

Investors Title

INNOVATIVE BY INSTINCT

THE NC CONNECTION



New Recording Requirements for Powers of Attorney



by Drew Foley SVP—Sr. Title Attorney
dfoley@invtitle.com

I frequently receive questions about when and where to record a power of attorney (POA) in connection with a real estate transaction. Many questions arise in the context of bank-owned or REO transactions. This typically occurs because the selling entity owns properties in counties across the State but has only recorded the POA document in one county, in many cases Mecklenburg or Wake County. The NC Legislature sought to address this issue during the 2013 legislative session. The Legislature amended NC General Statute Section 47-28 to make it easier to understand and to address a previously unanticipated result.

This unanticipated result was due to the previous modernization of the notary statutes and the difficulties that arose in trying to reconcile that modernization with NCGS 47-28. The old statute allowed the agent or attorney to file the POA in the county where the real property was located or, "... if it does not relate to the

conveyance of any estate or property, then in the county in which the attorney resides or the business is to be transacted."

**"These statutes,
old and new,
created a
problem..."**

That last part of the statute was construed by many practitioners to mean that recording a POA in a county in the State of NC where the agent did business was sufficient and the power of attorney did not need to be recorded in the county where the real estate was located. That interpretation, however, was not universally held. In addition, the new generic "one size fits all" notary acknowledgment form in NCGS 10B-41 does not provide space for the recording information for the POA.

These statutes, old and new, created a problem as some deeds were executed by an attorney-in-fact and no corresponding information as to

where the POA is recorded was included. One of the main purposes for recording the POA is to ensure that there is evidence of authority for the agent to act for the principal. Recording the POA in the county where the agent does business, but not where the real estate is located, and with no reference to where the POA is located, creates a question of authority for the agent to act. There was no way for a title searcher to tell whether or not there was authority except to search all 100 counties or guess at the county. Recognizing this

(Continued on page 2)

New Recording Requirements for Powers of Attorney	1-2
NC Fun Facts	2
Claims Corner	3
NC Lien Waivers	4
NC CFPB Resources	4
Value Incentive Partnership	5
Investors Trust: <i>Salmony v BOA</i>	5

New Recording Requirements for Powers of Attorney Cont.

issue, many practitioners include recorded copies of the POA as exhibits or reference the recorded POA in the other county on their deeds. Many, however, did not implement these procedures as they believed it to be unnecessary and not required by statute.

NCGS Section 47-28, as rewritten, provides clarity as to the procedure to be followed. The statute requires that for a POA affecting a real property, the POA shall be registered in the county in which the principal is domiciled or the real property lies. If the principal is not a resident of NC, the power of attorney, or a certified copy, may be recorded in any county where the principal owns real property or has a significant business reason for registering in the county. If the real property lies in more than one county, or in a county other than where the principal is domiciled, the POA or certified copy must be registered in one of the counties and the instrument of transfer shall refer to the recording information for the POA. The revised statute goes on to state that if the instrument

of conveyance is recorded in a county that is not the county where the POA is registered the conveyance document must contain the recording information, book, page, and county for the POA.

“...the best and most efficient practice would be to put the recording information in every deed...”

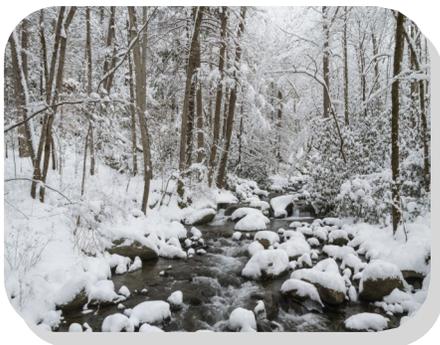
It should be noted that failure to comply with this subsection constitutes an infraction but does not affect the validity or enforceability of the conveyance instrument. The revised statute further provides that if the recording information is not present, but there was authority for the agent to act on behalf of the principal, the POA can be later recorded in the county where the real estate is located. This registration will relate back to the time and registration of the instrument of conveyance. This treatment of a subsequently recorded POA

also applies to transactions occurring prior to the statute being rewritten.

The statute does not specify where on the conveyance instrument the recording information for a POA is to be located. It can be placed anywhere on the face of the document including the notary acknowledgment as in the statutory acknowledgment form provided for by NCGS 47-43. The best and most efficient practice would be to put the recording information in every deed even if the POA is recorded in the county where the transaction takes place. This practice will ensure compliance with the statute on each transaction where a POA is utilized and will no doubt be much appreciated by the next title searcher.



NC FUN FACTS



Snow in North Carolina

North Carolina averages five inches of snow a year; however, this amount varies greatly across the state. Along the coast, most areas register less than two inches per year while Raleigh averages 7.5 inches. The most snowfall ever recorded for one storm was in the April storm of 1987. Over several days, Newfound Gap in western NC had reports of up to 60 (yes, that's sixty!) inches of snow!

Claims Corner: Eliminating Typos, an Ounce of Prevention

by Kellie E. Army, Claims Counsel

The difference between the right word and the nearly right word is the same as the difference between lightning and the lightning bug. ~ Mark

Typographical errors in legal descriptions can cost millions. The previous sentence is not a typo. Small errors can have big consequences – even a word or two can make all the difference. For example, what is the difference between the “SOUTH HALF OF THE NORTHWEST QUARTER OF THE WEST HALF OF THE NORTHEAST QUARTER” and the “SOUTH HALF OF THE NORTHWEST QUARTER, AND WEST HALF OF THE NORTHEAST QUARTER”? The answer: 97 acres and years of ongoing litigation.

In 2013 alone, almost one quarter of all claims that Investors Title paid were caused by some error in the legal description attached to a deed or deed of trust. There are many different types of errors that might make their way into a legal description, but the one thing they all have in common is that they are preventable.

Another thing these typographical errors have in common is that everybody makes them. I have made several while typing this article, although I hope to have them corrected by the time you are reading the finished product. It is easy for Plat Book 232 to become Plat Book 233 or for Lot 34 to become Lot

43. A long metes and bounds description may start out as North to East to South to West, but end up as North to East to South to East. The first description closes, the second does not. The grantor owned Lot 34, but not Lot 43 and Plat Book 233 depicts a swamp not even close to your subdivision.

These typographical errors can cause big problems for borrowers and lenders alike. Even if the problem can be resolved with a corrective deed or reformation action, these remedies take time and money. Sometimes, the errors cannot be so easily corrected. Suppose, for example, that the borrower who signed a deed of trust that allegedly encumbers Lot 43 files bankruptcy. The lender does not have an enforceable lien on Lot 43 because the borrower owned Lot 34 – and they may not have an enforceable lien on Lot 34 because of the legal description error. While these borrowers may be delighted, the lender most certainly will not.

How to prevent these errors that everybody makes almost every day? One useful step is to check the legal description against prior deeds. If they don't match, there may be an error with your deed or with a prior deed. Another critical component in preventing typos

is proofreading. It is hard to proofread your own work, so the best proofreading often involves including another person. It might be useful to have the individual who typed the legal description read it out loud to you or another team member in the office. If the second person has the original legal in their hand while they are listening, they will likely catch the difference in the newly typed legal description and avoid a recorded error. In addition, it is helpful to review the description one last time, even after it has been proofread. When you have a metes and bounds description, for example, you can plug in the final description and see if it closes. You might also want to check the legal description against the tax map – if it does not match, there is likely a problem – and you have caught it before it causes injury to the borrower or lender.

Proofreading isn't glamorous or very much fun and it probably doesn't save lives. What it can save, though, is time, money, and the headache that comes from discovering that typographical error when it is too late for an easy fix.

Revisions to NCLTA Lien Forms

The NC Land Title Association (NCLTA) has made revisions to NCLTA Forms 5, 6, and 7. Forms 6 and 7 were revised to remove the indemnity provisions in response to objections from certain potential lien claimants. Minor changes were made and instructions were added to the Form 5 Owner Affidavit and Indemnity Agreement that make the form more user-friendly. Investors Title is currently in the process of implementing these forms. You can find the revised forms at www.invtile.com/resources/nc | Forms. Please note that during the implementation process, Investors Title will continue to accept the old Forms 5, 6, and 7 in addition to the revised forms.

The NCLTA has also revised its suggested commitment requirement for mechanics' lien coverage. The new requirement more clearly outlines the forms necessary for obtaining title coverage for potential unfiled mechanics' liens. As with the lien forms we are currently in the process of implementing this revision and you will soon note the changes in your commitments.

Redline versions of the revised forms clearly delineating the changes can be found on the NCLTA's website at www.nclta.org/forms. If you have questions about the changes to the NCLTA forms please do not hesitate to contact one of our [Title Attorneys](#).

NC CFPB Resources

www.invtile.com/cfpb/nc

Investors Title has developed a number of resources to assist you in navigating important industry changes. Please visit the NC CFPB Resources page linked above to access articles, templates, and links to on-demand education courses.

Click [here](#) to access all of Investors Title's NC On-Demand seminars.

Investors Title

INNOVATIVE BY INSTINCT

Online Courses

Search

FAQs

Technical Info

Sup

Select a category to see the available seminars

CLE Credit Courses (6 Seminars)

1031 Exchange Basics: A Brief Primer ▾

NC Mechanics' Lien Law - Nuts and Bolts ▾

The New Mechanics' Lien Law in NC ▾

Title Insurance Endorsements (Commercial Transactions F

What Are We Gonna Do With Mama's Property? ▾

What Does the CFPB Stand For? ▾

Commercial Transactions (1 Seminar)

Exchange Courses (1 Seminar)

General/Non-Credit (3 Seminars)

Paralegal Courses for CPE Credit (7 Seminars)

Investors Title: Value Incentive Partnership

The Investors Title Value Incentive Partnership (VIP) program takes advantage of our extensive network of affiliates to bring our customers and partners unprecedented purchasing power. All of our customers and partners can enjoy pricing and service typically available only to large companies from key suppliers such as Office Depot, FedEx®, and Enterprise Rental Cars.

www.invtitle.com/vip



...and more.

Investors Trust Company: *Salmony v. Bank of America*

A case from the North Carolina Court of Appeals underscores the importance of carefully researching the names of potential defendants whenever two or more corporations have merged. The case developed after surgery left Mary Elizabeth Edwards with a neurologic impairment that resulted in her becoming a “paraplegic and unable to learn or read or write.” She

was awarded nearly \$900,000 in a civil settlement in 1992, when Edwards was approximately 13. At approximately the same time, her parents were named as guardians of her person and Nations Bank of North Carolina, N.A., was named as the guardian of her estate. In 2006, Mary’s mother filed suit against Bank of

America in Wake County Superior Court alleging in her complaint, *inter alia*, that the bank, as a successor to Nations Bank, had not been responsive to her daughter’s needs. The court removed the bank as guardian during a hearing in December 2006, and appointed attorney Edith Salmony as the bank’s successor. More than three years later, in July 2010, Salmony and Edwards’ parents filed suit again, alleging that the bank was negligent and breached various fiduciary duties while it was serving as Edwards’ guardian. The bank denied all of the plaintiff’s allegations. But perhaps more significantly, the complaint had named Bank of America (BOA), not Bank of America, N.A. (BANA), as the defendant. Because BANA (not BOA) was the actual successor to Nations Bank, BOA moved for summary judgment arguing, *inter alia*, that the complaint had not named the proper party as the defendant. The trial court agreed, and granted the bank’s motion, and the appellate court affirmed.

--*Salmony v. Bank of America*, No. COA12-1414, N.C. Ct. App. 7/16/13

www.invtrust.com



Sign Up for Investors Trust Company’s Weekly Market Update

What is an RSS Feed?

An RSS feed is a method to receive notifications of changes to the content of a webpage or blog. Set the subscription through your web browser and be notified of changes to content as they occur. You may choose to receive notifications through the web browser or an email service. You may also unsubscribe at any time.