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Land Records and Registers of Deeds

The 2001 Session of the General Assembly proved to be a momentous one for the registers of deeds. The legislature made sweeping changes to the statutory fees charged by registers in the execution of their duties. The comprehensive fee increases coupled with the creation of a special fund to enhance the use of automation in the registers' offices will better enable registers to handle the increasing technology and complexity involved in real and personal property transactions. The implementation of new recording standards, which for the first time are clear and precise, will further streamline the procedures used by registers of deeds.

Office of the Register of Deeds

Increases in Uniform Fees

Legislation passed this session increases many of the fees that registers of deeds charge. These changes are included in S.L. 2001-390 (H 1073), effective January 1, 2002.

Instruments in general. The new fees for registering or filing all instruments that are not specifically assigned a fee in G.S. 161-10(a) are now \$12 for the first page and \$3 for each additional or partial page. Registers of deeds had charged \$6 for the first page and \$2 for each additional or partial page.

Deeds of trust, mortgages, and cancellations. Previously the charge for recording a deed of trust or mortgage was \$10 for the first page and \$2 for each additional or partial page. Under the new fee structure, these fees have increased to \$12 and \$3 respectively, bringing them in line with the fees charged for recording all other instruments in general. "Multiple instrument" deeds of trust or mortgages continue to incur an additional \$10 fee for each distinct legal instrument

recorded.¹ There continues to be no fee imposed for recording records of satisfaction or for canceling deeds of trust or mortgages by any other means.

Marriage licenses. The fee for issuing a marriage license is now \$50, increased from the previous amount of \$40. The fee for issuing a delayed marriage certificate with one certified copy has increased substantially—from \$5 to \$20. Finally, the new fee to make a correction on a marriage application, license, or certificate and receive one certified copy of any of these documents as corrected is \$10, double the amount of the previous fee.

Plats. The fee for recording a plat remains \$21 per sheet or page. However, the fee to obtain a certified copy of a plat has increased from \$3 to \$5.

Right-of-way plans. The Board of Transportation must now pay \$21 to record the first page and \$5 to record each additional or partial page of an original or amended right-of-way plan and profile sheet. The previous fee was \$5 per recorded plan. This fee change is effective for plans recorded on or after January 1, 2001, the only increase that is retroactively effective.

Registration of birth certificates. The fees charged for processing delayed birth certificates, or birth certificates registered a year or more after the birth, are amended as follows. If a register prepares the papers necessary for the registration of a delayed certificate, but the registration itself will actually occur in another county, the fee for the preparation is now \$10, double its previous amount. When the delayed birth certificate is presented for registration in the other county, the fee for the registration of the certificate and the issuance of one certified copy is also \$10, again double its previous amount. Finally, if the necessary papers are prepared and the delayed birth certificate is registered in the same county, the register of that county charges one fee of \$20 for both services, twice the previous amount of that fee.

Amendments to birth or death records. The fee for amending or correcting a birth or death record has increased from \$2 to \$10.

Legitimations. The fee charged for preparation of documents related to legitimations is now \$10, increased from the previous amount of \$7.

Certified copies of birth certificates, death certificates, and marriage licenses. Under the previous fee schedule, registers charged \$3 for certified copies of birth certificates, death certificates, and marriage licenses. The fee is now \$10 for each certified copy of these records. Registers may continue to waive this fee in issuing certified birth certificates to persons over age sixty-two.

Certified copies of all other instruments. The fee for providing a certified copy of any instrument other than a birth, death, or marriage certificate has increased from \$3 to \$5.

Comparison of copies for certification. The fee for comparing a copy of an instrument to be filed for registration to its original and subsequently certifying it will increase from \$2 to \$5.

Uncertified copies of instruments. The amended statute leaves to the discretion of the register of deeds whether a fee should be charged for uncertified copies of instruments and how much that fee should be. The statute now clarifies, however, that the amounts of any fees to be charged for uncertified copies must be prominently displayed in the office of the register of deeds. G.S. 161-10(a)(11) previously required that these fees be “prominently posted in his office.” The clarification was probably intended either to make the language of the statute more gender neutral, to specify that the fees had to be posted in the register of deeds’ office generally rather than in the register’s own private workspace, or both. The revised provision reiterates that the register of deeds may change these fees according to his or her discretion, but the fees must remain uniform.

