

# Summer 2019

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Real Estate Lawyers Association of North Carolina

The Quarterly Newsletter for RELANC Members ♦ Summer 2019



# RELANC



## Legislative Link



The North Carolina General Assembly is currently in "long" session. You may view legislation, load live audio, and see agendas and activity, all at the link below.

[www.ncleg.net](http://www.ncleg.net)

*Please see pages 4-8 for Nancy Ferguson's very detailed and timely update on current legislation.*

*New for 2019*, as of January 1, you no longer need credentials to use the UNC School of Government's Legislative Reporting Service website, which provides immediate access to the daily business of the North Carolina General Assembly. You may also set up a free account to track bills or keywords in legislation. That site is located at:

<https://lrs.sog.unc.edu/>

## Chair's Message

Jim Arges, Arges Law Firm, P.C.

### RELANC to Launch Two New Outreach Initiatives:

#### We Need Your Help!

**REALTOR® CONVENTION AND EXPO,  
SEPTEMBER 14-17 IN PINEHURST**

We are launching two new outreach initiatives for RELANC this year. First, RELANC is reaching out to our broker partners across North Carolina through our participation in the NC REALTORS® 2019 Convention & Expo in September in

Pinehurst. We will have a booth at the event and will be distributing information about RELANC to over 1,000 REALTORS®, vendors, partners, staff, affiliates and public stakeholders from across the state. Our main objective is to inform brokers, through their 47 local associations in the state, and others in the industry about how important it is to retain a North Carolina real estate attorney in the closing process. In addition to **sharing the names and contact information for every RELANC attorney** in the state, we will be distributing copies of our brochure, *Why Use A North Carolina Attorney To Handle Your Real Estate Closings and Settlements?* We will also distribute our recently



completed *Tax Proration Brochure*, produced by an energetic RELANC committee led by Immediate Past President, Ashleigh Black. Finally, much interest has been expressed by people in the real estate industry in North Carolina for more information on specific legal matters of interest to them. As a result, we will also be offering to **provide knowledgeable speakers to REALTOR® groups** from among our members.

Please consider getting involved in these efforts! If you have the ability to spend a half a day at the REALTOR® EXPO booth (September 15th or 16th) please

*continued on next page*



# Chair's Message continued

## Lobbying & Task Force Contacts



James A. Harrell, Jr.



Kim Rosenberg,  
Co-chair, Best Practices Task Force & NCLTA Legislative Committee



Chris Salyer  
E-Mortgage Closing Advisory Committee



Randy Herman  
Secretary of State's Land Records Task Force

contact our Executive Director, Bonnie Biggs at [Bonniebiggs@relanc.com](mailto:Bonniebiggs@relanc.com). Volunteers will be included as needed to fill our schedule, with any accommodations on your own. Also, if you would like to be a REALTOR® speaker or would be willing to meet with REALTORS® and other groups in your area please, again, reach out to Bonnie and let her know.

### LAW SCHOOL AND YOUNG LAWYER INITIATIVE

Our second initiative is directed at our state's law students and young attorneys. We are working with law schools across North Carolina to present a program to law students who have an interest in a career in real estate law. We want to introduce these prospective practitioners to our organization and get them involved from the start of their careers. Our program, which will kick off in spring 2020, will further educate these potential colleagues about the real estate lawyer-led closing process in North Carolina and the career path that can be found supporting the real property buying public. (You may wish to see the article in this newsletter about an attorney recently censured in a UPL case, written by our Treasurer, Sal Balsamo of Charlotte). As part of that process, we want to offer mentorship opportunities to these future lawyers by connecting them with experienced RELANC attorneys. If you have an interest in being a part of one of these programs at your alma mater or another law school, please contact our Executive Director, Bonnie Biggs. If you feel called to be a mentor to a law student or young attorney, we will be happy to match you.

In the last ten years RELANC has become a respected voice in North Carolina's legislature (see Nancy Ferguson's legislative update in this newsletter). With both of these new initiatives, RELANC hopes to spread our message and influence to even more corners of our state to help reinforce how the central role historically held by North Carolina attorneys in the real estate closing process, continues to benefit and protect the public.

~ Jim Arges

### RELANC in The News

RELANC President Jim Arges appeared in a WRAL TV news story in June to comment on an [attorney's standard of practice](#) as it relates to residential real estate title examinations. This news story centered on a power company's easement that did not appear on a developer's subdivision plat. The situation is heart-wrenching: there are close to 20 property owners in Johnston County who face the loss of their homes because of the easement omission. Open the electronic version of this newsletter for the hyperlink or look for the article by name: "Surveyor dropped Duke Energy easement from map before Johnston neighborhood built," published on June 7, 2019 on WRAL.com.

# New Tax Proration Brochure now available at [www.relanc.com](http://www.relanc.com)

RELANC members have created a handout you can share with your clients who inquire about property tax proration. It is free on our web site and you can print them anywhere or order them printed and shipped from our printer.

**What are real property taxes?**  
Real property taxes (also known as "ad valorem" taxes) are imposed by municipalities and counties based on the assessed value of the real property as of January 1st and the tax rate the municipality and/or county sets by June 30. The real property taxes are the primary source of revenue for local governments in North Carolina.

