

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 852

Short Title: Real Property Technical Corrections. (Public)

Sponsors: Representatives Jordan and Zachary (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary III, if favorable, Finance

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE CORRECTIONS AND OTHER AMENDMENTS TO VARIOUS
STATUTES IMPACTING REAL PROPERTY OWNERSHIP AND TO MAKE OTHER
CONFORMING CHANGES, AS RECOMMENDED BY THE REAL PROPERTY
SECTION OF THE NORTH CAROLINA STATE BAR ASSOCIATION.

The General Assembly of North Carolina enacts:

PART I. MORTGAGE AND DEED OF TRUST CHANGES

SECTION 1.1. G.S. 39-13 reads as rewritten:

"§ 39-13. Spouse need not join in purchase-money mortgage.

~~The purchaser of real estate who does not pay the whole of the purchase money at the time when he or she takes a deed for title may make a mortgage or deed of trust for securing the payment of such purchase money, or such part thereof as may remain unpaid, which 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 ~~his or her~~ the purchaser's spouse as well as the purchaser, without requiring the spouse to join in the execution of ~~such~~ the mortgage or deed of trust."~~

SECTION 1.2. G.S. 161-10(a) reads as rewritten:

"§ 161-10. Uniform fees of registers of deeds.

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

...

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. – For registering or filing any deed of trust or mortgage the fee shall be sixty-four dollars (\$64.00) for the first 35 pages plus four dollars (\$4.00) for each additional page or fraction thereof.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars (\$10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have different legal consequences or intent, each of which is separately executed and acknowledged and could be recorded alone.



1 For recording records of satisfaction, or the cancellation of record by any
 2 other means, of deeds of trust or mortgages, there shall be no fee. In all other
 3 cases, the fees provided in subdivision (1) of this subsection shall apply to
 4 the registration or filing of any subsequent instrument that relates to a
 5 previously recorded deed of trust or mortgage. For the purposes of this
 6 section, the term "subsequent instrument" has the same meaning as set forth
 7 in G.S. 161-14.1(a)(3).

8"

9 **SECTION 1.3.** G.S. 161-14.1(a) reads as rewritten:

10 **"§ 161-14.1. Recording subsequent entries as separate instruments.**

11 (a) As used in this section, the following terms mean:

12 (1) Original instrument. – The previously recorded instrument that is modified,
 13 amended, restated, supplemented, assigned, satisfied, terminated, revoked, or
 14 cancelled by a subsequent instrument.

15 ...

16 (3) Subsequent instrument. – Any instrument presented for registration that
 17 indicates in its title or within the first two pages of its text that it is intended
 18 or purports to modify, amend, restate, supplement, assign, satisfy, terminate,
 19 revoke, or cancel a previously registered instrument. Examples of
 20 subsequent instruments include the following:

21 ...

22 i. An instrument that amends, modifies, or restates an original
 23 instrument, such as an amendment or modification
 24 agreement-agreement or an amended and restated instrument.

25"

26
 27 **PART II. PROBATE AND REGISTRATION CHANGES**

28 **SECTION 2.1.** G.S. 47-17.1 reads as rewritten:

29 **"§ 47-17.1. Documents registered or ordered to be registered in certain counties to**
 30 **designate draftsman; exceptions.**

31 The register of deeds of any county in North Carolina shall not accept for registration, nor
 32 shall any judge order registration pursuant to G.S. 47-14, of any deeds or deeds of trust,
 33 executed after January 1, 1980, unless the first page of the deeds or deeds of trust bears an entry
 34 showing the name of either the person or law firm who drafted the instrument. This section
 35 shall not apply to other instruments presented for registration. For the purposes of this section,
 36 the register of deeds shall accept the verbal or written representation of the individual
 37 presenting the deed or deed of trust for registration, or any individual reasonably related to the
 38 transaction, including, but not limited to, any employee of a title insurance company or agency
 39 purporting to be involved with the transaction, that the individual or law firm listed on the first
 40 page is a validly licensed attorney or validly existing law firm in this State or another
 41 jurisdiction within the United States."

42 **SECTION 2.2.** G.S. 47-18.3 reads as rewritten:

43 **"§ 47-18.3. Execution of corporate instruments; authority and proof.**

44 (a) Notwithstanding anything to the contrary in the bylaws or articles of ~~incorporation,~~
 45 incorporation or the operating agreement or articles of organization, when it appears on the face
 46 of an instrument registered in the office of the register of deeds that the instrument was signed
 47 in the ordinary course of business on behalf of a domestic or foreign corporation or a domestic
 48 or foreign limited liability company by its chairman, president, chief executive officer, a
 49 vice-president or an assistant vice-president, treasurer, ~~or~~ chief financial officer, chief
 50 operations officer, general counsel, deputy or assistant general counsel, manager, member,
 51 director, or any similar business titles, such an instrument shall be as valid with respect to the

1 rights of innocent third parties as if executed pursuant to authorization from the board of
2 directors, unless the instrument reveals on its face a potential breach of fiduciary obligation.
3 The subsection shall not apply to parties who had actual knowledge of lack of authority or of a
4 breach of fiduciary obligation.

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

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

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

21 (e) Any corporation or limited liability company may convey an interest in real
22 property which is transferable by instrument which is duly executed by either an officer,
23 manager, member, or agent of said corporation or limited liability company and has attached
24 thereto a signed and attested resolution of the board of directors of said corporation or the
25 managers or members of the limited liability company authorizing the said officer, manager,
26 member, or agent to execute, sign, seal, and attest deeds, conveyances, or other instruments.
27 This section shall be deemed to have been complied with if an attested resolution is recorded
28 separately in the office of the register of deeds in the county where the land lies, which said
29 resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its
30 authority. Notwithstanding the foregoing, this section shall not require a signed and attested
31 resolution of the board of directors of the corporation or the managers or members of the
32 limited liability company to be attached to an instrument or separately recorded in the case of
33 an instrument duly executed by the corporation's chairman, president, chief executive officer, a
34 vice-president, assistant vice-president, treasurer, ~~or~~ chief financial officer, officer, chief
35 operations officer, general counsel, deputy or assistant general counsel, manager, member,
36 director, or any similar business title. All deeds, conveyances, or other instruments which have
37 been heretofore or shall be hereafter so executed shall, if otherwise sufficient, be valid and shall
38 have the effect to pass the title to the real or personal property described therein."
39

40 PART III. EFFECTIVE DATES

41 **SECTION 3.1.** Part I of this act is effective when this act becomes law and applies
42 to mortgages and deeds of trust entered into before, on, or after that date. Part II of this act is
43 effective when this act becomes law and applies to instruments presented for registration on or
44 after that date. The remainder of this act is effective when it becomes law.