

Chapter 39.

Conveyances.

Article 1.

Construction and Sufficiency.

§ 39-1. Fee presumed, though word "heirs" omitted.

When real estate is conveyed to any person, the same shall be held and construed to be a conveyance in fee, whether the word "heir" is used or not, unless such conveyance in plain and express words shows, or it is plainly intended by the conveyance or some part thereof, that the grantor meant to convey an estate of less dignity. (1879, c. 148; Code, s. 1280; Rev., s. 946; C.S., s. 991.)

§ 39-1.1. In construing conveyances court shall give effect to intent of the parties.

(a) In construing a conveyance executed after January 1, 1968, in which there are inconsistent clauses, the courts shall determine the effect of the instrument on the basis of the intent of the parties as it appears from all of the provisions of the instrument.

(b) The provisions of subsection (a) of this section shall not prevent the application of the rule in Shelley's case. (1967, c. 1182.)

§ 39-2. Vagueness of description not to invalidate.

No deed or other writing purporting to convey land or an interest in land shall be declared void for vagueness in the description of the thing intended to be granted by reason of the use of the word "adjoining" instead of the words "bounded by," or for the reason that the boundaries given do not go entirely around the land described: Provided, it can be made to appear to the satisfaction of the jury that the grantor owned at the time of the execution of such deed or paper-writing no other land which at all corresponded to the description contained in such deed or paper-writing. (1891, c. 465, s. 2; Rev., s. 948; C.S., s. 992.)

§ 39-3. Repealed by Session Laws 1961, c. 52.

§ 39-4. Conveyances by infant trustees.

When an infant is seized or possessed of any estate in trust, whether by way of mortgage or otherwise, for another person who may be entitled in law to have a conveyance of such estate, or may be declared to be seized or possessed, in the course of any proceeding in the superior court, the court may decree that the infant shall convey and assure such estate, in such manner as it may direct, to such other person; and every conveyance and assurance made in pursuance of such decree shall be as effectual in law as if made by a person of full age. (1821, c. 1116, ss. 1, 2; R.C., c. 37, s. 27; Code, s. 1265; Rev., s. 1036; C.S., s. 994.)

§ 39-5. Official deed, when official selling or empowered to sell is not in office.

When a sheriff, coroner, or tax collector, in virtue of his office, sells any real or personal property and goes out of office before executing a proper deed therefor, he may execute the same after his term of office has expired; and when he dies or removes from the State before executing

the deed, his successor in office shall execute it. When a sheriff or tax collector dies having a tax list in his hands for collection, and his personal representative or surety, in collecting the taxes, makes sale according to law, his successor in office shall execute the conveyance for the property to the person entitled. (R.C., c. 37, s. 30; Code, s. 1267; 1891, c. 242; Rev., ss. 950, 951; C.S., s. 995; 1971, c. 528, s. 36.)

§ 39-6. Revocation of deeds of future interests made to persons not in esse.

The grantor in any voluntary conveyance in which some future interest in real estate is conveyed or limited to a person not in esse may, at any time before he comes into being, revoke by deed such interest so conveyed or limited. This deed of revocation shall be registered as other deeds; and the grantor of like interest for a valuable consideration may, with the joinder of the person from whom the consideration moved, revoke said interest in like manner. The grantor, maker or trustor who has heretofore created or may hereafter create a voluntary trust estate in real or personal property for the use and benefit of himself or of any other person or persons in esse with a future contingent interest to some person or persons not in esse or not determined until the happening of a future event may at any time, prior to the happening of the contingency vesting the future estates, revoke the grant of the interest to such person or persons not in esse or not determined by a proper instrument to that effect; and the grantor of like interest for a valuable consideration may, with the joinder of the person from whom the consideration moved, revoke said interest in like manner: Provided, that in the event the instrument creating such estate has been recorded, then the deed of revocation of such estate shall be likewise recorded before it becomes effective: Provided, further, that this section shall not apply to any instrument hereafter executed creating such a future contingent interest when said instrument shall expressly state in effect that the grantor, maker, or trustor may not revoke such interest: Provided, further, that this section shall not apply to any instrument heretofore executed whether or not such instrument contains express provisions that it is irrevocable unless the grantor, maker, or trustor shall within six months after the effective date of this proviso either revoke such future interest, or file with the trustee an instrument stating or declaring that it is his intention to retain the power to revoke under this section: Provided, further, that in the event the instrument creating such estate has been recorded, then the revocation or declaration shall likewise be recorded before it becomes effective. (1893, c. 498; Rev., s. 1045; C.S., s. 996; 1929, c. 305; 1941, c. 264; 1943, c. 437.)

§ 39-6.1. Validation of deeds of revocation of conveyances of future interests to persons not in esse.

All deeds or instruments heretofore executed, revoking any conveyance of future interest made to persons not in esse, are hereby validated insofar as any such deed of revocation may be in conflict with the provisions of G.S. 39-6.

All such deeds of revocation heretofore executed are hereby validated and no such deed of revocation shall be held to be invalid by reason of not having been executed within the six-month period prescribed in the third proviso of G.S. 39-6. (1947, c. 62.)

§ 39-6.2. Creation of interest or estate in personal property.

Any interest or estate in personal property which may be created by last will and testament may also be created by a written instrument of transfer. (1953, c. 198.)

§ 39-6.3. Inter vivos and testamentary conveyances of future interests permitted.

(a) The conveyance, by deed or will, of an existing future interest shall not be ineffective on the sole ground that the interest so conveyed is future or contingent. All future interests in real or personal property, including all reversions, executory interests, vested and contingent remainders, rights of entry both before and after breach of condition and possibilities of reverter may be conveyed by the owner thereof, by an otherwise legally effective conveyance, inter vivos or testamentary, subject, however, to all conditions and limitations to which such future interest is subject.

(b) The power to convey as provided in subsection (a), can be exercised by any form of conveyance, inter vivos or testamentary, which is otherwise legally effective in this State at the date of such conveyance to transfer a present estate of the same duration in the property.

(c) This section shall apply only to conveyances which become operative to transfer title on or after October 1, 1961. (1961, c. 435.)

§ 39-6.4. Creation of easements, restrictions, and conditions.

(a) The holder of legal or equitable title of an interest in real property may create, grant, reserve, or declare valid easements, restrictions, or conditions of record burdening or benefiting the same interest in real property.

(b) Subsection (a) of this section shall not affect the application of the doctrine of merger after the severance and subsequent reunification of title to all of the benefited or burdened real property or interests therein. (1997-333, s. 1.)

§ 39-6.5. Elimination of seal.

The seal of the signatory shall not be necessary to effect a valid conveyance of an interest in real property; provided, that this section shall not affect the requirement for affixing a seal of the officer taking an acknowledgment of the instrument. (1999-221, s. 2.)

§ 39-6.6. Subordination agreements.

(a) A subordination agreement shall be given effect in accordance with its terms and is not required to state any interest rate, principal amount secured, or other financial terms.

(b) The trustee of a deed of trust shall not be a necessary party to a subordination agreement unless the deed of trust provides otherwise.

(c) For purposes of G.S. 1-47, a subordination agreement is deemed a conveyance of an interest in real property.

(d) This section is not exclusive. No subordination agreement that is otherwise valid shall be invalidated by this section.

(e) This section applies to a subordination agreement regardless of when the agreement was signed by the party or parties thereto, except that this section does not apply to an agreement that (i) is the subject of litigation pending on the effective date of this subsection, and (ii) was filed or recorded before October 1, 2003.

(f) In this section:

- (1) "Interest in real property" includes all rights, title, and interest in and to land, buildings, and other improvements of an owner, tenant, subtenant, secured lender, materialman, judgment creditor, lienholder, or other person, whether the interest in real property is evidenced by a deed, easement, lease, sublease, deed

of trust, mortgage, assignment of leases and rents, judgment, claim of lien, or any other record, instrument, document, or entry of court.

- (2) "Subordination agreement" means a written commitment or agreement to subordinate or that subordinates an interest in real property signed by a person entitled to priority. (2003-219, s. 1; 2005-212, s. 1.)

§ 39-6.7. Construction of conveyances to or by trusts.

(a) A deed, will, beneficiary designation, or other instrument that purports to convey, devise, or otherwise transfer any ownership or security interest in real or personal property to a trust shall be deemed to be a transfer to the trustee or trustees of that trust.

(b) A deed or other instrument which purports to convey or otherwise transfer any ownership or security interest in real or personal property by a trust shall be deemed to be a transfer by the trustee or trustees of that trust. This rule of construction shall apply:

- (1) Regardless of whether the instrument is signed by the trustee or trustees as such, or by the trustee or trustees purportedly for or on behalf of the trust; and
- (2) Regardless of whether the instrument by which the trustee or trustees acquired title transferred that title to the trustee or trustees as such, or purportedly to the trust.

(c) A deed or other instrument by which the trustee or trustees of a trust convey or otherwise transfer any ownership or security interest in real or personal property shall be deemed sufficient:

- (1) Regardless of whether the instrument is signed by the trustee or trustees as such, or by the trustee or trustees purportedly for or on behalf of the trust; and
- (2) Regardless of whether the instrument by which the trustee or trustees acquired title transferred that title to the trustee or trustees as such, or purportedly to the trust.

(d) The trustee or trustees of a trust may convey or otherwise transfer any ownership or security interest in real or personal property as trustee or trustees even though the deed or instrument by which the trustee or trustees acquired title purported to convey or transfer that title to the trust.

(e) Nothing in this section shall be construed to limit the manner in which title to real or personal property may be conveyed or transferred to or by trustees. (2007-106, s. 53.)

Article 2.

Conveyances by Husband and Wife.

§ 39-7. Instruments affecting married person's title; joinder of spouse; exceptions.

(a) In order to waive the elective life estate of either husband or wife as provided for in G.S. 29-30, every conveyance or other instrument affecting the estate, right or title of any married person in lands, tenements or hereditaments must be executed by such husband or wife, and due proof or acknowledgment thereof must be made and certified as provided by law.

(b) A married person may bargain, sell, lease, mortgage, transfer and convey any of his or her separate real estate without joinder or other waiver by his or her spouse if such spouse is incompetent and a guardian or trustee has been appointed as provided by the laws of North

Carolina, and if the appropriate instrument is executed by the married person and the guardian or trustee of the incompetent spouse and is probated and registered in accordance with law, it shall convey all the estate and interest as therein intended of the married person in the land conveyed, free and exempt from the elective life estate as provided in G.S. 29-30 and all other interests of the incompetent spouse.

(c) Subsection (a) shall not be construed to require the spouse's joinder or other waiver of the elective life estate of such spouse as provided for in G.S. 29-30 where a different provision is made or provided for in the General Statutes including, but not limited to, G.S. 39-13, 39-13.3, 39-13.4, 31A-1(d), and 52-10. (C.C.P., s. 429; subsec. 6; 1868-9, c. 277, s. 15; Code, s. 1256; 1899, c. 235, s. 9; Rev., s. 952; C.S., s. 997; 1945, c. 73, s. 4; 1957, c. 598, s. 3; 1965, c. 855.)

§ 39-7.1. Certain instruments affecting married woman's title not executed by husband validated.

No conveyance, power of attorney, or other instrument affecting the estate, right or title of any married woman in lands, tenements or hereditaments which was executed by such married woman prior to June 8, 1965, shall be invalid for the reason that the instrument was not also executed by the husband of such married woman. (1965, c. 857; 1973, c. 853, s. 1.)

§ 39-8. Acknowledgment at different times and places; before different officers; order immaterial.

In all cases of deeds, or other instruments executed by husband and wife and requiring registration, the probate of such instruments as to the husband and due proof or acknowledgment of the wife may be taken before different officers authorized by law to take probate of deeds, and at different times and places, whether both of said officials reside in this State or only one in this State and the other in another state or country. And in taking the probate of such instruments executed by husband and wife, it is immaterial whether the execution of the instrument was proven as to or acknowledged by the husband before or after due proof as to or acknowledgment of the wife. (1895, c. 136; 1899, c. 235, s. 9; Rev., s. 953; C.S., s. 998; 1945, c. 73, s. 5.)

§ 39-9. Absence of wife's acknowledgment does not affect deed as to husband.

When an instrument purports to be signed by a husband and wife the instrument may be ordered registered, if the acknowledgment of the husband is duly taken, but no such instrument shall be the act or deed of the wife unless proven or acknowledged by her according to law. (1889, c. 235, s. 8; 1901, c. 637; Rev., s. 954; C.S., s. 999; 1945, c. 73, s. 6.)

§ 39-10: Repealed by Session Laws 1977, c. 375, s. 16.

§ 39-11. Certain conveyances not affected by fraud if acknowledgment or privy examination regular.

No deed conveying lands nor any instrument required or allowed by law to be registered, executed by husband and wife since the eleventh of March, 1889, if the acknowledgment or private examination of the wife is thereto certified as prescribed by law, shall be invalid because its execution or acknowledgment was procured by fraud, duress or undue influence, unless it is shown

that the grantee or person to whom the instrument was made participated in the fraud, duress or undue influence, or had notice thereof before the delivery of the instrument. Where such participation or notice is shown, an innocent purchaser for value under the grantee or person to whom the instrument was made shall not be affected by such fraud, duress or undue influence. (1889, c. 389; 1899, c. 235, s. 10; Rev., s. 956; C.S., s. 1001; 1945, c. 73, s. 7.)

§ 39-12. Power of attorney of married person.

Every competent married person of lawful age is authorized to execute, without the joinder of his or her spouse, instruments creating powers of attorney affecting the real and personal property of such married person naming either third parties or, subject to the provisions of G.S. 52-10 or 52-10.1, his or her spouse as attorney-in-fact. When such a married person executes a power of attorney authorized by the preceding sentence naming his or her spouse as attorney in fact the acknowledgment by the spouse of the grantor is not necessary. Such instruments may confer upon the attorney, and the attorney may exercise, any and all powers which lawfully can be conferred upon an attorney-in-fact, including, but not limited to, the authority to join in conveyances of real property for the purpose of waiving or quitclaiming any rights which may be acquired as a surviving spouse under the provisions of G.S. 29-30. (1798, c. 510; R.C., c. 37, s. 11; Code, s. 1257; Rev., s. 957; C.S., s. 1002; 1965, c. 856; 1977, c. 375, s. 7; 1979, c. 528, s. 8.)

§ 39-13. Spouse need not join in purchase-money mortgage.

A mortgage or deed of trust given by the purchaser of real property to secure a loan, the proceeds of which were used to pay all or a portion of the purchase price of the encumbered real property, regardless of whether the secured party is the seller of the real property or a third-party lender, shall be good and effectual against the purchaser's spouse as well as the purchaser, without requiring the spouse to join in the execution of the mortgage or deed of trust. (1868-9, c. 204; Code, s. 1272; Rev., s. 958; 1907, c. 12; C.S., s. 1003; 1965, c. 852; 2018-80, s. 1.1; 2020-50, s. 3(a); 2020-69, s. 6(a).)

§ 39-13.1. Validation of certain deeds, etc., executed by married women without private examination.

(a) No deed, contract, conveyance, leasehold or other instrument executed since the seventh day of November, 1944, shall be declared invalid because of the failure to take the private examination of any married woman who was a party to such deed, contract, conveyance, leasehold or other instrument.

(b) Any deed, contract, conveyance, lease or other instrument executed prior to February 7, 1945, which is in all other respects regular except for the failure to take the private examination of a married woman who is a party to such deed, contract, conveyance, lease or other instrument is hereby validated and confirmed to the same extent as if such private examination had been taken, provided that this section shall not apply to any instruments now involved in any pending litigation. (1945, c. 73, s. 21 1/2; 1969, c. 1008, s. 1.)

§ 39-13.2. Married persons under 18 made competent as to certain transactions; certain transactions validated.

(a) Any married person under 18 years of age is authorized and empowered and shall have the same privileges as are conferred upon married persons 18 years of age or older to:

- (1) Waive, release or renounce by deed or other written instrument any right or interest which he or she may have in the real or personal property (tangible or intangible) of the other spouse; or
- (2) Jointly execute with his or her spouse, if such spouse is 18 years of age or older, any note, contract of insurance, deed, deed of trust, mortgage, lien of whatever nature or other instrument with respect to real or personal property (tangible or intangible) held with such other spouse either as tenants by the entirety, joint tenants, tenants in common, or in any other manner.

(b) Any transaction between a husband and wife pursuant to this section shall be subject to the provisions of G.S. 52-10 or 52-10.1 whenever applicable.

(c) No renunciation of dower or curtesy or of rights under G.S. 29-30(a) by a married person under the age of 21 years after June 30, 1960, and until April 7, 1961, shall be invalid because such person was under such age. No written assent by a husband under the age of 21 years to a conveyance of the real property of his wife after June 30, 1960, and until April 7, 1961, shall be invalid because such husband was under such age. (1951, c. 934, s. 1; 1955, c. 376; 1961, c. 184; 1965, c. 851; c. 878, s. 2; 1971, c. 1231, s. 1; 1977, c. 375, s. 8.)

§ 39-13.3. Conveyances between husband and wife.

(a) A conveyance from a husband or wife to the other spouse of real property or any interest therein owned by the grantor alone vests such property or interest in the grantee.

(b) Recodified as G.S. 41-56(b) by Session Laws 2020-50, s. 1(b), effective June 30, 2020.

(c) Recodified as G.S. 41-63(4) by Session Laws 2020-50, s. 1(b), effective June 30, 2020.

(d) The joinder of the spouse of the grantor in any conveyance made by a husband or a wife pursuant to the foregoing provisions of this section is not necessary.

(e) Any conveyance authorized by this section is subject to the provisions of G.S. 52-10 or 52-10.1, except that acknowledgment by the spouse of the grantor is not necessary. (1957, c. 598, s. 1; 1965, c. 878, s. 3; 1977, c. 375, s. 9; 2020-50, s. 1(b).)

§ 39-13.4. Conveyances by husband or wife under deed of separation.

Any conveyance of real property, or any interest therein, by the husband or wife who have previously executed a valid and lawful deed of separation which authorizes said husband or wife to convey real property or any interest therein without the consent and joinder of the other and which deed of separation or a memorandum of the deed of separation setting forth such authorization is recorded in the county where the land lies, shall be valid to pass such title as the conveying spouse may have to his or her grantee and shall pass such title free and clear of all rights in such property and free and clear of such interest in property that the other spouse might acquire solely as a result of the marriage, including any rights arising under G.S. 29-30, unless an instrument in writing canceling the deed of separation or memorandum thereof and properly executed and acknowledged by said husband and wife is recorded in the office of said register of deeds. The instrument which is registered under this section to authorize the conveyance of an

interest in real property or the cancellation of the deed of separation or memorandum thereof shall comply with the provisions of G.S. 52-10 or 52-10.1.

All conveyances of any interest in real property by a spouse who had previously executed a valid and lawful deed of separation, or separation agreement, or property settlement, which authorized the parties thereto to convey real property or any interest therein without the consent and joinder of the other, when said deed of separation, separation agreement, or property settlement, or a memorandum of the deed of separation, separation agreement, property settlement, setting forth such authorization, had been previously recorded in the county where the property is located, and when such conveyances were executed before October 1, 1981, shall be valid to pass such title as the conveying spouse may have to his or her grantee, and shall pass such to him free and clear of rights in such property and free and clear of such interest in such property that the other spouse might acquire solely as a result of the marriage, including any rights arising under G.S. 29-30, unless an instrument in writing canceling the deed of separation, separation agreement, or property settlement, or memorandum thereof, properly executed and acknowledged by said husband and wife, is recorded in the office of said register of deeds. The instrument which is registered under this section to authorize the conveyance of an interest in real property or the cancellation of the deed of separation, separation agreement, property settlement, or memorandum thereof shall comply with G.S. 52-10 or 52-10.1. (1959, c. 512; 1973, c. 133; 1977, c. 375, s. 10; 1981, c. 599, ss. 10, 11.)

§ 39-13.5: Recodified as G.S. 41-56(c) by Session Laws 2020-50, s. 1(b), effective June 30, 2020.

§ 39-13.6. Control of real property held in tenancy by the entirety.

(a) Recodified as G.S. 41-58 by Session Laws 2020-50, s. 1(b), effective June 30, 2020.

(b) Recodified as G.S. 41-56(a) by Session Laws 2020-50, s. 1(b), effective June 30, 2020.

(c) Recodified as G.S. 41-59(b) by Session Laws 2020-50, s. 1(b), effective June 30, 2020. (1981 (Reg. Sess., 1982), c. 1245, s. 1; 1983, c. 449, ss. 1, 2; 2020-50, s. 1(b).)

§ 39-13.7: Recodified as G.S. 41-65 by Session Laws 2020-50, s. 1(b), effective June 30, 2020.

§ 39-14: Repealed by Session Laws 1943, c. 543.

Article 3.

Fraudulent Conveyances.

§§ 39-15 through 39-23: Repealed by Session Laws 1997-291, s. 1.

Article 3A.

Uniform Voidable Transactions Act.

§ 39-23.1. Definitions.

In this Article, the following definitions apply:

- (1) **Affiliate.** – Any of the following:
 - a. A person that directly or indirectly owns, controls, or holds with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person that holds the securities:
 1. As a fiduciary or agent without sole discretionary power to vote the securities; or
 2. Solely to secure a debt, if the person has not in fact exercised the power to vote.
 - b. A corporation twenty percent (20%) or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that directly or indirectly owns, controls, or holds, with power to vote, twenty percent (20%) or more of the outstanding voting securities of the debtor, other than a person that holds the securities:
 1. As a fiduciary or agent without sole discretionary power to vote the securities; or
 2. Solely to secure a debt, if the person has not in fact exercised the power to vote.
 - c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor.
 - d. A person that operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.
- (2) **Asset.** – Property of a debtor, but the term does not include any of the following:
 - a. Property to the extent it is encumbered by a valid lien.
 - b. Property to the extent it is generally exempt under nonbankruptcy law.
 - c. An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.
- (3) **Claim.** – Except as used in "claim for relief," a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
- (4) **Creditor.** – A person that has a claim.
- (5) **Debt.** – Liability on a claim.
- (6) **Debtor.** – A person that is liable on a claim.
- (6a) **Electronic.** – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

- (7) Insider. – Includes any of the following:
- a. If the debtor is an individual, any of the following:
 1. A relative of the debtor or of a general partner of the debtor.
 2. A partnership in which the debtor is a general partner.
 3. A general partner in a partnership in which the debtor is a general partner.
 4. A corporation of which the debtor is a director, officer, or person in control.
 - b. If the debtor is a corporation, any of the following:
 1. A director of the debtor.
 2. An officer of the debtor.
 3. A person in control of the debtor.
 4. A partnership in which the debtor is a general partner.
 5. A general partner in a partnership in which the debtor is a general partner.
 6. A relative of a general partner, director, officer, or person in control of the debtor.
 - c. If the debtor is a partnership, any of the following:
 1. A general partner in the debtor.
 2. A relative of a general partner in, a general partner of, or a person in control of the debtor.
 3. Another partnership in which the debtor is a general partner.
 4. A general partner in a partnership in which the debtor is a general partner.
 5. A person in control of the debtor.
 - d. An affiliate, or an insider of an affiliate as if the affiliate were the debtor.
 - e. A managing agent of the debtor.
- (8) Lien. – A charge against or an interest in property to secure payment of a debt or performance of an obligation and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.
- (8a) Organization. – A person other than an individual.
- (9) Person. – An individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.
- (10) Property. – Anything that may be the subject of ownership.
- (10a) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (11) Relative. – An individual related by consanguinity within the third degree as determined in accordance with G.S. 104A-1, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.
- (11a) Sign. – With present intent to authenticate or adopt a record, to do any of the following:

- a. Execute or adopt a tangible symbol.
 - b. Attach to or logically associate with the record an electronic symbol, sound, or process.
- (12) Transfer. – Every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.
- (13) Valid lien. – A lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.
- (14) Repealed by Session Laws 2018-142, s. 7(a), effective December 14, 2018. (1997-291, s. 2; 2015-23, s. 1; 2017-204, s. 3.3(a); 2018-142, s. 7(a).)

§ 39-23.2. Insolvency.

(a) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum of the debtor's assets.

(b) A debtor that is generally not paying the debtor's debts as they become due other than as a result of a bona fide dispute is presumed to be insolvent. The presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence.

(c) Repealed by Session Laws 2015-23, s. 1, effective October 1, 2015, and applicable to a transfer made or obligation incurred on or after that date.

(d) Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making transfer voidable under this Article.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset. (1997-291, s. 2; 2015-23, s. 1.)

§ 39-23.3. Value.

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of G.S. 39-23.4(a)(2) and G.S. 39-23.5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous. (1997-291, s. 2; 1998-217, s. 6.)

§ 39-23.4. Transfer or obligation voidable as to present or future creditor.

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) With intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - a. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - b. Intended to incur, or believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

(b) In determining intent under subdivision (a)(1) of this section, consideration may be given, among other factors, to whether:

- (1) The transfer or obligation was to an insider;
- (2) The debtor retained possession or control of the property transferred after the transfer;
- (3) The transfer or obligation was disclosed or concealed;
- (4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- (5) The transfer was of substantially all the debtor's assets;
- (6) The debtor absconded;
- (7) The debtor removed or concealed assets;
- (8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- (9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (10) The transfer occurred shortly before or shortly after a substantial debt was incurred;
- (11) The debtor transferred the essential assets of the business to a lienor that transferred the assets to an insider of the debtor;
- (12) The debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor reasonably should have believed that the debtor would incur debts beyond the debtor's ability to pay as they became due; and
- (13) The debtor transferred the assets in the course of legitimate estate or tax planning.

(c) A creditor making a claim for relief under subsection (a) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence. (1997-291, s. 2; 2015-23, s. 1.)

§ 39-23.5. Transfer or obligation voidable as to present creditor.

(a) A transfer made or obligation incurred by a debtor is voidable as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is voidable as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(c) Subject to G.S. 39-23.2(b), a creditor making a claim for relief under subsection (a) or subsection (b) of this section has the burden of proving the elements of the claim for relief by a preponderance of the evidence. (1997-291, s. 2; 2015-23, s. 1.)

§ 39-23.6. When transfer is made or obligation is incurred.

For the purposes of this Article:

- (1) A transfer is made:
 - a. With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against which applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee; and
 - b. With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this Article that is superior to the interest of the transferee.
- (2) If applicable law permits the transfer to be perfected as provided in subdivision (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this Article, the transfer is deemed made immediately before the commencement of the action.
- (3) If applicable law does not permit the transfer to be perfected as provided in subdivision (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.
- (4) A transfer is not made until the debtor has acquired rights in the asset transferred.
- (5) An obligation is incurred:
 - a. If oral, when it becomes effective between the parties; or
 - b. If evidenced by a record, when the record signed by the obligor is delivered to or for the benefit of the obligee. (1997-291, s. 2; 2015-23, s. 1.)

§ 39-23.7. Remedies of creditor.

(a) In an action for relief against a transfer or obligation under this Article, a creditor, subject to the limitations in G.S. 39-23.8, may obtain:

- (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
- (2) An attachment or other provisional remedy against the asset transferred or other property of the transferee if available under applicable law; and
- (3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
 - a. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;
 - b. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or
 - c. Any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds. (1997-291, s. 2; 2015-23, s. 1.)

§ 39-23.8. Defenses, liability, and protection of transferee or obligee.

(a) A transfer or obligation is not voidable under G.S. 39-23.4(a)(1) against a person that took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(b) To the extent a transfer is avoidable in an action by a creditor under G.S. 39-23.7(a)(1), the following rules apply:

- (1) Except as otherwise provided in this section, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (c) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against any of the following:
 - a. The first transferee of the asset or the person for whose benefit the transfer was made.
 - b. An immediate or mediate transferee of the first transferee, other than any of the following:
 1. A good-faith transferee that took for value.
 2. An immediate or mediate good-faith transferee of a person described in sub-sub-subdivision 1. of this sub-subdivision.
- (2) Recovery pursuant to G.S. 39-23.7(a)(1) or G.S. 39-23.7(b) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in sub-subdivision a. or b. of subdivision (1) of this subsection.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment shall be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under this Article, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to any of the following:

- (1) A lien on or a right to retain an interest in the asset transferred.
- (2) Enforcement of an obligation incurred.
- (3) A reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under G.S. 39-23.4(a)(2) or G.S. 39-23.5 if the transfer results from one or more of the following:

- (1) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law.
- (2) Enforcement of a security interest in compliance with Article 9 of Chapter 25 of the General Statutes, the Uniform Commercial Code, other than acceptance of collateral in full or partial satisfaction of the obligation it secures.
- (3) The payment of taxes, debts, fines, penalties, or other obligations or amounts to the State or to any political subdivision of the State.

(f) A transfer is not voidable under G.S. 39-23.5(b):

- (1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the extent the new value was secured by a valid lien;
- (2) If made in the ordinary course of business or financial affairs of the debtor and the insider; or
- (3) If made pursuant to a good-faith effort to rehabilitate the debtor, and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(g) The following rules determine the burden of proving matters referred to in this section:

- (1) A party that seeks to invoke subsection (a), (d), (e), or (f) of this section has the burden of proving the applicability of that subsection.
- (2) Except as otherwise provided in subdivisions (3) and (4) of this subsection, the creditor has the burden of proving each applicable element of subsection (b) or (c) of this section.
- (3) The transferee has the burden of proving the applicability to the transferee of sub-sub-subdivision (b)(1)b.1. or 2. of this section.
- (4) A party that seeks adjustment under subsection (c) of this section has the burden of proving the adjustment.

(h) The standard of proof required to establish matters referred to in this section is preponderance of the evidence. (1997-291, s. 2; 2015-23, s. 1; 2017-204, s. 3.3(b); 2018-142, s. 7(b).)

§ 39-23.9. Extinguishment of claim for relief.

A claim for relief with respect to a voidable transfer or obligation under this Article is extinguished unless action is brought:

- (1) Under G.S. 39-23.4(a)(1), not later than four years after the transfer was made or the obligation was incurred or, if later, not later than one year after the transfer or obligation was or could reasonably have been discovered by the claimant;
- (2) Under G.S. 39-23.4(a)(2) or G.S. 39-23.5(a), not later than four years after the transfer was made or the obligation was incurred; or
- (3) Under G.S. 39-23.5(b), not later than one year after the transfer was made. (1997-291, s. 2; 2015-23, s. 1.)

§ 39-23.9A. Governing law.

(a) In this section, the following rules determine a debtor's location:

- (1) A debtor who is an individual is located at the individual's principal residence.
- (2) A debtor that is an organization and has only one place of business is located at its place of business.
- (3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(b) A claim for relief in the nature of a claim for relief under this Article is governed by the local law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. (2015-23, s. 1.)

§ 39-23.9B. Application to series organization.

(a) In this section, the following definitions apply:

- (1) Protected series. – An arrangement, however denominated, created by a series organization that, pursuant to the law under which the series organization is organized, has the characteristics set forth in subdivision (2) of this subsection.
- (2) Series organization. – An organization that, pursuant to the law under which it is organized, has all the following characteristics:
 - a. The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of or associated with the protected series.
 - b. Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.
 - c. Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization

only, and not against the property of or associated with a protected series of the organization.

(b) A series organization and each protected series of the organization is a separate person for purposes of this Article, even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization. (2015-23, s. 1.)

§ 39-23.10. Supplementary provisions.

Unless displaced by the provisions of this Article, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement its provisions. (1997-291, s. 2.)

§ 39-23.11. Uniformity of application and construction.

This Article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Article among states enacting it. (1997-291, s. 2; 2015-23, s. 1.)

§ 39-23.11A. Relation to Electronic Signatures in Global and National Commerce Act.

This Article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b). (2015-23, s. 1.)

§ 39-23.12. Short title.

This Article, which was formerly cited as the Uniform Fraudulent Transfer Act, may be cited as the Uniform Voidable Transactions Act. (1997-291, s. 2; 2015-23, s. 1.)

Article 4.

Voluntary Organizations and Associations.

§§ 39-24, 39-25: Repealed by Session Laws 2006-226, s. 2(a), effective January 1, 2007.

§ 39-26: Recodified as G.S. 59B-15(a) by Session Laws 2006-226, s. 2(b), effective January 1, 2007.

§ 39-27: Recodified as G.S. 59B-15(b) by Session Laws 2006-226, s. 2(b), effective January 1, 2007.

Article 5.

Sale of Building Lots in North Carolina.

§§ 39-28 through 39-32: Repealed by Session Laws 1981, c. 358.

Article 5A.

Control Corners in Real Estate Developments.

§§ 39-32.1 through 39-32.4: Repealed by Session Laws 2017-27, s. 2, effective July 1, 2017.

Article 6.

Power of Appointment.

§§ 39-33, 39-34: Repealed by Sessions Laws 2017-102, s. 13(a), effective July 12, 2017.

§ 39-35: Recodified as G.S. 31D-5-505 by Session Laws 2017-102, s. 13(b), effective July 12, 2017.

§ 39-36: Recodified as G.S. 31D-4-403.1 by Sessions Laws 2017-102, s. 13(c), effective July 12, 2017.

Article 7.

Uniform Vendor and Purchaser Risk Act.

§ 39-37. **Short title.**

This Article may be cited as the Uniform Vendor and Purchaser Risk Act. (1959, c. 514.)

§ 39-38. **Uniformity of interpretation.**

This Article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (1959, c. 514.)

§ 39-39. Risk of loss.

Any contract hereafter made in this State for the purchase and sale of realty shall be interpreted as including an agreement that the parties shall have the following rights and duties, unless the contract expressly provides otherwise:

- (1) If, when neither the legal title nor the possession of the subject matter of the contract has been transferred, all or a material part thereof is destroyed without fault of the purchaser, the vendor cannot enforce the contract, and the purchaser is entitled to recover any portion of the price that he has paid;
- (2) If, when either the legal title or the possession of the subject matter of the contract has been transferred, all or any part thereof is destroyed without fault of the vendor, the purchaser is not thereby relieved from a duty to pay the price, nor is he entitled to recover any portion thereof that he has paid. (1959, c. 514.)

§ 39-40. Reserved for future codification purposes.

§ 39-41. Reserved for future codification purposes.

§ 39-42. Reserved for future codification purposes.

§ 39-43. Reserved for future codification purposes.

Article 8.

Business Trusts.

§ 39-44. Definition.

The term "business trust" whenever used or referred to in this Article shall mean any unincorporated association, including an Illinois land trust, a Delaware statutory trust, or a Massachusetts business trust, engaged in any business or trade under a written instrument or declaration of trust under which the beneficial interest therein is divided into shares represented by certificates or shares of beneficial interest. (1977, c. 768, s. 1; 2009-174, s. 1.)

§ 39-45. Authority to acquire and hold real estate.

Business trusts are hereby authorized and empowered to acquire real estate and interests therein and to hold the same in their trust names and may sue and be sued in their trust names. (1977, c. 768, s. 1.)

§ 39-46. Title vested; conveyance; probate.

(a) Where real estate has been or may be hereafter conveyed to a business trust in its trust name or in the names of its trustees in their capacity as trustees of such business trust, the said title shall vest in said business trust, and the said real estate and interests therein may be conveyed, encumbered or otherwise disposed of by said business trust in its trust name by an instrument

signed by at least one of its trustees, its president, a vice-president or other duly authorized officer, the said conveyance to be proven and probated in the same manner as provided by law for conveyances by corporations. Any conveyance, encumbrance or other disposition thus made by any such business trust shall convey good and sufficient title to said real estate and interests therein in accordance with the provisions of said conveyance; provided, however, that with respect to any such conveyance, encumbrance or other disposition effected after June 28, 1977, there must be recorded in the county where the land lies a memorandum of the written instrument or declaration of trust referred to in G.S. 39-44. As a minimum such memorandum shall set forth the name, date and place of filing, if any, of such written instrument or declaration of trust, and the place where the written instrument or declaration of trust, and all amendments thereto, is kept and may be examined upon reasonable notice, which place need not be a public office. Such memorandum may include designation of trustees and duly authorized officers and the authority granted to them with regard to real estate matters, pursuant to subsection (b) of this section.

(b) Any business trust may convey or encumber an interest in real property that is transferable by either (i) an instrument duly executed by either an officer of the business trust other than one of its trustees, its president, a vice president, or other authorized agent identified in the recorded memorandum, or (ii) a declaration of trust described in subsection (a) of this section, if the conveyance has attached to it a signed resolution adopted by the board of trustees, as certified by an officer authorized to make such certifications of the business trust, authorizing the officer to execute, sign, seal, and deliver deeds, conveyances, or other instruments. This section is deemed to have been complied with if a resolution required by this subsection is recorded separately in the office of the register of deeds in the county where the land lies. Such a resolution shall be applicable to all instruments executed subsequently to the recording of the resolution and pursuant to its authority.

Notwithstanding the foregoing, this section does not require a signed resolution adopted by the board of directors, as certified by an officer authorized to make such certifications, to be attached to an instrument or separately recorded in the case of an instrument duly executed by one of its trustees, its president, or a vice president of the business trust. All deeds, conveyances, or other instruments so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described in the instrument. Notwithstanding anything to the contrary in the trust agreement, and absent any provision otherwise in the recorded memorandum or declaration of trust required under subsection (a) of this section, when it appears on the face of an instrument registered in the office of the register of deeds that the instrument was signed in the ordinary course of business on behalf of a business trust by at least one of its trustees, its president, a vice president, or an assistant vice president, such an instrument shall be as valid with respect to the rights of innocent third parties for value without notice of a defect or breach of fiduciary duty as if executed pursuant to authorization from the board of trustees, unless the instrument reveals on its face a breach of fiduciary obligation. The provisions of this subsection shall not apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary obligation.

(c) Nothing in this section shall be deemed to exclude the power of any representatives of a business trust to bind the business trust pursuant to express, implied, inherent, or apparent authority, ratification, estoppel, or otherwise.

(d) Nothing in this section shall relieve trustees or officers of a business trust from liability to the business trust or from any other liability that they may have incurred from any violation of their actual authority. (1977, c. 768, s. 1; 2009-174, s. 2.)

§ 39-47. Prior deeds validated.

All deeds, leases, mortgages, deeds of trust or other conveyances heretofore executed in conformity with this Article and which are proper in all other respects are declared to be sufficient to pass title to real estate held by such business trusts in accordance with the provisions of such instruments. (1977, c. 768, s. 1.)

§ 39-48. Reserved for future codification purposes.

§ 39-49. Reserved for future codification purposes.

Article 9.

Disclosure.

§ 39-50. Death, illness, or conviction of certain crimes not a material fact.

In offering real property for sale it shall not be deemed a material fact that the real property was occupied previously by a person who died or had a serious illness while occupying the property or that a person convicted of any crime for which registration is required by Article 27A of Chapter 14 of the General Statutes occupies, occupied, or resides near the property; provided, however, that no seller may knowingly make a false statement regarding any such fact. (1989, c. 592, s. 1; 1998-212, s. 17.16A(a).)

Article 9.

Disclosure.

§§ 39-51 through 39-59: Reserved for future codification purposes.

Article 10.

Real Property Tax Proration.

§ 39-60. Property tax proration on sale of real property.

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. (2006-106, s. 7.)