

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 734

Short Title: Satisfaction of Mortgages and Deeds of Trust.

(Public)

Sponsors: Senator Boseman.

Referred to: Judiciary I.

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 In this Article:

- 25 (1) "Address for giving a notification" means, for the purpose of a
26 particular type of notification, the most recent address provided in a
27 document by the intended recipient of the notification to the person
28 giving the notification, unless the person giving the notification knows
29 of a more accurate address, in which case the term means that address.
- 30 (2) "Day" means calendar day.
- 31 (3) "Document" means information that is inscribed on a tangible medium
32 or that is stored in an electronic or other medium and is retrievable in
33 perceivable form.
- 34 (4) "Electronic" means relating to technology having electrical, digital,
35 magnetic, wireless, optical, electromagnetic, or similar capabilities.
- 36 (5) "Entitled person" means a person liable for payment or performance of
37 the obligation secured by the real property described in a security
38 instrument, or the landowner.
- 39 (6) "Good faith" means honesty in fact and the observance of reasonable
40 commercial standards of fair dealing.
- 41 (7) "Landowner" means 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" means a document containing information required
2 under this Article and signed by the person required to provide the
3 information.
- 4 (9) "Original parties" means, with respect to a security instrument, each
5 person named as a party to the security instrument on the face thereof
6 as originally recorded. In identifying the original parties to a deed of
7 trust for purposes of this Article, it is not necessary to include the
8 original trustee or trustees named therein.
- 9 (10) "Payoff amount" means the sum necessary to satisfy a secured
10 obligation.
- 11 (11) "Payoff statement" means a document containing the information
12 specified in G.S. 45-36.7(d).
- 13 (12) "Person" means an individual, corporation, business trust, estate, trust,
14 partnership, limited liability company, association, joint venture,
15 public corporation, government, or governmental subdivision, agency,
16 or instrumentality, or any other legal or commercial entity.
- 17 (13) "Recording data" means the book and page number or document
18 number that indicate where a document is recorded in the office of the
19 register of deeds.
- 20 (14) "Register of deeds" shall be interpreted to mean "register of deeds,
21 assistant register of deeds, or deputy register of deeds."
- 22 (15) "Satisfy" means, with respect to a security instrument, to terminate the
23 effectiveness of the security instrument.
- 24 (16) "Secured creditor" means a person that holds or is the beneficiary of a
25 security interest or that is authorized both to receive payments on
26 behalf of a person that holds a security interest and to record a
27 satisfaction of the security instrument upon receiving full performance
28 of the secured obligation. The term does not include a trustee under a
29 security instrument.
- 30 (17) "Secured obligation" means an obligation the payment or performance
31 of which is secured by a security interest.
- 32 (18) "Security instrument" means an agreement, however denominated, that
33 creates or provides for an interest in real property to secure payment or
34 performance of an obligation, whether or not it also creates or provides
35 for a lien on personal property. The term includes, without limitation, a
36 deed of trust and a mortgage.
- 37 (19) "Security interest" means an interest in real property created by a
38 security instrument.
- 39 (20) "Sign" means, with present intent to authenticate or adopt a document:
40 a. To execute or adopt a tangible symbol; or
41 b. To attach to or logically associate with the document an
42 electronic sound, symbol, or process.

1 (21) "State" means a state of the United States, the District of Columbia,
2 Puerto Rico, the United States Virgin Islands, or any territory or
3 insular possession subject to the jurisdiction of the United States.

4 (22) "Submit for recording" means to deliver, with required fees and taxes,
5 a document sufficient to be recorded under this Article to the register
6 of deeds in the county in which the real property described in the
7 related security instrument is located.

8 **"§ 45-36.5. Notification: manner of giving and effective date.**

9 (a) A person gives a notification by:

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

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

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

21 (b) A notification is effective:

22 (1) The day after it is deposited with a commercially reasonable delivery
23 service for overnight delivery;

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

28 (3) The day it is given, if given pursuant to subdivision (a)(2) of this
29 section; or

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

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

36 **"§ 45-36.6. Document of Rescission: effect; liability for wrongful recording.**

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

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

1 or affidavit and the erroneous satisfaction of record of the security instrument, and
2 reinstates the security instrument.

