

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1213

Short Title: Buncombe/Cancellation by Exhibition.

(Local)

Sponsors: Senators Ledbetter; and Carpenter.

Referred to: Local Government and Regional Affairs.

May 20, 1996

A BILL TO BE ENTITLED

1 AN ACT TO ALLOW CANCELLATION BY EXHIBITION OF A NOTE SECURED
2 BY A DEED OF TRUST OR MORTGAGE IN BUNCOMBE COUNTY
3 REGARDLESS OF THE DATE OF ENDORSEMENT.
4

5 The General Assembly of North Carolina enacts:

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

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

11 (1) By acknowledgment of the satisfaction of the provisions of such deed of
12 trust, mortgage or other instrument in the presence of the register of
13 deeds by:

14 a. The trustee,

15 b. The mortgagee,

16 c. The legal representative of a trustee or mortgagee, or

17 d. A duly authorized agent or attorney of any of the above.

18 The register of deeds is not required to verify or make inquiry
19 concerning the authority of the person acknowledging the satisfaction to
20 do so. Upon acknowledgment of satisfaction, the register of deeds shall

1 record a record of satisfaction as described in G.S. 45-37.2, and may
2 forthwith make upon the margin of the record of such deed of trust,
3 mortgage or other instrument an entry of such acknowledgment of
4 satisfaction which shall be signed by the trustee, mortgagee, legal
5 representative, agent or attorney and witnessed by the register of deeds,
6 who shall also affix his name thereto.

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

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

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

41 (3) By exhibiting to the register of deeds by:

- 42 a. The grantor,
- 43 b. The mortgagor, or

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

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

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

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

37 Upon receipt of written notice of loss or theft of the deed of trust or
38 evidences of indebtedness the register of deeds shall record a record of
39 satisfaction, as described in G.S. 45-37.2, which in this case shall
40 consist of a rerecording of the record of the deed of trust containing the
41 marginal entry and may make on the record of the deed of trust
42 concerned a marginal entry in writing thereof, with the date of receipt of
43 the notice. The deed of trust shall not be canceled after such recording

1 of a record of satisfaction or marginal entry until the ownership of said
2 instrument shall have been lawfully determined. Nothing in this
3 subdivision (4) shall be construed to impair the negotiability of any
4 instrument otherwise properly negotiable, nor to impair the rights of any
5 innocent purchaser for value thereof.

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

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

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

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

1 bond, or other evidence of indebtedness cannot be found; and (iii) that
 2 the person signing the affidavit is the current owner of the note, bond, or
 3 other evidence of indebtedness. The certificate of satisfaction shall be
 4 substantially in the form set out in G.S. 47-46.2 and shall recite the
 5 names of all parties to the original instrument, the amount of the
 6 obligation secured, the date of satisfaction of the obligation, and a
 7 reference by book and page number to the record of the instrument
 8 satisfied. The affidavit of lost note, if necessary, shall be substantially in
 9 the form set out in G.S. 47-46.3. The certificate of satisfaction shall be
 10 accompanied by the deed of trust, mortgage, or other instrument, or a
 11 copy of the instrument, for verification and indexing purposes, which
 12 shall not be recorded with the certificate.

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

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

24 **"§ 47-46.3. Affidavit of lost note.**

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

27 **AFFIDAVIT OF LOST NOTE**

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

- 31 1. The affiant is the owner of the note or other indebtedness secured by the
 32 deed of trust, mortgage, or other instrument executed by
 33 _____ (grantor, mortgagor), _____
 34 (trustee), and _____ (beneficiary, mortgagee), and
 35 recorded in _____ County at _____
 36 (book and page); and
- 37 2. The note or other indebtedness has been lost and after the exercise of
 38 due diligence cannot be located.
- 39 3. The affiant certifies that all indebtedness secured by the deed of trust,
 40 mortgage, or other instrument ~~has been~~ was satisfied on
 41 _____, 19____, and the affiant is responsible for cancellation
 42 of the same.

1 (Signature of affiant)
2 Sworn to (or affirmed) and subscribed before me this _____ day of
3 _____, 19 ____.

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

5 Sec. 3. This act applies only to Buncombe County.

6 Sec. 4. This act is effective upon ratification.