

MEMORANDUM REGARDING
NORTH CAROLINA – SOUTH CAROLINA
BOUNDARY CERTIFICATION (2016)

TO: Any attorney, real estate broker, mortgage lender, appraiser, surveyor, title insurer or others involved with real estate closings involving real properties affected by the re-survey of the boundary between North Carolina and South Carolina

FROM: Real Property Section of the North Carolina Bar Association
North Carolina Land Title Association

DATE: March 20, 2017

The North Carolina-South Carolina boundary was recently re-surveyed based on historical monumentation and research back to original colonial records. Some parcels (or portions of larger tracts) previously believed to be in South Carolina are now confirmed to be in North Carolina, and vice versa. Anyone involved with properties directly affected by the re-survey should be sure to discuss title issues and the necessary certifications of title in detail with professionals who are knowledgeable about the many legal issues involved in these titles, -- whether the property is now all in North Carolina or is still partially in South Carolina, or vice versa.

From a real estate title perspective, these are uncharted waters. Interpretations of applicable law and solutions to issues are *not* transparent. So CAUTION AND DUE DILIGENCE are critical, as discussed below.

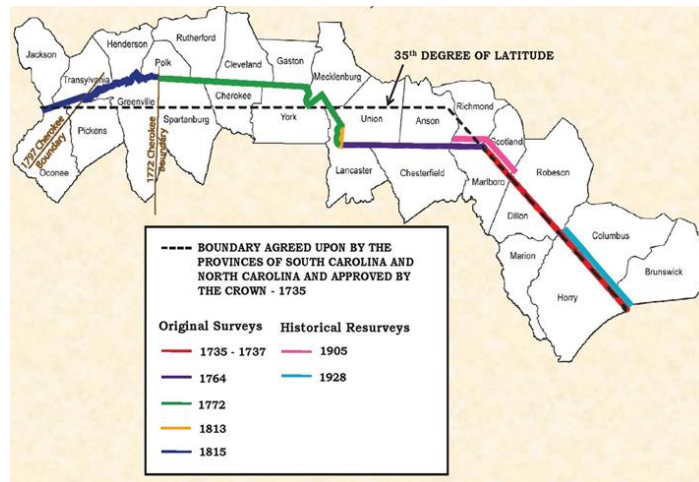
With regard to properties (in whole or in part) now found to be located in North Carolina, but formerly believed to be in South Carolina, [Session Law 2016-23](#) addresses matters as diverse as voting, schools, licenses, in-state tuition, permits, ABC licenses, utilities, fire protection, county service districts, water and sewer districts, environmental compliance, taxes (income, gas, property and others) and title to real property. Information regarding the surveys is available on-line at the office of the North Carolina Geodetic Survey. <http://www.ncgs.state.nc.us/Pages/County-and-State-Boundaries.aspx>. Executive Order 118 was signed by the Governor on December 5, 2016, adopting the re-survey certification. <https://governor.nc.gov/document/executive-order-no-118-declare-proclamation-true-boundary-line-between-state-north-carolina>

The legal premise is that “[t]he boundary between North Carolina and South Carolina has not changed; however, over the course of time from the original survey of the boundary, some of the markers denoting the boundary from the original surveys have been lost or destroyed by the elements.” G.S. 141-9, Session Law 2016-23, (herein the “Session Law”) on-line at: <http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=2015&BillID=s575> People have developed, conveyed and improved properties based on an erroneous assumption of the location of this legal boundary.

From a title perspective, the critical provisions of Section Law 2016-23 appear in Part III (Instruments of Title to Real Property") and Part IV ("Foreclosure of Deeds of Trust and Mortgages"). Some of the provisions affecting real estate titles are codified into the General Statutes, but others will remain a Session Law only.

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The areas affected by the re-survey of the boundary between North Carolina and South Carolina are shown below:



Closing issues

Issues of concern with closings, primarily those for properties previously believed to lie only in one state and now lying partially or entirely across the border:

- TRID disclosures and settlement statements will be significantly affected by dual title examination, dual documentation, dual recording and dual title insurance premium costs.
- Addresses may change.
- For SC property, a SC attorney must handle the closing and disbursement. But for NC, a NC approved attorney must certify the title and the closing must comply with APAO 2002-1.
- Potential delays may result from dual researching, addressing ambiguities, closing and recording.
- Title insurance will require both NC and SC licensed underwriter(s) and/or agent(s).
- New surveys that locate the property boundaries with reference to the newly re-surveyed state line boundary markers are *highly* recommended to assure that the location of the boundary vis-à-vis the property is correctly identified and, therefore, to determine which state's laws apply.
- Dually licensed surveyors, appraisers, inspectors and other licensees may be required.

