

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 1018
PROPOSED COMMITTEE SUBSTITUTE H1018-PCS30574-MU-5

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

(Public)

Sponsors:

Referred to:

May 24, 2022

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. 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."

SECTION 2.(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.**



* H 1 0 1 8 - P C S 3 0 5 7 4 - M U - 5 *

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

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

14 Such a memorandum may be in substantially the following form:

15 NORTH CAROLINA

16 _____ COUNTY

17 In _____ consideration _____ of _____, _____ the _____ receipt
18 _____

19 (Set out consideration)
20 of _____ which _____ is _____ hereby _____ acknowledged,

21 _____
22 (Name and address of person selling option)
23 does _____ hereby _____ give _____ and _____ grant _____ to
24 _____

25 (Name and address of person buying option)
26 the right and option to purchase the following property:
27 (Here describe property)

28 This option shall expire on the _____ day of _____, _____.
29 The provisions set forth in a written option agreement between the parties dated the _____
30 day of _____, _____, are hereby incorporated in this memorandum.
31 Witness our hand(s) and seal(s) this _____ day of _____, _____

32 _____ (Seal)
33 _____ (Seal)"

34 SECTION 2.(b) G.S. 47-119.1 reads as rewritten:
35 "§ 47-119.1. Form of memorandum-Memorandum for contract to purchase real estate.

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

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

48 The memorandum may be in substantially the following form:

49 NORTH CAROLINA

50 _____ COUNTY

(Name and address of person contracting to sell real estate)
and

(Name and address of person contracting to purchase real estate)
have entered into a contract to sell and purchase the following property:

(Here describe property)

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

The provisions set forth in a written contract to convey real estate 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)

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

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

SECTION 2.(c) G.S. 47-120 reads as rewritten:

"§ 47-120. Memorandum as notice.

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

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

SECTION 3.(a) Article 1 of Chapter 41 of the General Statutes is amended by adding a new section to read:

"§ 41-6.5. Common-law rule against perpetuities abolished.

- (a) The rule of the common law known as the rule against perpetuities is abolished.
- (b) Article 2 of this Chapter sets out the Uniform Statutory Rule Against Perpetuities.

1 (c) This section applies to a property interest or a power of appointment created on or
2 after October 1, 1995. This section clarifies the intent of the General Assembly to abolish the
3 common-law rule against perpetuities when it enacted Chapter 190 of the 1995 Session Laws,
4 which enacted the Uniform Statutory Rule Against Perpetuities."

5 **SECTION 3.(b)** G.S. 41-22 is repealed.

6 **SECTION 3.(c)** This section is effective when it becomes law and does not affect
7 any rights adjudicated in a final court decision entered on or before that date.

8
9 **PART II. LIMITED LIABILITY PARTNERSHIPS**

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

11 "**§ 59-45. Nature of partner's liability in ordinary partnerships and in registered limited**
12 **liability partnerships.**

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

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

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

34 ...

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

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

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

44 "**§ 59-70. Rules for distribution.**

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

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

48 a. The partnership ~~property~~ property.

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

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

- 1 a. Those owing to creditors other than ~~partners,partners.~~
 2 b. Those owing to partners other than for capital and ~~profits,profits.~~
 3 c. Those owing to partners in respect of ~~capital,capital.~~
 4 d. Those owing to partners in respect of profits.
- 5 (3) The assets shall be applied in the order of their declaration in subdivision (1)
 6 of this section to the satisfaction of the liabilities.
- 7 (4) The partners shall contribute, as provided by ~~G.S. 59-48, subdivision (1)~~
 8 G.S. 59-48(1), the amount necessary to satisfy the liabilities; any liabilities
 9 incurred when the partnership was not a registered limited liability
 10 partnership; but if any, but not all, of the partners are insolvent, or, not being
 11 subject to process, refuse to contribute, the other partners shall contribute their
 12 share of the these liabilities, and, in the relative proportions in which they
 13 share the profits, the additional amount necessary to pay the these liabilities.
- 14 (5) An assignee for the benefit of creditors or any person appointed by the court
 15 ~~shall have~~ has the right to enforce the contributions specified in subdivision
 16 (4) of this section.
- 17 (6) ~~Any A partner or his legal representative shall have~~ has the right to enforce
 18 the contributions specified in subdivision (4) of this ~~section,~~ section to the
 19 extent of the amount ~~which he~~ that the partner has paid in excess of his the
 20 partner's share of the liability.
- 21 (7) The individual property of a deceased partner ~~shall be liable for~~ is subject to
 22 the contributions specified in subdivision (4) of this section.
- 23 (8) When partnership property and the individual properties of the partners are in
 24 possession of a court for distribution, partnership creditors ~~shall have~~ have priority
 25 on partnership property and separate creditors have priority on individual
 26 property, saving the rights of lien or secured ~~creditors as heretofore creditors.~~
- 27 (9) Where a partner has become bankrupt or ~~his the partner's estate is insolvent~~
 28 insolvent, the claims against the separate property ~~shall rank~~ in the following
 29 order:
 30 a. Those owing to separate ~~creditors,creditors.~~
 31 b. Those owing to partnership ~~creditors,creditors.~~
 32 c. Those owing to partners by way of contribution."

33 PART III. VENUE FOR JUDICIAL REVIEW OF CONTESTED CASES

34 SECTION 5.(a) G.S. 150B-45 reads as rewritten:

35 "§ 150B-45. Procedure for seeking review; waiver.

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

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

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

4 (1) Contested tax cases. – A petition for review of a final decision in a contested
 5 tax case arising under G.S. 105-241.15 must be filed in the Superior Court of
 6 Wake County.

7 (2) Other final decisions. – A petition for review of any other final decision under
 8 this Article must be filed in the superior court of the county where the person
 9 aggrieved by the administrative decision resides, or in the case of a person
 10 residing outside the State, in the county where the contested case that resulted
 11 in the final decision was filed.

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

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

19 **SECTION 5.(b)** This section is effective when it becomes law and applies to
 20 petitions filed on or after that date.

21 **PART IV. GUARDIANSHIP**

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

23 "**§ 35A-1107. Right to counsel or guardian ad litem.**

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

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

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

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

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

35 (c) After being appointed, the guardian ad litem shall personally visit the respondent as
 36 soon as possible and shall make every reasonable effort to determine the respondent's wishes
 37 regarding the incompetency proceeding and any proposed guardianship. The guardian ad litem
 38 shall present to the clerk the respondent's express wishes at all relevant stages of the proceedings.
 39 The guardian ad litem also may make recommendations to the clerk concerning the respondent's
 40 best interests if those interests differ from the respondent's express wishes. In appropriate cases,
 41 the guardian ad litem shall consider the possibility of a limited guardianship and shall make
 42 recommendations to the clerk concerning the rights, powers, and privileges that the respondent
 43 should retain under a limited guardianship."
 44

45 **PART V. LANDMARK DESIGNATION**

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

47 "**§ 160D-946. Required landmark designation procedures.**

48 As a guide for the identification and evaluation of landmarks, the preservation commission
 49 shall undertake, at the earliest possible time and consistent with the resources available to it, an
 50 inventory of properties of historical, architectural, prehistorical, and cultural significance within
 51

1 its jurisdiction. ~~Such~~ The inventories and any additions or revisions thereof to them shall be
2 submitted as expeditiously as possible to the Office of Archives and History. No regulation or
3 amendment to a regulation designating a historic building, structure, site, area, or object as a
4 landmark ~~nor any amendment thereto may~~ shall be adopted, ~~nor may any and no property shall~~
5 be accepted or acquired by a preservation commission or the governing board, until all of the
6 following procedural steps have been taken:

- 7 (1) The preservation commission ~~shall (i) prepare and adopt (i) prepares and~~
8 adopts rules of procedure and (ii) ~~prepare and adopt prepares and~~
9 adopts principles and ~~guidelines, standards,~~ not inconsistent with this Part, for
10 altering, restoring, moving, or demolishing properties designated as
11 landmarks.
- 12 (2) The preservation commission ~~shall make or cause to be made forwards to the~~
13 Office of Archives and History of the North Carolina Department of Natural
14 and Cultural Resources an investigation and report on the historic,
15 architectural, prehistorical, educational, or cultural significance of each
16 building, structure, site, area, or object proposed for designation or
17 acquisition. ~~Such investigation or report shall be forwarded to the Office of~~
18 Archives and History, North Carolina Department of Cultural Resources.
- 19 (3) The Department of Natural and Cultural Resources, acting through the State
20 Historic Preservation Officer, shall, upon request of the department or at the
21 initiative of the preservation commission, be given an opportunity to review
22 and comment upon the substance and effect of the designation of any
23 landmark pursuant to this Part. Any comments shall be provided in writing. If
24 the Department does not submit its comments or recommendation in
25 connection with any designation within 30 days following receipt by the
26 Department of the investigation and report of the preservation commission,
27 the commission and any governing board shall be relieved of any
28 responsibility to consider such comments. Resources is allowed 30 days from
29 receipt of the preservation commission's complete investigation and report to
30 provide written comments to the commission concerning the proposed
31 designation or acquisition. Failure of the Department to submit its comments
32 within the time allowed relieves the commission and the governing board of
33 any responsibility to consider the comments.
- 34 (4) The preservation commission and the governing board ~~shall~~ hold a joint
35 legislative hearing or separate legislative hearings on the proposed regulation.
36 Notice of the hearing shall be made as provided by G.S. 160D-601.
- 37 (5) ~~Following~~ Following the hearings, the governing board may adopt the
38 regulation as proposed, adopt the regulation with any amendments it deems
39 necessary, or reject the proposed regulation.
- 40 (6) Upon adoption of the regulation, the owners and occupants of each designated
41 landmark ~~shall be~~ are given written notice of ~~such the~~ designation within a
42 reasonable time. One copy of the regulation and all amendments ~~thereto to it~~
43 shall be filed by the preservation commission in the office of the register of
44 deeds of the county in which the landmark ~~or landmarks are~~ is located. In the
45 case of any landmark property lying within the planning and development
46 regulation jurisdiction of a city, a second copy of the regulation and all
47 amendments ~~thereto to it~~ shall be kept on file in the office of the city or town
48 clerk and be made available for public inspection at any reasonable time. A
49 third copy of the regulation and any amendments shall be given to the local
50 government building inspector. The fact that a building, structure, site, area,
51 or object has been designated a landmark shall be clearly indicated on all tax

1 maps maintained by the local government for such period as the designation
2 remains in effect.
3 (7) Upon the adoption of the landmark regulation or any amendment ~~thereto, it~~
4 ~~shall be the duty of to it,~~ the preservation commission ~~to give~~ gives notice
5 ~~thereof of the regulation or amendment~~ to the tax supervisor of the county in
6 which the property is located. The designation and any recorded restrictions
7 upon the property limiting its use for preservation purposes shall be
8 considered by the tax supervisor in appraising it for tax purposes."
9

10 **PART VI. EFFECTIVE DATE**

11 **SECTION 8.** Except as otherwise provided, this act is effective when it becomes
12 law.