or evidences of indebtedness ~~that identify the security instrument, the original parties to the security instrument, and the recording data for the security instrument,~~ that identify the security instrument, the original parties to the security instrument, and the recording data for the security instrument, 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. G.S. 45-37.2(b). The deed of trust security instrument shall not be canceled presented for satisfaction 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.~~

~~Security instruments satisfied of record pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.~~

- (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.~~

Security instruments satisfied of record pursuant to this subdivision as it was in effect prior to October 1, 2005, shall be deemed satisfied of record, discharged, and released.

(7) By recording:

- a. A satisfaction document that satisfies the requirements of G.S. 45-36.10,
- b. An affidavit of satisfaction that satisfies the requirements of G.S. 45-36.16, or
- c. A trustee's satisfaction that satisfies the requirements of G.S. 45-36.20, but only if the security instrument is a deed of trust.

The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any satisfaction document, affidavit of satisfaction, or trustee's satisfaction, or (ii) the authority of the person executing any satisfaction document, affidavit, or trustee's satisfaction to do so.

(b) It shall be conclusively presumed that the conditions of any ~~deed of trust, mortgage or other security instrument~~ securing the payment of money or securing the performance of any other obligation or obligations have been complied with or the debts secured thereby paid or obligations performed, as against creditors or purchasers for valuable consideration from the mortgagor or grantor, from and after the expiration of 15 years from whichever of the following occurs last:

- (1) The date when the conditions of ~~such the security instrument~~ were required by its terms to have been performed, or
- (2) The date of maturity of the last installment of debt or interest secured thereby;

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

- (1) The amount of debt unpaid, which is secured by ~~said the security instrument~~; or
- (2) In what respect any other condition thereof shall not have been complied with; or

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

- (1) Any payments that have been made on the indebtedness or other obligation secured by ~~such~~ the security instrument including the date and amount of payments and
- (2) The amount still due or obligations not performed under the security instrument.

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

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

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

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

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

(g) The satisfaction of record of a security instrument pursuant to this section shall operate and have the same effect as a duly executed and recorded deed of release or reconveyance of the property described in the security instrument and shall release and discharge (i) all the interest of the secured creditor in the real property arising from the security instrument and, (ii) if the security instrument is a deed of trust, all the interest of the trustee or substitute trustee in the real property arising from the deed of trust.

"§ 45-37.1. Validation of certain entries of cancellation made by beneficiary or assignee instead of trustee.

In all cases where, prior to January 1, 1930, it appears from the margin or face of the record in the office of the register of deeds of any county in this State that the original beneficiary named in any deed of trust, trust indenture, or other instrument intended to secure the payment of money and constituting a lien on real estate, or his assignee of record, shall have made an entry purporting to fully satisfy and discharge the lien of such instrument, and such entry has been signed by the original payee and beneficiary in said deed of trust, or other security instrument, or by his assignee of record, or by his or their properly constituted officer, agent, attorney, or legal representatives, and has been duly witnessed by the register of deeds or his deputy, all such entries of cancellation and satisfaction are hereby validated and made full, sufficient and complete to release,

satisfy and discharge the lien of such instrument, and shall have the same effect as if such entry had been made and signed by the trustee named in said deed of trust, or other security instrument, or by his duly appointed successor or substitute.

"§ 45-37.2. Recording satisfactions of deeds of trust and mortgages security instruments.

(a) When a notice of satisfaction document, affidavit of satisfaction, or trustee's satisfaction is recorded pursuant to G.S. 45-37(a)(5) or a certificate of satisfaction is recorded pursuant to G.S. 45-37(a)(6), G.S. 45-37(a)(7), the register of deeds shall make an entry of satisfaction on the notice or certificate and record and index the instrument in accordance with G.S. 161-14.1. No fee shall be charged by the register of deeds for recording a satisfaction document, affidavit of satisfaction, or a trustee's satisfaction.

