

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 852
Senate Finance Committee Substitute Adopted 6/14/18

Short Title: Real Prop. Tech Correc/Solicitation of Copies.

(Public)

Sponsors:

Referred to:

April 13, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CORRECTIONS AND OTHER AMENDMENTS TO VARIOUS
3 STATUTES IMPACTING REAL PROPERTY OWNERSHIP AND TO MAKE OTHER
4 CONFORMING CHANGES, AS RECOMMENDED BY THE REAL PROPERTY
5 SECTION OF THE NORTH CAROLINA STATE BAR ASSOCIATION, AND TO
6 REGULATE THE SOLICITATION OF A FEE IN EXCHANGE FOR COPIES OF
7 RECORDED DOCUMENTS.

8 The General Assembly of North Carolina enacts:

9
10 **PART I. MORTGAGE AND DEED OF TRUST CHANGES**

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

12 "**§ 39-13. Spouse need not join in purchase-money mortgage.**

13 ~~The purchaser of real estate who does not pay the whole of the purchase money at the time~~
14 ~~when he or she takes a deed for title may make a mortgage or deed of trust for securing the~~
15 ~~payment of such purchase money, or such part thereof as may remain unpaid, which A mortgage~~
16 ~~or deed of trust given by the purchaser of real property to secure a loan, the proceeds of which~~
17 ~~were used to pay all or a portion of the purchase price of the encumbered real property, regardless~~
18 ~~of whether the secured party is the seller of the real property or a third-party lender, shall be good~~
19 ~~and effectual against his or her the purchaser's spouse as well as the purchaser, without requiring~~
20 ~~the spouse to join in the execution of such the mortgage or deed of trust."~~

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

22 "**§ 161-10. Uniform fees of registers of deeds.**

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

26 ...

27 (1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and
28 Mortgages. – For registering or filing any deed of trust or mortgage the fee
29 shall be sixty-four dollars (\$64.00) for the first 35 pages plus four dollars
30 (\$4.00) for each additional page or fraction thereof.

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



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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 the
 4 registration or filing of any subsequent instrument that relates to a previously
 5 recorded deed of trust or mortgage. For the purposes of this section, the term
 6 "subsequent instrument" has the same meaning as set forth in
 7 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 subsequent
 20 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, executed
 33 after January 1, 1980, unless the first page of the deeds or deeds of trust bears an entry showing
 34 the name of either the person or law firm who drafted the instrument. This section shall not apply
 35 to other instruments presented for registration. For the purposes of this section, the register of
 36 deeds shall accept the written representation of the individual presenting the deed or deed of trust
 37 for registration, or any individual reasonably related to the transaction, including, but not limited
 38 to, any employee of a title insurance company or agency purporting to be involved with the
 39 transaction, that the individual or law firm listed on the first page is a validly licensed attorney
 40 or validly existing law firm in this State or another jurisdiction within the United States."

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

42 **"§ 47-18.3. Execution of corporate instruments; authority and proof.**

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

1 instrument reveals on its face a potential breach of fiduciary obligation. The subsection shall not
2 apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary
3 obligation.

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

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

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

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

39 PART III. REGULATE SOLICITATION OF COPIES

40 **SECTION 3.1.** Article 1 of Chapter 75 of the General Statutes is amended by adding
41 a new section to read:

42 "**§ 75-43. Solicitation of a fee for copy of recorded documents.**

43 (a) Any person, firm, or corporation soliciting a fee in exchange for providing a copy of
44 a record available at the register of deeds office shall state on the top of the document used for
45 the solicitation, in conspicuous type, all of the following:

- 46 (1) That the solicitation is not from a State agency or a local unit of government.
- 47 (2) That no action is legally required by the person being solicited.
- 48 (3) The fee for obtaining a copy of the record directly from the register of deeds
49 that has custody of the record.
- 50 (4) The information necessary to contact the register of deeds that has custody of
51 the record.

1 (5) The name and physical address of the person, firm, or corporation soliciting
2 the fee.

3 (b) A document used for a solicitation governed by this section shall not contain deadline
4 dates or be in a form or contain language designed to make the document appear to be issued by
5 a State agency or local unit of government or to appear to impose a legal duty on the person being
6 solicited.

7 (c) A person, firm, or corporation soliciting a fee in exchange for providing a copy of a
8 record may not charge a fee that is greater than four times the amount the register of deeds with
9 custody of the record would charge for a copy of the same record.

10 (d) A violation of this section constitutes an unfair trade practice under G.S. 75-1.1 and
11 is subject to all of the enforcement and penalty provisions under this Article.

12 (e) For the purposes of this section, the term "solicit" means to advertise or market to a
13 nonbusiness entity with whom the solicitor has no preexisting business relationship."
14

15 **PART IV. EFFECTIVE DATES**

16 **SECTION 4.1.** Sections 1.2 and 1.3 of this act become effective October 1, 2018,
17 and apply to instruments presented for registration on or after that date. Section 3.1 of this act
18 becomes effective October 1, 2018. The remainder of this act is effective when this act becomes
19 law and applies to mortgages and deeds of trust entered into before, on, or after that date.