

NORTH CAROLINA GENERAL ASSEMBLY  
1973 SESSION

CHAPTER 255  
SENATE BILL 408

AN ACT TO PROVIDE FOR THE PROTECTION OF THE TITLE TO LAND IN THE  
STATE OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

**Section 1.** A new Chapter is hereby inserted in the General Statutes to read as follows:

"Chapter 47B.

"Real Property Marketable Title Act.

"§ 47B-1. **Declaration of policy and statement of purpose.** — It is hereby declared as a matter of public policy by the General Assembly of the State of North Carolina that:

- (1) Land is a basic resource of the people of the State of North Carolina and should be made freely alienable and marketable so far as is practicable.
- (2) Nonpossessory interests in real property, obsolete restrictions and technical defects in titles which have been placed on the real property records at remote times in the past often constitute unreasonable restraints on the alienation and marketability of real property.
- (3) Such interests and defects are prolific producers of litigation to clear and quiet titles which cause delays in real property transactions and fetter the marketability of real property.
- (4) Real property transfers should be possible with economy and expediency.

The status and security of recorded real property titles should be determinable from an examination of recent records only.

It is the purpose of the General Assembly of the State of North Carolina to provide that if a person claims title to real property under a chain of record title for 30 years, and no other person has filed a notice of any claim of interest in the real property during the 30-year period, then all conflicting claims based upon any title transaction prior to the 30-year period shall be extinguished.

"§ 47B-2. **Marketable record title to interest in real property; 30-year unbroken chain of title of record; effect of marketable title.** — (a) Any person having the legal capacity to own real property in this State, who, alone or together with his predecessors in title, shall have been vested with any interest in real property of record for 30 years or more, shall have a marketable record title to such interest in real property.

(b) A person has an interest in real property of record for 30 years or more when the public records disclose a title transaction affecting the title to the real property which has been of record for not less than 30 years purporting to create such interest either in:

- (1) the person claiming such interest; or
- (2) some other person from whom, by one or more title transactions, such interest has passed to the person claiming such interest with nothing appearing of record, in either case, purporting to divest such claimant of the interest claimed.

(c) Subject to the matters stated in G.S. 47B-3, such marketable record title shall be free and clear of all rights, estates, interests, claims or charges whatsoever, the existence of which

depends upon any act, title transaction, event or omission that occurred prior to such 30-year period. All such rights, estates, interests, claims or charges, however denominated, whether such rights, estates, interests, claims or charges are or appear to be held or asserted by a person sui juris or under a disability, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void.

(d) In every action for the recovery of real property, to quiet title, or to recover damages for trespass, the establishment of a marketable record title in any person pursuant to this statute shall be prima facie evidence that such person owns title to the real property described in his record chain of title.

"§ 47B-3. **Exceptions.** — Such marketable record title shall not affect or extinguish the following rights:

- (1) Rights, estates, interests, claims or charges disclosed by and defects inherent in the muniments of title of which such 30-year chain of record title is formed, provided, however, that a general reference in any of such muniments to rights, estates, interests, claims or charges created prior to such 30-year period shall not be sufficient to preserve them unless specific identification by reference to book and page of record be made therein to a recorded title transaction which imposed, transferred or continued such rights, estates, interests, claims or charges.
- (2) Rights, estates, interests, claims or charges preserved by the filing of a proper notice in accordance with the provisions of G.S. 47B-4.
- (3) Rights, estates, interests, claims or charges of any person who is in present, actual and open possession of the real property so long as such person is in such possession.
- (4) Rights of any person who likewise has a marketable record title as defined in G.S. 47B-2 and who is listed as the owner of such real property on the tax books of the county in which the real property is located at the time that marketability is to be established.
- (5) Rights of any owners of mineral rights.
- (6) Rights-of-way of any railroad company (irrespective of nature of its title or interest therein whether fee, easement, or other quality) and all real estate other than right-of-way property of a railroad company in actual use for railroad purposes or being held or retained for prospective future use for railroad operational purposes. The use by any railroad company or the holding for future use of any part of a particular tract or parcel of right-of-way or non-right-of-way property shall preserve the interest of the railway company in the whole of such particular tract or parcel. Operational use is defined as railroad use requiring proximity and access to railroad tracks. Nothing in this section shall be construed as repealing G.S. 1-44.1.
- (7) Rights, interests, or servitudes in the nature of easements, rights-of-way or terminal facilities of any railroad (company or corporation) obtained by the terms of its charter or through any other congressional or legislative grant not otherwise extinguished.
- (8) Rights of any person who has an easement or interest in the nature of an easement, whether recorded or unrecorded and whether possessory or non-possessory, when such easement or interest in the nature of an easement is for the purpose of:
  - a. Flowage, flooding or impounding of water, provided that the watercourse or body of water, which such easement or interest in the nature of an easement serves, continues to exist; or

