



# CHICAGO BULL

(11-15-2019)

## 2019 NC Legislative Session: Hottest Items of Interest for Real Estate Lawyers (as of 11/15/19)



The 2019 Legislative Session has been another busy time for issues related to practitioners and clients, including real property attorneys. So read on, and share any comments with members of our Chicago Title counsel team, with your representatives on the Real Property Section Council ([www.ncbar.org](http://www.ncbar.org)) and the Real Estate Lawyers of North Carolina ([www.relanc.org](http://www.relanc.org)) or with your Senators and Representatives! Many thanks to David Ferrell and Michelle Frazier who have been so instrumental in working with the Legislature on behalf of our industry!

NOTE: All bills can be accessed, along with Bill Digests and Bill Summaries on the North Carolina General Assembly website, <https://www.ncleg.gov/Legislation> as well as statutes, bill summaries, legislators and other useful information.

Bills are in no particular order, either numerical or priority, primarily because of changes in Senate vs House bills and versions that have survived to this point.

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### ENACTED LEGISLATION

**Street Database Maintenance/Public Record Except (so-called "Orphan Roads"), H620:** This bill would require, by January 1, 2020, a database of federally owned/maintained, state owned/maintained and state maintained roads, providing clear and concise information, to be updated monthly and publicly available in either graphic or tabular format, such as through GIS. It is supported by NC Association of Realtors and NC Home Builders. <https://www.ncleg.gov/BillLookup/2019/H620> Enacted as S.L. 2019-156, effective July 22, 2019.

**Transportation Corridor Official Map Act Repeal, H131:** The 1987 Transportation Corridor Map Act authorized NC Department of Transportation or other governmental bodies to adopt and file transportation corridor maps. The Kirby v. NC Department of Transportation cases found this a perpetual restriction (since no termination) and a taking for which the owners were entitled to compensation, All filed maps were rescinded by the General Assembly (S.L. 2016-990), and a moratorium imposed on further maps, extending through 2018 (S.L. 2017-57) and July 1, 2019 (S.L. 2018-5). This legislation repeals the act entirely. <https://www.ncleg.gov/BillLookup/2019/H131> Enacted as Session Law 2019-35, effective June 21, 2019.

**NC Association of Registers of Deeds (NCARD) Technical corrections, S594:** This bill provides for several critical issues of interest to NC real property attorneys. It would:

- Increase margin for recorded documents from ¼” to ½” (other than 3” top margin on first page)
- Remove the requirement for “return to” provision on e-recorded documents
- Extend the ability to reject false/fraudulent lien filing under GS 14-118.6 to all person, not just the current limitation to public officials, effective December 1, 2019. See additional clarification in H470, S.L. 2019-243, § 29 below.
- Clarify that assumed business names cannot include appear to be corporations, LLC’s, limited partnership or limited liability partnership using their official names, since those entities must be properly created by officially filing with the NC Secretary of State, though those entities may themselves have assumed business names requiring the statutory assumed business name certificate. Statutory forms are provided, but they are almost identical to the ones already posted on the Secretary of State’s website,  
[https://www.sosnc.gov/divisions/business\\_registration/assumed\\_business\\_names](https://www.sosnc.gov/divisions/business_registration/assumed_business_names)

<https://www.ncleg.gov/BillLookup/2019/S594> Enacted as Session Law 2019-117, with most provisions effective October 1, 2019 other than the fraudulent lien provisions effective on December 1, 2019.

**NC Servicemembers’ Civil Relief Act, S420:** The act extends protection to coincide with the federal Servicemembers’ Civil Relief Act, Chapter 50, Title 50 of the U.S. Code, and add the NC National Guard and National Guard members from other states residing in North Carolina, as well as dependents. <https://www.ncleg.gov/BillLookup/2019/S420> Enacted as S.L. 2019-161, effective October 1, 2019.