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

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

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

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

15 **"§ 45-36.7. Payoff statement: request and content.**

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

20 (1) The entitled person's name;

21 (2) If given by a person other than an entitled person, the name of the
22 person giving the notification and a statement that the person is an
23 authorized agent of the entitled person;

24 (3) A direction whether the statement is to be sent to the entitled person or
25 that person's authorized agent;

26 (4) The address to which the creditor must send the statement; and

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

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

33 (b1) A person who gives to a secured creditor a notification requesting a payoff
34 statement thereby represents that the person is an entitled person or the authorized agent
35 of an entitled person. A secured creditor may rely on that representation in providing a
36 payoff statement unless the secured creditor knows that the requesting person is neither
37 an entitled person nor the authorized agent of an entitled person. A secured creditor has
38 no duty to make inquiry as to whether, or to verify that, the person requesting a payoff
39 statement is an entitled person or the authorized agent of an entitled person.

40 (c) Within 10 days after the effective date of a notification that complies with
41 subsection (a) of this section, the secured creditor shall issue a payoff statement and
42 send it as directed pursuant to subdivision (a)(3) of this section in the manner prescribed
43 in G.S. 45-36.5 for giving a notification. A secured creditor that sends a payoff
44 statement to the entitled person or the authorized agent may not claim that the

1 notification did not satisfy subsection (a). If the person to whom the notification is given
2 once held an interest in the secured obligation but has since assigned that interest, the
3 person need not send a payoff statement but shall give (i) a notification of the
4 assignment to the person to whom the payoff statement otherwise would have been sent,
5 providing the name and address of the assignee, or (ii) a notification to the person to
6 whom the payoff statement otherwise would have been sent, stating that the recipient
7 claims no interest in the security instrument or the secured obligation, that the secured
8 obligation was assigned, but that the identity and address of the assignee is not known.

9 (d) A payoff statement must contain:

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

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

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

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

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

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

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

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

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

3 **"§ 45-36.8. Understated Payoff Statement: correction; effect.**

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

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

12 (c) This Article does not:

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

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

18 **"§ 45-36.9. Secured creditor to submit satisfaction for recording; liability for**
19 **failure.**

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

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

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

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

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

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

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

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

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

12 **"§ 45-36.10. Content and effect of satisfaction.**

13 (a) A document is a satisfaction of a security instrument if it:

14 (1) Identifies the security instrument, the original parties to the security
15 instrument, the recording data for the security instrument, and the
16 office in which the security instrument is recorded;

17 (2) States that the person signing the satisfaction is the secured creditor;

18 (3) [Reserved]

19 (4) Contains language terminating the effectiveness of the security
20 instrument; and

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

23 (b) The register of deeds shall accept for recording a satisfaction of a security
24 instrument, unless:

25 (1) the document is submitted by a method or in a medium not authorized
26 for registration by the register of deeds under applicable law; or

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

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

36 **"§ 45-36.11. Satisfaction: form.**

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

40 "SATISFACTION OF SECURITY INSTRUMENT

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

42 The undersigned is now the secured creditor in the security instrument identified as
43 follows:

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

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

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

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

9 This satisfaction terminates the effectiveness of the security instrument.

10
11 Date: _____

12 (Signature of secured creditor)

13 [Acknowledgment before officer authorized to take acknowledgments]"

14 **"§ 45-36.12 Limitation of secured creditor's liability.**

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

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

21 **"§ 45-36.13. Definition; eligibility to serve as satisfaction agent.**

22 (a) In this Article, "title insurance company" means an organization authorized to
23 conduct the business of insuring titles to real property in this State.

24 (b) The following may serve as a satisfaction agent under this Article:

- 25 (1) A title insurance company, acting directly or through a duly licensed
26 title agent authorized to sign and submit for recording an affidavit of
27 satisfaction; or
- 28 (2) An attorney licensed to practice law in this State.

29 **"§ 45-36.14. Affidavit of satisfaction: notification to secured creditor.**

30 (a) If a secured creditor has not submitted for recording a satisfaction of a
31 security instrument and the security instrument has not been satisfied of record by any
32 of the methods provided by G.S. 45-37(a) within the period specified in G.S. 45-36.9(a),
33 a satisfaction agent acting for and with authority from the landowner may give the
34 secured creditor a notification that the satisfaction agent intends to submit for recording
35 an affidavit of satisfaction of the security instrument. The notification must include:

- 36 (1) The identity and mailing address of the satisfaction agent;
- 37 (2) Identification of the security instrument for which a recorded
38 satisfaction is sought, including the names of the original parties to,
39 and the recording data for, the security instrument;
- 40 (3) A statement that the satisfaction agent has reasonable grounds to
41 believe that:
42 a. The person to which the notification is being given is the
43 secured creditor; and

1 b. The secured creditor has received full payment or performance
2 of the secured obligation.

