

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 734
Judiciary I Committee Substitute Adopted 5/2/05

Short Title: Satisfaction of Mortgages and Deeds of Trust.

(Public)

Sponsors:

Referred to:

March 22, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND ARTICLE 4 OF CHAPTER 45 RELATING TO THE
3 SATISFACTION OF MORTGAGES AND DEEDS OF TRUST AS
4 RECOMMENDED BY THE NORTH CAROLINA BAR ASSOCIATION.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 4 of Chapter 45 of the General Statutes reads as
7 rewritten:

8 "Article 4.

9 "~~Discharge and Release. Satisfaction.~~

10 "**§ 45-36.2. Register of deeds includes assistants and deputies. Obligation of good**
11 **faith.**

12 The words "~~register of deeds~~" appearing in this Article shall be interpreted to mean
13 "~~register of deeds, assistant register of deeds, or deputy register of deeds.~~Every action or
14 duty within this Article imposes an obligation of good faith in its performance or
15 enforcement.

16 "**§ 45-36.3. Notification by mortgagee of satisfaction of provisions of deed of trust**
17 **or mortgage, or other instrument; civil penalty.**

18 (a) After the satisfaction of the provisions of any deed of trust or mortgage, or
19 other instrument intended to secure with real property the payment of money or the
20 performance of any other obligation and registered as required by law, the holder of the
21 evidence of the indebtedness, if it is a single instrument, or a duly authorized agent or
22 attorney of such holder shall within 60 days:

23 (1) Discharge and release of record such documents and forward the
24 cancelled documents to the grantor, trustor or mortgagor; or,

25 (2) Alternatively, the holder of the evidence of the indebtedness or a duly
26 authorized agent or attorney of such holder, at the request of the
27 grantor, trustor or mortgagor, shall forward said instrument and the
28 deed of trust or mortgage instrument, with payment and satisfaction

1 acknowledged in accordance with the requirements of G.S. 45-37, to
2 the grantor, trustor or mortgagor.

3 (b) Any person, institution or agent who fails to comply with this section may be
4 required to pay a civil penalty of not more than one thousand dollars (\$1,000) in
5 addition to reasonable attorneys' fees and any other damages awarded by the court to the
6 grantor, trustor or mortgagor, or to a subsequent purchaser of the property from the
7 grantor, trustor or mortgagor. A five hundred dollar (\$500.00) civil penalty may be
8 recovered by the grantor, trustor or mortgagor, and a five hundred dollar (\$500.00)
9 penalty may be recovered by the purchaser of the property from the grantor, trustor or
10 mortgagor. If that purchaser of the property consists of more than a single grantee, then
11 the civil penalty will be divided equally among all of the grantees. A petitioner may
12 recover damages under this section only if he has given the mortgagee, obligee,
13 beneficiary or other responsible party written notice of his intention to bring an action
14 pursuant to this section. Upon receipt of this notice, the mortgagee, obligee, beneficiary
15 or other responsible party shall have 30 days, in addition to the initial 60-day period, to
16 fulfill the requirements of this section.

17 (c) Should any person, institution or agent who is not the present holder of the
18 evidence of indebtedness be required to pay a civil penalty, attorneys' fees, or other
19 damages under this section, they will have an action against the holder of the evidence
20 of indebtedness for all sums they were required to pay."

21 (d) This section applies only if the provisions of the deed of trust, mortgage, or
22 other instrument are satisfied before October 1, 2005.

23 **"§ 45-36.4. Definitions.**

24 As used in this Article, the following terms mean:

- 25 (1) Address for giving a notification. – For the purpose of a particular type
26 of notification, the most recent address provided in a document by the
27 intended recipient of the notification to the person giving the
28 notification, unless the person giving the notification knows of a more
29 accurate address, in which case the term means that address.
- 30 (2) Day. – Calendar day.
- 31 (3) Document. – Information that is inscribed on a tangible medium or
32 that is stored in an electronic or other medium and is retrievable in
33 perceivable form.
- 34 (4) Electronic. – Relating to technology having electrical, digital,
35 magnetic, wireless, optical, electromagnetic, or similar capabilities.
- 36 (5) Entitled person. – A person liable for payment or performance of the
37 obligation secured by the real property described in a security
38 instrument, or the landowner.
- 39 (6) Good faith. – Honesty in fact and the observance of reasonable
40 commercial standards of fair dealing.
- 41 (7) Landowner. – A person that, before foreclosure, has the right of
42 redemption in the real property described in a security instrument. The
43 term does not include a person that holds only a lien on the real
44 property.

- 1 (8) Notification. – A document containing information required under this
2 Article and signed by the person required to provide the information.
- 3 (9) Original parties. – With respect to a security instrument, each person
4 named as a party to the security instrument on the face thereof as
5 originally recorded. In identifying the original parties to a deed of trust
6 for purposes of this Article, it is not necessary to include the original
7 trustee or trustees named therein.
- 8 (10) Payoff amount. – The sum necessary to satisfy a secured obligation.
- 9 (11) Payoff statement. – A document containing the information specified
10 in G.S. 45-36.7(d).
- 11 (12) Person. – An individual, corporation, business trust, estate, trust,
12 partnership, limited liability company, association, joint venture,
13 public corporation, government, or governmental subdivision, agency,
14 or instrumentality, or any other legal or commercial entity.
- 15 (13) Recording data. – The book and page number or document number
16 that indicate where a document is recorded in the office of the register
17 of deeds.
- 18 (14) Register of deeds. – Includes the register of deeds, assistant register of
19 deeds, or deputy register of deeds.
- 20 (15) Satisfy. – With respect to a security instrument, to terminate the
21 effectiveness of the security instrument.
- 22 (16) Secured creditor. – A person that holds or is the beneficiary of a
23 security interest or that is authorized both to receive payments on
24 behalf of a person that holds a security interest and to record a
25 satisfaction of the security instrument upon receiving full performance
26 of the secured obligation. The term does not include a trustee under a
27 security instrument.
- 28 (17) Secured obligation. – An obligation the payment or performance of
29 which is secured by a security interest.
- 30 (18) Security instrument. – An agreement, however denominated, that
31 creates or provides for an interest in real property to secure payment or
32 performance of an obligation, whether or not it also creates or provides
33 for a lien on personal property. The term includes a deed of trust and a
34 mortgage.
- 35 (19) Security interest. – An interest in real property created by a security
36 instrument.
- 37 (20) Sign. – With present intent to authenticate or adopt a document:
38 a. To execute or adopt a tangible symbol; or
39 b. To attach to or logically associate with the document an
40 electronic sound, symbol, or process.
- 41 (21) State. – A state of the United States, the District of Columbia, Puerto
42 Rico, the United States Virgin Islands, or any territory or insular
43 possession subject to the jurisdiction of the United States.

1 (22) Submit for recording. – To deliver, with required fees and taxes, a
2 document sufficient to be recorded under this Article to the register of
3 deeds in the county in which the real property described in the related
4 security instrument is located.

5 **"§ 45-36.5. Notification: manner of giving and effective date.**

6 (a) A person gives a notification by any of the following:

7 (1) Depositing it with the United States Postal Service with first-class
8 postage paid or with a commercially reasonable delivery service with
9 cost of delivery provided, properly addressed to the recipient's address
10 for giving a notification.

11 (2) Sending it by facsimile transmission, electronic mail, or other
12 electronic transmission to the recipient's address for giving a
13 notification, but only if the recipient agreed to receive notification in
14 that manner.

15 (3) Causing it to be received at the address for giving a notification within
16 the time that it would have been received if given pursuant to
17 subdivision (1) of this subsection.

18 (b) A notification is effective on any of the following:

19 (1) The day after it is deposited with a commercially reasonable delivery
20 service for overnight delivery.

21 (2) Three days after it is deposited with the United States Postal Service,
22 first-class mail with postage prepaid, or with a commercially
23 reasonable delivery service for delivery other than by overnight
24 delivery.

25 (3) The day it is given, if given pursuant to subdivision (a)(2) of this
26 section.

27 (4) The day it is received, if given by a method other than as provided in
28 subdivision (a)(1) or (2) of this section.

29 (c) If this Article or a notification given pursuant to this Article requires
30 performance on or by a certain day and that day is a Saturday, Sunday, or legal holiday
31 under the laws of this State or the United States, the performance is sufficient if
32 performed on the next day that is not a Saturday, Sunday, or legal holiday.

33 **"§ 45-36.6. Document of rescission: effect; liability for wrongful recording.**

34 (a) In this section, "document of rescission" means a document stating that an
35 identified satisfaction or affidavit of satisfaction of a security instrument was recorded
36 erroneously or that a security instrument was satisfied of record erroneously, the
37 secured obligation remains unsatisfied, and the security instrument remains in force.

38 (b) If a person records a satisfaction or affidavit of satisfaction of a security
39 instrument in error or if a security instrument is satisfied of record erroneously by any
40 other means, the person or the secured creditor may execute and record a document of
41 rescission. Upon recording, the document rescinds an erroneously recorded satisfaction
42 or affidavit and the erroneous satisfaction of record of the security instrument, and
43 reinstates the security instrument.

