



CHICAGO BULL

NC Legislative Session –2021-2022: What Real Property Practitioners Need to Know!



The 2021-2022 Legislative Sessions included a lot of changes that affect NC real property practice! The list, links and brief descriptions below should give you food for thought as well as providing a means for you to reach out on items of interest to YOU! Obviously, this is not a complete list even for real estate related matters. Many other legislative items will be important to you, your firm, family, and friends.

Hopefully these highlights will be helpful to you!

North Carolina General Assembly Bills & Laws are on-line at: <https://www.ncleg.gov/Legislation>
Please also visit our website www.northcarolina.ctic.com for Resources -- Legal Articles, as well as CLE and CPE courses on-line, on-demand <https://www.pathlms.com/chicago-title/courses> with much more detail.

GENERAL STATUTES COMMISSION

Bar Association proposals, includes the Real Property Section legislative agenda items below statutory revisions, among others:

- **G.S. 47-18.1 for entity name changes** is clarified for consistency with G.S. 55D-26, requiring recordation of the certificate issued by the applicable Secretary of State
- **G.S. 47-119 regarding memoranda for options** is clarified and revised to include **options to purchase or convey, rights of first refusal or rights of first offer**, consistent with G.S. 47-18 (as revised in 2021).
- **G.S. 47-119.1** is clarified and updated regarding **memoranda of contracts to purchase real estate**.
- **G.S. 47-120** clarifies and modernizes the memoranda provisions regarding leases, options, rights of first refusal, rights of first over and contracts regarding recordation and constructive notice.
- **G.S. 41-6.5 abolishes the common law rule against perpetuities** retroactive to the October 1, 1995, adoption of the Uniform Statutory Rule Against Perpetuities in North Carolina.
- Technical corrections for:
 - **limited liability partnerships** (G.S. 59-45 and G.S. 59-70),
 - **judicial review in contested cases** (G.S. 150B-45),
 - **right to counsel or guardian ad litem** (G.S. 35A-1107,
 - **Landmark designations** (G.S. 160D-946)

H1018v4 <https://www.ncleg.gov/BillLookUp/2021/h1018> S.L. 2022-64

Alignment of Postponements of Judicial, Execution & Foreclosure sales under G.S. 1-339.20, G.S. 1-310, G.S. 1-339.58, and G.S. 45-21.21, applicable to sales noticed on or after October 1, 2022.

S769v4 <https://www.ncleg.gov/BillLookUp/2021/s769> S.L. 2022-60

Tenancy by entireties reimbursement provisions revised G.S. 41-61 as follows:

"§ 41-61. Reimbursement for expenditures made on entireties property.

(a) ~~Neither spouse holding property as tenants by the entirety is entitled to reimbursement of expenditures made on the property, including payments on indebtedness encumbering the property, while the tenancy by the entirety exists.~~—In the case of property held as tenants by the entirety, neither spouse is entitled to reimbursement from the other for expenditures made with respect to the property during the existence of the tenancy by the entirety, including payments made for recurring expenses, improvements, and payments made on indebtedness secured by a lien on the property.

(b) When the tenancy by the entirety is converted to a tenancy in common by absolute divorce or otherwise, responsibility for expenditures ~~for~~ *made with respect to* the property held as tenants in common is allocated as provided by the law governing tenants in common, ~~unless otherwise directed in a court order such as in an equitable distribution proceeding.~~ common.

(c) *When the tenancy by the entirety is terminated by death, neither the surviving spouse nor the personal representative of the deceased spouse is entitled to reimbursement from the other for expenditures made with respect to the property during the existence of the tenancy by the entirety, including payments made for recurring expenses, improvements, and payments made on indebtedness secured by a lien on the property.*

(d) *Nothing in subsection (a), (b), or (c) of this section does any of the following:*

(1) Applies in any proceeding for equitable distribution or constitutes any limitation on the power of the court in any equitable distribution proceeding.

(2) Renders unenforceable the terms of any otherwise valid and enforceable provisions in a premarital agreement, postmarital agreement, or promissory note given by one spouse to the other.

(3) Affects any otherwise valid and enforceable lien or judgment."