3 (4) A statement that the security instrument has not been satisfied of
4 record;

5 (5) A statement that the satisfaction agent, acting with the authorization of
6 the owner of the real property described in the security instrument,
7 intends to sign and submit for recording an affidavit of satisfaction of
8 the security instrument unless, within 30 days after the effective date
9 of the notification:

10 a. The secured creditor submits a satisfaction of the security
11 instrument for recording;

12 b. The satisfaction agent receives from the secured creditor a
13 notification stating that the secured obligation remains
14 unsatisfied;

15 c. The satisfaction agent receives from the secured creditor a
16 notification stating that the secured creditor has assigned the
17 security instrument and identifying the name and address of the
18 assignee; or

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

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

26 (c) This Article does not require a person to agree to serve as a satisfaction agent.

27 **§ 45-36.15. Affidavit of satisfaction: authorization to submit for recording.**

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

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

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

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

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

- 1 (1) Giving a notification of intent to submit for recording an affidavit of
- 2 satisfaction to the identified assignee at the identified address; and
- 3 (2) Complying with G.S. 45-36.14 with respect to the identified assignee.

4 **"§ 45-36.16. Affidavit of satisfaction: content.**

5 An affidavit of satisfaction of a security instrument must:

- 6 (1) Identify the original parties to the security instrument, the secured
- 7 creditor, and the recording data for the security instrument;
- 8 (2) State the basis upon which the person signing the affidavit is a
- 9 satisfaction agent;
- 10 (3) [Reserved]
- 11 (4) State that the person signing the affidavit has reasonable grounds to
- 12 believe that the secured creditor has received full payment or
- 13 performance of the secured obligation;
- 14 (5) State that the person signing the affidavit, acting with the authority of
- 15 the owner of the real property described in the security instrument,
- 16 gave notification to the secured creditor of its intention to sign and
- 17 submit for recording an affidavit of satisfaction;
- 18 (6) Describe the method by which the person signing the affidavit gave
- 19 notification in compliance with this Article;
- 20 (7) State that:
 - 21 a. More than 30 days have elapsed since the effective date of that
 - 22 notification, and the person signing the affidavit has no
 - 23 knowledge that the secured creditor has submitted a satisfaction
 - 24 for recording and has not received a notification that the
 - 25 secured obligation remains unsatisfied; or
 - 26 b. The secured creditor authorized the person signing the affidavit
 - 27 to sign and record an affidavit of satisfaction; and
- 28 (8) Be signed and acknowledged as required by law for a conveyance of
- 29 an interest in real property.

30 **"§ 45-36.17. Affidavit of satisfaction: form.**

31 No particular phrasing of an affidavit of satisfaction is required. The following form

32 of affidavit, when properly completed, is sufficient to satisfy the requirements of

33 G.S. 45-36.16:

34 "AFFIDAVIT OF SATISFACTION

35 _____

36 (Date of Affidavit)

37 The undersigned hereby states as follows:

38 1. I am: [check appropriate box]

39

40 An officer or a duly appointed agent of Name of title insurance company

41 (the "Company"), which is authorized to transact the business of insuring titles to

42 interests in real property in this State, and I have been authorized by the Company to

43 sign and submit for recording an affidavit of satisfaction.

An attorney licensed to practice law in this State.

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

Title of security instrument:

Original parties to security instrument:

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.

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

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

6 **(1)** The affidavit is submitted by a method or in a medium not authorized
7 for registration by the register of deeds under applicable law; or

8 **(2)** The affidavit is not signed by the satisfaction agent identified therein
9 and acknowledged as required by law for a conveyance of an interest
10 in real property. The register of deeds shall not be required to verify or
11 make inquiry concerning (i) the truth of the matters stated in any
12 affidavit of satisfaction, or (ii) the authority of the person executing
13 any affidavit of satisfaction to do so.

14 **"§ 45-36.19. Liability of satisfaction agent.**

15 **(a)** Except as otherwise provided in subsection (b), a satisfaction agent or any
16 person purporting to be a satisfaction agent that records or submits for recording an
17 affidavit of satisfaction of a security instrument erroneously or with knowledge that the
18 statements contained in the affidavit are false is liable to the secured creditor for any
19 actual damages caused by the recording and reasonable attorneys' fees and costs.

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

24 **(c)** If a satisfaction agent or any person purporting to be a satisfaction agent
25 records or submits for recording an affidavit of satisfaction of a security instrument with
26 knowledge that the statements contained in the affidavit are false, this section does not
27 preclude:

28 **(1)** A court from awarding punitive damages on account of the conduct;

29 **(2)** The secured creditor from proceeding against the satisfaction agent or
30 person purporting to be a satisfaction agent under law of this State
31 other than this Article; or

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

33 **"§ 45-36.20. Trustee's satisfaction of deed of trust: content and effect.**

34 **(a)** Upon recording, a trustee's satisfaction substantially complying with the
35 requirements of this section constitutes a satisfaction of the deed of trust described in
36 the trustee's satisfaction.

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

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

42 **(d)** Document is a trustee's satisfaction of a deed of trust if it:

- (1) Identifies the deed of trust, the original parties to the deed of trust, the recording data for the deed of trust, and the office in which the deed of trust is recorded;
- (2) States that the person signing the trustee's satisfaction is then serving as trustee or substitute trustee under the terms of the deed of trust;
- (3) Contains language terminating the effectiveness of the deed of trust; and
- (4) Is signed by the trustee or substitute trustee then serving under the terms of the deed of trust and acknowledged as required by law for a conveyance of an interest in real property.

(e) The register of deeds shall accept for recording a trustee's satisfaction of a 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 identified therein 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.

1 Date: _____

2 _____
 3 (Signature of trustee or substitute trustee)

4 [Acknowledgment before officer authorized to take acknowledgments]"

5 "~~§ 45-37. Discharge of record of mortgages, deeds of trust and other~~
 6 ~~instruments.~~Satisfaction of record of security instruments.

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

12 (1) ~~Repealed effective October 1, 2005. By acknowledgment of the~~
 13 ~~satisfaction of the provisions of such deed of trust, mortgage or other~~
 14 ~~instrument in the presence of the register of deeds by:~~

- 15 a. ~~The trustee,~~
 16 b. ~~The mortgagee,~~
 17 c. ~~The legal representative of a trustee or mortgagee, or~~
 18 d. ~~A duly authorized agent or attorney of any of the above.~~

19 ~~The register of deeds is not required to verify or make inquiry~~
 20 ~~concerning the authority of the person acknowledging the satisfaction~~
 21 ~~to do so. Upon acknowledgment of satisfaction, the register of deeds~~
 22 ~~shall record a record of satisfaction as described in G.S. 45-37.2, and~~
 23 ~~may forthwith make upon the margin of the record of such deed of~~
 24 ~~trust, mortgage or other instrument an entry of such acknowledgment~~
 25 ~~of satisfaction which shall be signed by the trustee, mortgagee, legal~~
 26 ~~representative, agent or attorney and witnessed by the register of~~
 27 ~~deeds, who shall also affix his name thereto.~~

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

31 (2) ~~By exhibition of any deed of trust, mortgage or other security~~
 32 ~~instrument accompanied with the bond, note, or other instrument~~
 33 ~~thereby secured to the register of deeds, with the endorsement of~~
 34 ~~payment and satisfaction appearing thereon and made by:~~

- 35 a. ~~The obligee, secured creditor,~~
 36 b. ~~The mortgagee, trustee or substitute trustee, if the security~~
 37 ~~instrument is a deed of trust,~~
 38 c. ~~The trustee,~~
 39 ~~d.c.~~ An assignee of the obligee, mortgagee, or trustee, or secured
 40 creditor, or
 41 ~~e.d.~~ Any chartered banking institution, or Any bank, savings and
 42 loan association, national or state, or credit union, qualified to
 43 do business in and having an office savings bank, or credit
 44 union chartered under the laws of this or any other state or the

1 United States having an office or branch in the State of North
2 Carolina, when so endorsed in the name of the institution by an
3 officer thereof.

