

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 114
HOUSE BILL 849

AN ACT TO REQUIRE REGISTERS OF DEEDS TO RECORD AS SEPARATE INSTRUMENTS ALL SUBSEQUENT ENTRIES REGARDING DEEDS OF TRUST, MORTGAGES, AND OTHER INSTRUMENTS AS SEPARATE INSTRUMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-14.1 reads as rewritten:

"§ 161-14.1. **Recording subsequent entries as separate instruments in counties using microfilm instruments.**

~~In any county in which instruments are recorded in the office of the register of deeds by a microphotographic process or by any other method or process which renders impractical or impossible the subsequent entering of marginal notations upon the records of instruments,~~ In all cases in which the register of deeds is authorized or directed by law to make a subsequent entry upon the margin of the record of a deed of trust, mortgage, or other instrument, the register of deeds may, shall, except as provided in G.S. 45-37.2 and 45-38, record all subsequent entries as separate instruments. Such instruments shall contain the information and notations required by law for the appropriate marginal entry, a reference by book and page number to the record of the instrument modified, and the date of recording the subsequent modifying instrument. There shall also be entered in the alphabetical indexes kept by the register of deeds, opposite the name of each indexed party to the original instrument, a reference by book and page to the record of the subsequent modifying instrument. In the recording of satisfactions or foreclosures of deeds of trust and mortgages, the register of deeds shall comply with the provisions of G.S. 45-37.2 and 45-38. Whenever it is practical to do so, the register of deeds may continue making marginal notations in addition to making the recordation required by this section."

Sec. 2. G.S. 45-37.2 reads as rewritten:

"§ 45-37.2. **Recording satisfactions of deeds of trust and mortgages in counties using microfilm mortgages.**

~~In any county in which deeds of trust and mortgages are recorded in the office of the register of deeds by a microphotographic process or by any other method or process which renders impractical or impossible the subsequent entering of marginal notations upon the records of instruments,~~ The register of deeds shall record the satisfaction and cancel the record of each such instrument every deed of trust or mortgage satisfied by recording a notice record of satisfaction which shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the names of all

parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, the appropriate entry of satisfaction as provided in G.S. 45-37, a reference by book and page number to the record of the instrument satisfied, and the date of recording the notice of satisfaction. The fee for recording a ~~notice-record~~ of satisfaction shall be the fee for recording instruments in general provided in G.S. 161-10(a)(1). Whenever it is practical to do so, the register of deeds may make a marginal notation in addition to making the recordation required by this section."

Sec. 3. G.S. 45-38 reads as rewritten:

"§ 45-38. ~~Entry or recording~~ Recording of foreclosure.

In case of foreclosure of any deed of trust, or mortgage, the trustee or mortgagee shall record a notice of foreclosure and, whenever it is practical to do so, may also enter upon the margin of the record thereof of the deed of trust or mortgage of the fact that such foreclosure and the date when, and the person to whom, a conveyance was made by reason thereof. 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 or mortgagee shall ~~make an additional notation as to indicate in the notice of foreclosure which property was sold and which was not sold. sold,~~ and may make an additional notation indicating the same, whenever practical.

~~Provided, that in counties in which deeds of trust and mortgages are recorded in the office of the register of deeds by a microphotographic process or by any process or method which renders impractical or impossible the subsequent entering of marginal notations upon the records of instruments, the register of deeds shall record the foreclosure of each deed of trust or mortgage foreclosed by recording a notice of foreclosure which~~ 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 parties to the original instrument, the amount of the obligation secured, a reference by book and page number to the record of the instrument foreclosed, and the date of recording the notice of foreclosure."

Sec. 4. G.S. 45-37 reads as rewritten:

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

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

- (1) By acknowledgment of the satisfaction of the provisions of such deed of trust, mortgage or other instrument in the presence of the register of deeds by:
 - a. The trustee,
 - b. The mortgagee,
 - c. The legal representative of a trustee or mortgagee, or
 - d. A duly authorized agent or attorney of any of the above.

Upon acknowledgment of satisfaction, the register of deeds shall record a record of satisfaction as described in G.S. 45-37.2, and may

forthwith make upon the margin of the record of such deed of trust, mortgage or other instrument an entry of such acknowledgement of satisfaction which shall be signed by the trustee, mortgagee, legal representative, agent or attorney and witnessed by the register of deeds, who shall affix his name thereto.

