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Register of Deeds

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REGISTERS OF DEEDS are major custodians of county records. The records for which they are responsible include real estate records, marriage records, and other vital records.

Real Estate Records

The register's most consuming responsibility is recording and maintaining real estate records including deeds, deeds of trust and mortgages, financing statements for real-estate related property, and maps and plats. No conveyance of real estate, contract to convey, option to convey, or lease of more than three years is valid against third parties unless it is recorded with the register in the county in which the real estate is located (G.S. 47-18). North Carolina has what is known as a "race" type of recording statute, in which the first to record prevails in a contest of priorities, with only very narrow exceptions (G.S. 47-18). This means that the act of recording, and accessibility to the records, are vital and can have a dispositive legal impact on real estate transactions.

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Recording Requirements

Registers are directed to record only after determining “that all statutory and locally adopted prerequisites for recording have been met” [G.S. 161-14(a)]. Documents submitted for recording must meet statutorily prescribed format requirements including size, margins, and legibility [G.S. 161-14(b)]. Registers also are required to review an instrument that requires an acknowledgment or proof to see if it “appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgments, and the said proof or acknowledgment includes the officer’s signature, commission, expiration date, and official seal, if required” [G.S. 47-14(a)]. By statute, a “register of deeds shall not be required to verify or make inquiry concerning (i) the legal sufficiency of any proof or acknowledgment, (ii) the authority of any officer who took a proof or acknowledgment, (iii) the legal sufficiency of any document presented for registration” [G.S. 47-14(a)]. Prior to 2005, registers had to certify that one or more signatures on the document “has been duly proved or acknowledged” and that a required acknowledgment was “in due form.” The elimination of this obligation was a substantial change in the register’s customary role.

Maps and Plats

Registers also record maps and subdivision plats, which must meet size, reproducibility, and other requirements (G.S. 47-30). With few exceptions, plats and maps must contain prescribed surveyor certificates (G.S. 47-30). County commissioners are required to designate one or more persons to serve as a review officer to review maps and plats submitted for recording (G.S. 47-30.2). The designation of the review officer must be recorded with the register (G.S. 47-30.2). Plats and maps must pass through the review officer unless they are certified to be of existing parcels, streets, structures, or natural features, or are control surveys, maps of a municipal boundary or annexation, highway right-of-way plans, transportation corridor maps, or certain types of illustrative maps attached to deeds (G.S. 47-30). Review officers check plats and maps for required information and for subdivision approvals if required; their responsibilities do not supplant the authority of local land use boards.

Financing Statements

Financing statements are used to create security interests in property that is not classified as real estate under state law. They are governed by the Uniform Commercial Code. Since July 1, 2001, registers are custodians only of Uniform Commercial Code financing statements pertaining to real property–related collateral, which includes fixture filings (personal property that has become attached to real estate, such as a furnace), as-extracted collateral (oil, gas, minerals), and timber to be cut [G.S. 25-9-501(a)]. Financing statements usually are submitted on standard forms. To be recorded with the register they must identify the debtor, the secured party, and the collateral, indicate that they cover real property–related collateral, provide a description of the real property to which the collateral is related, and, if the debtor is not the real property owner, state the name of the record owner (G.S. 25-9-502). The grounds on which a register may reject a financing statement submitted for recording are limited to submissions by a method not authorized, such as electronically to a registry not so equipped, a failure to pay the required fee, and omission of specifically required information [G.S. 25-9-516(b)]. Registers index financing statements and subsequent related instruments, such as statements continuing or terminating the security interest, in the Consolidated Real Property Index of all the real estate records.

Excise Tax

Registers must collect the excise tax on certain conveyances of real property (G.S. 105-228.28). The tax does not apply to conveyances by federal, state, county, and municipal governments and their instrumentalities (G.S. 105-228.28). The excise tax also does not apply to mortgages and deeds of trust, transfers that occur by operation of law, transfers made by will or intestacy, nominal ownership changes resulting from corporate merger or consolidation, or gifts or other transfers without consideration (G.S. 105-228.29). The county credits one-half of the tax to the general fund and remits the other half to the North Carolina Department of Revenue, but may retain 2 percent of the remitted amount for the costs of collection and remittance (G.S. 105-228.30).

Registration and Indexing

When documents are registered they are endorsed with the day and hour at which presented [G.S. 161-14(a)]. A document is not considered registered until it is indexed [G.S. 161-22(h)]. Registers maintain the records sequentially in order of recording. Records are made available for public use in a variety of formats, increasingly in electronic

form. All real property records are indexed in the Consolidated Real Property Index according to standards promulgated by the North Carolina Secretary of State (G.S. 147-54.3). Registers are required to index documents immediately, but may show recently filed instruments for up to thirty days on a temporary index [G.S. 161-14(a)]. The usual index is a grantor/grantee index, arranged alphabetically by the names of the parties to the instrument—one index for grantors, such as sellers, and one for grantees, such as buyers—with references to the book and page at which the identified instrument can be viewed. A few counties maintain a parcel identifier number (PIN) index, by which parcels of real property are assigned unique numbers, for which an index is provided with references to each instrument affecting the parcel, and the county may choose to designate the PIN index as its official index (G.S. 161-22.2).

Marriage Records

The register of deeds issues marriage licenses (G.S. 51-8). Couples may apply for licenses on statutorily prescribed forms supplied to registers by the Vital Records Section of the North Carolina Department of Health and Human Services (G.S. 51-16). North Carolina law requires the register to determine whether the applicants are “authorized to be married in accordance with the laws of this State,” and the register must make a “reasonable inquiry” into whether the applicants meet the requirements (G.S. 51-17). The form, once completed by the register’s office, becomes the marriage license, and must be completed and returned with a record of the marriage ceremony (G.S. 51-16).