S278 <https://www.ncleg.gov/BillLookUp/2021/S278> S.L. 2022-12

Real Property clarifications and technical corrections includes key provisions related to real estate as follows:

- Notices in execution sales, G.S. 1-339.54
- Default upset bid procedures G.S. 1-339.36
- Partition default technical correction, G.S. 46A-84.5, G.S. 46A-83
- Commissioners' fees in tax foreclosures and redemptions, notices required (owners, other taxing units, lienholders, parties otherwise required in foreclosures, but *not* trustees under deeds of trust), G.S. 105-374
- Notices in *in rem* tax foreclosures and conforming parties entitled to notice consistent with above, G.S. 105-375
- Tax settlements and remedies, G.S. 105-373, G.S. 105-378
- Probate, recording, and notarial curatives updated from 2013 to 2022, in various sections of Chapter 47 and Chapter 10B
- Clarification of G.S. 41-56(b) regarding creation of tenancies by entireties.
- Amendment to G.S. 47-18, race priority recording statute, to include rights of first refusal.
- Extension of G.S. 93A-12, disputed monies deposited with Clerk, to include title insurance companies acting as escrow agents, as well as real estate brokers and attorneys.

S196 <https://www.ncleg.gov/BillLookUp/2021/s196> S.L. 2021-91

Trust & Estates Amendments include: --

- Remove location requirement for holographic wills, G.S. 28A-2A-9, G.S. 31-3.4
- Trust power holders provision changes under G.S. 36C
- Trust exception from rule against perpetuities, G.S. 41-15, G.S. 41-18(10)

S197 <https://www.ncleg.gov/BillLookUp/2021/S197> S.L. 2021-85

Good Funds Settlement / Commercial Receivership includes various banking and Commercial Receivership Act technical corrections along with several other financial / banking provisions.

S198 <https://www.ncleg.gov/BillLookUp/2021/S198> S.L. 2021-93

2022 LEGISLATIVE SESSION

NC Farm Act of 2022 provides, among other items:

- some **farm building** exemptions from the building code under Ch. 143 and Ch. 160D,
- **conservation easements** are not extinguished by tax foreclosures under G.S. 105-374(k) and G.S. 105-375(i).

S762v6 <https://www.ncleg.gov/BillLookup/2021/s762> SL 2022-55

State Bar grievance review panel procedure is created under G.S. 84-28(c1). State Bar records are confidential and not subject to the public records law under G.S. 84-32.1(e).

H869v5 <https://www.ncleg.gov/BillLookup/2021/h869> S.L. 2022-61

Refunds of overpayments of excise taxes at recording can be approved by county manager or county finance officer if authorized by county commissioners under amended G.S. 105-228.37, as requested by the NC Association of Registers of Deeds

H674 <https://www.ncleg.gov/BillLookup/2021/h674> S.L. 2022-50

Condominium Act clarifications and curative provisions, including:

- G.S. 47C-2-105(a)5 addition:
A unit that is not specifically described by an upper limiting boundary with reference to established datum shall be deemed to include so much of the land and air above the unit as would be attributed to a noncondominium parcel of land under the common or statutory law applicable to such noncondominium parcel of land. A unit that is not specifically described by a lower limiting elevation boundary with reference to established datum shall be deemed to include so much of the land and air below the unit as would be attributed to a noncondominium parcel of land.
- G.S. 47C-2-101(b)
(b) A declaration or an amendment to a declaration adding units to a condominium ~~must contain a certificate executed by~~ may not be recorded unless all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed in accordance with building design plans of an architect licensed under the provisions of Chapter 83A of the General Statutes or an engineer registered under the provisions of Chapter 89C of the General Statutes ~~stating that the plans for such building or buildings fully and accurately depict the structural components and mechanical systems of all buildings containing or comprising any units thereby created;~~ Statutes, as evidenced by a recorded certificate of completion executed by the architect or engineer; provided, however, that (i) such requirement shall not apply to any unit or portion of a unit, the boundaries of which comprise solely surface space, airspace, subterranean space, or any specified combination thereof, as provided in ~~G.S. 47C-2-105(a)(5)~~. G.S. 47C-2-105(a)(5) and (ii) nothing in this subsection shall require that the structural components and mechanical systems of buildings be depicted on the plats or plans described in G.S. 47C-2-109(b)(6). clarification that:
- Clarification of applicability provisions of G.S. 47C-1-102(a), adding 2 clarifying provisions:
 - "In addition, the following sections apply to all condominiums created in this State on or before October 1, 1986, notwithstanding any conflicting provisions in the articles of incorporation, the declaration, or the bylaws and notwithstanding any references in those documents to Chapter 47A of the General Statutes..."
 - "G.S. 47C-1-103 (Definitions) also applies to all condominiums created in this State on or before October 1, 1986, to the extent necessary in construing any of the sections referenced in this subsection."
- Clarification of applicability provisions of G.S. 47A-2, by adding:
 - "Notwithstanding the formation of a condominium by a declaration pursuant to this section and specifically referencing this Chapter, those provisions of Chapter 47C of the General Statutes that are made applicable to condominiums formed on or before October 1, 1986, pursuant to G.S. 47C-1-102 shall apply and are not in conflict with this Chapter."