Qualification of notary public. The fee for administering the oath of office to a notary public and making the related record entries has increased from \$5 to \$10.

Nonstandard instruments. S.L. 2001-390 adds new G.S. 161-10(a)(19), which establishes a fee of \$25 for the registration or filing of any document that fails to meet the recording standards adopted in G.S. 161-14(b). The new recording standards are discussed below.

1. Under G.S. 161-10(a)(1a) an “instrument” is a distinct legal instrument that would incur the \$10 fee if it were separately executed and acknowledged and could be recorded alone.

Blank or master forms of mortgages. S.L. 2001-390 amends G.S. 47-21 to increase the fee charged for filing, recording, and indexing a blank or master form of mortgage, deed of trust, or other lien-creating document. The previous fee was \$5 per document. The amendment makes the fee the same as that for recording instruments in general—\$12 for the first page and \$3 for each page or partial page thereafter.

Automation Enhancement and Preservation Fund

In addition to raising uniform fees to more appropriate levels for sustaining operations in the registers of deeds' offices, S.L. 2001-390 also creates an Automation Enhancement and Preservation Fund. New G.S. 161-11.3 provides that 10 percent of the fees collected pursuant to G.S. 161-10 and retained by the county must be set aside each year and deposited into this nonreverting fund to finance expenditures on computer and imaging technology for the register of deeds' office.

The Fiscal Research Division prepared a legislative fiscal note to assess the impact of the changes proposed by House Bill 1073. While it was not possible to accurately estimate the amount that would be dedicated to the fund through the 10 percent set-aside, the Fiscal Research Division did estimate that the statewide increase in revenues from the fee increases alone would total approximately \$13.5 million per year.

G.S. 161-11.3 provides that the existence of this fund and the new moneys it generates for automation expenditures are not intended to diminish the obligation of the board of county commissioners to furnish supplies and equipment to the register of deeds' office.

Real Property Records

Recording Standards

S.L. 2001-390 makes significant changes to G.S. 161-14, which deals with the registration of instruments. These changes apply to instruments *executed* on or after July 1, 2002. It is important to note that the determinative date for the recording standards amendments is *not* the date that the document is presented for recording, but the date that the document is executed. This will require registers and their staff members to pay careful attention to the date that an instrument was fully executed² or, if the instrument itself does not contain a date, to the date stated in the acknowledgment.

The first major change to G.S. 161-14 is the addition of the following italicized language to Subsection (a):

“After the register of deeds has determined that all statutory and locally adopted prerequisites for recording have been met, the register of deeds shall immediately register all written instruments presented to him for registration.”

This additional language is critical because it clarifies the authority of registers of deeds to screen for recordability documents presented for registration and to reject those that are not in proper form. The statute now provides that “[t]he register of deeds shall immediately register all written instruments presented to him for registration.” Despite the current existence of local and state prerequisites that must be met before a document can be recorded, the present language seems to imply that any and every document presented to the register of deeds with the appropriate fee must be recorded, whether it is in proper form or not. The new addition to the paragraph makes it clear

2. The term “fully executed” is used here because situations often arise in which documents require multiple signatures. In such cases, the date of execution should be the date that the last signing party signed the document or, if the document does not indicate the date of signing, the date that the acknowledgment was taken.

that the register has both the authority and the duty to ensure that documents presented are in proper form.

S.L. 2001-390 also rewrites G.S. 161-14(b). Currently the recording standards mandated in this section require only that a document presented for registration be reproducible. The revision deletes this somewhat vague measure of recordability and, in its place, articulates very specific criteria that each presented document must meet. Effective July 1, 2002, any instrument presented for registration must:

- be presented on 8½-by-11-inch or 8½-by-14-inch paper,
- have a 3-inch blank margin at the top of the first page and a ½-inch margin on the remaining sides of the first page and on all sides of subsequent pages,
- be typed or printed in black on white paper in a legible font that is not smaller than 10 points in size,
- be printed on one side of the page, and
- indicate the type of instrument it is at the top of the first page.

The new requirements allow blanks to be filled in and corrections to be made manually in pen.

If a document presented for recording does not meet all of these requirements, the register should first collect the new \$25 fee for filing a “nonstandard document.” After this fee has been collected, the register may then record the document and collect the applicable recording fees. Thus, when an instrument does not comply with the new recording standards, the register will collect *two* fees: one for noncompliance and another for the actual recording. The register may at his or her discretion waive the nonstandard document fee under one circumstance. If the document is printed in a font size that is smaller than 10 points, but the register finds that it is still legible, he or she may record the document without charging the nonstandard document fee.

Treatment of Manufactured Homes As Real Property

S.L. 2001-506 (H 253) amends G.S. 105-273(13) by redefining *real property*. Under the previous version of the statute, the terms “real property,” “real estate,” and “land” included a manufactured home if the home was a multisectional residential structure; had the moving hitch, wheels, and axles removed; and was placed upon a permanent enclosed foundation on land belonging to the owner of the manufactured home. S.L. 2001-506 eliminates the requirements that a manufactured home consist of two or more sections and that the permanent foundation be enclosed in order for the home to be classified as real property. Thus a single-section manufactured home, or “single-wide,” can, for tax years beginning on or after July 1, 2002, be considered real property if the owner takes appropriate steps to have it so classified.

S.L. 2001-506 also provides for a new process for registering manufactured housing that qualifies as real property in the real property records of the county where the home is located. The law creates new G.S. 20-109.2, which provides that the owner of a titled manufactured home that qualifies as real property under G.S. 105-273(13) may have the Division of Motor Vehicles (DMV) cancel the certificate of title so that the manufactured home can be registered in the register of deeds’ office. DMV shall cancel the title upon receipt of the surrendered certificate of title and an affidavit which provides (1) the name of the manufacturer of the home and, if applicable, the model name of the home; (2) the vehicle identification and serial numbers of the home; (3) a legal description of the underlying real property (land) and a statement that the land belongs to the owner of the manufactured home; (4) a description of any security interests in the home; and (5) a section for a notation or statement by DMV regarding the surrender and cancellation of the title certificate. Once DMV cancels the title and certifies the affidavit, the original title is returned to the owner, or to the secured party having the first recorded security interest, for filing in the register’s office. The filing in the register’s office is made pursuant to new section G.S. 47-20.6, which requires that the affidavit be indexed on the grantor index in the name of the owner of the manufactured home and on the grantee index in the name of the secured party or lienholder, if any. Once the affidavit has been recorded, the manufactured home is considered an improvement to the real property, and liens which were previously held against only the

manufactured home or only the underlying land are perfected and become liens against both the manufactured home and the underlying land.

S.L. 2001-506 creates new G.S. 47-20.7, which governs the process of registering manufactured housing as real property when there is no certificate of title for DMV to cancel. If a manufactured home has never been titled by DMV or if the title has been previously surrendered, the owner of the home, as an alternative to filing the affidavit prescribed by G.S. 20-109.2, may file in the register of deeds' office a "declaration of intent" to affix the manufactured home to the underlying land. The declaration of intent must provide (1) a description of the manufactured home; (2) the name of the manufacturer of the home and, if applicable, the model name; (3) the serial number of the home; and (4) a statement that the owner intends for the manufactured home to be treated as real property. Thereafter, the manufactured home is considered an improvement to the real property, and liens which were previously held against only the manufactured home or only the underlying land are perfected and become liens against both the manufactured home and the underlying land.

Tax Certification

S.L. 2001-464 (H 108) gives certain counties another "enforcement measure" that should increase property tax collection rates in those counties that choose to implement it. This chapter authorizes the boards of commissioners in twenty-five counties³ to pass a resolution requiring the register of deeds to refuse to accept for registration any deed transferring real property unless the county tax collector has certified that there is no lien against the subject property as a result of delinquent county, municipal, or other taxes the collector is charged with collecting. The authority is established in a new statute, G.S. 161-31. The statute assigns to the board of commissioners the task of prescribing the form that the "certification" must take.

