

NORTH CAROLINA GENERAL ASSEMBLY
1969 SESSION

CHAPTER 746
SENATE BILL 13

1 AN ACT TO RECODIFY AND SIMPLIFY THE LAW CONCERNING DISCHARGE OF
2 RECORD OF MORTGAGES, DEEDS OF TRUST AND OTHER INSTRUMENTS
3 INTENDED TO SECURE THE PAYMENT OF MONEY OR THE PERFORMANCE OF
4 ANY OTHER OBLIGATION.

5
6 The General Assembly of North Carolina do enact:

7
8 **Section 1.** G.S. 45-37 is rewritten to read as follows:

9 "Sec. 45-37. Discharge of record of mortgages, deeds of trust and other instruments. (a)
10 Subject to the provisions of G.S. 45-73 relating to secured instruments which secure future
11 advances, any deed of trust or mortgage or other instrument intended to secure the payment of
12 money or the performance of any other obligation registered as required by law may be
13 discharged and released of record in the following manner:

14 (1) By acknowledgment of the satisfaction of the provisions of such deed of
15 trust, mortgage or other instrument in the presence of the Register of Deeds
16 by

- 17 a. the trustee,
18 b. the mortgagee,
19 c. the legal representative of a trustee or mortgagee, or
20 d. a duly authorized agent or attorney of any of the above.

21 Upon acknowledgment of satisfaction, the Register of Deeds shall forthwith
22 make upon the margin of the record of such deed of trust, mortgage or other
23 instrument an entry of such acknowledgment of satisfaction which shall be
24 signed by the trustee, mortgagee, legal representative, agent or attorney and
25 witnessed by the Register of Deeds who shall also affix his name thereto.

26 (2) By exhibition of any deed of trust, mortgage or other instrument
27 accompanied with the bond, note, or other instrument thereby secured to the
28 Register of Deeds, with the endorsement of payment and satisfaction
29 appearing thereon by

- 30 a. the obligee,
31 b. the mortgagee,
32 c. the trustee,
33 d. an assignee of the obligee, mortgagee, or trustee; or
34 e. any chartered banking institution, national or state, qualified to do
35 business in and having an office in the State of North Carolina, when
36 so endorsed in the name of the institution by an officer thereof.

37 Upon exhibition of the instruments, the Register of Deeds shall cancel the
38 mortgage, deed of trust or other instrument by entry of satisfaction on the
39 margin of the record. The person so claiming satisfaction, performance or
40 discharge of the debt or other obligation may retain possession of all of the
41 instruments exhibited. The exhibition of the mortgage, deed of trust or other
42 instrument alone to the Register of Deeds, with endorsement of payment,
43 satisfaction, performance or discharge shall be sufficient if the mortgage,

- 1 deed of trust or other instrument itself sets forth the obligation secured or the
2 performance of any other obligation and does not call for or recite any note,
3 bond or other instrument secured by it. The Register of Deeds may require
4 the person exhibiting the instruments for cancellation to furnish him an
5 acknowledgment of cancellation of the mortgage, deed of trust or other
6 instrument for the purpose of showing upon whose request and exhibition
7 the mortgage, deed of trust or other instrument was cancelled.
- 8 (3) By exhibiting to the Register of Deeds by:
9 a. the grantor,
10 b. the mortgagor, or
11 c. an agent, attorney or successor in title of the grantor or mortgagor
12 of any mortgage, deed of trust or other instrument intended to secure the
13 payment of money or the performance of any other obligation, together with
14 the bond, note or other instrument secured thereby, or by exhibition of the
15 mortgage, deed of trust or other instrument alone if such instrument itself
16 sets forth the obligation secured or other obligation to be performed and does
17 not call for or recite any note, bond or other instrument secured by it, if at
18 the time of exhibition, all such instruments are more than ten (10) years old
19 counting from the maturity date of the last obligation secured. If the
20 instrument or instruments so exhibited have an endorsement of partial
21 payment, satisfaction, performance or discharge within the said period of ten
22 (10) years, the period of ten (10) years shall be counted from the date of the
23 most recent endorsement.
- 24 The Register of Deeds shall make proper entry of cancellation and
25 satisfaction of said instrument on the margin of the record where the same is
26 recorded, whether there be any such entries on the original papers or not.
- 27 (4) By exhibition to the Register of Deeds of any deed of trust given to secure
28 the bearer or holder of any negotiable instruments transferable by delivery,
29 together with all the evidences of indebtedness secured thereby, marked paid
30 and satisfied in full and signed by the bearer or holder thereof.
- 31 Upon exhibition of the deed of trust, and the evidences of indebtedness
32 properly marked, the Register of Deeds shall cancel such deed of trust by
33 entry of satisfaction upon the margin of the record, which entry shall be
34 valid and binding upon all persons, if no person rightfully entitled to the
35 deed of trust or evidences of indebtedness has previously notified the
36 Register of Deeds in writing of the loss or theft of the instrument or
37 evidences of indebtedness and has caused the Register of Deeds to record the
38 notice of loss or theft on the margin of the record of the deed of trust.
- 39 Upon receipt of written notice of loss or theft of the deed of trust or
40 evidences of indebtedness the Register of Deeds shall make on the record of
41 the deed of trust concerned a marginal entry in writing thereof, with the date
42 of receipt of the notice. The deed of trust shall not be cancelled after such
43 marginal entry until the ownership of said instrument shall have been
44 lawfully determined. Nothing in this subdivision (4) shall be construed to
45 impair the negotiability of any instrument otherwise properly negotiable, nor
46 to impair the rights of any innocent purchaser for value thereof.
- 47 Every entry of acknowledgment of satisfaction or of satisfaction made or
48 witnessed by the Register of Deeds as provided in subdivision (a)(1) shall
49 operate and have the same effect to release and discharge all the interest of
50 such trustee, mortgagee or representative in such deed or mortgage as if a

1 deed of release or reconveyance thereof had been duly executed and
2 recorded.

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

9 a. The date when the conditions of such instrument were required by its terms
10 to have been performed, or

11 b. The date of maturity of the last installment of debt or interest secured
12 thereby;

13 Provided that the holder of the indebtedness secured by such instrument or party secured by
14 any provision thereof may file an affidavit with the Register of Deeds which affidavit shall
15 specifically state:

16 1. the amount of debt unpaid, which is secured by said instrument; or

17 2. in what respect any other condition thereof shall not have been complied
18 with; or

19 may make on the margin of the record of the instrument a notation signed by the holder or party
20 secured and witnessed by the Register of Deeds stating:

21 1. any payments that have been made on the indebtedness or other obligation
22 secured by such instrument including the date and amount of payments and

23 2. the amount still due or obligations not performed under the instrument.

24 The effect of the filing of the affidavit or of the notation made as herein provided shall be to
25 postpone the effective date of the conclusive presumption of satisfaction to a date fifteen (15)
26 years from the filing of the affidavit or from the making of the notation. There shall be only one
27 postponement of the effective date of the conclusive presumption provided for herein. The
28 Register of Deeds shall record the affidavit provided for herein and shall make a reference on
29 the margin of the record of the instrument referred to therein to the filing of such affidavit and
30 to the book and page where the affidavit is recorded. This subsection shall not apply to any
31 deed, mortgage, deed of trust or other instrument made or given by any railroad company, or to
32 any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage or other
33 instrument relating to the sale, purchase or lease of railroad equipment or rolling stock, or of
34 other personal property.

35 "(c) In any county in which deeds of trust and mortgages are recorded in the office of the
36 Register of Deeds by microphotographic process or any other method or process which renders
37 impractical or impossible the subsequent entry of marginal notations upon the records of
38 instruments, the Register of Deeds, in lieu of making entries of acknowledgment, of satisfaction
39 or of cancellation and satisfaction, shall require the submission for recordation of a notice of
40 satisfaction sufficient to comply with the provisions of G.S. 45-37.2.

41 "(d) For the purposes of this section 'Register of Deeds' means the Register of Deeds, his
42 deputies or assistants of the county in which the mortgage, deed of trust, or other instrument
43 intended to secure the payment of money or performance of other obligation is registered."

44 "(e) Any transaction subject to the provisions of the Uniform Commercial Code, Chapter
45 25 of the General Statutes, is controlled by the provisions of that Act and not by this section."

46 **Sec. 2.** All laws and clauses of laws in conflict with this Act are hereby repealed.

47 **Sec. 3.** This Act shall become effective January 1, 1970.

48 In the General Assembly read three times and ratified, this the 9th day of June,
49 1969.