§ 47-14. Register of deeds to verify the presence of proof or acknowledgement and register instruments and electronic documents; order by judge; instruments to which register of deeds is a party.

(a) Verification of Instruments. – The register of deeds shall not accept for registration any instrument that requires proof or acknowledgement unless the execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the proof or acknowledgement includes the officer's signature, commission expiration date, and official seal, if required. The register of deeds shall accept an instrument for registration that does not require proof or acknowledgement if the instrument otherwise satisfies the requirements of G.S. 161-14. Any instrument previously recorded or any certified copy of any instrument previously recorded may be rerecorded provided the instrument is conspicuously marked on the first page as a rerecording. The register of deeds may rely on the marking and the appearance of the original recording office's recording information to determine that an instrument is being presented as it was previously recorded. The register of deeds is not required to further verify the proof or acknowledgement of or determine whether any changes or alterations have been made after the original recording to an instrument presented for rerecording. The register of deeds is not required to verify or make inquiry concerning any of the following:

(1) The legal sufficiency of any proof or acknowledgement.

(2) The authority of any officer who took a proof or acknowledgement.

(3) The legal sufficiency of any document presented for registration.

(a1) Verification of Electronic Documents. – The requirements of subsection (a) of this section for verification of the execution of an instrument are satisfied with respect to an electronic document if all of the conditions in this subsection are met. For purposes of this subsection, the term "electronic document" is as defined in G.S. 47-16.2(3). The conditions are:

(1) The register of deeds has authorized the submitter to electronically register the electronic document.

(2) The document is submitted by a United States federal or state governmental unit or instrumentality or a trusted submitter. For purposes of this subsection, "a trusted submitter" means a person or entity that has entered into a memorandum of understanding regarding electronic recording with the register of deeds in the county in which the electronic document is to be submitted.

(3) The execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the proof or acknowledgment includes the officer's signature, commission expiration date, and official seal, if required, based on the appearance of these elements on the digitized image of the document as it will appear on the public record.

(4) Evidence of other required governmental certification or annotation appears on the digitized image of the document as it will appear on the public record.

(5) With respect to a document submitted by a trusted submitter, the digitized image of the document as it will appear on the public record contains the submitter's name in the following completed statement on the first page of the document image: "Submitted electronically by ___ (submitter's name) in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the ___ (insert county name) County Register of Deeds."

(6) Except as otherwise provided in this subsection, the digitized image of the electronic document conforms to all other applicable laws and rules that prescribe recordation.

(a2) Verification of Officer's Signature. – Submission to a register of deeds of an electronic document requiring proof or acknowledgement is a representation by the submitter that, prior to submission, the submitter verified the officer's signature required under subdivision (a1)(3) of this section to be one of the types of signatures listed in this subsection. The register of deeds may rely on this representation for purposes of determining compliance with the signature requirements of this section. The electronic registration of a document with a register of deeds prior to the effective date of this statute is not invalid based on whether the register verified the officer's signature in accordance with this subsection. The types of signatures are:

(1) A signature in ink by hand.

(2) An electronic signature as defined in G.S. 10B-101(7).

(b) Order by Judge. – If a register of deeds denies registration pursuant to subsection (a), the person offering the instrument for registration may apply to any judge of the district court in the district, including the county in which the instrument is to be registered, for an order for registration. Upon finding all of the requirements in this subsection, the judge shall order the instrument to be registered, together with the certificates, and the register of deeds shall register them accordingly. The requirements are:

(1) If the instrument requires proof or acknowledgement, that the signature of one or more signers has been proved or acknowledged before an officer authorized to take proofs and acknowledgements.

(2) That the proof or acknowledgement includes the officer's signature and commission expiration date and official seal, if required.

(c) Repealed by Session Laws 2008-194, s. 7(a), effective October 1, 2008.

(d) Scope. – Registration of an instrument pursuant to this section is not effective with regard to parties who have not executed the instrument or whose execution thereof has not been duly proved or acknowledged.

(e) Register of Deeds as Party. – Any instrument required or permitted by law to be registered in which the register of deeds of the county of registration is a party may be proved or acknowledged before any magistrate or any notary public.

(f) Presumption of Notarial Seal. – The acceptance of a record for registration by the register of deeds shall give rise to a presumption that, at the time the record was presented for registration, a clear and legible image of the notary's official seal was affixed or embossed on the record near the notary's official signature. This presumption applies regardless of whether the image is legible or photographically reproduced in the records maintained by the register of deeds and applies to all instruments filed in the records maintained by the register of deeds regardless of when the instrument was presented for registration. A register of deeds may not refuse to accept a record for registration because a notarial seal does not satisfy the requirements of G.S. 10B-37. The presumption under this subsection is rebuttable and shall apply to all instruments whenever recorded. However, a court order finding the lack of a valid seal shall not affect the rights of a person who (i) records an interest in the real property described in the instrument before the finding of a lack of a valid seal and (ii) would otherwise have an enforceable interest in the real property. (1899, c. 235, s. 7; 1905, c. 414; Rev., s. 999; C.S., s. 3305; 1921, c. 91; 1939, c. 210, s. 2; 1967, c. 639, s. 1; 1969, c. 664, s. 2; 1973, c. 60; 2005-123, s. 2; 2006-59, s. 26; 2006-259, s. 52(a)-(b); 2006-264, s. 40(c); 2008-194, s. 7(a); 2012-18, s. 1.4; 2013-204, s. 1.14.)

§ 14-118.6. Filing false lien or encumbrance.

(a) It shall be unlawful for any person to present for filing or recording in a public record or a private record generally available to the public a false lien or encumbrance against the real or personal property of a public officer, a public employee, or an immediate family member of the public officer or public employee on account of the performance of the public officer or public employee's official duties, knowing or having reason to know that the lien or encumbrance is false or contains a materially false, fictitious, or fraudulent statement or representation. For purposes of this subsection, the term "immediate family member" means a spouse or a child. Any person who violates this subsection shall be guilty of a Class I felony.

(b) When presented to the register of deeds for recording, if a register of deeds has a reasonable suspicion that the lien or encumbrance is false, as described in subsection (a) of this section, the register of deeds may refuse to record the lien or encumbrance. Neither the register of deeds nor any other entity shall be liable for recording or the refusal to record a lien or encumbrance as described in subsection (a) of this section. If the recording of the lien or encumbrance is denied, the register of deeds shall allow the recording of a Notice of Denied Lien or Encumbrance Filing on a form adopted by the Secretary of State, for which no filing fee shall be collected. The Notice of Denied Lien or Encumbrance Filing shall not itself constitute a lien or encumbrance. When recording is denied, any interested person may initiate a special proceeding in the county where the recording was denied within ten (10) business days of the filing of the Notice of Denied Lien or Encumbrance Filing asking the superior court of the respective county to find that the proposed recording has a statutory or contractual basis and to order that the document be recorded. If, after hearing, upon a minimum of five (5) days' notice as provided in Rule 5 of the Rules of Civil Procedure and opportunity to be heard to all interested persons and all persons claiming an ownership interest in the property, the court finds that there is a statutory or contractual basis for the proposed recording, the court shall order the document recorded. A lien or encumbrance recorded upon order of the court under this subsection shall have a priority interest as of the time of the filing of the Notice of Denied Lien or Encumbrance Filing. If the court finds that there is no statutory or contractual basis for the proposed recording, the court shall enter an order finding that the proposed recording is null and void and that it shall not be filed, indexed, or recorded and a certified copy of that order shall be recorded by the register of deeds that originally denied the recording. The review by the judge under this subsection shall not be deemed a finding as to any underlying claim of the parties involved. If a special proceeding is not initiated under this subsection within ten (10) business days of the filing of the Notice of Denied Lien or Encumbrance Filing, the lien or encumbrance is deemed null and void as a matter of law.

(b1) When a lien or encumbrance is presented to a clerk of superior court for filing and the clerk of court has a reasonable suspicion that the lien or encumbrance is false as described in subsection (a) of this section, the clerk of court may refuse to file the lien or encumbrance. Neither the clerk of court nor the clerk's staff shall be liable for filing or the refusal to file a lien or encumbrance under this subsection. The clerk of superior court shall not file, index, or docket the document against the property of a public officer or public employee until that document is approved for filing by the clerk of superior court by any judge of the judicial district having subject matter jurisdiction. If the judge determines that the filing is not false, the clerk shall index the claim of lien. A lien or encumbrance filed upon order of the court under this subsection shall have a priority interest as of the date and time of indexing by the clerk of superior court. If the court finds that there is no statutory or contractual basis for the proposed filing, the court shall enter an order that the proposed filing is null and void as a matter of law, and that it shall not be filed or indexed. The clerk of superior court shall serve the order and return the original denied filing to the person or entity that presented it. The person or entity

shall have 30 days from the entry of the order to appeal the order. If the order is not appealed within the applicable time period, the clerk may destroy the filing.

(c) Upon being presented with an order duly issued by a court of competent jurisdiction of this State declaring that a lien or encumbrance already recorded or filed is false, as described in subsection (a) of this section, and therefore null and void as a matter of law, the register of deeds or clerk of court that received the recording or filing, in addition to recording or filing the court's order finding the lien or encumbrance to be false, shall conspicuously mark on the first page of the original record previously filed the following statement: "THE CLAIM ASSERTED IN THIS DOCUMENT IS FALSE AND IS NOT PROVIDED FOR BY THE GENERAL LAWS OF THIS STATE."

(d) In addition to any criminal penalties provided for in this section, a violation of this section shall constitute a violation of G.S. 75-1.1.

(e) Subsections (b), (b1), and (c) of this section shall not apply to filings under Article 9 of Chapter 25 of the General Statutes or under Chapter 44A of the General Statutes. (2012-150, s. 4; 2013-170, s. 1; 2013-410, s. 27.8; 2015-87, s. 1.)

Real Estate and North Carolina Law

A RESIDENT'S PRIMER

Charles Szypszak

2012

UNC SCHOOL OF GOVERNMENT

proportional to every other comparable taxable real estate. It is this proportionality—rather than the amount—that is required constitutionally in North Carolina as is required generally in the country.

All counties must reassess real estate at least every eight years to adjust for changes in real estate values and the market. A taxpayer may challenge the valuation by appealing to the county board of equalization or, in some counties, to the board of commissioners. The board convenes each year in April and at its first meeting may vote to close the window for accepting appeal applications and deal only with those that have been submitted by that date. The N.C. Property Tax Commission hears appeals from these boards across the state. On an appeal the county's appraisal is presumed to be correct, but an owner can get an adjustment by proving that the value is excessive or disproportionate to comparable properties. The owner may appeal the commission's decision to the N.C. Court of Appeals and the N.C. Supreme Court, but those courts usually choose not to hear tax appeals.

Failure to pay tax that is overdue can result in a forced sale of the real estate to collect. Tax collectors also have broad authority to enforce the payment of delinquent taxes by seizing personal property and attaching bank accounts.

1.5.2 Excise Tax

Another significant tax collected in connection with real estate is the *excise tax* on conveyances. This is sometimes called a *transfer tax*. Before a deed for which a tax is due may be recorded, the excise tax must be paid and the deed marked by the register of deeds to show this has occurred.[27] By statute the seller owes the tax, but it is paid to the register of deeds by the person presenting the deed for recording. The tax reporting procedure creates an odd dynamic because although the seller is responsible for paying the tax, the buyer or the buyer's legal representative usually presents the deed and pays the tax. The county may bring an enforcement action for failure to pay a tax that was owed, and an intentional misrepresentation about what was paid for the real estate could be tax fraud and subject the offender to civil and criminal penalties.

The excise tax is levied on conveyances of an interest in real estate by all persons and organizations except federal, state, county, and municipal

27. G.S. 105-228.28 through .37.

governments and their *instrumentalities*, bodies formed by governments for public purposes. Roughly half is retained by the county with the remainder paid to the state. The current rate is two-tenths of one percent of what was paid for the real estate. If someone pays by exchanging property rather than by paying cash, the tax will be based on the value of what is exchanged. If the owners of two separate parcels trade property, the value of the property being exchanged is considered payment and the excise tax is required. There is no deduction for an assumed loan or other obligation secured by the property. If the amount paid for the real estate is not a multiple of $500, the amount of value is rounded up to the next multiple of $500 before computing the tax. If the land lies in more than one county, the excise tax must be paid to the county where the most valuable part of the land lies. Timber deeds and contracts also are subject to the excise tax. There is no excise tax if the real estate is a gift or no payment is made for it.[28]

The state excise tax does not apply when the transfer is made upon someone's death by will or the laws of intestacy that provide rules about who inherits when there is no will. It also does not apply to a transfer by what the statute calls "operation of law," which occurs when no instrument of conveyance is necessary—for example, when a joint tenant succeeds after the other joint tenant dies or when real estate passes to another as a consequence of the life tenant's death. The tax also does not apply to a lease or a deed of trust.[29] When a husband and wife separate and as part of a divorce property settlement one spouse conveys to the other, the spouse who receives the deed is treated as receiving real estate he or she already owns, and no excise tax is due on the transaction.

Probably the most common question that arises about application of the tax concerns transfers from an investor in an entity to the entity itself, such as when someone forms a corporation and transfers real estate to the corporation in exchange for shares. This is a transfer for consideration—the value of the shares—and the tax therefore applies. There is no statutory exception for this kind of transfer.

The tax does not apply to an entity that is merging, converting, or consolidating according to a statutory procedure. When a deed conveys real estate as part of a plan of reorganization under Chapter 11 of the federal

28. G.S. 105-228.29; G.S. 105-228.30(a).
29. G.S. 105-228.29.

Bankruptcy Code, by federal law no excise tax may be charged.[30] This exclusion does not apply to other transfers by bankrupt debtors, such as those that might occur before the reorganization or that occur in liquidation.

Several counties have an additional excise tax, sometimes referred to as a *land transfer tax*, of not more than $1 per $100 of consideration or value on instruments conveying interests in land. This tax applies in the same way as the statewide excise tax and must be paid before the register of deeds may record an instrument of conveyance. A statute makes any *county* excise tax inapplicable to transfers made as a result of foreclosure or by a deed in lieu of foreclosure, an exception also set forth in the acts authorizing the tax. This does not eliminate the need to pay the *statewide* excise tax collectible in all counties as a result of foreclosure or by a deed in lieu of foreclosure, and that tax is due on the amount paid or credited for the real estate.[31]

1.6 Eminent Domain

Notwithstanding the firmly established notion of private property rights, American law has always sustained the power of federal, state, and local governments to use *eminent domain* to take real estate for use as roads, public buildings, and other public improvements provided that just compensation is paid to the owner for what is taken. Use of the eminent domain power to take real estate also is called *condemnation*, regardless of the real estate's condition. As the demand for public improvements has intensified and government projects have become more interrelated with private development, some particular uses of eminent domain have been questioned and challenged, but the use of the power for public projects has been a recognized legislative power for centuries. Most of the disputes that arise over eminent domain are disagreements about the amount of compensation that must be paid to the owner, not about the constitutionality of the power itself.

30. 11 U.S.C. § 1146(c) (2006).
31. G.S. 45-45.2.

2.1 Owners and Co-Owners

Most people and companies who become real estate owners do so by paying a prior owner and receiving and recording a deed. The recorded deed enables others to identify the owner or owners. If there is more than one owner, the deed usually will use time-tested forms of co-ownership. Although these forms and the rights they entail are well-known to real estate lawyers, they may not be understood even by those who have these rights.

2.1.1 Co-Ownership

Most co-ownership arrangements are in traditional forms that are governed by well-established rules for what each owner has and what happens when any one owner dies. When a deed uses the appropriate terminology for one of these forms, such as *tenancy by the entireties* or *joint tenancy with right of survivorship*, it will carry with it all of the legal rules that apply to such a form without their having to be expressed in the deed. Nothing in the law limits anyone to these established forms of ownership—what will be acceptable is up to those who transfer and receive the real estate. But a clear benefit of using customary forms of ownership is that everyone can understand what the rules are. Being creative is appropriate when something unusual is being described, but in such a case the drafter must be clear. When something customary is being described creatively, those who later attempt to interpret the language may not understand what was intended, and ambiguity may be resolved with legal presumptions that the drafter did not consider.

Deeds form a chain of ownership; the interests of all in the chain depend on what their predecessors received. Sometimes a deed must be interpreted long after those who were involved are gone. Even when common forms of ownership are used, confusion can arise. This occurs, for example, if there are discrepancies in the way a name appears on the deed by which the real estate was received and the deed by which it is later transferred. Obvious typographical errors usually do not create a problem if the variation can be easily explained, such as when someone adopts a new name after marriage or divorce. On rare occasions an error results in a dispute and there is need for a court interpretation of what was intended.

Tenancy by the entireties is the most common form of co-ownership in North Carolina. Real estate owned by a husband and wife together is usually held in this form because its use ensures that each spouse has rights

to the real estate and that one spouse cannot convey without the other's participation. If one spouse dies during ownership, the other automatically becomes sole owner. This is the most important practical consideration of this form of ownership, known as the *right of survivorship*. Also, neither spouse may convey or mortgage the real estate without the other's participation.

Two or more owners who are not spouses can own property in another form that has a right of survivorship, known as *joint tenancy*. Each joint tenant has full ownership rights, and when one dies the other automatically becomes sole owner. Another form of co-ownership, *tenancy in common*, is used when co-owners do not want a right of survivorship. With this form, one owner's share can be conveyed to another separately, and it separately passes to the owner's heirs upon the owner's death. Unless otherwise specified, tenants in common are presumed to have equal interests, such as one-half interests when there are two tenants in common. By statute, unless a deed specifies a joint tenancy, a conveyance to two or more persons will create a tenancy in common.[1] The intent to create joint tenancy will be demonstrated "if the instrument creating the joint tenancy expressly provides for a right of survivorship."[2] When a deed is to two or more individuals without specifying the form in which they are taking ownership, they are presumed to be tenants in common unless something different is made clear.

2.1.2 Entities as Owners

Just as individual human beings may acquire, hold, and transfer real estate in their own names, so can legal entities, the most common being corporations, limited liability companies, and voluntary corporations. Entities continue to have the power to transfer property in liquidation of their businesses even after they have been legally dissolved by agreement of the shareholders or members, by order of a court, or administratively by failing to comply with statutory requirements, such as filing reports and paying fees. This authority becomes important when the company fails to fully wind up its business. When these entities have been dissolved without a transfer of real estate, difficult legal issues can arise about exactly what types of documents are needed to transfer it because, among other things, it may be unclear which individuals have continuing rights in the dissolved entity.

1. Section 41-2 of the North Carolina General Statutes (hereinafter G.S.).
2. *Id.*

whether a sale is subject to federal or state taxes and what returns must be filed.

Several tax credits or deductions have recently been allowed as special incentives to home buyers. These may enable a buyer to deduct a portion of the purchase price against other income, for a substantial tax advantage. Credits or deductions may be available for home improvements or energy enhancements. Current law should be checked, and a tax professional consulted, when the current tax rules are unclear.

Regardless of whether a tax is owed, the person handling a real estate conveyance transaction may have a federal tax reporting obligation. Under Section 6045 of the Internal Revenue Code, one of the following persons, in order, must file, with the IRS, Form 1099, which includes the parties' Social Security or taxpayer identification numbers and information about the transaction: the person (including any lawyer or title company) responsible for closing the transaction; the mortgage lender; the seller's broker; the buyer's broker; or such other person designated in regulations prescribed by the treasury secretary. Certain transactions are not subject to the reporting requirements, but most persons handling closings file a Form 1099 in all cases rather than risk making determinations about the applicability of the exceptions in a particular case.

3.7 Recording

A deed does not have to be recorded for real estate ownership to be transferred from the seller to the buyer. But the buyer takes a great risk if the deed is not recorded. Without recording the deed, no one could be certain about who the current legal owner is, and a buyer would be always vulnerable to having someone else claim to already have a deed for the same real estate. The real estate recording system is intended to provide a mechanism for a buyer to confirm the rights of someone offering to convey and for those who legitimately acquire real estate interests to protect themselves against wrongful claims. In North Carolina all one hundred counties have an elected register of deeds who manages a public office for such recording.