The register of deeds keeps records of marriage licenses issued and the returns showing the solemnization (G.S. 51-18). The register keeps an index by the names of the intended husbands and wives. The index entries must show the spouses’ names, the ceremony dates, and the locations of the original licenses and returns (G.S. 51-18). The register keeps one copy of the returned license and submits one to the state Vital Records Section on a monthly basis [G.S. 130A-110(a)]. These records are public [G.S. 130A-110(d)]. An uncertified copy may be obtained by anyone who pays the required fee, and a certified copy may be obtained by a subject of the license or the subject’s spouse, sibling, direct ancestor or descendant, stepparent or stepchild, a person seeking information for a legal determination of personal or property rights, or an authorized agent, attorney, or legal representative of the aforementioned individuals [G.S. 130A-93(c); G.S. 130A-110(c)].

Other Records

Other commonly used records for which the register is custodian include birth and death records, military discharges, and records of assumed names.

Birth and Death Certificates

The register files and preserves copies of birth and death certificates furnished by the local health director (G.S. 130A-97; G.S. 130A-99). County birth and death certificates are public records, and copies must be provided to anyone upon request, and certified copies can be provided to the same persons as are entitled to marriage records as described above (G.S. 130A-99).

Military Discharges

Registers are required to keep a separate, permanent book for official discharges from the armed forces (G.S. 47-109). Public access to copies or to the information on the discharges is restricted for discharges received since January 1, 2004, and for discharges that were kept in separate books prior to that date and that have been on file for less than fifty years (G.S. 47-113.2). Restricted access is limited to the veteran, the veteran’s agents and representatives authorized in writing by the veteran, the veteran’s widow or widower, by someone appointed by a court to represent the veteran, or by the deceased veteran’s executor. Additionally, access to such restricted records is permitted to authorized Agents of the Division of Veteran Affairs, U.S. Department of Veteran’s Affairs, the Department of Defense, a court official with an interest in assisting a veteran or a deceased veteran’s beneficiaries, and representatives of the North Carolina State Archives [G.S. 47-113.2(b)(1)]. Registers may refuse to accept discharges if they are submitted by someone other than the aforementioned persons and authorities, or if they are not

an original or carbon or photocopy issued or certified by a state or federal agency [G.S. 47-113.2(d)]. No fees may be charged for filing the documents or for providing certified copies of discharge records to authorized parties; the registry may charge standard fees for uncertified copies [G.S. 47-113.2(n), (o)].

Assumed Names

Any person or partnership that uses an assumed name in North Carolina, and any limited partnership, limited liability company, or corporation that uses a name in this state other than the organizational name filed with the Secretary of State, must file a certificate of assumed name with the register of deeds in such county in which business is to be conducted (G.S. 66-68). Such names may be withdrawn or transferred by the owners [G.S. 66-68(f)]. The register keeps an alphabetical index of every assumed name with respect to which a certificate was issued in the county (G.S. 66-69).

Notary Commissions

Registers administer the oath of office to notaries public who live or work in the registers' counties and who have been qualified by the Secretary of State for commissioning. Registers maintain the official records of the notary commissions issued in their counties (G.S. 10B-9).

Office of Register of Deeds

The register's office is elective for a four-year term (G.S. 161-1, -2) Before a register may take the oath of office and exercise the office's duties, the board of county commissioners must approve the register's bond [G.S. 161-4(a)]. The bond must be for at least \$10,000 but not more than \$50,000 [G.S. 161-4(a)]. The bond is "conditioned for the safekeeping of the books and records, and for the faithful discharge of the duties of [the register's] office" [G.S. 161-4(b)]. If the county provides liability insurance to other county officials, the register must be included in the policy; if the county provides no liability insurance, the register must be informed in writing of that fact (G.S. 161-4.2). The small amount of the bond makes insurance important for protection against liability for errors and omissions in the recording and indexing of documents, which can involve complex transactional documents.

The county must provide the register with at least one deputy, and at least a second deputy if the register justifies to the county commissioners that a second deputy is necessary (G.S. 153A-103). In most counties, numerous deputies and assistants are required to perform the work. The register has the authority to appoint the deputies and assistants, for whose acts the register is officially responsible (G.S. 161-6).

The register's permissible fees are exclusively set by statute (G.S. 161-10). The prescribed fees are designated amounts based on the type of record, as well as designated amounts and guidelines for certified and uncertified copies (G.S. 161-10). Registers may include the cost of purchasing and maintaining related copying and computer equipment in the charges for uncertified copies, which must be uniform and prominently posted [G.S. 161-10(a)(11)]. Ninety percent of most fees are deposited into the county general fund (G.S. 161-10). Ten percent of the fees returned by the county must be set aside in a nonreverting Automation Enhancement and Preservation Fund for spending on computer and imaging technology in the register's office (G.S. 161-11.3).

The office hours of the register of deeds are set by the board of commissioners (G.S. 161-8). In some counties, the commissioners, by resolution, have provided that the register must stop recording instruments a few minutes before the office closes for the day. This arrangement gives the register time to complete the recording process prior to close of business for the documents received.

When a register of deeds resigns, retires, or dies during the register's term, the executive committee of the political party from which the register was elected has thirty days in which to submit the name of a successor to the board of commissioners. If the committee meets this deadline, the commissioners must appoint the person recommended (G.S. 161-5). This procedure does not apply in Camden, Chowan, Pasquotank, and Perquimans counties; in those counties the board of commissioners selects the replacement. Deputies and assistants continue to serve until discharged or otherwise lawfully relieved by a duly appointed and qualified successor [G.S. 161-5(b)].

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