Title Examination and Title Insurance

Public information that will alert all to the changes will include:

- A Notice of Affected Parcel, based on taxpayer listings, has been recorded in the office of the Register of Deeds of each county along the North Carolina – South Carolina Boundary, along with the re-survey maps. The Notices are required to contain the information listed below concerning each parcel potentially affected by the boundary certification:
 - (1) Reference to Session Law 2016-23.
 - (2) The recording reference for the final survey of the confirmed boundary.
 - (3) The names of the record owners (according to the tax records) of the affected parcel.
 - (4) The property address of the affected parcel.
 - (5) A tax parcel identification number or other applicable identifier for the affected parcel used by a county tax office, if available.
 - (6) A brief description of the affected parcel, if available.
 - (7) A source deed reference for the affected parcel, if available.

The maps may be indexed under a “Boundary” reference or under “NC Geodetic Survey,” depending on the county, and should be indexed in the names of all record owners (or at least the names of the taxpayers identified in the county’s property tax rolls) of the affected parcels.

The recordings are as follows, as of January 27, 2017:

County	Boundary Plat	Notice of Affected Parcels
Anson	Plat Book 330, Pages 9-13	Book 1138, Pages 17-22
Brunswick	Plat Book 99, Page 48	Book 3872, Page 1083-1093
Cleveland	Plat Book 39, Pages 86-89	Book 1734, Pages 344-357
Columbus	Plat Book 101, Pages 1-2 & 32	Book 1149, Page 130-142
Gaston	Plat Book 85, Pages 94-97	Book 4887, Pages 2110-2122
Henderson	Plat Book 2013, Pages 8840-8855	Book 3003, Pages 1-22
Jackson	Plat Cabinet 21, Slide 116	Book 2180, Pages 749-750
Mecklenburg	Plat Book 60, Pages 480-482 & 728	Book 31636, Pages 293-311
Polk	Plat Book 99999, Pages 309-312 and Plat Book F, Pages 765-768	Book 424, Pages 1739-1748
Richmond	Plat Book 786, Pages N through R	Book 1739, Pages 306-309
Robeson	Plat Book 51, Pages 68-69	Book 2069, Pages 338-345
Rutherford	Plat Book 37, Pages 200-203	Book 1141, Pages 496-503
Scotland	Plat Book 12, Pages 42-46	Book 1530, Pages 118-123
Transylvania	Plat File 15, Slides 93-115	Book 791, Pages 75-80
Union	Plat Book N, Pages 418-425	Book 6851, Pages 248-268

- Tax office records should begin showing the changes. Attorneys should be very cautious and double-check the valuations in each state. New listing and application for deferrals may be required. More information is available in the detailed: “Protocols and Procedures for Reconciliation of Property Tax Records in North Carolina Counties Affected by the Re-establishment of the Original State Boundary Between North Carolina and South Carolina” July 2016, on-line at: http://dornc.com/taxes/property/state_boundary_survey.pdf
- The owners of affected parcels will be receiving correspondence and different tax bills, and resident owners will have changed their voter registrations and driver’s licenses.

For parcels formerly believed to be in South Carolina that are now confirmed as being in North Carolina (each a "NC affected property"), the Session Law (*new* G.S. 47-108.27) provides the legislative intent that, as of January 1, 2017:

“All conveyances and instruments of title, of any sort, made prior to the certification of the boundary shall be recognized and given full faith and credit in this State according to the law, jurisdiction, and terms in effect at the time of the conveyance in the jurisdiction the property was previously treated as being subject to. For the purposes of this subsection, "instruments of title" means any instrument that affects title or constitutes the chain of title to real property, including, but not limited to, all deeds, wills, estate documents evidencing transfer of title, plats, surveys, easements, rights-of-way, outstanding mortgages and deeds of trust, judicial orders or decrees, and documents evidencing intestate succession.”

