

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 261
HOUSE BILL 868

AN ACT TO PROVIDE A MEANS OF RECORDING A NOTICE DOCUMENT PRIOR TO A REAL ESTATE CLOSING WHICH WOULD FIX AT THAT TIME THE PRIORITY OF TITLE DOCUMENTS RECORDED LATER IN CONNECTION WITH THAT REAL ESTATE CLOSING.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 47D.
"Notice of Settlement Act.

"§ 47D-1. Short title.

This Chapter shall be known as the 'Notice of Settlement Act.'

"§ 47D-2. Purpose.

The underlying purpose and policy of this Chapter is to modernize the law governing the transfer of a legal or equitable title to real property, or interests therein, by simplifying the settlement of real property transactions and facilitating the disbursement of funds in connection with the settlement of real property transactions.

The use of this Chapter in a real estate transaction is optional, and failure to use the procedure authorized by this Chapter shall not constitute grounds for any claim for relief at law or equity, unless an express contract exists requiring its use. This Chapter does not supplant any of the registration laws in this State, but creates an additional, nonexclusive procedure for registering a property interest in real property through the use of a notice of settlement, and establishing concurrently therewith priority in the property in a grantee or mortgagee from the time of filing of the notice. As an example of the principle set out in the preceding sentence and the effect of this Chapter on existing registration laws, nothing in this Chapter shall have any effect upon the effective date of liens and the effective time of perfection of liens as set forth in Chapter 44A.

"§ 47D-3. Definitions.

Unless it is plainly evident from the context that a different meaning is intended, as used herein:

- (1) 'Business day' means a day during which the office of the register of deeds of the county in which the real property which is the subject of a notice of settlement is open to the public for the filing of documents.
- (2) 'Deed' means any instrument conveying a legal or equitable title to, or an interest in, real property for other than security purposes.

- (3) 'Grantee' means the person to whom a legal or equitable title to real property, or an interest therein, shall be conveyed pursuant to a settlement.
- (4) 'Mortgage' means a mortgage, deed of trust, or other instrument conveying a legal or equitable interest in real property for security purposes.
- (5) 'Mortgagor' means the person executing a mortgage pursuant to a settlement.
- (6) 'Mortgagee' means the grantee, beneficiary, or secured party in a mortgage.
- (7) 'Person' means any individual, firm, corporation, governmental unit or subdivision, or other legal entity that may hold a legal or equitable title to, or interest in, real property under the laws of the State of North Carolina.
- (8) 'Settlement' means the delivery of the instrument conveying a legal or equitable title to, or interest in, real property to the grantee for valuable consideration as agreed upon by the parties to the transaction.
- (9) 'Settlement attorney' means the attorney signing the notice of settlement authorized by this Chapter.

"§ 47D-4. Instrument; designation; filing; index of notice of settlement.

Any attorney licensed to practice law in the State of North Carolina having responsibilities with reference to a settlement that he in good faith reasonably believes will occur within three business days, or any person who holds of record the legal or equitable title to, or interest in, real property to be conveyed pursuant to a settlement may file an instrument designated a 'notice of settlement' in the office of the register of deeds of the county in which the real property is situated. The notice shall be indexed in the indexes provided for real estate conveyances, shall be filed as a real estate instrument, and shall be indexed under the name of the person who holds of record the legal or equitable title to, or interest in, the real property to be conveyed pursuant to a settlement as grantor or grantors. No indexing under the 'grantee' portion of the indexes shall be required. Any filing fee shall be paid by the person conveying the legal or equitable title.

"§ 47D-5. Signature; content; acknowledgment.

The notice of settlement shall be signed and acknowledged in accordance with G.S. 47-38 by the settlement attorney or other person authorized by this Chapter to file a notice of settlement. Such notice shall set forth the address and telephone number of such attorney or person, the name or names of the person or persons who hold of record the legal or equitable title to, or interest in, the real property to be conveyed pursuant to a settlement, and a legal description of the real property.

"§ 47D-6. Form.

