

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 937

Short Title: Real Prop. Chgs./Notice of Settlement Act. (Public)

Sponsors: Representative D. Hall.

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

Referred to: Judiciary, if favorable, Rules, Calendar, and Operations of the House

April 22, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE NOTICE OF SETTLEMENT ACT AND TO MAKE CHANGES
3 AND TECHNICAL CORRECTIONS TO THE GENERAL STATUTES CONCERNING
4 REAL PROPERTY LAW AS RECOMMENDED BY THE NORTH CAROLINA BAR
5 ASSOCIATION.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. THE NOTICE OF SETTLEMENT ACT**

9 **SECTION 1.(a)** The General Statutes are amended by adding a new Chapter to read:

10 **"Chapter 47I.**

11 **"Notice of Settlement Act.**

12 **"§ 47I-1. Short title.**

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

14 **"§ 47I-2. Purpose.**

15 The purpose of this Chapter is to modernize the law governing the transfer of a legal or
16 equitable title to real property, or interests therein, by providing advance notice of transactions
17 and facilitating electronic closing of transactions, electronic recording of documents, and
18 disbursement of funds in connection with the settlement of real property transactions. The use of
19 this Chapter in a real estate transaction is optional, and failure to use the procedure authorized by
20 this Chapter shall not constitute grounds for any claim for relief at law or equity, unless an express
21 contract exists requiring its use. This Chapter creates an additional, nonexclusive procedure for
22 registering a property interest in real property through the use of a notice of settlement, and
23 establishing concurrently therewith priority in the property in a grantee of a conveyance or lease
24 under G.S. 47-18 or mortgagee under G.S. 47-20 and for any other priority purposes based on
25 registration in the public records from the time of filing of the notice of settlement.

26 **"§ 47I-3. Definitions.**

27 As used in this Chapter, unless the context requires otherwise, the following definitions
28 apply:

- 29 (1) Conveyance transaction. – A transaction involving a deed or lease from the
30 current owner of record to a grantee. The term includes any mortgage
31 financing to be secured by the real property at the settlement.
32 (2) Current owner of record. – The person who holds of record the legal or
33 equitable title to, or interest in, real property to be conveyed, leased, or
34 mortgaged under this Chapter and as identified in the notice of settlement.



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- 1 (3) Deed. – Any instrument conveying a legal or equitable title to, or an interest
2 in, real property for a purpose other than to secure an obligation or
3 indebtedness. The term includes the legal or equitable title to and any interest
4 in real property described in the instrument.
- 5 (4) Discoverable online. – A document, instrument, or other entry which, at the
6 time of registration of the deed, lease, or mortgage is the subject of a notice of
7 settlement, would be indexed and found online at the public Web sites
8 maintained by the applicable register of deeds for the county in which the
9 property is located, the Administrative Office of the Courts, the mechanics'
10 online lien agent registry pursuant to G.S. 44A-11.2(f)(7), and any other
11 offices, other than birth, death, and notary records, which would be a part of
12 the regular search of a title to property by a reasonable title examiner in this
13 State for purposes of conveyance, lease, and mortgage of real property.
- 14 (5) Grantee. – The person to whom a legal or equitable title to real property, or an
15 interest therein, including leasehold interest, shall be conveyed pursuant to a
16 settlement. The term includes a related assignee, including, but not limited to,
17 a principal on behalf of the ultimate purchaser, a parent entity for a wholly
18 owned special purpose entity purchaser, existing or to be formed, or their
19 attorney; provided, however, that the assignee is designated in writing at or
20 prior to the settlement by assignment from the person contracting to purchase
21 the real property from the current owner of record. Priority of a grantee
22 hereunder shall extend to those claiming by, through, or under them pursuant
23 to G.S. 47-18 and G.S. 47-20.
- 24 (6) Lease. – An agreement creating a leasehold interest in real property described
25 in that agreement or in a memorandum describing that agreement.
- 26 (7) Mortgage. – A mortgage, deed of trust, or other instrument conveying a legal
27 or equitable interest in real property for purposes of obtaining a security
28 interest therein as security for an underlying obligation or any ancillary
29 security instrument, as defined in G.S. 45-42.3(a), recorded therewith and
30 related thereto and that includes the legal or equitable interest in real property
31 described in the instrument.
- 32 (8) Mortgage transaction. – A settlement transaction involving a mortgage from
33 the current owner of record, encumbering the real property which is the
34 subject of the notice of settlement. The term may include (i) a refinancing of
35 an existing mortgage, (ii) a home equity loan, (iii) a line of credit, (iv) a
36 construction loan, or (v) other financing to be secured by a mortgage on the
37 real property. The term does not include a conveyance transaction as defined
38 in this section.
- 39 (9) Mortgagee. – The grantee, beneficiary, or secured party in the mortgage. The
40 term includes the trustee under a deed of trust on their behalf.
- 41 (10) Mortgagor. – The person executing a mortgage pursuant to a settlement.
- 42 (11) Notice agent. – One of the following:
- 43 a. An attorney licensed under Chapter 84 of the General Statutes who is
44 representing any of the following:
- 45 1. The current owner of record.
- 46 2. The grantee in a conveyance transaction.
- 47 3. The mortgagor in a mortgage transaction, by the current owner
48 of record or their assignee.
- 49 4. The title insurance company or agent insuring the real estate
50 title that is subject to the settlement.

