



## **LEGISLATION 2013-2014 AFFECTING REAL ESTATE TITLES & CLOSINGS**

### **Corporations (SB239, S.L. 2013-153)**

G.S. 55-12-01(b) allows for disposition of assets without shareholder approval both “in the usual and regular course of business”, to an entity all of which is owned by the corporation, *or* “not in the usual and regular course of business, if the sale, lease, exchange, or other disposition is of less than all, or substantially all, of the corporation's property. If the sale, lease, exchange, or other disposition would leave the corporation with a continuing business activity that represented at least twenty-five percent (25%) of total assets at the end of the most recently completed fiscal year and at least twenty-five percent (25%) of either (i) income from continuing operations before taxes or (ii) revenues from continuing operations for that fiscal year, in each case of the corporation and its subsidiaries on a consolidated basis, the sale, lease, exchange, or other disposition will conclusively be deemed to be of less than all, or substantially all, of the corporation's property.”

The new provisions also allow for merger, conversion, sale of assets or dissolution either on recommendation of the board, *or* if they cannot make a recommendation because of conflicts of interest, or wish to withdraw their recommendation.

Effective January 1, 2014.

### **Decedents’ estates – substituting as parties in civil actions (SB 773, HB1116, S.L. 2014-107)**

#### **PART IV. CLARIFY TIME FRAME FOR SUBSTITUTION OF PERSONAL REPRESENTATIVE**

**SECTION 4.1.** G.S. 28A-19-1(c) reads as rewritten:

"(c) In an action pending against the decedent at the time of the decedent's death, which action survives at law, the court may order the substitution of the personal representative or collector for the decedent on motion therefor and that motion will constitute the presentation of a claim, ~~provided that substitution occurs within the time specified for the presentation of claims under G.S. 28A-19-3, any claim pending in the action, provided that the substitution or a motion for substitution is made within the time specified for the presentation of claims under G.S. 28A-19-3, and no further presentation is necessary. Such claim will be deemed to have been presented from the time of the substitution, or motion therefor. Neither the timely substitution of the personal representative nor timely motion therefor as provided in this subsection extends the time for filing additional claims.~~"

Effective 8/6/14.

### **Decedent’s Estates – certified copies of probated wills (SB 773, HB1116, S.L. 2014-107)**

**SECTION 2.1.** G.S. 28A-2A-13 reads as rewritten:

**"§ 28A-2A-13. Wills filed in clerk's office-office; certified copies filed for real property in other counties.**

(a) All original probated wills shall remain in the ~~clerk's office-office~~ of the clerk of superior court, among the public records of the court where the same shall be proved, and to such wills any person may have access, as to the other records-wills were probated.

(b) If ~~said-a probated will contains a devise of real estate,~~ devises real property outside ~~said-the~~ county where ~~said-will is~~ the will was probated, then a copy of the said will, together with the probate of the same, a copy of the will and a copy of the certificate of probate of the will, certified under the hand and seal of the clerk of the superior court of said-the county where the will was probated, may be recorded ~~in the book of wills and~~ filed in the office of the clerk of the superior court of any other county in the this State in which said land is situated with the real property is situated. The filing of the probated will in the county where the real property is situated shall have the same effect as to ~~passing the title to said real estate~~ for purposes of G.S. 31-39(c) as to the priorities of claims against the real property as if said-the will had originally been probated and filed in said county and the clerk of the superior court of said last-mentioned county had in that county and as if the clerk of superior court of that county had jurisdiction to probate the same-will."

**SECTION 2.2.** G.S. 31-39(c) reads as rewritten:

"(c) A will duly probated in one county of this State is not effective to pass title to an interest in real property located in any other county of this State as against lien creditors or purchasers for valuable consideration from the intestate heirs at law of a decedent unless a certified copy of the will ~~is and a certified copy of the certificate of probate of the will are~~ filed in the office of the clerk of superior court in the county where the real property lies within the time limitation set forth in subsection (b) of this section."

**SECTION 2.3.** This Part becomes effective October 1, 2014, and applies to estates of decedents dying before, on, or after that date.

And [SB279, S.L. 2013-91](#), effective June 12, 2013 (other than changes to spouse's elective share noted below), the below changes were made affecting estates and guardianships.

Notice to creditors without estate administration

**"§ 28A-29-1. Notice to creditors without estate administration.**

When (i) a decedent dies testate or intestate leaving no personal property subject to probate, probate and no real property devised to the personal representative; (ii) a decedent's estate is being administered by collection by affidavit pursuant to Article 25 of this Chapter; (iii) a decedent's estate is being administered under the summary administration provisions of Article 28 of this Chapter; (iv) a decedent's estate consists solely of a motor vehicle that can be transferred by the procedure authorized by G.S. 20-77(b); or (v) a decedent has left assets that may be treated as assets of an estate for limited purposes as described in G.S. 28A-15-10, and no application or petition for appointment of a personal representative is pending or has been granted in this State, any person otherwise qualified to serve as personal representative of the estate pursuant to Article 4 of this Chapter or the trustee then serving under the terms of a revocable trust created by the decedent may file a petition to be appointed as a limited personal representative to provide notice to creditors without administration of an estate before the clerk of superior court of the county where the decedent was domiciled at the time of death. This procedure is not available if the decedent's will provides that it is not available. A limited personal representative shall have the rights and obligations provided for in this Article."

G.S. 28A-29-2(a) The application for appointment as limited personal representative shall be in the form of an affidavit sworn to before an officer authorized to administer oaths, signed by the applicant or the applicant's attorney, which may be supported by other proof under oath in writing, all of which shall be recorded and filed by the clerk of superior court, and shall allege all of the following facts:

- (1) The name and domicile of the decedent at the time of death.
- (2) The date and place of death of the decedent.
- (3) That, so far as is known or can with reasonable diligence be ascertained (i) the decedent left no personal property subject to probate and no real property devised to the personal representative; (ii) the decedent's estate is being administered by collection by affidavit pursuant to Article 25 of this Chapter; (iii) the decedent's estate is being administered under the summary administration provisions of Article 28 of this Chapter; (iv) the decedent's estate consists solely of a motor vehicle that can be transferred by the procedure authorized by G.S. 20-77(b); or (v) the decedent left assets that may be treated as assets of an estate for limited purposes as described in G.S. 28A-15-10.
- (4) That no application or petition for appointment of a personal representative is pending or has been granted in this State."

Effective for estates of decedents dying on or after October 1 1, 2013, the spouse's elective share was bifurcated depending on how long they had been married, under G.S. 30-3.1, *i.e.* 15% if married less than 5 years, 25% if married between 5 and 10 years, 33% if married between 10 and 15 years, and only reaching the earlier threshold of 50% if they have been married at least 15 years. The earlier provision under G.S. 30-3.1(b) for reduction by 1/2 for second or successive spouses was deleted.

Self-proving wills from other states are expressly recognized under new G.S. 31-11.6(d), as are will executed by military personnel under 10 U.S.C. § 1044d(d), pursuant to new G.S. 31-11.6(e).

Foreign wills are also recognized pursuant to revised G.S. 31-46 which provides:

**"§ 31-46. Validity of will; which laws govern.**

A will is valid if it meets the requirements of the applicable provisions of law in effect in this State either at the time of its execution or at the time of the death of the testator, or if (i) its execution complies with the law of the place where it is executed at the time of execution; (ii) its execution complies with the law of the place where the testator is domiciled at the time of execution or at the time of death; or (iii) it is a military testamentary instrument executed in accordance with the provisions of 10 U.S.C. § 1044d or any successor or replacement statute.

The filing of a certified copy of the foreign or military will complying with G.S. 31-46 and the probate proceedings in the county in which real property is located will be sufficient to pass title, pursuant to revised G.S. 28A-2A-17.

**Foreclosures - S.A.F.E. Act (HB293, S.L. 2013-412)**

The provision for suspension of foreclosures under GS 45-94 and notification by the Clerk to the Commissioner of Banks under GS 53-243.12(n) was deleted, effective 8/23/13.

**“Fracking” (SB76, S.L. 2013-365, & SB 786, S.L. 2014-4)**

Hydraulic fracturing is sanctioned in North Carolina. Committee review continues on how funds will be allocated among properties affected by pooling, with or without owners’ consent.

**Guardianships (SB279, S.L. 2013-91)**

As revised, G.S. § 35A-1336.1 allows a judge to approve gifts of income from a guardianship estate under limited circumstances:

The judge shall not approve gifts from income to individuals unless it appears to the judge's satisfaction that both the following requirements are met:

(1) After making the gifts and paying federal and State income taxes, the remaining income of the incompetent will be reasonable and adequate to provide for the support, maintenance, comfort, and welfare of the incompetent and those legally entitled to support from the incompetent in order to maintain the incompetent and those dependents in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life;

(2) The judge determines that either:

- a. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent, and each donee is entitled to one or more specific devises, or distributions of specific amounts of money, income, or property under the paper-writing or the revocable trust or both or is a residuary devisee or beneficiary designated in the paper-writing or revocable trust or both; or
- b. That so far as is known the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent, and each donee is a person who would share in the incompetent's estate, if the incompetent died contemporaneously with the signing of the order of the approval of the gifts; or
- c. The donee is the spouse, parent, descendent of the incompetent, or descendant of the incompetent's parent, and the amount of the gift qualifies either for the federal annual gift tax exclusion under section 2503(b) of the Internal Revenue Code or is a qualified transfer for tuition or medical expenses under section 2503(e) of the Internal Revenue Code.

The judge may order that the gifts be made in cash or in specific assets and may order that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The judge may also order that the gifts be treated as an advancement of some or all of the amount the donee would otherwise receive at the incompetent's death.

As revised, G.S. § 35A-1341.1 allows a judge to approve gifts of principal from a guardianship estate under limited circumstances:

The judge shall not approve gifts from principal to individuals unless it appears to the judge's satisfaction that all of the following requirements have been met:

(1) Making the gifts will not leave the incompetent's remaining principal estate insufficient to provide reasonable and adequate income for the support, maintenance, comfort, and welfare of the incompetent in order to maintain the incompetent and any dependents legally entitled to support from the incompetent in the manner to which the incompetent and those dependents are accustomed and in keeping with their station in life.

(2) The making of the gifts will not jeopardize the rights of any existing creditor of the incompetent.

(3) It is improbable that the incompetent will recover competency during his or her lifetime.

(4) The judge determines that either a., b., c., or d. applies.

a. All of the following apply:

1. The incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent.

2. Each donee is entitled to one or more specific devises, or distributions of specific amounts of money, income, or property under either the paper-writing or revocable trust or both or is a residuary devisee or beneficiary designated in the paper-writing or revocable trust or both.

3. The making of the gifts will not jeopardize any specific devise, or distribution of specific amounts of money, income, or property.

b. That so far as is known the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent, and each donee is a person who would share in the incompetent's intestate estate, if the incompetent died contemporaneously with the signing of the order of approval of the gifts.

c. The donee is a person who would share in the incompetent's nonprobate estate, if the incompetent died contemporaneously with the signing of the order of approval.

d. The donee is the spouse, parent, descendant of the incompetent, or descendant of the incompetent's parent, and the amount of the gift qualifies either for the federal annual gift tax exclusion under section 2503(b) of the Internal Revenue Code or is a qualified transfer for tuition or medical expenses under section 2503(e) of the Internal Revenue Code.

(5) If the incompetent, prior to being declared incompetent, executed a paper-writing with the formalities required by the laws of North Carolina for the execution of a valid will, including a paper-writing naming as beneficiary a revocable trust created by the incompetent; then all residuary devisees and beneficiaries designated in the paper-writing or revocable trust or both, who would take under the paper-writing or revocable trust or both if the incompetent died contemporaneously with the signing of the order of approval of the gifts and the paper-writing was probated as the incompetent's will, the spouse, if any, of the incompetent and all persons identified in G.S. 35A-1341.1(7) have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of superior court of the county in which the guardian was appointed, within the 10-day period.

(6) If so far as is known, the incompetent has not, prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent, all persons who would share in the incompetent's estate, if the incompetent died contemporaneously with the signing of the order of approval, have been given at least 10 days' written notice that approval

for the gifts will be sought and that objection may be filed with the clerk of the superior court of the county in which the guardian was appointed, within the 10-day period.

(7) If the gift for which approval is sought is of a nonprobate asset, all persons who would share in that nonprobate asset if the incompetent died contemporaneously with the signing of the order of approval have been given at least 10 days' written notice that approval for the gifts will be sought and that objection may be filed with the clerk of the superior court of the county in which the guardian was appointed within the 10-day period. This notice requirement shall be in addition to the notice requirements contained in G.S. 35A-1341.1(5) and (6) above.

The judge may order that the gifts be made in cash or in specific assets and may order that the gifts be made outright, in trust, under the North Carolina Uniform Transfers to Minors Act, under the North Carolina Uniform Custodial Trust Act, or otherwise. The judge may also order that the gifts be treated as an advancement of some or all of the amount the donee would otherwise receive at the incompetent's death.

#### **Good Funds & E-recording (HB1133, §36, S.L. 2014-115)**

G.S. 45A-4(a)

Adds language: A settlement agent may disburse funds from the settlement agent's trust or escrow account (to either the applicable register of deeds or directly to a private company authorized to electronically record documents with the office of the register of deeds) as necessary to record any deeds, deeds of trust, and any other documents required to be filed in connection with the closing, including excise tax (revenue stamps) and recording fees, but the settlement agent may not disburse any other funds from its trust or escrow account until the deeds, deeds of trust, and other required loan documents have been recorded in the office of the register of deeds.

#### **Homeowner's associations – uniform lien enforcement actions under the Condominium Act and the Planned Community Act (HB331, S.L. 2013-202)**

G.S. 47C-3-116 and G.S. 47F-3-116 were amended to update the procedure for notice, filing of a claim of lien and foreclosure by a trustee (named in the claim of lien) under power of sale by an owner's association against a delinquent owner. The legislation also adds a one-year validation provision for foreclosures under each Act.

