

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 292
HOUSE BILL 459

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

The General Assembly of North Carolina enacts:

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

"(5) By exhibition to the register of deeds of a notice of satisfaction of a deed of trust, mortgage, or other instrument which has been acknowledged by the trustee or the mortgagee before an officer authorized to take acknowledgments. The notice of satisfaction shall be substantially in the form set out in G.S. 47-46.1. The notice of satisfaction shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied.

Upon exhibition of the notice of ~~satisfaction and payment of the appropriate fee provided in G.S. 161-10, satisfaction,~~ the register of deeds shall record the notice of satisfaction and cancel the deed of trust, mortgage, or other instrument ~~by recording a record of satisfaction as described in G.S. 45-37.2, may make an entry of satisfaction on the margin of the record 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."

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

"(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.

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

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

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]."

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

"§ 47-46.3. Affidavit of lost note.

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

AFFIDAVIT OF LOST NOTE

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

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

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

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

(Signature of affiant)

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

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

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

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

- a. The obligee,
- b. The mortgagee,
- c. The trustee,
- d. An assignee of the obligee, mortgagee, or trustee, or
- e. Any chartered banking institution, or savings and loan association, national or state, or credit union, qualified to do business in and having an office in the State of North Carolina, when so endorsed in the name of the institution by an officer thereof. If the endorsement of payment and satisfaction is

undated, no cancellation may be made pursuant to this subdivision.

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

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

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

(a) When a notice of 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), the register of deeds shall make an entry of satisfaction on the notice or certificate and record and index the instrument.

(b) When a deed of trust, mortgage, or other instrument is satisfied by a method other than by means of a notice of satisfaction or certificate of satisfaction, the register of deeds shall record ~~the a record of satisfaction and cancel the record of every deed of trust or mortgage satisfied by recording a record of satisfaction which shall consist consisting of either a separate instrument, instrument or that part 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 record of satisfaction. A separate instrument or original deed of trust or mortgage rerecorded pursuant to this subsection shall contain ~~reciting the~~ (i) names of all parties to the original instrument, (ii) the amount of the obligation secured, (iii) the date of satisfaction of the obligation, ~~the appropriate entry of satisfaction as provided in G.S. 45-37,~~ (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.

(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."

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

In the General Assembly read three times and ratified this the 20th day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives