

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 1018
May 23, 2022
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH10583-MUZ-38A

Short Title: GSC Bar Ass'n Proposals/Landmark Designation.

(Public)

Sponsors: Representative Davis.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO (I) MAKE VARIOUS AMENDMENTS AFFECTING REAL PROPERTY, (II) STRENGTHEN THE PERSONAL LIABILITY PROTECTION FOR LIMITED LIABILITY PARTNERSHIPS, (III) ALIGN THE AUTHORITY TO TRANSFER VENUE FOR JUDICIAL REVIEW OF CONTESTED CASES WITH OTHER CASES, (IV) MAKE A CONFORMING CHANGE TO ACCOUNT FOR SPECIAL FIDUCIARIES IN GUARDIANSHIP PROCEEDINGS, AND (V) CLARIFY AND IMPROVE THE LANDMARK DESIGNATION PROCEDURE, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

PART I. REAL PROPERTY AMENDMENTS

SECTION 1. G.S. 41-22 reads as rewritten:

"§ 41-22. ~~Supersession.~~ **Rule against perpetuities abolished.**

~~This Article supersedes the~~ The rule of the common law known as the rule against perpetuities. ~~perpetuities is abolished.~~"

SECTION 2. G.S. 47-18.1 reads as rewritten:

"§ 47-18.1. **Registration of certificate of corporate entity name change, merger, consolidation, or conversion.**

(a) If title to real property in this State is vested by operation of law in another entity upon the name change, merger, consolidation, or conversion of an entity, ~~such the~~ vesting is effective against lien creditors or purchasers for a valuable consideration from the entity formerly owning the property, only from the time of registration of a certificate ~~thereof~~ as provided in this section, in the county where the land lies, or if the land is located in more than one county, then in each county where any portion of the land lies to be effective as to the land in that county.

(b) The Secretary of State shall adopt uniform certificates of name change, merger, consolidation, or conversion, to be furnished for registration, and shall adopt ~~such~~ fees as ~~are~~ necessary for the expense of ~~such certification.~~ these certifications. If the entity involved is not a domestic entity, a similar certificate by any competent authority in the jurisdiction of incorporation or organization may be registered in accordance with this section.

(c) A certificate of the Secretary of State prepared in accordance with this section shall be registered by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgment, probate, or approval by any other officer ~~shall be~~ are required. The name of the entity formerly owning the property shall appear in the "Grantor" index, and the name of the entity owning the property by virtue of the merger, consolidation, or conversion shall appear in the "Grantee" index."



* D R H 1 0 5 8 3 - M U Z - 3 8 A *

SECTION 3.(a) G.S. 47-119 reads as rewritten:
"§ 47-119. Form of memorandum-Memorandum for option to purchase or convey, right of first refusal, or right of first offer for real estate.

An option to purchase or convey, a right of first refusal, or a right of first offer for real estate may be registered by registering a memorandum thereof which shall set forth that sets forth all of the following:

- (1) The names of the parties thereto; and signatures, executed and notarized, of all of the following:
a. Each record title holder selling the option or right.
b. Each person purchasing the option or right.
(2) A description of the property which real estate that is subject to the option; option or right.
(3) The expiration date of the option; option or right.
(4) Reference-The title of the agreement and the parties to it, as contained in the original written contract, or other reference sufficient to identify the complete agreement between the parties.

Such a memorandum may be in substantially the following form:

NORTH CAROLINA

_____ COUNTY

In _____ consideration _____ of _____, the _____ receipt

(Set out consideration)

of _____ which _____ is _____ hereby _____ acknowledged,

(Name and address of person selling option)

does _____ hereby _____ give _____ and _____ grant _____ to

(Name and address of person buying option)

the right and option to purchase the following property:

(Here describe property)

This option shall expire on the _____ day of _____, _____.

The provisions set forth in a written option agreement between the parties dated the _____ day of _____, _____, are hereby incorporated in this memorandum.

Witness our hand(s) and seal(s) this _____ day of _____, _____

(Seal)

(Seal)"

SECTION 3.(b) G.S. 47-119.1 reads as rewritten:
"§ 47-119.1. Form of memorandum-Memorandum for contract to purchase real estate.

A contract to convey real estate may be registered by registering a memorandum thereof which shall set that sets forth all of the following:

- (1) The names of the parties thereto; and signatures, executed and notarized, of all of the following:
a. Each record title holder contracting to convey an interest in the real estate.
b. Each person contracting to purchase the real estate.
(2) A description of the property which real estate that is subject to the contract.
(3) The expiration date of the contract.
(4) Reference-The title of the agreement and the parties to it, as contained in the original written contract, or other reference sufficient to identify the complete agreement between the parties.

The memorandum may be in substantially the following form:

1 NORTH CAROLINA

2 _____ COUNTY

3
4 _____
5 (Name and address of person contracting to sell real estate)

6 and

7 _____
8 (Name and address of person contracting to purchase real estate)

9 have entered into a contract to sell and purchase the following property:

10 _____
11 (Here describe property)

12 This contract provides for a closing date of the _____ day of _____, _____.

13 The provisions set forth in a written contract to convey real estate between the parties dated
14 the _____ day of _____, _____, are hereby incorporated in this
15 memorandum.

16 Witness our hand(s) and seal(s) this _____ day of _____, _____

17 (Seal)

18 (Seal)

19 [~~Acknowledgement notarial certificate by all parties, as provided by applicable law in order
20 to register in the office of the register of deeds of the county in which the property is located.]~~

21 The titles of the contract and the parties thereto, as contained in the original written contract,
22 may be substituted in lieu of the above references."

23 SECTION 3.(c) G.S. 47-120 reads as rewritten:

24 "§ 47-120. Memorandum as notice.

25 ~~Such A~~ memorandum of a lease, an option to purchase real estate, or convey, a right of first
26 refusal, a right of first offer, or a contract to convey real estate as proposed by G.S. 47-118,
27 47-119, or 47-119.1 when ~~executed, acknowledged, executed by each record title holder and each~~
28 other party to the instrument, acknowledged before a notary public, and delivered and registered
29 as required by law, ~~shall be~~ is as good and sufficient notice, and ~~have~~ has the same force and
30 effect as if the ~~written lease, option to purchase real estate, or contract to convey instrument~~ had
31 been registered in its entirety. However, it ~~shall be~~ is conclusively presumed that the conditions
32 of any contract to purchase that is the subject of a recorded memorandum under this section have
33 instrument reflected in a memorandum have either been complied with or have expired and are
34 no longer enforceable as against creditors or purchasers for valuable consideration ~~who that~~ have
35 recorded their interests ~~after the memorandum from and after the expiration of 60 days from~~
36 ~~whichever of the following events occurs first: 60 days after the earlier of the following:~~

37 (1) The ~~closing~~ expiration date stated in the memorandum, or any recorded
38 extension or renewal of the memorandum, signed by the parties and
39 acknowledged before ~~an officer authorized to take acknowledgements a~~
40 notary public.

41 (2) The date when the memorandum required the conditions of the contract to
42 convey, to have been performed, including payment of the last installment of
43 earnest money or balance of purchase price (other price, other than a purchase
44 money note or deed of trust), trust, and delivery of the deed from the seller to
45 buyer were required by the terms of the recorded memorandum to have been
46 performed, buyer, or the date of any recorded extension or renewal thereof
47 signed by the parties and acknowledged before an officer authorized to take
48 acknowledgements a notary public."

50 PART II. LIMITED LIABILITY PARTNERSHIPS

51 SECTION 4.(a) G.S. 59-45 reads as rewritten:

1 **"§ 59-45. Nature of partner's liability in ordinary partnerships and in registered limited**
 2 **liability partnerships.**

3 (a) Except as provided by subsections (a1) and (b) of this section, all partners are jointly
 4 and severally liable for the acts and obligations of the partnership.

5 (a1) Except as provided in subsection (b) of this section, a partner in a registered limited
 6 liability partnership is not individually ~~liable~~ liable, directly or indirectly, including by
 7 indemnification, contribution, assessment, or otherwise, for debts and obligations of the
 8 partnership incurred while it is a registered limited liability partnership solely by reason of being
 9 a partner and does not become liable by participating, in whatever capacity, in the management
 10 or control of the business of the partnership.

11 (b) Nothing in this Chapter ~~shall be interpreted to abolish, modify, restrict, limit, or alter~~
 12 alters the law in this State applicable to the professional relationship and liabilities between the
 13 individual furnishing the professional services and the person receiving the professional services,
 14 the standards of professional conduct applicable to the rendering of the services, or any
 15 responsibilities, obligations, or sanctions imposed under applicable licensing statutes. A partner
 16 in a registered limited liability partnership is not individually liable, directly or indirectly,
 17 including by indemnification, contribution, assessment, or otherwise, for the debts, obligations,
 18 and liabilities of, or chargeable to, the registered limited liability partnership that arise from
 19 errors, omissions, negligence, malpractice, incompetence, or malfeasance committed by another
 20 partner or by an employee, agent, or other representative of the partnership; ~~provided, however,~~
 21 nothing in this Chapter ~~shall affect~~ affects the liability of a partner of a professional registered
 22 limited liability partnership for his or her own errors, omissions, negligence, malpractice,
 23 incompetence, or malfeasance committed in the rendering of professional services.

24 ...

25 (e) The liability of partners of a registered limited liability partnership formed and
 26 existing under this Chapter ~~shall at all times be~~ is determined ~~solely and exclusively~~ by this
 27 Chapter and the laws of this State.

28 (f) If a conflict arises between the laws of this State and the laws of any other jurisdiction
 29 with regard to the liability of a partner of a registered limited liability partnership formed and
 30 existing under this Chapter for the debts, obligations, and liabilities of the registered limited
 31 liability partnership, this Chapter and the laws of this State ~~shall govern~~ in determining the
 32 liability."

33 **SECTION 4.(b)** G.S. 59-70 reads as rewritten:

34 **"§ 59-70. Rules for distribution.**

35 In settling accounts between the partners after dissolution, the following rules shall be
 36 observed, subject to any agreement to the contrary:

37 (1) The assets of the partnership are all of the following:

38 a. The partnership ~~property,~~ property.

39 b. The contributions of the partners necessary for the payment of all the
 40 liabilities specified in subdivision (2) of this section.

41 (2) The liabilities of the partnership ~~shall rank~~ in order of payment, as follows:

42 a. Those owing to creditors other than ~~partners,~~ partners.

43 b. Those owing to partners other than for capital and ~~profits,~~ profits.

44 c. Those owing to partners in respect of ~~capital,~~ capital.

45 d. Those owing to partners in respect of profits.

46 (3) The assets shall be applied in the order of their declaration in subdivision (1)
 47 of this section to the satisfaction of the liabilities.

48 (4) The partners shall contribute, as provided by ~~G.S. 59-48, subdivision (1)~~
 49 G.S. 59-48(1), the amount necessary to satisfy ~~the liabilities;~~ any liabilities
 50 incurred when the partnership was not a registered limited liability
 51 partnership; but if any, but not all, of the partners are insolvent, or, not being

- 1 subject to process, refuse to contribute, the other partners shall contribute their
 2 share of ~~the~~these liabilities, and, in the relative proportions in which they
 3 share the profits, the additional amount necessary to pay ~~the~~these liabilities.
- 4 (5) An assignee for the benefit of creditors or any person appointed by the court
 5 ~~shall have~~has the right to enforce the contributions specified in subdivision
 6 (4) of this section.
- 7 (6) ~~Any A partner or his legal representative shall have~~has the right to enforce
 8 the contributions specified in subdivision (4) of this ~~section,~~section to the
 9 extent of the amount ~~which he~~that the partner has paid in excess of ~~his~~the
 10 partner's share of the liability.
- 11 (7) The individual property of a deceased partner ~~shall be liable for~~is subject to
 12 the contributions specified in subdivision (4) of this section.
- 13 (8) When partnership property and the individual properties of the partners are in
 14 possession of a court for distribution, partnership creditors ~~shall have~~have priority
 15 on partnership property and separate creditors have priority on individual
 16 property, saving the rights of lien or secured ~~creditors as heretofore~~creditors.
- 17 (9) Where a partner has become bankrupt or ~~his~~the partner's estate is ~~insolvent~~
 18 insolvent, the claims against the separate property ~~shall~~rank in the following
 19 order:
- 20 a. Those owing to separate ~~creditors,~~creditors.
- 21 b. Those owing to partnership ~~creditors,~~creditors.
- 22 c. Those owing to partners by way of contribution."

23 PART III. VENUE FOR JUDICIAL REVIEW OF CONTESTED CASES

24 SECTION 5. G.S. 150B-45 reads as rewritten:

25 "§ 150B-45. Procedure for seeking review; waiver.

26 (a) ~~Procedure.—Deadline.~~ — To obtain judicial review of a final decision under this
 27 Article, the person seeking review must file a petition in superior court within 30 days after the
 28 person is served with a written copy of the decision. ~~The petition must be filed as follows: A~~
 29 person that fails to file a petition within the required time waives the right to judicial review
 30 under this Article. For good cause shown, however, the superior court may accept an untimely
 31 petition.

- 32 (1) ~~Contested tax cases.— A petition for review of a final decision in a contested~~
 33 ~~tax case arising under G.S. 105-241.15 must be filed in the Superior Court of~~
 34 ~~Wake County.~~
- 35 (2) ~~Other final decisions.— A petition for review of any other final decision under~~
 36 ~~this Article must be filed in the superior court of the county where the person~~
 37 ~~aggrieved by the administrative decision resides, or in the case of a person~~
 38 ~~residing outside the State, in the county where the contested case which~~
 39 ~~resulted in the final decision was filed.~~

40 (b) ~~Waiver.— A person who fails to file a petition within the required time waives the~~
 41 ~~right to judicial review under this Article. For good cause shown, however, the superior court~~
 42 ~~may accept an untimely petition.~~ Venue. — The petition must be filed as follows:

- 43 (1) Contested tax cases. — A petition for review of a final decision in a contested
 44 tax case arising under G.S. 105-241.15 must be filed in the Superior Court of
 45 Wake County.
- 46 (2) Other final decisions. — A petition for review of any other final decision under
 47 this Article must be filed in the superior court of the county where the person
 48 aggrieved by the administrative decision resides, or in the case of a person
 49 residing outside the State, in the county where the contested case that resulted
 50 in the final decision was filed.

1 (3) If a petition is filed in an improper county, the superior court of that county
2 may order a change of venue consistent with G.S. 1-83 but shall not dismiss
3 the petition on the ground of improper venue.

4 (c) ~~Judicial Review for State Board of Elections and Ethics Enforcement.~~—Elections.—
5 For a stay entered pursuant to G.S. 150B-33(b)(6), the State Board of Elections ~~and Ethics~~
6 ~~Enforcement~~ may obtain judicial review of the temporary restraining order or preliminary
7 injunction in the superior court of the county designated in subsection (a) of this section."
8

9 **PART IV. GUARDIANSHIP**

10 **SECTION 6.** G.S. 35A-1107 reads as rewritten:

11 **"§ 35A-1107. Right to counsel or guardian ad litem.**

12 (a) The respondent is entitled to be represented by counsel of ~~his~~ the respondent's own
13 choice or by an appointed guardian ad litem. Upon filing of the petition, an attorney shall be
14 appointed as guardian ad litem to represent the respondent unless the respondent retains ~~his own~~
15 counsel, in which event the guardian ad litem may be discharged. Appointment and discharge of
16 an appointed guardian ad litem shall be in accordance with rules adopted by the Office of Indigent
17 Defense Services.

18 (b) An attorney appointed as a guardian ad litem under this section shall represent the
19 respondent until ~~the any of the following occurs:~~

20 (1) The petition is dismissed or until a dismissed.

21 (2) A guardian is appointed under Subchapter II of this Chapter.

22 (3) Other relief is granted under Article 2 of this Subchapter.

23 (c) After being appointed, the guardian ad litem shall personally visit the respondent as
24 soon as possible and shall make every reasonable effort to determine the respondent's wishes
25 regarding the incompetency proceeding and any proposed guardianship. The guardian ad litem
26 shall present to the clerk the respondent's express wishes at all relevant stages of the proceedings.
27 The guardian ad litem also may make recommendations to the clerk concerning the respondent's
28 best interests if those interests differ from the respondent's express wishes. In appropriate cases,
29 the guardian ad litem shall consider the possibility of a limited guardianship and shall make
30 recommendations to the clerk concerning the rights, powers, and privileges that the respondent
31 should retain under a limited guardianship."
32

33 **PART V. LANDMARK DESIGNATION**

34 **SECTION 7.** G.S. 160D-946 reads as rewritten:

