

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 1354\*

Short Title: Improve Torrens Law.

(Public)

Sponsors: Representatives Brawley; Decker, Goodwin, Gulley, Weatherly, and Yongue.

Referred to: Judiciary II, if Favorable, Finance.

May 20, 1998

A BILL TO BE ENTITLED

AN ACT TO IMPROVE AND MODERNIZE THE TORRENS LAND TITLE  
REGISTRATION PROCEDURES OF THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 43-5 reads as rewritten:

**"§ 43-5. Fees of officers.**

The examiner ~~hereinbefore~~ provided for in G.S. 43-4 shall ~~receive, as may be allowed by the clerk, a minimum fee of five dollars (\$5.00) for such examination of each title of property assessed upon the tax books at the amount of five thousand dollars (\$5,000) or less; for each additional thousand dollars (\$1,000) of assessed value of property so examined he shall receive fifty cents (50¢); for examination outside of the county he shall receive a reasonable allowance.~~ be compensated as provided in G.S. 1-408. All plats required by this Chapter shall comply with G.S. 47-30 and shall be recorded in the office of the register of deeds, and the recording fee shall be that specified in G.S. 161-10 for recording plats. There shall be allowed to the register of deeds for copying the plot upon registration of titles book two dollars (\$2.00) for the first page and one dollar (\$1.00) for each succeeding page; The fee for copying or recording new certificates under this Chapter, two dollars (\$2.00) for the first page and one dollar (\$1.00) for each succeeding page; Chapter shall be that specified in G.S. 161-10 for recording instruments in general. The fee for issuing the certificate and new certificates under this Chapter, fifty cents

1 ~~(50¢) for each; Chapter shall be that specified in G.S. 161-10 for issuing certified copies.~~  
2 The fee for noting the entries or memorandum required and for the entries noting the  
3 cancellation of mortgages and all other entries, if any, herein provided for, fifty cents  
4 (50¢) for each entry. The county or other surveyor employed under the provisions of this  
5 Chapter shall not be allowed to charge more than forty cents (40¢) per hour for his time  
6 actually employed in making the survey and the map, except by agreement with the  
7 petitioner, but he shall be allowed a minimum fee of two dollars (\$2.00). for shall be that  
8 specified in G.S. 161-10 for recording instruments in general.

9 There shall be no other fees allowed of any nature except as herein provided, and the  
10 ~~bond bonds~~ of the ~~register, register and clerk and sheriff~~ shall be liable in case of any  
11 mistake, malfeasance, or misfeasance as to the duties imposed upon them by this Chapter  
12 in as full a manner as such bond is now liable by law."

13 Section 2. G.S. 43-13 reads as rewritten:

14 **"§ 43-13. Manner of registration.**

15 (a) ~~The county commissioners of each county shall provide for the register of~~  
16 ~~deeds in the county a book, to be called Registration of Titles, in which the register shall~~  
17 ~~enroll, register and index, as hereinafter provided, the decree of title before mentioned~~  
18 ~~and the copy of the plot contained in the petition, and all subsequent transfers of title, and~~  
19 ~~note all voluntary and involuntary transactions in any wise affecting the title to the land,~~  
20 ~~authorized to be entered thereon. thereon in the real property records and indexes. The~~  
21 ~~certificate of title and the entries for voluntary and involuntary transactions shall be~~  
22 ~~indexed on the grantor index in the name 'Registered estate no. ....' and on the grantee~~  
23 ~~index in the name of the registered owner. If the title be subject to trust, condition,~~  
24 ~~encumbrance or the like, the words 'in trust,' 'upon condition,' 'subject to encumbrance,'~~  
25 ~~'life estate,' or like appropriate insertion shall indicate the fact and fix any person dealing~~  
26 ~~with such certificate with notice of the particulars of such limitations upon the title as~~  
27 ~~appears upon the registry. registry, and no new or additional certificate number shall be~~  
28 ~~issued in such circumstances. No erasure, alteration, or amendment shall be made upon~~  
29 ~~the registry after entry and issuance of a certificate of title except by order of a court of~~  
30 ~~competent jurisdiction.~~

31 (b) When a voluntary or involuntary transaction is entered on a certificate of title,  
32 the certificate with the new entry shall be copied and recorded and indexed in the real  
33 property records and indexes. The copied certificate shall be indexed on the grantor  
34 index in the name 'Registered estate no. ....' and on the grantee index in the name of the  
35 registered owner."

36 Section 3. Chapter 43 of the General Statutes is amended by adding a new  
37 section to read:

38 **"§ 43-30.1. Correction of registered title by the register of deeds upon death of**  
39 **spouse, life tenant, or joint tenant.**

40 Upon the death of a life tenant in registered property, the spouse of a registered  
41 owner, or a joint tenant with right of survivorship, any surviving claimant under the  
42 registered title may apply to the register of deeds for a correction to the certificate of title.  
43 Upon receipt of the applicable death certificate, the register of deeds may make

1 appropriate changes, deletions, or corrections to the certificate of title. Any interested  
2 party may appeal the register of deeds' changes to the certificate of title under this section  
3 by filing with the clerk of superior court a notice of appeal within 30 days of the register  
4 of deeds' decision. If not appealed within 30 days, any changes by the register of deeds  
5 to the certificate of title pursuant to this section shall become final."

6 Section 4. G.S. 43-31 reads as rewritten:

7 **"§ 43-31. When whole of land conveyed.**

8 Whenever the whole of any registered estate is transferred or conveyed the same shall  
9 be done by a transfer or conveyance ~~upon or~~ attached to the certificate substantially as  
10 follows:

11 ~~A.B. and wife~~ The owners (giving the names of the parties owning land described in  
12 the certificate ~~and their wives~~) hereby, in consideration of ..... dollars, sell and convey  
13 to ~~C. Bill~~ the purchaser (giving name of purchaser) the lot or tract of land, as the case may  
14 be, described in the certificate of title hereto attached. The transfer shall be indexed on  
15 the grantor and grantee indexes in the same manner as deeds are indexed.

16 The same shall be signed and properly acknowledged by the parties ~~and their wives~~  
17 and shall have the full force and effect of a deed in fee simple: Provided, that if the sale  
18 shall be in trust, upon condition, with power to sell or other unusual form of conveyance,  
19 the same shall be set out in the deed, and shall be entered upon the registration of titles  
20 book as hereinafter provided; that upon presentation of the transfer, together with the  
21 certificate of title, to the register of deeds, the transaction shall be duly noted and  
22 registered in accordance with the provisions of this Chapter, and certificate of title so  
23 presented shall be canceled and a new certificate with the same number issued to the  
24 purchaser thereof, which new certificate shall fully refer by number and also by name of  
25 holder to former certificate just canceled."

26 Section 5. G.S. 43-32 reads as rewritten:

27 **"§ 43-32. Conveyance of part of registered land.**

28 The transfer of any part of a registered estate, either of an undivided interest therein or  
29 of a separate lot or parcel thereof, shall be made by an instrument of the transfer or  
30 conveyance similar in form to that herein provided for the transfer of the whole of any  
31 registered estate, to which shall be attached the certificate of title of such registered  
32 estate. In case of the transfer of an undivided interest in a registered estate, such  
33 instrument or transfer or conveyance shall accurately specify and describe the extent and  
34 amount of the interest transferred and of the interest retained, respectively. In case of a  
35 transfer of a separate lot or parcel of a registered estate, such instrument of transfer or  
36 conveyance shall describe the lot or parcel transferred either by metes and bounds or by  
37 reference to the map or plat attached thereto, and shall in every case be accompanied by a  
38 map or plat having clearly indicated thereon the boundaries of the whole of the registered  
39 estate and of the lot or parcel to be ~~transferred~~ transferred, but a new survey of the  
40 original registered estate shall not be required. The transfer shall be indexed on the  
41 grantor and grantee indexes in the same manner as deeds are indexed."

42 Section 6. G.S. 43-33 reads as rewritten:

43 **"§ 43-33. Duty of register of deeds upon part conveyance.**

1 Upon presentation to the register of deeds of an instrument of transfer or conveyance  
2 of an undivided interest in a registered estate, in proper form as above prescribed, it shall  
3 be his duty to cancel the certificate of title attached thereto and to issue to each owner a  
4 new certificate of title, each bearing the same number as the original certificate of title  
5 and accurately specifying and describing the extent and the amount of the interest  
6 retained or of the interest transferred, as the case may be. Upon presentation to the  
7 register of deeds of an instrument of transfer or conveyance of a separate lot or parcel of  
8 a registered estate, in proper form as above prescribed, it shall be his duty to cancel the  
9 certificate of the title attached thereto and to issue to each owner a new certificate of title  
10 bearing a new number and describing the separate lot or parcel retained or transferred, as  
11 the case may be, either by metes and bounds or by reference to a map or plat thereto  
12 attached. The register of deeds is responsible for determining that each new certificate of  
13 title contains a description of the property transferred or retained but not for verifying the  
14 accuracy of any description."

15 Section 7. G.S. 43-45 reads as rewritten:

16 "**§ 43-45. Docketed judgments.**

17 Whenever any judgment of the superior court of the county in which the registered  
18 estate is situated shall be duly docketed in the office of the clerk of the superior court, or  
19 any lien or notice of lis pendens is filed in the office of the clerk of the superior court, it  
20 shall be the duty of the ~~clerk~~-clerk, upon the request of any interested party, to certify the  
21 same to the register of deeds. The register of deeds shall ~~thereupon~~-enter upon the  
22 certificate of title, the date, and the amount of the judgment, and the same shall be a lien  
23 upon such land as fully as such docketed judgment would be a lien upon unregistered  
24 lands of the judgment ~~debtor~~-debtor, and the register of deeds is authorized to recover the  
25 certificate of title pursuant to G.S. 43-40. The register of deeds shall also enter notice of  
26 the judgment, lien, or lis pendens on the record copy of the certificate of title, and the  
27 encumbrance is valid against the registered estate from the time it is noted on the record  
28 copy."

29 Section 8. G.S. 43-46 reads as rewritten:

30 "**§ 43-46. Notice of delinquent taxes filed.**

31 It shall be the duty of the ~~sheriff or other collector of taxes or assessments of each county~~  
32 ~~and town~~-tax collector of each taxing unit, not later than the first day of March in each year,  
33 June 30 following the date the taxes became delinquent, to file an exact memorandum of  
34 the delinquency, if any, of any registered land for the nonpayment of the taxes or  
35 assessments thereon, including ~~penalty therefor~~-interest, in the office of the register of  
36 deeds for registration; and if such officer fails to perform such duty, and there shall be  
37 subsequent to such day a transfer of the land as hereinbefore provided, the grantee shall  
38 acquire a good title free from any lien for such taxes and assessments, and ~~such sheriff or~~  
39 ~~other the~~ collector of taxes and his sureties shall be liable for the payment of the taxes and  
40 assessments with the ~~penalty and~~ interest thereon. The register of deeds shall enter the  
41 notice of delinquency on the record copy of the certificate of title, and the tax lien shall  
42 be valid against the registered estate from the time it is noted on the record copy."

43 Section 9. G.S. 43-47 is repealed.

1 Section 10. G.S. 43-48 reads as rewritten:

2 "**§ 43-48. Foreclosure of tax lien. Sale of unredeemed land; application of proceeds.**

3 ~~If there be no redemption of land under the preceding section [G.S. 43-47], in~~  
4 ~~accordance with the law, it shall be the duty of the sheriff or other collector of taxes in~~  
5 ~~the county or town in which the land lies to sell the same at public auction for cash, first~~  
6 ~~giving such notice of the time and place of sale as is prescribed for execution sales, and~~  
7 ~~the proceeds of sale shall be applied, first, to the payment of all taxes and assessments~~  
8 ~~then due to the State, county and town, with interest, penalty and costs; second, to the~~  
9 ~~payment of all sums paid by any person who purchased at the former tax sale, with~~  
10 ~~interest and the additional sum of five dollars (\$5.00); third, to the payment of a~~  
11 ~~commission to the officer making the sale of five per centum (5%) on the first three~~  
12 ~~hundred dollars (\$300.00) and two per centum (2%) on the residue of the proceeds;~~  
13 ~~fourth, to the satisfaction of any liens other than the taxes and assessments registered~~  
14 ~~against the land in the order of their priorities; fifth, and the surplus, if any, to the person~~  
15 ~~in whose name the land was previous to sale for taxes, subject to redemption as provided~~  
16 ~~herein, his heirs, personal representatives or assigns. The lien for ad valorem taxes may~~  
17 ~~be foreclosed and the property sold pursuant to G.S. 105-375. A note of the sale under~~  
18 ~~this section shall be duly registered, and a certificate shall be entered and an owner's~~  
19 ~~certificate issued in favor of the purchaser in whom title shall be thereby vested as~~  
20 ~~registered owner, in accordance with the provisions of this Chapter. Nothing in this~~  
21 ~~section shall be so construed as to affect or divert the title of a tenant in reversion or~~  
22 ~~remainder to any real estate which has been returned delinquent and sold on account of~~  
23 ~~the default of the tenant for life in paying the taxes or assessments thereon."~~

24 Section 11. This act becomes effective January 1, 1999.