

## **N.C. General Assembly – 2009 Bills**

### ***More Happened Than a Budget Cut***

**By Don Merritt, Title Counsel / Branch Manager**

The 2009 session of the North Carolina General Assembly adjourned on Tuesday, August 11, 2009. The Senate adjourned at 1:06 p.m. after a 6-minute session convened for the sole purpose of adjourning for the year with 6 senators present. The House adjourned at 1:30 p.m. While not the longest session on record, the Legislature considered 2,766 bills filed since it convened on January 28, 2009, and a total of 578 of them were ratified and have either been signed by the Governor or are pending on her desk. The 2009-2010 \$19 billion budget enacted by the Legislature for the current fiscal year raised taxes and fees by nearly \$1 billion and cut another \$1 billion in education funding.

Of the ratified bills, a number of them are of special interest to real estate practitioners. The bills are summarized in this article and a copy of the pertinent legislation is available as an attachment which may be accessed at the discussion section of each bill. The official name of the law enacted by each ratified bill appears in capital letters following the bill number and short title below.

#### **Senate Bill 202 (State Budget Bill) - Fee Increases**

AN ACT TO MAKE BASE BUDGET APPROPRIATIONS FOR CURRENT OPERATIONS OF STATE DEPARTMENTS, INSTITUTIONS, AND AGENCIES, AND FOR OTHER PURPOSES.

The State Budget Bill contains the following revenue provisions regarding increased filing fees and recording fees:

- a. Increase in the filing fee of a foreclosure action under a power of sale in a deed of trust or mortgage to \$150.00 (currently \$75.00). Effective September 1, 2009.
- b. The fee to record deeds of trust and mortgages will increase to \$30.00 for the first page (includes \$2.00 probate fee). Additional pages remain \$3.00 per page. N.C.G.S. §161-11 was added requiring each county to forward \$5.00 from the recording fee of deeds of trust and mortgages to the North Carolina General Fund. Effective October 1, 2009.
- c. Imposes a \$5.00 fee to be collected by the Register of Deeds on each deed recorded to be used by the Department of Cultural Resources to offset the cost of the Archives and Records Management Program. The recording fee for the first page of a deed will increase to \$19.00 for the first page (includes \$2.00 probate fee). Additional pages remain \$3.00 each. Effective October 1, 2009.

### [House Bill 806 – Homeowners Association Liens](#)

AN ACT TO REQUIRE THAT A HOMEOWNERS ASSOCIATION MAKE REASONABLE AND DILIGENT EFFORTS TO LOCATE AND NOTIFY A LOT OWNER UNDER THE PLANNED COMMUNITY ACT OR A UNIT OWNER UNDER THE CONDOMINIUM ACT PRIOR TO FILING A CLAIM OF LIEN FOR ASSESSMENTS.

Requires that a homeowners' association notify the owner of a lot or condominium unit by mail **prior to** filing a claim of lien for unpaid assessments of the assessment amount due. In addition, the claim of lien must contain certain language in boldface capital type and must be attempted to be served on the lot or unit owner in the same manner as service of process of a summons and complaint in a civil matter under Rule 4(j) of the Rules of Civil Procedure. (N.C.G.S. §47F-3-116 and N.C.G.S. §47C-3-116)

### [Senate Bill 1007 – Home Inspector Licensing](#)

AN ACT AMENDING THE LAWS UNDER THE NORTH CAROLINA HOME INSPECTOR LICENSURE ACT.

This act revised the continuing education requirements for licensed home inspectors and added a new Part IV regarding the format of a Home Inspection Report.

### [Senate Bill 405 – Real Property Sales Information](#)

AN ACT TO ASSIST COUNTIES AND THE DEPARTMENT OF REVENUE IN OBTAINING ACCURATE REAL PROPERTY SALES INFORMATION NEEDED FOR PROPERTY TAX APPRAISALS.

A new section has been added to Chapter 105 of the General Statutes requiring the name and address of each grantor and grantee to appear on all deeds conveying property and also a statement whether the property includes the primary residence of the grantor.

This act also amends N.C.G.S. §105-228.32 to add the following sentence to the provision requiring the person who presents a deed for recording to report and pay excise tax due on instruments being recorded: *"It is the duty of the person presenting the instrument for registration to report the correct amount of tax due."*

### [House Bill 1368 – Amend Future Advance Statutes](#)

AN ACT TO AMEND THE FUTURE ADVANCES STATUTES BY DISTINGUISHING BETWEEN A FUTURE ADVANCE AND A FUTURE OBLIGATION AND BY MAKING VARIOUS OTHER CHANGES.

This act clarifies the difference between an advance and an obligation under the Future Advance statutes and that a security instrument that complies with this statute secures future advances and future obligations. The period within which future advances may be made and future obligations may be incurred is extended to 30 years from the previous period of 15 years.

### [House Bill 794 – Substitution of Trustees](#)

AN ACT TO AMEND THE LAW GOVERNING SUBSTITUTION OF TRUSTEES IN MORTGAGES AND DEEDS OF TRUST.

N.C.G.S. §45-10 is amended to add a subsection which provides that when a deed of trust is recorded and the name of the trustee is omitted, the lender is subsequently allowed to record a substitution of trustee to add the missing trustee. The act was ratified on June 16, 2009, is effective when it became law on June 26, 2009, and applies to instruments recorded before, on or after the effective date. This legislation addresses the concern among attorneys that a trustee could not be substituted in a deed of trust where no trustee was named initially.

### [Senate Bill 764 – Good Funds Settlement Act and Settlement Agent Embezzlement](#)

AN ACT AMENDING THE CRIMINAL STATUTES AND THE GOOD FUNDS SETTLEMENT ACT TO CLARIFY THAT A SETTLEMENT AGENT IS GUILTY OF EMBEZZLEMENT IN INSTANCES WHERE IT CANNOT BE SHOWN THAT THE FUNDS WERE EMBEZZLED FROM A PARTICULAR PERSON OR ENTITY.

A settlement agent can be found guilty of embezzlement whether or not it can be shown that the funds were taken from a particular person or entity. The criminal statutes found in Chapter 14 of the General Statutes and the Good Funds Settlement Act (Chapter 45A) are amended to incorporate this change.

### [House Bill 1057 – Deficiency Judgments Abolished in Certain Cases](#)

AN ACT TO ABOLISH DEFICIENCY JUDGMENTS IN CERTAIN CASES WHERE THE MORTGAGE IS SECURED BY PRIMARY RESIDENCE.

Deficiency judgments following the foreclosure of certain types of non-traditional mortgage loans and rate-spread home loans are abolished (See the act for the definition of a “non-traditional mortgage loan” and N.C.G.S. §24-1.1F for the definition of a “rate-spread home loan”). This bill was initially proposed as a mechanism to abolish all deficiency judgments, but was amended during the session to limit its effectiveness to the small category of non-traditional and high-cost loans.

### [House Bill 799 – Interests in a Joint Tenancy May Be Held in Unequal Shares](#)

AN ACT TO CLARIFY THAT INTERESTS IN A JOINT TENANCY WITH A RIGHT OF SURVIVORSHIP MAY BE HELD IN UNEQUAL SHARES.

A new subsection (b) has been added to N.C.G.S. §41-2 (Survivorship in joint tenancy defined), to state that the interests of grantees in a deed who hold property as joint tenants with rights of survivorship shall be equal “unless otherwise specified in the conveyance.” The new section also addresses the treatment of a husband and wife owning property as joint tenants with right of survivorship and the effect of the death of a joint tenant on that tenant’s interest. The act provides that distributions of a joint tenant’s interest made prior to the enactment of new subsection (b) and incongruent with its terms shall remain valid and shall not be subject to modification on the basis of the act.

### [House Bill 182 – Traffic Calming Devices](#)

AN ACT TO ALLOW THE PLACEMENT OF TRAFFIC TABLES OR TRAFFIC CALMING DEVICES ON THOSE PORTIONS OF STATE ROADS WITHIN A RESIDENTIAL SUBDIVISION.

A new section is added to Chapter 136 of the North Carolina General Statutes to give the Department of Transportation the power to establish policies and procedures for the installation of traffic calming devices on subdivision streets that are also state-maintained roads provided that certain requirements are met by the department.

## Partition Proceeding Changes

### [House Bill 578](#)

AN ACT TO CLARIFY NOTICE REQUIRED TO PARTIES WHO MAY BE UNKNOWN OR UNLOCATABLE IN A PARTITION PROCEEDING; TO CODIFY THE CURRENT PRACTICE OF GRANTING OWNERS CREDIT FOR THEIR EXISTING INTEREST IN LAND WHEN BIDDING ON A PARTITION SALE; TO PERMIT A COURT TO ORDER AN INDEPENDENT APPRAISAL IF REQUESTED AND PAID FOR BY A PARTY TO THE PARTITION WHO CHALLENGES THE AMOUNT BID IN A PARTITION SALE; TO CLARIFY THE STANDARD FOR DETERMINING WHAT CONSTITUTES "SUBSTANTIAL INJURY" WITH REGARDS TO A PETITION FOR A SALE OF THE PROPERTY; AND TO PROVIDE FOR MEDIATION OF PARTITION DISPUTES.

