



# HOUSE BILL 852: Real Property Technical Corrections/Solicitation of Copies.

2017-2018 General Assembly

<b>Committee:</b>	<b>Date:</b> August 22, 2018
<b>Introduced by:</b>	<b>Prepared by:</b> Trina Griffin
<b>Analysis of:</b> S.L. 2018-80	Staff Attorney

**OVERVIEW:** *S.L. 2018-80 does the following:*

- *Makes changes to various real property statutes as recommended by the Real Property Section of the North Carolina Bar Association. These changes have various effective dates, so please see the full summary for details.*
- *Regulates the solicitation of a fee for copies of documents recorded with registers of deeds offices. This provision becomes effective October 1, 2018.*
- *Clarifies eligibility for needs-based public school capital fund grants. This provision, which became effective July 1, 2018, is summarized separately and can be found under the "Education" heading.*

**BILL ANALYSIS:**

**Part I – Mortgage & Deed of Trust Changes**

**Section 1.1:** Clarifies that in a purchase-money mortgage transaction (*i.e.* where the purchased property serves as collateral to secure financing for some or all of the purchase price), the buyer's spouse is not required to sign the mortgage instrument or deed of trust regardless of whether the secured party is the seller or a third-party lender.

**Section 1.2:** Clarifies the fee for recording subsequent instruments related to mortgages or deeds of trust. For instruments in general for which there is no other specific provision, the recording fee is \$26 for the first 15 pages and \$4.00 for each additional page. The fee for filing a deed of trust or mortgage is \$64 for the first 35 pages and \$4 for each additional page. There is no fee for recording records of satisfaction or the cancellation of record of deeds of trust or mortgages. There is a lack of clarity and consistency among registers of deeds with regard to the fee that should be charged for subsequent instruments related to a previously recorded deed of trust or mortgage. Some registers are charging the fees prescribed in G.S. 161-10(a)(1) while others are charging the fees in G.S. 161-10(a)(1a). This section will make the fee standard statewide and charge the lower of the two fees.

**Section 1.3:** Amends the definitions of "original instrument" and "subsequent instrument" in G.S. 161-14.1(a) to include documents that "restate" the original document.

**EFFECTIVE DATE:** Section 1.1 of this Part became effective June 25, 2018, and applies to mortgages and deeds of trust entered into before, on, or after that date. Sections 1.2 and 1.3 of this Part become effective October 1, 2018, and apply to instruments presented for registration on or after that date.

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## **Part II – Probate & Registration Changes**

**Section 2.1:** Clarifies the requirement for recording that the drafter's name appear on the first page of an instrument applies only to a deed or deed of trust and adds language requiring the register of deeds to accept written representations regarding the licensing status of the attorney who drafted the deed or deed of trust.

**Section 2.2:** Adds additional corporate officials whose signatures, when appearing on the face of instruments recorded in the register of deeds, are deemed as valid as if authorized directly by a board of directors. Clarifies that the statute applies to limited liability companies and makes other technical and conforming changes.

**EFFECTIVE DATE:** This Part became effective on June 25, 2018, and applies to mortgages and deeds of trust entered into before, on, or after that date.<sup>1</sup>

## **Part III – Regulate Solicitation of Copies**

G.S. 75-1.1 provides that unfair or deceptive acts or practices in or affecting commerce are unlawful. Whether an act or practice is unfair or deceptive usually depends on the facts of each case, but the general test is whether the act or practice has the capacity or tendency to deceive. Chapter 75 provides for the prosecution of such acts by the Attorney General and through private civil actions.

Chapter 161 contains the laws that relate to the register of deeds office, which includes the office's duty to register and index documents presented to it for registration or recording. Filing fees and certified copy fees vary depending on document type, as set by statute in G.S. 161-10.

**Section 3.1** would create a new section in Chapter 75 to regulate the solicitation of a fee for providing copies of recorded instruments. A solicitation, for the purposes of this section, must meet the following requirements:

- The solicitation must contain a conspicuous statement at the top of the solicitation with the following:
  - That the solicitation is not from a State agency or a local unit of government.
  - That no action is legally required by the person being solicited.
  - The fee for obtaining a copy of the record directly from the register of deeds that has custody of the record.
  - The information necessary to contact the register of deeds that has custody of the record.
  - The name and physical address of the person, firm, or corporation soliciting the fee.
- The solicitation shall not contain language designed to make the solicitation appear to be issued by a State agency or local unit of government, or to appear to impose a legal duty on the person being solicited.
- The fee shall not be greater than four times the amount the register of deeds would charge for a copy of the same record.

A violation of this new section would be an unfair trade practice under G.S. 75-1.1.

**EFFECTIVE DATE:** This Part becomes effective October 1, 2018.

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<sup>1</sup> This effective date should be clarified to reflect that the changes in Section 2.2 should apply to instruments presented for registration on or after the effective date and are not limited only to mortgages and deeds of trust. This change has been identified for a technical correction.

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## **Part III-A – Clarify Eligibility for Needs-Based Public School Capital Fund Grants.**

This provision is summarized separately and can be found under "Education."

**EFFECTIVE DATE:** This Part became effective July 1, 2018.