S278 <https://www.ncleg.gov/BillLookup/2021/S278> S.L. 2022-12

Marketable Title Act additional exclusion (14) for active owners' associations under G.S. 47B-3:

Such marketable record title shall not affect or extinguish the following rights: ...

(14) Notwithstanding anything in this section to the contrary, provisions contained in any declaration of covenants that are applicable to any of the following:

- a. A condominium created under Chapter 47A or 47C of the General Statutes of North Carolina.
- b. A cooperative, as defined in G.S. 47F-1-103(8).
- c. A planned community, other than a planned community in which all lots are restricted exclusively to nonresidential purposes, whenever created, to which any of the provisions of Chapter 47F of the General Statutes of North Carolina apply; provided, however, that if such planned community was created prior to January 1, 1999, this exemption shall not apply unless it is governed by an owners' association in existence as of July 1, 2022."

SECTION 4.(b) This section becomes effective July 1, 2022.

S278 <https://www.ncleg.gov/BillLookup/2021/S278> S.L. 2022-12

Mechanics' lien waivers VOID until paid in full in many situations pursuant to G.S. 22B-5, set forth below because of significance:

"§ 22B-5. Waiver of liens or claims as a condition of progress payment invalid.

(a) Provisions in lien waivers, releases, construction agreements as defined in G.S. 22B-1(f)(1), or design professional agreements as defined in G.S. 22B-1(f)(5) purporting to require a promisor to submit a waiver or release of liens or claims as a condition of receiving interim or progress payments due from a promisee under a construction agreement or design professional agreement are void and unenforceable unless limited to the specific interim or progress payment actually received by the promisor in exchange for the lien waiver.

(b) This section does not apply to the following:

- (1) Lien waivers or releases for final payments.
- (2) Agreements to settle and compromise disputed claims after the claim has been identified by the claimant in writing regardless of whether the promisor has initiated a civil action or arbitration proceeding."

This section becomes effective March 1, 2022, and applies to liens attached on or after that date.

G.S. 44A-35 was also substantially amended to address court orders of attorneys' fees to the prevailing party, effective for any claim arising on or after March 1, 2022.

S219 <https://www.ncleg.gov/BillLookup/2021/s219> S.L. 2022-1

Remote on-line notarization ("RON") for NC notaries, to extend the temporary Emergency Video Notarization statute, G.S. 10B-25, until June 30, 2023, and to implement a new NC remote online notarization ("RON") statute, effective July 1, 2023. This is a quite complex bill, with significant provisions unique to North Carolina. It is also subject to being amended by rules and regulations to be adopted by the Secretary of State and possible legislative amendments in the 2023 long session. [H776](#) See separate Chicago Title Underwriting Bulletin, dated July 18, 2022, "Notarizing Documents Remotely for NC Notaries – Updates, reminders, forewarnings!"

[H776](#) <https://www.ncleg.gov/BillLookup/2021/h776> S.L.2022-54

2021 LEGISLATIVE SESSION

Business Corporation Act clarifications and updates of various provisions, including subsidiaries, voting, shareholder access to records and other matters.

S507 <https://www.ncleg.gov/BillLookup/2021/s507> S.L. 2021-106

Landlord / Tenant law changes address administrative fees, no liability regarding criminal record, and personal property of deceased tenants, among other items.

S644 <https://www.ncleg.gov/BillLookup/2021/s644> S.L. 2021-71

Mobile and manufactured home clarifications -- include the below provisions related to the conversion of manufactured home titles and the removal of liens from the titles:

- Delete the provision under G.S. 20-109.2(d) that would require "evidence sufficient to demonstrate that all affected owners of security interests have been notified and consent."
- Add the procedure under G.S. 20-58.4 for the DMV (not a contractor) to give 15-day notice to a security interest holder showing as a lien on the DMV Certificate of Title and to cancel the lien if no objection received within 15 days, upon application of the owner of the home *or* the real property under subsections (e1) and (e2). This provision is extended to manufactured homes as well.

