

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

FILED SENATE
Apr 3, 2019
S.B. 594
PRINCIPAL CLERK

S

D

SENATE BILL DRS35246-MQ-90A

Short Title: Register of Deeds Updates. (Public)

Sponsors: Senators Daniel and Marcus (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THE STANDARDS AND REQUIREMENTS FOR THE
3 REGISTRATION OF CERTAIN LAND RECORDS WITH THE REGISTER OF DEEDS,
4 TO MAKE CHANGES TO THE PROHIBITION ON FILING FALSE LIENS OR
5 ENCUMBRANCES, AND TO PROVIDE SUGGESTED FORMS FOR THE
6 REGISTRATION OF ASSUMED BUSINESS NAMES.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. G.S. 161-14 reads as rewritten:

9 "§ 161-14. Registration of instruments.

10 ...

11 (b) All instruments, except instruments conforming to the provisions of G.S. 25-9-521,
12 presented for registration on paper shall meet all of the following requirements:

- 13 (1) Be eight and one-half inches by eleven inches or eight and one-half inches by
14 fourteen inches.
15 (2) Have a blank margin of three inches at the top of the first page and blank
16 margins of at least ~~one-quarter~~ one-half inches on the remaining sides of the
17 first page and on all sides of subsequent pages.

18"

19 SECTION 2. G.S. 161-30 reads as rewritten:

20 "§ 161-30. Modernization of land records.

21 (a) The county commissioners of any county may require that the register of deeds shall
22 not accept for registration any map or instrument affecting real property unless the following
23 requirements are satisfied:

- 24 (1) ~~The~~ With the exception of a map or instrument that is submitted electronically,
25 the name and address of the person to whom the map or instrument is to be
26 returned is affixed on the face thereof.
27 (2) The grantee's or owner's permanent mailing address is affixed on the face
28 thereof.

29 (a1) A map or instrument that is submitted electronically shall not be required to contain
30 on its face the name and address of the person to whom the map or instrument is to be returned.
31 The register of deeds shall not be required to return a recorded map or instrument that was
32 submitted electronically but may return to the submitting party a recorded map or instrument that
33 was submitted electronically in accordance with an authorizing agreement.

34"

35 SECTION 3. G.S. 14-118.6 reads as rewritten:

36 "§ 14-118.6. Filing false lien or encumbrance.



* D R S 3 5 2 4 6 - M Q - 9 0 A *

1 (a) It shall be unlawful for any person to present for filing or recording in a public record
2 or a private record generally available to the public a false lien or encumbrance against the real
3 or personal property of ~~a public officer, a public employee, or an immediate family member of~~
4 ~~the public officer or public employee on account of the performance of the public officer or~~
5 ~~public employee's official duties, an owner or beneficial interest holder, knowing or having~~
6 reason to know that the lien or encumbrance is false or contains a materially false, fictitious, or
7 fraudulent statement or representation. ~~For purposes of this subsection, the term "immediate~~
8 ~~family member" means a spouse or a child.~~ Any person who violates this subsection shall be
9 guilty of a Class I felony.

10 (b) When presented to the register of deeds for recording, if a register of deeds has a
11 reasonable suspicion that ~~the~~ an instrument purporting to be a lien or encumbrance is materially
12 false, as described in subsection (a) of this section, fictitious, or fraudulent, the register of deeds
13 may refuse to record the purported lien or encumbrance. Neither the register of deeds nor any
14 other entity shall be liable for recording or the refusal to record a purported lien or encumbrance
15 as described in ~~subsection (a) of this section.~~ If the recording of the purported lien or
16 encumbrance is denied, the register of deeds shall allow the recording of a Notice of Denied Lien
17 or Encumbrance Filing on a form adopted by the Secretary of State, for which no filing fee shall
18 be collected. The Notice of Denied Lien or Encumbrance Filing shall not itself constitute a lien
19 or encumbrance. When recording is denied, any interested person may initiate a special
20 proceeding in the county where the recording was denied within ten (10) business days of the
21 filing of the Notice of Denied Lien or Encumbrance Filing asking the superior court of the
22 respective county to find that the proposed recording has a statutory or contractual basis and to
23 order that the document be recorded. If, after hearing, upon a minimum of five (5) days' notice
24 as provided in Rule 5 of the Rules of Civil Procedure and opportunity to be heard to all interested
25 persons and all persons claiming an ownership interest in the property, the court finds that there
26 is a statutory or contractual basis for the proposed recording, the court shall order the document
27 ~~recorded.~~ recorded, and the party submitting the instrument shall pay the filing fee in accordance
28 with G.S. 161-10. A lien or encumbrance recorded upon order of the court under this subsection
29 shall have a priority interest as of the time of the filing of the Notice of Denied Lien or
30 Encumbrance Filing. If the court finds that there is no statutory or contractual basis for the
31 proposed recording, the court shall enter an order finding that the proposed recording is null and
32 void and that it shall not be filed, indexed, or recorded and a certified copy of that order shall be
33 recorded by the register of deeds that originally denied the ~~recording.~~ recording, for which the
34 party who submitted the instrument shall pay the filing fee in accordance with G.S. 161-10. The
35 review by the judge under this subsection shall not be deemed a finding as to any underlying
36 claim of the parties involved. If a special proceeding is not initiated under this subsection within
37 ten (10) business days of the filing of the Notice of Denied Lien or Encumbrance Filing, the
38 purported lien or encumbrance is deemed null and void as a matter of law.

39 (b1) When a purported lien or encumbrance is presented to a clerk of superior court for
40 filing and the clerk of court has a reasonable suspicion that the purported lien or encumbrance is
41 false as described in subsection (a) of this section, the clerk of court may refuse to file the
42 purported lien or encumbrance. Neither the clerk of court nor the clerk's staff shall be liable for
43 filing or the refusal to file a purported lien or encumbrance under this subsection. The clerk of
44 superior court shall not file, index, or docket the document against the property of a public officer
45 or public employee until that document is approved by any judge of the judicial district having
46 subject matter jurisdiction for filing by the clerk of superior court. If the judge determines that
47 the filing is not false, the clerk shall index the claim of lien. A lien or encumbrance filed upon
48 order of the court under this subsection shall have a priority interest as of the date and time of
49 indexing by the clerk of superior court. If the court finds that there is no statutory or contractual
50 basis for the proposed filing, the court shall enter an order that the proposed filing is null and
51 void as a matter of law, and that it shall not be filed or indexed. The clerk of superior court shall

1 serve the order and return the original denied filing to the person or entity that presented it. The
2 person or entity shall have 30 days from the entry of the order to appeal the order. If the order is
3 not appealed within the applicable time period, the clerk may destroy the filing.

4 (c) Upon being presented with an order duly issued by a court of competent jurisdiction
5 of this State declaring that a lien or encumbrance already recorded or filed is false, ~~as described~~
6 ~~in subsection (a) of this section~~, and therefore null and void as a matter of law, the register of
7 deeds or clerk of court that received the recording or filing, in addition to recording or filing the
8 court's order finding the lien or encumbrance to be false, shall conspicuously mark on the first
9 page of the original record previously filed the following statement: "THE CLAIM ASSERTED
10 IN THIS DOCUMENT IS FALSE AND IS NOT PROVIDED FOR BY THE GENERAL LAWS
11 OF THIS STATE."

12 (d) In addition to any criminal penalties provided for in this section, ~~a violation of this~~
13 ~~section~~ the presentation of an instrument for recording or filing with a register of deeds or clerk
14 of superior court that purports to be a lien or encumbrance that is determined to be materially
15 false, fictitious, or fraudulent shall constitute a violation of G.S. 75-1.1.

16 (e) Subsections (b), (b1), and (c) of this section shall not apply to filings under Article 9
17 of Chapter 25 of the General Statutes or under Chapter 44A of the General Statutes."

18 **SECTION 4.** G.S. 66-71.5 reads as rewritten:

19 **"§ 66-71.5. Contents of certificate.**

20 (a) An assumed business name certificate must ~~include~~ include all of the following:

- 21 (1) The assumed business ~~name~~ name, subject to the requirements of subsection
22 (b) of this section.
- 23 (2) A real name of the person engaging in business under the assumed business
24 name. If the business is a partnership other than a limited liability partnership
25 or limited partnership, the assumed business name certificate must include a
26 real name of five general partners or of each general partner, whichever is
27 fewer.
- 28 (3) The nature of the business.
- 29 (4) The street address of the principal place of business.
- 30 (5) Each county where the person uses or will be using the assumed business
31 name to engage in business.

32 (b) A person may not include in an assumed business name any of the following terms:

- 33 (1) "Corporation," "incorporated," "corp.," or "inc.," unless the entity is a
34 corporation organized under Chapter 55 of the General Statutes.
- 35 (2) "Limited liability company," "L.L.C." or "LLC," or any other similar
36 abbreviation or form of "limited liability company," unless the entity is a
37 limited liability company organized under Chapter 55D of the General
38 Statutes.
- 39 (3) "Limited partnership," "L.P." or "LP," or any other similar abbreviation or
40 form of "limited partnership," unless the entity is a limited partnership
41 organized under Chapter 59 of the General Statutes.
- 42 (4) "Limited liability partnership," "registered limited liability limited
43 partnership," or any other similar abbreviation or form of those terms, unless
44 the entity is organized or registered as a limited liability partnership under
45 Chapter 59 of the General Statutes."

46 **SECTION 5.** G.S. 66-71.11 reads as rewritten:

47 **"§ 66-71.11. Forms.**

48 (a) The Land Records Management Advisory Committee established under
49 G.S. 147-54.3 may develop forms for the documents required or permitted to be filed by this
50 Article, but their use is not mandatory.

1 (a1) An Assumed Business Name Certificate that substantially complies with the
2 following form may be used and shall be sufficient to satisfy the requirements of G.S. 66-71.5:

3
4 "ASSUMED BUSINESS NAME CERTIFICATE (NCGS § 66-71.5)

5
6 1. The assumed business name is: _____
7 (You may include no more than five (5) assumed business names on this form.)

8
9 2. The real name of the person or entity engaging in business under the assumed business
10 name is: _____
11 (Corporations, limited liability companies, limited partnerships must provide the exact name
12 registered with the NC Secretary of State's office and the SOSID number assigned at the time of
13 formation.)

14
15 3. The nature/type of the business is: _____

16
17 4. The street address of the principal place of business is: _____
18 (Post office boxes are not acceptable.)

19
20 5. The mailing address, if different from the street address, is: _____

21
22 6. The counties where the assumed business name will be used to engage in business are:
23 _____ (Can indicate all 100 North Carolina counties)

24
25 This certificate is signed by the owner/legal representative of the person or entity named
26 above, this _____ day of _____, 20_____.

27
28 Signature: _____
29 Printed/Typed Name: _____
30 Title: _____ "

31
32 (a2) An Amendment of Assumed Business Name Certificate that substantially complies
33 with the following form may be used and shall be sufficient to satisfy the requirements of
34 G.S. 66-71.7:

35
36 "AMENDMENT OF ASSUMED BUSINESS NAME CERTIFICATE (NCGS § 66-71.7)

37
38 1. The assumed business name previously registered is:
39 _____

40
41 2. The real name of the person or entity engaging in business under the assumed business
42 name is: _____ (Corporations, limited liability companies, limited
43 partnerships must provide the exact name registered with the NC Secretary of State's office and
44 the SOSID number assigned at the time of formation.)

45
46 3. The book and page number of the initial filing that is being amended is: Book _____, Page
47 _____, _____ County Registry.

48
49 4. The identification number assigned to the assumed business name by the Secretary of State
50 (SOSID) is: _____
51

5. The current mailing address of the business: _____

6. The certificate of assumed business name should be amended by changing the following information:

(Check all that apply and provide new information in the space provided below.):

- Change assumed business name
- Add real name of person engaging in business under assumed business name
- Delete real name of person engaging in business under assumed business name
- Change nature of business
- Change street address of principal place of business
- Change mailing address
- Add counties where assumed business name will be used to engage in business
- Delete counties where assumed business name will be used to engage in business

7. Provide new information here:

- Add: _____
- Delete: _____
- Change: _____

This certificate is signed by the owner/legal representative of the person or entity named above, this _____ day of _____, 20_____.

Signature: _____

Printed/Typed Name: _____

Title: _____"

(b) Any person, including the registers of deeds, may make available the forms developed under subsection (a) of this section. The authorization of the use of the forms in subsections (a1) and (a2) of this section does not preclude the use of other forms as long as the form complies with the requirements of G.S. 66-71.5, G.S. 66-71.7, and this Article."

SECTION 6. Section 3 of this act becomes effective December 1, 2019. The remainder of this act becomes effective October 1, 2019, and applies to instruments, certificates, and amended certificates submitted on or after that date.