Marriage Laws

S.L. 2001-62 (H 142) makes significant changes and additions to the North Carolina marriage laws. While many of the amended provisions reflect new requirements for marriages involving a minor or minors, several of the amendments alter the duties of registers of deeds in issuing marriage licenses and in performing other record-keeping functions related to marriage. All of these marriage law changes and additions became effective on October 1, 2001.

Registers are often asked who may perform or officiate at a marriage ceremony. Before the new provisions were enacted, qualified officiants included ordained ministers, ministers acting under the authority of their churches, and magistrates. S.L. 2001-62 amends G.S. 51-1 and adds new Section 51-3.2 to provide additional methods for solemnizing marriages. The amendments extend the authority to perform marriages to those acting "[i]n accordance with any mode of solemnization recognized by any religious denomination, or federally or State recognized Indian Nation or Tribe." With respect to solemnization as prescribed by a religious denomination, it is not incumbent upon the register issuing and recording the license to determine what does and does not constitute a "religious denomination." Such matters are more appropriately settled by the religious establishment itself.

Minors' Authority to Marry

The changes that affect the ability of minors to marry are quite substantial. The most important ones relating to the issuance and management of marriage records are as follows:

3. Alleghany, Anson, Beaufort, Cabarrus, Camden, Cherokee, Chowan, Currituck, Forsyth, Graham, Granville, Harnett, Haywood, Jackson, Lee, Madison, Montgomery, Pasquotank, Perquimans, Pitt, Stanly, Swain, Vance, Warren, and Yadkin.

- In order for a marriage license to be issued to a sixteen- or seventeen-year-old applicant, the person, agency, or institution that has legal custody of or serves as guardian for the underage applicant must first provide a written consent to such marriage. The consent must be notarized or signed in the presence of the register of deeds, and it must be filed with the register of deeds.
- Before a marriage license can be issued to a fourteen- or fifteen-year-old applicant, a certified copy of a district court order authorizing the marriage must be filed with the register of deeds. Such marriage licenses shall only be issued when the fourteen- or fifteen-year-old applicant has become or will become a parent and the applicant seeks to marry the other parent of his or her child. Registers must be aware that the court order will only address the capacity of a single underage applicant to marry. If both marriage applicants are under the age of sixteen, each applicant is required to obtain a court order granting him or her the capacity to marry and authorizing the marriage. Likewise, if one applicant is under the age of sixteen and one is between the ages of sixteen and seventeen, the applicant under the age of sixteen will have to file the requisite court order, and the sixteen- or seventeen-year-old applicant will have to file the necessary written consent signed by his or her legal guardian or custodian.
- Marriage licenses may no longer be issued to persons who are thirteen years of age or younger under *any* circumstances, including pregnancy and parenthood. It is unlawful for persons thirteen and under to marry, and no legal custodian or guardian may consent to such a union.

Other changes affecting minors and the marriage laws are discussed in Chapter 3, “Children and Families.”

Authority of Assistant Registers to Issue Licenses

S.L. 2001-62 amends G.S. 51-6 to provide that marriage licenses may now be issued and signed by *assistant* registers of deeds, in addition to registers and deputy registers.

Evaluation of Capacity to Marry

S.L. 2001-62 also adds language to G.S. 51-8 in an attempt to make more objective the register’s task of determining whether applicants have the capacity to marry. The amended section provides that persons applying for a marriage license shall demonstrate this capacity by answering questions about their ages, marital statuses, and intentions to marry. The register of deeds should then rely on the answers given to determine whether a license should be issued to the applicants. Before this change, the law required that the register issue a license for the marriage of two persons “if it appear[ed] that such persons [were] authorized to be married in accordance with the laws of this State.” The prior version of the statute provided little guidance to registers in judging the capacity of parties to be married. Apparently lawmakers intended, by creating these three questions, to introduce more unambiguous standards to a process that involves some amount of guesswork.

