

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 312
Committee Substitute Favorable 3/24/11

Short Title: Register of Deeds.

(Public)

Sponsors:

Referred to:

March 10, 2011

1 A BILL TO BE ENTITLED
2 AN ACT AMENDING THE METHODS FOR RECORDING SATISFACTION OF A
3 SECURITY INSTRUMENT WITH THE REGISTER OF DEEDS, CLARIFYING THE
4 REQUIREMENTS FOR ELECTRONICALLY REGISTERING PLATS WITH THE
5 REGISTER OF DEEDS, AND AMENDING RESTRICTIONS ON ACCESS TO
6 MILITARY DISCHARGE DOCUMENTS RECORDED WITH THE REGISTER OF
7 DEEDS.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. G.S. 45-6 reads as rewritten:

10 "§ 45-6. **Renunciation by representative; clerk appoints trustee.**

11 The executor or administrator of any deceased mortgagee or trustee in any mortgage or
12 deed of trust heretofore or hereafter executed may renounce in writing, before the clerk of the
13 superior court before whom he qualifies, the trust under the mortgage or deed of trust at the
14 time he qualifies as executor or administrator, or at any time thereafter before he intermeddles
15 with or exercises any of the duties under said mortgage or deed of trust, except to preserve the
16 property until a trustee can be appointed. In every such case of renunciation the clerk of the
17 superior court of any county wherein the said mortgage or deed of trust is registered has power
18 and authority, upon proper proceedings instituted before him, as in other cases of special
19 proceedings, to appoint some person to act as trustee and execute said mortgage or deed of
20 trust. The clerk, in addition to recording his proceedings in his book of orders and decrees, shall
21 record a separate instrument, as required by G.S. 161-14.1, containing the name of the
22 substituted trustee or mortgagee and may enter the name of the substituted trustee or mortgagee
23 on the margin of the deed in trust or the mortgage in the book of the office of mortgagee, with
24 the register of deeds of said county."

25 SECTION 2. G.S. 45-21.17A reads as rewritten:

26 "§ 45-21.17A. **Requests for copies of notice.**

27 ...

28 (b) Register of Deeds' Duties. – Upon the filing for record of such request, the register
29 of deeds shall index in the general index of grantors the names of the trustors (mortgagors)
30 recited therein, and the names of the persons requesting copies, with a ~~marginal entry~~ reference
31 in the index of the book and page of the recorded security instrument to which the request
32 refers; or upon the filing for record of such request, the register of deeds may, instead of
33 indexing such request on the general index of grantors, stamp upon the face of the security
34 instrument referred to in the request the book and page of each request for notice thereunder.

35"

36 SECTION 3. G.S. 45-36.9(e) is repealed.

37 SECTION 4. G.S. 45-37(a) reads as rewritten:



* H 3 1 2 - V - 2 *

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

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

9 (2) ~~By presentation of any original security instrument accompanied with the
10 original bond, note, or other instrument thereby secured to the register of
11 deeds, with the endorsement of payment and satisfaction appearing thereon
12 and made by:~~

13 a. ~~The secured creditor,~~

14 b. ~~The trustee or substitute trustee, if the security instrument is a deed
15 of trust,~~

16 e. ~~An assignee of the secured creditor, or~~

17 d. ~~Any bank, savings and loan association, savings bank, or credit union
18 chartered under the laws of this or any other state or the United
19 States having an office or branch in the State of North Carolina,
20 when so endorsed in the name of the institution by an officer thereof.~~

21 ~~The register of deeds is not required to verify or make inquiry concerning
22 the authority of the person making the endorsement of payment and
23 satisfaction to do so. Only upon presentation of the original instruments with
24 endorsement of payment and satisfaction appearing thereon shall the register
25 of deeds record a record of satisfaction as described in G.S. 45-37.2(b). The
26 person so claiming satisfaction, performance or discharge of the debt or
27 other obligation may retain possession of all of the instruments presented.
28 The presentation of the security instrument alone to the register of deeds,
29 with endorsement of payment, satisfaction, performance or discharge, shall
30 be sufficient if the security instrument itself sets forth the obligation secured
31 or the performance of any other obligation and does not call for or recite any
32 note, bond or other instrument secured by it.~~Security instruments satisfied of
33 record prior to October 1, 2011, pursuant to this subdivision as it was in
34 effect prior to October 1, 2011, shall be deemed satisfied of record,
35 discharged, and released.

