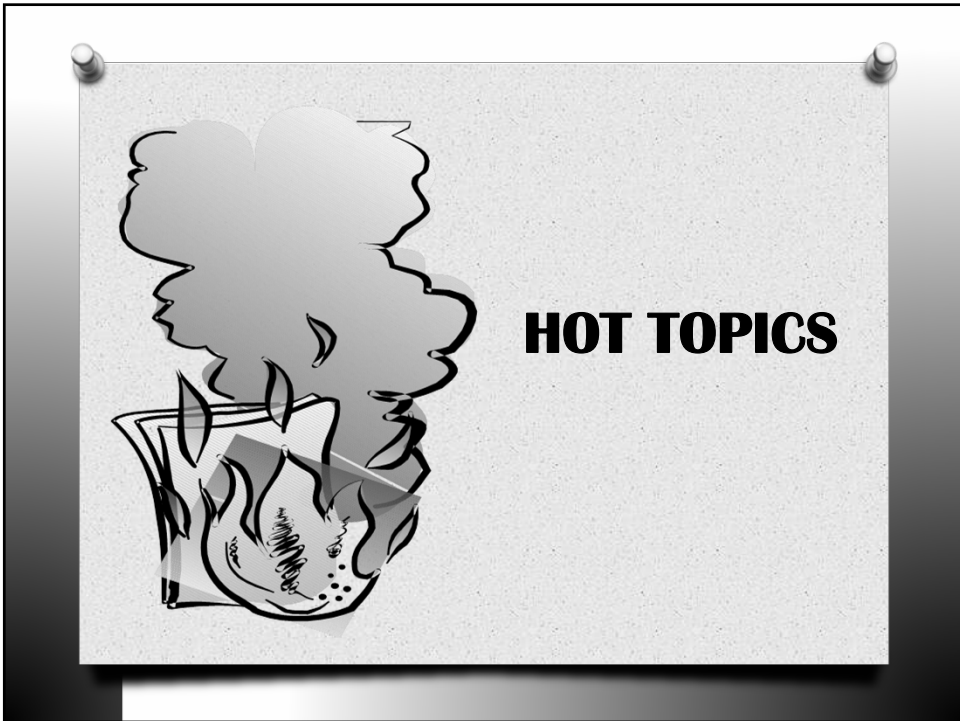


From Barns to Big Boxes
Redux 2012
New Laws, New Economy

Mortgages, Satisfactions, & Releases



HOT TOPICS

DISTINGUISH:

Borrower's debt - privacy



Lien on real estate - lien or ownership rights of another

Satisfactions (G.S. 45-37)

- o NO MORE original presentation of note & deed of trust as "paid & satisfied" (Effec. 10/1/11 -GS 45-37(a))

Trustee on Deed of Trust (GS 45-10 & GS 45-45.3)

- o Deed of Trust not invalid if:
 - No Trustee Named
 - Trustee same as beneficiary
 - o Cure: Substitution of Trustee (*not* markup)
- *****
- o Trustee *no longer required as party to*:
 - Releases
 - Subordinations
 - Modifications
 - Satisfactions
 - Civil actions, condemnations, bankruptcy, special proceedings & PENALTY for joinder
 - o EXC: TRUSTEE STILL REQUIRED FOR FORECLOSURE

NC Mortgage Satisfaction Act: Procedure

Payoff Request (Creditor issue within 10 day maximum)

↓
Payoff Statement

↓
Payoff at Closing

↓
Record Satisfaction within 30 days (Actual loss)

↓
Record Satisfaction within 30 days after follow-up notice

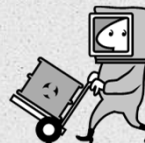
OR: Penalties, Court Cost, Attorney Fees, & Actual Loss

Self-Help Satisfaction

EXCUSES: “Reasonable procedure” & “Circumstances beyond its control”

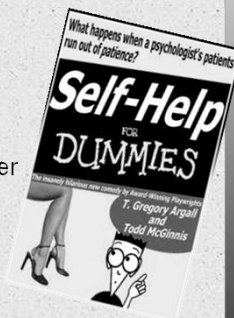


- o Burden on lender
- o NOT a defense:
 - o computer system crashed on last day
 - o too busy / understaffed
- o IS a defense:
 - o entire northeastern blackout
 - o Post Office shut down for anthrax
 - o Federal Express plane crashed



“Self-Help” Satisfaction - NC

- o Voluntary, not mandatory
- o NC licensed attorney only
- o Residential & commercial
- o Retroactive
- o “Landowner”
 - o subsequent purchaser or borrower
- o Requires:
 - o Evidence of full payment or performance
 - o 30-day notice to lender
 - o No objection from lender
- o Satisfaction Agent Affidavit



Satisfaction Agent Liability

o Erroneous but lender did not respond to 30-day notice

No liability

o Erroneous (other than above) or knowingly false

Actual loss

o Knowledge that false+

Actual loss
Punitive damages
Criminal sanctions

Releases & Satisfactions

Release (GS 45-36.22)	Release <i>part</i> of property from deed of trust No joinder by trustee
Obligation Release (G.S. 45-36.23)	Release of one obligation, where deed of trust secures multiple obligations (&/or obligees)
Satisfaction (G.S. 45-37)	Release <i>all</i> property from deed of trust

Rescission of Erroneous Satisfaction (GS 45-36.6)

- o "Reinstatement" by
 - o Person who erroneously filed OR
 - o Lender
- o Debt still outstanding
- o Intervening purchasers & lenders protected
- o Erroneous rescission/reinstatement = Liability for Actual Loss + Attorney Fees + Court Costs

CAUTION:

Rescission is subject to intervening interests between the satisfaction and the rescission!!