**Protecting Tenants at Foreclosure Act Restored, H531:** This act:

- Adds new subsection (5a) to G.S. 45-21.29(k) regarding Orders for Possession, adding this requirement in order for a purchaser to obtain an order of possession:  
(5a) If the property is covered by the federal Protecting Tenants at Foreclosure Act (PTFA), Pub. L. 111-22, Title VII, Sections 701 through 703, as amended, the provisions of PTFA have been satisfied.

NOTE: The above provision (k)(5a) was then repealed entirely by H470, S.L. 2019-143 (further below)

- Repeals G.S. 45-21.33A in its entirety.  
<https://www.ncleg.gov/BillLookup/2019/h531> Enacted as Session Law 2019-53, effective for petitions filed on or after October 1, 2019.

**Amendments to Probate/Trusts/Wills Choice of Law, S532:** Provisions, in relevant part, would:

- Amend G.S. 28A-2B-1 to require the original will or codicil or other evidence at a hearing to determine validity of a will *prior to decedent’s death* in a contest estate proceeding, and a copy with the original petition under G.S. 28A-2B-3.
- Amend GS 28A-6-1(a)(3) to allow reference to “minor” or “18+” or “adult” as the case may be for identifying ages of heirs or devisees in application for letters of administration or letters testamentary.
- Amend GS 31-11.6 to provide that any will recognized as valid under G.S. 31-46(1) or (2), as amended, which was self-proved under the laws of the jurisdiction in which the testator was physically present at the time of execution or the place where the testator was domiciled at the time of execution or at the time of death shall be considered as self-proved.
- GS 31-46, as amended, provides that a will is valid if it complies (or complied) with:
  - NC law in effect either at the time of its execution or
  - NC law at the time of the testator’s death or
  - the law of the jurisdiction in which the testator was physically present at the time of its execution or
  - the law of the place where the testator was domiciled at the time of its execution or
  - the law of the place of the testator’s death or
  - 20 U.S.C. § 2044d (or successor or replacement statute) as a military testamentary instrument.
- Add two new subsections to G.S. 39-13.7, regarding tenancy by entirety trusts, to allow notice that the trust complies with the statute at time of conveyance to the trust, and a confirmation of continued compliance and entireties immunity at the time the trust conveys the property to a third party.

<https://www.ncleg.gov/BillLookup/2019/s532> Enacted as Session Law 2019-178, effective July 26, 2019.

**Surveyor Statutes of Limitation and Repose combined, S332:** This bill would remove the ten-year statute of repose set out in GS 1-47(6) and add a 7 year period from specific last act to the 3-year statute of limitation from occurrence of the physical damage under GS 1-52 for actions against registered land surveyors or any person acting under the surveyor's supervision and control for physical damage or for economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting. <https://www.ncleg.gov/BillLookup/2019/s332> Enacted as Session Law 2019-164, effective July 26, 2019, and applicable to actions arising on or after that date.

**Simplify Builder Inventory Exclusion, H492:** After several amendments, the current version would simply provide for a single application (rather than annual applications) under G.S. 105-277.02, effective for tax year beginning July 1, 2019. <https://www.ncleg.gov/BillLookup/2019/h492> Enacted as Session Law 2019-123, applicable for taxes imposed for taxable years beginning on or after July 1, 2019.

**Short Term / Vacation Rentals, S483:** Short term vacation rental properties are subject to city ordinances, such as inspection requirements. <https://www.ncleg.gov/BillLookup/2019/s483> Enacted as Session Law 2019-73, effective July 1, 2019.

**Liability of Register of Deeds for Failure to Record, H264,** General Statutes Commission technical corrections bill corrects GS 47F-2-117(e) for declaration amendments to reference GS 47-41.01 or GS 47-41.02 regarding execution and notarization) and corrects GS 161-16 to reference liability for the register for failure to record under GS 161-14, among other provisions. <https://www.ncleg.gov/BillLookup/2019/H264> Enacted as Session Law 2019-177, effective July 26, 2019.