- (2) By exhibition of any deed of trust, mortgage or other instrument accompanied with the bond, note, or other instrument thereby secured to the register of deeds, with the endorsement of payment and satisfaction appearing thereon by:
- a. The obligee,
 - b. The mortgagee,
 - c. The trustee,
 - d. An assignee of the obligee, mortgagee, or trustee, or
 - e. Any chartered banking institution, or savings and loan association, national or state, or credit union, qualified to do business in and having an office in the State of North Carolina, when so endorsed in the name of the institution by an officer thereof.

Upon exhibition of the instruments, the register of deeds shall cancel the mortgage, deed of trust or other instrument by recording a record of satisfaction as described in G.S. 45-37.2, and may make an entry of satisfaction on the margin of the record. The person so claiming satisfaction, performance or discharge of the debt or other obligation may retain possession of all of the instruments exhibited. The exhibition of the mortgage, deed of trust or other instrument alone to the register of deeds, with endorsement of payment, satisfaction, performance or discharge, shall be sufficient if the mortgage, deed of trust or other instrument itself sets forth the obligation secured or the performance of any other obligation and does not call for or recite any note, bond or other instrument secured by it. The register of deeds may require the person exhibiting the instruments for cancellation to furnish him an acknowledgment of cancellation of the mortgage, deed of trust or other instrument for the purpose of showing upon whose request and exhibition the mortgage, deed of trust or other instrument was canceled.

- (3) By exhibiting to the register of deeds by:
- a. The grantor,
 - b. The mortgagor, or
 - c. An agent, attorney or successor in title of the grantor or mortgagor

of any mortgage, deed of trust or other instrument intended to secure the payment of money or the performance of any other obligation, together with the bond, note or other instrument secured thereby, or by exhibition of the mortgage, deed of trust or other instrument alone if

such instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond or other instrument secured by it, if at the time of exhibition, all such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments so exhibited have an endorsement of partial payment, satisfaction, performance or discharge within the said period of 10 years, the period of 10 years shall be counted from the date of the most recent endorsement.

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

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

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

Upon receipt of written notice of loss or theft of the deed of trust or evidences of indebtedness the register of deeds shall record a record of satisfaction, as described in G.S. 45-37.2, which in this case shall consist of a rerecording of the record of the deed of trust containing the marginal entry and may make on the record of the deed of trust concerned a marginal entry in writing thereof, with the date of receipt of the notice. The deed of trust shall not be canceled after such recording of a record of satisfaction or marginal entry until the ownership of said instrument shall have been lawfully determined. Nothing in this subdivision (4) shall be construed to impair the negotiability of any instrument otherwise properly negotiable, nor to impair the rights of any innocent purchaser for value thereof.

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

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

Upon exhibition of the notice of satisfaction and payment of the appropriate fee provided in G.S. 161-10, the register of deeds shall record the notice of satisfaction and cancel the deed of trust, mortgage, or other instrument by recording a record of satisfaction as described in G.S. 45-37.2, and may make an entry of satisfaction on the margin of the record or as provided in G.S. 45-37.2-record.

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

- (1) The date when the conditions of such instrument were required by its terms to have been performed, or
- (2) The date of maturity of the last installment of debt or interest secured thereby;

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

- (1) The amount of debt unpaid, which is secured by said instrument; or
- (2) In what respect any other condition thereof shall not have been complied with; or

may record a separate instrument ~~make on the margin of the record of the instrument a notation~~ signed by the holder or party secured and witnessed by the register of deeds stating:

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

- (2) The amount still due or obligations not performed under the instrument.

Whenever practical, the register of deeds may also enter the information contained in the separate instrument on the margin of the record of the instrument. The effect of the filing of the affidavit or of the instrument recorded made as herein provided shall be to postpone the effective date of the conclusive presumption of satisfaction to a date 15 years from the filing of the affidavit or from the recording of the instrument or the making of the notation. There shall be only one postponement of the effective date of the conclusive presumption provided for herein. The register of deeds shall record the affidavit provided for herein and shall record a separate instrument, as required by G.S. 161-14.1, making reference to ~~make a reference on the margin of the record of the instrument referred to therein to~~ the filing of such affidavit and to the book and page where the affidavit is recorded. Whenever practical, the register of deeds may also make such a reference on the margin of the record of the deed of trust, mortgage, or other instrument referred to. This subsection shall not apply to any deed, mortgage, deed of trust or other instrument made or given by any railroad company, or to any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage or other instrument relating to the sale, purchase or lease of railroad equipment or rolling stock, or of other personal property.

