

March 22, 2005

S 734. SATISFACTION OF MORTGAGES AND DEEDS OF TRUST. TO AMEND ARTICLE 4 OF CHAPTER 45 RELATING TO THE SATISFACTION OF MORTGAGES AND DEEDS OF TRUST AS RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION. Enacts substantial amendments to Article 4 of GS Chapter 45 that (1) require secured creditors to record document evidencing satisfaction of a security interest within 30 days of satisfaction and stiffen penalties for a secured creditor's failure to record satisfaction of a security interest; (2) obligate secured creditors to provide payoff information sufficiently detailed to allow determination of payoff required to satisfy a security interest as of a specific date; (3) permit recording of an affidavit of satisfaction if secured creditor fails to record satisfaction of security interest; and (5) allow recording of a document of rescission if a satisfaction of security interest is erroneously recorded.

Renames Article 4 "Satisfaction" (formerly, "Discharge and Release"). Rewrites GS 45-36.2 to impose obligation of good faith on performance of acts under article. Renders notification, discharge, and release requirements of GS 45-36.3 applicable only to security instruments satisfied before October 1, 2005. Enacts new GS 45-36.4 setting forth applicable definitions and new GS 45-36.5 prescribing the manner for notification under the article and the date notification is effective.

New GS 45-36.7 permits "entitled person," (defined as obligor or landowner), or his or her agent to request a payoff statement for a date not more than 30 days after notification. Requires secured creditor to issue payoff statement or to inform requestor of assignment of security interest within 10 days. Requires that payoff statement contain payoff amount as of date it was prepared, including amount by type of each fee, charge, or other sum included, along with information necessary to calculate payoff amount as of requested payoff date. Prohibits issuance of payoff statement listing amount as "subject to change" without also providing information necessary to obtain updated payoff amount, without charge, on date of payoff. Requires secured creditors to provide one payoff statement without charge every six months. Permits \$25 fee for additional statements, but not for updated or corrected statements. Renders secured creditor liable for actual damages, but not punitive damages, caused by failure to send timely payoff statement.

Enacts new GS 45-36.8 permitting secured creditor to send a corrected payoff statement. If entitled person or agent receives corrected statement in time to act, corrected statement supercedes earlier statement. Binds secured creditor to amount in original payoff statement as to any person who reasonably and detrimentally relies on amount but preserves creditor's ability to recover from person liable for payment of secured obligation.

New GS 45-36.9 requires a secured creditor to submit for recording a satisfaction of security instrument within 30 days after payment of secured obligation. Renders secured creditor liable to landowner for actual damages (but not punitive damages) caused by failure to comply. Increases secured creditor's liability to include \$1,000 to the landowner plus attorneys' fees and costs if secured creditor fails to submit satisfaction for recording within 30 days after demand and security interest is not otherwise satisfied of record. New GS 45-36.12 provides that secured creditor that complies in good faith with reasonable procedures is not liable if failure to submit satisfaction is caused by circumstances beyond creditor's control.

Enacts new GS 45-36.10 setting forth required content and effect of satisfaction. Requires register of deeds to record satisfaction meeting statutory requirements. New GS 45-36.11 sets forth authorized form for satisfaction.

New GS 45-36.14 through 45-36.18 provide for recording of affidavit of satisfaction by "satisfaction agent" (title insurance agent or attorney) for landowner upon secured creditor's failure to submit satisfaction. Provides that affidavit of satisfaction constitutes a satisfaction of security interest described in affidavit.

New GS 45-36.19 renders satisfaction agent who submits false affidavit of satisfaction liable to the secured creditor for actual damages and reasonable attorneys' fees and costs. Provides that agent who records erroneous affidavit without knowledge is not liable if agent complied with article and secured creditor did not respond in timely manner to notification from agent. Does not preclude court from awarding punitive damages for knowingly filing a false affidavit or enforcing criminal statutes barring such conduct.

Enacts new GS 45-36.20 providing for the recording of a trustee's satisfaction to satisfy a deed of trust.