**Land Use Regulatory Changes, S355,** includes a massive re-write of city and county regulations into a new Chapter 160D, to take effect January 1, 2021, and with some additional provisions taking effect at varying times beginning on the date it became law, July 11, 2019. <https://www.ncleg.gov/BillLookup/2019/s355> Enacted as Session Law 2019-111.

**Misc. changes to estate and trust statutes, S394,** supported by the NC Bar Association, includes:

- (1) Clarifications regarding encumbered assets (G.S. 28A-15-4),
- (2) Clerk's original jurisdiction on guardianships (G.S. 35A-1103),
- (3) Amendment regarding spousal allowance that either the decedent or spouse must be resident of North Carolina (G.S. 30-15),
- (4) No statute of limitations on trust reformation (G.S. 1-56 and 1-56.1),
- (5) Jurisdiction of Superior Court for trusts (G.S. 36C-2-203), and
- (6) No trust amendments allowed for removal or replacement of trustee of a non-charitable irrevocable trust (G.S. 36C-4-411(h)).

<https://www.ncleg.gov/BillLookup/2019/s394> Enacted as Session Law 2019-113, with Section 1, 2 and 3 effective July 11, 2019, Section 4 retroactively as a curative clarification (unless the act would substantially interfere with judicial proceedings or prejudice a party's rights), and Sections 5 and 6 applicable to trusts formed before on or after the effective date of July 11, 2019 and to pleadings filed on or after that date.

**General contractor licensing provisions, S55** <https://www.ncleg.gov/BillLookup/2019/S55> Enacted as Session Law 2019-72, requiring continuing education for licensees beginning January 1, 2020.

**Water bill pass-through for contiguous rental property, H432** <https://www.ncleg.gov/BillLookup/2019/H432> Enacted as Session Law 2019-56, effective June 26, 2019.

**Expand Cartway Path Law, S353:** This bill widens the statutory cartway from 18' to 30' under G.S. 136-69. <https://www.ncleg.gov/BillLookup/2019/s353> Enacted as Session Law 2019-215.

**AOC Legislative changes, S470:** This bill, among other provisions:

- Provides for emergency judges and scope of review of judicial conduct by Judicial Standards Commission.
- Requires the Supreme Court to promulgate rules for e-filing of pleadings and other documents filed with the General Court of Justice.
- Various fee changes including estates, *in rem* tax foreclosures, among others
- Repeals G.S. 45-21.21(f), regarding postponements of sales, which had set the time for sale, per the notice of sale, and between the hours of 10:00AM and 4:00PM on any day on which the Clerk's office is normally open for transactions." (Sec. 26(a)) Effective Nov. 6, 2019.
- Amends G.S. 45-21.23 that sale must be "on any day when the clerk's office is normally open for transactions." It deletes the limitation that the sale be on any day "other than Sunday or a legal holiday when the courthouse is closed for transaction."(Sec. 26(b)) Effective Nov. 6, 2019
- Repeals GS 45-21.29(k)(5a) regarding compliance with the federal Protecting Tenants at Foreclosure Act (PTFA), which was added by H531 above. (§ 26.(c)) Effective Nov. 6, 2019
- Amends GS 14-118.6(b1), as amended by § 3 of S.L. 2019-117 (NCARD changes above) to clarify that it applies to "materially false, fictitious, or fraudulent" liens or encumbrances and applies to the property of any person (not just a public officer or public employee). (§ 29.(a)) Effective December 1, 2019
- Amends G.S. 32C-1-116(a) that the clerk has original jurisdiction to approve compensation and expenses for an agent under GS. 32C-1-112(b) and (c).

<https://www.ncleg.gov/BillLookup/2019/h470> Enacted as S.L. 2019-243, with varying effective dates.