(b) When a deed of trust, mortgage, or other security instrument is satisfied of record by a method other than by means of a notice of satisfaction or certificate of satisfaction, recording a satisfaction document, satisfaction affidavit, or trustee's satisfaction pursuant to G.S. 45-37(a)(7), the register of deeds shall record and index in accordance with G.S. 161.14.1 a record of satisfaction consisting of either a separate instrument or all or a portion of the original deed of trust or mortgage rerecorded, and shall make the appropriate entry of satisfaction as provided in G.S. 45-37 on each as provided for in this subsection. record of satisfaction. A separate instrument or original deed of trust or mortgage rerecorded pursuant to this subsection shall contain (i) names of all parties to the original instrument, (ii) the amount of the obligation secured, (iii) the date of satisfaction of the obligation, (iv) a reference by book and page number to the record of the instrument satisfied, and (v) the date of recording the notice of satisfaction. If the security instrument is being satisfied of record pursuant to G.S. 45-37(a)(2), the record of satisfaction may consist of either (i) all or a portion of the original security instrument rerecorded as described in subdivision (1) of this subsection or (ii) a separate instrument as described in subdivision (2) of this subsection. In all other cases, the record of satisfaction shall consist of a separate instrument as described in subdivision (2) of this subsection. No fee shall be charged by the register of deeds for recording a record of satisfaction.

(1) If the security instrument is being satisfied of record pursuant to G.S. 45-37(a)(2), all or a portion of the security instrument rerecorded is a sufficient record of satisfaction if it identifies the security instrument, the original parties to the security instrument, and the recording data for the security instrument as originally recorded. In addition, the rerecorded security instrument must contain either (i) an endorsement of payment and satisfaction made by a person authorized under G.S. 45-37(a)(2) to make such an endorsement, or (ii) an endorsement signed by the register of deeds that states substantially the following: "This security instrument is satisfied of record pursuant to 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."

(2) A separate instrument is a sufficient record of satisfaction if it complies with all of the following:

- a. Identifies the security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded.
- b. States the statutory authority pursuant to which the security instrument is being satisfied of record.
- c. Contains language terminating the effectiveness of the security instrument.
- d. Is signed by the register of deeds.

No particular phrasing is required for a record of satisfaction. The following form, when properly completed, is sufficient to satisfy the requirements of this subdivision:

"RECORD OF SATISFACTION
(G.S. 45-37.2)

This Record of Satisfaction applies to the following security instrument:

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.

This Record of Satisfaction terminates the effectiveness of the security instrument 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)".

~~(c) 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.~~

"§ 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

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

A notice of foreclosure shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names of ~~all the original parties to the original instrument, instrument foreclosed, the amount of the obligation secured, a reference by book and page number to the record of and the recording data for the instrument foreclosed, and the date of recording the notice of foreclosure.~~foreclosed. A notice of forfeiture shall be indexed by the register of deeds in accordance with G.S. 161.14.1.

"§ 45-39: Repealed by Session Laws 1949, c. 720, s. 5.

~~"§ 45-40. Register to enter satisfaction on index.~~

~~When satisfaction of the provisions of any deed of trust or mortgage is acknowledged and entry of such acknowledgment of satisfaction is made upon the margin of the record of said deed of trust or mortgage, or when the register of deeds or his deputy shall cancel the mortgage or other instrument by entry of satisfaction, then the register of deeds or his deputy shall enter upon the alphabetical grantor index kept by him, as required by law, and opposite the names of the grantor and grantee and on a line with the names of said grantor and grantee, the words "satisfied mortgage," if the instrument of which satisfaction has been acknowledged or entered is a mortgage, and the words "satisfied deed of trust," if the instrument of which satisfaction has been acknowledged or entered is a deed of trust, or, in lieu of the entries herein provided, the register of deeds or his deputy may denote satisfaction in the grantor index by using a capital "C" or the word "Cancelled," or the word "Satisfied." This statute shall not apply to counties using computerized indexing or to counties in which a parcel identifier index is established pursuant to G.S. 161-22.2.~~

"§ 45-41. Recorded deed of release of mortgage's representative.