b. The mortgagee for a mortgage transaction, duly authorized by the current owner of record or their agent to register a notice of settlement pursuant to this Chapter, where the mortgagee is handling the settlement and closing of the transaction, regardless of how funds are disbursed.

(12) Person. – Any individual, firm, corporation, governmental unit or subdivision, or other legal entity that may hold a legal or equitable title to, or interest in, real property under the laws of this State.

(13) Settlement. – The delivery of the instruments conveying a legal or equitable title to, or interest in, real property to the grantee or mortgagee for valuable consideration as agreed upon by the parties to the transaction.

(14) Transaction documents. - A deed, lease, or mortgage and any other documents registered simultaneously with and as part of the settlement, or referenced in the deed, lease, or mortgage and related to the settlement, including any ancillary security instruments as provided in G.S. 45-42.3.

"§ 47I-4. Instrument; designation; filing; index of notice of settlement.

(a) The notice agent may register an instrument designated a "Notice of Settlement" in the office of the register of deeds of the county or counties in which the real property is situated with reference to a settlement that the notice agent in good faith reasonably believes will occur within 60 days of the registration.

(b) A contract between the current owner of record and a grantee shall be conclusively deemed sufficient authority for the notice agent to register a notice of settlement, unless the contract specifically prohibits registration of a notice.

(c) The notice of settlement shall be (i) indexed in the indexes provided for real estate conveyances, (ii) registered as a real estate instrument, and (iii) indexed in the name of the current owner of record identified in the notice of settlement and in the names of the parties as identified in the notice of settlement.

(d) The applicable registration fee under G.S. 161-10 shall be paid at the time the notice of settlement is registered.

"§ 47I-5. Signature; content; acknowledgement.

The notice of settlement shall contain at least all of the following:

(1) The name, street address, and telephone number of the notice agent registering the notice of settlement.

(2) The current owner of record.

(3) The grantee, if a conveyance transaction.

(4) The mortgagee, if a mortgage transaction.

(5) Sufficient information to identify the real property based on the public records.

(6) The date the notice of settlement will expire, not to exceed 60 days from the date of registration. If no date is provided, the notice shall expire 60 days after registration.

(7) Execution by the notice agent.

(8) Acknowledgment of the execution by the notice agent as required by law for the registration of instruments.

"§ 47I-6. Forms.

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

"NOTICE OF SETTLEMENT

Notice Agent: _____

Street address: _____

Telephone number: _____

Current Owner(s) of Record: _____

1 Street address:_____

2 Telephone number:_____

3 Grantee(s) (for conveyance transaction):_____

4 Street address:_____

5 Telephone number:_____

6 Mortgagee (for mortgage transaction):_____

7 Officer:_____

8 Street address:_____

9 Telephone number:_____

10

11 NOTICE is hereby given pursuant to Chapter 47I of the North Carolina General Statutes of

12 a settlement affecting title to the following described real property of the current owner of record.

13 The undersigned is duly authorized by the current owner of record (and their client, if

14 different) to record this Notice of Settlement, and is:

15 A North Carolina licensed attorney representing the current owner of record, the

16 grantee, the mortgagor, or the title insurance company or agent insuring the real estate title related

17 to the settlement, OR

18 The mortgagee for a mortgage transaction by the current owner of record.

19

20 The property subject to this Notice of Settlement is:

21 [INSERT SUFFICIENT INFORMATION REGARDING THE PROPERTY FOR IT TO BE

22 CLEARLY IDENTIFIED FROM THE PUBLIC RECORDS, SUCH AS LEGAL

23 DESCRIPTION, VESTING DOCUMENT REFERENCE, STREET ADDRESS, AND/OR TAX

24 MAP REFERENCES]

25

26 This Notice of Settlement shall be effective from the time of, and for _____ days [INSERT

27 NUMBER OF DAYS, NOT TO EXCEED 60 DAYS], or if none stated, the term of this Notice

28 of Settlement shall be 60 days, following the day of registration of this Notice of Settlement in

29 the office of the register of deeds of the county in which the above real property is situated.

30

31 _____

32 Signature of Notice Agent

33

34 [NOTARIAL CERTIFICATE OF ACKNOWLEDGMENT IN COMPLIANCE WITH

35 NORTH CAROLINA LAW]"

36 "§ 47I-7. Constructive notice; priority.

37 (a) The registration of a notice of settlement shall be constructive notice of the anticipated

38 settlement and interest of the grantee or mortgagee affecting the real property identified in the

39 notice of settlement.

40 (b) Subject to the provisions of subsection (c) of this section, the registration of the notice

41 of settlement shall establish priority of title of the grantee or mortgagee under the deed, lease, or

42 mortgage from the time of registration of the notice of settlement as against subsequent

43 purchasers for value, lien creditors, and others claiming an interest in the real property identified

44 in the notice of settlement through any person who holds the legal or equitable title to, or interest

45 in, the real property and through chain of title of the current owner of record identified in the

46 notice of settlement. Priority shall be determined as if the deed or lease to the grantee or mortgage

47 to mortgagee had been registered at the time of the registration of the notice of settlement. A

48 deed, lease, or mortgage delivered pursuant to the settlement for which the notice of settlement

49 is duly registered in the county or counties where the real property is situated prior to expiration

50 of the notice of settlement shall continue the priority of the grantee or mortgagee in the subject

51 real property established by the notice of settlement and the priority of the grantee or mortgagee

1 under the duly registered deed, lease, or mortgage shall be a continuously perfected property
2 interest in the real property from the time of registration of the notice of settlement under this
3 Chapter, against subsequent purchasers for value, lien creditors, and other persons claiming an
4 interest in the real property through any person who holds of record the legal or equitable title to,
5 or interest in, the real property.

6 (c) A duly registered notice of settlement shall not affect the priority of any of the
7 following:

8 (1) The designation of a lien agent and the related notices to lien agent filed
9 pursuant to Article 2 of Chapter 44A of the General Statutes for the subject
10 real property and discoverable online at an Internet Web site for that purpose
11 pursuant to G.S. 44A-1.2(f)(7) prior to registration of the deed, lease, or
12 mortgage.

13 (2) Potential claims for which no lien agent is required to be appointed under
14 G.S. 44-11.1(a).

15 (3) Valid conveyances, liens, or encumbrances, other than transaction documents,
16 upon the property duly registered with the register of deeds or filed with the
17 clerk in the county or counties in which the real property is located and
18 discoverable online at least five business days prior to registration of the deed,
19 lease, or mortgage pursuant to this Chapter.

