

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 527*

Short Title: Notice of Settlement Act.

(Public)

Sponsors: Senator Ezzell.

Referred to: Judiciary I.

March 20, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A MEANS OF RECORDING A NOTICE DOCUMENT
3 PRIOR TO A REAL ESTATE CLOSING WHICH WOULD FIX AT THAT TIME
4 THE PRIORITY OF TITLE DOCUMENTS RECORDED LATER IN
5 CONNECTION WITH THAT REAL ESTATE CLOSING AS RECOMMENDED
6 BY THE GENERAL STATUTES COMMISSION.

7 The General Assembly of North Carolina enacts:

8 Section 1. The General Statutes are amended by adding a new Chapter 47D
9 to read:

10 **“CHAPTER 47D.**
11 **"NOTICE OF SETTLEMENT ACT.**

12 **"§ 47D-1. Short title.**

13 This Chapter shall be known as the ‘Notice of Settlement Act.’

14 **"§ 47D-2. Purpose.**

15 The underlying purpose and policy of this Chapter is to modernize the law
16 governing the transfer of a legal or equitable title to real property, or interests therein,
17 by simplifying the settlement of real property transactions and facilitating the
18 disbursement of funds in connection with the settlement of real property transactions.

19 **"§ 47D-3. Definitions.**

20 Unless it is plainly evident from the context that a different meaning is intended, as
21 used herein:

- 22 (1) ‘Business day’ means a day during which the office of the register of
23 deeds of the county in which the real property which is the subject of a
24 notice of settlement is open to the public for the filing of documents.

- 1 (2) 'Deed' means any instrument conveying a legal or equitable title to, or
2 an interest in, real property for other than security purposes.
- 3 (3) 'Grantee' means the person to whom a legal or equitable title to real
4 property, or an interest therein, shall be conveyed pursuant to a
5 settlement.
- 6 (4) 'Mortgage' means a mortgage, deed of trust, or other instrument
7 conveying a legal or equitable interest in real property for security
8 purposes.
- 9 (5) 'Mortgagor' means the person executing a mortgage pursuant to a
10 settlement.
- 11 (6) 'Mortgagee' means the grantee, beneficiary, or secured party in a
12 mortgage.
- 13 (7) 'Person' means any individual, firm, corporation, governmental unit or
14 subdivision, or other legal entity that may hold a legal or equitable title
15 to, or interest in, real property under the laws of the State of North
16 Carolina.
- 17 (8) 'Settlement' means the delivery of the instrument conveying a legal or
18 equitable title to, or interest in, real property to the grantee for valuable
19 consideration as agreed upon by the parties to the transaction.
- 20 (9) 'Settlement attorney' means the attorney signing the notice of
21 settlement authorized by this Chapter.

22 **"§ 47D-4. Instrument; designation; filing; index of notice of settlement; fee.**

23 Any attorney licensed to practice law in the State of North Carolina having
24 responsibilities with reference to a settlement that he in good faith reasonably believes
25 will occur within seven business days or any person who holds of record the legal or
26 equitable title to, or interest in, real property to be conveyed pursuant to a settlement
27 may file an instrument designated a 'notice of settlement' in the office of the register of
28 deeds of the county in which the real property is situated. The notice shall be indexed in
29 the indexes provided for real estate conveyances, shall be filed as a real estate
30 instrument, and shall be indexed under the name of the person who holds of record the
31 legal or equitable title to, or interest in, the real property to be conveyed pursuant to a
32 settlement as grantor or grantors. No indexing under the 'grantee' portion of the indexes
33 shall be required. The register of deeds shall charge a fee for such filing in accordance
34 with that charged for the filing of deeds. The fee shall be paid by the person conveying
35 the legal or equitable title to, or interest in, real property to a grantee, unless otherwise
36 agreed by the parties to the transaction.

37 **"§ 47D-5. Signature; content; acknowledgement.**

38 The notice of settlement shall be signed and acknowledged in accordance with G.S.
39 47-38 by the settlement attorney or other person authorized by this Chapter to file a
40 notice of settlement. Such notice shall set forth the address and telephone number of
41 such attorney or person, the name or names of the person or persons who hold of record
42 the legal or equitable title to, or interest in, the real property to be conveyed pursuant to
43 a settlement, and a legal description of the real property.

