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April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO MAKE CORRECTIONS AND OTHER AMENDMENTS TO VARIOUS STATUTES IMPACTING REAL PROPERTY OWNERSHIP AND TO MAKE OTHER CONFORMING CHANGES, AS RECOMMENDED BY THE REAL PROPERTY SECTION OF THE NORTH CAROLINA STATE BAR ASSOCIATION, TO REGULATE THE SOLICITATION OF A FEE IN EXCHANGE FOR COPIES OF RECORDED DOCUMENTS, AND TO CLARIFY ELIGIBILITY FOR NEEDS-BASED PUBLIC SCHOOL CAPITAL FUND GRANTS.

The General Assembly of North Carolina enacts:

PART I. MORTGAGE AND DEED OF TRUST CHANGES

SECTION 1.1. G.S. 39-13 reads as rewritten:

"§ 39-13. Spouse need not join in purchase-money mortgage.

~~The purchaser of real estate who does not pay the whole of the purchase money at the time when he or she takes a deed for title may make a mortgage or deed of trust for securing the payment of such purchase money, or such part thereof as may remain unpaid, which~~ A mortgage or deed of trust given by the purchaser of real property to secure a loan, the proceeds of which were used to pay all or a portion of the purchase price of the encumbered real property, regardless of whether the secured party is the seller of the real property or a third-party lender, shall be good and effectual against his or her the purchaser's spouse as well as the purchaser, without requiring the spouse to join in the execution of such the mortgage or deed of trust."

SECTION 1.2. G.S. 161-10(a) reads as rewritten:

"§ 161-10. Uniform fees of registers of deeds.

(a) Except as otherwise provided in this Article, all fees collected under this section shall be deposited into the county general fund. While performing the duties of the office, the register of deeds shall collect the following fees which shall be uniform throughout the State:

...

(1a) Deeds of Trust, Mortgages, and Cancellation of Deeds of Trust and Mortgages. – For registering or filing any deed of trust or mortgage the fee shall be sixty-four dollars (\$64.00) for the first 35 pages plus four dollars (\$4.00) for each additional page or fraction thereof.

When a deed of trust or mortgage is presented for registration that contains one or more additional instruments, the fee shall be ten dollars (\$10.00) for each additional instrument. A deed of trust or mortgage contains one or more additional instruments if such additional instrument or instruments has or have



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1 different legal consequences or intent, each of which is separately executed
2 and acknowledged and could be recorded alone.

3 For recording records of satisfaction, or the cancellation of record by any
4 other means, of deeds of trust or mortgages, there shall be no fee. In all other
5 cases, the fees provided in subdivision (1) of this subsection shall apply to the
6 registration or filing of any subsequent instrument that relates to a previously
7 recorded deed of trust or mortgage. For the purposes of this section, the term
8 "subsequent instrument" has the same meaning as set forth in
9 G.S. 161-14.1(a)(3).

10"

11 **SECTION 1.3.** G.S. 161-14.1(a) reads as rewritten:

12 **"§ 161-14.1. Recording subsequent entries as separate instruments.**

13 (a) As used in this section, the following terms mean:

14 (1) Original instrument. – The previously recorded instrument that is modified,
15 amended, restated, supplemented, assigned, satisfied, terminated, revoked, or
16 cancelled by a subsequent instrument.

17 ...

18 (3) Subsequent instrument. – Any instrument presented for registration that
19 indicates in its title or within the first two pages of its text that it is intended
20 or purports to modify, amend, restate, supplement, assign, satisfy, terminate,
21 revoke, or cancel a previously registered instrument. Examples of subsequent
22 instruments include the following:

23 ...

24 i. An instrument that amends, modifies, or restates an original
25 instrument, such as an amendment or modification
26 agreement, agreement or an amended and restated instrument.

