



# CHICAGO BULL

(8-6-2018)

## LEGISLATION AFFECTING REAL PROPERTY - 2018



This was another very busy legislature for a “short” session, coming and going in short bursts of sessions. It was as notable for what *did* pass, and final provisions, as for what did *not*.

### (1) Recording fees for “subsequent instruments.”

Subsequent instruments affecting previously recorded deeds of trust or mortgages, defined as “*an instrument that amends, modifies, or restates an original instrument, such as an amendment or modification agreement or an amended and restated instrument*” (as clarified by revised G.S. 161-14.1(a)(3)) fall under the *deed* recording fees, G.S. 161-10(1). [S.L. 2018-80](#), §§ 1.2 and 1.3, effective for all instruments presented for registration on or after October 1, 2018.

### (2) Purchase money deeds of trust.

**G.S. 39-13** was amended to extend to institutional lenders the protection against marital interests of non-owning non-borrowing spouses, now providing:

*A mortgage or deed of trust given by the purchaser of real property to secure a loan, the proceeds of which were used to pay all or a portion of the purchase price of the encumbered real property, regardless of whether the secured party is the seller of the real property or a third-party lender, shall be good and effectual against the purchaser's spouse as well as the purchaser, without requiring the spouse to join in the execution of the mortgage or deed of trust.*

[S.L. 2018-80](#), § 1.1, effective for mortgages and deeds of trust entered before on or after the effective date of the act (approved 6-25-2018).

### (3) Draftsman or “prepared by” on deeds and deeds of trust.

The requirement to show draftsman (or “prepared by”) on deeds or deeds of trust under G.S. 47-17.1 was amended. However, (we believe inadvertently) the Legislature limited the effective date to apply “to mortgages and deeds of trust entered into before, on or after” the effective date of the act (approved 6-25-2018 – not deeds). The relevant additions are:

*This section shall not apply to other instruments presented for registration. For the purposes of this section, the register of deeds shall accept the written representation of the individual presenting the*

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deed or deed of trust for registration, or any individual reasonably related to the transaction, including, but not limited to, any employee of a title insurance company or agency purporting to be involved with the transaction, that the individual or law firm listed on the first page is a validly licensed attorney or validly existing law firm in this State or another jurisdiction within the United States.

[S.L. 2018-80](#), § 2.1, effective for mortgages and deeds of trust entered before on or after the effective date of the act (approved 6-25-2018).

**(4) Execution of corporate and limited liability company instruments; company officials.**

The presumption of authority of company officials for transactions in the ordinary course of business was extended to a much broader list of company officials and to limited liability companies, by amended provisions to G.S. 47-18.3. However (again, we believe inadvertently), the Legislature limited this amendment “to mortgages and deeds of trust entered into before, on or after” the effective date of the act (approved 6-25-2018). The specific text of the amendment for mortgages and deeds of trust (since ambiguously the original text still applies to anything other than mortgages and deeds of trust) is as follows:

***“§ 47-18.3. Execution of corporate instruments; authority and proof.***

*(a) Notwithstanding anything to the contrary in the bylaws or articles of ~~incorporation~~, incorporation or the operating agreement or articles of organization, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a domestic or foreign corporation or a domestic or foreign limited liability company by its chairman, president, chief executive officer, a ~~vice president or an vice-president~~, assistant vice-president, treasurer, ~~or~~ chief financial officer, chief operations officer, general counsel, deputy or assistant general counsel, manager, member, director, or other fiduciary duly authorized by the applicable business entity's statutes or governing documents, such an instrument shall be as valid with respect to the rights of innocent third parties as if executed pursuant to authorization from the board of directors, unless the instrument reveals on its face a potential breach of fiduciary obligation. The subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.*

*(b) Any instrument registered in the office of the register of deeds, appearing on its face to be executed by a ~~corporation~~, corporation or limited liability company, foreign or domestic, and bearing a seal which purports to be the corporate seal, setting forth the name of the corporation engraved, lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, is prima facie evidence that the seal is the duly adopted corporate seal of the corporation, that it has been affixed as such by ~~a person~~ an individual duly authorized so to do, that the instrument was duly executed and signed by ~~persons~~ individuals who were officers or agents of the corporation acting by authority duly given by the board of directors, and that any such instrument is the act of the corporation, and shall be admissible in evidence without further proof of execution.*

*(c) Nothing in this section shall be deemed to exclude the power of any corporate or limited liability company representatives to bind the corporation or limited liability company pursuant to express, implied, inherent or apparent authority, ratification, estoppel, or otherwise.*

*(d) Nothing in this section shall relieve corporate or limited liability company officers from liability to the corporation or limited liability company or from any other liability that they may have incurred from any violation of their actual authority.*