#### **Joint Tenancy with Right of Survivorship and Slayer Statute (SB 773, HB1116, S.L. 2014-107)**

The act clarifies the passage of title, especially in situations of unequal interests, when a joint tenant is the slayer of another joint tenant, under G.S. 31A-6

#### **Limited Liability Company Act (SB 439, S.L. 2013-157)**

The North Carolina Limited Liability Company Act was modernized to be more consistent with business actualities and laws of sister states.

### **Manufactured or Mobile Home Titles (HB410, S.L. 2013-79)**

Effective July 1, 2013, if a manufactured home qualifies as real property under G.S. 105-273(13), the owner listed on the title is required to submit an affidavit to DMV surrendering the certificate of title. Under new subsection (a1):

(a1) Surrender When Title Not Available. – If a certificate of title has been issued for a manufactured home, no issued title is available, and the manufactured home qualifies as real property as defined in G.S. 105-273(13), the owner listed on the title shall be deemed to have surrendered the title to the Division if the owner of the real property on which the manufactured home is affixed (i) submits an affidavit to the Division that the manufactured home meets the definition of real property under G.S. 105-273(13) and in compliance with subsection (b) of this section and (ii) submits a tax record showing the manufactured home listed for ad valorem taxes as real property pursuant to Article 17 of Chapter 105 of the General Statutes in the name of the record owner of the real property on which the manufactured home is affixed.

Subsection (b) requires that the affidavit be submitted by the owner of *both* the home and the land upon which it is affixed, including that affiant is the owner listed on the certificate of title. A technical correction is being considered for the 2015 legislative session, among other manufactured home title curative provisions.

### **Mechanics' Liens (HB1133, § 35(b), S.L. 2014-115)**

Effective 8/11/14, the statutory format is *required* for Notice to Lien Agent, including information of "if available". A Notice to Lien Agent shall not be combined with or make reference to a Notice of Subcontract or Notice of Claim of Lien upon Funds as described in this subsection.

### **Medicaid (HB 399, S.L. 2013-378)**

S.L. 2013-378, § 4 adds to GS 28A-19-6(a), effective 10/1/13:

The Department of Health and Human Services is a sixth-class creditor for purposes of determining the order of claims against the estate; provided, however, that judgments in favor of other sixth-class creditors docketed and in force before the Department seeks recovery for medical assistance shall be paid prior to recovery by the Department.

S.L. 2013-378, § 5 effective 10/1/13, amends GS 36C0-8-818 regarding a beneficiary of Medicaid proceeds who died leaving a revocable trust:

#### **"§ 36C-8-818. Notice of deceased Medicaid beneficiaries.**

If a trust was established by a person who at the time of that person's death was receiving medical assistance, as defined in G.S. 108A-70.5(b)(1), and the trust was revocable at the time of that person's death, then any trustee of that trust who knows of the medical

assistance within 90 days of the person's death shall provide notice of that person's death to the Department of Health and Human Services, Division of Medical Assistance, within 90 days of the person's death. This section does not apply to trustees of preneed funeral trusts established or created pursuant to Article 13D of Chapter 90 of the General Statutes."

**New Oil, Gas and Mineral Rights Disclosure, G.S. 47E-4.1(a) (SB734, S.L. 2014-57, § 49)**

Section 49 of the Regulatory Reform Act of 2014 revised the Residential Property Disclosure Act by deleting the oil, gas and mineral rights disclosure provisions of G.S. 47E-4, and adding an entirely new disclosure as G.S. 47E-4.1, Required mineral and oil and gas rights disclosures, to be developed by the Real Estate Commission

		<u>MINERAL AND OIL AND GAS RIGHTS DISCLOSURE</u>		
		<u>Mineral rights and/or oil and gas rights can be severed from the title to real property by conveyance (deed) of the mineral rights and/or oil and gas rights from the owner or by reservation of the mineral rights and/or oil and gas rights by the owner. If mineral rights and/or oil and gas rights are or will be severed from the property, the owner of those rights may have the perpetual right to drill, mine, explore, and remove any of the subsurface mineral and/or oil or gas resources on or from the property either directly from the surface of the property or from a nearby location. With regard to the severance of mineral rights and/or oil and gas rights, Seller makes the following disclosures:</u>		
		<u>Yes</u>	<u>No</u>	<u>No Representation</u>
<u>                    </u>	<u>1. Mineral rights were severed from the property by a previous owner.</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>Buyer Initials</u>		<u>Yes</u>	<u>No</u>	
<u>                    </u>	<u>2. Seller has severed the mineral rights from the property.</u>	<u>—</u>	<u>—</u>	
<u>Buyer Initials</u>		<u>Yes</u>	<u>No</u>	
<u>                    </u>	<u>3. Seller intends to sever the mineral rights from the property prior to transfer of title to Buyer.</u>	<u>—</u>	<u>—</u>	
<u>Buyer Initials</u>		<u>Yes</u>	<u>No</u>	<u>No Representation</u>
<u>                    </u>	<u>4. Oil and gas rights were severed from the property by a previous owner.</u>	<u>—</u>	<u>—</u>	<u>—</u>
<u>Buyer Initials</u>		<u>Yes</u>	<u>No</u>	
<u>                    </u>	<u>5. Seller has severed the oil and gas rights from the property.</u>	<u>—</u>	<u>—</u>	
<u>Buyer Initials</u>		<u>Yes</u>	<u>No</u>	
<u>                    </u>	<u>6. Seller intends to sever the oil and gas rights from the property prior to transfer of title to Buyer.</u>	<u>—</u>	<u>—</u>	
<u>Buyer Initials</u>				

Revised G.S. 47E-2(b) still exempts the following from the overall statutory Residential Property Disclosure Act, *but not* from the disclosure mandates of new G.S. 47E-4.1 regarding oil, gas and mineral rights:

- (1) Transfers involving the first sale of a dwelling never inhabited.
- (2) Lease with option to purchase contracts where the lessee occupies or intends to occupy the dwelling.
- (3) Transfers between parties when both parties agree not to complete a residential property disclosure statement or an owners' association and mandatory covenants disclosure statement.

G.S. 47E-4(c) provides that:



(c) The rights of the parties to a real estate contract as to the severance of minerals or the severance of oil and gas rights by the previous owner of the property and of which the owner had no actual knowledge are not affected by this Article unless the mineral and oil and gas rights mandatory disclosure statement states that the owner makes no representations as to the severance of mineral rights or the severance of oil and gas rights by the previous owner of the property. If the statement states that an owner makes no representations as to the severance of mineral rights or the severance of oil and gas rights by the previous owner of the property, then the owner has no duty to disclose the severance of mineral rights or the severance of oil and gas rights, as applicable, by a previous owner of the property, whether or not the owner should have known of any such severance.

The disclosure must be delivered with the Contract.

### **Planned Community, Declarant's Rights Assignment (HB330, S.L. 2014-57)**

This bill, sponsored by the Real Property Section of the NC Bar Association, was developed over a 4-year period in an attempt to try to address new development in failed developments during the 2008 and later recession. The bill provides for 3 important provisions, all effective July 7, 2014, and retroactive for any development under the Planned Community Act:

#### 1. Definition of an affiliate of the declarant, under G.S. 47F-1-103(1) :

"Affiliate of declarant" means any person who succeeds to any special declarant rights and who controls, is controlled by, or is under common control with a declarant. A person

"controls" a declarant if the person is any of the following:

- a. A general partner, officer, director, or employer of the declarant.
- b. Directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interest in the declarant.
- c. Controls in any manner the election of a majority of the directors of the declarant.
- d. Has contributed more than twenty percent (20%) of the capital of the declarant.

A person "is controlled by" a declarant if the declarant (i) is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent (20%) of the capital of the person. Control does not exist if the powers described in this subdivision are held solely as security for an obligation and are not exercised.

#### 2. Definition of development rights, under G.S. 47F-1-103(11):

"Development rights" means any right or combination of rights reserved by a declarant in the declaration (i) to add real estate to a planned community; (ii) to create lots, common elements, or limited common elements within a planned community; (iii) to subdivide or combine lots or convert lots into common elements; or (iv) to withdraw real estate from a planned community.

3. Outlining a mechanism, similar to the Condominium Act, for transfer of developer and declarant rights, especially on a failed and foreclosed development.

**"§ 47F-3-104. Transfer of special declarant rights.**

(a) No special declarant right (G.S. 47F-1-103(28)) defined under this Chapter may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the planned community is located. Except for the transfer of declarant rights pursuant to subsection (c) of this section, the instrument is not effective unless executed by the transferee.

(b) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(1) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor by this Chapter. Lack of privity does not deprive any lot owner of standing to maintain an action to enforce any obligation of the transferor.

(2) If a successor to any special declarant right is an affiliate of a declarant (G.S. 47F-1-103(1)), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the planned community.

(3) If a transferor retains any special declarant rights but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this Chapter or by the declaration relating to the retained special declarant rights and arising after the transfer.

(4) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(c) Unless otherwise provided in a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings of any lots owned by a declarant, or real estate in a planned community subject to development rights, or real estate subject to development rights for a planned community, a person acquiring title to all the property being foreclosed or sold, but only upon the person's request in an instrument recorded in every county in which any portion of the planned community is located, succeeds to all special declarant rights (G.S. 47F-1-103(28)) related to that property held by that declarant and requested by the person acquiring title. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested. The mortgage, deed of trust, tax lien, or other conveyance to be foreclosed under this subsection shall not be required to contain specific reference to an assignment of special declarant rights but shall be deemed to include the special declarant rights as part of the right, title, and interest encumbered by the mortgage, deed of trust, tax lien, or other conveyance.

(d) Upon foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings of all interests in a planned community owned by a declarant, the declarant ceases to have any special declarant rights and the period of declarant control (G.S. 47F-3-103(d)) terminates unless either of the following applies:

(1) The judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(2) The declarant transferred special declarant rights related to the appointment of executive board members to another person pursuant to this section prior to the foreclosure or sale.

(e) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(1) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this Chapter or by the declaration.

(2) Unless otherwise specified in the declaration as to the holder of a mortgage instrument, deed of trust, or other agreement creating a security interest, in case of foreclosure of a security interest, sale by a trustee under an agreement creating a security interest, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, a successor to any special declarant right who is not an affiliate of a declarant, other than a successor described in subdivision (3) or (4) of this subsection, is subject to the obligations and liabilities expressly imposed by this Chapter or the declaration:

a. On a declarant which relate to the successor's exercise or nonexercise of special declarant rights; or

b. On his or her transferor, other than:

1. Misrepresentations by the transferor or any previous declarant;

2. Warranty obligations on improvements made by the transferor or any previous declarant or made before the planned community was created;

3. Obligations and liabilities arising out of contractual agreements between the transferor or any previous declarant and third parties other than the declaration;

4. Breach of any fiduciary obligation by the transferor or any previous declarant or his or her appointees to the executive board; or

5. Any liability or obligation imposed on the transferor or any previous declarant as a result of the transferor's acts or omissions after the transfer.

(3) A successor to only a right reserved in the declaration to maintain sales offices, management offices, signs advertising the planned community, and models, if the successor is not an affiliate of the declarant may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant.

(4) A successor to all special declarant rights held by a transferor who is not an affiliate of the declarant who succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of foreclosure or a judgment or instrument conveying title under subsection (c) of this section may declare in a recorded instrument the intention to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any lot or real estate subject to development rights owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by his or her transferor to control the executive board in accordance with G.S. 47F-3-103(d) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant does not have the right to exercise special declarant

rights under this subsection, the successor declarant is not subject to any liability or obligation as a declarant other than liability for his or her acts and omissions under G.S. 47F-3-103(d).

(f) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant other than claims and obligations expressly arising under this Chapter or the declaration.

(g) For purposes of this section, "assignment of declarant rights" shall include any assignment by the declarant of special declarant rights to a person, including, without limitation, an assignment pursuant to this section."

#### **Predatory Lending Act (HB692, S.L. 2013-399)**

Several provisions of the NC Predatory Lending Act were revised, including deleting the separate state-specific rate spread home loan provisions and, instead, incorporating the federal regulations and limiting the act to be no more stringent than the federal law, effective October 1, 2013.

#### **Tax reappraisals and revaluations (SB159, S.L. 2013-362)**

So far only adopted in Mecklenburg County as far as we have heard.

**SECTION 1.** Notwithstanding G.S. 105-287, 105-325, 105-380, any provision of law restricting the time for which a change in appraisal or valuation may be made, or any other provision of Subchapter II of Chapter 105 of the General Statutes inconsistent with the provisions of this act, a board of county commissioners shall undertake the measures required by this act if all of the following conditions are met:

- (1) The county has independent evidence that the majority of commercial neighborhoods in the county reviewed by a qualified appraisal company possess significant issues of inequity.
- (2) The county has independent evidence that for residential neighborhoods instances of inequity or erroneous data had an impact on the valuation of the neighborhood as a whole.
- (3) The county's last general reappraisal was performed for the 2008 tax year, 2009 tax year, 2010 tax year, 2011 tax year, or 2012 tax year.
- (4) The independent evidence resulted from a review performed by a qualified appraisal company selected and retained by the county and registered with the Department of Revenue and had a sample size of no less than 375 properties, the relevant characteristics of which were reviewed on location at the property.

**SECTION 2.** If all of the conditions of Section 1 of this act are met, a board of county commissioners shall either (i) conduct a reappraisal, using no less than one person certified by the Department of Revenue for mass valuations per 4,250 parcels, pursuant to G.S. 105-286 within 18 months, applicable to all tax years from and including the tax year when the last general reappraisal was performed pursuant to G.S. 105-286 or (ii) have a qualified appraisal company, which may be the same company that provides the evidence in Section 1 of this act, conduct a review of all the values in the county by neighborhoods and make recommendations as to the true value of the properties as of January 1 of the year of the last general reappraisal performed pursuant to G.S. 105-286. After the reappraisal or after each neighborhood review required by this section is complete, the board of county commissioners shall make any change on the abstracts and tax records to ensure that the assessed values of incorrectly appraised properties in the county reflect the true values of those properties

effective for the year of the last general reappraisal performed pursuant to G.S. 105-286 and shall apply the adjusted values for those properties for each tax year until the next general reappraisal for real property is performed by the county pursuant to G.S. 105-286 unless those adjusted values are changed in accordance with G.S. 105-287. In making changes to the abstracts and tax records mandated by this act, the board of county commissioners shall make adjustments for previous errors prioritized as follows:

- (1) Adjustments to parcels with errors that resulted in the parcels having a significantly overstated value.
- (2) Adjustments to parcels with errors that resulted in the parcels having a significantly understated value.
- (3) Adjustments to parcels with errors that resulted in the parcels having an overstated value.
- (4) Adjustments to parcels with errors that resulted in the parcels having an understated value.

In instances of parcels with errors that resulted in an overpayment of taxes, the governing board shall require that notice of refund and the refund amount be sent to the owner of record as of the date the payment was made. The provisions of G.S. 105-380 do not apply to the issuance of any refund under the provisions of this act.

**SECTION 3.** Interest on taxes paid on parcels with errors that resulted in the parcels having an overstated value shall be calculated at a rate of five percent (5%) per annum. Additional taxes levied on parcels as a result of errors causing the parcels to have an understated value shall be treated as taxes on discovered property pursuant to G.S. 105-312, except that the discovery penalties set forth in subsection (h) of G.S. 105-312 shall not apply.

**SECTION 4.** This act is effective when it becomes law [ July 26, 2013] . If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

In the General Assembly read three times and ratified this the 18<sup>th</sup> day of July, 2013.

**Tax deferrals for site infrastructure land (HB439, S.L. 2013-130):**

Another tax deferral provision was added in 2013, effective July 1, 2013:

**"§ 105-277.15A. Taxation of site infrastructure land.**

(a) Classification. – Site infrastructure land is designated a special class of property under Section 2(2) of Article V of the North Carolina Constitution and must be appraised, assessed, and taxed in accordance with this section.

(b) Requirements. – Land qualifies as site infrastructure land if it meets the following size and use requirements:

- (1) Size. – The land must consist of at least 100 contiguous acres.
- (2) Use. – The land must meet all of the following requirements:
  - a. It must be zoned for industrial use, office use, or both.
  - b. A building permit for a primary building or structure must not have been issued for the land, and there is no primary building or structure on the land.
  - c. It must be classified under G.S. 105-277.3 or have been classified under G.S. 105-277.3 within the previous six months.

(c) **Deferred Taxes.** – An owner may defer a portion of tax imposed on site infrastructure land that represents the sum of the increase in value of the property attributable solely to improvements made to the site infrastructure land, if any, and the difference between the true value of the site infrastructure land and the value of the site infrastructure land as if it were classified under G.S. 105-277.3 as agricultural land. The difference between the taxes due under this section and the taxes that would have been payable in the absence of this section is a lien on the site infrastructure land as provided in G.S. 105-355(a). The difference in taxes must be carried forward in the records of each taxing unit as deferred taxes. The deferred taxes are due and payable in accordance with G.S. 105-277.1F when the site infrastructure land loses its eligibility for deferral because of the occurrence of a disqualifying event as follows:

- (1) The deferred taxes for the preceding five fiscal years are due and payable when an amount equal to the deferred taxes is not invested in improvements to make the land suitable for industrial use, office use, or both within five years from the first day of the fiscal year the property was classified under this section.
- (2) The deferred taxes for the preceding five fiscal years are due and payable when the minimum investment required by subdivision (1) of this subsection is timely made, but the land has been classified under this section for 10 years.
- (3) All deferred taxes are due and payable when some or all of the site infrastructure land is rezoned for a use other than for industrial use, office use, or both.
- (4) The deferred taxes for the preceding year are due and payable when the land is transferred or when a building permit for a primary building or structure for the land is issued.

(d) **Notice.** – On or before September 1 of each year, the collector shall notify each owner to whom a tax deferral has previously been granted of the accumulated sum of deferred taxes and interest. An owner who fails to notify the county assessor when land classified under this section loses its eligibility for classification is subject to a penalty in the amount set in G.S. 105-277.5.

(e) **Exception to Payment.** – No deferred taxes are due in the following circumstances, and the deferred taxes remain a lien on the land:

- (1) When the owner of site infrastructure land that was previously classified under G.S. 105-277.3 does not transfer the land, and the land again becomes eligible for classification under G.S. 105-277.3. In this circumstance, the deferred taxes are payable in accordance with G.S. 105-277.3.
- (2) When a portion of the site infrastructure land is transferred for industrial use, office use, or both or has issued for the land a building permit for a primary building or structure for industrial use, office use, or both, and the remainder of the site infrastructure land no longer meets the size requirement of this section. In this circumstance, the deferred taxes for the remainder are payable in accordance with this section without application of the size requirement of subdivision (b)(1) of this section.