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

37 a. ~~The grantor,~~

38 b. ~~The mortgagor, or~~

39 e. ~~An agent, attorney or successor in title of the grantor or mortgagor~~

40 ~~of any original security instrument intended to secure the payment of money
41 or the performance of any other obligation, together with the original bond,
42 note or other instrument secured thereby, or by presentation of the original
43 security instrument alone if such instrument itself sets forth the obligation
44 secured or other obligation to be performed and does not call for or recite
45 any note, bond or other instrument secured by it, if at the time of
46 presentation, all such instruments are more than 10 years old counting from
47 the maturity date of the last obligation secured. If the instrument or
48 instruments so presented have an endorsement of partial payment,
49 satisfaction, performance or discharge within the said period of 10 years, the
50 period of 10 years shall be counted from the date of the most recent
51 endorsement.~~

1 ~~Only upon presentation of the original instruments shall the register of~~
2 ~~deeds record a record of satisfaction as described in G.S. 45-37.2(b). Security~~
3 ~~instruments satisfied of record prior to October 1, 2011, pursuant to this~~
4 ~~subdivision as it was in effect prior to October 1, 2011, shall be deemed~~
5 ~~satisfied of record, discharged, and released.~~

- 6 (4) ~~By presentation to the register of deeds of any original security instrument~~
7 ~~given to secure the bearer or holder of any negotiable instruments~~
8 ~~transferable by delivery, together with all the evidences of indebtedness~~
9 ~~secured thereby, marked paid and satisfied in full and signed by the bearer or~~
10 ~~holder thereof.~~

11 ~~Only upon presentation of the original security instruments, and the~~
12 ~~originals of evidences of indebtedness properly marked shall the register of~~
13 ~~deeds record a record of satisfaction as described in G.S. 45-37.2(b), which~~
14 ~~record of satisfaction shall be valid and binding upon all persons, if no~~
15 ~~person rightfully entitled to the security instrument or evidences of~~
16 ~~indebtedness has previously notified the register of deeds by means of a~~
17 ~~written affidavit of the loss or theft of the security instrument or evidences of~~
18 ~~indebtedness and has caused the register of deeds to record the affidavit of~~
19 ~~loss or theft as a separate document, as required by G.S. 161-14.1.~~

20 ~~Upon receipt of an affidavit of loss or theft of the security instrument or~~
21 ~~evidences of indebtedness that identify the security instrument, the original~~
22 ~~parties to the security instrument, and the recording data for the security~~
23 ~~instrument, the register of deeds shall record a record of satisfaction, as~~
24 ~~described in G.S. 45-37.2(b). The security instrument shall not be presented~~
25 ~~for satisfaction after such recording of a record of satisfaction or marginal~~
26 ~~entry until the ownership of said instrument shall have been lawfully~~
27 ~~determined. Nothing in this subdivision (4) shall be construed to impair the~~
28 ~~negotiability of any instrument otherwise properly negotiable, nor to impair~~
29 ~~the rights of any innocent purchaser for value thereof. Security instruments~~
30 ~~satisfied of record prior to October 1, 2011, pursuant to this subdivision as it~~
31 ~~was in effect prior to October 1, 2011, shall be deemed satisfied of record,~~
32 ~~discharged, and released.~~

- 33 (5) ~~Security instruments satisfied of record prior to October 1, 2005, pursuant to~~
34 ~~this subdivision as it was in effect prior to October 1, 2005, shall be deemed~~
35 ~~satisfied of record, discharged, and released.~~

- 36 (6) ~~Security instruments satisfied of record prior to October 1, 2005, pursuant to~~
37 ~~this subdivision as it was in effect prior to October 1, 2005, shall be deemed~~
38 ~~satisfied of record, discharged, and released.~~

- 39 (7) ~~By recording:~~
40 a. ~~A satisfaction document that satisfies the requirements of~~
41 ~~G.S. 45-36.10,~~
42 b. ~~An affidavit of satisfaction that satisfies the requirements of~~
43 ~~G.S. 45-36.16, or~~
44 c. ~~A trustee's satisfaction that satisfies the requirements of~~
45 ~~G.S. 45-36.20, but only if the security instrument is a deed of trust.~~

46 ~~The register of deeds shall not be required to verify or make inquiry~~
47 ~~concerning (i) the truth of the matters stated in any satisfaction document,~~
48 ~~affidavit of satisfaction, or trustee's satisfaction, or (ii) the authority of the~~
49 ~~person executing any satisfaction document, affidavit, or trustee's~~
50 ~~satisfaction to do so."~~

51 **SECTION 5.** G.S. 45-37.2 reads as rewritten:

1 **"§ 45-37.2. Recording-Indexing satisfactions of security instruments.**

2 (a) When a satisfaction document, affidavit of satisfaction, or trustee's satisfaction is
3 recorded pursuant to G.S. 45-37(a)(7), the register of deeds shall record and index the
4 instrument in accordance with G.S. 161-14.1. No fee shall be charged by the register of deeds
5 for recording a satisfaction document, affidavit of satisfaction, or a trustee's satisfaction.

6 (b) ~~When a security instrument is satisfied of record by a method other than by means
7 of recording a satisfaction document, satisfaction affidavit, or trustee's satisfaction pursuant to
8 G.S. 45-37(a)(7), the register of deeds shall record and index in accordance with G.S. 161.14.1
9 a record of satisfaction as provided for in this subsection. If the security instrument is being
10 satisfied of record pursuant to G.S. 45-37(a)(2), the record of satisfaction may consist of either
11 (i) all or a portion of the original security instrument rerecorded as described in subdivision (1)
12 of this subsection or (ii) a separate instrument as described in subdivision (2) of this subsection.
13 In all other cases, the record of satisfaction shall consist of a separate instrument as described in
14 subdivision (2) of this subsection. No fee shall be charged by the register of deeds for recording
15 a record of satisfaction.~~

16 (1) ~~If the security instrument is being satisfied of record pursuant to
17 G.S. 45-37(a)(2), all or a portion of the security instrument rerecorded is a
18 sufficient record of satisfaction if it identifies the security instrument, the
19 original parties to the security instrument, and the recording data for the
20 security instrument as originally recorded. In addition, the rerecorded
21 security instrument must contain either (i) an endorsement of payment and
22 satisfaction made by a person authorized under G.S. 45-37(a)(2) to make
23 such an endorsement, or (ii) an endorsement signed by the register of deeds
24 that states substantially the following: "This security instrument is satisfied
25 of record pursuant to G.S. 45-37(a)(2), the original security instrument and
26 secured obligations having been presented to me with appropriate
27 endorsement of payment and satisfaction appearing thereon as required by
28 law."~~

29 (2) ~~A separate instrument is a sufficient record of satisfaction if it complies with
30 all of the following:
31 a. Identifies the security instrument, the original parties to the security
32 instrument, the recording data for the security instrument, and the
33 office in which the security instrument is recorded.
34 b. States the statutory authority pursuant to which the security
35 instrument is being satisfied of record.
36 c. Contains language terminating the effectiveness of the security
37 instrument.
38 d. Is signed by the register of deeds.~~

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

41
42 ~~"RECORD OF SATISFACTION
43 (G.S. 45-37.2)~~

44
45 ~~This Record of Satisfaction applies to the following security instrument:~~

46
47 ~~Type of Security Instrument: (Identify type of security instrument,
48 such as deed of trust or mortgage)~~

49
50 ~~Original Grantor(s): (Identify original grantor(s), trustor(s), or
51 mortgagor(s))~~

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

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

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

~~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)"~~

~~SECTION 6. G.S. 45-73 reads as rewritten:~~

~~"§ 45-73. Cancellation of record; presentation of notes described in security instrument sufficient.~~

~~The provisions of G.S. 45-37 apply to discharge of record of instruments executed under this Article except that in cases of cancellation by exhibition or presentation under G.S. 45-37(a)(2) or 45-37(a)(3), only notes or bonds described in the body of the instrument or noted in writing thereon as provided in G.S. 45-68(3) need be exhibited or presented. Article."~~