27"

28
29 **PART II. PROBATE AND REGISTRATION CHANGES**

30 **SECTION 2.1.** G.S. 47-17.1 reads as rewritten:

31 **"§ 47-17.1. Documents registered or ordered to be registered in certain counties to**
32 **designate draftsman; exceptions.**

33 The register of deeds of any county in North Carolina shall not accept for registration, nor
34 shall any judge order registration pursuant to G.S. 47-14, of any deeds or deeds of trust, executed
35 after January 1, 1980, unless the first page of the deeds or deeds of trust bears an entry showing
36 the name of either the person or law firm who drafted the instrument. This section shall not apply
37 to other instruments presented for registration. For the purposes of this section, the register of
38 deeds shall accept the written representation of the individual presenting the deed or deed of trust
39 for registration, or any individual reasonably related to the transaction, including, but not limited
40 to, any employee of a title insurance company or agency purporting to be involved with the
41 transaction, that the individual or law firm listed on the first page is a validly licensed attorney
42 or validly existing law firm in this State or another jurisdiction within the United States."

43 **SECTION 2.2.** G.S. 47-18.3 reads as rewritten:

44 **"§ 47-18.3. Execution of corporate instruments; authority and proof.**

45 (a) Notwithstanding anything to the contrary in the bylaws or articles of ~~incorporation,~~
46 incorporation or the operating agreement or articles of organization, when it appears on the face
47 of an instrument registered in the office of the register of deeds that the instrument was signed in
48 the ordinary course of business on behalf of a domestic or foreign corporation or a domestic or
49 foreign limited liability company by its chairman, president, chief executive officer, a
50 ~~vice president or an vice-president~~, assistant vice-president, treasurer, ~~or~~ chief financial officer,
51 chief operations officer, general counsel, deputy or assistant general counsel, manager, member,

1 director, or other fiduciary duly authorized by the applicable business entity's statutes or
2 governing documents, such an instrument shall be as valid with respect to the rights of innocent
3 third parties as if executed pursuant to authorization from the board of directors, unless the
4 instrument reveals on its face a potential breach of fiduciary obligation. The subsection shall not
5 apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary
6 obligation.

7 (b) Any instrument registered in the office of the register of deeds, appearing on its face
8 to be executed by a ~~corporation,~~ corporation or limited liability company, foreign or domestic,
9 and bearing a seal which purports to be the corporate seal, setting forth the name of the
10 corporation engraved, lithographed, printed, stamped, impressed upon, or otherwise affixed to
11 the instrument, is prima facie evidence that the seal is the duly adopted corporate seal of the
12 corporation, that it has been affixed as such by ~~a person~~ an individual duly authorized so to do,
13 that the instrument was duly executed and signed by ~~persons~~ individuals who were officers or
14 agents of the corporation acting by authority duly given by the board of directors, and that any
15 such instrument is the act of the corporation, and shall be admissible in evidence without further
16 proof of execution.

17 (c) Nothing in this section shall be deemed to exclude the power of any corporate or
18 limited liability company representatives to bind the corporation or limited liability company
19 pursuant to express, implied, inherent or apparent authority, ratification, estoppel, or otherwise.

20 (d) Nothing in this section shall relieve corporate or limited liability company officers
21 from liability to the corporation or limited liability company or from any other liability that they
22 may have incurred from any violation of their actual authority.

23 (e) Any corporation or limited liability company may convey an interest in real property
24 which is transferable by instrument which is duly executed by either an officer, manager,
25 member, or agent of said corporation or limited liability company and has attached thereto a
26 signed and attested resolution of the board of directors of said corporation or the managers or
27 members of the limited liability company authorizing the said officer, manager, member, or agent
28 to execute, sign, seal, and attest deeds, conveyances, or other instruments. This section shall be
29 deemed to have been complied with if an attested resolution is recorded separately in the office
30 of the register of deeds in the county where the land lies, which said resolution shall be applicable
31 to all deeds executed subsequently thereto and pursuant to its authority. Notwithstanding the
32 foregoing, this section shall not require a signed and attested resolution of the board of directors
33 of the corporation or the managers or members of the limited liability company to be attached to
34 an instrument or separately recorded in the case of an instrument duly executed by the
35 corporation's or limited liability company's chairman, president, chief executive officer, a
36 vice-president, assistant vice-president, treasurer, ~~or~~ chief financial officer, officer, chief
37 operations officer, general counsel, deputy or assistant general counsel, manager, member,
38 director, or other fiduciary duly authorized by the applicable business entity's statutes or
39 governing documents. All deeds, conveyances, or other instruments which have been heretofore
40 or shall be hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect
41 to pass the title to the real or personal property described therein."
42

43 **PART III. REGULATE SOLICITATION OF COPIES**

44 **SECTION 3.1.** Article 1 of Chapter 75 of the General Statutes is amended by adding
45 a new section to read:

46 **"§ 75-43. Solicitation of a fee for copy of recorded documents.**

47 (a) Any person, firm, or corporation soliciting a fee in exchange for providing a copy of
48 a record available at the register of deeds office shall state on the top of the document used for
49 the solicitation, in conspicuous type, all of the following:

- 50 (1) That the solicitation is not from a State agency or a local unit of government.
- 51 (2) That no action is legally required by the person being solicited.

- 1 (3) The fee for obtaining a copy of the record directly from the register of deeds
2 that has custody of the record.
3 (4) The information necessary to contact the register of deeds that has custody of
4 the record.
5 (5) The name and physical address of the person, firm, or corporation soliciting
6 the fee.

7 (b) A document used for a solicitation governed by this section shall not contain deadline
8 dates or be in a form or contain language designed to make the document appear to be issued by
9 a State agency or local unit of government or to appear to impose a legal duty on the person being
10 solicited.

11 (c) A person, firm, or corporation soliciting a fee in exchange for providing a copy of a
12 record may not charge a fee that is greater than four times the amount the register of deeds with
13 custody of the record would charge for a copy of the same record.

14 (d) A violation of this section constitutes an unfair trade practice under G.S. 75-1.1 and
15 is subject to all of the enforcement and penalty provisions under this Article.

16 (e) For the purposes of this section, the term "solicit" means to advertise or market to a
17 nonbusiness entity with whom the solicitor has no preexisting business relationship."

18 19 **PART III-A. CLARIFY ELIGIBILITY FOR NEEDS-BASED PUBLIC SCHOOL** 20 **CAPITAL FUND GRANTS**

21 **SECTION 3A.1.(a)** Section 5.3(e) of S.L. 2017-57, as amended by Section 1.1(a) of
22 S.L. 2017-187, Section 1.1 of S.L. 2017-212, and Section 5.3(a) of S.L. 2018-5, reads as
23 rewritten:

24 **"SECTION 5.3.(e)** Grant funds awarded under this section shall be subject to a matching
25 requirement from the recipient county as follows:

- 26 (1) For a county designated as a development tier one area, the grant shall not
27 exceed three dollars (\$3.00) in grant funds for every one dollar (\$1.00)
28 provided by the county. Grant funds awarded to a county designated as a
29 development tier one area shall not exceed fifteen million dollars
30 (\$15,000,000).
31 (2) For a county designated as a development tier two area, the grant shall not
32 exceed one dollar (\$1.00) for every one dollar (\$1.00) in grant funds provided
33 by the county. Grant funds awarded to a county designated as a tier two area
34 shall not exceed ten million dollars (\$10,000,000).

35 Grant funds shall be used for the construction of new school buildings only. Grant funds shall
36 not be used for real property acquisition. Grant funds shall be disbursed in a series of payments
37 based on the progress of the project. To obtain a payment, the grantee shall submit a request for
38 payment along with documentation of the expenditures for which the payment is requested and
39 evidence that the matching requirement contained in subsection (b) of this section has been met.
40 Grant funds shall not be awarded to any county that has received an aggregate amount exceeding
41 eight million seven hundred fifty thousand dollars (\$8,750,000) in funds from the Public School
42 Building Capital Fund from the 2012-2013 fiscal year to the 2016-2017 fiscal year. No county
43 may receive grant funds under this section more than once every five years. No portion of grant
44 funds may be used to acquire a Leadership in Energy and Environmental Design (LEED)
45 certification. For fiscal year 2018-2019, for the purposes of this section, a county shall be
46 considered to be designated as a development tier one area if (i) it was so designated by the
47 Department of Commerce in 2017 or 2018 and (ii) the county filed a grant application under this
48 section in 2017."

49 **SECTION 3A.1.(b)** Notwithstanding any other effective date in this act, this section
50 becomes effective July 1, 2018.
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1 **PART IV. EFFECTIVE DATES**

2 **SECTION 4.1.** Sections 1.2 and 1.3 of this act become effective October 1, 2018,
3 and apply to instruments presented for registration on or after that date. Section 3.1 of this act
4 becomes effective October 1, 2018. The remainder of this act is effective when this act becomes
5 law and applies to mortgages and deeds of trust entered into before, on, or after that date.