3.7.1 Recording and Priorities

Although the notion of recording seems straightforward, there are complicated legal rules that come into play when there is a question about who has a better right to real estate among competing claimants. Each state has

its own set of recording laws. North Carolina is one of the few states with a *pure race* recording statute. This statute provides that no deed or other instrument of conveyance "shall be valid to pass any property interest as against lien creditors or purchasers for a valuable consideration from the donor, bargainor or lessor but from the time of registration thereof in the county where the land lies."[63] This is called the pure race rule because only registration of the instrument matters when determining which of two recorded deeds for the same real estate is enforceable. This means that unless a court applies a narrow exception based on fraud or another rarely applied theory, those who record first will have title. This also means it is very important to record instruments immediately.

3.7.2 Recording Requirements

Registers of deeds do not review instruments presented to them to determine if they are legally valid. They do not check or confirm that an instrument creates ownership rights. Registers only review presented instruments to see if they meet the format and minimum content requirements.

One recording requirement that registers enforce is the presence of a notary acknowledgment or other authorized official's acknowledgment of the party's signature, and this applies to deeds and deeds of trust. This requirement also applies to a number of other common instruments, including a contract for real estate, a lease, a marriage settlement, a satisfaction instrument, and power of attorney.[64] When in doubt drafters should consult the current version of the statutes to see whether particular kinds of instruments require notarizations.

The usual form of notarization is an acknowledgment through which a notary or other authorized official states that he or she saw the person sign the document. The basic form of acknowledgment certificate is shown in Figure 2.

An alternative is a *proof*, which is when a person certifies under oath or affirmation to a notary or other authorized official that the person witnessed someone else execute, record, or acknowledge a record. The basic form of proof certificate for an individual is shown in Figure 3.

---

63. G.S. 47-18(a) (deeds, contracts); G.S. 47-20 (deeds of trust and other security instruments); G.S. 47-27 (easements).

64. G.S. 47-17; G.S. 47-25.

Figure 2. Acknowledgment certificate

_____ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: *name(s) of principals*.

Date: _____

(Official Seal)

official signature of notary
notary's typed name, Notary Public
My commission expires: _____

Figure 3. Proof certificate

_____ County, North Carolina

I certify that *name of subscribing witness* personally appeared before me this day and certified to me under oath or by affirmation that he or she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed *name of principal* (the principal) sign the foregoing document or (ii) witnessed the principal acknowledge the principal's signature on the already signed document.

Date: _____

(Official Seal)

official signature of notary
notary's typed name, Notary Public
My commission expires: _____

Some documents instead require an oath or affirmation, which is when an individual makes a vow of truthfulness before the official and a *jurat* is completed. An example of such a document is an *affidavit*, which records someone's statement under oath. With an oath, the individual whose action is being observed invokes a deity or uses any form of the word *swear*; with an affirmation the person makes a vow based on personal honor without invoking a deity or using the word *swear*. The basic form for jurat certificate for an individual is shown in Figure 4.

If, after reviewing the proof or acknowledgment of execution the register of deeds decides that a signature cannot be verified and therefore that the instrument cannot be registered, the individual seeking to record

Figure 4. Jurat certificate

_____ County, North Carolina

Signed and sworn to (or affirmed) before me this day by *name of principal*.

Date: _____

(Official Seal)

official signature of notary
notary's typed name, Notary Public
My commission expires: _____

the instrument may apply to the district court of the county for an order directing the register to record the instrument.[65] To issue the order, however, the district court must find that the instrument meets the verification requirements.[66]

Under North Carolina law, in addition to notaries, specified other officials may perform acknowledgments, and before registering the document the register will check the North Carolina statute to see that a person with the designated capacity is among those who are authorized.[67] Within North Carolina, the authorized officials include notaries, judges and clerks of court, federal consular officials and military officers, and North Carolina magistrates. Note that the register considers whether the officer has *apparent* authority for registration purposes. The register does not check to determine whether the person actually has the authority indicated. Nor does the register investigate whether the law of another state would authorize the official to take an acknowledgment. For the purpose of recording a document, the register relies on the list of authorized officials in the North Carolina statute. The register will check for the certificate and for the official's signature, a seal (if one is required, as for a notary), and the official's expiration date.