The personal representative of any mortgagee or trustee in any mortgage or deed of trust which has heretofore or which may hereafter be registered in the manner required by the laws of this State may satisfy of record, discharge and release the same and all property thereby conveyed by deed of quitclaim, release or conveyance executed, acknowledged and recorded as is now prescribed by law for the execution, acknowledgment and registration of deeds and mortgages in this State.

"§ 45-42. Satisfaction of corporate mortgages by corporate officers.

~~All mortgages and deeds in trust security instruments~~ executed to a corporation may be satisfied and so marked of record as by law provided for the satisfaction of ~~mortgages and deeds in trust security instruments~~, by any officer of the corporation indicating the office held. For the purposes of recordation and ~~cancellation, satisfaction~~, such signature shall be deemed to be a certification by the signer that he is an officer and is authorized to execute the satisfaction on behalf of such corporation. Where ~~mortgages or deeds in trust security instruments~~ were marked "satisfied" on the records before the twenty-third day of February, 1909, by any president, secretary, treasurer or cashier of any corporation by such officer writing his own name and affixing thereto the title of his office in such corporation, such satisfaction is validated, and is as effective to all intents and purposes as if a deed of release duly executed by such corporation had been made, acknowledged and recorded.

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

Upon affidavit of the secretary and treasurer of a corporation showing that the records of such corporation show that such corporation has fully paid and satisfied all of the notes secured by a ~~mortgage or deed of trust security instrument~~ executed by such corporation and such payment and satisfaction was made more than 25 years ago, and that such ~~mortgage or deed of trust security instrument~~ was made to a corporation which ceased to exist more than 25 years ago, and such affidavit shall further state that the records of such corporation show that no payments have been made on such ~~mortgage secured obligation~~ by the corporation executing such ~~mortgage or deed of trust security instrument~~ for 25 years, the register of deeds of the county in which such ~~mortgage or~~

~~deed of trust security instrument is recorded is authorized and empowered to file such affidavit and record the same in his office and to record a separate instrument making reference to the filing of such affidavit and to the book and page where the affidavit is recorded to record the affidavit. The register of deeds may also make reference thereto on the margin of the record in which the said mortgage or deed of trust is recorded, and, upon recording such instrument or making such entry, the said mortgage or deed of trust shall be deemed to be cancelled and satisfied and the said register of deeds is hereby authorized to cancel the same of record. The register of deeds shall index the affidavit according to G.S. 161-22 using the names of parties stated in the affidavit and shall make reference to the recording data of the original security instrument as stated in the affidavit opposite the name of each party so indexed. Upon recording such affidavit, the said security instrument shall be deemed to be cancelled and satisfied of record. Provided, that this section shall not apply to any mortgagor corporation except those in which the State of North Carolina owns more than a majority of the capital stock and shall not apply to any mortgage or deed of trust security instrument in which the principal amount secured thereby exceeds the sum of fifteen thousand dollars (\$15,000): Provided, such cancellation shall not bar any action to foreclose such mortgage or deed of trust security instrument instituted within 90 days after the same is cancelled."~~

SECTION 2. G.S. 47-14 reads as rewritten:

"§ 47-14. Register of deeds to pass on certificate verify the presence of proof or acknowledgement 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 registration any instrument that requires proof or acknowledgement unless the execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the said proof or acknowledgement includes the officer's signature, commission expiration date, and official seal, if required. The register of deeds shall accept an instrument for registration that does not require proof or acknowledgement if the instrument otherwise satisfies the requirements of G.S. 161-14. Any document previously recorded or any certified copy of any document previously recorded may be rerecorded, regardless of whether it is being rerecorded pursuant to G.S. 47-36.1. The register of deeds shall not be required to verify or make inquiry concerning (i) the legal sufficiency of any proof or acknowledgement, (ii) the authority of any officer who took a proof or acknowledgement, or (iii) the legal sufficiency of any document presented for registration.~~