Ancillary documents also
automatically released

(GS 45-42.3)

Deed of Trust Expiration

“Life of Lien” (GS 45-36.24)

Deed of Trust recorded before 10/1/11	Maturity stated → + 15 yrs Maturity calculable → + 15 yrs Maturity not of record → Earlier of: 35 yrs from date of rec of deed of trust OR 15 yrs from off record maturity
Deed of Trust recorded after 10/1/11	Maturity stated → + 15 yrs Maturity calculable → + 15 yrs Maturity not of record → 35 yrs from date of rec of deed of trust
Lien maturity extension agreement	Recorded prior to deed of trust expiration Signed by note-holder & <i>property owner(s)</i> Extend to date certain
Notice of maturity date (incl. modification, amendment, restatement if secured creditor, borrower & <i>property owner(s)</i> sign	If only secured creditor → earlier of: 15 years from maturity date in notice OR 50 years from date of deed of trust If secured creditor & <i>property owner(s)</i> → 15 yrs from maturity date in notice

PAYOFFS

Normal,
Short Sales
Equity Lines &
Future Advance Loans

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Payoffs

(G.S. 45-36.7)

- o Mandatory
- o Conditional / Unconditional
- o By Lender or its agents
 - o Apparent authority of substitute trustee if in foreclosure
- o Crafted to address FEDERAL & STATE privacy & TIL provisions

**Parties
Authorized to
Receive Payoffs**
(GS 45-36.4 & 45-36.7)

- o Borrower(s) (or agent/attorney)
- o Landowner(s) (or agent/attorney)
- o Purchaser under contract (or agent/attorney)
- o New lender (financing purchase or refinancing)
- o Title insurance company that is insuring
- o Foreclosure trustee or high bidder (another deed of trust)
- o Qualified (subordinate) lienholder
- o Attorney or lender handling sale or new loan intended to be free & clear of this prior lien

Short Sale & Payoff Statements

(G.S. 45-36.7 expanded)

- o ALL of property OR release of described portion (if allowed)?
- o Obligor liability remains, unless otherwise stated

1st statement → free

2nd payoff statement → \$25

2nd short sale statement → \$100

Freddie Mac Short Payoff Affidavit Changes

effective 1/1/12

Bulletin No. 2011-23, Nov. 18, 2011

SHORT PAYOFF REQUIREMENTS

We are updating Chapter B65 to provide additional guidance with respect to Freddie Mac's short payoff requirements. Specifically, we are:

- o Providing that short sale negotiation fees must not be deducted from the proceeds of the sale or charged to the Borrower
- o Clarifying that all amounts paid to any party in connection with the short payoff transaction, including payments made to holders of other liens on the Mortgaged Premises, must be accurately reflected on the HUD-1 Settlement Statement and the amount and recipient of the payments must be clearly identified
- o Allowing a Borrower to receive a payment upon the sale of the Mortgaged Premises only if the payment is offered by the Servicer, approved by Freddie Mac, and reflected on the HUD-1 Settlement Statement
- o Revising our short sale affidavit requirements to clarify that statements made in the affidavit are made to the best of each signatory's knowledge and belief and that each signatory is liable for his or her negligent or intentional misrepresentations, **but not those of other signatories to the affidavit.**
- o We are also providing other additional guidance with respect to the short sale affidavit, including the information that must be included in the affidavit.

Credit Suspension Directive

Action	From ...	Lender Requirement
Credit Suspension Directive G.S. 45-36.7A	<ul style="list-style-type: none">• Borrower (legal representative)• Attorney for Borrower• Attorney or Bank for sale/refi with payoff request	(1) "Freeze" anticipating imminent closing (30 days) , <i>except</i> protect collateral or complete construction or pre-CSD draws (2) Apply to payoff even if short (3) Satisfy deed of trust of record, when paid in full *Notice to Borrower (?)

**PRE-CLOSING:
CLOSING
ATTORNEY
CONTROLS!**

Termination Requests

Action	From ...	Lender Requirement
Termination Request G.S. 45-82.2	<ul style="list-style-type: none"> Borrower (or legal representative) Attorney for Borrower Title insurance company insuring property Attorney or Bank for sale/refi 	(1) Terminate advances (2) Apply to payoff even if short (3) Satisfy deed of trust of record when paid in full *Notice to Borrower (?)

AT CLOSING:
CLOSING ATTORNEY
MUST FOLLOW UP
FOR SATISFACTION!

Action	From ...	Lender Requirement
Notice re Future Advances G.S. 45-82.3	<ul style="list-style-type: none"> Borrower (or legal representative) Attorney for Borrower Title insurance company insuring property Attorney or Bank for sale/refi Owner of the property Qualified lienholder (subsequent, but not intended to be subordinate) 	(1) Either terminate advances or provide not secured by the property (2) Provide balance to the requester to release the property (3) Satisfy deed of trust of record when paid in full *Notice to Borrower (?)

POST-CLOSING:
CURATIVE!

Tracking Services

o RE-QUIRE

WWW.GOREQUIRE.COM

5029 Corporate Woods Dr., Suite 225

Virginia Beach VA 23462



o RS Release Tracking

2765 E. Eldorado Pkwy

Little Elm, TX

PMB 215-417 984786



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