~~SECTION 7. G.S. 47-30 is amended by adding a new subsection to read as follows:~~

~~"§ 47-30. Plats and subdivisions; mapping requirements.~~

~~...~~

~~(o) The requirements of this section regarding plat size, reproducible form, and evidence of required certifications shall be met with respect to a plat that is an "electronic document," as that term is defined in G.S. 47-16.2(3), if all of the following conditions have been met:~~

~~(1) The register of deeds has authorized the submitter to electronically register the electronic document.~~

~~(2) The plat is submitted by a United States federal or a state governmental unit or instrumentality or a trusted submitter. For purposes of this subsection, "a trusted submitter" means a person or entity that has entered into a memorandum of understanding regarding electronic recording with the~~

1 register of deeds in the county in which the electronic document is to be
 2 submitted.

3 (3) Evidence of required certifications appear on the digitized image of the
 4 document as it will appear on the public record.

5 (4) With respect to a plat submitted by a trusted submitter, the digitized image
 6 of the document as it will appear on the public record contains the
 7 submitter's name in the following completed statement on the first page of
 8 the document image: "Submitted electronically by ----- (submitter's
 9 name) in compliance with North Carolina statutes governing recordable
 10 documents and the terms of the submitter agreement with the -----
 11 (insert county name) County Register of Deeds.

12 (5) Except as otherwise provided in this subsection, the digitized image of the
 13 plat conforms to all other applicable laws and rules that prescribe
 14 recordingation."

15 **SECTION 8.** G.S. 47-113.2(b)(1) reads as rewritten:

16 "(1) Authorized party. – Four categories of authorized parties are recognized with
 17 respect to access to military discharge documents under subsection (d) of
 18 this section:

19 a. The subject of the ~~document~~document or the subject's widow or
 20 widower.

21 b. Agents and representatives of the subject authorized in writing:

22 1. By the subject or subject's widow or widower in a notarized
 23 authorization,

24 2. By a court to represent subject, or

25 3. By the subject's executor acting on behalf of a deceased
 26 subject.

27 c. Authorized agents of the Division of Veterans Affairs, the United
 28 States Department of Veterans Affairs, the Department of Defense,
 29 or a court official with an interest in assisting the subject or the
 30 deceased subject's beneficiaries to obtain a benefit.

31 d. Agents or representatives of the North Carolina State Archives."

32 **SECTION 9.** G.S. 58-74-10 reads as rewritten:

33 **"§ 58-74-10. Cancellation of mortgage in such proceedings.**

34 Any mortgage given by any person in lieu of bond as administrator, executor, guardian,
 35 collector, receiver or as an officer required to give an official bond, or as agent or surety of
 36 such person or officer, or in lieu of bond or undertaking or recognizance for his appearance at
 37 any court in any criminal proceeding, or for the security of any cost or fine in a criminal action
 38 which has been registered, when such party as administrator, executor, guardian, collector, or
 39 receiver has filed his final account and when the time required by statute for the bond given by
 40 any administrator, executor, guardian, collector, or receiver to remain in force for the purpose
 41 of action thereon has expired, or when the officer required to give an official bond has fully
 42 complied with the conditions of such bond and the time within which suit is allowed by law to
 43 be brought thereon has expired, or when the person giving such mortgage in lieu of bond has
 44 made his appearance at the court to which he was bound and did not depart the court without
 45 leave, or paid the cost or fine required, may be canceled or discharged by the clerk of the
 46 superior court of the county where such action was pending or where the mortgage in lieu of
 47 bond is recorded by entry of "satisfaction" upon the margin of the record where such mortgage
 48 is recorded in the presence of the register of deeds, or his deputy, who shall subscribe his name
 49 as a witness thereto, recording a satisfaction document pursuant to G.S. 45-37(a)(7), and such
 50 cancellation-satisfaction document shall have the effect to discharge and release all the right,

1 title and interest of the State of North Carolina in and to the property described in such
2 mortgage."

3 **SECTION 10.** Section 7 of this act becomes effective October 1, 2011, and applies
4 to plats registered on or after that date. Section 8 of this act is effective when it becomes law.
5 The remainder of this act becomes effective October 1, 2011.