44 (c) A recorded document of rescission has no effect on the rights of a person that:

1 (1) Records an interest in the real property described in a security
2 instrument after the recording of the satisfaction or affidavit of
3 satisfaction of the security instrument or the erroneous satisfaction of
4 record of the security instrument by other means and before the
5 recording of the document of rescission; and

6 (2) Would otherwise have priority over or take free of the lien created by
7 the security instrument as reinstated under Chapter 47 of the General
8 Statutes.

9 (d) A person that erroneously or wrongfully records a document of rescission is
10 liable to any person injured thereby for the actual loss caused by the recording and
11 reasonable attorneys' fees and costs.

12 **"§ 45-36.7. Payoff statement: request and content.**

13 (a) An entitled person, or an agent authorized by an entitled person to request a
14 payoff statement, may give to the secured creditor a notification requesting a payoff
15 statement for a specified payoff date not more than 30 days after the notification is
16 given. The notification must contain all of the following:

17 (1) The entitled person's name.

18 (2) If given by a person other than an entitled person, the name of the
19 person giving the notification and a statement that the person is an
20 authorized agent of the entitled person.

21 (3) A direction whether the statement is to be sent to the entitled person or
22 that person's authorized agent.

23 (4) The address to which the creditor must send the statement.

24 (5) Sufficient information to enable the creditor to identify the secured
25 obligation and the real property encumbered by the security interest.

26 (b) If a notification under subsection (a) of this section directs the secured
27 creditor to send the payoff statement to a person identified as an authorized agent of the
28 entitled person, the secured creditor must send the statement to the agent, unless the
29 secured creditor knows that the entitled person has not authorized the request.

30 (c) A person who gives to a secured creditor a notification requesting a payoff
31 statement thereby represents that the person is an entitled person or the authorized agent
32 of an entitled person. A secured creditor may rely on that representation in providing a
33 payoff statement unless the secured creditor knows that the requesting person is neither
34 an entitled person nor the authorized agent of an entitled person. A secured creditor has
35 no duty to make inquiry as to whether, or to verify that, the person requesting a payoff
36 statement is an entitled person or the authorized agent of an entitled person.

37 (d) Within 10 days after the effective date of a notification that complies with
38 subsection (a) of this section, the secured creditor shall issue a payoff statement and
39 send it as directed pursuant to subdivision (a)(3) of this section in the manner prescribed
40 in G.S. 45-36.5 for giving a notification. A secured creditor that sends a payoff
41 statement to the entitled person or the authorized agent may not claim that the
42 notification did not satisfy subsection (a) of this section. If the person to whom the
43 notification is given once held an interest in the secured obligation but has since
44 assigned that interest, the person need not send a payoff statement but shall give (i) a

1 notification of the assignment to the person to whom the payoff statement otherwise
2 would have been sent, providing the name and address of the assignee, or (ii) a
3 notification to the person to whom the payoff statement otherwise would have been
4 sent, stating that the recipient claims no interest in the security instrument or the secured
5 obligation, that the secured obligation was assigned, but that the identity and address of
6 the assignee is not known.

7 (e) A payoff statement must contain:

8 (1) The date on which it was prepared and the payoff amount as of that
9 date, including the amount by type of each fee, charge, or other sum
10 included within the payoff amount;

11 (2) The information reasonably necessary to calculate the payoff amount
12 as of the requested payoff date, including the per diem interest amount;
13 and

14 (3) The payment cutoff time, if any, the address or place where payment
15 must be made, and any limitation as to the authorized method of
16 payment.

17 (f) A payoff statement may contain the amount of any fees authorized under this
18 section not included in the payoff amount. A secured creditor may require the payment
19 in full of any fees authorized under this section before issuing a payoff statement.

20 (g) A secured creditor may not qualify a payoff amount or state that it is subject
21 to change before the payoff date unless the payoff statement provides information
22 sufficient to permit the entitled person or the person's authorized agent to request an
23 updated payoff amount at no charge and to obtain that updated payoff amount during
24 the secured creditor's normal business hours on the payoff date or the immediately
25 preceding business day.

26 (h) A secured creditor must provide upon request one payoff statement without
27 charge during any six-month period. A secured creditor may charge a fee of twenty-five
28 dollars (\$25.00) for each additional payoff statement requested during that six-month
29 period. However, a secured creditor may not charge a fee for providing an updated
30 payoff amount under subsection (f) of this section or a corrected payoff statement under
31 G.S. 45-36.8(a).

32 (i) Unless the security instrument provides otherwise, a secured creditor is not
33 required to send a payoff statement by means other than first-class mail. If the creditor
34 agrees to send a statement by another means, it may charge a reasonable fee for
35 complying with the requested manner of delivery.

36 (j) Except as otherwise provided in G.S. 45-36.12, if a secured creditor to which
37 a notification has been given pursuant to subsection (a) of this section does not send a
38 timely payoff statement that substantially complies with subsection (d) of this section,
39 the creditor is liable to the entitled person for any actual damages caused by the failure,
40 but not punitive damages. A creditor that does not pay the damages provided in this
41 subsection within 30 days after receipt of a notification demanding payment shall also
42 be liable for reasonable attorneys' fees and costs.

43 (k) This section does not apply unless the notification requesting a payoff
44 statement is given on or after October 1, 2005.

1 **"§ 45-36.8. Understated payoff statement: correction; effect.**

2 (a) If a secured creditor determines that the payoff amount it provided in a payoff
3 statement was understated, the creditor may send a corrected payoff statement. If the
4 entitled person or the person's authorized agent receives and has a reasonable
5 opportunity to act upon a corrected payoff statement before making payment, the
6 corrected statement supersedes an earlier statement.

7 (b) A secured creditor that sends a payoff statement containing an understated
8 payoff amount may not deny the accuracy of the payoff amount as against any person
9 that reasonably and detrimentally relies upon the understated payoff amount.

10 (c) This Article does not:

11 (1) Affect the right of a secured creditor to recover any sum that it did not
12 include in a payoff amount from any person liable for payment of the
13 secured obligation; or

14 (2) Limit any claim or defense that a person liable for payment of a
15 secured obligation may have under law other than this Article.

16 **"§ 45-36.9. Secured creditor to submit satisfaction for recording; liability for**
17 **failure.**

18 (a) A secured creditor shall submit for recording a satisfaction of a security
19 instrument within 30 days after the creditor receives full payment or performance of the
20 secured obligation. If a security instrument secures a line of credit or future advances,
21 the secured obligation is fully performed only if, in addition to full payment, the secured
22 creditor has received a notification requesting the creditor to terminate the line of credit
23 or containing a statement sufficient to terminate the effectiveness of the provision for
24 future advances in the security instrument.

25 (b) Except as otherwise provided in G.S. 45-36.12, a secured creditor that is
26 required to submit a satisfaction of a security instrument for recording and does not do
27 so by the end of the period specified in subsection (a) of this section is liable to the
28 landowner for any actual damages caused by the failure, but not punitive damages.

29 (c) Except as otherwise provided in subsection (d) of this section and in
30 G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security
31 instrument for recording and does not do so by the end of the period specified in
32 subsection (a) of this section, is also liable to the landowner for one thousand dollars
33 (\$1,000) and any reasonable attorneys' fees and court costs incurred if, after the
34 expiration of the period specified in subsection (a) of this section, all of the following
35 occur:

36 (1) The landowner gives the secured creditor a notification, by any method
37 authorized by G.S. 45-36.5 that provides proof of receipt, demanding
38 that the secured creditor submit a satisfaction for recording.

39 (2) The secured creditor does not submit a satisfaction for recording
40 within 30 days after the secured creditor's receipt of the notification.

41 (3) The security instrument is not satisfied of record by any of the
42 methods provided in G.S. 45-37(a) within 30 days after the secured
43 creditor's receipt of the notification.

1 The right to receive the additional one thousand dollars (\$1,000) is personal to the
2 landowner who gives the secured creditor notification under this subsection, and may
3 not be assigned.

4 (d) Subsection (c) of this section does not apply if the secured creditor received
5 full payment or performance of the secured obligation before October 1, 2005.

6 (e) This section does not apply if the security instrument is satisfied of record by
7 any of the methods provided in G.S. 45-37(a) within 30 days after the secured creditor
8 receives full payment or performance of the secured obligation.

9 **"§ 45-36.10. Content and effect of satisfaction.**

10 (a) A document is a satisfaction of a security instrument if it does all of the
11 following:

12 (1) Identifies the type of security instrument, the original parties to the
13 security instrument, the recording data for the security instrument, and
14 the office in which the security instrument is recorded.

15 (2) States that the person signing the satisfaction is the secured creditor.

16 (3) [Reserved]

17 (4) Contains language terminating the effectiveness of the security
18 instrument.

19 (5) Is signed by the secured creditor and acknowledged as required by law
20 for a conveyance of an interest in real property.

21 (b) The register of deeds shall accept for recording a satisfaction of a security
22 instrument, unless one of the following applies:

23 (1) The document is submitted by a method or in a medium not authorized
24 for registration by the register of deeds under applicable law.

25 (2) The document is not signed by the secured creditor and acknowledged
26 as required by law for a conveyance of an interest in real property. The
27 register of deeds shall not be required to verify or make inquiry
28 concerning (i) the truth of the matters stated in any satisfaction
29 document, or (ii) the authority of the person executing any satisfaction
30 document to do so.

31 (c) The recording of a satisfaction of a security instrument does not by itself
32 extinguish any liability of a person for payment or performance of the secured
33 obligation.

34 **"§ 45-36.11. Satisfaction: form.**

35 No particular phrasing is required for a satisfaction of a security instrument. The
36 following form, when properly completed, is sufficient to satisfy the requirements of
37 G.S. 45-36.10(a):

38 "SATISFACTION OF SECURITY INSTRUMENT

39 (G.S. 45-36.10; G.S. 45-37(a)(7))

40 The undersigned is now the secured creditor in the security instrument identified as
41 follows:

42 Type of Security Instrument: (identify type of security instrument, such as deed of
43 trust or mortgage)

44 Original Grantor(s): (Identify original grantor(s), trustor(s), or mortgagor(s))

1 Original Secured Party(ies): (Identify the original beneficiary(ies), mortgagee(s), or
2 secured party(ies) in the security instrument)

3 Recording Data: The security instrument is recorded in Book _____ at Page
4 _____ or as document number _____ in the office of the Register of
5 Deeds for _____ County, North Carolina.

6 This satisfaction terminates the effectiveness of the security instrument.

7
8 Date: _____

9 (Signature of secured creditor)

10 [Acknowledgment before officer authorized to take acknowledgments]"

11 **"§ 45-36.12. Limitation of secured creditor's liability.**

12 A secured creditor is not liable under this Article if it:

- 13 (1) Established a reasonable procedure to achieve compliance with its
- 14 obligations under this Article;
- 15 (2) Complied with that procedure in good faith; and
- 16 (3) Was unable to comply with its obligations because of circumstances
- 17 beyond its control.

18 **"§ 45-36.13. Eligibility to serve as satisfaction agent.**

19 No person other than an attorney licensed to practice law in the State of North
20 Carolina may serve as a satisfaction agent under this Article.

21 **"§ 45-36.14. Affidavit of satisfaction: notification to secured creditor.**

22 (a) If a secured creditor has not submitted for recording a satisfaction of a
23 security instrument and the security instrument has not been satisfied of record by any
24 of the methods provided by G.S. 45-37(a) within the period specified in G.S. 45-36.9(a),
25 a satisfaction agent acting for and with authority from the landowner may give the
26 secured creditor a notification that the satisfaction agent intends to submit for recording
27 an affidavit of satisfaction of the security instrument. The notification must include all
28 of the following:

- 29 (1) The identity and mailing address of the satisfaction agent.
- 30 (2) Identification of the security instrument for which a recorded
- 31 satisfaction is sought, including the names of the original parties to,
- 32 and the recording data for, the security instrument.
- 33 (3) A statement that the satisfaction agent has reasonable grounds to
- 34 believe that:
 - 35 a. The person to which the notification is being given is the
 - 36 secured creditor; and
 - 37 b. The secured creditor has received full payment or performance
 - 38 of the secured obligation.
- 39 (4) A statement that the security instrument has not been satisfied of
- 40 record.
- 41 (5) A statement that the satisfaction agent, acting with the authorization of
- 42 the owner of the real property described in the security instrument,
- 43 intends to sign and submit for recording an affidavit of satisfaction of

1 the security instrument unless, within 30 days after the effective date
2 of the notification:

3 a. The secured creditor submits a satisfaction of the security
4 instrument for recording;

5 b. The satisfaction agent receives from the secured creditor a
6 notification stating that the secured obligation remains
7 unsatisfied;

8 c. The satisfaction agent receives from the secured creditor a
9 notification stating that the secured creditor has assigned the
10 security instrument and identifying the name and address of the
11 assignee; or

12 d. The security instrument is satisfied of record by any of the
13 methods provided in G.S. 45-37(a).

14 (b) A notification under subsection (a) of this section must be sent by a method
15 authorized by G.S. 45-36.5 that provides proof of receipt to the secured creditor's
16 address for giving a notification for the purpose of requesting a payoff statement or, if
17 the satisfaction agent cannot ascertain that address, to the secured creditor's address for
18 notification for any other purpose.

19 (c) This Article does not require a person to agree to serve as a satisfaction agent.
20 "§ 45-36.15. Affidavit of satisfaction: authorization to submit for recording.

21 (a) Subject to subsections (b) and (c) of this section, a satisfaction agent may sign
22 and submit for recording an affidavit of satisfaction of a security instrument complying
23 with G.S. 45-36.16 if:

24 (1) The secured creditor has not, to the knowledge of the satisfaction
25 agent, submitted for recording a satisfaction of a security instrument or
26 otherwise caused the security instrument to be satisfied of record
27 pursuant to any of the methods provided in G.S. 45-37(a) within 30
28 days after the effective date of a notification complying with
29 G.S. 45-36.14(a); or

30 (2) The secured creditor authorizes the satisfaction agent to do so.

31 (b) A satisfaction agent may not sign and submit for recording an affidavit of
32 satisfaction of a security instrument if it has received a notification under
33 G.S. 45-36.14(a)(5)b. stating that the secured obligation remains unsatisfied.

34 (c) If a satisfaction agent receives a notification under G.S. 45-36.14(a)(5)c.
35 stating that the security instrument has been assigned, the satisfaction agent may not
36 submit for recording an affidavit of satisfaction of the security instrument without:

37 (1) Giving a notification of intent to submit for recording an affidavit of
38 satisfaction to the identified assignee at the identified address; and

39 (2) Complying with G.S. 45-36.14 with respect to the identified assignee.

40 "§ 45-36.16. Affidavit of satisfaction: content.

41 An affidavit of satisfaction of a security instrument must comply with all of the
42 following:

43 (1) Identify the type of security instrument, the original parties to the
44 security instrument, the secured creditor, the recording data for the

1 security instrument, and the office in which the security instrument is
2 recorded.

3 (2) State the basis upon which the person signing the affidavit is a
4 satisfaction agent.

5 (3) [Reserved]

6 (4) State that the person signing the affidavit has reasonable grounds to
7 believe that the secured creditor has received full payment or
8 performance of the secured obligation.

9 (5) State that the person signing the affidavit, acting with the authority of
10 the owner of the real property described in the security instrument,
11 gave notification to the secured creditor of its intention to sign and
12 submit for recording an affidavit of satisfaction.

13 (6) Describe the method by which the person signing the affidavit gave
14 notification in compliance with this Article.

15 (7) State that:

16 a. More than 30 days have elapsed since the effective date of that
17 notification, and the person signing the affidavit has no
18 knowledge that the secured creditor has submitted a satisfaction
19 for recording and has not received a notification that the
20 secured obligation remains unsatisfied; or

21 b. The secured creditor authorized the person signing the affidavit
22 to sign and record an affidavit of satisfaction.

23 (8) Be signed and acknowledged as required by law for a conveyance of
24 an interest in real property.

25 **"§ 45-36.17. Affidavit of satisfaction: form.**

26 No particular phrasing of an affidavit of satisfaction is required. The following form
27 of affidavit, when properly completed, is sufficient to satisfy the requirements of
28 G.S. 45-36.16:

29 "AFFIDAVIT OF SATISFACTION

30 _____
31 (Date of Affidavit)

32 The undersigned hereby states as follows:

33 1. I am an attorney licensed to practice law in the State of North Carolina.

34
35 2. I am signing this Affidavit of Satisfaction to evidence full payment or
36 performance of the obligations secured by real property covered by the following
37 security instrument (the "security instrument") currently held by _____ (the
38 "secured creditor");

39
40 Type of security instrument:

41
42 Original parties to security instrument:

43
44 County and state of recording:

Recording data for security instrument:

3. I have reasonable grounds to believe that the secured creditor has received full payment or performance of the balance of the obligations secured by the security instrument.

4. With the authorization of the owner of the real property described in the security instrument, I gave notification to the secured creditor by method authorized by G.S. 45-36.5 that provides proof of receipt that I would sign and record an affidavit of satisfaction of the security instrument if, within 30 days after the effective date of the notification, the secured creditor did not submit a satisfaction of the security interest for recording or give notification that the secured obligation remains unsatisfied.

5. [Check appropriate box]

[] The 30-day period identified in paragraph 4 has elapsed, I have no knowledge that the secured creditor has submitted a satisfaction for recording, and I have not received notification that the secured obligation remains unsatisfied.

