



**CHICAGO TITLE INSURANCE COMPANY
NORTH CAROLINA**

THE END OF TOWER V. ZELL
CHICAGO BULL

The General Assembly recently passed a law that allows an owner of real property to create easements, restrictions and conditions on his/her property. Effective October 1, 1997, N.C.G.S. 3906.4(a). will provide:

The holder of legal or equitable title of an interest in real property may create, grant, reserve, or declare valid easements, restrictions, or conditions of record burdening or benefiting the same interest in real property.

The statute is a result of the uproar which followed the Court of Appeals decision in Tower v. Zell, 120 N.C. App. 136, 461 S.E. 2d 17 (1995). In that case the court held an owner of two adjoining tracts could not grant itself an easement across one of the tracts to benefit the other tract while maintaining title to both tracts. This sent shivers down the spines of real property attorneys and their insurers, as developers routinely grant easements across their own property in restrictive covenants.

The new statute allows such easements and applies retroactively, unless the easement, restriction or condition is currently the subject of litigation or was previously the subject of a final judgment.