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## **NOT ENACTED IN 2019, BUT EXPECTED TO RECUR IN 2020 OR LATER LEGISLATION**

**NC Farm Act of 2019, S315:** This bill includes amendments regarding growing hemp (under the special pilot program) and medical marijuana to conform to the federal Farm Act of 2018 (Section 10113 of the Federal Agriculture Improvement Act of 2018), adding a new Article 50F of Chapter 106 of the NC General Statutes specifically to address that act. The bill also includes an important provision for any property owner to petition for removal of utility easements unused after 20 years upon payment of fair market value, if the utility cannot provide a current need. It also would require a notice and hearing for termination of present use value. <https://www.ncleg.gov/BillLookup/2019/S315> Though this made cross-over, it is still under discussion as of 8-15-19, primarily because of disagreements regarding legalizing smokable hemp and exemptions for gun ranges in agritourism properties.

**Condominium Act Revisions, H920:** This bill was introduced by Investors Title, but is now being considered by a joint committee of the Real Property Section (Brian Byrd, co-chair) and NC Land Title Association (Jim Saintsing, co-chair), meeting with representatives from many other industry groups. This is intended as a curative bill for the many defectively formed condominiums and not a re-write of the Condominium Act. The initial bill, as drafted provides for:

1. A change to plat certification requirements.
2. A 7-year sunset of development rights, absent 67% vote to extend within 1 year *prior* to their expiration.
3. A savings provision that documents would be "liberally construe[d] in favor of the valid establishment of a condominium," and allow amendments by the executive board:
  - (1) To cure any ambiguity, to establish marketable title to units, or to correct or supplement any provision of the declaration, including plats or plans, that is defective, missing, or inconsistent with any other provision of the declaration or with this Chapter.
  - (2) To conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on units in condominium projects, such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.
  - (3) To comply with any statute, regulation, code, or ordinance which may be applicable to the condominium or association.
  - (4) To make a reasonable accommodation or permit a reasonable modification in favor of persons with disabilities, as may be defined by federal or State laws or regulations applicable to the association or its employees, unit owners, residents, or tenants.

4. Judicial reformation by the Association without vote of membership based on notice provisions and allowing lienholders standing.

Issues being considered by the committee include:

- Revisions of the “as built” certifications to a survey monument basis (what actually gets built on the land) rather than based on drawings which are often changed in the process of construction.
- Technical inconsistencies between the NC Condominium Act, GS Chapter 47C, and the NC Planned Community Act, GS Chapter 47F.
- A curative that if the project has been called a “condominium” and operated as such for a number of years, it will be deemed a condominium

<https://www.ncleg.gov/BillLookup/2019/H920>

**Tenancy-by-Entireties** provisions would codify existing statutory and case law in a single new article. Proposed by the Estate Planning Section. Formerly Part I of S595, the North Carolina Bar Association bill, but current status unknown.

<https://www.ncleg.gov/BillLookUp/2019/S595>

**Joint Tenancy with right-of-survivorship** would update the current statute, GS 41-2, and was approved, submitted and supported by the Bar Association but did not pass in 2018 session. Proposed by the Estate Planning Section. Formerly Part II of S595, the North Carolina Bar Association bill, but current status unknown.

<https://www.ncleg.gov/BillLookUp/2019/S595>

**Notice of Settlement Act (NOSA)**, would allow for priority to be established by voluntary recording of a notice of settlement, for an anticipated closing within 60 days, subject to matters discoverable on-line. Formerly Part III of S595, the North Carolina Bar Association bill, supported by the NC Land Title Association and Real Estate Lawyers of North Carolina (RELANC), the proposal is still under discussion with stakeholders, with leadership by the Commercial Committee of the Real Property Section (Co-chairs Jeremy Shrader and David Martin)

<https://www.ncleg.gov/BillLookUp/2019/S595>

**Technical and Other Corrections, S419:** This bill includes, among other items, the Real Property Section Technical corrections to GS 47-17.1 and GS 47-18.3, clarifying ambiguities from S.L. 2018-80, formerly Part IV of S595.