In addition to notarization, as discussed in Section 3.5.3, sometimes certain other information must be included on particular instruments, such as the name of the drafter on a deed or a deed of trust. Registers also check for certain statewide format requirements, such as a size of either 8½ by 11 or 8½ by 14, certain minimum margins and font size, use of only

65. G.S. 47-14(b).
66. *Id.*
67. G.S. 47-1; G.S. 47-2.

is for a defined period, usually one year, and an insurance company can decide not to renew the policy but must give advance notice of this decision, which in general must be at least forty-five days before the policy expires.[73] A North Carolina statute provides that insurers may cancel a policy only for certain reasons, including nonpayment of a premium, willful failure by the insured to take reasonable steps to protect the real estate from damage, and material misrepresentation or nondisclosure of a material fact in obtaining the policy.[74]

In addition to reviewing the policy carefully to see what is covered, owners should study the exclusions in the policy to see what is *not* covered and the conditions for what must be done if there is damage or some other loss for which a claim is to be made. One important condition, for example, is the need to give the insurance company prompt notice when something has happened for which a claim will be made. Failure to give notice within a reasonable time can prevent the owner from later receiving payment if the delay was not for a good cause and the failure interfered with the insurer's ability to take action in connection with the claim.

3.11 Transfers at Death

Most real estate transfers are accomplished with a deed recorded with the register of deeds. However, many transfers of real estate interests occur as a result of a current owner's death, and in many cases no instrument is recorded with the register of deeds to mark this event. This section describes the most common ways in which real estate is transferred at death, the nature of the rights acquired in this way, and how they are determined.

3.11.1 Automatic Transfers

By law, when an owner of real estate dies, the title to the real estate instantly transfers. If title was held in a form of ownership that involves survivorship—joint tenancy or tenancy by the entireties—the survivor automatically becomes the owner. For example, if a husband and wife own real estate as tenants by the entireties and the husband dies, the wife automatically becomes sole owner of all that real estate. No deed or action of any court is needed for it to happen. Those looking at the title later will be able to

73. G.S. 58-41-20.
74. G.S. 58-41-15.

confirm the transfer by seeing the survivorship rights in the deed and a death certificate for one of the joint owners. If there is no such ownership involving an automatic survivor, the title will pass to someone not mentioned in the deed: the person's heirs. If there is a valid will, the title will go to the beneficiaries named in the will. This may not be determined until the will has been probated in court, but once this occurs the ownership transfer relates back to the time of death.[75] If there is no will, the heirs are determined by what is known as the *intestacy statutes* (summarized in Section 3.11.4).

3.11.2 Transfers by Will

A will is used to pass property onto someone of choice. The transfer is confirmed in a probate action in superior court. The clerk is the judge of probate and handles the probate of wills and the administration of estates. An entire estate will be the subject of a probate in North Carolina if the person died in this state. An *ancillary administration* is available for a decedent who has real estate in North Carolina but was not a resident of North Carolina at the time of death.

The deceased person's personal representative in the probate can be either an executor chosen by the person when there is a valid will or an administrator when there is no will. The personal representative may have power to sell the property if this is what is specified in the will or if it is necessary to meet the decedent's debts and otherwise distribute the estate assets according to the will. If a sale of the decedent's property is to occur within two years of death, notice must be given to the decedent's creditors, which enables them to object to the sale if the real estate is necessary to meet those debts.[76] If the sale occurs after notice but before the final account in the estate has been approved by the clerk of court, the personal representative must sign the deed along with the heirs of the estate.