20 (4) Any interest or claim regarding the real property by a claimant who is the
21 beneficiary of any valid conveyance, lien, or encumbrance in the public record
22 that attaches to the real property and is duly registered or filed in the public
23 records of the county or counties in which the real property is located as
24 required by law, and for which the claimant or their attorney has done all of
25 the following:

26 a. Delivered actual notice clearly identifying the recordation or filing
27 information in the county or counties of their legitimate conveyance,
28 lien, or encumbrance on the real property; the specific notice of
29 settlement; the property; and the current owner of record to the notice
30 agent at least five business days prior to the settlement.

31 b. Obtained an acceptance of delivery identifying their valid conveyance,
32 lien, or encumbrance, (i) identifying the notice of settlement by book
33 and page of registration in the county or counties and the real property
34 affected, (ii) signed by the claimant, including the name, address, and
35 telephone number of the claimant, (iii) signed by the notice agent, and
36 (iv) with notarial certificate regarding execution by each person
37 signing, at least one business day prior to the registration of the deed,
38 lease, or mortgage pursuant to the notice of settlement.

39 c. Has registered the signed acceptance of delivery with the register of
40 deeds of the county or counties in which the property is located at least
41 one business day prior to the registration of the deed, lease, or
42 mortgage pursuant to the notice of settlement.

43 Registration of a notice and acceptance of delivery shall be prima facie evidence that the
44 notice and acceptance of delivery was delivered to the notice agent. If the notice agent is not the
45 closing or settlement agent, upon request by the closing or settlement agent, the notice agent shall
46 provide any notices received pursuant to this subsection.

47 (d) Notwithstanding subsection (c) of this section, a closing attorney or settlement agent
48 shall have authority to pay any potential liens upon the real property that is the subject of the
49 notice of settlement or any liabilities of the current owner of record which may affect title and
50 that are actually known to the closing attorney or settlement agent, in order to protect a purchaser,
51 lessee, or mortgagee or comply with the terms of a contract of sale, lease, or mortgage.

1 (e) Nothing in this section shall be deemed to relieve the current owner of record,
 2 mortgagor, or any other party of their personal liability for any legal or financial obligation.

3 (f) If the named grantee or mortgagee in the notice of settlement differs from the grantee
 4 or mortgagee in the instrument registered pursuant to the settlement, the deed or mortgage
 5 registered pursuant to the settlement may bear a legend that is in a form and substance
 6 substantially as follows:

7
 8 "This instrument was delivered at the settlement referred to in the Notice of Settlement by
 9 _____ (Signatory of Notice of Settlement) recorded in Book _____, Page _____,
 10 _____ County Registry, identifying the Grantee as [Name of Grantee] and Mortgagee
 11 [Name of Mortgagee] (as applicable)."
 12

13 (g) A statement signed by an attorney licensed under Chapter 84 of the General Statutes
 14 may be submitted for registration with the deed, lease, or mortgage that the attorney had updated
 15 the title examination for the real property on the applicable online registries for the public records
 16 as of a specified date and time after registration of the notice of settlement and prior to its
 17 expiration, identifying any further conveyances, liens, or encumbrances found online after
 18 registration of the notice of settlement and before registration of the transaction documents. The
 19 certification shall be prima facie evidence of the truth of the certification therein.

20 **"§ 47I-8. Duration of notice; priority; number of filings; not renewable.**

21 (a) The notice of settlement shall be effective as provided in G.S. 47I-7(a) from the time
 22 of registration and for the number of days stated in the notice of settlement, but no more than 60
 23 days, following the day of registration of the notice of settlement pursuant to this Chapter. If the
 24 deed, lease, or mortgage delivered pursuant to a settlement for which the notice of settlement was
 25 registered has not been properly registered in the county or counties where the real property is
 26 situated prior to the expiration of the notice of settlement, the notice of settlement shall be void,
 27 and the priority of the grantee or mortgagee under the deed, lease, or mortgage registered
 28 subsequent to the expiration shall date from the time of registration of the deed, lease, or
 29 mortgage, and not from the time of the registration of the expired notice of settlement.