(f) **Application.** – An application for property tax relief provided by this section should be filed during the regular listing period but may be filed after the regular listing period upon a showing of good cause by the applicant for failure to make a timely application, as determined and approved by the board of equalization and review or, if that board is not in session, by the board of county commissioners. An untimely application approved under this subsection applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed. Decisions of the county board may be appealed to the Property Tax Commission. Persons may apply for this property tax relief by

entering the appropriate information on a form made available by the assessor under G.S. 105-282.1. An application for property tax relief provided by this section may not be approved for any portion of site infrastructure land which has previously lost eligibility for the program.

(g) Report. – On August 1 of each year, the Secretary shall report to the Department of Commerce the number and location of site infrastructure lands qualified under this section."

**SECTION 2.** G.S. 105-277.3 is amended by adding a new subsection to read:

"(d3) Site Infrastructure Exception. – When an owner of land classified under this section (i) does not transfer the land and the land becomes eligible for classification under G.S. 105-277.15A or (ii) does transfer the land but the land becomes eligible for classification under G.S. 105-277.15A within six months of the transfer, no deferred taxes are due. The deferred taxes remain a lien on the land and are payable in accordance with G.S. 105-277.15A."

**Trusts (SB773, HB1116, § 33(a), S.L. 2014-115)**

**"§ 39-13.7. Tenancy by the entireties trusts in real property.**

Any real property held by a husband and wife as a tenancy by the entireties and conveyed to their joint revocable or irrevocable trust, or to their separate revocable or irrevocable trusts, shall have the same immunity from the claims of the spouses' separate creditors as would exist if the spouses had continued to hold the property as a tenancy by the entireties, so long as (i) the spouses remain husband and wife, (ii) the real property continues to be held in the trust or trusts, and (iii) the spouses remain the beneficial owners of the real property."

This section becomes effective January 1, 2015, and applies to real property transferred to a trust on or after that date.

**Utility companies *must* locate easements (SB 9, S.L. 2013-142)**

Effective July 15, 2013:

**"§ 87-107.1. Surveyor requests; notice required; duties of utility owners; exceptions.**

(a) Before surveying an area containing highways, public spaces, or private easements of a utility owner, a surveyor may give notice to each utility owner having underground utilities located in the area to be surveyed or to the utility owner's designated representative or association, either orally or in writing, not less than 10 working days prior to starting, of the surveyor's intent to have a survey conducted. The written or oral notice shall contain all of the following:

- (1) The name, address, and telephone number of the surveyor.
- (2) The name, address, and telephone number of the person conducting the survey.
- (3) The anticipated starting date of the survey.
- (4) The anticipated duration of the survey.
- (5) The area to be surveyed.

(b) If a surveyor provides oral notice under subsection (a) of this section, the utility owner or designated representative or association and the surveyor shall make an adequate record of the notification to document compliance with this section.

(c) Each utility owner or designated representative or association, other than a small water or wastewater utility owner, notified of an intent to survey under subsection (a) of this section shall, before the proposed start of the survey, unless another period is agreed to by the surveyor and the utility owner or designated representative or association provide at least one of the following to the surveyor to the extent the information is reflected by records in the possession of and reasonably available to the utility owner:

(1) The location and description of all of the underground utilities within the area to be surveyed.

(2) The best available description of all underground utilities in the area of the proposed survey, which may include drawings marked with a scale, dimensions, and reference points for underground utilities already built in the area or other facility records that are maintained by the utility owner.

(3) Allowing the surveyor or any other authorized person to inspect the drawings or other records for all underground utilities within the area to be surveyed at a location that is acceptable to both parties.

(d) The requirements in subsection (c) of this section shall not apply to a notice of intent to survey a single-family residential property given by an engineer or architect. However, subsection (c) of this section shall apply to a notice of intent to survey a single family residential property given by a property owner or a surveyor who has been retained in connection with the development of the property."

#### **WHAT'S NEXT???**

#### **NC / SC Boundary Commission**

#### **4-year tax appraisal cycles**

#### **Manufactured Home**

Curative provisions regarding outstanding liens and prior owners' interests.

#### **Mechanics' liens**

- (1) Exempting mobile homes on leased lots
- (2) Addressing interests of tenants' contractors

#### **Oil, Gas and Mineral Rights – establishing or extinguishing ancient reservations or grants**

#### **Practice of Law, UPL and form generation (the LegalZoom scenario) (last variation of HB663)**

#### **HomeBuyer Protection Act (formerly HB203)**

#### **Redacting public records to protect law enforcement, district attorneys and other public officials (former SB78 )**