4 The register of deeds is not required to verify or make inquiry
5 concerning the authority of the person making the endorsement of
6 payment and satisfaction to do so. Upon exhibition of the instruments,
7 the register of deeds shall ~~cancel the mortgage, deed of trust or other~~
8 satisfy the security instrument of record by recording a record of
9 satisfaction as described in ~~G.S. 45-37.2, and may make an entry of~~
10 ~~satisfaction on the margin of the record.~~ G.S. 45-37.2. The person so
11 claiming satisfaction, performance or discharge of the debt or other
12 obligation may retain possession of all of the instruments exhibited.
13 The exhibition of the ~~mortgage, deed of trust or other security~~
14 instrument alone to the register of deeds, with endorsement of
15 payment, satisfaction, performance or discharge, shall be sufficient if
16 the ~~mortgage, deed of trust or other security~~ instrument itself sets forth
17 the obligation secured or the performance of any other obligation and
18 does not call for or recite any note, bond or other instrument secured
19 by it.

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

- 21 a. The grantor,
- 22 b. The mortgagor, or
- 23 c. An agent, attorney or successor in title of the grantor or
24 mortgagor

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

38 The register of deeds shall ~~cancel the mortgage, deed of trust, or~~
39 ~~other~~ satisfy the security instrument of record by recording a record of
40 satisfaction as described in ~~G.S. 45-37.2, and may make proper entry~~
41 ~~of cancellation and satisfaction of said instrument on the margin of the~~
42 ~~record where the same is recorded, whether there be any such entries~~
43 ~~on the original papers or not.~~ G.S. 45-37.2.
44

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

6 Upon exhibition of the ~~deed of trust, security instruments,~~ and the
7 evidences of indebtedness properly marked, the register of deeds shall
8 ~~cancel such deed of trust~~ satisfy the security instrument of record by
9 recording a record of satisfaction as described in G.S. 45-37.2, ~~and~~
10 ~~may make an entry of satisfaction upon the margin of the record,~~
11 ~~which record, or entry if made,~~ which record shall be valid and binding
12 upon all persons, if no person rightfully entitled to the ~~deed of trust~~
13 security instrument or evidences of indebtedness has previously
14 notified the register of deeds in writing of the loss or theft of the
15 security instrument or evidences of indebtedness and has caused the
16 register of deeds to record the notice or loss or theft in a separate
17 document, as required by G.S. 161-14.1.

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

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

- 38 (5) ~~Repealed as of October 1, 2005. By exhibition to the register of deeds~~
39 ~~of a notice of satisfaction of a deed of trust, mortgage, or other~~
40 ~~instrument which has been acknowledged by the trustee or the~~
41 ~~mortgagee before an officer authorized to take acknowledgments. The~~
42 ~~notice of satisfaction shall be substantially in the form set out in~~
43 ~~G.S. 47-46.1. The notice of satisfaction shall recite the names of all~~
44 ~~parties to the original instrument, the amount of the obligation secured,~~

1 the date of satisfaction of the obligation, and a reference by book and
2 page number to the record of the instrument satisfied. The notice of
3 satisfaction shall be accompanied by the deed of trust, mortgage, or
4 other instrument, or a copy of the instrument, for verification and
5 indexing purposes, which shall not be recorded with the notice.

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

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

- 16 (6) Repealed as of October 1, 2005.By exhibition to the register of deeds
17 of a certificate of satisfaction of a deed of trust, mortgage, or other
18 instrument that has been acknowledged before an officer authorized to
19 take acknowledgments by the owner of the note, bond, or other
20 evidence of indebtedness secured by the deed of trust or mortgage. The
21 certificate of satisfaction shall be accompanied by the note, bond, or
22 other evidence of indebtedness, if available, with an endorsement of
23 payment and satisfaction by the owner of the note, bond, or other
24 evidence of indebtedness. If such evidence of indebtedness cannot be
25 produced, an affidavit, hereafter referred to as an "affidavit of lost
26 note", signed by the owner of the note, bond, or other evidence of
27 indebtedness, shall be delivered to the register of deeds in lieu of the
28 evidence of indebtedness certifying that the debt has been satisfied and
29 stating: (i) the date of satisfaction; (ii) that the note, bond, or other
30 evidence of indebtedness cannot be found; and (iii) that the person
31 signing the affidavit is the current owner of the note, bond, or other
32 evidence of indebtedness. The certificate of satisfaction shall be
33 substantially in the form set out in G.S. 47-46.2 and shall recite the
34 names of all parties to the original instrument, the amount of the
35 obligation secured, the date of satisfaction of the obligation, and a
36 reference by book and page number to the record of the instrument
37 satisfied. The affidavit of lost note, if necessary, shall be substantially
38 in the form set out in G.S. 47-46.3. The certificate of satisfaction shall
39 be accompanied by the deed of trust, mortgage, or other instrument, or
40 a copy of the instrument, for verification and indexing purposes, which
41 shall not be recorded with the certificate.