[] The secured creditor responded to the notification in paragraph 4 by authorizing me to execute and record this affidavit of satisfaction.

(Signature of Satisfaction Agent)

[Acknowledgment before officer authorized to take acknowledgments]"

§ 45-36.18. Affidavit of satisfaction: effect.

(a) Upon recording, an affidavit substantially complying with the requirements of G.S. 45-36.16 constitutes a satisfaction of the security instrument described in the affidavit.

(b) The recording of an affidavit of satisfaction of a security instrument does not by itself extinguish any liability of a person for payment or performance of the secured obligation.

(c) The register of deeds may not refuse to accept for recording an affidavit of satisfaction of a security instrument unless:

- (1) The affidavit is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law; or
(2) The affidavit is not signed by the satisfaction agent and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any affidavit of

1 satisfaction, or (ii) the authority of the person executing any affidavit
2 of satisfaction to do so.

3 **"§ 45-36.19. Liability of satisfaction agent.**

4 (a) Except as otherwise provided in subsection (b) of this section, a satisfaction
5 agent or any person purporting to be a satisfaction agent that records or submits for
6 recording an affidavit of satisfaction of a security instrument erroneously or with
7 knowledge that the statements contained in the affidavit are false is liable to the secured
8 creditor for any actual damages caused by the recording and reasonable attorneys' fees
9 and costs.

10 (b) A satisfaction agent that records or submits for recording an affidavit of
11 satisfaction of a security instrument erroneously is not liable if the agent properly
12 complied with this Article and the secured creditor did not respond in a timely manner
13 to the notification pursuant to G.S. 45-36.14(a)(5).

14 (c) If a satisfaction agent or any person purporting to be a satisfaction agent
15 records or submits for recording an affidavit of satisfaction of a security instrument with
16 knowledge that the statements contained in the affidavit are false, this section does not
17 preclude any of the following:

18 (1) A court from awarding punitive damages on account of the conduct.

19 (2) The secured creditor from proceeding against the satisfaction agent or
20 person purporting to be a satisfaction agent under law of this State
21 other than this Article.

22 (3) The enforcement of any criminal statute prohibiting the conduct.

23 **"§ 45-36.20. Trustee's satisfaction of deed of trust: content and effect.**

24 (a) Upon recording, a trustee's satisfaction substantially complying with the
25 requirements of this section constitutes a satisfaction of the deed of trust described in
26 the trustee's satisfaction.

27 (b) The recording of a trustee's satisfaction does not by itself extinguish any
28 liability of a person for payment or performance of the secured obligation.

29 (c) This section applies only if the security instrument is a deed of trust. This
30 section is not exclusive. Deeds of trust may also be satisfied of record by methods other
31 than the filing of a trustee's satisfaction.

32 (d) Document is a trustee's satisfaction of a deed of trust if it complies with all of
33 the following:

34 (1) Identifies the original parties to the deed of trust, the recording data for
35 the deed of trust, and the office in which the deed of trust is recorded.

36 (2) States that the person signing the trustee's satisfaction is then serving
37 as trustee or substitute trustee under the terms of the deed of trust.

38 (3) Contains language terminating the effectiveness of the deed of trust.

39 (4) Is signed by the trustee or substitute trustee then serving under the
40 terms of the deed of trust and acknowledged as required by law for a
41 conveyance of an interest in real property.

42 (e) The register of deeds shall accept for recording a trustee's satisfaction of a
43 deed of trust, unless:

(1) The trustee's satisfaction is submitted by a method or in a medium not authorized for registration by the register of deeds under applicable law; or

(2) The trustee's satisfaction is not signed by the trustee or substitute trustee and acknowledged as required by law for a conveyance of an interest in real property. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any trustee's satisfaction, or (ii) the authority of the person executing any trustee's satisfaction to do so.

"§ 45-36.21. Trustee's satisfaction of deed of trust: form.

No particular phrasing is required for a trustee's satisfaction of a deed of trust. The following form, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.20:

"TRUSTEE'S SATISFACTION OF DEED OF TRUST
(G.S. 45-36.20; G.S. 45-37(a)(7))

The undersigned is now serving as the trustee or substitute trustee under the terms of the deed of trust identified as follows:

Original Grantor(s): (Identify original grantor(s) or trustor(s))

Original Secured Party(ies): (Identify the original beneficiary(ies) or secured party(ies) in the deed of trust)

Recording Data: The deed of trust is recorded in Book _____ at Page _____ or as document number _____ in the office of the Register of Deeds for _____ County, North Carolina.

This satisfaction terminates the effectiveness of the deed of trust.

Date: _____
(Signature of trustee or substitute trustee)

[Acknowledgment before officer authorized to take acknowledgments]"

"§ 45-37. Discharge of record of mortgages, deeds of trust and other instruments.Satisfaction of record of security instruments.

(a) Subject to the provisions of G.S. 45-36.9(a) and G.S. 45-73 relating to ~~secured security~~ instruments which secure future advances, ~~any deed of trust or mortgage or other~~ any security instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be satisfied of record and thereby discharged and released of record in the following manner:

1 (1) ~~By acknowledgment of the satisfaction of the provisions of such deed~~
2 ~~of trust, mortgage or other instrument in the presence of the register of~~
3 ~~deeds by:~~

4 a. ~~The trustee,~~

5 b. ~~The mortgagee,~~

6 e. ~~The legal representative of a trustee or mortgagee, or~~

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

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

17 Security instruments satisfied of record pursuant to this subdivision as
18 it was in effect prior to October 1, 2005, shall be deemed satisfied of
19 record, discharged, and released.

20 (2) ~~By exhibition of any deed of trust, mortgage or other presentation of~~
21 ~~any original security instrument accompanied with the original bond,~~
22 ~~note, or other instrument thereby secured to the register of deeds, with~~
23 ~~the endorsement of payment and satisfaction appearing thereon and~~
24 ~~made by:~~

25 a. ~~The obligee, secured creditor,~~

26 b. ~~The mortgagee, trustee or substitute trustee, if the security~~
27 ~~instrument is a deed of trust,~~

28 e. ~~The trustee,~~

29 d.c. ~~An assignee of the obligee, mortgagee, or trustee, or secured~~
30 ~~creditor, or~~

31 e.d. ~~Any chartered banking institution, or Any bank, savings and~~
32 ~~loan association, national or state, or credit union, qualified to~~
33 ~~do business in and having an office savings bank, or credit~~
34 ~~union chartered under the laws of this or any other state or the~~
35 ~~United States having an office or branch in the State of North~~
36 ~~Carolina, when so endorsed in the name of the institution by an~~
37 ~~officer thereof.~~

38 ~~The register of deeds is not required to verify or make inquiry~~
39 ~~concerning the authority of the person making the endorsement of~~
40 ~~payment and satisfaction to do so. Upon exhibition of the~~
41 ~~instruments, Only upon presentation of the original instruments with~~
42 ~~endorsement of payment and satisfaction appearing thereon shall the~~
43 ~~register of deeds shall cancel the mortgage, deed of trust or other~~
44 ~~instrument by recording record a record of satisfaction as described in~~

1 ~~G.S. 45-37.2, and may make an entry of satisfaction on the margin of~~
2 ~~the record. G.S. 45-37.2(b). The person so claiming satisfaction,~~
3 ~~performance or discharge of the debt or other obligation may retain~~
4 ~~possession of all of the instruments ~~exhibited~~presented. ~~The exhibition~~
5 ~~of the mortgage, deed of trust or other~~The presentation of the security
6 ~~instrument alone to the register of deeds, with endorsement of~~
7 ~~payment, satisfaction, performance or discharge, shall be sufficient if~~
8 ~~the mortgage, deed of trust or other~~security instrument itself sets forth
9 ~~the obligation secured or the performance of any other obligation and~~
10 ~~does not call for or recite any note, bond or other instrument secured~~
11 ~~by it.~~~~

12 (3) By ~~exhibiting~~presentation to the register of deeds by:

- 13 a. The grantor,
14 b. The mortgagor, or
15 c. An agent, attorney or successor in title of the grantor or
16 mortgagor

17 of any ~~mortgage, deed of trust or other~~original security instrument
18 ~~intended to secure the payment of money or the performance of any~~
19 ~~other obligation, together with the original bond, note or other~~
20 ~~instrument secured thereby, or by ~~exhibition of the mortgage, deed of~~
21 ~~trust or other~~presentation of the original security instrument alone if
22 ~~such instrument itself sets forth the obligation secured or other~~
23 ~~obligation to be performed and does not call for or recite any note,~~
24 ~~bond or other instrument secured by it, if at the time of~~
25 ~~exhibition,presentation, all such instruments are more than 10 years~~
26 ~~old counting from the maturity date of the last obligation secured. If~~
27 ~~the instrument or instruments so ~~exhibited~~presented have an~~
28 ~~endorsement of partial payment, satisfaction, performance or discharge~~
29 ~~within the said period of 10 years, the period of 10 years shall be~~
30 ~~counted from the date of the most recent endorsement.~~~~