**Who will send me my real property tax bill?**  
Where you own property in North Carolina will determine which government entity sends out your property tax bill. If you own in the county but not in a municipality, then the county will send you your property tax bill. If you own in a municipality, you will receive either two property tax bills (one from your county, and one from your municipality) or one bill from the county, which will include collection for both the county and the municipality.

**When is my real property tax bill due?**  
When you receive your property tax bill, it will have a due date of September 1; however, you will not be subject to interest charges on the tax bill amount if your tax bill is paid or postmarked before January 6 of the next year (N.C.G.S. 106-300(b)). For example, your 2019 tax bill will have a due date of September 1, 2019 but will not be subject to interest charges if paid or postmarked before January 6, 2020.

**THIS BROCHURE WAS PRODUCED AND SPONSORED BY THE FOLLOWING ORGANIZATIONS:**

- NORTH CAROLINA REAL ESTATE LAWYERS ASSOCIATION (N+C)
- NORTH CAROLINA REAL ESTATE ASSOCIATION
- REAL ESTATE LAWYERS ASSOCIATION OF NORTH CAROLINA

**So, you bought a house and received your first real property tax bill? Or you are thinking of closing to buy or sell your house? Ever wonder...**

**Why are Real Property Taxes Prorated on a Calendar Year Basis at Closing?**

It's the law! The North Carolina legislature enacted a law that "unless otherwise provided by contract, property taxes on the real property being sold shall be prorated between the seller and buyer of the real property on a calendar year basis" (N.C.G.S. 206-403 with emphasis added).

It's contractual! The standard "Title to Purchase and Contract" used by the majority of buyers and sellers of residential property follows the law and requires the real property taxes to be prorated on a calendar year basis at closing.

But doesn't the local government use a fiscal year? Yes, the local government budget operates on a fiscal year (July 1 to June 30), but the tax lien on the real property and the tax billing and collection process operate on a calendar year (January 1 to December 31). Therefore, even though the property tax bill will not be created until the middle of the current year, it will relate back to January 1 of the current year.

**Need more information? For help with your additional tax questions, call your closing attorney or find one at [www.relanc.com](http://www.relanc.com)**

# Attorney Censured in Unauthorized Practice Case Involving Settlement Shop

## Sal Balsamo, Barrister's Title, and RELANC Treasurer

On Aril 15th of this year a Consent Order of Discipline was entered against Ryan Shoaf. Shoaf (hereinafter "Shoaf") was Censured for his role in participating in Closings conducted by a non-attorney Settlement shop called American Home Title (hereinafter "AHT"). A review of the Censure reveals that AHT was holding itself out to the public as an entity that could



"provide customers with all of the services necessary to conduct closings in North Carolina." Specifically, AHT advertised to the public "Our range of products include, Title, Closing & Escrow, Property Reports, full Purchase and Refinance Products, including an experienced Reserve Management Team." AHT's website also included the following language "Our Purchase Concierge Team will be happy to answer any of your questions!"

The Censure indicates that at some point in 2016, Shoaf entered into an Agreement with AHT to purportedly provide the supervision of the real estate closing services advertised by AHT. For each real estate transaction conducted by AHT (and allegedly supervised by Shoaf), AHT collected and disbursed the proceeds. Shoaf did not collect, nor disburse, any of the funds associated with the closings. Shoaf's fees were paid to him by AHT at the conclusion of the closings, out of the closing funds. The Censure notes that Shoaf's fees were \$325 per closing and that he conducted 3400 title searches at the behest of AHT. Of note in the Censure is the fact that none of AHT's clients chose Shoaf as their attorney, but rather all of his services were arranged by AHT. The Censure noted one example, involving a client of AHT with the surname of Scarlett, who did not know that Shoaf acted as her attorney at her closing and never spoke to him at any point during the closing process.

The Censure noted that that in practice, Shoaf rarely communicated with the parties involved in the AHT closings, did not witness the execution of closing documents, and rarely, if ever, visited AHT's office where the closings were conducted. The Censure noted that allowing AHT to represent in its marketing and advertising that Shoaf provided legal services on behalf of AHT to AHT's clients was a violation of Section 5 of NCGS Chapter 84. The Bar concluded that Shoaf's action in this matter also violated Rule 5.5(f) and Rule 1.5(a) of the Rules of Professional Conduct.

### Legal Significance and Analysis

The Censure was the result of a settlement between the State Bar and Shoaf. For us practitioners, ideally there would have been a more expansive explanation of what is permissible and impermissible in the context of non-lawyers performing

Settlement services in North Carolina.

Having said that, the Censure does provide some significant guidance. Shoaf's Answer to the initial Complaint filed by the Bar was that he, or a Member of his Staff, oversaw aspects of the Closings and cited an Authorized Practice Advisory Opinion issued by the Bar in 2002-1 (APAO 2002-1). The Bar rejected Shoaf's assertions that he was "paid", "retained" and "hired" by AHT's clients. This is noted in the Censure itself. The reference to APAO-1 is of extreme significance. APAO-1 is what is often cited by non-attorney Settlement Shops who conduct closings. Those of us who were around in 2002 can attest to the implications of what many felt at the time was a poorly worded Opinion. In short, APAO 2002-1 indicated that there were some aspects of a Closing that could be performed by non-Lawyers and some aspects of a Closing that must have attorney involvement because those aspects were the practice of law.

In 2012, the State Bar revised APAO 2002-1 and made it clear that a Real Estate Closing *could not be broken into segmented parts with non-lawyers handling some aspects of the closing and lawyers handling other parts*. That, in fact, the entire process was the practice of law. But this revision came 10 years later and by that point, non-Attorney Settlement Shops, similar to AHT, were already conducting closings. The significance of the Shoaf Censure is that *the Bar has made it very clear that providing services associated with a closing must involve a relationship between an attorney and his or her client*.

A legitimate relationship must exist between the attorney and the client and an attorney cannot be used as a means to boot-strap legitimize what is, in fact, a relationship between the client and the non-Attorney Settlement Shop.



# Legislative Update – as of 7/23/2019

*Nancy Ferguson  
Chicago Title, VP & Sr. State Counsel  
Fidelity National Title Group, NC State Counsel, VP*

The North Carolina Legislature is now in the Long Session, as we all know. We receive legislative tracking reports from various sources, and our industry groups are actively engaged, including the NC Bar Association Real Property Section (RPS) and the NC Land Title Association (NCLTA) as well as RELANC. We have regular contacts with other industry groups as well and are exchanging comments and information among our lobbyists, including RELANC’s Jim Harrell. *(Note: Many of the highlights of key bills are from David Ferrell, lobbyist for NCLTA and NCBA, in the interest of time and completeness, with his permission.)*

The primary deadline for public bills (not agency, appropriations or local bills) was cross-over date, May 9 2019, when most bills must have made it through either the House or the Senate to remain “live” for the 2019-2020 Sessions.

At the time of this article, the bills are in the status as indicated. A couple are noted because, though they did not make cross-over, they are still very much under discussion, such as H309, the Adverse Possession bill. NOTE: All bills can be accessed, along with Bill Digests and Bill Summaries on the North Carolina General Assembly website, <https://www.ncleg.gov/Legislation> as well as statutes, legislators and other useful information.

Bills are in no particular order, either numerical or priority, primarily because of changes in Senate vs House bills and versions that have survived to this point.  
\*\*\*\*\*

**Eminent Domain, H3:** Proposed constitutional amendment to prohibit **eminent domain** for public purpose; only allow for public use. Unlikely to pass; Introduced every session and never enacted. <https://www.ncleg.gov/BillLookup/2019/H3>

**Tax Certification, H201:** Under current GS 161-31, certain counties are authorized to prohibit their respective register of deeds from accepting for the registration a deed transferring real property when taxes are delinquent. Though originally for all counties, the enacted Session Law 2019-25 added Randolph County only. <https://www.ncleg.gov/BillLookup/2019/H201>  
Enacted as Session Law 2019-25

**AOC Legislative changes, H226:** Would, among other provisions:

- Repeals G.S. 45-21.21(f), regarding postponements of sales, which had set the time for sale, per the notice of sale, and between the hours of 10:00AM and 4:00PM on any day on which the Clerk’s office is normally open for transactions.” (Sec. 26(a))
- Amends G.S. 45-21.23 that sale must be “on any day when the clerk’s office is normally open for transactions.” It deletes the limitation that the sale be on any day “other than Sunday or a legal holiday when the courthouse is closed for transaction.”(Sec. 26(b))
- Amend G.S. 32C-1-116(a) that the clerk has original jurisdiction to approve compensation and expenses for an agent under GS. 32C-1-112(b) and (c).

<https://www.ncleg.gov/BillLookup/2019/H226>  
On Senate Calendar for 7/23/2019

**Adverse Possession Law, H309:** This proposal is being promoted by the Grange of North Carolina. Though this did not make cross-over, parties agreed to discuss further. Bill would make various changes to the adverse possession law.

- Extend the period to acquire property by adverse possession from 20 years to 30 years.
- Adverse possessor would have to pay the previous owner fair market value of the property at the time of the acquisition and reimburse the previous owner for all property taxes incurred for the 30 years that the property was adversely possessed.
- Title to property may not transfer by adverse possession if the property that is being adversely possessed is entirely within one foot of the recorded boundary of the property.

<https://www.ncleg.gov/BillLookup/2019/H309>

**Annual Report Standardization, S362:** Business Annual Reporting requirements would (1) be extended to require principals as well as officers be reported, and a contact who can provide information about those with authority to bind the entity, (2) be extended to corporations (including non-profits), LLC’s, LLP’s, limited partnerships, and all filed directly with the NC Secretary of State, removing insurance companies under Ch. 58, the Insurance Act, per G.S. 55-16-22(a1), (3) standardize fees for all for-profit entities, (4) be extended to non-profit entities but free.



The bill also includes GS 55D-18, Penalty for signing false document, with enforcement by the Secretary of State. This has appropriations provisions so was not subject to cross-over.

<https://www.ncleg.gov/BillLookup/2019/s362>

Still in committee.

**Identity Theft Protection Act (Data Breach), H904:** This bipartisan bill, proposed by Attorney General Josh Stein and Rep. Saine, would significantly amend the time frames for existing statute. There is a change in the timing of the notification requirement in G.S. 75-65, where a law enforcement investigation is delayed by law enforcement. The requirement is now 5 days from LE's communication to the business that notice will no longer impede the investigation or security. This change is clearer than the prior wording. Notice must go out to potentially affected consumers within 30 days of *learning* of the breach. The lookback to determine who may be affected is 3 years. G.S. 75-65(h)(2) would require that, if SSN is breached, the business that was the source of the breach must provide free credit monitoring to consumers for 2 years. The information provided to the Consumer Protection Division of the Attorney General's Office is not a public record as defined in G.S. 132-1. This has been discussed with and reviewed by several title insurers' regulatory counsel over the 2-year period it has been discussed, is being monitored and commented on by multiple sections of the Bar Association and many of their comments are being incorporated into the latest version of the bill. Further changes and negotiations are anticipated.

<https://www.ncleg.gov/BillLookup/2019/H904>

**Condominium Act Revisions, H920:** This bill was introduced by Investors Title, but is now being considered by a joint committee of the Real Property Section (Brian Byrd, co-chair) and NC Land Title Association (Jim Saintsing, co-chair), meeting with representatives from many other industry groups. This is intended as a curative bill for the many defectively formed condominiums and not a re-write of the Condominium Act. The initial bill, as drafted provides for:

1. A change to plat certification requirements.
2. A 7-year sunset of development rights, absent 67% vote to extend within 1 year *prior* to their expiration.
3. A savings provision that documents would be "liberally construe[d] in favor of the valid establishment of a condominium," and allow amendments by the executive board:
  - (1) To cure any ambiguity, to establish marketable title to units, or to correct or supplement any provision of the declaration, including plats or plans, that is defective, missing, or inconsistent with any other

provision of the declaration or with this Chapter.

(2) To conform to the requirements of any agency or entity that has established national or regional standards with respect to loans secured by mortgages or deeds of trust on units in condominium projects, such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(3) To comply with any statute, regulation, code, or ordinance which may be applicable to the condominium or association.

(4) To make a reasonable accommodation or permit a reasonable modification in favor of persons with disabilities, as may be defined by federal or State laws or regulations applicable to the association or its employees, unit owners, residents, or tenants.

4. Judicial reformation by the Association without vote of membership based on notice provisions and allowing lienholders standing.

<https://www.ncleg.gov/BillLookup/2019/H920>

**NC Bar Association Property Law changes, S595:** This bill includes the following:

- **Tenancy-by-Entireties** provisions would codify existing statutory and case law in a single new article.
- **Joint Tenancy with right-of-survivorship** would update the current statute, and was approved, submitted and supported by the Bar Association but did not pass in 2018 session.
- **Notice of Settlement Act (NOSA)**, would allow for priority to be established by voluntary recording of a notice of settlement, for an anticipated closing within 60 days, subject to matters discoverable on-line.
- **Real Property Section Technical corrections to GS 47-17.1 (draftsman) and GS 47-18.3 (entity presumptive authority)** would clear up effective date and misinterpretations of 2018 bill.

<https://www.ncleg.gov/BillLookup/2019/S595>

This bill is not anticipated to move forward this Session. Unanticipated objections were raised to both the estate planning sections and to the proposed notice of settlement act, despite the extensive discussion and information dissemination on all of these. It is hoped that another vehicle can be found to have the technical corrections addressed.

*continued on next page*

## Legislative update, continued

**Street Database Maintenance/Public Record Except (so-called “Orphan Roads”), H620:** This bill would require a database of federally owned/maintained, state owned/maintained and state maintained roads, providing clear and concise information, to be updated monthly and publicly available in either graphic or tabular format, such as through GIS. It is supported by NC Association of Realtors and NC Home Builders.  
<https://www.ncleg.gov/BillLookUp/2019/H620>  
Enacted as S.L. 2019-156.

**Transportation Corridor Official Map Act Repeal, H131:** The 1987 Transportation Corridor Map Act authorized NC Department of Transportation or other governmental bodies to adopt and file transportation corridor maps. The Kirby v. NC Department of Transportation cases found this a perpetual restriction (since no termination) and a taking for which the owners were entitled to compensation. All filed maps were rescinded by the General Assembly (S.L. 2016-990, and a moratorium imposed on further maps, extending through 2018 (S.L. 2017-57) and July 1, 2019 (S.L. 2018-5). This legislation repeals the act entirely.  
<https://www.ncleg.gov/BillLookUp/2019/H131>  
Enacted as Session Law 2019-35

**NC Association of Registers of Deeds (NCARD) Technical corrections, S594:** This bill provides for several critical issues of interest to NC real property attorneys. It would:

- Increase margin for recorded documents from ¼” to ½” (other than 3” top margin on first page)
- Remove the requirement for “return to” provision on e-recorded documents
- Extend the ability to reject false/fraudulent lien filing to all person, not just the current limitation to public officials, effective December 1, 2019
- Clarify that assumed business names cannot include appear to be corporations, LLC’s, limited partnership or limited liability partnership using their official names, since those entities must be properly created by officially filing with the NC Secretary of State, though those entities may themselves have assumed business names requiring the statutory assumed business name certificate. Statutory forms are provided, but they are almost identical to the ones already posted on the Secretary of State’s website,

[https://www.sosnc.gov/divisions/business\\_registration/assumed\\_business\\_names](https://www.sosnc.gov/divisions/business_registration/assumed_business_names)

<https://www.ncleg.gov/BillLookup/2019/S594>

Enacted as Session Law 2019-117, with most provisions effective October 1, 2019 other than the fraudulent lien provisions effective on December 1, 2019.

