

TABLED

CHEROKEE COUNCIL HOUSE
CHEROKEE, NORTH CAROLINA

Date: JAN 10 2019

ORDINANCE NO.: 451 (2019)

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WHEREAS, Cherokee Code (C.C.) Chapter 45 governs the recording and foreclosure of leasehold interests and related matters; and

WHEREAS, certificates of satisfaction are important documents used to memorialize the completion of a borrower's obligations under a mortgage, deed of trust, or other such debt instrument and to provide a clear record that the debt has been satisfied; and

WHEREAS, C.C. § 45-5 addresses recording of certain documents, but does not adequately express the requirement of recording a certificate of satisfaction with the Tribal Realty Office; and

WHEREAS, C.C. § 45-5 should be amended to expressly require that certificates of satisfaction have to be filed with the Tribal Realty Office when a borrower satisfies his or her obligations under a debt instrument; and

NOW THEREFORE BE IT ORDAINED, by the Tribal Council of the Eastern Band of Cherokee Indians, in council assembled, at which a quorum is present, that C.C. § 45-5 shall be amended to read as follows, to expressly require the filing of certificates of satisfaction:

Sec. 45-5. - Recording.

(a) Pursuant to 25 C.F.R. 150.6, all title documents shall be recorded in the Books of Miscellaneous Records in the Land Title and Records Office of the Cherokee Agency, Bureau of Indian Affairs, according to federal rules, regulations and policies applicable thereto. As stated in 25 C.F.R. 150.2, title documents means any document that affects the title to or encumbers Indian land and is required to be recorded by regulation or policy of the Bureau of Indian Affairs, including but not limited to issuance of possessory interests, assignment of such interests to the Tribe, each lease entered in return for such assignment, leasehold mortgages and leasehold deeds of trust, Tribal home loan guarantees, promissory notes, and other security instruments entered to purchase, construct or improve eligible housing, any sale and transfer of eligible housing backed by a Tribal guaranty pursuant to this chapter, and any amendment, modification or termination of any of the aforementioned documents.

1 (b) A mortgagee or trustee may also record leasehold mortgages and leasehold deeds of trust
2 applicable to Tribal land in the office of the Register of Deeds in the North Carolina county
3 in which the properties are located; provided, however, that a recording with Cherokee
4 Agency of the Bureau of Indian Affairs is the only official recording, that state and county
5 governments have no authority or power over Tribal land or improvements thereon, and that
6 recording with the Register of Deeds is for information purposes only. By allowing
7 recording in the county, the Tribe shall not be construed to have waived its sovereign
8 immunity.

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10 (c) As required by federal law, public disclosure of information recorded in the Books of
11 Miscellaneous Records in the Land Title and Records Office of the Cherokee Agency,
12 Bureau of Indian Affairs is governed by 25 C.F.R. 150.11 and, as referenced therein, the
13 Privacy Act (25 U.S.C. 552a) and the Freedom of Information Act (25 U.S.C. 552).

14
15 (d) Upon satisfaction of a leasehold mortgage or leasehold deed of trust, the holder thereof shall
16 record in the Land Title and Records Office of the Cherokee Agency, Bureau of Indian
17 Affairs an instrument evidencing the satisfaction of the debt. The satisfaction shall be filed
18 with the Recording Clerk within 30 days of actual receipt of full payment under the
19 mortgage. The Recording Clerk shall record the satisfaction in the Books of Miscellaneous
20 Records.

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22 (e) Upon satisfaction of a leasehold mortgage or leasehold deed of trust, the holder thereof shall
23 record in the Tribal Realty Office an instrument evidencing the satisfaction of the debt. The
24 certificate of satisfaction shall be filed with the Tribal Realty Office within 30 days of actual
25 receipt of full payment under the mortgage or deed of trust. The Tribal Realty Office shall
26 record the satisfaction in the Tribe's land records and place a copy of the recorded certificate
27 of satisfaction in the appropriate realty file.

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29 (f) A certificate of satisfaction need not contain particular phrasing, but shall be in a writing that
30 contains, at a minimum, the following information:

31 (1) the original grantor of the debt instrument,

32 (2) the original grantee of the debt instrument and all subsequent owners, holders, or
33 beneficiaries of the debt instrument,

34 (3) date when the debt instrument was executed and its recording data (if applicable),

35 (4) a reference or description of the real property,

36 (5) that the obligations under the debt instrument have been satisfied and the date the
37 satisfaction,

38 (6) that the filing of the certificate of satisfaction terminates the effectiveness of the debt
39 instrument, and

40 (7) the acknowledged signature of an authorized person or agent of the holder, owner, or
41 beneficiary of the debt instrument.

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44 BE IT FURTHER ORDAINED, that all ordinances and resolutions inconsistent with this ordinance
45 are rescinded, and this ordinance shall become effective upon ratification by the
46 Principal Chief.

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2 *Submitted by the Office of the Attorney General and the Tribal Realty Office*

Space above this line reserved for recording

CERTIFICATE OF SATISFACTION
EASTERN BAND OF CHEROKEE INDIANS

(1) Prepared by: _____ (2) After recording, return this document, with recording information affixed, to: _____

(3) The entity or person identified as _____, for whom or by whom this Satisfaction is signed below, certifies that he/she/it is now the Secured Creditor of the indebtedness secured by following Security Instrument:

(4) Type and date of Instrument: _____ Dated _____

(5) Original Grantor(s) in Instrument: _____

(6) Original Grantee in Instrument: _____

(7) The Instrument applies to the following parcel(s) of tribal trust land of the Eastern Band of Cherokee Indians: _____ Community Parcel #(s) _____

(8) The Security Instrument is recorded in the following registries:

(9) Book # _____ Page # _____ in the _____ of the Cherokee Agency, Bureau of Indian Affairs, Cherokee, NC.

(10) Book # _____ Page # _____ in the Tribal Realty Office of the Eastern Band of Cherokee Indians, Cherokee, NC.

(11) Book # _____, in the Office of the Register of Deeds of _____ County, North Carolina.

(12) The final payment necessary to satisfy the debt to which the Security Instrument applies was made on the following date: _____ (13) This Satisfaction evidences termination of the Security Instrument and the Security Instrument is cancelled. (14) The person signing below has signed as, or has signed for and on behalf of, the Secured Creditor, with authority to do so.

(15) Signature: _____ (16) Title: _____

(17) Date signed: _____

ACKNOWLEDGMENT

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, the undersigned Notary Public, certify that the following person: _____ personally appeared before me on the _____ day of _____, _____ and acknowledged that he or she signed the above Satisfaction of Security Instrument on behalf of the Secured Creditor identified above, for the purposes stated therein. Witness my hand and official notary seal this the _____ day of _____, _____.

Signature of Notary Public _____
My Commission Expires: _____

(place notary seal here)