



CHICAGO BULL

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The 2016 NC Legislative Short Session: Top Ten for Real Estate Lawyers

This was a very busy legislature for a “short” session, as notable for what *did* pass as for what did *not*. Below (in no particular order of priority) is a Top Ten list for real estate practitioners of bills that did pass, some of which will be discussed in more detail in later posts. For 2017, the list is already quite long of items not completed, not addressed or still desperately needing attention, including technical corrections already seen in these bills! 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) or with your Senators and Representatives!

(1) **Deed of trust recording fees** were standardized up to 35 pages at \$64 in order to facilitate TILA-RESPA INTEGRATED DISCLOSURE (“TRID”) Loan Estimates and Closing Disclosures. All are hoping this will be sufficient to cover about all TRID loans, before triggering the additional \$4.00 per additional page, \$10 additional instrument and \$25 non-conforming format charges. See **S19, S.L. 2016-86**, effective October 1, 2016.

(2) The **Transportation Corridor Official Map Act**, G.S. 136-44.50 *et seq.*, Article 2E of Chapter 136, were modified under **H959, S.L. 2016-90**. The bill was presumably in response to the case of *Kirby v. N.C. Department of Transportation*, 239 N.C.App. 345, COA14-184, 769 S.E.2d 218 (2015) *aff'd* 368 N.C. 847, 786 S.E.2d 919 (Supreme Court of North Carolina, 56PA14-2, June 10, 2016). A moratorium was imposed on new transportation corridor maps while a NC DOT study is in process, due July 1, 2017. In the interim, all transportation corridor maps already adopted pursuant to Article 2E of Chapter 136 of the General Statutes are rescinded. NC DOT will post information on their website, as well as filing information with the city clerks, county tax supervisors, city tax collectors, registers of deeds and city and county planning agencies for all of the statutorily rescinded maps. The bill also included a reduction in the condemnation interest rate – from the legal rate of 8% to a new “legal rate,” the prime lending rate published by the Federal Reserve.

NOTE: The bill § 10.5, also creates a joint tenancy with right of survivorship in motor vehicles.

(3) **NC-SC Boundary Certification** acknowledges the re-surveyed official line between the states based on over 20 years or detailed research and surveying. The Session Law (which will not be a statute) provides for several curative provisions to address issues, such as gas tax, schools, driver’s licenses, in-state tuition, permits, motor vehicle titles and taxes, environmental compliance, utilities, fire

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protection districts, county service districts, water and sewer districts. However, the tax (Part II), title (Part III) and foreclosure (Part IV) provisions left substantial ambiguities for the real estate industry and affected property owners. This is important to all practitioners along any state boundary since upcoming surveys will address the Virginia, then Tennessee, then Georgia boundaries. See [S575](#), S.L. 2016-23.

(4) The **manufactured home bill**, [H870](#), S.L. 2016-59, provides much needed curative legislation for “stale” liens on manufactured home titles. The new provisions, mostly effective July 1, 2017, in a nutshell, include:

G.S. 20-58(c): Lien must state maturity date

G.S. 20-58.3A: Automatic expiration in:

- 30 years unless extended OR
- 90 days after stated maturity date or extended maturity date if renewed OR
- 15 years + 180 days after issuance of lien on title OR
- 10 years after renewal

G.S. 20-58.4 release on owner affidavit of service on lender & no response

G.S. 20-109.2(d) reissuance of title (Effective 8/1/2016).

G.S. 44A-11.1(a1) – exemption of leasehold manufactured home from lien agent provisions

(5) The **Assumed Name bill** [S124](#), S.L. 2016-100, drafted by the General Statutes Commission, requires the recordation of an “assumed business name certificate” in the office of the Register of Deeds of the county in which the person or entity will be engaged in business (even if a non-profit or HOA). The certificate must include:

- 1) The assumed business name.
- 2) A real name of the person engaging in business under the assumed business name. If the business is a partnership other than a limited liability partnership or limited partnership, the assumed business name certificate must include a real name of five general partners or of each general partner, whichever is fewer.
- 3) The nature of the business.
- 4) The street address of the principal place of business.
- 5) Each county where the person uses or will be using the assumed business name to engage in business.

The Secretary of State is to develop and maintain a database for scanned images to be transmitted by the local Registers of Deeds – if funded through the Reserve Fund (decisions for which are still in process at this time). Anyone failing to file the required certificate will incur costs and fees of person obtaining the information elsewhere. Most importantly, the certificates must be renewed, and *existing assumed name* filings must be brought under the new system by July 1 2022.

(6) **Trespass after ejectment OR false evidence of ownership (also called the “squatters” post-foreclosure bill)**, [H283](#), S.L. 2016-26, effective December 1, 2016, is potentially much broader than its title. The bill adds to the existing first degree trespass statutory provisions (G.S. 14-159.12(a), set for the below), the new provision (f) (also below), as follows:

G.S. 14-159.12(a) Offense. – A person commits the offense of first degree trespass if, without authorization, he enters or remains:

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- (1) On premises of another so enclosed or secured as to demonstrate clearly an intent to keep out intruders; or
- (2) In a building of another.

(f) A violation of subsection (a) of this section is a Class I felony and shall include a fine of not less than one thousand dollars (\$1,000) for each violation, if any of the following circumstances exist:

- (1) The offense occurs on real property where the person has reentered after having previously been removed pursuant to the execution of a valid order or writ for possession.
- (2) The offense occurs under color of title where the person has knowingly created or provided materially false evidence of an ownership or possessory interest."

