 **Real Property Section**
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NCLTA 2017 Annual Convention


NCBA Real Property Section Update
 Frankie T. Jones, Jr., Chair

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- **Officers**
- **Council Members**
- **Liaisons**
- **Update on Section Activities**
- **Legislation**

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- **2017-18 Real Property Section Council Officers**
 - **Chair:** Frankie Jones (Smith Moore Leatherwood LLP)
 - **Vice Chair:** Ellie Bradshaw (Patrick Harper & Dixon LLP)
 - **Secretary:** Nancy Ferguson (Chicago Title Company)
 - **Treasurer:** Brian Taylor (White & Allen PA)

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- **2017-18 Real Property Section Council (Terms Expiring 2018)**
 - Benjamin P. Drayton (The Hunoval Law Firm PLLC, Charlotte)
 - Tara G. Eudy (Carolina Title, Wadesboro)
 - John T. Higgins, Jr. (Higgins Benjamin PLLC, Greensboro)
 - Robert C. Lawson (Williams Mullen, Raleigh)
 - Ted Shipley (Live Oak Bank, Wilmington)

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- **2017-18 Real Property Section Council (Terms Expiring 2019)**
 - Joanne Badr (Ward and Smith PA, Asheville)
 - Chad Brown (Womble Carlyle Sandridge & Rice LLP, Winston-Salem)
 - Marc Garren (Investors Title Insurance Co., Chapel Hill)
 - Greg Hinshaw (Burns Day & Presnell PA, Raleigh)
 - Shelley Levine (Hinson Faulk, Indian Trail)
 - John Overfield (Coltrane & Overfield PLLC, Greensboro)
 - Tim Sellers (Sellers Ayers Dortch and Lyons PA, Charlotte)

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- **2017-18 Real Property Section Council (Terms Expiring 2020)**
 - Susan R. Benoit (Hutchens Law Firm, Fayetteville)
 - Susan Leigh Haire (Starnes Aycock Law Firm, Morganton)
 - Benjamin Vance Ipock (Attorneys Title, Triangle)
 - Mr. Phillip E Lewis (Horack Talley Pharr & Lowndes PA, Charlotte)
 - Ms. Christina Freeman Pearsall (Schell Bray PLLC, Greensboro)
 - Mr. Robert Christopher Rountree (Narron & Holdford PA, Wilson)
 - Ms. Lindsay Parris Thompson (The Van Winkle Law Firm, Asheville)



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• 2017-18 Real Property Section Liaisons

- o **E-Mortgage Advisory Committee Liaison:** Nancy Ferguson (Chicago Title Company, LLC)
- o **E-Mortgage Stakeholder Committee Liaison:** Tonya Powell (Shanahan Law Group)
- o **E-Recording Advisory Council Liaison:** Scott Andrew Schaaf (Womble Carlyle Sandridge & Rice LLP)
- o **Land Records Task Force/E-Recording:** John McLean (BridgeTrust Title Group); Thomas L. Newton (Craig Jenkins Lipfert & Walker LLP); Tonya Powell (Shanahan Law Group)
- o **Paralegal Division Liaison Committee Chair:** Linda Marion (Brooks Pierce McLendon Humphrey & Leonard LLP)
- o **Real Estate Commission Liaison:** Charlene D. Moody (NC Real Estate Commission)
- o **RELANC Liaison:** Chris Salyer (Hutchens Law Firm)
- o **YLD Liaison:** Jimmy Haynes (Schell Bray PLLC)



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□ Update on Section Activities

1. New Committees
 - a. Litigation
 - b. Website



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□ Update on Section Activities (Cont.)

2. Forms Book
 - a. Remaining Sections:
 1. Purchase Agreements
 2. Easements
 3. Declarations of Covenants
 4. Condo Declarations
 5. Mobile Homes
 6. Certain sections on Loan Documents
 - b. Goal: Line up people by end of Bar Year to complete sections



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Section Activities, cont.

3. CLE

Date	Theme/Topic
October 5-6, 2017	Practical Skills, Bar Center
October 11, 2017	Best Practices Task Force Webinar
February 16, 2018	Hot Topics, Bar Center
May 4-5, 2018	Annual Meeting, Wrightsville Beach



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Section Activities, cont.

4. Ethics

- o AVVO Referral Service
- o Will be considered at October NC State Bar Ethics Committee Meeting
- o Published for Comment

5. Consumer Protection

- o Continued Consumer Protection Monitoring

6. Pro Bono / Habitat for Humanity initiative continues



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7. NC SOS E-Mortgage Closing Advisory Committee

- Stakeholders Meeting held on August 10
- Drafting Subcommittee to begin developing an Electronic Mortgage Closing Guide and Best Practices Document
- Leo John with NC SOS office is working on initial draft
- NC is the first state to secure eSignature service for all state agencies/municipalities/townships etc.
- The E-Mortgage Closing process in North Carolina includes in-person interaction between the borrower and the eNotary



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7. NC SOS E-Mortgage Closings (Cont.)