31 ~~The register of deeds shall cancel the mortgage, deed of trust, or~~
32 ~~other instrument by recording Only upon presentation of the original~~
33 ~~instruments shall the register of deeds record a record of satisfaction as~~
34 ~~described in G.S. 45-37.2, and may make proper entry of cancellation~~
35 ~~and satisfaction of said instrument on the margin of the record where~~
36 ~~the same is recorded, whether there be any such entries on the original~~
37 ~~papers or not.G.S. 45-37.2(b).~~

38 (4) By ~~exhibition~~presentation to the register of deeds of any ~~deed of trust~~
39 ~~original security instrument given to secure the bearer or holder of any~~
40 ~~negotiable instruments transferable by delivery, together with all the~~
41 ~~evidences of indebtedness secured thereby, marked paid and satisfied~~
42 ~~in full and signed by the bearer or holder thereof.~~

43 ~~Upon exhibition of the deed of trust, Only upon presentation of the~~
44 ~~original security instruments, and the originals of evidences of~~

1 indebtedness properly ~~marked,~~marked shall the register of deeds shall
2 ~~cancel such deed of trust by recording~~record a record of satisfaction as
3 described in ~~G.S. 45-37.2,~~ and may make an entry of satisfaction upon
4 the ~~margin of the record, which record, or entry if made,~~
5 G.S. 45-37.2(b), which record of satisfaction shall be valid and binding
6 upon all persons, if no person rightfully entitled to the ~~deed of trust~~
7 security instrument or evidences of indebtedness has previously
8 notified the register of deeds ~~in writing~~by means of a written affidavit
9 of the loss or theft of the security instrument or evidences of
10 indebtedness and has caused the register of deeds to record the ~~notice~~
11 ~~or affidavit of loss or theft in~~as a separate document, as required by
12 G.S. 161-14.1.

13 Upon receipt of ~~written notice~~an affidavit of loss or theft of the
14 ~~deed of trust~~security instrument or evidences of indebtedness that
15 identifies the security instrument, the original parties to the security
16 instrument, and the recording data for the security instrument, the
17 register of deeds shall record a record of satisfaction, as described in
18 ~~G.S. 45-37.2, which in this case shall consist of a rerecording of the~~
19 ~~record of the deed of trust containing the marginal entry and may make~~
20 ~~on the record of the deed of trust concerned a marginal entry in writing~~
21 ~~thereof, with the date of receipt of the notice.~~G.S. 45-37.2(b). The
22 ~~deed of trust~~security instrument shall not be ~~anceled~~presented for
23 satisfaction after such recording of a record of satisfaction or marginal
24 entry until the ownership of said instrument shall have been lawfully
25 determined. Nothing in this subdivision (4) shall be construed to
26 impair the negotiability of any instrument otherwise properly
27 negotiable, nor to impair the rights of any innocent purchaser for value
28 thereof.

29 ~~Every entry of acknowledgment of satisfaction or of satisfaction~~
30 ~~made or witnessed by the register of deeds as provided in subdivision~~
31 ~~(a)(1) shall operate and have the same effect to release and discharge~~
32 ~~all the interest of such trustee, mortgagee or representative in such~~
33 ~~deed or mortgage as if a deed of release or reconveyance thereof had~~
34 ~~been duly executed and recorded.~~

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

1 ~~other instrument, or a copy of the instrument, for verification and~~
2 ~~indexing purposes, which shall not be recorded with the notice.~~

3 ~~Upon exhibition of the notice of satisfaction, the register of deeds~~
4 ~~shall record the notice of satisfaction and cancel the deed of trust,~~
5 ~~mortgage, or other instrument as required by G.S. 45-37.2. No fee~~
6 ~~shall be charged for recording any documents or certifying any~~
7 ~~acknowledgments pursuant to this subdivision. The register of deeds~~
8 ~~shall not be required to verify or make inquiry concerning the authority~~
9 ~~of the person executing the notice of satisfaction to do so.~~

10 ~~Security instruments satisfied of record pursuant to this subdivision as~~
11 ~~it was in effect prior to October 1, 2005, shall be deemed satisfied of~~
12 ~~record, discharged, and released.~~

13 (6) ~~By exhibition to the register of deeds of a certificate of satisfaction of a~~
14 ~~deed of trust, mortgage, or other instrument that has been~~
15 ~~acknowledged before an officer authorized to take acknowledgments~~
16 ~~by the owner of the note, bond, or other evidence of indebtedness~~
17 ~~secured by the deed of trust or mortgage. The certificate of satisfaction~~
18 ~~shall be accompanied by the note, bond, or other evidence of~~
19 ~~indebtedness, if available, with an endorsement of payment and~~
20 ~~satisfaction by the owner of the note, bond, or other evidence of~~
21 ~~indebtedness. If such evidence of indebtedness cannot be produced, an~~
22 ~~affidavit, hereafter referred to as an "affidavit of lost note", signed by~~
23 ~~the owner of the note, bond, or other evidence of indebtedness, shall be~~
24 ~~delivered to the register of deeds in lieu of the evidence of~~
25 ~~indebtedness certifying that the debt has been satisfied and stating: (i)~~
26 ~~the date of satisfaction; (ii) that the note, bond, or other evidence of~~
27 ~~indebtedness cannot be found; and (iii) that the person signing the~~
28 ~~affidavit is the current owner of the note, bond, or other evidence of~~
29 ~~indebtedness. The certificate of satisfaction shall be substantially in the~~
30 ~~form set out in G.S. 47-46.2 and shall recite the names of all parties to~~
31 ~~the original instrument, the amount of the obligation secured, the date~~
32 ~~of satisfaction of the obligation, and a reference by book and page~~
33 ~~number to the record of the instrument satisfied. The affidavit of lost~~
34 ~~note, if necessary, shall be substantially in the form set out in~~
35 ~~G.S. 47-46.3. The certificate of satisfaction shall be accompanied by~~
36 ~~the deed of trust, mortgage, or other instrument, or a copy of the~~
37 ~~instrument, for verification and indexing purposes, which shall not be~~
38 ~~recorded with the certificate.~~

39 ~~Upon exhibition of the certificate of satisfaction and accompanying~~
40 ~~evidence of indebtedness endorsed paid and satisfied, or upon~~
41 ~~exhibition of an affidavit of lost note, the register of deeds shall record~~
42 ~~the certificate of satisfaction and either the accompanying evidence of~~
43 ~~indebtedness or the affidavit of lost note, and shall cancel the deed of~~
44 ~~trust, mortgage, or other instrument as required by G.S. 45-37.2. No~~

1 ~~fee shall be charged for recording any documents or certifying any~~
2 ~~acknowledgments pursuant to this subdivision. The register of deeds~~
3 ~~shall not be required to verify or make inquiry concerning the authority~~
4 ~~of the person executing the certificate of satisfaction to do so.~~

5 Security instruments satisfied of record pursuant to this subdivision as
6 it was in effect prior to October 1, 2005, shall be deemed satisfied of
7 record, discharged, and released.

8 (7) By recording:

9 a. A satisfaction document that satisfies the requirements of
10 G.S. 45-36.10,

11 b. An affidavit of satisfaction that satisfies the requirements of
12 G.S. 45-36.16, or

13 c. A trustee's satisfaction that satisfies the requirements of
14 G.S. 45-36.20, but only if the security instrument is a deed of
15 trust.

16 The register of deeds shall not be required to verify or make inquiry
17 concerning (i) the truth of the matters stated in any satisfaction
18 document, affidavit of satisfaction, or trustee's satisfaction, or (ii) the
19 authority of the person executing any satisfaction document, affidavit,
20 or trustee's satisfaction to do so.

21 (b) It shall be conclusively presumed that the conditions of any ~~deed of trust,~~
22 ~~mortgage or other security~~ instrument securing the payment of money or securing the
23 performance of any other obligation or obligations have been complied with or the debts
24 secured thereby paid or obligations performed, as against creditors or purchasers for
25 valuable consideration from the mortgagor or grantor, from and after the expiration of
26 15 years from whichever of the following occurs last:

27 (1) The date when the conditions of ~~such the security~~ instrument were
28 required by its terms to have been performed, or

29 (2) The date of maturity of the last installment of debt or interest secured
30 thereby;

31 provided that the holder of the indebtedness secured by ~~such the security~~ instrument or
32 party secured by any provision thereof may file an affidavit with the register of deeds
33 which affidavit shall specifically state:

34 (1) The amount of debt unpaid, which is secured by ~~said the security~~
35 instrument; or

36 (2) In what respect any other condition thereof shall not have been
37 complied with; or

38 may record a separate instrument signed by the ~~holder or party secured~~ creditor and
39 witnessed by the register of deeds stating:

40 (1) Any payments that have been made on the indebtedness or other
41 obligation secured by ~~such the security~~ instrument including the date
42 and amount of payments and

43 (2) The amount still due or obligations not performed under the security
44 instrument.