42 Upon exhibition of the certificate of satisfaction and accompanying
43 evidence of indebtedness endorsed paid and satisfied, or upon
44 exhibition of an affidavit of lost note, the register of deeds shall record

1 ~~the certificate of satisfaction and either the accompanying evidence of~~
2 ~~indebtedness or the affidavit of lost note, and shall cancel the deed of~~
3 ~~trust, mortgage, or other instrument as required by G.S. 45-37.2. No~~
4 ~~fee shall be charged for recording any documents or certifying any~~
5 ~~acknowledgments pursuant to this subdivision. The register of deeds~~
6 ~~shall not be required to verify or make inquiry concerning the authority~~
7 ~~of the person executing the certificate of satisfaction to do so.~~

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

11 (7) By recording:

- 12 a. A satisfaction document that satisfies the requirements of
13 G.S. 45-36.10,
14 b. An affidavit of satisfaction that satisfies the requirements of
15 G.S. 45-36.16, or
16 c. A trustee's satisfaction that satisfies the requirements of
17 G.S. 45-36.20, but only if the security instrument is a deed of
18 trust.

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

24 (b) It shall be conclusively presumed that the conditions of any ~~deed of trust,~~
25 ~~mortgage or other security instrument~~ securing the payment of money or securing the
26 performance of any other obligation or obligations have been complied with or the debts
27 secured thereby paid or obligations performed, as against creditors or purchasers for
28 valuable consideration from the mortgagor or grantor, from and after the expiration of
29 15 years from whichever of the following occurs last:

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

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

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

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

- 1 (1) Any payments that have been made on the indebtedness or other
2 obligation secured by ~~such~~ the security instrument including the date
3 and amount of payments and
4 (2) The amount still due or obligations not performed under the security
5 instrument.

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

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

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

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

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

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

42 "**§ 45-37.1. Validation of certain entries of cancellation made by beneficiary or**
43 **assignee instead of trustee.**

1 In all cases where, prior to January 1, 1930, it appears from the margin or face of the
2 record in the office of the register of deeds of any county in this State that the original
3 beneficiary named in any deed of trust, trust indenture, or other instrument intended to
4 secure the payment of money and constituting a lien on real estate, or his assignee of
5 record, shall have made an entry purporting to fully satisfy and discharge the lien of
6 such instrument, and such entry has been signed by the original payee and beneficiary
7 in said deed of trust, or other security instrument, or by his assignee of record, or by his
8 or their properly constituted officer, agent, attorney, or legal representatives, and has
9 been duly witnessed by the register of deeds or his deputy, all such entries of
10 cancellation and satisfaction are hereby validated and made full, sufficient and complete
11 to release, satisfy and discharge the lien of such instrument, and shall have the same
12 effect as if such entry had been made and signed by the trustee named in said deed of
13 trust, or other security instrument, or by his duly appointed successor or substitute.

14 **"§ 45-37.2. Recording satisfactions of deeds of trust and mortgages.security**
15 **instruments.**

16 (a) When a ~~notice of satisfaction document, affidavit of satisfaction, or trustee's~~
17 ~~satisfaction is recorded pursuant to G.S. 45-37(a)(5) or a certificate of satisfaction is~~
18 ~~recorded pursuant to G.S. 45-37(a)(6), G.S. 45-37(a)(7),~~ the register of deeds shall make
19 an entry of satisfaction on the notice or certificate and record and index the instrument.
20 No fee shall be charged by the register of deeds for (i) recording a satisfaction
21 document, affidavit of satisfaction, or a trustee's satisfaction, or (ii) certifying any
22 acknowledgments relating thereto.

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

36 (1) All or a portion of a security instrument rerecorded is a sufficient
37 record of satisfaction if it identifies the security instrument, the
38 original parties to the security instrument, and the recording data for
39 the security instrument as originally recorded. In addition, the
40 rerecorded security instrument must contain the following:

41 a. If the security instrument is being satisfied of record pursuant to
42 G.S. 45-37(a)(2), the rerecorded security instrument must also
43 contain either (i) an endorsement of payment and satisfaction
44 made by a person authorized under G.S. 45-37(a)(2) to make

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

8 b. If the security instrument is being satisfied of record pursuant to
9 G.S. 45-37(a)(3), the rerecorded security instrument must also
10 contain an endorsement signed by the register of deeds that
11 states substantially the following: "This security instrument is
12 satisfied of record pursuant to G.S. 45-37(a)(3), the original
13 security instrument and secured obligations having been
14 exhibited to me, and each such instrument being more than 10
15 years old as provided by law."