Enacts new GS 45-36.6 authorizing the recording of a document of rescission where document indicating satisfaction or affidavit of satisfaction of a security interest was recorded erroneously. Permits person who erroneously recorded satisfaction document or secured creditor to record rescission document, which rescinds erroneously recorded satisfaction or affidavit and reinstates security instrument. Recorded document of rescission does not affect rights of person recording an interest in property subsequent to the recording of erroneous satisfaction of record but before the recording of the document of rescission. Rescission document likewise does not affect the interests of a person who would otherwise have priority over or take free of the lien created by the security instrument under GS Chapter 47. Renders liable for damages a person who wrongfully records a document of rescission.

Makes conforming amendments to GS 45-37 providing for the satisfaction of record of security instruments by recording satisfaction document, affidavit of satisfaction, or trustee's satisfaction pursuant to GS 45-36.10, 45-36.16, and 45-36.20. Repeals GS 45-37(a)(1), (5), and (6) for security instruments satisfied October 1, 2005, and later.

Amends GS 45-37.2(a) to prohibit register of deeds from charging a fee for recording satisfaction document, affidavit of satisfaction, or trustee's satisfaction or for certifying any related acknowledgements. Amends subsection (b) to require that when security interest is satisfied by means other than satisfaction document, affidavit of satisfaction, or trustee's satisfaction, the register of deeds must record a record of satisfaction at no charge. Sets forth requirements for the record of satisfaction.

Enacts other technical and conforming changes to GS Chapter 45.

Rewrites GS 47-46.1 to provide that no particular form is required for a notice of satisfaction of a security interest and setting forth model form that satisfies the requirements of GS Chapter 45. Similarly amends GS 47-46.2 for certificates of satisfaction and affidavits of lost notes.

Effective October 1, 2005.

Intro. by Boseman.

Ref. to Judiciary I

GS 45, 47

May 2, 2005

S 734. SATISFACTION OF MORTGAGES AND DEEDS OF TRUST. Intro. 3/22/05. Senate committee substitute makes the following changes to 1st edition. (1) Modifies proposed new GS 45-36.13 to remove authorization for title insurance company to serve as a satisfaction agent. (2) Modifies proposed new GS 45-36-16 to require that an affidavit of satisfaction identify the type of security instrument and the office in which the security instrument is recorded. (3) Amends GS 45-37 to require presentation of original instruments (was, exhibition of instruments) before satisfaction of record and to require a written affidavit with specified contents regarding lost or stolen securities (was, a notice). (4) Deletes language in GS 45-37(f) allowing register of deeds to refuse to register document without legible printed name of required signer. (5) Amends various statutes to eliminate the practice of entering information on the margin of instruments. (6) Deletes proposed language in GS 45-37.2(a) that would have prohibited register of deeds from charging a fee for certifying acknowledgements related to satisfaction documents. (7) Revises GS 45-37.2(b)(1) regarding required contents of rerecorded security interest in order to be a sufficient record of satisfaction. (8) Amends GS 47-14 to prohibit acceptance for registration of any instrument requiring proof or acknowledgement unless certain conditions are met and to modify the conditions for a district court judge to determine that an instrument has been proved or acknowledged. (9) Repeals GS 47-37 and 47-46, concerning forms for registration and verification. (10) Amends GS 161-14.1 to update and reorganize the provisions governing recording subsequent instruments (was, recording subsequent entries as separate instruments). (11) Makes conforming and technical changes.

June 8, 2005

S 734. SATISFACTION OF MORTGAGES AND DEEDS OF TRUST. Intro. 3/22/05. House committee substitute makes the following changes to 2nd edition. Amends GS 161-14.1(c) to provide that register of deeds is not required to read or examine any page of an instrument, other

than the first two pages, to determine whether it is a subsequent instrument within meaning of section. Makes technical changes.

June 30, 2005

SL 2005-123 (S 734). SATISFACTION OF MORTGAGES AND DEEDS OF TRUST. 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. Summarized in *Daily Bulletin* 3/22/05, 5/2/05, and 6/8/05. Enacted June 29, 2005. Effective October 1, 2005.