1 ~~Whenever practical, the register of deeds may also enter the information contained in~~
2 ~~the separate instrument on the margin of the record of the instrument. The effect of the~~
3 ~~filing of the affidavit or of the instrument recorded~~the recording of a separate instrument
4 made as herein provided shall be to postpone the effective date of the conclusive
5 presumption of satisfaction to a date 15 years from the filing of the affidavit or from the
6 recording of the ~~instrument or the making of the notation,~~separate instrument. There
7 shall be only one postponement of the effective date of the conclusive presumption
8 provided for herein. The register of deeds shall record and index the affidavit provided
9 for herein ~~and shall record aor the separate instrument, as required by G.S. 161-14.1,~~
10 ~~making reference to the filing of such affidavit and to the book and page where the~~
11 ~~affidavit is recorded. Whenever practical, the register of deeds may also make such a~~
12 ~~reference on the margin of the record of the deed of trust, mortgage, or other instrument~~
13 ~~referred to.~~instrument made as herein provided as a subsequent instrument in
14 accordance with G.S. 161-14.1. This subsection shall not apply to any deed, mortgage,
15 ~~deed of trust or other security~~ instrument made or given by any railroad company, or to
16 any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage or
17 other instrument relating to the sale, purchase or lease of railroad equipment or rolling
18 stock, or of other personal property.

19 (c) Repealed by Session Laws 1991, c. 114, s. 4.

20 (d) ~~For the purposes of this section "register of deeds" means the register of~~
21 ~~deeds, his deputies or assistants of the county in which the mortgage, deed of trust, or~~
22 ~~other instrument intended to secure the payment of money or performance of other~~
23 ~~obligation is registered.~~

24 (e) Any transaction subject to the provisions of the Uniform Commercial Code,
25 Chapter 25 of the General Statutes, is controlled by the provisions of that act and not by
26 this section.

27 (f) Whenever this section requires a signature or endorsement, that signature or
28 endorsement shall be followed by the name of the person signing or endorsing the
29 document printed, stamped, or typed so as to be clearly legible. ~~The register of deeds~~
30 ~~may refuse to accept any document when the provisions of this subsection have not~~
31 ~~been met.~~

32 (g) The satisfaction of record of a security instrument pursuant to this section
33 shall operate and have the same effect as a duly executed and recorded deed of release
34 or reconveyance of the property described in the security instrument and shall release
35 and discharge (i) all the interest of the secured creditor in the real property arising from
36 the security instrument and, (ii) if the security instrument is a deed of trust, all the
37 interest of the trustee or substitute trustee in the real property arising from the deed of
38 trust.

39 **"§ 45-37.1. Validation of certain entries of cancellation made by beneficiary or**
40 **assignee instead of trustee.**

41 In all cases where, prior to January 1, 1930, it appears from the margin or face of the
42 record in the office of the register of deeds of any county in this State that the original
43 beneficiary named in any deed of trust, trust indenture, or other instrument intended to
44 secure the payment of money and constituting a lien on real estate, or his assignee of

1 record, shall have made an entry purporting to fully satisfy and discharge the lien of
2 such instrument, and such entry has been signed by the original payee and beneficiary
3 in said deed of trust, or other security instrument, or by his assignee of record, or by his
4 or their properly constituted officer, agent, attorney, or legal representatives, and has
5 been duly witnessed by the register of deeds or his deputy, all such entries of
6 cancellation and satisfaction are hereby validated and made full, sufficient and complete
7 to release, satisfy and discharge the lien of such instrument, and shall have the same
8 effect as if such entry had been made and signed by the trustee named in said deed of
9 trust, or other security instrument, or by his duly appointed successor or substitute.

10 "**§ 45-37.2. Recording satisfactions of deeds of trust and mortgages.**security
11 instruments.

12 (a) ~~When a notice of satisfaction document, affidavit of satisfaction, or trustee's~~
13 ~~satisfaction is recorded pursuant to G.S. 45-37(a)(5) or a certificate of satisfaction is~~
14 ~~recorded pursuant to G.S. 45-37(a)(6), G.S. 45-37(a)(7), the register of deeds shall make~~
15 ~~an entry of satisfaction on the notice or certificate and record and index the~~
16 ~~instrument.~~instrument in accordance with G.S. 161-14.1. No fee shall be charged by the
17 register of deeds for recording a satisfaction document, affidavit of satisfaction, or a
18 trustee's satisfaction.

19 (b) ~~When a deed of trust, mortgage, or other security instrument is satisfied of~~
20 ~~record by a method other than by means of a notice of satisfaction or certificate of~~
21 ~~satisfaction, recording a satisfaction document, satisfaction affidavit, or trustee's~~
22 ~~satisfaction pursuant to G.S. 45-37(a)(7), the register of deeds shall record and index in~~
23 ~~accordance with G.S. 161.14.1 a record of satisfaction consisting of either a separate~~
24 ~~instrument or all or a portion of the original deed of trust or mortgage rerecorded, and~~
25 ~~shall make the appropriate entry of satisfaction as provided in G.S. 45-37 on each as~~
26 ~~provided for in this subsection.~~ record of satisfaction. A separate instrument or original
27 deed of trust or mortgage rerecorded pursuant to this subsection shall contain (i) names
28 of all parties to the original instrument, (ii) the amount of the obligation secured, (iii)
29 the date of satisfaction of the obligation, (iv) a reference by book and page number to
30 the record of the instrument satisfied, and (v) the date of recording the notice of
31 satisfaction.If the security instrument is being satisfied of record pursuant to
32 G.S. 45-37(a)(2), the record of satisfaction may consist of either (i) all or a portion of
33 the original security instrument rerecorded as described in subdivision (1) of this
34 subsection or (ii) a separate instrument as described in subdivision (2) of the subsection.
35 In all other cases, the record of satisfaction shall consist of a separate instrument as
36 described in subdivision (2) of this subsection. No fee shall be charged by the register of
37 deeds for recording a record of satisfaction.

38 (1) If the security instrument is being satisfied of record pursuant to
39 G.S. 45-37(a)(2), all or a portion of the security instrument rerecorded
40 is a sufficient record of satisfaction if it identifies the security
41 instrument, the original parties to the security instrument, and the
42 recording data for the security instrument as originally recorded. In
43 addition, the rerecorded security instrument must contain either (i) an
44 endorsement of payment and satisfaction made by a person authorized

1 under G.S. 45-37(a)(2) to make such an endorsement, or (ii) an
2 endorsement signed by the register of deeds that states substantially
3 the following: "This security instrument is satisfied of record pursuant
4 to G.S. 45-37(a)(2), the original security instrument and secured
5 obligations having been presented to me with appropriate endorsement
6 of payment and satisfaction appearing thereon as required by law."

7 (2) A separate instrument is a sufficient record of satisfaction if it
8 complies with all of the following:

9 a. Identifies the security instrument, the original parties to the
10 security instrument, the recording data for the security
11 instrument, and the office in which the security instrument is
12 recorded.

13 b. States the statutory authority pursuant to which the security
14 instrument is being satisfied of record.

15 c. Contains language terminating the effectiveness of the security
16 instrument.

17 d. Is signed by the register of deeds.

18 No particular phrasing is required for a record of satisfaction. The following
19 form, when properly completed, is sufficient to satisfy the requirements of this
20 subdivision:

21
22 "RECORD OF SATISFACTION
23 (G.S. 45-37.2)

24
25 This Record of Satisfaction applies to the following security instrument:

26
27 Type of security instrument: (identify type of security instrument,
28 such as deed of trust or mortgage)

29
30 Original Grantor(s): (Identify original grantor(s), trustor(s), or
31 mortgagor(s))

32
33 Original Secured Party(ies): (Identify the original beneficiary(ies),
34 mortgagee(s), or secured party(ies) in the security instrument)

35
36 Recording Data: The security instrument is recorded in Book
37 at Page or as document number
38 in the office of the Register of Deeds for
39 County, North Carolina.

40
41 This Record of Satisfaction terminates the effectiveness of the security
42 instrument pursuant to the following statutory authority: (check applicable box)
43

G.S. 45-37(a)(2), the original security instrument and secured obligations having been presented to me with appropriate endorsement of payment and satisfaction appearing thereon as required by law.

G.S. 45-37(a)(3), the original security instrument and secured obligations having been presented to me, each such instrument being more than 10 years old as provided by law.

G.S. 45-37(a)(4), the original security instrument and all negotiable instruments transferable by delivery secured thereby having been presented to me, each having been marked paid and satisfied in full by the bearer or holder thereof.

Other: (specify)

Date: _____

(Signature of register of deeds)".

~~(e) 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.~~

"§ 45-38. Recording of foreclosure.

In case of foreclosure of any deed of trust, or mortgage, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall record a notice of foreclosure ~~and, whenever it is practical to do so, may also enter upon the margin of the record of the deed of trust or mortgage of the fact that such foreclosure and that includes~~ the date when, and the person to whom, a conveyance was made by reason of the foreclosure. In the event the entire obligation secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property embraced within the terms of the mortgage or deed of trust, the trustee, mortgagee, or the trustee's or mortgagee's attorney shall indicate in the notice of foreclosure which property was sold ~~and which was not sold, and may make an additional notation indicating the same, whenever practical.~~ sold.

A notice of foreclosure shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names of ~~all the original parties to the original instrument,~~ instrument foreclosed, ~~the amount of the obligation secured, a reference by book and page number to the record of~~ and the recording data for the instrument foreclosed, ~~and the date of recording the notice of foreclosure.~~ foreclosed. A notice of forfeiture shall be indexed by the register of deeds in accordance with G.S. 161.14.1.

~~"§ 45-39: Repealed by Session Laws 1949, c. 720, s. 5.~~

~~**"§ 45-40. Register to enter satisfaction on index.**~~

~~When satisfaction of the provisions of any deed of trust or mortgage is acknowledged and entry of such acknowledgment of satisfaction is made upon the margin of the record of said deed of trust or mortgage, or when the register of deeds or his deputy shall cancel the mortgage or other instrument by entry of satisfaction, then~~

1 the register of deeds or his deputy shall enter upon the alphabetical grantor index kept
2 by him, as required by law, and opposite the names of the grantor and grantee and on a
3 line with the names of said grantor and grantee, the words "satisfied mortgage," if the
4 instrument of which satisfaction has been acknowledged or entered is a mortgage, and
5 the words "satisfied deed of trust," if the instrument of which satisfaction has been
6 acknowledged or entered is a deed of trust, or, in lieu of the entries herein provided, the
7 register of deeds or his deputy may denote satisfaction in the grantor index by using a
8 capital "C" or the word "Cancelled," or the word "Satisfied." This statute shall not apply
9 to counties using computerized indexing or to counties in which a parcel identifier index
10 is established pursuant to G.S. 161-22.2.

11 **"§ 45-41. Recorded deed of release of mortgagee's representative.**

12 The personal representative of any mortgagee or trustee in any mortgage or deed of
13 trust which has heretofore or which may hereafter be registered in the manner required
14 by the laws of this State may satisfy of record, discharge and release the same and all
15 property thereby conveyed by deed of quitclaim, release or conveyance executed,
16 acknowledged and recorded as is now prescribed by law for the execution,
17 acknowledgment and registration of deeds and mortgages in this State.

18 **"§ 45-42. Satisfaction of corporate mortgages by corporate officers.**

19 All ~~mortgages and deeds in trust~~ security instruments executed to a corporation may
20 be satisfied and so marked of record as by law provided for the satisfaction of
21 ~~mortgages and deeds in trust, security instruments~~, by any officer of the corporation
22 indicating the office held. For the purposes of recordation and ~~cancellation, satisfaction~~,
23 such signature shall be deemed to be a certification by the signer that he is an officer
24 and is authorized to execute the satisfaction on behalf of such corporation. Where
25 ~~mortgages or deeds in trust security instruments~~ were marked "satisfied" on the records
26 before the twenty-third day of February, 1909, by any president, secretary, treasurer or
27 cashier of any corporation by such officer writing his own name and affixing thereto the
28 title of his office in such corporation, such satisfaction is validated, and is as effective to
29 all intents and purposes as if a deed of release duly executed by such corporation had
30 been made, acknowledged and recorded.

31 **"§ 45-42.1. Corporate cancellation of lost mortgages by register of deeds.**

32 Upon affidavit of the secretary and treasurer of a corporation showing that the
33 records of such corporation show that such corporation has fully paid and satisfied all of
34 the notes secured by a ~~mortgage or deed of trust~~ security instrument executed by such
35 corporation and such payment and satisfaction was made more than 25 years ago, and
36 that such ~~mortgage or deed of trust security instrument~~ was made to a corporation which
37 ceased to exist more than 25 years ago, and such affidavit shall further state that the
38 records of such corporation show that no payments have been made on such ~~mortgage~~
39 secured obligation by the corporation executing such ~~mortgage or deed of trust security~~
40 instrument for 25 years, the register of deeds of the county in which such ~~mortgage or~~
41 deed of trust security instrument is recorded is authorized ~~and empowered to file such~~
42 affidavit and record the same in his office and to record a separate instrument making
43 reference to the filing of such affidavit and to the book and page where the affidavit is
44 recorded to record the affidavit. The register of deeds may also make reference thereto

1 on the margin of the record in which the said mortgage or deed of trust is recorded, and,
2 upon recording such instrument or making such entry, the said mortgage or deed of trust
3 shall be deemed to be cancelled and satisfied and the said register of deeds is hereby
4 authorized to cancel the same of record: The register of deeds shall index the affidavit
5 according to G.S. 161-22 using the names of parties stated in the affidavit and shall
6 make reference to the recording data of the original security instrument as stated in the
7 affidavit opposite the name of each party so indexed. Upon recording such affidavit, the
8 said security instrument shall be deemed to be cancelled and satisfied of record:
9 Provided, that this section shall not apply to any mortgagor corporation except those in
10 which the State of North Carolina owns more than a majority of the capital stock and
11 shall not apply to any mortgage or deed of trust security instrument in which the
12 principal amount secured thereby exceeds the sum of fifteen thousand dollars (\$15,000):
13 Provided, such cancellation shall not bar any action to foreclose such mortgage or deed
14 of trust security instrument instituted within 90 days after the same is cancelled."

15 **SECTION 2.** G.S. 47-14 reads as rewritten:

16 "**§ 47-14. Register of deeds to ~~pass on certificate~~ verify the presence of proof or**
17 **acknowledgement and register instruments; order by judge; instruments**
18 **to which register of deeds is a party.**

19 (a) ~~When the proof or acknowledgment of the execution of any instrument,~~
20 ~~required or permitted by law to be registered, is had before any other official than the~~
21 ~~register of deeds of the county in which the instrument is offered for registration, the~~
22 ~~register of deeds shall examine the certificate or certificates of proof or~~
23 ~~acknowledgment appearing upon the instrument, and if it appears on the face of the~~
24 ~~instrument that the execution thereof by one or more of the signers has been duly~~
25 ~~proved or acknowledged and the certificate or certificates to that effect are in due form,~~
26 ~~he shall so certify, and shall register the instrument, together with the certificates. No~~
27 ~~certification is required when the proof or acknowledgment is before the register of~~
28 ~~deeds of the county in which the instrument is offered for registration. The register of~~
29 ~~deeds shall not accept for registration any instrument that requires proof or~~
30 ~~acknowledgement unless the execution of the instrument by one or more signers appears~~
31 ~~to have been proved or acknowledged before an officer with the apparent authority to~~
32 ~~take proofs or acknowledgements, and the said proof or acknowledgement includes the~~
33 ~~officer's signature, commission expiration date, and official seal, if required. The~~
34 ~~register of deeds shall accept an instrument for registration that does not require proof or~~
35 ~~acknowledgement if the instrument otherwise satisfies the requirements of G.S. 161-14.~~
36 ~~Any document previously recorded or any certified copy of any document previously~~
37 ~~recorded may be rerecorded, regardless of whether it is being rerecorded pursuant to~~
38 ~~G.S. 47-36.1. The register of deeds shall not be required to verify or make inquiry~~
39 ~~concerning (i) the legal sufficiency of any proof or acknowledgement, (ii) the authority~~
40 ~~of any officer who took a proof or acknowledgement, or (iii) the legal sufficiency of any~~
41 ~~document presented for registration.~~

42 (b) If a register of deeds denies registration pursuant to subsection (a), the person
43 offering the instrument for registration may present the instrument to a judge, as
44 provided in subsection (c), and ~~he shall examine the certificate or certificates of proof or~~

1 acknowledgment appearing upon the instrument, and if it appears on the face of the
 2 instrument that the execution thereof by one or more of the signers has been duly
 3 proved or acknowledged and the certificates to that effect are in due form, ~~hethe judge~~
 4 shall determine that if the instrument requires proof or acknowledgement and if the
 5 signature of one or more signers has been proved or acknowledged before an officer
 6 authorized to take proofs and acknowledgements, and if said proof or acknowledgement
 7 includes the officer's signature and commission expiration date and official seal, if
 8 required, the judge shall so adjudge, and shall order the instrument to be registered,
 9 together with the certificates, and the register of deeds shall register them accordingly.

10 (c) ~~When a district court has been established in the district including the county~~
 11 ~~in which the instrument is to be registered, application~~Application for an order for
 12 registration pursuant to subsection (b) of this section shall be made to any judge of the
 13 district court in the district including the county in which the instrument is to be
 14 registered. ~~Until a district court has been established, application for an order for~~
 15 ~~registration pursuant to subsection (b) may be made to a resident judge of superior court~~
 16 ~~residing in the district including the county in which the instrument is to be registered, a~~
 17 ~~judge regularly holding the superior courts of the district including the county in which~~
 18 ~~the instrument is to be registered, any judge holding a session of superior court, either~~
 19 ~~civil or criminal, in the district including the county in which the instrument is to be~~
 20 ~~registered, or a special judge of superior court residing in the district including the~~
 21 ~~county in which the instrument is to be registered.~~

22 ..."

23 **SECTION 3.** G.S. 47-37 is repealed.

24 **SECTION 4.** G.S. 47-46 is repealed.

25 **SECTION 5.** G.S. 47-46.1 reads as rewritten:

26 "**§ 47-46.1. Notice of satisfaction of deed of trust, mortgage, or other instrument.**

27 No particular phrasing is required for a notice of satisfaction pursuant to
 28 G.S. 45-37(a)(5) as it was prior to October 1, 2005, a satisfaction of a security
 29 instrument under G.S. 45-36.10, or a trustee's satisfaction under G.S. 45-36.20. The
 30 following form, when properly completed, is sufficient to satisfy the requirements (i) for
 31 a notice of satisfaction under G.S. 45-37(a)(5) as it was in effect prior to October 1,
 32 2005, (ii) for a satisfaction under G.S. 45-36.10 if the form is signed and acknowledged
 33 by the secured creditor, and (iii) for a trustee's satisfaction under G.S. 45-36.20 if the
 34 security instrument is a deed of trust and the form is signed and acknowledged by the
 35 trustee:

36 ~~The form of a notice of satisfaction of a deed of trust, mortgage, or other instrument~~
 37 ~~pursuant to G.S. 45-37(a)(5) shall be substantially as follows:~~

38 North Carolina, _____ County.

39 I, _____ (name of trustee or mortgagee), certify that the debt or
 40 other obligation in the amount of _____ secured by the (deed of trust) (mortgage)
 41 (other instrument) executed by _____ (grantor) (mortgagor),
 42 _____ (trustee) (leave blank if mortgage), and _____
 43 (beneficiary) (mortgagee), and recorded in _____ County at _____
 44 (book and page) was satisfied on _____ (date of satisfaction).

(Signature of trustee or mortgagee)

I, _____ (name of officer taking acknowledgment), _____ (official title of person taking acknowledgment) certify that _____ (name of trustee or mortgagee) personally came before me this day and acknowledged the satisfaction of the provisions of the above referenced (deed of trust) (mortgage) (other instrument).

Witness my hand and official seal this the _____ day of _____ (month), _____ (year).

(Signature of officer taking acknowledgment)

(Acknowledgment before officer authorized to take acknowledgments)

My commission expires _____ (Date of expiration of official's commission).

North Carolina, _____ County.

The foregoing acknowledgment of _____ (name of officer that took acknowledgment), _____ (official title of person that took acknowledgment), is certified to be correct.

This _____ (day) of _____ (month), _____ (year).

(Signature of Register of Deeds).

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

No particular phrasing is required for a certification of satisfaction pursuant to G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005, or for a satisfaction of a security instrument under G.S. 45-36.10. The following form, when properly completed, is sufficient to satisfy the requirements (i) for a certificate of satisfaction under G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005, and (ii) for a satisfaction of a security instrument under G.S. 45-36.10 when signed and acknowledged by the secured creditor:

~~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

1 _____ (grantor) _____ (mortgagor),
2 _____ (trustee) (leave blank if mortgage), and
3 _____ (beneficiary) (mortgagee), and recorded in
4 _____ County at _____ (book and page) was satisfied
5 on _____ (date of satisfaction). I request that this certificate
6 of satisfaction be recorded and the above-referenced security instrument be canceled of
7 record.

8 _____
9 (Signature of owner of note)

10 [Acknowledgment before officer authorized to take acknowledgments]."

11 **SECTION 6.** G.S. 47-46.3 reads as rewritten:

12 **"§ 47-46.3. Affidavit of lost note.**

13 No particular phrasing is required for an affidavit of lost note pursuant to
14 G.S. 45-36(a)(6) as it was in effect prior to October 1, 2005. The following form, when
15 properly completed, is sufficient to satisfy the requirements for an affidavit of lost note
16 under G.S. 45-37(a)(6) as it was in effect prior to October 1, 2005.

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

19 **AFFIDAVIT OF LOST NOTE**

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

- 23 1. The affiant is the owner of the note or other indebtedness secured by
24 the deed of trust, mortgage, or other instrument executed by
25 _____ (grantor, mortgagor), _____
26 (trustee), and _____ (beneficiary, mortgagee), and
27 recorded in _____ County at _____ (book and
28 page); and
- 29 2. The note or other indebtedness has been lost and after the exercise of
30 due diligence cannot be located.
- 31 3. The affiant certifies that all indebtedness secured by the deed of trust,
32 mortgage, or other instrument was satisfied on
33 _____, _____ (date of satisfaction), and
34 the affiant is responsible for cancellation of the same.

35 _____
36 (Signature of affiant)

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

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

40 **SECTION 7.** G.S. 161-10(a)(16) reads as rewritten:

41 "(16) Probate. – For ~~certification of instruments for registration verification~~
42 of proofs and acknowledgements as provided in G.S. 47-14 two dollars
43 (\$2.00)."

44 **SECTION 8.** G.S. 161-14.1 reads as rewritten:

1 **"§ 161-14.1. Recording subsequent entries as separate instruments.**

2 ~~In all cases in which the register of deeds is authorized or directed by law to make a~~
3 ~~subsequent entry upon the margin of the record of a deed of trust, mortgage, or other~~
4 ~~instrument, the register of deeds shall, except as provided in G.S. 45-37.2 and 45-38,~~
5 ~~record all subsequent entries as separate instruments. Such instruments shall contain the~~
6 ~~information and notations required by law for the appropriate marginal entry, a~~
7 ~~reference by book and page number to the record of the instrument modified, and the~~
8 ~~date of recording the subsequent modifying instrument. There shall also be entered in~~
9 ~~the alphabetical indexes kept by the register of deeds, opposite the name of each~~
10 ~~indexed party to the original instrument, a reference by book and page to the record of~~
11 ~~the subsequent modifying instrument. In the recording of satisfactions or foreclosures of~~
12 ~~deeds of trust and mortgages, the register of deeds shall comply with the provisions of~~
13 ~~G.S. 45-37.2 and 45-38. Whenever it is practical to do so, the register of deeds may~~
14 ~~continue making marginal notations in addition to making the recordation required by~~
15 ~~this section.~~

16 (a) As used in this section, the following terms mean:

- 17 (1) Original instrument. – The previously recorded instrument that is
18 modified, amended, supplemented, revoked or cancelled by a
19 subsequent instrument.
- 20 (2) Recording data. – The book and page number or document number
21 that indicates where an instrument is recorded in the office of the
22 register of deeds.
- 23 (3) Subsequent instrument. – Any instrument presented for registration
24 that purports to modify, amend, supplement, assign, satisfy, terminate,
25 revoke or cancel a previously registered instrument. Examples of
26 subsequent instruments include the appointment or designation of a
27 substitute trustee in a deed of trust; an affidavit extending the life of a
28 deed of trust; the cancellation of a Notice of Inactive Hazardous
29 Substance or Waste Disposal Site registered pursuant to
30 G.S. 130A-310.8(f); a record of satisfaction or other instrument
31 purporting to satisfy a security instrument registered pursuant to
32 G.S. 45-37 or G.S. 45-37.2; a notice of foreclosure registered pursuant
33 to G.S. 45-38; an assignment of a security instrument or lease; a
34 modification agreement; a release or partial release of property from
35 the lien of a security instrument; an assumption agreement; a
36 subordination agreement; an instrument terminating future optional
37 advances registered pursuant to G.S. 45-72; the revocation of a power
38 of attorney; any instrument authorized or directed by law to be indexed
39 under the provisions of this section; and any instrument for which the
40 register of deeds is authorized or directed by law to make a subsequent
41 entry upon the margin of the record of an original instrument.

42 (b) The register of deeds shall register each subsequent instrument as a separate
43 instrument and do all of the following:

- 44 (1) Index the parties to the subsequent instrument.

1 (2) If the subsequent instrument names one or more of the original parties
2 to the original instrument, index the original parties to the original
3 instrument as they are named in the subsequent instrument.

4 (3) If the subsequent instrument states the recording data for the original
5 instrument, reference the recording data of the original instrument as
6 that recording data is stated in the subsequent instrument to each name
7 so indexed.

8 (c) The register of deeds shall not be required to verify or make inquiry
9 concerning the accuracy, sufficiency, or completeness of information about an original
10 instrument contained in any subsequent instrument. The register of deeds is expressly
11 authorized to rely solely on the information contained in the subsequent instrument,
12 including, but not limited to, the names of the original parties to the original instrument
13 and the recording data for the original instrument."

14 **SECTION 9.** G.S. 161-22(d) reads as rewritten:

15 "(d) Deeds of trust may be indexed in the names of the grantor and ~~trustee~~
16 beneficiary only."

17 **SECTION 10.** This act becomes effective October 1, 2005.