

Property, Trusts, and Estates

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Electronic Storage of Attested Written Wills by An Attorney – Amend Business Corporations Act.

SL 2025-33 (H388), Part VIII

Part VIII of S.L. 2025-33 (House Bill 388) does the following:

- Defines the terms "electronic" and "record."
- Authorizes an attorney licensed in this State to create an electronic record of an attested written will at the direction of the testator and during the testator's life. The electronic record must include (i) the attorney's certification that the electronic record is a complete, true, and accurate copy of the attested written will, that (ii) the attorney was authorized by the testator to store it as an electronic record, and that (iii) the testator was advised that the creation of the electronic record eliminates the testator's ability to revoke the attested written will by physical act.
- Authorizes an attorney licensed in this State to create a certified paper copy of an attested written will stored as an electronic record by certifying by affidavit that the paper copy is a complete, true, and accurate copy of that electronic record. These provisions also authorize the probating of the certified paper copy of the attested written will.
- Amends the statute governing the manner of probate for an attested will to also establish the manner of probate for a certified paper copy or an attested written will stored as an electronic record.

Part VIII becomes effective January 1, 2026, and applies to attested written wills stored as electronic records on or after that date, regardless of the date of execution of the attested written will.

Updates to Elective Share Statutes – Amend Business Corporations Act.

SL 2025-33 (H388), Part X

Part X of S.L. 2025-33 amends the law governing a surviving spouse's claim for an elective share to:

- Provide additional guidance drafting trusts that will count 100% towards the spouse's elective share.
- Clarify that the requirement of a nonadverse trustee must be in place for the duration of the trust, including successor trustees, and that this requirement is met if the surviving spouse serves as his or her own trustee.
- Clarify and simplify the process by which a surviving spouse files a claim for elective share.

This Part becomes effective January 1, 2026, and applies to elective share claims filed on or after that date.

Trust Administration / Contest Updates. – Amend Business Corporations Act.

SL 2025-33 (H388), Part XI

Part XI of S.L. 2025-33 (House Bill 388) provides that:

- A trustee of a trust that was revocable at the settlor's death cannot distribute trust property to any beneficiary if:
 - The trustee knows of a pending judicial proceeding contesting the identity of the beneficiaries eligible to receive distributions therefrom; or
 - A potential contestant has notified the trustee in writing of a possible proceeding to contest the validity of the identity of the beneficiaries eligible to receive distribution.
- Any distribution made in violation of these provisions will constitute a breach of trust by the trustee.
- Upon motion of a party and after notice to interested parties, a court can make an exception to these provisions on good cause shown, subject to any conditions the court can, in its discretion, impose, including the posting of a bond by the beneficiary.
- A beneficiary whose interest is determined to be invalid is liable to return any distribution received.
- A beneficiary who refuses to return the distribution after being ordered to do so by a court will be liable for all costs incurred for recovery of the distribution, including attorneys' fees.

This Part becomes effective January 1, 2026, and applies to settlors dying on or after that date.

Revisions To Year's Allowance Statutes – Amend Business Corporations Act.

SL 2025-33 (H388), Part XII

Part XII of S.L. 2025-33 (House Bill 388) does the following:

- Clarifies that a proceeding for a spouse's allowance or for a child's allowance is an estate proceeding.
- Clarifies that a child's year's allowance has priority over a spouse's year's allowance when both of the following are true:
 - The surviving spouse fails to petition for the spousal allowance within six months after the decedent's date of death.
 - An eligible person files a petition for a child's allowance before the spouse files a petition for an allowance.
- Clarifies that a child who is at least 18 years old or an emancipated minor at the time of the filing of a petition can file his or her own petition for the child's allowance.
- Removes the provision that allowed a clerk, on the clerk's own motion, to determine that a hearing is necessary to determine whether a year's allowance should be awarded.

- Provides that if no administrator has been appointed, the clerk can disburse estate funds upon motion of the clerk or application of an interested party when both of the following are true:
 - It has been more than six months since the decedent's death.
 - There has been no petition filed and assignment of a spouse's or child's year's allowance.

