

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

1

HOUSE BILL 849

Short Title: Record Separate Instruments.

(Public)

Sponsors: Representative Redwine.

Referred to: Judiciary II.

April 17, 1991

A BILL TO BE ENTITLED

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

The General Assembly of North Carolina enacts:

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

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

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

1 so, the register of deeds may continue making marginal notations in addition to making
2 the recordation required by this section."

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

4 "**§ 45-37.2. Recording satisfactions of deeds of trust and ~~mortgages in counties using~~**
5 **~~microfilm mortgages.~~**

6 In any county in which deeds of trust and mortgages are recorded in the office of the
7 register of deeds by a microphotographic process or by any other method or process
8 which renders impractical or impossible the subsequent entering of marginal notations
9 upon the records of instruments, ~~the~~ The register of deeds shall record the satisfaction
10 and cancel the record of each such instrument ~~every~~ deed of trust or mortgage satisfied
11 by recording a ~~notice record~~ record of satisfaction which shall consist of a separate instrument,
12 or that part of the original deed of trust or mortgage rerecorded, reciting the names of all
13 parties to the original instrument, the amount of the obligation secured, the date of
14 satisfaction of the obligation, the appropriate entry of satisfaction as provided in G.S.
15 45-37, a reference by book and page number to the record of the instrument satisfied,
16 and the date of recording the notice of satisfaction. The fee for recording a ~~notice record~~
17 of satisfaction shall be the fee for recording instruments in general provided in G.S.
18 161-10(a)(1). Whenever it is practical to do so, the register of deeds may make a
19 marginal notation in addition to making the recordation required by this section."

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

21 "**§ 45-38. ~~Entry or recording~~ Recording of foreclosure.**

22 In case of foreclosure of any deed of trust, or mortgage, the trustee or mortgagee
23 shall record a notice of foreclosure and, whenever it is practical to do so, may also enter
24 upon the margin of the record thereof of the deed of trust or mortgage of the fact that
25 such foreclosure and the date when, and the person to whom, a conveyance was made
26 by reason thereof of the foreclosure. In the event the entire obligation secured by a
27 mortgage or deed of trust is satisfied by a sale of only a part of the property embraced
28 within the terms of the mortgage or deed of trust, the trustee or mortgagee shall ~~make an~~
29 ~~additional notation as to~~ indicate in the notice of foreclosure which property was sold and
30 which was not sold, and may make an additional notation indicating the same,
31 whenever practical.

32 ~~Provided, that in counties in which deeds of trust and mortgages are recorded in the~~
33 ~~office of the register of deeds by a microphotographic process or by any process or~~
34 ~~method which renders impractical or impossible the subsequent entering of marginal~~
35 ~~notations upon the records of instruments, the register of deeds shall record the~~
36 ~~foreclosure of each deed of trust or mortgage foreclosed by recording a notice of~~
37 ~~foreclosure which~~ A notice of foreclosure shall consist of a separate instrument, or that
38 part of the original deed of trust or mortgage rerecorded, reciting the information
39 required hereinabove, the names of all parties to the original instrument, the amount of
40 the obligation secured, a reference by book and page number to the record of the
41 instrument foreclosed, and the date of recording the notice of foreclosure."

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

43 "**§ 45-37. Discharge of record of mortgages, deeds of trust and other instruments.**

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

5 (1) By acknowledgment of the satisfaction of the provisions of such deed
6 of trust, mortgage or other instrument in the presence of the register of
7 deeds by:

- 8 a. The trustee,
- 9 b. The mortgagee,
- 10 c. The legal representative of a trustee or mortgagee, or
- 11 d. A duly authorized agent or attorney of any of the above.

12 Upon acknowledgment of satisfaction, the register of deeds shall
13 record a record of satisfaction as described in G.S. 45-37.2, and may
14 forthwith make upon the margin of the record of such deed of trust,
15 mortgage or other instrument an entry of such acknowledgement of
16 satisfaction which shall be signed by the trustee, mortgagee, legal
17 representative, agent or attorney and witnessed by the register of
18 deeds, who shall affix his name thereto.

19 (2) By exhibition of any deed of trust, mortgage or other instrument
20 accompanied with the bond, note, or other instrument thereby secured
21 to the register of deeds, with the endorsement of payment and
22 satisfaction appearing thereon by:

- 23 a. The obligee,
- 24 b. The mortgagee,
- 25 c. The trustee,
- 26 d. An assignee of the obligee, mortgagee, or trustee, or
- 27 e. Any chartered banking institution, or savings and loan
28 association, national or state, or credit union, qualified to do
29 business in and having an office in the State of North Carolina,
30 when so endorsed in the name of the institution by an officer
31 thereof.

32 Upon exhibition of the instruments, the register of deeds shall cancel
33 the mortgage, deed of trust or other instrument by recording a record
34 of satisfaction as described in G.S. 45-37.2, and may make an entry of
35 satisfaction on the margin of the record. The person so claiming
36 satisfaction, performance or discharge of the debt or other obligation
37 may retain possession of all of the instruments exhibited. The
38 exhibition of the mortgage, deed of trust or other instrument alone to
39 the register of deeds, with endorsement of payment, satisfaction,
40 performance or discharge, shall be sufficient if the mortgage, deed of
41 trust or other instrument itself sets forth the obligation secured or the
42 performance of any other obligation and does not call for or recite any
43 note, bond or other instrument secured by it. The register of deeds may
44 require the person exhibiting the instruments for cancellation to furnish

1 him an acknowledgment of cancellation of the mortgage, deed of trust
2 or other instrument for the purpose of showing upon whose request
3 and exhibition the mortgage, deed of trust or other instrument was
4 canceled.