35 **"§ 160D-946. Required landmark designation procedures.**

36 As a guide for the identification and evaluation of landmarks, the preservation commission
37 shall undertake, at the earliest possible time and consistent with the resources available to it, an
38 inventory of properties of historical, architectural, prehistorical, and cultural significance within
39 its jurisdiction. ~~Such~~ The inventories and any additions or revisions thereof to them shall be
40 submitted as expeditiously as possible to the Office of Archives and History. No regulation or
41 amendment to a regulation designating a historic building, structure, site, area, or object as a
42 landmark ~~nor any amendment thereto may shall be adopted, nor may any and no property shall~~
43 be accepted or acquired by a preservation commission or the governing board, until all of the
44 following procedural steps have been taken:

45 (1) The preservation commission ~~shall (i) prepare and adopt (i) prepares and~~
46 adopts rules of procedure and (ii) ~~prepare and adopt prepares and adopts~~
47 principles and guidelines, standards, not inconsistent with this Part, for
48 altering, restoring, moving, or demolishing properties designated as
49 landmarks.

50 (2) The preservation commission ~~shall make or cause to be made forwards to the~~
51 Office of Archives and History of the North Carolina Department of Natural

1 and Cultural Resources an investigation and report on the historic,
2 architectural, prehistorical, educational, or cultural significance of each
3 building, structure, site, area, or object proposed for designation or
4 acquisition. ~~Such investigation or report shall be forwarded to the Office of~~
5 ~~Archives and History, North Carolina Department of Cultural Resources.~~

6 (3) The Department of Natural and Cultural Resources, ~~acting through the State~~
7 ~~Historic Preservation Officer~~, shall, upon request of the department or at the
8 initiative of the preservation commission, be given an opportunity to review
9 and comment upon the substance and effect of the designation of any
10 landmark pursuant to this Part. Any comments shall be provided in writing. If
11 the Department does not submit its comments or recommendation in
12 connection with any designation within 30 days following receipt by the
13 Department of the investigation and report of the preservation commission,
14 the commission and any governing board shall be relieved of any
15 responsibility to consider such comments. Resources is allowed 30 days from
16 receipt of the preservation commission's complete investigation and report to
17 provide written comments to the commission concerning the proposed
18 designation or acquisition. Failure of the Department to submit its comments
19 within the time allowed relieves the commission and the governing board of
20 any responsibility to consider the comments.

21 (4) The preservation commission and the governing board shall hold a joint
22 legislative hearing or separate legislative hearings on the proposed regulation.
23 Notice of the hearing shall be made as provided by G.S. 160D-601.

24 (5) ~~Following~~ Following the hearings, the governing board may adopt the
25 regulation as proposed, adopt the regulation with any amendments it deems
26 necessary, or reject the proposed regulation.

27 (6) Upon adoption of the regulation, the owners and occupants of each designated
28 landmark ~~shall be~~ are given written notice of ~~such the~~ designation within a
29 reasonable time. One copy of the regulation and all amendments ~~thereto to it~~
30 shall be filed by the preservation commission in the office of the register of
31 deeds of the county in which the landmark ~~or landmarks are~~ is located. In the
32 case of any landmark property lying within the planning and development
33 regulation jurisdiction of a city, a second copy of the regulation and all
34 amendments ~~thereto to it~~ shall be kept on file in the office of the city or town
35 clerk and be made available for public inspection at any reasonable time. A
36 third copy of the regulation and any amendments shall be given to the local
37 government building inspector. The fact that a building, structure, site, area,
38 or object has been designated a landmark shall be clearly indicated on all tax
39 maps maintained by the local government for such period as the designation
40 remains in effect.

41 (7) Upon the adoption of the landmark regulation or any amendment ~~thereto, it~~
42 ~~shall be the duty of to it,~~ the preservation commission ~~to give~~ gives notice
43 ~~thereof of the regulation or amendment~~ to the tax supervisor of the county in
44 which the property is located. The designation and any recorded restrictions
45 upon the property limiting its use for preservation purposes shall be
46 considered by the tax supervisor in appraising it for tax purposes."
47

48 PART VI. EFFECTIVE DATE

49 **SECTION 8.** This act is effective when it becomes law.