(b) ~~If a register of deeds denies registration pursuant to subsection (a), the person offering the instrument for registration may present the instrument to a judge, as provided in subsection (c), and he 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 certificates to that effect are in due form, he the judge shall determine that if the instrument requires proof or acknowledgement and if the signature of one or more signers has been proved or acknowledged before an officer authorized to take proofs and acknowledgements, and if said proof or acknowledgement includes the officer's signature and commission expiration date and official seal, if~~

required, the judge shall so adjudge, and shall order the instrument to be registered, together with the certificates, and the register of deeds shall register them accordingly.

~~(c) When a district court has been established in the district including the county in which the instrument is to be registered, application~~Application for an order for registration pursuant to subsection (b) of this section shall be made to any judge of the district court in the district including the county in which the instrument is to be registered. ~~Until a district court has been established, application for an order for registration pursuant to subsection (b) may be made to a resident judge of superior court residing in the district including the county in which the instrument is to be registered, a judge regularly holding the superior courts of the district including the county in which the instrument is to be registered, any judge holding a session of superior court, either civil or criminal, in the district including the county in which the instrument is to be registered, or a special judge of superior court residing in the district including the county in which the instrument is to be registered.~~

....

SECTION 3. G.S. 47-37 is repealed.

SECTION 4. G.S. 47-46 is repealed.

SECTION 5. G.S. 47-46.1 reads as rewritten:

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

No particular phrasing is required for a notice of satisfaction pursuant to G.S. 45-37(a)(5) as it was prior to October 1, 2005, a satisfaction of a security instrument under G.S. 45-36.10, or a trustee's satisfaction under G.S. 45-36.20. The following form, when properly completed, is sufficient to satisfy the requirements (i) for a notice of satisfaction under G.S. 45-37(a)(5) as it was in effect prior to October 1, 2005, (ii) for a satisfaction under G.S. 45-36.10 if the form is signed and acknowledged by the secured creditor, and (iii) for a trustee's satisfaction under G.S. 45-36.20 if the security instrument is a deed of trust and the form is signed and acknowledged by the trustee:

~~The form of a notice of satisfaction of a deed of 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 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) (mortgagor), _____ (trustee) (leave blank if mortgage), and _____ (beneficiary) (mortgagee), and recorded in _____ County at _____ (book and page) was satisfied on _____ (date of satisfaction).

(Signature of trustee or mortgagee)

I, _____ (name of officer taking acknowledgment), _____ (official title of person taking acknowledgment) certify that _____ (name of 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)

(Acknowledgment before officer authorized to take acknowledgments)

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.

This _____ (day) of _____ (month), _____ (year).

(Signature of Register of Deeds).

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

No particular phrasing is required for a certification of satisfaction pursuant to G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005, or for a satisfaction of a security instrument under G.S. 45-36.10. The following form, when properly completed, is sufficient to satisfy the requirements (i) for a certificate of satisfaction under G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005, and (ii) for a satisfaction of a security instrument under G.S. 45-36.10 when signed and acknowledged by the secured creditor:

~~The form of a certificate 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]."

SECTION 6. G.S. 47-46.3 reads as rewritten:

"§ 47-46.3. Affidavit of lost note.

No particular phrasing is required for an affidavit of lost note pursuant to G.S. 45-36(a)(6) as it was in effect prior to October 1, 2005. The following form, when properly completed, is sufficient to satisfy the requirements for an affidavit of lost note under G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005.

~~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 was satisfied on _____, _____ (date of satisfaction), and the affiant is responsible for cancellation of the same.