44 **"§ 47D-6. Form.**

1 The form of the notice of settlement shall be substantially as follows:

2 Name(s):)

3 (Current owner(s) of record))

4)

5)

6)

7 (Street address))

8)

9)

10 (City or town, and state))

11)

12 AND)

13)

14 (Name of grantee(s)))

15)

16 AND) NOTICE OF SETTLEMENT

17)

18)

19)

20 (Name of settlement attorney,)

21 if any)

22)

23 (Street address))

24)

25 , North Carolina)

26 City or town))

27)

28)

29 (Telephone number))

30)

31 NOTICE is hereby given pursuant to Chapter 47D of the North Carolina
32 General Statutes of a settlement affecting title to the following described real property
33 of the captioned record owner or owners:

34)
35 (legal description - mandatory)

36)
37 (street address and/or tax map references are optional)
38)

39)
40 This notice shall be effective from the time of, and for seven business days
41 following the day of, filing of this notice in the office of the register of deeds of the
42 county in which the above real property is situated.

43)
44) Signature of settlement attorney

or record owner or owners

North Carolina, _____ County

I (here give the name of the official and his official title), do hereby certify that (here give the name of the settlement attorney or record owner or owners) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an official seal is required by law) official seal this the _____ day of _____ (year).

Official Seal

Signature of officer

Prepared by the above named settlement attorney or

_____ .

"§ 47D-7. Constructive notice; priority.

(a) A deed or mortgage delivered pursuant to a settlement and properly registered in the county where the real property is situated within seven business days following the day of filing of a notice of settlement pursuant to this Chapter with respect to such settlement, shall impart constructive notice to purchasers for value, lien creditors and other persons, and establish priority in such real estate in the grantee or mortgagee under the deed or mortgage from the time of filing of the notice of settlement; provided the deed or mortgage registered pursuant to the settlement bears a legend, signed by the signatory of the notice of settlement, that is in a form and substance substantially as follows:

'This instrument was delivered at the settlement referred to in the notice of settlement filed by the undersigned on _____ (date) _____.'

(b) Notwithstanding the provisions of subsection (a) of this section, the filing of a notice of settlement shall not affect the lien priority of any person who first performs or furnishes labor or professional design or surveying services or furnishes materials pursuant to a contract, either express or implied, with a person who holds the legal or equitable title to the real property for the making of an improvement thereon, between the time of filing of a notice of settlement and the registration of a deed or mortgage delivered pursuant to a settlement in the county where the real property is situated. The

1 lien priority of such person shall be determined under the provisions of Articles 2 and 3
2 of Chapter 44A as if the notice of settlement had not been filed; and as to such person,
3 the priority of the grantee or mortgagee under the deed or mortgage delivered pursuant
4 to a settlement shall date from the time of the registration of the deed or mortgage in the
5 county where the real estate is situated.

6 **"§ 47D-8. Duration of notice; priority; number of filings.**

7 (a) The notice of settlement shall be effective as provided in G.S. 47D-7(a) from
8 the time of, and for seven business days following the day of, filing of the notice of
9 settlement pursuant to this Chapter. If the deed or mortgage delivered pursuant to a
10 settlement for which the notice was filed has not been properly registered in the county
11 where the real property is situated within the seven business day period, the notice of
12 settlement shall become absolutely void, and the priority of the grantee or mortgagee
13 under the deed or mortgage registered subsequent to said seven business day period
14 shall date from the time of registration of the deed or mortgage, and not from the time of
15 the filing of the notice of settlement.

16 (b) Only one notice of settlement may be filed with respect to any settlement and
17 if a settlement does not occur within seven business days following the day of the filing
18 of the notice of settlement, no further or additional notices may be filed with respect to
19 the settlement for which the notice was filed.

20 **"§ 47D-9. Early termination of notice of settlement.**

21 The signatory of a notice of settlement filed pursuant to this Chapter may terminate
22 the notice at any time during the duration of its effectiveness as provided in G.S. 47D-
23 8(a) by filing a notice of termination in a form substantially as follows:

24 Name(s):)
25 (Current owner(s) of record))
26)
27)
28)
29 (Street address))
30)
31)
32 (City or town, and state))
33)
34 AND)
35)
36)
37 (Name of grantee(s)))
38)
39 AND)
40)
41)
42 (Name of settlement attorney,)
43 if any))
44)

TERMINATION OF
NOTICE OF SETTLEMENT

