

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 764

Judiciary II Committee Substitute Adopted 5/9/91

House Committee Substitute Favorable 6/3/91

Short Title: Limitations for Actions/Surveyors.

(Public)

Sponsors:

Referred to:

April 24, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT ACTIONS FOR NEGLIGENT OR DEFICIENT SURVEYING OR PLATTING AGAINST REGISTERED LAND SURVEYORS BE COMMENCED WITHIN THREE YEARS AND IN NO EVENT MORE THAN TEN YEARS FROM THE ACT OR OMISSION GIVING RISE TO THE ACTION, AND TO AMEND THE LAW PROVIDING MAPPING REQUIREMENTS FOR PLATS AND SUBDIVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-52 reads as rewritten:

"§ 1-52. Three years.

Within three years an action –

- (1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1).
(2) Upon a liability created by statute, either state or federal, unless some other time is mentioned in the statute creating it.
(3) For trespass upon real property. When the trespass is a continuing one, the action shall be commenced within three years from the original trespass, and not thereafter.
(4) For taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery.

- 1 (5) For criminal conversation, or for any other injury to the person or
2 rights of another, not arising on contract and not hereafter enumerated.
- 3 (6) Against the sureties of any executor, administrator, collector or
4 guardian on the official bond of their principal; within three years after
5 the breach thereof complained of.
- 6 (7) Against bail; within three years after judgment against the principal;
7 but bail may discharge himself by a surrender of the principal, at any
8 time before final judgment against the bail.
- 9 (8) For fees due to a clerk, sheriff or other officer, by the judgment of a
10 court; within three years from the rendition of the judgment, or the
11 issuing of the last execution thereon.
- 12 (9) For relief on the ground of fraud or mistake; the cause of action shall
13 not be deemed to have accrued until the discovery by the aggrieved
14 party of the facts constituting the fraud or mistake.
- 15 (10) Repealed by Session Laws 1977, c. 886, s. 1.
- 16 (11) For the recovery of any amount under and by virtue of the provisions
17 of the Fair Labor Standards Act of 1938 and amendments thereto, said
18 act being an act of Congress.
- 19 (12) Upon a claim for loss covered by an insurance policy which is subject
20 to the three-year limitation contained in lines 158 through 161 of the
21 Standard Fire Insurance Policy for North Carolina, G.S. 58-44-15(c).
- 22 (13) Against a public officer, for a trespass, under color of his office.
- 23 (14) An action under Chapter 75B of the General Statutes, the action in
24 regard to a continuing violation accrues at the time of the latest
25 violation.
- 26 (15) For the recovery of taxes paid as provided in G.S. 105-267 and G.S.
27 105-381.
- 28 (16) Unless otherwise provided by statute, for personal injury or physical
29 damage to claimant's property, the cause of action, except in causes of
30 actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to
31 the claimant or physical damage to his property becomes apparent or
32 ought reasonably to have become apparent to the claimant, whichever
33 event first occurs. Provided that no cause of action shall accrue more
34 than 10 years from the last act or omission of the defendant giving rise
35 to the cause of action.
- 36 (17) Against a public utility, electric or telephone membership corporation,
37 or a municipality for damages or for compensation for right-of-way or
38 use of any lands for a utility service line or lines to serve one or more
39 customers or members unless an inverse condemnation action or
40 proceeding is commenced within three years after the utility service
41 line has been constructed or by October 1, 1984, whichever is later.
- 42 (18) Against any registered land surveyor as defined in G.S. 89C-3(9) or
43 any person acting under his supervision and control for physical
44 damage or economic or monetary loss due to negligence or a

1 deficiency in the performance of surveying or platting as defined in
2 G.S. 1-50(7)."