The form of the notice of settlement shall be substantially as follows:

Name(s): _____)
 (Current owner(s) of record) _____)
)

(Street address) _____)
_____)

(City or town, and state) _____)
_____)
AND _____)

(Name of grantee(s) and/or _____)
mortgagee(s) _____)
_____)
AND _____)
_____)

NOTICE OF SETTLEMENT

(Name of settlement attorney, _____)
if any) _____)

(Street address) _____)

_____, North Carolina _____)
(City or town) _____)
_____)
_____)

(Telephone number) _____)

NOTICE is hereby given pursuant to Chapter 47D of the North Carolina General Statutes of a settlement affecting title to the following described real property of the captioned record owner or owners:

(legal description - mandatory)

(street address and/or tax map references are optional)

This notice shall be effective from the time of, and for three business days following the day of, filing of this notice in the office of the register of deeds of the county in which the above real property is situated.

Signature of settlement attorney
or record owner or owners

North Carolina, _____ County

I, (here give the name of the official and his official title), do hereby certify that (here give the name of the settlement attorney or record owner or owners) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an official seal is required by law) official seal this the _____ day of _____ (year).

Official Seal

Signature of officer

Prepared by the above named
settlement attorney or

"§ 47D-7. Constructive notice; priority.

The filing of a notice of settlement shall be record evidence of a property interest of the grantee or mortgagee identified in the notice in the real property to be conveyed pursuant to the settlement for which the notice is filed, and shall establish priority in the grantee or mortgagee from the time of, and for three business days following, the day of filing of the notice against subsequent purchasers for value, lien creditors, and other persons claiming an interest in the real property through any person who holds of record the legal or equitable title to, or interest in, the real property. A deed or mortgage delivered pursuant to the settlement for which the notice is filed and properly registered in the county where the real property is situated within three business days following the day of filing of the notice shall continue the priority of the grantee or mortgagee in such real property established by the notice and the priority of the grantee or mortgagee under the properly registered deed or mortgage shall be a continuously perfected interest in such real property from the time of filing of the notice of settlement against subsequent purchasers for value, lien creditors, and other persons claiming an interest in the real property through any person who holds of record the legal or equitable title to, or interest in, the real property, provided the deed or mortgage registered pursuant to the settlement bears a legend that is in a form and substance substantially as follows:

'This instrument was delivered at the settlement referred to in the notice of settlement filed by:

_____ Signatory of notice of settlement _____ (date) _____.'

"§ 47D-8. Duration of notice; priority; number of filings.

(a) The notice of settlement shall be effective as provided in G.S. 47D-7(a) from the time of, and for three business days following the day of, filing of the notice of settlement pursuant to this Chapter. If the deed or mortgage delivered pursuant to a settlement for which the notice was filed has not been properly registered in the county where the real property is situated within the three business day period, the notice of settlement shall become absolutely void, and the priority of the grantee or mortgagee under the deed or mortgage registered subsequent to said three business day period shall

date from the time of registration of the deed or mortgage, and not from the time of the filing of the notice of settlement.

(b) Only one notice of settlement may be filed with respect to any settlement and if a settlement does not occur within three business days following the day of the filing of the notice of settlement, no further or additional notices may be filed with respect to the settlement for which the notice was filed.

"§ 47D-9. Early termination of notice of settlement.

The signatory of a notice of settlement filed pursuant to this Chapter may terminate the notice at any time during the duration of its effectiveness as provided in G.S. 47D-8(a) by filing a notice of termination in a form substantially as follows:

Name(s):
(Current owner(s) of record) _____)
)
)

(Street address) _____)
)
)

(City or town, and state) _____)
)

AND _____)
)

(Name of grantee(s)) _____)
AND _____)
)

TERMINATION OF
NOTICE OF SETTLEMENT

(Name of settlement attorney,
if any) _____)

(Street address) _____)
)

_____, North Carolina
(City or town) _____)
)

(Telephone number) _____)

NOTICE is hereby given pursuant to Chapter 47D of the North Carolina General Statutes that the notice of settlement filed by the undersigned on _____ is hereby terminated.

Signature of settlement attorney or record owner or owners

North Carolina, _____ County

I, (here give the name of the official and his official title), do hereby certify that (here give the name of the settlement attorney or record owner or owners) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an official seal is required by law) official seal this the _____ day of _____ (year).

Official Seal

Signature of officer

Prepared by the above named settlement attorney or _____

"§ 47D-10. Severability.

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable."

Sec. 2. This act becomes effective July 1, 1992. Section 1 expires June 30, 1993.

In the General Assembly read three times and ratified this the 11th day of June, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives