



THE TITLE COMPANY OF NORTH CAROLINA

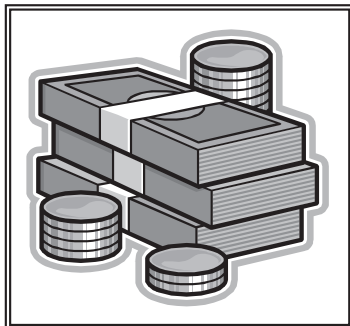
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A PUBLICATION OF THE TITLE COMPANY OF NORTH CAROLINA

2009 Legislative Report

The 2009 session of the N.C. General Assembly adjourned on August 11, 2009. Much of the focus of the legislature's attention was dealing with the budget crisis brought on by the recent recession, but a number of bills dealing with real estate related issues were passed. Here are brief summaries of some of them:

Budget Bill—(SB 202) The appropriations authorization increased the fee for filing a deed, deed of trust or mortgage, effective October 1, 2009. The recording fee for the first page of a deed increases by five dollars to \$19.00, with the additional pages remaining \$3.00 per page. The fee to record a deed



of trust or mortgage will increase to \$30.00 for the first page. Additional pages of a mortgage or deed of trust will remain \$3.00 per page.

The NC Association of Registers of Deeds has interpreted the change in

N.C.G.S. §161-11.6 to allow them to charge the five dollar fee on any document that has the word "Deed" in the title of the instrument and any document where excise taxes are collected, with the exception of deeds of trust or mortgages. Be sure and change the title of your "Deed of Separation," "Release Deed," "Deed of Easement," etc. to avoid a possible increased recording fee.

Other court costs have also increased. Effective September 1, 2009, the filing fee for a foreclosure doubled to \$150.00. Civil Superior Court actions require a filing fee of \$112.00 as of July 1, 2009.

Abolish Certain Deficiency Judgments—(HB 1057) This act adds a new section, N.C.G.S. §45-21.38 which prohibits deficiency judgments where

the mortgage is secured by a primary residence and is a nontraditional mortgage loan (as defined in the statute) or a rate spread home loan. This new section does not apply to home equity lines of credit, construction loans, reverse mortgages, or bridge loans, or loans secured by a subordinate lien on the borrower's primary residence. Effective October 1, 2009.

Substitution of Omitted Trustees—(HB 794) This act amends N.C.G.S. §45-10 to provide that a deed of trust recorded with the name of the trustee blank shall be deemed to be a deed of trust and the owner shall be deemed to be the constructive trustee. The act authorizes a substitution of trustee by the lender in such cases under the provisions in N.C.G.S. §45-10(a) without ratification or re-affirmation of the deed of trust by the borrowers. It became effective on June 26, 2009 and applies to all instruments recorded on, before or after that date.

Procedure for Appeals of Quasi-Judicial Decisions—(SB 44) Clarifies the procedure for appeals of quasi-judicial decisions of zoning boards of adjustment, city councils or county commissioners where appeal is to the superior court, in the nature of certiorari. Effective January 1, 2010.

Joint Tenancy With Right of Survivorship May be Held in Unequal Shares—(HB 799) Amends N.C.G.S. §41-2 to provide that while equal tenancy is presumed in JTWRoS property, the creating instrument may provide for unequal shares. Also provides that a joint tenancy interest held by a husband and wife shall be deemed to be held as a single tenancy by the entirety unless otherwise specified. Effective June 30, 2009.



Mortgage/Rate Spread & High-Cost Loans—(HB 1222) Modifies and updates the statutory requirements, definitions, and regulations that apply to rate spread home loans and high-cost home loans. Effective: October 1, 2009

Mortgage Licensing Act—(HB 1523) Rewrites the provisions of the Mortgage Lending Act, and adds a new Chapter 19B to Chapter 53 of the General



Statutes. Of particular interest, the act adds a new exemption [N.C.G.S. §53-244.040 (d) (8)] allowing seller financing of residential property for up to five homes per year without having to be licensed as a mortgage broker. Effective July 31, 2009.

Consumer Economic Protection Act of 2009—(SB 974) Establishes an opportunity for parties to mediate or resolve foreclosure of owner-occupied residential property before the clerk in a foreclosure proceeding. The act gives the clerk authority to continue a hearing if the clerk finds that there is good cause to believe that additional time or additional measures have a reasonable likelihood of resolving the delinquency without foreclosure. It also defines a “debt buyer” as someone who purchases delinquent or charged off consumer loans, and makes certain practices illegal in attempting to collect these debts. Effective October 1, 2009.

Business Trusts—(HB 615) This act modifies the definition of a “business trust” to include “Illinois land trusts” and “Delaware statutory trusts.” A new subsection was added to N.C.G.S. §39-46 to provide for execution of instruments by a business trust. If a recorded instrument is signed in the ordinary course of business by the trustees, the president or the vice president of the business trust, then the instrument is valid with respect to the rights of innocent third parties for value without notice of defect or breach of fiduciary duty. Effective October 1, 2009.

Permit Extension Act of 2009—(SB 831) In recognition of the effects of the recession, the legislature provided the running of any state or local governmental approvals for the development of land or for the provision of water or wastewater services which were current and valid at any point between

January 1, 2008 and December 31, 2010 is suspended during that period of time. Effective July 30, 2009.

Notice on Liens for HOA Assessments—(HB 806) Amends the lien enforcement provisions of the Planned Community Act and the Condominium Act to require that at least fifteen days prior to filing a claim of lien, an association must make reasonable and diligent efforts to notify an owner of the outstanding balance due by mailing a statement by first class mail. Also requires that the association attempt to serve the notice of lien on the owner in accord with Rule 4(j) of the Rules of Civil Procedure. Effective October 31, 2009.

Future Advances Statute Amendments—(HB 1368) Amends Article 7 of Chapter 45 of the General Statutes to distinguish between a future advance and future obligation, by defining “advance” as a disbursement of funds or other action that increases the principal balance. The act makes it clear that a future advance deed of trust secures not only the existing “obligation” existing when the deed of trust was executed (and advances made pursuant thereto), but also secures an “obligation” executed in the future (and the advances made pursuant to this provision). The requirements of N.C.G.S. §45-68 were simplified to require the deed of trust to state: i) that it secures future advances and future obligations; ii) the maximum principal amount which can be secured at any one time; and iii) the period during which future advances may be made and future obligations incurred. The maximum period for future advances or obligations was extended from 15 to 30 years. Effective October 1, 2009.

Real Property Sales Information—(SB405) Requires every deed to provide: i) the name and mailing address of each grantor and grantee; and, ii) a statement regarding whether the property was the primary residence of the grantor(s). Failure to comply with this section does not affect the validity of a duly recorded deed and the statute does not apply to deeds of trust, deeds of release or similar instruments. Effective January 1, 2010.

Real Estate/Settlement Agent Embezzlement— (SB 764) Adds a new section to the Good Funds Settlement Act providing that all funds received by a settlement agent as trust or escrow funds are subject to the embezzlement provisions of N.C.G.S. §14-90, even in instances where it cannot be shown that the funds were embezzled from a particular person or entity. Effective December 1, 2009.



Renunciation Amendments—(HB 800) amends the law relating to renunciations and makes related amendments to the North Carolina Uniform Trust Code and the law governing powers of attorney and administration of decedents' estates regarding renunciation. Of particular note to real property attorneys is the provision making it clear that the spouse of the person renouncing the interest in real property has no statutory marital interest and is not required to join in the renunciation. Record title does not pass to the person receiving the renounced property until the renunciation is recorded. Effective October 1, 2009.

Partition Sales Amendments—(HB 578, 579, 580, and 581) Four bills were introduced, all pushed by a study committee which was heavily influenced by advocates who feel that the NC partition laws cause minorities to lose their interest in real property in disproportionate numbers. Two of the bills passed, and two failed to pass.

Partition Sales/Extend Report & Answer Times—(HB 581) was one of the bills that passed. It extends the deadline for responding to a summons in a partition action from 10 days to 30 days. The bill requires that a petition include written notice reasonably calculated to make the respondent aware that the respondent has the right to seek advice of an attorney. The bill also amends N.C.G.S. §46-28.1 to provide that an order confirming the partition or sale of real property may be appealed within 10 days of the date the order becomes final. Effective October 1, 2009.

Partition Sales/Commissioners, Sellers, Buyers— (HB 578) This bill also passed, modifying the procedure for partition to provide that a guardian ad litem be appointed to represent anyone who is served by publication and does not appear. In

actions for partition by sale, the clerk is required to make additional findings of fact to support a sale and provides for the clerk to appoint an independent appraiser in certain circumstances. Effective October 1, 2009, and applies to partition actions filed on or after that date.

There were several other real estate related bills which did not pass in this session, but remain eligible for consideration in the “short” session next year. These include:

- Commercial Real Estate Broker Lien Act (H.B. 1356) – providing commercial real estate broker liens;
- Modernize the NC Consumer Finance Act and the North Carolina Banking Laws (H.B. 1138) Proposes amendments to the North Carolina Consumer Finance Act (Article 15 of Chapter 53 of the General Statutes) to provide greater protection to consumers;
- Railroad Corridor Management--(HB 116) which would allow railroad companies greater control of their current and proposed corridors;
- Hidden Mechanics Lien--(SB 803) revise Chapter 44A dealing with mechanic's liens on real property in North Carolina to address hidden liens to protect third-party purchasers for value and lenders in real estate transactions.

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