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

- 6 a. The grantor,
7 b. The mortgagor, or
8 c. An agent, attorney or successor in title of the grantor or
9 mortgagor

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

23 The register of deeds shall cancel the mortgage, deed of trust, or other
24 instrument by recording a record of satisfaction as described in G.S.
25 45-37.2, and may make proper entry of cancellation and satisfaction of
26 said instrument on the margin of the record where the same is
27 recorded, whether there be any such entries on the original papers or
28 not.

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

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

1 Upon receipt of written notice of loss or theft of the deed of trust or
2 evidences of indebtedness the register of deeds shall record a record of
3 satisfaction, as described in G.S. 45-37.2, which in this case shall
4 consist of a rerecording of the record of the deed of trust containing the
5 marginal entry and may make on the record of the deed of trust
6 concerned a marginal entry in writing thereof, with the date of receipt
7 of the notice. The deed of trust shall not be canceled after such
8 recording of a record of satisfaction or marginal entry until the
9 ownership of said instrument shall have been lawfully determined.
10 Nothing in this subdivision (4) shall be construed to impair the
11 negotiability of any instrument otherwise properly negotiable, nor to
12 impair the rights of any innocent purchaser for value thereof.
13 Every entry of acknowledgment of satisfaction or of satisfaction made
14 or witnessed by the register of deeds as provided in subdivision (a)(1)
15 shall operate and have the same effect to release and discharge all the
16 interest of such trustee, mortgagee or representative in such deed or
17 mortgage as if a deed of release or reconveyance thereof had been duly
18 executed and recorded.

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

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

34 (b) It shall be conclusively presumed that the conditions of any deed of trust,
35 mortgage or other instrument securing the payment of money or securing the
36 performance of any other obligation or obligations have been complied with or the debts
37 secured thereby paid or obligations performed, as against creditors or purchasers for
38 valuable consideration from the mortgagor or grantor, from and after the expiration of
39 15 years from whichever of the following occurs last:

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

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

4 (1) The amount of debt unpaid, which is secured by said instrument; or

5 (2) In what respect any other condition thereof shall not have been
6 complied with; or

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

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

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

15 Whenever practical, the register of deeds may also enter the information contained in
16 the separate instrument on the margin of the record of the instrument. The effect of the
17 filing of the affidavit or of the instrument recorded made as herein provided shall be to
18 postpone the effective date of the conclusive presumption of satisfaction to a date 15
19 years from the filing of the affidavit or from the recording of the instrument or the
20 making of the notation. There shall be only one postponement of the effective date of
21 the conclusive presumption provided for herein. The register of deeds shall record the
22 affidavit provided for herein and shall record a separate instrument, as required by G.S.
23 161-14.1, making reference to ~~make a reference on the margin of the record of the~~
24 ~~instrument referred to therein to the filing of such affidavit and to the book and page~~
25 ~~where the affidavit is recorded.~~ Whenever practical, the register of deeds may also make
26 such a reference on the margin of the record of the deed of trust, mortgage, or other
27 instrument referred to. This subsection shall not apply to any deed, mortgage, deed of
28 trust or other instrument made or given by any railroad company, or to any agreement of
29 conditional sale, equipment trust agreement, lease, chattel mortgage or other instrument
30 relating to the sale, purchase or lease of railroad equipment or rolling stock, or of other
31 personal property.

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

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

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

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

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

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

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

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

27 **"§ 45-16. Register of deeds to make marginal entry of substituted trustee.**

28 Whenever any substituted trustee shall be appointed as provided in G.S. 45-10 to 45-
29 17 and such designation of such substituted trustee shall have been registered, together
30 with the certificates required in G.S. 45-10 to 45-17, then it shall be the duty of the
31 register of deeds to record a separate instrument, as required by G.S. 161-14.1, make an
32 appropriate notation on the margin of the registration of the said mortgage, deed of trust, or
33 other instrument securing the payment of money, indicating the place of registration of such
34 appointment of a substituted trustee, and this shall be done as many times as a trustee
35 may be substituted as provided for in G.S. 45-10 to 45-17. Whenever practical, the
36 register of deeds may also make an appropriate notation on the margin of the
37 registration of the mortgage, deed of trust, or other instrument securing the payment of
38 money. It shall be competent for the holder of such deed of trust, or deeds of trust,
39 mortgage or mortgages, wherein the same trustee is named, to execute one instrument
40 applying to all such deeds of trust or mortgages, in the substitution of a trustee for any
41 of the causes set forth in G.S. 45-10, and in said instrument to recite and name the
42 mortgages and/or deeds of trust affected by giving the names of the grantors, the trustee
43 and, if registered, the book and page of such registration. This may be done as many
44 times as a trustee may be substituted as provided for in G.S. 45-10 to 45-17, and in

1 which cases the register of deeds shall make, as to each recited instrument, mortgage or
2 deed of trust, the notation provided for in this section."

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

4 **"§ 45-42.1. Corporate cancellation of lost mortgages by register of deeds.**

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

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