16 c. If the security instrument is being satisfied of record pursuant to
17 G.S. 45-37(a)(4), the rerecorded security instrument must also
18 contain an endorsement signed by the register of deeds that
19 states substantially the following: "This security instrument is
20 satisfied of record pursuant to G.S. 45-37(a)(4), the original
21 security instrument and all negotiable instruments transferable
22 by delivery secured thereby having been exhibited to me, and
23 each having been marked paid and satisfied in full by the bearer
24 or holder thereof."

25 (2) A separate instrument is a sufficient record of satisfaction if it:

26 a. Identifies the security instrument, the original parties to the
27 security instrument, the recording data for the security
28 instrument, and the office in which the security instrument is
29 recorded;

30 b. States the statutory authority pursuant to which the security
31 instrument is being satisfied of record;

32 c. Contains language terminating the effectiveness of the security
33 instrument; and

34 d. Is signed by the register of deeds.

35 No particular phrasing is required for a record of satisfaction. The following
36 form, when properly completed, is sufficient to satisfy the requirements of this
37 subsection (b)(2):

38
39 "RECORD OF SATISFACTION
40 (G.S. 45-37.2)

41
42 This Record of Satisfaction applies to the following security instrument:
43

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

Original Grantor(s): (Identify original grantor(s), trustor(s), or 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 exhibited 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 exhibited 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 exhibited 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)"

(c) Whenever it is practical to do so, the register of deeds may make a marginal notation of satisfaction ~~in addition to making the recordation~~ the original record of the security instrument in addition to recording the documents 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 the date when, and the person to whom, a conveyance was made by reason of the foreclosure. In the event the entire obligation

1 secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property
2 embraced within the terms of the mortgage or deed of trust, the trustee, mortgagee, or
3 the trustee's or mortgagee's attorney shall indicate in the notice of foreclosure which
4 property was sold and which was not sold, and may make an additional notation
5 indicating the same, whenever practical.

6 A notice of foreclosure shall consist of a separate instrument, or that part of the
7 original deed of trust or mortgage rerecorded, reciting the information required
8 hereinabove, the names of ~~all the original~~ parties to the original instrument, the amount
9 of the obligation secured, a reference by book and page number or document number to
10 the record of the instrument foreclosed, and the date of recording the notice of
11 foreclosure.

12 "§ 45-39: Repealed by Session Laws 1949, c. 720, s. 5.

13 "§ 45-40. **Register to enter satisfaction on index.**

14 When satisfaction of the provisions of any ~~deed of trust or mortgage security~~
15 instrument is acknowledged and entry of such acknowledgment of satisfaction is made
16 upon the margin of the record of said ~~deed of trust or mortgage, security instrument~~
17 when the register of deeds or his or her deputy shall cancel the ~~mortgage or other~~
18 security instrument by entry of satisfaction, then the register of deeds or his or her
19 deputy shall enter upon the alphabetical grantor index kept by ~~him, the register of deeds,~~
20 as required by law, and opposite the names of the grantor and grantee and on a line with
21 the names of said grantor and grantee, the words "satisfied mortgage," if the security
22 instrument of which satisfaction has been acknowledged or entered is a mortgage, and
23 the words "satisfied deed of trust," if the security instrument of which satisfaction has
24 been acknowledged or entered is a deed of trust, or, in lieu of the entries herein
25 provided, the register of deeds or his deputy may denote satisfaction in the grantor index
26 by using a capital "C" or the word "Cancelled," or the word "Satisfied." This statute
27 shall not apply to counties using computerized indexing or to counties in which a parcel
28 identifier index is established pursuant to G.S. 161-22.2.