(7) **Uniform Law on Adult Guardianship**, allows for an abbreviated procedure for recognition in North Carolina foreign adult incompetency proceedings and guardianships, effective for guardianship proceedings on or after December 1, 2016. The guardian appointed in another state could register the foreign guardianship in the NC court via certified copies of the foreign court's order and letters of office. N.C.G.S. §§ 35B-19 and 35B-20. The guardian may then exercise powers under NC law, though still requiring ancillary guardianship, and compliance with N.C.G.S. 35A-1280, 35A-1301 *et seq.* for sale of real property and petition for removal of assets. See [H817](#), **S.L. 2016-72**

(8) **"Vested rights" in multi-phased developments** (over 100 acres, subject to a master development plan) are recognized, but with the "vesting" limited to a period of seven years from site approval, under [H483](#), **S.L. 2016-111**. Presumably this is in response to the recent condemnation case, *Town of Midland vs. Wayne*, 229 N.C.App. 481, 748 S.E.2d 35 (2013), *modified and affirmed in part, reversed in part and remanded*, 368 N.C. 55, 773 S.E.2d 301 (2015). In that case, the N.C. Supreme Court recognized the vested rights (and resulting loss) of multiple related owners with different tracts under a multi-phased development plan approved in 1997 and pursued through phased development since then, even if the particular condemnation by the Town for a natural gas pipeline in 2009 did not cross all of the owners' tracts.

(9) **UCC Accord & Satisfaction by check**, [S807](#), **S.L. 2016-52**, amends G.S. 25-3-311(c) if the payee-creditor has either communicated that the debt is disputed OR sends repayment to the debtor within 90 days of the payment. Effective October 1, 2016, and applicable to negotiable instruments tendered in full satisfaction of a claim on or after that date, revised G.S. 25-3-311(c) provides as follows:

(c) Subject to subsection (d) [in which creditor knew the payment was tendered in full satisfaction of the claim] of this section, a claim is not discharged under subsection (b) of this section if either of the following applies:

- (1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.
- (2) The claimant, whether or not an organization, proves that within 90 days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. This subdivision does not

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apply if the claimant is an organization that sent a statement complying with clause (i) of subdivision (1) of this subsection.

(10) **Practice of Law**, now carves out on-line forms – the so-called “LegalZoom” compromise – [H436, S.L. 2016-60](#), effective June 30, 2016, with the key issues addressed (in relevant part):

1. Adding the carveout below to G.S. 84-2.1(b) (formerly limited to new (b)(1)) that “[t]he phrase "practice law" does not encompass:

. . . .

(2) The selection or completion of a preprinted form by a real estate broker licensed under Chapter 93A of the General Statutes, when the broker is acting as an agent in a real estate transaction and in accordance with rules adopted by the North Carolina Real Estate Commission, or the selection or completion of a preprinted residential lease agreement by any person or Web site provider. Nothing in this subdivision or in G.S. 84-2.2 shall be construed to permit any person or Web site provider who is not licensed to practice law in accordance with this Chapter to prepare for any third person any contract or deed conveying any interest in real property, or to abstract or pass upon title to any real property, which is located in this State.

2. Adding a new section G.S. 84-2.2. Exemption and additional requirements for Web site providers, as follows:

(a) The practice of law, including the giving of legal advice, as defined by G.S. 84-2.1 does not include the operation of a Web site by a provider that offers consumers access to interactive software that generates a legal document based on the consumer's answers to questions presented by the software, provided that all of the following are satisfied:

(1) The consumer is provided a means to see the blank template or the final, completed document before finalizing a purchase of that document.

(2) An attorney licensed to practice law in the State of North Carolina has reviewed each blank template offered to North Carolina consumers, including each and every potential part thereof that may appear in the completed document. The name and address of each reviewing attorney must be kept on file by the provider and provided to the consumer upon written request.

(3) The provider must communicate to the consumer that the forms or templates are not a substitute for the advice or services of an attorney.

(4) The provider discloses its legal name and physical location and address to the consumer.

(5) The provider does not disclaim any warranties or liability and does not limit the recovery of damages or other remedies by the consumer.

(6) The provider does not require the consumer to agree to jurisdiction or venue in any state other than North Carolina for the resolution of disputes between the provider and the consumer.

(7) The provider must have a consumer satisfaction process. All consumer concerns involving the unauthorized practice of law made to the provider shall be referred to the North Carolina State Bar. The consumer satisfaction process must be conspicuously displayed on the provider's Web site.

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(b) A Web site provider subject to this section shall register with the North Carolina State Bar prior to commencing operation in the State and shall renew its registration with the State Bar annually. The State Bar may not refuse registration.

(c) Each Web site provider subject to this section shall pay an initial registration fee in an amount not to exceed one hundred dollars (\$100.00) and an annual renewal fee in an amount not to exceed fifty dollars (\$50.00)."

3. They did provide a "revisit" provision regarding G.S. 84-2.2, to the extent: "The General Assembly shall review the implementation of [G.S. 84-2.2] and consider whether the provision should be modified or discontinued by June 30, 2018."

There were a lot more, but these are the most important real estate related statutory changes.

Enjoy!

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