### [House Bill 581](#)

AN ACT TO EXTEND THE DEADLINE FOR THE COMMISSIONERS IN A PARTITION ACTION TO REPORT BACK TO THE COURT ON THEIR PROPOSED DIVISION OF THE LAND, TO EXTEND THE DEADLINE FOR RESPONDING TO A SUMMONS IN A PARTITION ACTION FROM TEN DAYS TO THIRTY DAYS, TO PROVIDE NOTICE OF RIGHT TO SEEK COUNSEL, AND TO CLARIFY THE TIME PERIOD FOR APPEALING A CONFIRMATION ORDER.

The second bill captioned above, House Bill 581, which becomes effective October 1, 2009, changes certain deadlines in partition actions and requires notice be given to parties in the action of their right to seek counsel.

House Bill 578 is more comprehensive and makes some substantial changes to the partition process as currently set out in Chapter 46. Like HB 581, it also provides for some additional notice rights for parties who may be unknown or unascertainable. In addition, N.C.G.S. §46-22 will now contain a more specific definition of the term "substantial injury" to be considered when determining whether an actual partition can be made of property. A new section (N.C.G.S. §46-22.1) has been added to permit mediation of partition disputes at any time upon the agreement of the parties and also allows the Court to order mediation before ordering a sale. The bill also allows for a high bidder at a partition sale who is a cotenant of the property to receive credit for the tenant's existing interest in the property being sold. The Court may order an independent appraisal by a licensed real estate appraiser and the cost thereof will be paid by the requesting party or parties.

### [House Bill 1387 – Solar Collectors on Residential Properties](#)

AN ACT TO MAKE THE CURRENT LIMITATIONS ON CITY ORDINANCES AND COUNTY ORDINANCES THAT REGULATE THE INSTALLATION OF SOLAR COLLECTORS FOR SINGLE-FAMILY RESIDENCES APPLICABLE TO ALL RESIDENTIAL PROPERTY AND THE CURRENT LIMITATIONS ON DEED RESTRICTIONS THAT REGULATE THE INSTALLATION OF SOLAR COLLECTORS FOR SINGLE-FAMILY RESIDENCES APPLICABLE TO ALL RESIDENTIAL PROPERTY EXCEPT CERTAIN MULTI-STORY CONDOMINIUMS.

N.C.G.S. §160A-201, which previously limited the ability of municipalities to regulate solar collectors on detached single-family residences, and N.C.G.S. §153A-144, which similarly limited county action, have been expanded to limit such regulation on **all residential property**. In like manner, N.C.G.S. §22B-20 expands the limitation on the effect of deed restrictions prohibiting solar collectors also to include "all residential property" except that in situations where a owners' association is responsible for exterior maintenance, the individual unit owner installing the solar device is responsible for damage and for indemnifying the owners' association. All three of these sections contain exceptions for regulation of solar collectors on facades and roofs that are visible from the ground of areas of public or common access.

### [HOUSE BILL 852 – Builder Inventory Property Tax Deferral](#)

AN ACT TO DEFER A PORTION OF THE PROPERTY TAX DUE ON REAL PROPERTY HELD FOR SALE BY A BUILDER.

For tax years beginning July 1, 2010, a general contractor who constructs a residence as an improvement to real property can defer property taxes representing the tax resulting from the increase in value attributable to the improvements made to the real property as long as it remains unoccupied and until it is sold or transferred. The exemption expires after 3 years, but in no event can it continue for more than 5 years after the property as improved was first subject to taxation.

The act is repealed effective for taxes imposed for taxable years beginning on or after July 1, 2013.

***On the irrelevant and lighter side, there are some additional rules to be aware of and follow:***

***Snake Handling*** – Owners of certain reptiles, such as venomous snakes and crocodiles, must keep them in escape-proof enclosures.

***License Plate Frames*** - State name, year sticker and month sticker on a vehicle license plate can no longer be covered up by a license plate frame.

***Marriages*** – A Superior Court Judge may now perform a marriage ceremony.

***Potato Festival*** - The Albemarle Potato Festival was adopted as the official Irish potato festival of the State of North Carolina.

***Portable Toilets*** – It is now a Class 1 Misdemeanor to steal, take from its temporary location or willfully destroy, deface or vandalize a chemical or portable toilet.

This is by no means an exhaustive list of legislation enacted by the 2009 legislature. Additional information can be obtained regarding this and other sessions of the North Carolina General Assembly at its website at [www.ncga.state.nc.us](http://www.ncga.state.nc.us) or feel free to call your local Attorneys Title office.