

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 312
PROPOSED COMMITTEE SUBSTITUTE H312-PCS70111-SA-10

Short Title: Register of Deeds.

(Public)

Sponsors:

Referred to:

March 10, 2011

A BILL TO BE ENTITLED

AN ACT AMENDING THE METHODS FOR RECORDING SATISFACTION OF A SECURITY INSTRUMENT WITH THE REGISTER OF DEEDS, CLARIFYING THE REQUIREMENTS FOR ELECTRONICALLY REGISTERING PLATS WITH THE REGISTER OF DEEDS, AND AMENDING RESTRICTIONS ON ACCESS TO MILITARY DISCHARGE DOCUMENTS RECORDED WITH THE REGISTER OF DEEDS.

The General Assembly of North Carolina enacts:

SECTION 1. 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 mortgagee, with the register of deeds of said county."

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

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

...

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



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1"

2 **SECTION 3.** G.S. 45-36.9(e) is repealed.

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

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

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

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

16 a. ~~The secured creditor,~~

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

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

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

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

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

40 a. ~~The grantor,~~

41 b. ~~The mortgagor, or~~

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

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

1 satisfaction, performance or discharge within the said period of 10 years, the
2 period of 10 years shall be counted from the date of the most recent
3 endorsement.

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

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

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

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

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

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

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

49 The register of deeds shall not be required to verify or make inquiry
50 concerning (i) the truth of the matters stated in any satisfaction document,
51 affidavit of satisfaction, or trustee's satisfaction, or (ii) the authority of the

1 person executing any satisfaction document, affidavit, or trustee's
2 satisfaction to do so."

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

4 "**§ 45-37.2. Recording-Indexing satisfactions of security instruments.**

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

9 (b) ~~When a security instrument is satisfied of record by a method other than by means
10 of recording a satisfaction document, satisfaction affidavit, or trustee's satisfaction pursuant to
11 G.S. 45-37(a)(7), the register of deeds shall record and index in accordance with G.S. 161-14.1
12 a record of satisfaction as provided for in this subsection. If the security instrument is being
13 satisfied of record pursuant to G.S. 45-37(a)(2), the record of satisfaction may consist of either
14 (i) all or a portion of the original security instrument rerecorded as described in subdivision (1)
15 of this subsection or (ii) a separate instrument as described in subdivision (2) of this subsection.
16 In all other cases, the record of satisfaction shall consist of a separate instrument as described in
17 subdivision (2) of this subsection. No fee shall be charged by the register of deeds for recording
18 a record of satisfaction.~~

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

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

- 34 a. ~~Identifies the security instrument, the original parties to the security
35 instrument, the recording data for the security instrument, and the
36 office in which the security instrument is recorded.~~
- 37 b. ~~States the statutory authority pursuant to which the security
38 instrument is being satisfied of record.~~
- 39 e. ~~Contains language terminating the effectiveness of the security
40 instrument.~~
- 41 d. ~~Is signed by the register of deeds.~~

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

44
45 "RECORD OF SATISFACTION
46 (G.S. 45-37.2)
47

48 This Record of Satisfaction applies to the following security instrument:

49
50 Type of Security Instrument: (Identify type of security instrument,
51 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 presented to me with appropriate endorsement of payment and satisfaction appearing thereon as required by law.~~

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

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

~~Other: (specify)~~

Date: _____
_____ (Signature of register of deeds)''

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

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

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

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

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

...

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

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

(2) The plat is submitted by a United States federal or a state governmental unit or instrumentality or a trusted submitter. For purposes of this subsection, "a

1 trusted submitter" means a person or entity that has entered into a
 2 memorandum of understanding regarding electronic recording with the
 3 register of deeds in the county in which the electronic document is to be
 4 submitted.

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

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

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

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

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

21 a. The subject of the ~~document~~ document or the subject's widow or
 22 widower.

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

- 24 1. By the subject or subject's widow or widower in a notarized
- 25 authorization,
- 26 2. By a court to represent subject, or
- 27 3. By the subject's executor acting on behalf of a deceased
- 28 subject.

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

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

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

35 "**§ 58-74-10. Cancellation of mortgage in such proceedings.**

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

1 ~~cancellation~~ satisfaction document shall have the effect to discharge and release all the right,
2 title and interest of the State of North Carolina in and to the property described in such
3 mortgage."

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