GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 434
HOUSE BILL 1023

AN ACT TO MAKE IT CLEAR THAT THE REGISTER OF DEEDS MAY CANCEL MORTGAGES UPON RECEIPT OF A NOTICE OF SATISFACTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-37(a) reads as rewritten:

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

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

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

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

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

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

a. The grantor,

b. The mortgagor, or

c. An agent, attorney or successor in title of the grantor or mortgagor

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

The register of deeds shall make proper entry of cancellation and satisfaction of said instrument on the margin of the record where the same is recorded, whether there be any such entries on the original papers or not.

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

Upon exhibition of the deed of trust, and the evidences of indebtedness properly marked, the register of deeds shall cancel such deed of trust by entry of satisfaction upon the margin of the record, which entry shall be valid and binding upon all persons, if no person rightfully entitled to the deed of trust or evidences of indebtedness has previously notified the register of deeds in writing of the loss or theft of the instrument or evidences of indebtedness and has caused the register of deeds to record the notice or loss or theft on the margin of the record of the deed of trust.

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

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

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

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

Sec. 2. G.S. 47-46.1 reads as rewritten:

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

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

North Carolina, _____ County.

I, _____ (name of ~~trustee),~~ 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),~~ (grantor) (mortgagor), _____ ~~(trustee),~~ (trustee) (leave blank if mortgage), and _____ ~~(beneficiary),~~ (beneficiary) (mortgagee), and recorded in _____ County at _____ (book and page) was satisfied on _____ (date of satisfaction).

_____
(Signature of ~~trustee)~~ trustee or mortgagee)

I, _____ (name of officer taking acknowledgment), _____ (official title of person taking acknowledgment) certify that _____ (name of ~~trustee)~~ 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)

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)."

Sec. 3. This act is effective retroactively to July 18, 1987, and applies to all applications for notice of satisfaction of a deed of trust, mortgage, or other instrument made on or after that date.

In the General Assembly read three times and ratified this the 23rd day of June, 1989.