FOR ANY PROPERTY THAT IS OR MAY BE AFFECTED BY THE BOUNDARY CERTIFICATION, A NEW SURVEY WITH TIE-LINES TO THE BOUNDARY MARKERS IS HIGHLY RECOMMENDED IN ORDER TO VERIFY LOCATION OF THE BOUNDARY with respect

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to the property and improvements involved in the transaction. Otherwise, it may be difficult to determine reliably which states' laws apply. Many properties will now be found to be located in both states. In some cases, improvements that determine the property address and where the owners are entitled to vote, attend school, pay taxes, etc. may be difficult to determine in the absence of a current and accurate survey of the property.

Taxes will be listed in the "prior" state for years prior to January 1, 2017, but any NC affected property will be added to the tax records for the county (and city, if applicable) in North Carolina in which it is located beginning January 1, 2017. Any special tax classifications or deferrals (such as G.S. 105-277.3) should be addressed immediately with both states since applications in NC will have to be filed anew in order to have special treatment beginning in 2017. Any pre-1/1/2017 tax provisions in SC will not come due solely as a result of the boundary re-survey, but they will still apply on any future conveyance or other disqualifying event under the applicable statute.

THE TITLE OF A NC AFFECTED PROPERTY WILL NEED TO BE EXAMINED IN BOTH STATES, even if the re-survey locates the NC affected property, formerly believed to be in South Carolina, as now entirely in North Carolina.

NOTE: IT IS RECOMMENDED THAT ANY PRE-JANUARY 1, 2017 DOCUMENTS ON NC AFFECTED PROPERTY **NOT** BE RE-RECORDED OR EVEN REFERENCED IN NORTH CAROLINA AFTER JANUARY 1, 2017.

Given the nature of title, it is conceivable that further documents will be recorded in the "former" state even after January 1, 2017 (especially mortgage satisfactions, for example), and that documents may have been recorded in both states prior to the January 1, 2017 effective date. So those potential interests may need to be included in properly advising a purchaser or lender. To the extent that filings are in both states on a NC affected property, it will be critical to address ambiguities. And, of course, a full judgment search (not just limited to 1/1/17) in NC of the owner-seller will be needed on any future closing.

REMEMBER: Title prior to January 1, 2017, is governed by SC law on these NC affected properties (to the extent of any portions formerly believed to be in SC), -- no matter the recordings in NC prior to that date! However, documents recorded in the "wrong" state may still indicate problems that an attorney would not want a purchaser or lender to have to defend. So, for protection of clients, and absent talking with the particular title insurer about coverage, we are recommending that, at least for the foreseeable future, dual title searches be performed.

It is highly recommended that any post-1/1/2017 deed or conveyance include a notation referring to the Session Law so that any future title examiner will be put on additional notice of the changes. Many areas also require a derivation clause for the last conveyance. But it is recommended that post-1/1/2017 documents **NOT** reference other documents in the SC pre-1/1/2017 chain of title, lest they create ambiguity under the pure race statutes in North Carolina. One exception, of course, would be the need to reference the plat in the legal description for a platted lot.

Vesting Deeds: Attorneys representing clients owning affected parcels may want to consider and advise their clients regarding new conveyances amongst themselves to create the intended estate. For example, for property now in North Carolina, but previously believed to be in South Carolina, the last deed may be "to Husband and Wife, as tenants in common with rights of survivorship" while the clients may prefer to create a tenancy by entireties on the North Carolina portion. Similarly, for property now in South Carolina, but vested by a North Carolina deed as tenancy by the entirety, the South Carolina attorney

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should consider a new vesting deed creating a tenancy in common with right of survivorship since South Carolina does not recognize a tenancy by the entireties.

A sample requirement for properties all or a portion of which may have been believed to be in SC and now found to be in NC under the re-surveyed boundary (the “affected parcels”) under discussion by the North Carolina Land Title Association provides:

For any portions of the Land lying in North Carolina on or near the South Carolina boundary identified pursuant to the confirmed boundary under S.L. 2016-23, previously believed to be in South Carolina (the “affected portion of the Land”) title to which was previously recorded in South Carolina, and for which a Notice of Affected Parcel should appear in the North Carolina County Registry wherein the Land is in fact located, opining attorney must provide:

(1) a title opinion from a South Carolina licensed attorney who is an Approved Attorney with this Company as to the status of title to the affected portion of the Land according to the South Carolina public records through the date of the opinion, based on generally accepted standards of practice for South Carolina title examination, certification (and generally accepted standards for tacking to a prior policy, if applicable); any matters of record after the January 1, 2017 effective date should be noted.

(2) a title opinion from a North Carolina licensed attorney who is an Approved Attorney with this Company as to the status of title to the Land according to the North Carolina public records based on generally accepted standards of practice for North Carolina title examination, certification (and generally accepted standards for tacking to a prior policy, if applicable); any matters of record regarding the affected portion of the Land before the January 1, 2017 effective date should be noted.

Upon receipt of said opinions, this requirement will be removed or amended and exceptions may be added in accordance with the facts disclosed thereby.[NOTE: It shall not be necessary nor is it recommended that South Carolina documents be re-recorded in North Carolina, since the South Carolina public record constitutes the “official” title prior to the boundary confirmation date.]

Lastly, foreclosure counsel will need to address the significant differences in the states’ security interest and foreclosure laws. Under the Session Law, *new* G.S. 45-21.01, a foreclosure sale under a power of sale (as opposed to a judicial foreclosure) of a South Carolina mortgage covering a NC affected property can be conducted in North Carolina only if the mortgage so provides. Lenders can, however, substitute a trustee (since the SC mortgage presumably would not have one) and bid and purchase at their own foreclosure sale under the Session Law (as compared to NC common law).

Some of the most critical legal differences between the states include:

	North Carolina	South Carolina
<i>Title to “A and spouse, B”</i>	Tenancy by the entirety, automatically	Tenants in common – could be with rights of survivorship (<i>if stated</i>)
<i>Marital rights</i>	Inchoate marital rights of non-owning spouse	N/A
<i>Security Instrument</i>	Deed of Trust	Mortgage

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<i>Intestacy</i>	Per capita & marital elections/spousal share	Per stirpes & spousal share, per distribution deed
<i>Estate Administration</i>	Local clerk's file	Distribution deeds
<i>Deed execution</i>	Acknowledgment	2 witnesses (one can be notary) and acknowledgment or probate
<i>Mechanics' Liens</i>	Relation-back & lien agent	Mortgage priority
<i>Leases</i>	Statute of frauds and priority recording requirement → more than 3 years	Statute of frauds and priority recording requirement → more than 1 year
<i>Foreclosure</i>	Power of sale	Judicial sale / civil action
<i>In rem jurisdiction – special proceedings & judicial action</i>	North Carolina only! Uniform Enforcement of Foreign Judgments Act	South Carolina only!
<i>Search Period</i>	30+ Marketable Title Act	40-60 years (tradition & quiet title act)
<i>Practice of Law</i>	Attorneys must certify title, draft deeds & deeds of trust, give legal advice; APAO 2002-1; G.S. 84-2.1	Attorneys must perform or supervise: searching titles, drafting documents, attending closings, disbursement, recording documents.

With regard to properties now found to be located in South Carolina, but formerly believed to be in North Carolina (the “SC affected property”), South Carolina counsel familiar with the boundary certification effects should be consulted. South Carolina’s legislature adopted S. 667 (on-line at: <http://www.scstatehouse.gov/billsearch.php?billnumbers=0667&session=121&summary=B>), which includes substantial additional provisions, including title provisions, which differ somewhat from the North Carolina Session Law. NOTE: Property tax exemptions or deferrals rollback payments will not be triggered by the boundary certification; it will not be considered a “disqualifying event” with regard to deferrals or exemptions from property taxes. But re-listing may be required in order to qualify in the “new” state.

REMINDER: This is a very brief overview of a potentially complex situation. So appropriate title counsel familiar with the issues involved in the cross-border titles should be consulted as soon as possible in advance of any transaction.

DISCLAIMER: This memorandum is provided for informational purposes only. Nothing contained in this memorandum constitutes legal advice. You should not act or rely upon any information contained in this memorandum without seeking the advice of a competent attorney licensed to practice law in the appropriate jurisdiction. While the authors have taken reasonable care with regard to the accuracy of the contents of this memorandum, no guarantee is made regarding the accuracy of such content. All information provided in this memorandum is made available “as-is” at the date of this particular version of the memorandum. This memorandum may be revised or updated at any time and without notice, but neither the authors, the NC Bar Association, nor NCLTA assume any obligation to revise or update this memorandum. Your use of this memorandum is at your own risk, and the authors, NC Bar Association, and NCLTA expressly disclaim all liability with respect to any actions taken, or not taken, based on the contents of this memorandum. Neither the authors, NC Bar Association, nor NCLTA are responsible for any errors or omissions in the contents of this memorandum, or for damages arising from your use of this memorandum under any circumstances.

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