- DMV Form MVR-46G was updated in response (11/21)
H650 <https://www.ncleg.gov/BillLookup/2021/h650> S.L. 2021-134

Judicial Establishment of Validity of Revocable Trust (before death of settlor) under Ch. 36C, Article 4C, and other trust and estate provisions.

S50, <https://www.ncleg.gov/BillLookup/2021/S50> S.L. 2021-53

Single action protective arrangement or single transaction sale without guardianship (G.S. G.S. 35A-1211), may be very helpful to real estate attorneys. It may avoid the necessity for a complete guardianship estate administration in limited cases, such as when the minor or incompetent only has a single asset or a small interest in an asset needing to be sold. It does still require the determination of incompetence of an adult. And the proceeding for the sale itself under G.S. 35A-1301 is still required, including approval by a Superior Court judge for a minor. It is applicable to proceedings initiated on or after October 1, 2021. The specific provision provides:

"§ 35A-1121. Authorization of a single protective arrangement or single transaction without appointing guardian.

(a) If it is established in a proper proceeding that a basis exists for the appointment of a guardian of a minor or an incompetent person, the clerk of superior court, without appointing a guardian, may order a single protective arrangement or single transaction for the benefit of a minor or incompetent person as follows:

(1) Authorize, direct, or ratify any transaction necessary or desirable to achieve any service, care, or safety arrangement meeting the foreseeable needs of the minor or incompetent person, and authorize a special fiduciary to execute any such transaction on behalf of the minor or incompetent person, including any of the following:

a. The payment, delivery, deposit, or retention of funds or property.

b. The sale, mortgage, lease, or other transfer of property in accordance with the requirements of subsection (c) of this section.

c. The entry into an annuity contract, a contract for life care, a deposit contract, or a contract for training and education.

d. The establishment, funding, or addition to a suitable trust, including, but not limited to, a trust for the benefit of the minor or incompetent person pursuant to 42 U.S.C. § 1396p(d)(4).

e. The establishment, funding, or administration of an ABLE account, as defined in section 529A of the Internal Revenue Code.

(2) Authorize, direct, or ratify any contract, trust, or other transaction relating to the minor or incompetent person's property and business affairs, and authorize a special fiduciary to execute any such contract, trust, or other transaction on behalf of the minor or incompetent person, if the clerk of superior court determines that the transaction is in the best interest of the minor or incompetent person.

(b) Before approving a protective arrangement or other transaction under this section, the clerk of superior court shall consider the interests of creditors and dependents of the minor or incompetent person and, in view of the disability, whether the minor or incompetent person needs the continuing protection of a guardian. The clerk of superior court may appoint a temporary guardian to assist in the accomplishment of any protective arrangement or other transaction authorized under this section who shall have the authority conferred by the order and serve until discharged by order after report to the clerk of superior court of all matters done pursuant to the order of appointment.

(c) The sale, mortgage, exchange, lease, or gift of any property by a special fiduciary or temporary guardian appointed as provided in this section shall be subject to the same procedural and reporting requirements that would otherwise apply to the sale, mortgage, exchange, lease, or gift of such property by a guardian of the estate or general guardian, pursuant to this Chapter."

S50, <https://www.ncleg.gov/BillLookup/2021/S50> S.L. 2021-53

System Development Fee clarification under Ch. 162A.

H344 <https://www.ncleg.gov/BillLookup/2021/h344> S.L. 2021-76

Timeshare Act changes to Ch. 93A, Article 4, were significant, so the effective date was delayed to July 1, 2022.

H531 <https://www.ncleg.gov/BillLookup/2021/h531> S.L. 2021-163 modified by S329

<https://www.ncleg.gov/BillLookup/2021/s329> S.L. 2021-192

North Carolina Farm Act of 2021 included real estate related issues:

- Disclosure of voluntary agricultural districts and nearby farmlands was clarified, under G.S. 106-737 *et seq.*
- Timber larceny civil and criminal penalties were increased to treble damages under G.S. 14-135 and G.S. 1-539.1 and G.S. 1-539.2B

S605 <https://www.ncleg.gov/BillLookup/2021/s605> S.L. 2021-78

Townhomes included under builder property tax inventory clarified under G.S. 105-277.02.

H273 <https://www.ncleg.gov/BillLookup/2021/h273> S.L. 2021-113

Land Use clarifications and updates included vested rights under GS 160D-108 and conflicts preemption between state and county under GS 160D-706, conflicts of interest of board members under GS 160D-109, among other issues.

H854 <https://www.ncleg.gov/BillLookup/2021/h854> S.L. 2021-168

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