

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL DRH40399-MQ-117

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

Sponsors: Representative D. Hall.

Referred to:

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.
35 (3) Deed. – Any instrument conveying a legal or equitable title to, or an interest
36 in, real property for a purpose other than to secure an obligation or



1 indebtedness. The term includes the legal or equitable title to and any interest
2 in real property described in the instrument.

3 (4) Discoverable online. – A document, instrument, or other entry which, at the
4 time of registration of the deed, lease, or mortgage is the subject of a notice of
5 settlement, would be indexed and found online at the public Web sites
6 maintained by the applicable register of deeds for the county in which the
7 property is located, the Administrative Office of the Courts, the mechanics'
8 online lien agent registry pursuant to G.S. 44A-11.2(f)(7), and any other
9 offices, other than birth, death, and notary records, which would be a part of
10 the regular search of a title to property by a reasonable title examiner in this
11 State for purposes of conveyance, lease, and mortgage of real property.

12 (5) Grantee. – The person to whom a legal or equitable title to real property, or an
13 interest therein, including leasehold interest, shall be conveyed pursuant to a
14 settlement. The term includes a related assignee, including, but not limited to,
15 a principal on behalf of the ultimate purchaser, a parent entity for a wholly
16 owned special purpose entity purchaser, existing or to be formed, or their
17 attorney; provided, however, that the assignee is designated in writing at or
18 prior to the settlement by assignment from the person contracting to purchase
19 the real property from the current owner of record. Priority of a grantee
20 hereunder shall extend to those claiming by, through, or under them pursuant
21 to G.S. 47-18 and G.S. 47-20.

22 (6) Lease. – An agreement creating a leasehold interest in real property described
23 in that agreement or in a memorandum describing that agreement.

24 (7) Mortgage. – A mortgage, deed of trust, or other instrument conveying a legal
25 or equitable interest in real property for purposes of obtaining a security
26 interest therein as security for an underlying obligation or any ancillary
27 security instrument, as defined in G.S. 45-42.3(a), recorded therewith and
28 related thereto and that includes the legal or equitable interest in real property
29 described in the instrument.

30 (8) Mortgage transaction. – A settlement transaction involving a mortgage from
31 the current owner of record, encumbering the real property which is the
32 subject of the notice of settlement. The term may include (i) a refinancing of
33 an existing mortgage, (ii) a home equity loan, (iii) a line of credit, (iv) a
34 construction loan, or (v) other financing to be secured by a mortgage on the
35 real property. The term does not include a conveyance transaction as defined
36 in this section.

37 (9) Mortgagee. – The grantee, beneficiary, or secured party in the mortgage. The
38 term includes the trustee under a deed of trust on their behalf.

39 (10) Mortgagor. – The person executing a mortgage pursuant to a settlement.

40 (11) Notice agent. – One of the following:

41 a. An attorney licensed under Chapter 84 of the General Statutes who is
42 representing any of the following:

43 1. The current owner of record.

44 2. The grantee in a conveyance transaction.

45 3. The mortgagor in a mortgage transaction, by the current owner
46 of record or their assignee.

47 4. The title insurance company or agent insuring the real estate
48 title that is subject to the settlement.

49 b. The mortgagee for a mortgage transaction, duly authorized by the
50 current owner of record or their agent to register a notice of settlement
51 pursuant to this Chapter, where the mortgagee is handling the

1 settlement and closing of the transaction, regardless of how funds are
2 disbursed.

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

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

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

13 **"§ 47I-4. Instrument; designation; filing; index of notice of settlement.**

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

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

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

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

27 **"§ 47I-5. Signature; content; acknowledgement.**

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

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

31 (2) The current owner of record.

32 (3) The grantee, if a conveyance transaction.

33 (4) The mortgagee, if a mortgage transaction.

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

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

39 (7) Execution by the notice agent.

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

42 **"§ 47I-6. Forms.**

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

44 "NOTICE OF SETTLEMENT

45 Notice Agent: _____

46 Street address: _____

47 Telephone number: _____

48 Current Owner(s) of Record: _____

49 Street address: _____

50 Telephone number: _____

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

Street address: _____

Telephone number: _____

Mortgagee (for mortgage transaction): _____

Officer: _____

Street address: _____

Telephone number: _____

NOTICE is hereby given pursuant to Chapter 47I of the North Carolina General Statutes of a settlement affecting title to the following described real property of the current owner of record.

The undersigned is duly authorized by the current owner of record (and their client, if different) to record this Notice of Settlement, and is:

A North Carolina licensed attorney representing the current owner of record, the grantee, the mortgagor, or the title insurance company or agent insuring the real estate title related to the settlement, OR

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

The property subject to this Notice of Settlement is:

[INSERT SUFFICIENT INFORMATION REGARDING THE PROPERTY FOR IT TO BE CLEARLY IDENTIFIED FROM THE PUBLIC RECORDS, SUCH AS LEGAL DESCRIPTION, VESTING DOCUMENT REFERENCE, STREET ADDRESS, AND/OR TAX MAP REFERENCES]

This Notice of Settlement shall be effective from the time of, and for _____ days [INSERT NUMBER OF DAYS, NOT TO EXCEED 60 DAYS], or if none stated, the term of this Notice of Settlement shall be 60 days, following the day of registration of this Notice of Settlement in the office of the register of deeds of the county in which the above real property is situated.

Signature of Notice Agent

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

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

(a) The registration of a notice of settlement shall be constructive notice of the anticipated settlement and interest of the grantee or mortgagee affecting the real property identified in the notice of settlement.

(b) Subject to the provisions of subsection (c) of this section, the registration of the notice of settlement shall establish priority of title of the grantee or mortgagee under the deed, lease, or mortgage from the time of registration of the notice of settlement as against subsequent purchasers for value, lien creditors, and others claiming an interest in the real property identified in the notice of settlement through any person who holds the legal or equitable title to, or interest in, the real property and through chain of title of the current owner of record identified in the notice of settlement. Priority shall be determined as if the deed or lease to the grantee or mortgagee had been registered at the time of the registration of the notice of settlement. A deed, lease, or mortgage delivered pursuant to the settlement for which the notice of settlement is duly registered in the county or counties where the real property is situated prior to expiration of the notice of settlement shall continue the priority of the grantee or mortgagee in the subject real property established by the notice of settlement and the priority of the grantee or mortgagee under the duly registered deed, lease, or mortgage shall be a continuously perfected property interest in the real property from the time of registration of the notice of settlement under this Chapter, against subsequent purchasers for value, lien creditors, and other persons claiming an

1 interest in the real property through any person who holds of record the legal or equitable title to,
2 or interest in, the real property.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 47I-9. Early termination of notice of settlement.

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

"TERMINATION OF NOTICE OF SETTLEMENT

Current Owner(s) of Record: _____
Grantee(s) (for Conveyance Transaction): _____
Mortgagee(s) (for Mortgage Transaction): _____
Notice Agent: _____

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

Signature of Notice Agent

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

3
4 A notice of termination shall be registered and indexed as a "subsequent instrument" pursuant
5 to the provisions of G.S. 161-14.1.3.

6 **"§ 47I-10. Severability.**

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

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

12 **"§ 47-18. Conveyances, contracts to convey, options and leases of land.**

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

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

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

26 The presumption created by this subsection is rebuttable.

27 ...

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

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

32 **"§ 47-20. Deeds of trust, mortgages, conditional sales contracts, assignments of leases and**
33 **rents; effect of registration.**

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

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

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

50 The presumption created by this subsection is rebuttable.

51"

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

2 "**§ 161-14.1. Recording subsequent entries as separate instruments.**

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

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

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

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

14 a. The appointment or designation of a substitute trustee in a deed of
15 trust.

16 ...

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

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

19 "

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

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

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

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

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

32 "**§ 47-17.1. Documents registered or ordered to be registered in certain counties to**
33 **designate draftsman; exceptions.**

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

47 **PART III. EFFECTIVE DATE.**

48 **SECTION 3.** Except as otherwise provided, this act is effective when it becomes
49 law.
50
51