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## Registers of Deeds, Land Records, and Notaries

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Compared to the previous two years, the 2007 legislative session was quiet with respect to legislation affecting registers of deeds and notaries.

### **Registers of Deeds and Land Records**

Several laws were enacted in 2007 affecting registers of deeds and real estate records, including changes to local taxation of real estate transactions.

### **Local Option Land Transfer Tax**

All North Carolina counties collect an excise tax of \$1 on each \$500 or portion thereof (0.2 percent) of the consideration or value of real estate conveyed in their counties [G.S. 105-228.30(a)]. The seller, or transferor, is required to report and pay the tax to the register of deeds when a deed is recorded [G.S. 105-228.30(a)]. The counties retain half the tax collected, and they may retain an additional 2 percent of the balance forwarded to the North Carolina Department of Revenue [G.S. 105-30(b)]. Several counties have been authorized by local acts to collect an additional tax, up to the same amount as the statewide tax, generally applicable to the same transactions, with the entire process retained by those counties. S.L. 2007-323 (H 1473) authorizes all counties to adopt such a tax, of up to 0.4 percent in increments of one-tenth percent, if approved in a local referendum. Counties that adopt the tax may not also adopt an additional one-quarter cent local sales and use tax authorized by the same legislation.

New Article 60 of Chapter 105 of the General Statutes provides that the local option county land transfer tax is to be based on “the consideration or value, whichever is greater, of the interest conveyed, including the value of any lien or encumbrance remaining on the property at the time of conveyance” [G.S. 105-602(b)]. The county retains the proceeds of the tax and may use them “for any lawful purpose” [G.S. 105-603(b)]. The tax has the same exceptions as apply to the statewide land transfer tax, the most commonly applicable of which are exceptions for gifts, transfers for no consideration, leases, conveyances by governments, and certain transfers that occur without deeds (such as transfers by survivorship or will). Other new statutes include G.S. 105-602(a) (incorporating exceptions from G.S. 105-228.28 and 105-228.29); G.S. 105-228.28 (tax does not apply to transfers by a governmental unit or instrumentality of a governmental unit); G.S. 105-228.29 (exceptions). Registers will collect the tax and show its amount on the recorded deeds [G.S. 105-603(a)]. The tax may take effect the first day of a calendar month set in the resolution levying the tax, but not earlier than the first day of the second succeeding calendar month after the resolution is adopted [G.S. 105-602(b)].

### **Tax Certification**

G.S. 161-31(b) authorizes the board of commissioners of about half of the counties to prohibit a register of deeds from recording a deed unless the tax collector has certified that no delinquent taxes are a lien on the property being conveyed. S.L. 2007-221 (H 464) adds Burke, Caswell, Greene, Jones, and Wayne Counties to the counties authorized to require this certification.

### **Automation Enhancement and Preservation Fund**

Pursuant to G.S. 161-11.3, counties retain 10 percent of certain fees charged by a register of deeds for use in an Automation Enhancement and Preservation Fund. S.L. 2007-353 (H 947) clarifies that the authorized use of these funds includes “computer or imaging technology and needs associated with the preservation and storage of public records in the office of the register of deeds.”

### **List of County Cemeteries**

S.L. 2007-118 (H 107) directs each board of county commissioners to prepare a list of all public cemeteries in the county that are outside municipalities and are not established and maintained by a municipality, including the names and address of those in possession and control of the cemeteries [G.S. 65-111(1)]. The list must be recorded and maintained with the register of deeds, as stated in G.S. 65-111(2), and a copy must be filed with the Department of Cultural Resources and the Publications Division in the Department of the Secretary of State, as instructed by G.S. 65-111(3).

### **Loan Originator Disclosure**

S.L. 2007-176 (H 313) requires settlement agents handling real estate loan transactions to show the name of “the mortgage broker or other person who acted as a mortgage broker in the origination of the loan” on the first page of a deed of trust, if the agent receives information about such a broker from the lender or has actual knowledge of such a broker. Lenders are required to identify mortgage brokers in the loan closing instructions (G.S. 45A-4, 45A-5).

### **Register Pension Changes**

County registers of deeds have important responsibilities, which are becoming increasingly challenging and complex in the modern transactional and technological environment. In 1987 the General Assembly established a supplemental pension for registers of deeds who are retired with at least twelve years of service as a register from the Local Governmental Employees’ Retirement

System or an equivalent locally sponsored plan. A number of changes have been made to the supplemental pension since its creation, including extension of eligibility to those with at least ten years of service as a register of deeds, and other eligibility criteria based on age and length of service for those who retire from service with counties that do not participate in the Local Governmental Employees' Retirement System (G.S. 161-50.4). The supplemental pension is funded through deposits made by counties of a percentage of the monthly receipts by registers for recording fees and certain other charges for office functions. S.L. 2007-245 (H 676) makes three changes to adjust the pension. First, it changes the percentage of receipts deposited into the pension from 4.5 percent to 1.5 percent, which is possible because the amount being deposited was exceeding the amount of funding needed for eligible pensions [G.S. 161-50.2(a)]. Second, S.L. 2007-245 changes the description of those eligible to receive the monthly pension to those who have completed the required service and retirement status "beginning with the month of retirement" [G.S. 161-50.4(b)]. Third, S.L. 2007-245 changes the manner in which the maximum pension payment is calculated, so that now the payment cannot exceed 75 percent of a register of deed's equivalent last monthly rate, including all supplements, up to a maximum of \$1,500 per month [G.S. 161-50.5(a)].

## **Notaries**

S.L. 2007-484 (S 613) added a new curative provision to the many statutes validating notarial acts that otherwise could be open to challenge. New G.S. 10B-70 validates acknowledgments performed for a local government agency between October 31, 2006, and June 20, 2007, "by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, by a person whose notary commission has expired, or by a person who failed to qualify within 45 days of commissioning as required by G.S. 10B-10."

## **Other Related Legislation**

Registers issue marriage licenses to those who wish to get married in North Carolina. G.S. 51-1 defines who may perform marriage ceremonies for those who have obtained licenses. S.L. 2007-61 (S 1131) authorized North Carolina district court judges to perform marriages between June 4, 2007, and June 8, 2007.

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