29 "§ 45-41. **Recorded deed of release of mortgagee's representative.**

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

36 "§ 45-42. **Satisfaction of corporate mortgages by corporate officers.**

37 All ~~mortgages and deeds in trust security instruments~~ executed to a corporation may
38 be satisfied and so marked of record as by law provided for the satisfaction of
39 ~~mortgages and deeds in trust, security instruments,~~ by any officer of the corporation
40 indicating the office held. For the purposes of recordation and ~~cancellation, satisfaction,~~
41 such signature shall be deemed to be a certification by the signer that he is an officer
42 and is authorized to execute the satisfaction on behalf of such corporation. Where
43 ~~mortgages or deeds in trust security instruments~~ were marked "satisfied" on the records
44 before the twenty-third day of February, 1909, by any president, secretary, treasurer or

1 cashier of any corporation by such officer writing his own name and affixing thereto the
2 title of his office in such corporation, such satisfaction is validated, and is as effective to
3 all intents and purposes as if a deed of release duly executed by such corporation had
4 been made, acknowledged and recorded.

5 **"§ 45-42.1. Corporate cancellation of lost mortgages by register of deeds.**

6 Upon affidavit of the secretary and treasurer of a corporation showing that the
7 records of such corporation show that such corporation has fully paid and satisfied all of
8 the notes secured by a ~~mortgage or deed of trust security instrument~~ executed by such
9 corporation and such payment and satisfaction was made more than 25 years ago, and
10 that such ~~mortgage or deed of trust security instrument~~ was made to a corporation which
11 ceased to exist more than 25 years ago, and such affidavit shall further state that the
12 records of such corporation show that no payments have been made on such ~~mortgage~~
13 ~~secured obligation~~ by the corporation executing such ~~mortgage or deed of trust security~~
14 ~~instrument~~ for 25 years, the register of deeds of the county in which such ~~mortgage or~~
15 ~~deed of trust security instrument~~ is recorded is authorized and empowered to file such
16 affidavit and record the same in his or her office and to record a separate instrument
17 making reference to the filing of such affidavit and to the book and page or document
18 number where the affidavit is recorded. The register of deeds may also make reference
19 thereto on the margin of the record in which the said ~~mortgage or deed of trust security~~
20 ~~instrument~~ is recorded, and, upon recording such instrument or making such entry, the
21 said ~~mortgage or deed of trust security instrument~~ shall be deemed to be cancelled and
22 satisfied of record and the said register of deeds is hereby authorized to ~~cancel~~ satisfy
23 the same of record: Provided, that this section shall not apply to any mortgagor
24 corporation except those in which the State of North Carolina owns more than a
25 majority of the capital stock and shall not apply to any ~~mortgage or deed of trust~~
26 ~~security instrument~~ in which the principal amount secured thereby exceeds the sum of
27 fifteen thousand dollars (\$15,000): Provided, such cancellation shall not bar any action
28 to foreclose such ~~mortgage or deed of trust security instrument~~ instituted within 90 days
29 after the same is cancelled."

30 **SECTION 2.** G.S. 47-46.1 reads as rewritten:

31 **"§ 47-46.1. Notice of satisfaction of deed of trust, mortgage, or other instrument.**

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

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

43 North Carolina, _____ County.

I, _____ (name of trustee or mortgagee), certify that the debt or other obligation in the amount of _____ secured by the (deed of trust) (mortgage) (other instrument) executed by _____ (grantor) (mortgagor), _____ (trustee) (leave blank if mortgage), and _____ (beneficiary) (mortgagee), and recorded in _____ County at _____ (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).

SECTION 3. G.S. 47-46.2 reads as rewritten:

"§ 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

1 North Carolina, _____ County.

2 I, _____ (name of owner of the note or other
3 indebtedness secured by the deed of trust or mortgage), certify that I am the owner of
4 the indebtedness secured by the hereafter described deed of trust or mortgage and that
5 the debt or other obligation in the amount of _____ secured by the
6 (deed of trust) (mortgage) (other instrument) executed by
7 _____ (grantor) (mortgagor),
8 _____ (trustee) (leave blank if mortgage), and
9 _____ (beneficiary) (mortgagee), and recorded in
10 _____ County at _____ (book and page) was satisfied
11 on _____ (date of satisfaction). I request that this certificate
12 of satisfaction be recorded and the above-referenced security instrument be canceled of
13 record.

14 _____
15 (Signature of owner of note)

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

17 **SECTION 4.** G.S. 47-46.3 reads as rewritten:

18 **"§ 47-46.3. Affidavit of lost note.**

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

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

25 **AFFIDAVIT OF LOST NOTE**

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

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

41 _____
42 (Signature of affiant)

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

- 1 [Signature and seal of notary public or other official authorized to administer oaths]."
2 **SECTION 5.** This act becomes effective October 1, 2005.