*(e) Any corporation or limited liability company may convey an interest in real property which is transferable by instrument which is duly executed by either an officer, manager, member, or agent of said corporation or limited liability company and has attached thereto a signed and attested resolution of the board of directors of said corporation or the managers or members of the limited liability company authorizing the said officer, manager, member, or agent to execute, sign, seal, and attest deeds, conveyances, or other instruments. This section shall be deemed to have been complied with if an attested*

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*resolution is recorded separately in the office of the register of deeds in the county where the land lies, which said resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its authority. Notwithstanding the foregoing, this section shall not require a signed and attested resolution of the board of directors of the corporation or the managers or members of the limited liability company to be attached to an instrument or separately recorded in the case of an instrument duly executed by the corporation's or limited liability company's chairman, president, chief executive officer, a vice-president, assistant vice-president, treasurer, ~~or chief financial officer-officer~~, chief operations officer, general counsel, deputy or assistant general counsel, manager, member, director, or other fiduciary duly authorized by the applicable business entity's statutes or governing documents. All deeds, conveyances, or other instruments which have been heretofore or shall be hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described therein."*

[S.L. 2018-80](#), § 2.2, effective for mortgages and deeds of trust entered before on or after the effective date of the act (approved 6-25-2018).

**(5) Limitations on solicitation of extra fee for copies of recorded documents.**

New G.S. 75-43 prohibits a solicitation charging more than four times the register of deeds fee for copies of recorded documents and use of any form or language that implies a governmental agency or entity requires it. Violations are subject to the unfair trade practice provisions of GS.75-1.1. [S.L. 2018-80](#), § 3.1, effective October 1, 2018.

**(6) Manufactured or Mobile Homes Lien Release.**

G.S. 20-58.4(e1) was amended such that the lien release provisions of the statute can be exercised by “i) the owner of the manufactured home; ii) the owner of real property on which the manufactured home is affixed; or iii) a title insurance company as insurer of an insured owner of real property on which the manufactured home is affixed.” This clarification of earlier amendments will further simplify the ability to clear the titles and complete the conversion to real property for manufactured home permanently affixed to real estate and intended to be permanent improvements. [S.L. 2018-74](#), § 16.3, effective October 1, 2018.

**(7) AOC Omnibus Bill.**

This includes, among other things, notices of foreclosure sale cancellations (G.S. 45-21.21), interim guardianships (G.S. 35A-1114), spousal year’s allowance increase to \$60,000 (G.S. 30-15), distributions to minor’s parent or guardian (G.S. 28A-22-7). [S.L. 2018-40](#), effective when it becomes law (approved June 22, 2018)

**(8) Farm Act of 2018.**

Attorneys will begin to see notices in the tax and GIS records (presumably) for properties that are within one-half mile of a poultry, swine or dairy qualifying farm or within 600 feet of any other qualifying farm or within one-half mile of a voluntary agricultural district, pursuant to G.S. 106-741. However, title examiners and real estate brokers are provided some protection from liability regarding the notices under subsections (c) and (d) which provide:

*(c) In no event shall any cause of action arise out of the failure of a person researching the title of a particular tract to report to any person the proximity of the tract to a qualifying farm or voluntary agricultural district as defined in this Article.*

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*(d) In no event shall any cause of action arise out of the failure of a person licensed under Chapters 93A or 93E of the General Statutes for failure to report to any person the proximity of a tract to a qualifying farm or voluntary agricultural district as defined in this Article.*

[S.L. 2018-113](#), effective when it becomes law (approved 6-27-2018)

(9) **Wake/Chatham/Harnett Boundary Line.**

Some segments were re-established. [S.L. 2018-62](#), effective January 1, 2019.

(10) **Alamance Guilford Boundary Line.**

Some segments were re-established. [S.L. 2018-61](#), effective July 1, 2018.

**Legislation Not Passed (Yet)**

Though the Legislature is set to re-convene on November 27, 2018, the focus may not be on substantive legislation affecting real property. So some of the bills of interest that were not passed in 2017-2018 include:

[Senate Bill 451](#), to clarify G.S. 41-2, regarding joint tenancies with rights of survivorship.

[House Bill 1025](#); [Senate Bill 771](#), the General Statutes Commission Technical Corrections bill which includes multiple issues regarding the Uniform Power of Attorney Act (Chapter 32C) corrections.

[Senate Bill 114](#), Annual Report Modernization which would have brought many more types of entities on-line for research of offices, company officials and other annual report information.

[Senate Bill 778](#), Estate Planning Section Bill which includes various provisions regarding will probate, estate administration, choice of laws and powers of attorney.

Amended and strengthened Data Breach / Identity Theft Act reporting bill, which will probably be raised again in the 2019-2020 Session.

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