

### § 47B-3. Exceptions.

Such marketable record title shall not affect or extinguish the following rights:

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

- c. Conserving land or water areas pursuant to a conservation agreement or preserving a structure or site pursuant to a preservation agreement under Article 4 of Chapter 121 of the General Statutes.
- (9) Rights, titles or interests of the United States to the extent that the extinguishment of such rights, titles or interest is prohibited by the laws of the United States.
  - (10) Rights, estates, interests, claims or charges created subsequent to the beginning of such 30-year period.
  - (11) Deeds of trust, mortgages and security instruments or security agreements duly recorded and not otherwise unenforceable.
  - (12) Rights, estates, interests, claims or charges with respect to any real property registered under the Torrens Law as provided by Chapter 43 of the General Statutes of North Carolina.
  - (13) Covenants applicable to a general or uniform scheme of development which restrict the property to residential use only, provided said covenants are otherwise enforceable. The excepted covenant may restrict the property to multi-family or single-family residential use or simply to residential use. Restrictive covenants other than those mentioned herein which limit the property to residential use only are not excepted from the provisions of Chapter 47B.
  - (14) Notwithstanding anything in this section to the contrary, provisions contained in any declaration of covenants that are applicable to any of the following:
    - a. A condominium created under Chapter 47A or 47C of the General Statutes of North Carolina.
    - b. A cooperative, as defined in G.S. 47F-1-103(8).
    - c. A planned community, other than a planned community in which all lots are restricted exclusively to nonresidential purposes, whenever created, to which any of the provisions of Chapter 47F of the General Statutes of North Carolina apply; provided, however, that if such planned community was created prior to January 1, 1999, this exemption shall not apply unless it is governed by an owners' association in existence as of July 1, 2022. (1973, c. 255, s. 1; 1995, c. 443, s. 3; 2022-12, s. 4(a).)