<https://www.ncleg.gov/BillLookUp/2019/S419>

**Identity Theft Protection Act (Data Breach), H904:** This bipartisan bill, proposed by Attorney General Josh Stein and Rep. Saine, would significantly amend the time frames for existing statute. There is a change in the timing of the notification requirement in G.S. 75-65, where a law enforcement investigation is delayed by law enforcement. The requirement is now 5 days from LE’s communication to the business that notice will no longer impede the investigation or security. This change is clearer than the prior wording. Notice must go out to potentially affected consumers within 30 days of *learning* of the breach. The lookback to determine who may be affected is 3 years. G.S. 75-65(h)(2) would require that, if SSN is breached, the business that was the source of the breach must provide free credit monitoring to consumers for 2 years. The information provided to the Consumer Protection Division of the Attorney General's Office is not a public record as defined in G.S. 132-1. This has been discussed with and reviewed by several title insurers’ regulatory counsel over the 2-year period it has been discussed, is being monitored and commented on by multiple sections of the Bar Association and many of their comments are being incorporated into the latest version of the bill. Further changes and negotiations are anticipated. <https://www.ncleg.gov/BillLookup/2019/H904>

**Adverse Possession Law, H309:** This proposal is being promoted by the Grange of North Carolina. Though this did not make cross-over, parties agreed to discuss further. Bill would make various changes to the adverse possession law.

- Extend the period to acquire property by adverse possession from 20 years to 30 years.
- Adverse possessor would have to pay the previous owner fair market value of the property at the time of the acquisition and reimburse the previous owner for all property taxes incurred for the 30 years that the property was adversely possessed.
- Title to property may not transfer by adverse possession if the property that is being adversely possessed is entirely within one foot of the recorded boundary of the property.

<https://www.ncleg.gov/BillLookUp/2019/h309>

**Transfer on Death Deeds, S312:** This bill would enact a NC revised version of the Uniform Real Property Transfer of Death Act as Article 11 of Chapter 31 of the General Statutes. The TOD deed would be revocable, nontestamentary, overridden by revocation or other inconsistent conveyance during grantor's life, requires same capacity as for a will, but only execution as deed, and must be recorded prior to grantor's death, to take effect only at grantor's death. The property can be renounced by the beneficiary and is subject to grantor's estate creditors as well as other NC specific estate provisions. This bill contains many ambiguities, open questions and inconsistencies with existing NC conveyance laws. NCLTA, RPS and RELANC as well as Estate Planning Section of the Bar Association are questioning and have offered negotiation. <https://www.ncleg.gov/BillLookup/2019/s312> Still in committee as of 8-15-19.

**Annual Report Standardization, S362:** Business Annual Reporting requirements would (1) be extended to require principals as well as officers be reported, and a contact who can provide information about those with authority to bind the entity, (2) be extended to corporations (including non-profits), LLC's, LLP's, limited partnerships, and all filed directly with the NC Secretary of State, removing insurance companies under Ch. 58, the Insurance Act, per G.S. 55-16-22(a1), (3) standardize fees for all for-profit entities, (4) be extended to non-profit entities but free. The bill also includes GS 55D-18, Penalty for signing false document, with enforcement by the Secretary of State. This has appropriations provisions so was not subject to cross-over. <https://www.ncleg.gov/BillLookup/2019/s362> Still in committee as of 8-15-19.

**NC Receivership Act Revisions, S364:** This bill, drafted and recommended by the Bankruptcy Section of the NC Bar Association, would provide for various changes to the current Receivership Act, and should better address receivership issues with regard to real property. Key provisions would provide for the following:

- Extends applicability to statutory, common law and equitable receiverships but not state agencies, trusts (other than business trusts), decedent's estates, missing persons or absentees in military service.
- Gives the court appointing a receiver (limited or general) the exclusive authority to direct the receiver and determine all controversies relating to the receivership or receivership property, wherever it is located.
- Allows any person, regardless of residency, to serve as a receiver as long as the court makes written conclusions based on the record that the person is qualified to serve as receiver and officer of the court and is independent as to any party in interest and the underlying dispute.
- Gives the receiver the powers and priority as if it were a creditor that obtained a judicial lien at the time of appointment on all of the receivership property, subject to satisfying the recording requirements as to real property that are described in the statute.
- Allows a receiver to apply in a foreign jurisdiction for appointment as a receiver with respect to any receivership property located in a foreign jurisdiction. The bill would set out provisions governing foreign receivers seeking to obtain appointment by a court in this state with respect to property located in this state.
- Provides for a stay to obtain possession of receivership property and intervene in actions.
- Authorizes receiver, upon court order, to obtain secured debt, adopt or reject executory contracts, to sell, lease, license, exchange or otherwise dispose of receivership property free and clear of all liens, claims of exemption and rights of redemption outside the ordinary course of business, abandon receivership property, with court order
- Amends GS 57D-3-02 to provide that a person ceases to be a member of a limited liability company upon the execution of an assignment for the benefit of creditors under any applicable law or upon the appointment of a general receiver for the person.
- Amends GS 23-38 to provide that no debt, demand, judgment or decree against a debtor who is discharged will be affected or impaired by the discharge, but the same must remain valid and effective against all of the debtor's property acquired after discharge and the appointment of a trustee, and the lien or any judgment or decree upon the debtor's property must not in any manner be affected by the discharge

<https://www.ncleg.gov/BillLookup/2019/S364> Still in committee as of 8-15-19.

**Foreign Seller reporting under Sec. 5.4 of the Rev. Laws Clarifying & Administrative Changes bill, S523, H600:** The requirement for a Form 1099-NRS submission would be made statutory, proposed new G.S. 105-251.3 (and, thereby, subject to penalties for noncompliance) and would extend not just to those under the current regulation (individuals, partnership, estates or trusts) to all non-resident (i.e. non-NC, not just non-US) sellers (broadly defined under statutory construction provisions to include all entities as well). <https://www.ncleg.gov/BillLookup/2019/H600> and <https://www.ncleg.gov/BillLookup/2019/S523> This was removed from S523, Session Law 2019-169, but may become the subject of a study to determine what legislation should be considered.

**HOAS- Leased Properties, H594:** This provision would prohibit amendments to declarations restricting leases over 30 days. It would not apply for pre-existing planned communities, if declarations address the issue or to condominiums (since this would disqualify them from FHA financing). <https://www.ncleg.gov/BillLookup/2019/h594> Still in committee as of 8-15-19.

**Eminent Domain, H3:** Proposed constitutional amendment to prohibit **eminent domain** for public purpose; only allow for public use. Unlikely to pass; Introduced every session and never enacted. <https://www.ncleg.gov/BillLookup/2019/H3>

**Tax Certification, (former H201):** Under current GS 161-31, certain counties are authorized to prohibit their respective register of deeds from accepting for the registration a deed transferring real property when taxes are delinquent. <https://www.ncleg.gov/BillLookup/2019/h201> Though H201 was originally to extend the statute to all counties, the enacted Session Law 2019-25, added Randolph County only.

**Landlord/Tenant changes, H880,** would amend provisions regarding removal or disposal of personal property of a deceased tenant, collection of expenses in summary ejectment proceedings and writ of possession. <https://www.ncleg.gov/BillLookup/2019/H880> Still in Committee as of 8-15-2019.

**Municipal Omnibus Bill, H557:** This Bill would, in relevant part:

- Amend GS 105-373 by allowing the governing body of a taxing unit to, in its discretion, relieve the tax collector of taxes owed that are ten or more years past due when it appears to the governing body that such taxes are uncollectable.
- Amend municipal annexation law to provide that the city council may include in the annexation ordinance a description of the area to be annexed any state-maintained street, street right-of-way, or easement.
- Delete the provisions stating that a municipality has no legal interest in a state-maintained street unless it owns the underlying fee and not just an easement.

<https://www.ncleg.gov/BillLookup/2019/H557> Still in committee

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