Best Practices Guide Framework

Section 1. Introduction

Executive summary
Purpose + audience for this document
Scope – banks, attorneys/settlement agents, realtors, title insurers
Definitions
Challenges

Section 2. Benefits of eClosings

Benefits to N.C.
Benefits to consumers
Benefits to industry

Section 3. How to transition to eClosings for each stakeholder group

Legal requirements for eClosings
Practices plus procedures for each stakeholder
Originating lenders
Attorneys, settlement agents and title insurers
Regulators



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7. NC SOS E-Mortgage Closings (Cont.)

Section 4. Legal framework for eClosings

Legal framework for eSignature, eNotary and eRecordings
Technical considerations

Section 5. Future issues and contingency plans

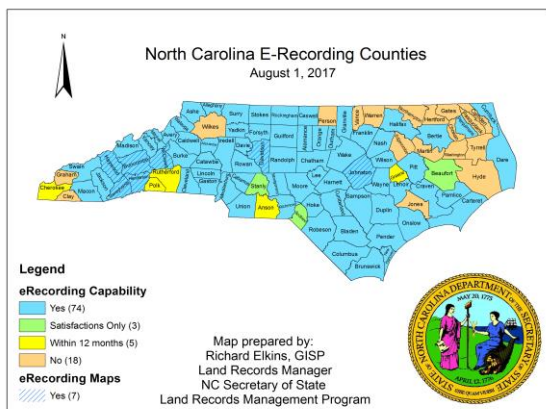
Alternatives to eNotes
Legal precedence for eNotes
Industry limitations
Closings in commercial sector

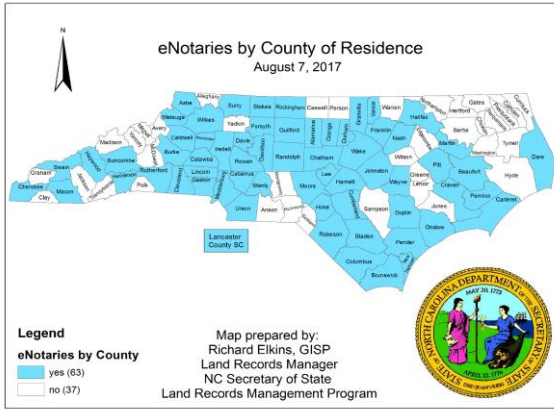
Section 6. Roadmap for other states

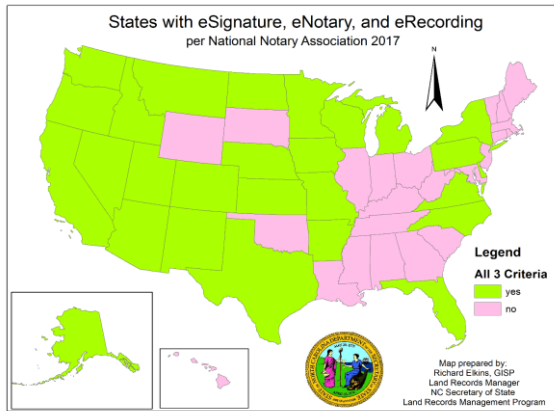
Comparison of each state's readiness to implement eClosings
Discussion of legal framework in states

Section 7. Exhibits

List of sub-committee members
List of advisory committee members







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7. NC SOS E-Mortgage Closings (Cont.)

- Important Dates for Best Practices Document:
 - First Draft: Week of Sept. 18
 - Second Draft: Week of October 9
 - Final Draft: End of Year
- Opportunity to provide input now, so please contact please contact Leo John at 919-814-5561 or ljohn@sosnc.gov with any input.
- Working with the NC SOS Office to offer free CLE program on eCommerce that would include the eNotary course and exam.

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7. NC SOS E-Mortgage Closings (Cont.)


Electronic Mortgage Closing Best Practices Drafting Sub-Committee Members

- **Tim M. Anderson** (Director of eServices, DocMagic, Inc.)
- **Nathan Bolts** (Senior Vice President & Counsel, North Carolina Bankers Association)
- **Nancy Short Ferguson** (Chicago Title)
- **Peter Gwaltney** (President & CEO, North Carolina Bankers Association)
- **Seth Palmer** (Political Communications and Regulatory Affairs Director, NC REALTORS)
- **Rajasekhar Penugonda** (Product Capabilities Manager, Freddie Mac)
- **Penny Reed** (Strategy Consultant, Wells Fargo Consumer Lending)
- **Chris Solyer** (Chair, RELANC)
- **Kelly Arlington** (Chief Operations Officer, North State Bank Mortgage)
- **Esther Fernandes** (Executive Director of Operations and Client Relationships, Brady and Kosofsky)
- **Ozle Stallworth** (N.C. Department of Secretary of State)
- **Leo John** (N.C. Department of Secretary of State)