(Signature of affiant)

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

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

SECTION 7. G.S. 161-10(a)(16) reads as rewritten:

"(16) Probate. – For ~~certification of instruments for registration-verification of proofs and acknowledgements~~ as provided in G.S. 47-14 two dollars (\$2.00)."

SECTION 8. G.S. 161-14.1 reads as rewritten:

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

~~In all cases in which the register of deeds is authorized or directed by law to make a subsequent entry upon the margin of the record of a deed of trust, mortgage, or other instrument, the register of deeds shall, except as provided in G.S. 45-37.2 and 45-38, record all subsequent entries as separate instruments. Such instruments shall contain the information and notations required by law for the appropriate marginal entry, a reference by book and page number to the record of the instrument modified, and the date of recording the subsequent modifying instrument. There shall also be entered in the alphabetical indexes kept by the register of deeds, opposite the name of each indexed party to the original instrument, a reference by book and page to the record of the subsequent modifying instrument. In the recording of satisfactions or foreclosures of deeds of trust and mortgages, the register of deeds shall comply with the provisions of G.S. 45-37.2 and 45-38. Whenever it is practical to do so, the register of deeds may continue making marginal notations in addition to making the recordation required by this section.~~

(a) As used in this section, the following terms mean:

- (1) Original instrument. – The previously recorded instrument that is modified, amended, supplemented, assigned, satisfied, terminated, revoked, or cancelled by a subsequent instrument.
- (2) Recording data. – The book and page number or document number that indicates where an instrument is recorded in the office of the register of deeds.
- (3) Subsequent instrument. – Any instrument presented for registration that indicates in its title or within the first two pages of its text that it is intended or purports to modify, amend, supplement, assign, satisfy, terminate, revoke, or cancel a previously registered instrument. Examples of subsequent instruments include the appointment or designation of a substitute trustee in a deed of trust; an affidavit extending the life of a deed of trust; the cancellation of a Notice of Inactive Hazardous Substance or Waste Disposal Site registered pursuant to G.S. 130A-310.8(f); a record of satisfaction or other instrument purporting to satisfy a security instrument registered pursuant to G.S. 45-37 or G.S. 45-37.2; a notice of foreclosure registered pursuant to G.S. 45-38; an assignment of a security instrument or lease; a modification agreement; a release or partial release of property from the lien of a security instrument; an assumption agreement; a subordination agreement; an instrument terminating future optional advances registered pursuant to G.S. 45-72; the revocation of a power of attorney; any instrument authorized or

directed by law to be indexed under the provisions of this section; and any instrument for which the register of deeds is authorized or directed by law to make a subsequent entry upon the margin of the record of an original instrument.

(b) The register of deeds shall register each subsequent instrument as a separate instrument and do all of the following:

- (1) Index the parties to the subsequent instrument.
- (2) If the subsequent instrument names one or more of the original parties to the original instrument, index the original parties to the original instrument as they are named in the subsequent instrument.
- (3) If the subsequent instrument states the recording data for the original instrument, reference the recording data of the original instrument as that recording data is stated in the subsequent instrument to each name so indexed.

(c) The register of deeds shall not be required to (i) read or examine any page of an instrument, other than the first two pages, to determine whether it is a subsequent instrument within the meaning of this section, or (ii) verify or make inquiry concerning the accuracy, sufficiency, or completeness of information about an original instrument contained in any subsequent instrument. The register of deeds is expressly authorized to rely solely on the information contained in the subsequent instrument, including, but not limited to, the names of the original parties to the original instrument and the recording data for the original instrument."

SECTION 9. G.S. 161-22(d) reads as rewritten:

"(d) Deeds of trust may be indexed in the names of the grantor and trustee beneficiary only."

SECTION 10. This act becomes effective October 1, 2005.

In the General Assembly read three times and ratified this the 22nd day of June, 2005.

Beverly E. Perdue
President of the Senate

James B. Black
Speaker of the House of Representatives

Michael F. Easley
Governor

Approved _____, m. this _____ day of _____, 2005