- b. Placing and maintaining lines, pipes, cables, conduits or other appurtenances which are either above ground, underground or on the surface and which are useful in the operation of any water, gas, natural gas, petroleum products, or electric generation, transmission or distribution system, or any sewage collection or disposal system, or any telephone, telegraph or other communications system, or any surface water drainage or disposal system whether or not the existence of the same is clearly observable by physical evidence of its use.
- (9) Rights, titles or interests of the United States to the extent that the extinguishment of such rights, titles or interest is prohibited by the laws of the United States.
- (10) Rights, estates, interests, claims or charges created subsequent to the beginning of such 30-year period.
- (11) Deeds of trust, mortgages and security instruments or security agreements duly recorded and not otherwise unenforceable.
- (12) Rights, estates, interests, claims or charges with respect to any real property registered under the Torrens Law as provided by Chapter 43 of the General Statutes of North Carolina.
- (13) Covenants applicable to a general or uniform scheme of development which restrict the property to residential use only, provided said covenants are otherwise enforceable. The excepted covenant may restrict the property to multi-family or single-family residential use or simply to residential use. Restrictive covenants other than those mentioned herein which limit the property to residential use only are not excepted from the provisions of Chapter 47-B.

**"§ 47B-4. Preservation by notice; contents; recording; indexing.** — (a) Any person claiming a right, estate, interest or charge which would be extinguished by this Chapter may preserve the same by registering within such 30-year period a notice in writing, duly acknowledged, in the office of the register of deeds for the county in which the real property is situated, setting forth the nature of such claim, which notice shall have the effect of preserving such claim for a period of not longer than 30 years after registering the same unless again registered as required herein. No disability or lack of knowledge of any kind on the part of any person shall delay the commencement of or suspend the running of said 30-year period. Such notice may be registered by the claimant or by any other person acting on behalf of any claimant who is

- (1) under a disability;
- (2) unable to assert a claim on his behalf; or
- (3) one of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(b) To be effective and to be entitled to registration, such notice shall contain an accurate and full description of all real property affected by such notice, which description shall be set forth in particular terms and not be by general reference; but if such claim is founded upon a recorded instrument, then the description in such notice may be the same as that contained in the recorded instrument. Such notice shall also contain the name of any record owner of the real property at the time the notice is registered and a statement of the claim showing the nature, description and extent of such claim. The register of deeds of each county shall accept all such notices presented to him which are duly acknowledged and certified for recordation and shall enter and record full copies thereof in the same way that deeds and other instruments are recorded, and each register of deeds shall be entitled to charge the same fees for the recording thereof as are charged for the recording of deeds. In indexing such notices in his

office each register of deeds shall enter such notices under the grantee indexes of deeds under the names of persons on whose behalf such notices are executed and registered and under the grantor indexes of deeds under the names of the record owners of the possessory estates in the real property to be affected against whom the claim is to be preserved at the time of the registration.

**"§ 47B-5. Extension of time for registering notice of claims which Chapter would otherwise bar.** — If the 30-year period specified in this Chapter shall have expired prior to October 1, 1973, no right, estate, interest, claim or charge shall be barred by G.S. 47B-2 until October 1, 1976, and any right, estate, interest, claim or charge that would otherwise be barred by G.S. 47B-2 may be preserved and kept effective by the registration of a notice of claim as set forth in G.S. 47B-4 of this Chapter prior to October 1, 1976.

**"§ 47B-6. Registering false claim.** — No person shall use the privilege of registering notices hereunder for the purpose of asserting false or fictitious claims to real property; and in any action relating thereto if the court shall find that any person has intentionally registered a false or fictitious claim, the court may award to the prevailing party all costs incurred by him in such action, including a reasonable attorney's fee, and in addition thereto may award to the prevailing party treble the damages that he may have sustained as a result of the registration of such notice of claim.

**"§ 47B-7. Limitations of actions and recording acts.** — Nothing contained in this Chapter shall be construed to extend the period for the bringing of an action or for the doing of any other required act under any statutes of limitations, nor, except as herein specifically provided, to affect the operation of any statutes governing the effect of the registering or the failure to register any instrument affecting real property.

**"§ 47B-8. Definitions.** — As used in this Chapter:

- (1) The term 'person' denotes singular or plural, natural or corporate, private or governmental, including the State and any political subdivision or agency thereof, and a partnership, unincorporated association, or other entity capable of owning an interest in real property.
- (2) The term 'title transaction' means any transaction affecting title to any interest in real property, including but not limited to title by will or descent, title by tax deed, or by trustee's, referee's, commissioner's, guardian's, executor's, administrator's, or sheriff's deed, contract, lease or reservation, or judgment or order of any court, as well as warranty deed, quitclaim deed, or mortgage.

**"§ 47B-9. Chapter to be liberally construed.** — This Chapter shall be liberally construed to effect the legislative purpose of simplifying and facilitating real property title transactions by allowing persons to rely on a record chain of title of 30 years as described in G.S. 47B-2, subject only to such limitations as appear in G.S. 47B-3."

**Sec. 2.** This act shall become effective October 1, 1973.

In the General Assembly read three times and ratified, this the 23rd day of April, 1973.