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Land Records and Registers of Deeds

The 1999 session of the General Assembly enacted numerous acts affecting registers of deeds. Perhaps the major one was a long-sought updating of Chapter 43 of the General Statutes, the Torrens land title procedures. Other important changes deal with corporate acknowledgments, real estate excise tax stamps, and marriage licenses.

Office of the Register of Deeds

Fees

S.L. 1999-434 (S 222) enacts new G.S. 159-32.1. This statute authorizes “a local government” to accept an electronic payment for any tax, assessment, fee, or charge. An *electronic payment*, as used in this statute, is defined by G.S. 147-86.29(2a) to include credit cards, debit cards, and electronic fund transfers. The statute further provides that a local government may pay any discount or transaction fee imposed by a credit card company or bank for handling the electronic payment and then impose a surcharge on the maker of the payment to recover this cost.

This statute prompts several questions concerning the acceptance of electronic payments by registers of deeds in payment of the fees required by G.S. 161-10. First, could a board of county commissioners require that all county offices, including the register of deeds, accept electronic payments even though the register did not wish to do so? The answer appears to be no. The register of deeds, as an elected county officer and pursuant to G.S. 161-10, is responsible for collecting and accounting for the fees collected in the office. The register alone determines when the appropriate fee has been paid and what medium is acceptable as payment, and the register is liable on his or her bond for the proper handling of the fees collected. Nothing in Chapter 153A of the General Statutes gives the board of county commissioners authority over the register’s fees, and nothing in Chapter 159 gives either the board or the county finance officer authority to direct what medium the register shall accept in payment of the fees set forth in G.S. 161-10.

Second, does new G.S. 159-32.1 authorize a register of deeds to accept electronic payments? The answer appears to be yes. Even though a register of deeds is not, strictly speaking, "a local government," the intent of the statute appears to be to allow acceptance of electronic payments for all fees owed to a city or county, and the register of deeds is certainly an officer of county government.

Third, if a register of deeds decides to accept electronic payments, can he or she impose a surcharge to recover any discount or transaction cost? The answer appears to be no, for two reasons. First, G.S. 161-10(a) requires that the fees charged by registers of deeds be uniform statewide. If some registers made surcharges in different amounts, this uniformity requirement would be violated. Second, G.S. 161-10(b) provides that the fees set forth in G.S. 161-10(a) are exclusive and that no other fees may be charged. The addition of a surcharge would violate this provision. Since these provisions of G.S. 161-10 relate specifically to the fees charged by registers of deeds, under accepted principles of statutory construction, they control the general provisions of new G.S. 159-32.1. Registers of deeds may well conclude that it would not be fiscally responsible to accept electronic payments without authority to impose the surcharges, because without the surcharge the county would lose between 4 and 7 percent of the fee charged on each transaction.

Electronic Storage of Records

G.S. 153A-436 deals with the various media on which copies of county records, including those in the office of the register of deeds, can be stored. Effective December 1, 1999, S.L. 1999-131 (S 1021) and S.L. 1999-456 (H 162) add new subsection (f) to provide that the statute also applies to records stored on permanent, computer-readable media, such as a CD-ROM, if the medium is not subject to erasure or alteration. G.S. 153A-436(f) also prohibits the use of nonerasable, computer-readable storage media for preservation duplicates, as defined in G.S. 132-8.2, or for the preservation of permanently valuable records, except as expressly approved by the Department of Cultural Resources.

Real Property Records

Real Estate Excise Tax

Effective July 1, 2000, S.L. 1999-28 (H 56) amends G.S. 105-228.31 and G.S. 105-228.32 to delete the requirement that stamps be affixed to instruments to show the amount of the real estate excise tax paid. It is important to note that this act does not eliminate the tax itself but only the requirement that stamps be affixed. The tax must still be paid, and the amount of the tax is unchanged. The types of instruments on which the tax is paid and the exemptions to the tax are also unchanged. Before an instrument is recorded, the register of deeds is required to collect the tax and enter a notation on the instrument that the tax has been paid and the amount of the tax. A notation similar to the following one should be sufficient: "Real estate excise tax paid: \$____." The entry can be handwritten, typed, or made as part of a computerized entry. The act also repeals G.S. 105-228.34, which makes willful failure to pay the tax a misdemeanor.

Corporate Acknowledgments

S.L. 1999-221 (S 761) makes significant changes in the forms for acknowledgments by corporations on conveyances, that is, on deeds and deeds of trust. In addition to a few minor changes in the form set out in G.S. 47-41.01(b) for an acknowledgment by the attesting officer, the act makes one major change: if the instrument is not sealed with the corporate seal, the words "sealed with its corporate seal" may be omitted from the acknowledgment. The reason for this change is that another provision of S.L. 1999-221, discussed below, deletes the requirement of a seal for real property instruments. The corporate officials authorized to perform attestations

remain the secretary, assistant secretary, trust officer, assistant trust officer, associate trust officer, or in the case of a bank, its secretary, assistant secretary, cashier, or assistant cashier.