**NC Receivership Act Revisions, S364:** This bill, drafted and recommended by the Bankruptcy Section of the NC Bar Association, would provide for various changes to the current Receivership Act, and should better address receivership issues with regard to real property. Key provisions would provide for the following:

- Extends applicability to statutory, common law and equitable receiverships but not state agencies, trusts (other than business trusts), decedent’s estates, missing persons or absentees in military service.
- Gives the court appointing a receiver (limited or general) the exclusive authority to direct the receiver and determine all controversies relating to the receivership or receivership property, wherever it is located.
- Allows any person, regardless of residency, to service as a receiver as long as the court makes written conclusions based on the record that the person is qualified to serve as receiver and officer of the court and is independent as to any party in interest and the underlying dispute.
- Gives the receiver the powers and priority as if it were a creditor that obtained a judicial lien at the time of appointment on all of the receivership property, subject to satisfying the recording requirements as to real property that are described in the statute.
- Allows a receiver to apply in a foreign jurisdiction for appointment as a receiver with respect to any receivership property located in a foreign jurisdiction. The bill would set out provisions governing foreign receivers seeking to obtain appointment by a court in this state with respect to property located in this state.
- Provides for a stay to obtain possession of receivership property and intervene in actions.
- Authorizes receiver, upon court order, to obtain secured debt, adopt or reject executory contracts, to sell, lease, license, exchange or otherwise dispose of receivership property free and clear of all liens, claims of exemption and rights of redemption outside the ordinary course of business, abandon receivership property, with court order
- Amends GS 57D-3-02 to provide that a person ceases to be a member of a limited liability company upon the execution of an assignment for the benefit of creditors under any applicable law or upon the appointment of a general receiver for the person.
- Amends GS 23-38 to provide that no debt, demand, judgment or decree against a debtor who is discharged will be affected or impaired by the discharge, but the same must remain valid and effective against all of the debtor’s property acquired after discharge and the appointment of a trustee, and the lien or any judgment or decree upon the debtor’s property must not in any manner be affected by the discharge

<https://www.ncleg.gov/BillLookUp/2019/S364>

Still in committee.



**NC Servicemembers' Civil Relief Act, S420:** The act would be extended to coincide with the federal act and add the NC National Guard and National Guard members from other states, as well as dependents.

<https://www.ncleg.gov/BillLookup/2019/S420>

Ratified

**Protecting Tenants at Foreclosure Act Restored, H531:**

This would re-enact the NC provisions, consistent with Pub. L. 111-22, Title VII, Sections 701 through 703, as amended, and repeals G.S. 45-21.33A.

<https://www.ncleg.gov/BillLookup/2019/h531>

Enacted as Session Law 2019-53

**Municipal Omnibus Bill, H557:** This includes, in relevant part:

- amend GS 105-373 by allowing the governing body of a taxing unit to, in its discretion, relieve the tax collector of taxes owed that are ten or more years past due when it appears to the governing body that such taxes are uncollectable.
- amend municipal annexation law to provide that the city council may include in the annexation ordinance a description of the area to be annexed any state-maintained street, street right-of-way, or easement.
- delete the provisions stating that a municipality has no legal interest in a state-maintained street unless it owns the underlying fee and not just an easement.

<https://www.ncleg.gov/BillLookup/2019/H557>

Still in committee

**Amendments to Probate/Trusts/Wills Choice of Law, S532:** Provisions, in relevant part, would:

- Amend GS 28A-2B-1 to require that at a hearing taking place before death on the validity of a will or codicil, that the petitioner produce the original will or codicil.
- Make conforming changes to GS 28A-2B-3 concerning the contents of a petition of will validity, requiring that the original will or codicil be tendered at the hearing, while attaching a copy with the petition.
- Amend GS 28A-6-1 to provide that on an application for letters of administration or letters testamentary, it is sufficient to use the terms minor or adult instead of the actual age of an heir or devisee.
- Amend GS 31-11.6 to provide that any will shown to have been made self-proved under the jurisdiction in which the testator was physically present at the time of execution or the place where the testator was domiciled at the time of execution or at the time of death is to be considered as self-proved.
- Amend GS 31-46 to provide that a will is valid if it meets the requirements of the applicable provision of law in effect in North Carolina at the time of its

execution or at the time of the testator's death if (1) the will's execution complied with the law of the jurisdiction in which the testator was physically present at the time of execution (was, execution complies with the law of the place where it is executed at the time of execution); its execution complied with the law of the place where the testator was domiciled at the time of execution or at the time of death; or it is a military testamentary instrument executed in accordance with 10 USC Sec. 1044d.

- Amend GS 39-13.7 by adding a provision allowing for notice that real property held in trust has immunity from the claims of separate creditors to be given in a statement in the conveyance of the tenancy by the entireties real property. The statement would say that the requirements for immunity from the claims of separate creditors are met as of the date of the conveyance. The bill would allow a person entering into a transaction involving real property that is held in trust to request confirmation from the trustee whether the requirements for providing immunity from the claims of separate creditors are met at the time of the transaction

<https://www.ncleg.gov/BillLookup/2019/s532>

Ratified and presented to Gov.

**Transfer on Death Deeds, S312:** This bill would enact a NC revised version of the Uniform Real Property Transfer of Death Act as Article 11 of Chapter 31 of the General Statutes.

The TOD deed would be revocable, nontestamentary, overridden by revocation or other inconsistent conveyance during grantor's life, requires same capacity as for a will, but only execution as deed, and must be recorded prior to grantor's death, to take effect only at grantor's death. The property can be renounced by the beneficiary and is subject to estate creditors as well as other NC specific estate provisions. This bill contains many ambiguities, open questions and inconsistencies with existing NC conveyance laws. NCLTA, RPS and RELANC as well as Estate Planning Section of the Bar Association are questioning and have offered negotiation.

<https://www.ncleg.gov/BillLookup/2019/s312>

Still in committee

**Surveyor Statutes of Limitation and Repose combined, S332:**

This bill would remove the ten-year statute of repose set out in GS 1-47(6) and add a 7 year period from specific last act to the 3-year statute of limitation from occurrence of the physical damage under GS 1-52 for actions against registered land surveyors or any person acting under the surveyor's supervision and control for physical damage or for economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting. <https://www.ncleg.gov/BillLookup/2019/s332>  
Ratified.

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## Legislative update, continued

**Simplify Builder Inventory Exclusion, H492:** After several amendments, the current version would simply provide for a single application (rather than annual applications) under G.S. 105-277.02, effective for tax year beginning July 1, 2019.

<https://www.ncleg.gov/BillLookup/2019/h492>  
Ratified.

**Expand Cartway Path Law, S353:** This bill would simply widen the statutory cartway from 18' to 30' under G.S. 136-69.

<https://www.ncleg.gov/BillLookup/2019/s353>  
Still in committee

**HOAS- Leased Properties, H594:** This provision would prohibit amendments to declarations restricting leases over 30 days. It would not apply for pre-existing planned communities, if declarations address the issue or to condominiums (since this would disqualify them from FHA financing). <https://www.ncleg.gov/BillLookup/2019/h594>  
Still in committee

**Short Term / Vacation Rentals, S483:** Short term vacation rental properties are subject to city ordinances, such as inspection requirements.

<https://www.ncleg.gov/BillLookup/2019/s483>  
Enacted as Session Law 2019-73

**NC Farm Act of 2019, S315:** This bill includes amendments regarding growing hemp (under the special pilot program) and medical marijuana to conform to the federal Farm Act of 2018 (Section 10113 of the Federal Agriculture Improvement Act of 2018), adding a new Article 50F of Chapter 106 of the NC General Statutes specifically to address that act. The bill also includes an important provision for any property owner to petition for removal of utility easements unused after 20 years upon payment of fair market value, if the utility cannot provide a current need. It also would require a notice and hearing for termination of present use value.

<https://www.ncleg.gov/BillLookup/2019/S315>

Though this made cross-over, it is still under discussion, primarily because of disagreements regarding legalizing smokable hemp.

### **Foreign Seller reporting under Sec. 5.4 of the Rev. Laws Clarifying & Administrative Changes bill, S523, H600:**

The requirement for a Form 1099-NRS submission would be made statutory, proposed new G.S. 105-251.3 (and, thereby, subject to penalties for noncompliance) and would extend not just to those under the current regulation (individuals, partnership, estates or trusts) to all non-resident (i.e. non-NC, not just non-US) sellers (broadly defined under statutory construction provisions to include all entities as well).

<https://www.ncleg.gov/BillLookup/2019/H600> and <https://www.ncleg.gov/BillLookup/2019/S523>

This was removed from S523, but may become the subject of a study to determine what legislation should be considered.

**Liability of Register of Deeds for Failure to Record, H264,** General Statutes Commission technical correction bill, would correct GS 161-16 to reference liability for the register for failure to record under GS 161-14, among other provisions. <https://www.ncleg.gov/BillLookup/2019/H264>  
Ratified.

**Landlord/Tenant changes, H880,** amends provisions regarding removal or disposal of personal property of a deceased tenant, collection of expenses in summary ejectment proceedings and writ of possession.

<https://www.ncleg.gov/BillLookup/2019/H880>  
On Senate Calendar for 7/23/2019

**Land Use Regulatory Changes, S355,** includes a massive re-write of city and county regulations into a new Chapter 160D, with some additional provisions supported by home builders. <https://www.ncleg.gov/BillLookup/2019/s355>  
Enacted as Session Law 2019-111

**Misc. changes to estate and trust statutes, S394,** supported by the NC Bar Association, includes:

- (1) Clarifications regarding encumbered assets (G.S. 28A-15-4),
- (2) Clerk's original jurisdiction on guardianships (G.S. 35A-1103),
- (3) Amendment regarding spousal allowance that either the decedent or spouse must be resident of North Carolina (G.S. 30-15),
- (4) No statute of limitations on trust reformation G.S. 1-56 and 1-56.1,
- (5) Jurisdiction of Superior Court for trusts G.S. 36C-2-203, and
- (6) No trust amendments allowed for removal or replacement of trustee of a non-charitable irrevocable trust G.S. 36C-4-411(h)).

Effective July 1, 2019 at 1:42PM, but sections (5) and (6) apply to all trusts, before, on or after that date.

<https://www.ncleg.gov/BillLookup/2019/s394>  
Enacted as Session Law 2019-113

### **General contractor licensing provisions, S55**

<https://www.ncleg.gov/BillLookup/2019/S55>  
Enacted as Session Law 2019-72

**Water bill pass-through for contiguous rental property, H432** <https://www.ncleg.gov/BillLookup/2019/H432>  
Enacted as Session Law 2019-56 ✨



# Have You Considered “Wire In – Check Out” as a General Rule? If so, you’re not alone!

By Jonathan W. Biggs, J.D.

Vice President – Director of Risk Management & Education  
Investors Title Insurance Company

**Wire In – Check Out.** Many times, these four little words can save you. In other words, get money quickly and send it out cautiously. Treat the closing like many individuals treat their personal finances. They are anxious to get their paycheck but may wait until the last day to pay their bills. The same can be true of receiving and sending your clients’ money in your trust account.

Careful, I did NOT say to delay in sending disbursements. After all, the interest meter is running every day that it takes that payoff to get to the bank. Your client is expecting that obligation to be retired immediately. Sellers are also expecting their proceeds quickly. The most important words in that statement are “*expecting their proceeds,*” not the adjective “*quickly.*” Before you send a six-figure disbursement of your own money anywhere, you probably stop and double check to make sure that everything is correct. It is time to ensure that we treat our clients’ money with the same respect. If that outgoing wire is misdirected, it will feel like you lost your own money. Just ask any of your colleagues who have had to restore those funds when they have sent money to the incorrect place.

We understand that wires are a fact of life, and it isn’t possible to just stop sending and receiving wires. What matters is that you limit wiring money to those instances in which it is absolutely necessary and that you put the proper controls in place when dealing with wires. Here are some things to consider regarding incoming and outgoing funds:

## Wire In

- Only transmit your wiring instructions in a secure manner: in person, encrypted email, regular mail, or telephone.
- Inform the wire sender that you will never change your wiring instructions and direct them to confirm the wiring instructions by phone before sending. Note this policy in your engagement letter, email footers, wiring instructions, advertising materials, and verbal communications. Hit this point repeatedly.
- Do not involve anyone else in the transmission of your wiring instructions to the wiring party. Many times, realtors and others want to be involved in that process. Deal directly with the consumer or lender sending the funds so that you can ensure that the wiring instructions are properly delivered and confirmed.

## Check Out

- If you can send a trust account check out, instead of a wire, you have more time to correct a problem and there are controls.
  - Positive Pay is great. If you do not have it, get it.
  - If you have Positive Pay, you have the opportunity to confirm or “white list” the check (but not a wire) before it clears your account.
  - Positive Pay cannot stop a wire.
  - Even without Positive Pay, you have 24 hours to stop a paper check from clearing.
  - You can issue a stop payment order on a check, it is much tougher to recall a wire.
- Generally, the recipient has to have a bank account in their name when they negotiate a check. With some exceptions, a check must be taken to the bank to be deposited or cashed, which is not true of a wire.

“Real estate cannot be lost or stolen, nor can it be carried away. Purchased with common sense, paid for in full, and managed with reasonable care, it is about the safest investment in the world.”

- Franklin D. Roosevelt  
(1882-1945)

*continued on next page*

- Do not use bank checks or certified checks for disbursements. If they are lost, they are difficult to replace and/or to issue a stop payment order on. Let the recipient go to the bank and exchange it for a bank check, if that is what they need.

### **Also “Check Out” All Outgoing Wires**

- Follow **W.I.R.E.** – **W**hat **I** **R**equire **E**very time ([click here](#)): includes steps, policies, and procedures to consider **before** you send another wire out of your office.
  - 1) **Proper Identification** – Verify the identity of the recipient with independent information.
  - 2) **Verbal Confirmation** – Call (old school on the phone) the properly identified individual to confirm wire instructions prior to initiating the wire. Do NOT trust email, whether encrypted or not, for wiring instructions.
  - 3) **Delivery Verification** – Call (again on the phone) the wire recipient to confirm delivery. You know when it was sent and when it should be received. This is an extra step, but a valuable one.
- Outgoing payoff wires are still money leaving your account. Some say, “but it’s to a bank.” All wires go from bank to bank, including payoffs. They need to be treated as cautiously as wires to individuals. In fact, the numbers are usually bigger and therefore the financial risk is bigger.
- Request a written, signed, notarized original disbursement instruction, and authorization. (*Samples available on request*)
  - If recipient is a bank or lender, they may not want to provide a signed disbursement instruction. Send them a check. If the wire is necessary, keep a list of verified lender payoff wiring instructions and refer to them before sending the next payoff wire to the same lender.
  - If the wiring instructions are different from previous successful payoff wires to the same lender, investigate the difference prior to sending those funds.
- If the lender is not set up to confirm receipt of payoff wires, a follow-up payoff statement can be requested the day after the funds are received to confirm a zero balance.

### **What Else Can I Do? Educate Yourself, Your Staff, and Your Clients**

- 1) **Spread the Word about Cyber Fraud:** I have prepared consumer and client materials to assist with this process, and they are located at <https://www.invtile.com/fraud>
- 2) **Download and Use Our Other Resources Designed to Help You:**

- **C.Y.B.E.R.** – **C**an **Y**ou **B**e **E**ntirely **R**eady ([click here](#)): includes steps, policies, and procedures to consider in formulating your Information Security and Trust Account Security Plans.
- **F.A.S.T.** – **F**ast **A**ction **S**tops **T**heft ([click here](#)): includes steps, policies, and procedures to consider in formulating your Cyber Fraud Response Team and your Cyber Fraud Response Plan. ✂

### *Receive Referrals via RELANC*

This year has seen a *significant increase in the number of referrals* requested through the RELANC office. We have received calls from members of the public throughout the state, seeking the name of a member attorney to assist them with their closings and other real estate matters. **This is an important member benefit, as the web site now contains a county and city-based directory of all members.** If you have changed your contact information *in any way* in recent history, please update your record with the NC State Bar and send a copy to your Executive Director, Bonnie Biggs, at [bonniebiggs@relanc.com](mailto:bonniebiggs@relanc.com).



## WHAT'S THE POINT OF RELANC?

Over the last 9 years, **RELANC** has positively impacted your law practice. In some form or fashion, you and **RELANC** have crossed paths, likely by attending a call-in webinar, a conference, CLE, or other event designed for North Carolina attorneys practicing in the residential and/or commercial real estate sector. Even if you have not had that direct contact, **RELANC** has been present in the legislature fighting for you and your clients.

**The Real Estate Lawyers Association of North Carolina**, a 500+ member 501(c)6 nonprofit, advocates on behalf of real estate attorneys and their clients, the property-owning public. **RELANC** gives voice to real estate attorneys, addressing the constant change and evolution of ethical representation and client protection. Recent areas of focus include e-closings, mechanics lien legislation, cyber-fraud and cyber security, AVVO discussions, recording fees, and NC-SC boundary line matters. One of the biggest issues facing our bar is the Unauthorized Practice of Law (UPL), in which **RELANC** has become a major force towards detecting and fighting - both the LegalZoom matter and the more recent and pervasive UPL occurring in your local communities.

**RELANC** also has a membership stake in several industry-wide groups such as the NC Land Records Taskforce, which influences state-wide road matters and other issues that involve a variety of constituencies such as the Secretary of State and Register of Deeds offices. These liaisons and partnerships are a key element of **RELANC**'s work. In a few short years, **RELANC** has become an active, sought-after participant in these organizations.

**RELANC** is the voice in Raleigh for real estate attorneys. **RELANC** is the only organization with a lobbyist in Raleigh at the legislature to protect you and your clients. Neither the State Bar nor the NCBA fight for you in this way. The State Bar is prohibited from having a lobbyist, while the NCBA is constrained to act only on matters for which its many divergent constituencies agree.

We have seen more change in our profession in the last 6 years than at any other time in the last 30 years. Change will continue to come, and **RELANC** is on the battlefield with collective and effective strategies and responses. There are several matters on the horizon that could have a *major effect* on how we practice real estate law -- it is so important to have as many attorneys as possible aware of the issues affecting our practices.

### Where to Find Us - RELANC on the Road

A few times a year we hop in the minivan and head out from our virtual office in Durham, to meet you and make new friends:

RELANC's Annual Meeting, February 22, 2020 at Pinehurst  
NC Bar Association Real Property Section Annual Meeting – May  
NC Land Title Association Annual Meeting – September

**NEW: NC REALTORS®**  
**2019 Convention/Expo XCHANGE**  
**Pinehurst Resort, Sept 14-17, 2019**

At the same time, we remember that our membership has clarified that RELANC's #1 mission is to reinforce how the central role historically held by North Carolina attorneys in the real estate closing process,  
*continues to benefit and protect the public.*

**WE WILL NOT VEER FROM THAT CORE OBJECTIVE.**



*We will be asking every REALTOR® who we meet if their preferred attorney is a RELANC member. Make sure your name is the Member Lookup list at*

**www.RELANC.com**





Arges



Portone



Balsamo



Garren



Black



Bowman



Burt



Gwynn



Gorenflo



Harrison



Herman



Hearne



Heim



Manning



Robb



Salyer



Thompson



# Investors Title

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