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8. E-Closings

- Compiling a template and itemizing recording variances among counties.
- E.g. varying reasons for rejection, restricted e-recording time frames, pre-recording requirements, and different wait times for e-recording results, among others.
- Webinar in late October/early November
- Paralegal Division is assisting

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Legislation

- o Legislative Chair: John McLean
- o **Curative Statute SL 2017-110, HB 584,**
 - Addressing correction of non-material errors.
 - GS 47-36.1 has minor changes, but NEW GS 47-36.2 to change "obvious description errors", where sufficient information to indicate intention is contained in the document, so that an attorney or title insurer can make the changes through affidavit and notice procedure, to avoid going to court.
 - Attorneys are advised not to make these changes themselves without consulting their malpractice carrier and title insurers because of significant claims issues, by title insurers and agents.



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Legislation (Cont.)

o **Power of Attorney**

- NC Uniform Power of Attorney Act, [SB569, S.L. 2017-153](#), takes effect January 1, 2018, though a couple of technical corrections anticipated.
- An article by Jim Creekman should be included in the next Section newsletter.



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Legislation (Cont.)

o **Notice of Settlement Act**

- Optional procedure
- Designed to bridge the gap between on-line records and "official" ROD records.
- Needs significant discussion and input from the practicing real property bar.



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Legislation (Cont.)

- Mobile home statutory revisions in [S.L. 2016-59](#), much of it took effect July 1, 2017, still cause ambiguity and may need technical correction, -- specifically:
 - o "owner" of home vs Land (distinguish GS 20-4.01 from revised "owner of the real property" under GS 20-109.2(d))
 - o The definition of "such evidence as may be available" on a prior payoff is unclear. Suggestions include, perhaps a NC attorney satisfaction affidavit to avoid delays in sending plus waiting for expiration & notice that no objection received for the 15-day notice by DMV as well as 30-day by "third party" under GS 20-58.4(e1) & (e2) (and additional hold harmless for DMV under (f))



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Legislation (Cont.)

- **SL 2017-102**, General Statutes Commission bill, includes § 35, tweaking the Chapter 12 statutory construction of the definitions of husband and wife, widow and widower, to spouse, so indirectly supporting interpretation of the tenancy by entireties statute.
- **SL 2017-27**, implements plat changes, effective July 1, including:
 - surveyors including GPS coordinates in legal descriptions on plats; and
 - revised language for stamp when recording a plat, map or survey which was not reviewed by Review Officers.
- **SL 2017-44**, Ch. 160A, allows certain towns to have sewer and storm water fees as a lien on real property.
- **SL 2017-20**, 160A-443, allows for a lien for publication costs.
- **SL 2017-10, SB 131**, amends the definition of "subdivision" under GS 160A-376 and GS 153A-335, effective 7/1/2017, and adds 2 new statutes of limitations regarding enforcement of land-use violations.



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Legislation (Cont.)

- **SL 2017-158**, allows redactions of social security numbers by clerks and registers of deeds, and revises authority to AOC to also now redact social security numbers of their own accord. Concern re: continued pressure to redact public officials' names and records from public records which creates significant title examination, title verification and thus closing and insuring problems for the industry and the public officials affected.
- **SL 2017-137** requires that the NC DOT acquisition plans must include information so that surveyor and attorney can determine where the property actually is, i.e. must tie into geodetic survey or coordinate marker.
- **SL 2017-143**, summary ejection in landlord-tenant in magistrate's court, allows pro se representation notwithstanding GS 84-4.



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Legislation (Cont.)

- **HB 158, SL 2017-40**, allows special assessment for critical infrastructure needs.
- **SL 2017-130**, includes building code changes.
- **SL 2017-159**, facilitates small wireless communication infrastructure, small micro-antennae on power poles, light poles, etc., getting the antennae in place for next generation wireless, and prohibits municipalities from giving exclusive contracts.
- **SL 2017-152**, allows for judicial reformation of wills and trusts where mistakes need correction for tax objectives, or clarification of intent if ambiguities



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Legislation we are watching

- **SL 114**, regarding revised and improved Annual Reporting requirements, is still in process.
- **SL 2017-152**, allows for judicial reformation of wills and trusts where mistakes need correction for tax objectives, or clarification of intent if ambiguities
- **SB 451**, tweaking GS 41-2, joint tenancy provisions
- **HB 852**



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Legislation we are watching (Cont.)

- Uniform Collaborative Law Act
 - NC's collaborative law is codified at NCGS 50-70 et. seq.
 - Similar to arbitration, though with the adoption of the UCLA, it may not be limited to family law and may be applicable to any area of practice, such as employment law, wills, trusts or other areas.
 - Estate Planning Section requested and secured an extension from the General Statutes Commission to submit comments.



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- Concerns from our Members
 - Continued changes in residential closing industry and associated expenses
 - Viability of small residential real estate practices
 - Wire Fraud/Trust Account Fraud
 - UPL/Disruption

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