Two provisions of this act authorize corporations to execute and record conveyances that have not been attested. New G.S. 47-41.01(c) is enacted to create a form of acknowledgment to be used when a corporate instrument making a conveyance is not attested. That form is set up as follows.

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| <p>_____ (State)</p> <p>_____ (County)</p> <p>I, _____ (Name of officer taking acknowledgment), _____ (Official title of officer taking acknowledgment), certify that _____ personally came before me this day and acknowledged that he (or she) is _____ (Title of official) of _____, a corporation, and that he/she, as _____ (Title of official), being authorized to do so, executed the foregoing on behalf of the corporation.</p> <p>Witness my hand and official seal, this the _____ day of _____.</p> <p>_____</p> <p>(Signature of officer taking acknowledgment)</p> <p>(Official seal, if officer taking acknowledgment has one)</p> <p>My commission expires _____ (Date of expiration of commission as notary public).</p> |
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The significance of this new form of acknowledgment is that, together with the deletion of the attestation requirement in G.S. 47-18.3(a), it permits a corporation to execute and acknowledge a deed or deed of trust without the instrument being attested and without a corporate seal being affixed.

New G.S. 47-41.01(d), together with G.S. 47-18.3(a), provides that if a corporate conveyance is executed on behalf of the corporation by its chairman, president, chief executive officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer, no further evidence of the official's authority to execute the conveyance is required. That is, a register of deeds should certify such an acknowledgment without requiring any additional documentation. This is no change from the existing law and practice. Amended G.S. 47-18.3(e), however, provides that any officer, manager, or agent of the corporation may execute a conveyance on behalf of the corporation if the corporation has either attached to the instrument or recorded in the office of the register of deeds a signed and attested resolution giving the officer, manager, or agent authority to execute conveyances on behalf of the corporation. It is permissible under this statute for a corporation to record the authorizing resolution once, and then the resolution is applicable to all deeds and deeds of trust subsequently recorded.

Seals

S.L. 99-221 enacted new G.S. 39-6.5 to eliminate the requirement that a person executing an instrument conveying an interest in real property must seal the instrument with his or her personal seal. This requirement was eliminated with regard to both corporate and individual instruments. Thus registers of deeds may soon begin seeing instruments that do not bear a corporate seal or that do not have the term "[SEAL]" after the grantor's signature. Such instruments are now legal. This act has no effect on the requirement that a notary or other official taking the acknowledgment of a signature must affix his or her official seal.

Records Study

S.L. 1999-395 (H 163) authorizes the Legislative Research Commission (LRC) to study ways to improve the quality of documents recorded in the office of the register of deeds. This study grew out of S 873, which would have authorized the Secretary of State to adopt rules imposing certain requirements as to format on documents recorded in the office of the register of deeds. S 873 did not pass, but this study may result in a proposal to accomplish its objectives. It is permissible for the commission to appoint nonlegislator members, such as registers of deeds and lawyers, to this study committee. The LRC may report its findings and recommendations on this matter to either the 2000 or the 2001 session of the General Assembly.

Torrens Land Title Registration Procedures

The Torrens land title registration procedures, authorized by Chapter 43 of the General Statutes, are used for the most part in the eastern counties, where timber and paper companies own large tracts of land, but the procedures are available for use in every county of the state. S.L. 1999-59 (H 1088) makes numerous changes in these procedures to bring them up to date. The act is effective January 1, 2000.

Fees. The act amends G.S. 43-5 to link the fees charged for Torrens procedures to the general fees charged pursuant to G.S. 161-10. The fee for recording a new certificate of title is that charged for instruments in general, the fee for issuing a certificate is the fee for issuing a certified copy, and the fee for noting entries is that for recording instruments in general. A considerable advantage of this linking is that, when the general fees provided in G.S. 161-10 are increased, the Torrens fees will automatically be increased as well.

Registration and Indexing. G.S. 43-13 is amended to delete the requirement that the register of deeds provide a special book for Torrens title registrations and instead requires that all instruments and entries be recorded in the real property records and indexed in those records. The certificate of title and entries for transactions regarding the title are to be indexed on the grantor index in the name "Registered estate no. _____ (the certificate number)" and on the grantee index in the name of the registered owner.

Judgments. The act amends G.S. 43-5 to change significantly the procedure when a judgment or lien is recorded in the clerk of superior court's office against the owner of registered land. The clerk is required to certify notice of the judgment, lien, or notice of *lis pendens* to the register of deeds only if a party in interest requests the clerk to do so. The register must then enter notice of the judgment or lien on the record copy of the certificate of title and proceed to recover the certificate of title pursuant to G.S. 43-40. The encumbrance is effective against the registered estate from the time the register of deeds enters the notice on the record copy of the certificate of title.

Delinquent Property Taxes. Property taxes become delinquent on January 6 following the September 1 due date. G.S. 43-46 currently directs the tax collector to file a memorandum of delinquency with the register of deeds by March 1 for each delinquent tax on registered land. The act amends G.S. 43-46 to move the deadline for filing this memorandum to June 30. It further directs the register of deeds to enter the notice of delinquency on the record copy of the certificate of title, and the tax lien shall be valid against the registered estate from that time. When the tax is paid, the register is directed to enter a notice of cancellation of tax lien on the record copy of the certificate of title. In place of the special procedure in G.S. 43-48 for foreclosing the tax lien on registered land, the act simply provides that the *in rem* foreclosure procedure contained in G.S. 105-375 shall be used. This procedure is one of two available to foreclose tax liens on unregistered land.

Technical Changes

S.L. 1999-119 (H 214) substitutes the Secretary of State for the Department of Environment and Natural Resources in various land records statutes, such as G.S. 161-22.2(d). This reflects the transfer several years ago of the Land Records Management Program to the Office of the Secretary of State.

Limited Liability Companies

G.S. 57C-2-34 provides that, when the real property of a limited liability company is transferred by merger, a certificate of merger is to be recorded in the office of the register of deeds. The name of the former limited liability company is to be indexed in the grantor index, and the name of the new entity is to be indexed in the grantee index. S.L. 1999-189 (S 660) amends this statute to provide that a certificate shall be filed with the register of deeds when there is a transfer by merger, conversion, or name change of the limited liability company.

Notice of Contaminated Property

S.L. 1999-198 (S 1159) enacts G.S. 143B-279.9 and -279.10 to provide for yet another type of notice of contaminated real property. The act authorizes the owner to place certain restrictions on the property. These restrictions, along with a surveyed plat of the property, must be approved by the Department of Environment and Natural Resources. The plat will be titled NOTICE OF CONTAMINATED SITE. After approval, the department will certify the notice and return it to the owner. The owner is then required to file a certified copy of the notice-plat with the register of deeds. The plat is required to comply with G.S. 47-30 and will have to be certified by a review officer before the register records it. It should be filed and indexed with other plats. It is to be indexed on the grantor index in the name of the landowner; no grantee indexing is necessary.

A Notice of Contaminated Site may be canceled by the Department of Environment and Natural Resources (DENR) after the contamination has been eliminated. DENR will then send a notice of cancellation to the register of deeds. This notice of cancellation is to be recorded in the deed books, indexed on the grantor index in the name of the landowner, and indexed on the grantee index in the name "Secretary of Environment and Natural Resources." If the register makes marginal entries, a marginal entry is to be made on the Notice of Contaminated Site showing the date of cancellation and the book and page where the notice of cancellation is recorded.

Department of Transportation Right-of-Way Plans

Effective January 1, 2000, S.L. 1999-422 (S 233) makes three changes in Department of Transportation (DOT) right-of-way plans. The first adjusts the dimensions of each plan from 20 inches by 12 inches to 17 inches by 11 inches. The second allows the DOT to file the plans electronically, if the register of deeds of the county where the plans are to be filed approves filing in that medium. The third change requires indexing the plans by identification number rather than by project number.

Notaries

Application Fee

Effective October 1, 1999, S.L. 1999-337 (S 55) amends G.S. 10A-4(b)(6) to increase the application fee to be commissioned as a notary public to \$30.

Validations

S.L. 1999-21 (S 62) amends G.S. 10A-16 to validate various defective notary acknowledgments that were taken on or before February 28, 1999 (the date was October 1, 1998). It also enacts new G.S. 10A-17 to validate acknowledgments taken on or before August 1, 1998, by a person whose commission was revoked on or before January 30, 1997.

S.L. 1999-456 amends G.S. 47-108.111 to validate instruments not containing a seal that were recorded prior to January 1, 1999 (the date was January 1, 1995).

Vital records

Death Certificates

Effective October 1, 1999, S.L. 1999-247 (H 957) amends G.S. 130A-115(c) to authorize a physician signing a death certificate to use an electronic or facsimile signature, if approved by the state registrar.

Marriage Licenses

Effective July 21, 1999, S.L. 1999-375 (S 1018) amends G.S. 51-8 to provide that if an applicant for a marriage license does not have a social security number, and is ineligible to obtain one, he or she shall present a sworn or affirmed statement to that effect to the register of deeds, and the register shall then issue the license, provided all other license requirements are met. The statement must be sworn or affirmed before an officer authorized to administer oaths, such as a notary. Registers who are currently using an affidavit for this purpose should modify the form so that the substantive language states: "I swear (or affirm) that I have not been issued a social security number by the United States Government and I am ineligible to obtain a social security number." Nothing needs to be said about why the applicant does not have a social security number, why the applicant is in the United States, or the country of which the applicant is a citizen. The register of deeds is to retain this statement with the register's copy of the marriage license; it is not forwarded to the state Office of Vital Records.

S.L. 1999-395 authorizes the Legislative Research Commission to study the North Carolina marriage laws. If the commission chooses to undertake this study, it is to be guided by H 973 and S 1018, as introduced in the 1999 General Assembly, for the scope of the study. Those bills called for a comprehensive study of Chapter 51 of the General Statutes, including an examination of such issues as who is authorized to perform marriages, the role of the register of deeds in issuing marriage licenses, and the laws regarding marriages by persons under eighteen years old. The commission may appoint one or more registers of deeds to the committee that undertakes this study. If the study is undertaken, the commission may report its findings and recommendations to either the 2000 or the 2001 session of the General Assembly.

William A. Campbell