30 (b) Except as provided in subsection (c) of this section, registered notice of settlement
 31 may not be amended, extended, or renewed.

32 (c) For any particular transaction, an "Additional Notice of Settlement" may be registered
 33 after the initial notice of settlement. The "Additional Notice of Settlement" shall be as effective
 34 as a notice of settlement pursuant to G.S. 47I-4, but only from the date and time of its registration
 35 and subject to the terms of this Chapter as if the original notice of settlement had not been
 36 registered. An "Additional Notice of Settlement" shall be registered and indexed as a "subsequent
 37 instrument" pursuant to the provisions of G.S. 161-14.1. Only one "Additional Notice of
 38 Settlement" may be registered for any single notice of settlement.

39 **"§ 47I-9. Early termination of notice of settlement.**

40 The notice agent may terminate the notice of settlement by filing a notice of termination in a
 41 form substantially as follows:

42 "TERMINATION OF NOTICE OF SETTLEMENT

43 Current Owner(s) of Record: _____
 44 Grantee(s) (for Conveyance Transaction): _____
 45 Mortgagee(s) (for Mortgage Transaction): _____
 46 Notice Agent: _____
 47

48 NOTICE is hereby given pursuant to Chapter 47I of the North Carolina General Statutes that
 49 the Notice of Settlement filed by the undersigned _____ (date or recording
 50 information) is hereby terminated.
 51 _____

1 Signature of Notice Agent

2
3 [NOTARIAL CERTIFICATE OF ACKNOWLEDGMENT IN COMPLIANCE WITH
4 NORTH CAROLINA LAW]"

5
6 A notice of termination shall be registered and indexed as a "subsequent instrument" pursuant
7 to the provisions of G.S. 161-14.1.3.

8 **"§ 47I-10. Severability.**

9 If any provision of this Chapter or the application thereof to any person or circumstance is
10 held invalid, that invalidity shall not affect other provisions or applications of this Chapter which
11 can be given effect without the invalid provision or application, and to that end, the provisions
12 of this Chapter are severable."

13 **SECTION 1.(b)** G.S. 47-18 reads as rewritten:

14 **"§ 47-18. Conveyances, contracts to convey, options and leases of land.**

15 (a) No (i) conveyance of land, or (ii) contract to convey, or (iii) option to convey, or (iv)
16 lease of land for more than three years shall be valid to pass any property interest as against lien
17 creditors or purchasers for a valuable consideration from the donor, bargainer or lesser but from
18 the time of registration thereof in the county where the land lies, or if the land is located in more
19 than one county, then in each county where any portion of the land lies to be effective as to the
20 land in that county. Unless otherwise stated either on the registered instrument or on a separate
21 registered instrument duly executed by the party whose priority interest is adversely affected, (i)
22 instruments registered in the office of the register of deeds shall have priority based on the order
23 of registration as determined by the time of registration, and (ii) if instruments are registered
24 simultaneously, then the instruments shall be presumed to have priority as determined by:

25 (1) The earliest document number set forth on the registered instrument.

26 (2) The sequential book and page number set forth on the registered instrument if
27 no document number is set forth on the registered instrument.

28 The presumption created by this subsection is rebuttable.

29 ...

30 (c) Notwithstanding any provision in subsection (a) to the contrary, the priority of
31 conveyances of land and leases is subject to the priority established under a notice of settlement
32 registered in compliance with the provisions of Chapter 47I of the General Statutes."

33 **SECTION 1.(c)** G.S. 47-20 reads as rewritten:

34 **"§ 47-20. Deeds of trust, mortgages, conditional sales contracts, assignments of leases and**
35 **rents; effect of registration.**

36 (a) No deed of trust or mortgage of real or personal property, or of a leasehold interest or
37 other chattel real, or conditional sales contract of personal property in which the title is retained
38 by the vendor, shall be valid to pass any property as against lien creditors or purchasers for a
39 valuable consideration from the grantor, mortgagor or conditional sales vendee, but from the time
40 of registration thereof as provided in this ~~Article~~; Article, or according to priority established
41 pursuant to compliance with the provisions of Chapter 47I of the General Statutes, provided
42 however that any transaction subject to the provisions of the Uniform Commercial Code (Chapter
43 25 of the General Statutes) is controlled by the provisions of that act and not by this section.
44 Unless otherwise stated either on the registered instrument or on a separate registered instrument
45 duly executed by the party whose priority interest is adversely affected, (i) instruments registered
46 in the office of the register of deeds shall have priority based on the order of registration as
47 determined by the time of registration, and (ii) if instruments are registered simultaneously, then
48 the instruments shall be presumed to have priority as determined by:

49 (1) The earliest document number set forth on the registered instrument.

50 (2) The sequential book and page number set forth on the registered instrument if
51 no document number is set forth on the registered instrument.

1 The presumption created by this subsection is rebuttable.

2"

3 **SECTION 1.(d)** G.S. 161-14.1 reads as rewritten:

4 **"§ 161-14.1. Recording subsequent entries as separate instruments.**

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

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

9 (2) Recording data. – The book and page number or document number that
10 indicates where an instrument is recorded in the office of the register of deeds.

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

16 a. The appointment or designation of a substitute trustee in a deed of
17 trust.

18 ...

19 t. An additional notice of settlement pursuant to G.S. 47I-8(c).

20 u. A termination of notice of settlement pursuant to G.S. 47I-9.

21"

22 **SECTION 1.(e)** This Part is effective January 1, 2020, and applies to notices of
23 settlement registered on or after that date.

24 **PART II. REAL PROPERTY TECHNICAL CORRECTIONS**

25 **SECTION 2.(a)** Section 4.1 of S.L. 2018-80 reads as rewritten:

26 **"SECTION 4.1.** Sections 1.2 and 1.3 of this act become effective October 1, 2018, and apply
27 to instruments presented for registration on or after that date. Section 3.1 of this act becomes
28 effective October 1, 2018. Section 2.1 of this act becomes effective when this act becomes law
29 and applies to deeds and deeds of trust presented for registration on or after that date. Section 2.2
30 of this act becomes effective when this act becomes law and applies to all instruments entered
31 into before, on, or after that date. The remainder of this act is effective when this act becomes
32 law and applies to mortgages and deeds of trust entered into before, on, or after that date."

33 **SECTION 2.(b)** G.S. 47-17.1 reads as rewritten:

34 **"§ 47-17.1. Documents registered or ordered to be registered in certain counties to**
35 **designate draftsman; exceptions.**

36 The register of deeds of any county in North Carolina shall not accept for registration, nor
37 shall any judge order registration pursuant to G.S. 47-14, of any deeds or deeds of trust, executed
38 after January 1, 1980, unless the first page of the deeds or deeds of trust bears an entry showing
39 the name of ~~either the person or law firm who drafted the instrument. This section shall not apply~~
40 ~~to other instruments presented for registration. For the purposes of this section, the register of~~
41 ~~deeds shall accept the written representation of the individual presenting the deed or deed of trust~~
42 ~~for registration, or any individual reasonably related to the transaction, including, but not limited~~
43 ~~to, any employee of a title insurance company or agency purporting to be involved with the~~
44 ~~transaction, that the individual or law firm listed on the first page is a validly licensed attorney~~
45 ~~or validly existing law firm in this State or another jurisdiction within the United States. the drafter~~
46 ~~of the deed or deed of trust. The register of deeds shall not be required to verify or make inquiry~~
47 ~~concerning the capacity or authority of the person or entity shown as the drafter on the~~
48 instrument."
49

50 **PART III. EFFECTIVE DATE.**

1 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
2 law.