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

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

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

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

Sec. 5. G.S. 45-6 reads as rewritten:

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

The executor or administrator of any deceased mortgagee or trustee in any mortgage or deed of trust heretofore or hereafter executed may renounce in writing, before the clerk of the superior court before whom he qualifies, the trust under the mortgage or deed of trust at the time he qualifies as executor or administrator, or at any time

thereafter before he intermeddles with or exercises any of the duties under said mortgage or deed of trust, except to preserve the property until a trustee can be appointed. In every such case of renunciation the clerk of the superior court of any county wherein the said mortgage or deed of trust is registered has power and authority, upon proper proceedings instituted before him, as in other cases of special proceedings, to appoint some person to act as trustee and execute said mortgage or deed of trust. The clerk, in addition to recording his proceedings in his book of orders and decrees, shall record a separate instrument, as required by G.S. 161-14.1, containing the name of the substituted trustee or mortgagee and may enter the name of the substituted trustee or mortgagee on the margin of the deed in trust or the mortgage in the book of the office of the register of deeds of said county."

Sec. 6. G.S. 45-16 reads as rewritten:

"§ 45-16. Register of deeds to make marginal entry of substituted trustee.

Whenever any substituted trustee shall be appointed as provided in G.S. 45-10 to 45-17 and such designation of such substituted trustee shall have been registered, together with the certificates required in G.S. 45-10 to 45-17, then it shall be the duty of the register of deeds to record a separate instrument, as required by G.S. 161-14.1, make an appropriate notation on the margin of the registration of the said mortgage, deed of trust, or other instrument securing the payment of money, indicating the place of registration of such appointment of a substituted trustee, and this shall be done as many times as a trustee may be substituted as provided for in G.S. 45-10 to 45-17. Whenever practical, the register of deeds may also make an appropriate notation on the margin of the registration of the mortgage, deed of trust, or other instrument securing the payment of money. It shall be competent for the holder of such deed of trust, or deeds of trust, mortgage or mortgages, wherein the same trustee is named, to execute one instrument applying to all such deeds of trust or mortgages, in the substitution of a trustee for any of the causes set forth in G.S. 45-10, and in said instrument to recite and name the mortgages and/or deeds of trust affected by giving the names of the grantors, the trustee and, if registered, the book and page of such registration. This may be done as many times as a trustee may be substituted as provided for in G.S. 45-10 to 45-17, and in which cases the register of deeds shall make, as to each recited instrument, mortgage or deed of trust, the notation provided for in this section."

Sec. 7. G.S. 45-42.1 reads as rewritten:

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

Upon affidavit of the secretary and treasurer of a corporation showing that the records of such corporation show that such corporation has fully paid and satisfied all of the notes secured by a mortgage or deed of trust executed by such corporation and such payment and satisfaction was made more than 25 years ago, and that such mortgage or deed of trust was made to a corporation which ceased to exist more than 25 years ago, and such affidavit shall further state that the records of such corporation show that no payments have been made on such mortgage by the corporation executing such mortgage or deed of trust for 25 years, the register of deeds of the county in which such mortgage or deed of trust is recorded is authorized and empowered to file such affidavit and record the same in his office and to record a separate instrument making reference

to the filing of such affidavit and to the book and page where the affidavit is recorded. The register of deeds may also make reference thereto on the margin of the record in which the said mortgage or deed of trust is recorded, and, upon recording such instrument or making such entry, the said mortgage or deed of trust shall be deemed to be cancelled and satisfied and the said register of deeds is hereby authorized to cancel the same of record: Provided, that this section shall not apply to any mortgagor corporation except those in which the State of North Carolina owns more than a majority of the capital stock and shall not apply to any mortgage or deed of trust in which the principal amount secured thereby exceeds the sum of fifteen thousand dollars (\$15,000): Provided, such cancellation shall not bar any action to foreclose such mortgage or deed of trust instituted within 90 days after the same is cancelled."

Sec. 8. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives