

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

S

4

SENATE BILL 125*
House Committee Substitute Favorable 3/22/95
Corrected Copy 3/23/95
House Committee Substitute #2 Favorable 6/4/96

Short Title: Allow Cancellation by Exhibition.

(Public)

Sponsors:

Referred to:

February 2, 1995

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

The General Assembly of North Carolina enacts:

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

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

- (1) By acknowledgment of the satisfaction of the provisions of such deed of
trust, mortgage or other instrument in the presence of the register of
deeds by:
a. The trustee,
b. The mortgagee,
c. The legal representative of a trustee or mortgagee, or
d. A duly authorized agent or attorney of any of the above.

1 The register of deeds is not required to verify or make inquiry
2 concerning the authority of the person acknowledging the satisfaction to
3 do so. Upon acknowledgment of satisfaction, the register of deeds shall
4 record a record of satisfaction as described in G.S. 45-37.2, and may
5 forthwith make upon the margin of the record of such deed of trust,
6 mortgage or other instrument an entry of such acknowledgment of
7 satisfaction which shall be signed by the trustee, mortgagee, legal
8 representative, agent or attorney and witnessed by the register of deeds,
9 who shall also affix his name thereto.

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

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

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

- 1 (3) By exhibiting to the register of deeds by:
2 a. The grantor,
3 b. The mortgagor, or
4 c. An agent, attorney or successor in title of the grantor or
5 mortgagor
6 of any mortgage, deed of trust or other instrument intended to secure the
7 payment of money or the performance of any other obligation, together
8 with the bond, note or other instrument secured thereby, or by exhibition
9 of the mortgage, deed of trust or other instrument alone if such
10 instrument itself sets forth the obligation secured or other obligation to
11 be performed and does not call for or recite any note, bond or other
12 instrument secured by it, if at the time of exhibition, all such
13 instruments are more than 10 years old counting from the maturity date
14 of the last obligation secured. If the instrument or instruments so
15 exhibited have an endorsement of partial payment, satisfaction,
16 performance or discharge within the said period of 10 years, the period
17 of 10 years shall be counted from the date of the most recent
18 endorsement.

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

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

30 Upon exhibition of the deed of trust, and the evidences of
31 indebtedness properly marked, the register of deeds shall cancel such
32 deed of trust by recording a record of satisfaction as described in G.S.
33 45-37.2, and may make an entry of satisfaction upon the margin of the
34 record, which record, or entry if made, shall be valid and binding upon
35 all persons, if no person rightfully entitled to the deed of trust or
36 evidences of indebtedness has previously notified the register of deeds
37 in writing of the loss or theft of the instrument or evidences of
38 indebtedness and has caused the register of deeds to record the notice or
39 loss or theft in a separate document, as required by G.S. 161-14.1.

40 Upon receipt of written notice of loss or theft of the deed of trust or
41 evidences of indebtedness the register of deeds shall record a record of
42 satisfaction, as described in G.S. 45-37.2, which in this case shall
43 consist of a rerecording of the record of the deed of trust containing the

1 marginal entry and may make on the record of the deed of trust
2 concerned a marginal entry in writing thereof, with the date of receipt of
3 the notice. The deed of trust shall not be canceled after such recording
4 of a record of satisfaction or marginal entry until the ownership of said
5 instrument shall have been lawfully determined. Nothing in this
6 subdivision (4) shall be construed to impair the negotiability of any
7 instrument otherwise properly negotiable, nor to impair the rights of any
8 innocent purchaser for value thereof.

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

- 15 (5) By exhibition to the register of deeds of a notice of satisfaction of a
16 deed of trust, mortgage, or other instrument which has been
17 acknowledged by the trustee or the mortgagee before an officer
18 authorized to take acknowledgments. The notice of satisfaction shall be
19 substantially in the form set out in G.S. 47-46.1. The notice of
20 satisfaction shall recite the names of all parties to the original
21 instrument, the amount of the obligation secured, the date of satisfaction
22 of the obligation, and a reference by book and page number to the
23 record of the instrument satisfied. The notice of satisfaction shall be
24 accompanied by the deed of trust, mortgage, or other instrument, or a
25 copy of the instrument, for verification and indexing purposes, which
26 shall not be recorded with the notice.

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

- 34 (6) By exhibition to the register of deeds of a certificate of satisfaction of a
35 deed of trust, mortgage, or other instrument that has been acknowledged
36 before an officer authorized to take acknowledgments by the owner of
37 the note, bond, or other evidence of indebtedness secured by the deed of
38 trust or mortgage. The certificate of satisfaction shall be accompanied
39 by the note, bond, or other evidence of indebtedness, if available, with
40 an endorsement of payment and satisfaction by the owner of the note,
41 bond, or other evidence of indebtedness. If such evidence of
42 indebtedness cannot be produced, an affidavit, hereafter referred to as
43 an 'affidavit of lost note', signed by the owner of the note, bond, or other

evidence of indebtedness, shall be delivered to the register of deeds in lieu of the evidence of indebtedness certifying that the debt has been satisfied and stating: (i) the date of satisfaction; (ii) that the note, bond, or other evidence of indebtedness cannot be found; and (iii) that the person signing the affidavit is the current owner of the note, bond, or other evidence of indebtedness. The certificate of satisfaction shall be substantially in the form set out in G.S. 47-46.2 and shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied. The affidavit of lost note, if necessary, shall be substantially in the form set out in G.S. 47-46.3. The certificate of satisfaction shall be accompanied by the deed of trust, mortgage, or other instrument, or a copy of the instrument, for verification and indexing purposes, which shall not be recorded with the certificate.

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

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

"§ 47-46.3. Affidavit of lost note.

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

AFFIDAVIT OF LOST NOTE

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

1. The affiant is the owner of the note or other indebtedness secured by the deed of trust, mortgage, or other instrument executed by _____ (grantor, mortgagor), _____ (trustee), and _____ (beneficiary, mortgagee), and recorded in _____ County at _____ (book and page); and
2. The note or other indebtedness has been lost and after the exercise of due diligence cannot be located.
3. The affiant certifies that all indebtedness secured by the deed of trust, mortgage, or other instrument ~~has been~~ was satisfied on