The provision authorizing the clerk's disbursement of funds when it has been more than six months since the decedent's death and there has been no petition and assignment of a year's allowance became effective June 30, 2025. The remainder of this Part becomes effective January 1, 2026, and applies to petitions filed on or after that date.

Modernize NC S.A.F.E. Act/Second Mortgage Fee Act.

SL 2025-43 (H762)

S.L. 2025-43 (House Bill 762) does the following:

Modernization of the North Carolina Secure and Fair Enforcement Mortgage Licensing Act (S.A.F.E. Act) – The act reorganizes the Article, makes technical corrections, adds new language to create efficiencies, and harmonizes servicing provisions with federal program requirements. Specifically, the changes include:

- Creating a Part 1 titled "Application, Licensing, Examination, and Enforcement" comprising the existing sections in Article 19B and creating a Part 2 titled "Prudential Standards for Mortgage Servicers," which strengthens the nonbank mortgage servicing supervision framework for which compliance is required to service Fannie Mae and Freddie Mac loans.
- Removing provisions for the transitional licensing of mortgage loan originators and adding provisions to recognize temporary authority, which are changes to conform to federal law.
- Requiring at least three years of residential mortgage lending or servicing experience to be a "qualifying individual" who operates the business under the supervision and control of a mortgage broker, mortgage lender, or mortgage servicer.
- Requiring registration for a mortgage origination support specialist.
- Removing State and federally chartered credit unions that have filed a notice of exemption from the list of exemptions from this Act.
- Providing a list of additional exemptions from the S.A.F.E. Act, which include:
 - A person who receives three or fewer residential mortgage loans as security for purchase money obligations in one calendar year.
 - An estate or trust that receives no more than one residential mortgage loan as security for a purchase money obligation in one calendar year.
 - Any agency of the federal government or any state, local, or municipal government, or their subsidiaries, making or servicing residential mortgage loans.
 - Any bona fide nonprofit that makes or services residential mortgage loans to promote home ownership for improvements for disadvantaged homeowners,

upon filing a notice of exemption with the Commissioner of Banks (Commissioner), so long as soliciting, brokering, making, or servicing residential mortgage loans is not their primary business.

- A trust acting in a fiduciary capacity, upon filing a notice of exemption with the Commissioner.
- A trustee of a trust, created under the laws of this State or the United States, that makes a residential mortgage loan to a qualified beneficiary of the trust or immediate family member, upon filing a notice of exemption with the Commissioner.
- Requiring branch offices of mortgage lenders and brokers to be in the United States and requiring applicants for licensure to have a principal office located in the United States.
- Substituting branch office registration for licensing and eliminating the branch license and associated fees.
- Modernizing mortgage loan origination testing and education provisions to align with national standards.
- Requiring mortgage lenders, brokers, servicers, or registrants to notify the Commissioner where required records will be stored.
- Removing the requirement for each mortgage broker and lender to display its certificate of licensure in public view at the principal and branch offices.
- Making the Commissioner's participation in NMLS discretionary and allowing the Commissioner to determine whether all persons must be licensed or registered through NMLS.
- Creating emergency powers for the Commissioner to waive regulatory requirements on a temporary basis in the event of a natural disaster or other national, regional, State, or local emergency.

Mortgage Fee Alignment – The act provides that the 2% limitation on lender fees and discounts provided by a lender do not apply to a loan secured by a second or junior lien on real property if the total points and fees charged to a borrower by all lenders related to that loan do not exceed the lesser of:

- Amounts specified under federal law.
- 3% of the total loan amount.

The provisions of the act pertaining to mortgage fee alignment became effective July 1, 2025, and applies to loans made on or after that date. The provisions of the act pertaining to the S.A.F.E. Act became effective October 1, 2025.

Timeshare Foreclosure – Timeshare Foreclosure/Paternity Matters.

SL 2025-75 (H992), Secs. 1 and 2

Sections 1 and 2 of S.L. 2025-75 (House Bill 992) will create a trustee foreclosure procedure as an alternative to judicial foreclosure for enforcing a claim of lien securing the payment of delinquent assessments owed by a timeshare owner that have been unpaid for six months or more.

This alternative procedure will enable a managing entity or lienholder to obtain a final judgment authorizing foreclosure upon the docketing and indexing of a certificate filed with the clerk of superior court showing the following information pertaining to a timeshare for which a delinquent assessment has remained unpaid for at least six months:

- The record owner of the timeshare and the amount of assessments and other costs secured by the lien.
- The year or years for which the delinquent assessments are due.
- A description of the timeshare sufficient to permit its identification by verbal testimony.
- The filing information for any claim of lien previously filed with the clerk of the superior court.

Prior to filing this certificate, the managing entity or lienholder will have to do the following:

- Send the timeshare owner a written statement of the delinquent assessment amount.
- No sooner than 15 days after sending the statement of delinquent assessment, file the claim of lien with the clerk of the superior court, together with a certificate that notice of the lien was sent to the record owner by first class mail and also either by registered or certified mail, return receipt requested, or by a designated delivery service with a delivery receipt requested.
- At least 30 days before docketing the judgment, send the timeshare owner a notice of the assessment lien foreclosure that includes the following:
 - A statement that a judgment will be docketed authorizing a sale of the timeshare pursuant to a timeshare foreclosure proceeding.
 - The date on which the judgment will be docketed.
 - A brief description of the affected timeshare.
 - The filing information for the claim of lien if previously filed with the clerk of court.
 - A statement that the lien must be satisfied prior to entry of the judgment.
- Along with the notice, send the timeshare owner an objection form to be used in objecting to the use of the timeshare foreclosure procedure.

If the owner of the timeshare estate objects to the use of the timeshare foreclosure proceeding within 30 days after receiving the notice of the assessment lien foreclosure, the lien securing payment of the delinquent assessments will be enforceable only by judicial foreclosure, and the timeshare owner and any successor that acquires title to the timeshare will remain potentially subject to a deficiency judgment. Alternatively, if the timeshare owner does not object to the timeshare trustee foreclosure procedure within 30 days after receiving the notice of the assessment lien, then the timeshare owner will not be subject to a deficiency judgment if the proceeds from the sale of the timeshare interest prove insufficient to offset the amounts secured by the lien.

Under the timeshare trustee foreclosure procedure, the managing entity or lienholder will have to appoint a trustee to conduct the public sale of the timeshare estate, which will have to be conducted at least 30 days and not more than one year after the indexing of the judgment directing the sale of the timeshare. On the date of sale and upon receipt of cash or certified funds,

the trustee will be required to issue a certificate of sale to the highest bidder. Within 10 calendar days of the sale, the trustee will have to file a certificate of compliance with the clerk of superior court and issue a trustee's deed to the buyer.

At any time prior to the issuance of a certificate of sale, the timeshare owner and anyone else entitled to notice as an interested party will have the right to appear before the clerk of superior court and move to set aside the judgment on the ground that the assessment has been paid or that the assessment lien on which the judgment is based is invalid.

The timeshare foreclosure procedure will not be available to enforce a lien securing a debt consisting only of fines, interest on unpaid fines, or attorney's fees incurred by the managing entity solely associated with fines; only judicial foreclosure will be available for the enforcement of such liens.

All foreclosure proceedings commenced by a managing entity or lienholder prior to March 1, 2026, and all resulting sales and transfers of real property, will be declared valid unless an action to set aside the foreclosure is commenced on or before March 1, 2026, or within one year after the date of the foreclosure sale, whichever occurs last.

Sections 1 and 2 of the act become effective December 1, 2025, and apply to claims of lien filed on or after that date.

Paternity Matters – Timeshare Foreclosure/Paternity Matters.

SL 2025-75 (H992), Secs. 3 and 4

Sections 3 and 4 of S.L. 2025-75 (House Bill 992) will modify the laws governing the right of a child born out of wedlock to take by intestate succession from a person who has acknowledged himself in a written instrument to be the child's father. These sections will remove provisions requiring the instrument acknowledging paternity to be filed with the clerk of superior court of the county where either he or the child resides.

These sections become effective December 1, 2025, and apply to the estates of decedents dying on or after that date.

Expedited Removal of Unauthorized Persons.

SL 2025-88 (S55)

S.L. 2025-88 (Senate Bill 55) will add Article 22D (Expedited Removal of Unauthorized Persons from Residential Property) to Chapter 14 of the General Statutes. Article 22D will authorize a property owner or an authorized representative of the property owner to initiate an expedited proceeding for the removal of an unauthorized person unlawfully occupying residential property, upon filing a complaint alleging at least the following facts:

- The requesting party is the property owner or the authorized agent of the property owner.
- The occupied property is residential property or property used in connection with or appurtenant to residential property.
- An unauthorized person has entered the property after the property owner acquired the property and is remaining or residing unlawfully on the residential property of the property owner.
- The property was not offered or intended as an accommodation for the general public at the time the unauthorized person entered.
- The property owner or the authorized representative of the property owner has directed the unauthorized person to leave the residential property.
- The unauthorized person is neither an owner nor a tenant of the property being unlawfully occupied.
- There is no pending litigation between the property owner and the unauthorized person related to the residential property.
- No other valid rental agreement or contract for deed has been entered into between the property owner or a former property owner and the unauthorized person permitting the unauthorized person to occupy the residential property.
- No rent or other form of payment has ever been demanded of or paid by the unauthorized person to the property owner or to an authorized representative of the property owner in connection with the occupancy of the residential property.

As used in Article 22D, the term "unauthorized person" will be defined to mean a person who has no legal claim to the property and who is not entitled to occupy it under a valid rental agreement or otherwise and will not include a tenant holding over after the lease term has expired.

The following procedure will be followed under Article 22D:

1. The requesting party's complaint will be filed and a summons will be issued in the county where the property is located.
2. Within 24 hours after receiving the summons and complaint, the sheriff will serve these papers on the unauthorized person personally or by posting a copy on the front door of the property and will promptly file a return.
3. A hearing before a magistrate will be held no more than 48 hours after the summons and complaint have been served.
4. If the magistrate finds in favor of the property owner, the magistrate will immediately enter a written order stating a time by which the property must be vacated, which will be no later than four hours after the order is served on the unauthorized person.
5. All parties will have the right to an appeal to the district court for a trial de novo.
6. If the unauthorized person fails to remove personal property from the occupied premises within the time allowed by the order, the property owner or their authorized representative will be authorized to remove the personal property to or near the property line.

The failure to vacate a residential property in accordance with a court order will constitute criminal trespass.

Law enforcement agencies, law enforcement officers, and magistrates will have immunity for any acts or omissions related to the expedited removal process, provided the parties act in good faith and do not act with gross negligence, willful or wanton misconduct, or intentional wrongdoing.

The property owner or the owner's authorized representative will have immunity for any damages related to the expedited removal process, unless the removal was wrongful.

A person harmed by a wrongful removal under Article 22D will be entitled to bring a civil action against the property owner or the owner's authorized representative seeking to recover possession of the property and actual damages, as in an action for trespass or conversion.

This act becomes effective December 1, 2025.

Surveyor Right of Entry – Regulatory Reform Act of 2025.

SL 2025-94 (H926), Sec. 2

Section 2 of S.L. 2025-94 (House Bill 926) recodifies the existing limited right of entry by professional land surveyors and removes the requirement that professional land surveyors make reasonable efforts to notify adjoining property owners before conducting surveying activities.

This section became effective October 6, 2025, and applies to acts on or after that date.

Award Attorneys' Fees for Trespass to Real Property or Surveyor Negligence – Regulatory Reform Act of 2025.

SL 2025-94 (H926), Sec. 2.5

Section 2.5 of S.L. 2025-94 (House Bill 926) allows courts to award attorneys' fees in actions for trespass upon real property and in actions against licensed surveyors or their agents in actions where the negligence or deficiency of the professional surveyor or their agent caused physical damage or economic or monetary loss.

This section became effective October 6, 2025.

Expedited Removal of Unauthorized Persons.

Ratified (H96)

House Bill 96 would have created an expedited removal process for the removal of an unauthorized person from residential property and created a new statute providing State uniformity for the operation of licensed pet shops.

Section 1

Section 1 would have added a new Article 22D to Chapter 14 of the General Statutes, under which a property owner or an authorized representative of the property owner may initiate an expedited removal proceeding for the removal of an unauthorized person unlawfully occupying residential property if all the following conditions are met:

1. The requesting party is the property owner or the authorized agent of the property owner.
2. The property that is being unlawfully occupied is residential property or property used in connection with or appurtenant to residential property.
3. An unauthorized person has entered the property after the property owner acquired the property and is remaining or residing unlawfully on the residential property of the property owner.
4. The property was not offered or intended as an accommodation for the general public at the time the unauthorized person entered.
5. The property owner or the authorized representative of the property owner has directed the unauthorized person to leave the residential property.
6. The unauthorized person is not a tenant of the property being unlawfully occupied.
7. The unauthorized person is not an owner of the property being unlawfully occupied.
8. There is no pending litigation between the property owner and the unauthorized person related to the residential property.
9. No other valid rental agreement or contract for deed has been entered into or formed by the property owner or a former property owner and the unauthorized person permitting the unauthorized person to occupy the residential property.

(10) No rent or other form of payment has ever been demanded of or paid by the unauthorized person to the property owner or to an authorized representative of the property owner in connection with the occupancy of the residential property.

The term "unauthorized person" would have meant a person who has no legal claim to the property and who is not entitled to occupy it under a valid rental agreement or otherwise. It would not have included a tenant holding over after the lease term has expired.

In terms of procedure, the following would have occurred: Filing of a complaint and issuance of a summons in the county where the property is located. ? The summons and complaint are provided to the sheriff. ? The summons and complaint are served on the unauthorized person by the sheriff within 24 hours of the sheriff receiving the documents. ? The sheriff promptly files a return. ? A hearing is held before a magistrate as soon as practicable, but no more than 48 hours after service. ? If the court finds for the property owner, the court immediately enters a written order granting the property owner possession of the property and stating the time the unauthorized person must vacate the property – which cannot be more than 4 hours after the order is served on the unauthorized person.

All parties would have had the right to appeal an order entered by a magistrate to the district court for a trial de novo.

If the court entered an order of removal and an unauthorized person failed to remove personal property from the residential property within the time allowed by the order, the property owner or authorized representative of the property owner would have been permitted to remove the personal property from the premises to or near the property line. The failure of an unauthorized person to vacate a residential property in accordance with a court order would have been a criminal trespass.

Law enforcement agencies, law enforcement officers, and magistrates would have been granted immunity for any acts or omissions related to the expedited removal process, provided the parties acted in good faith and did not act with gross negligence, willful or wanton misconduct, or intentional wrongdoing. The property owner or authorized representative would have been granted immunity for any damages related to the expedited removal process unless the removal was wrongful.

A person harmed by a wrongful removal would have been entitled to bring a civil action against the property owner or authorized representative seeking to recover possession of the property and would have been able to recover from the property owner or authorized representative damages limited to actual damages as in an action for trespass or conversion.

Section 2

Section 2 would have directed the Administrative Office of the Courts, in consultation with the North Carolina Sheriff's Association and the North Carolina Association of Chiefs of Police, to develop the affidavit form to implement the expedited removal process discussed above by September 30, 2025.

Section 3

Section 3 would have created a new statute, G.S. 19A-27.5, to provide for State uniformity for operation of pet shops. Specifically, this new law would have provided that no local government or other political subdivision of the State may enact, maintain, or enforce any ordinance, resolution, or other enactment that does either of the following:

- Prohibits or restricts the sale of animals by a licensed pet shop.
- Imposes additional licensing, operational, or regulatory requirements on pet shops beyond those established by State law.

House Bill 96 was ratified by the General Assembly on June 30, 2025, and vetoed by the Governor on July 9, 2025. Subsequent to the Governor's veto of House Bill 96, the General Assembly enacted and the Governor signed Senate Bill 55, which included language similar to the sections of this bill addressing expedited removal of unauthorized persons.