Obtaining a License without Personal Appearance

S.L. 2001-62 also creates new G.S. 51-8.2, which allows the issuance of a marriage license even when one of the applicants cannot personally appear before the register of deeds. This provision allows the register to accept an affidavit in lieu of the absent applicant’s personal appearance. The affidavit must be presented by the other applicant for the marriage license when he or she appears before the register. The required format for the affidavit is set forth in G.S. 51-8.2. The affidavit must contain:

- the full name of the absent applicant;
- his or her residential address;
- the applicant’s date of birth, birthplace, and current age;

- the names and birthplaces of the applicant's father and mother and their addresses if they are still living;
- the cause (for example, death, divorce, or annulment) and date of termination of the applicant's last marriage, if applicable; and
- the applicant's social security number, or an affidavit of ineligibility if the applicant does not have a social security number.

The applicant may, if so desired, include on the affidavit information about his or her race and the level of education obtained.

Finally, the applicant must attach to the affidavit (1) documentation that he or she is eighteen years of age or older and (2) documentation of divorce as required by the county of issuance.

Statewide Authority to Marry

The new legislation makes a few changes to the content of the marriage license by amending G.S. 51-16. The first significant change is that, under the new version of the statute, the holders of the marriage license are permitted to celebrate the proposed marriage anywhere within the state of North Carolina. Previously the couple had the authority to marry only in the county in which the license was issued. The license continues to be effective for sixty days from the date of issuance and, as always, must be returned to the county of issuance.

Racial Classification

The legislation also addresses the designation of race on the license. Under the amended provision, the register no longer has to indicate the race of the applicants unless an applicant requests the racial designation. The prior version of the statute gave the register three racial classifications to choose from. The statute now allows the register to select one of twenty-four racial classifications if instructed to do so by an applicant.

Corrections to Marriage Records

Finally, S.L. 2001-62 expands the register's authority to correct marriage records. Before its enactment, registers were authorized to correct only the names of the parties to the marriage. With the passage of the amendments to G.S. 51-18.1, a register of deeds may now correct a marriage record or records containing any incorrect information. In order to make such a correction, the register must first receive

- an affidavit signed by either or both of the applicants for the marriage license and
- affidavits from at least two other persons who know the correct information.

These documents are the same as those required in order for a register to perform a name change under the prior version of the statute.

Uniform Commercial Code

In 2000 the legislature significantly revised Article 9 of the Uniform Commercial Code. S.L. 2001-231 (S 257) makes a few clarifying changes to these revisions. Several of the provisions in the new statute address the filing of fraudulent financing statements in the Secretary of State's office. The act makes no reference to the occurrence of such filings in registers of deeds' offices and provides no method for the prevention or correction of fraudulent filings in local filing offices.

The changes discussed below became effective July 1, 2001.

Terminations of Pre-effective-date Filings

S.L. 2001-231 provides an additional method of terminating financing statements that were filed before July 1, 2001. The statute refers to these financing statements as "pre-effective-date

financing statements” and provides that after July 1, 2001, they may be canceled by filing a termination statement in the office in which they were filed. Cancellation by filing a termination statement may not be used when an “initial financing statement” has been filed in the new filing office to continue the effectiveness of a pre-effective-date financing statement.

The statute also provides that, with respect to statements filed in the register of deeds’ office, cancellation by filing a termination statement is permitted only when the subject financing statement relates to real property (that is, it covers fixtures, as-extracted collateral, or timber to be cut). Apparently, terminating a pre-effective-date financing statement unrelated to real property cannot be accomplished simply by filing a termination statement in the register of deeds’ office.

Duty to Accept Filings

S.L. 2001-231 also clarifies the duties of local filing offices to accept filings. Registers of deeds must continue to accept for filing any record related to real property. Records that do not concern timber to be cut, as-extracted collateral, or fixtures shall not be accepted by registers in the local filing offices, even if such records relate to financing statements previously filed there.

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