A copy of the will is filed in the superior court when the probate is filed. Within three months after a personal representative has been appointed, the representative will file an inventory that lists all of the property owned by the decedent at the time of death. In general, a final accounting of the estate and how it has been distributed is to be filed within one year, subject to extensions for tax-filing obligations and other circumstances. Unless a will provides otherwise, the heirs will take the real estate subject to any

75. G.S. 28A-15-2; G.S. 31-39.
76. G.S. 28A-17-12.

existing deeds of trust or leases.[77] If the deceased person specified that the real estate was to pass free of these obligations, this will be allowed only if there are sufficient other assets in the estate to pay what is owed to creditors or as taxes.

A *transfer on death* deed, used in some states as a *will substitute*, through which an owner designates a beneficiary who acquires the property only upon the owner's death, is not recognized in the North Carolina statutes, and its effect is an unsettled question in this state.

3.11.3 Trusts

Real estate commonly passes from a deceased person as a result of a trust. A trust involves three parties. The person who created the trust and intends to put property into it is called the *settlor, grantor,* or *trust creator.* More than one person can create a single trust. The person to whom the property is transferred, and who agrees to follow the instructions given by the settlor, is the *trustee.* Sometimes there is more than one trustee. By statute a trustee must act prudently when administering a trust, exercising reasonable care, skill, and caution.[78] The person who receives the benefits of the trust, which can be periodic payments earned from the property or, upon a certain date or event, the property itself, is a *beneficiary.* There usually is more than one beneficiary, and some beneficiaries may have a contingent interest that takes effect only upon certain conditions, such as someone else's death.

Trusts are characterized as *testamentary* or *living.* A testamentary trust is created by will. Property will go into the trust upon the creator's death and be held by a trustee for some time, with the property to be later conveyed to the beneficiaries. Many trusts allow distributions from earnings on the trust property, with a final distribution at some point, such as when someone reaches a certain age. Certain kinds of trusts are used for their tax advantages. For example, a *marital trust* may be used to enable a spouse to take advantage of the federal tax deduction for property. The property is held after one spouse's death so that the other spouse receives payments while still alive, and the spouse who is still alive may be given powers to designate who will receive the property upon that spouse's death.

A living trust is created during the owner's lifetime. One common form of such is a *revocable living* or *inter vivos* ("between the living") trust. The trust creator's property is transferred to the trustee, often initially the trust

77. G.S. 28A-15-3.
78. G.S. 36C-8-804.

creator or the trust creator's spouse, who holds it until the creator's death. Someone is named as a successor trustee to step in after the initial trustee's death. The trust agreement will specify who receives the property after the creator's death. When the property goes to the beneficiaries, the trustee records a deed. An advantage of this type of trust is to allow for the transfer of the property to the beneficiaries upon death without having to go through probate court.

3.11.4 Distribution without a Will

According to North Carolina law known as the *intestacy statutes*,[79] if a person owning real estate dies without a will and has a living spouse, the surviving spouse has a right to no less than a one-third interest in the real estate. If the deceased left no children or other lineal descendants, such as grandchildren, the spouse will inherit all of the real estate. If there is only one child or lineal descendant, the spouse will take one-half. Similarly, if there is no child or lineal descendant but there is at least one parent, the spouse takes one-half. If there is more than one child or lineal descendant, the spouse takes one-third. The statutes also give a surviving spouse the option to choose a right to live on the property during life rather than receive a share of the ownership.[80] If there is no spouse and no lineal descendant, the estate goes to the parents; if there also is no parent, the estate goes to siblings, including the lineal descendants of a deceased sibling. If there also are no siblings, the statute then provides for distribution in shares to grandparents and in the lines of aunts and uncles.

As among the individuals who share, the law in North Carolina divides the shares into branches, and the individuals at the same level of the branch divide up the branch's share.[81] For example, if there is a spouse, one child, and two grandchildren of a deceased child, there are three branches. The spouse would take one-third and the child one-third, and the grandchildren of the deceased child would each take one-half of a branch, or, one-sixth of the shares.

The statutes also address how the share is calculated when the parties were in the process of being divorced and an equitable distribution is awarded subsequent to the death of a spouse.

---

79. G.S. 29-14; G.S. 29-15.
80. G.S. 29-30.
81. G.S. 29-16.