3 Sec. 2. G.S. 1-50 reads as rewritten:

4 **"§ 1-50. Six years.**

5 Within six years an action –

- 6 (1) Upon the official bond of a public officer.
7 (2) Against an executor, administrator, collector, or guardian on his
8 official bond, within six years after the auditing of his final account by
9 the proper officer, and the filing of the audited account as required by
10 law.
11 (3) For injury to any incorporeal hereditament.
12 (4) Against a corporation, or the holder of a certificate or duplicate
13 certificate of stock in the corporation, on account of any dividend,
14 either a cash or stock dividend, paid or allotted by the corporation to
15 the holder of the certificate or duplicate certificate of stock in the
16 corporation.
17 (5) a. No action to recover damages based upon or arising out of the
18 defective or unsafe condition of an improvement to real property shall
19 be brought more than six years from the later of the specific last act or
20 omission of the defendant giving rise to the cause of action or
21 substantial completion of the improvement.
22 b. For purposes of this subdivision, an action based upon or
23 arising out of the defective or unsafe condition of an
24 improvement to real property includes:
25 1. Actions to recover damages for breach of a contract to
26 construct or repair an improvement to real property;
27 2. Actions to recover damages for the negligent
28 construction or repair of an improvement to real
29 property;
30 3. Actions to recover damages for personal injury, death or
31 damage to property;
32 4. Actions to recover damages for economic or monetary
33 loss;
34 5. Actions in contract or in tort otherwise;
35 6. Actions for contribution indemnification for damages
36 sustained on account of an action described in this
37 subdivision;
38 7. Actions against a surety or guarantor of a defendant
39 described in this subdivision;
40 8. Actions brought against any current or prior owner of the
41 real property or improvement, or against any other
42 person having a current or prior interest therein;
43 9. Actions against any person furnishing materials, or
44 against any person who develops real property or who

- 1 performs or furnishes the design, plans, specifications,
2 surveying, supervision, testing or observation of
3 construction, or construction of an improvement to real
4 property, or a repair to an improvement to real property.
- 5 c. For purposes of this subdivision, 'substantial completion' means
6 that degree of completion of a project, improvement or
7 specified area or portion thereof (in accordance with the
8 contract, as modified by any change orders agreed to by the
9 parties) upon attainment of which the owner can use the same
10 for the purpose for which it was intended. The date of
11 substantial completion may be established by written
12 agreement.
- 13 d. The limitation prescribed by this subdivision shall not be
14 asserted as a defense by any person in actual possession or
15 control, as owner, tenant or otherwise, of the improvement at
16 the time the defective or unsafe condition constitutes the
17 proximate cause of the injury or death for which it is proposed
18 to bring an action, in the event such person in actual possession
19 or control either knew, or ought reasonably to have known, of
20 the defective or unsafe condition.
- 21 e. The limitation prescribed by this subdivision shall not be
22 asserted as a defense by any person who shall have been guilty
23 of fraud, or willful or wanton negligence in furnishing
24 materials, in developing real property, in performing or
25 furnishing the design, plans, specifications, surveying,
26 supervision, testing or observation of construction, or
27 construction of an improvement to real property, or a repair to
28 an improvement to real property, or to a surety or guarantor of
29 any of the foregoing persons, or to any person who shall
30 wrongfully conceal any such fraud, or willful or wanton
31 negligence.
- 32 f. This subdivision prescribes an outside limitation of six years
33 from the later of the specific last act or omission or substantial
34 completion, within which the limitations prescribed by G.S. 1-
35 52 and 1-53 continue to run. For purposes of the three-year
36 limitation prescribed by G.S. 1-52, a cause of action based upon
37 or arising out of the defective or unsafe condition of an
38 improvement to real property shall not accrue until the injury,
39 loss, defect or damage becomes apparent or ought reasonably to
40 have become apparent to the claimant. However, as provided in
41 this subdivision, no action may be brought more than six years
42 from the later of the specific last act or omission or substantial
43 completion.

- 1 g. The limitation prescribed by this subdivision shall apply to the
 2 exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).
- 3 (6) No action for the recovery of damages for personal injury, death or
 4 damage to property based upon or arising out of any alleged defect or
 5 any failure in relation to a product shall be brought more than six years
 6 after the date of initial purchase for use or consumption.
- 7 (7) a. No action against any registered land surveyor as defined in G.S.
 8 89C-3(9) or any person acting under his supervision and control for
 9 physical damage or for economic or monetary loss due to negligence
 10 or a deficiency in the performance of surveying or platting shall be
 11 brought more than 10 years from the last act or omission giving rise to
 12 the cause of action.
- 13 b. For purposes of this subdivision, 'surveying and platting' means
 14 boundary surveys, topographical surveys, surveys of property
 15 lines, and any other measurement or surveying of real property
 16 and the consequent graphic representation thereof.
- 17 c. The limitation prescribed by this subdivision shall apply to the
 18 exclusion of G.S. 1-15(c) and G.S. 1-52(16)."

19 Sec. 3. G.S 47-30 reads as rewritten:

20 "**§ 47-30. Plats and subdivisions; mapping requirements.**

21 (a) Size Requirements. – All land plats presented to the register of deeds for
 22 recording in the registry of a county in North Carolina after ~~January 1, 1984,~~ September
 23 30, 1991, ~~shall have having an outside marginal size of not more than either 18 inches by~~
 24 24 inches, 21 inches by 30 inches, or 24 inches by 36 inches, nor less than eight and one-
 25 half inches by 14 inches, and shall include a and having a minimum one and one-half inch
 26 border on the left side and a minimum one-half inch border on each side. on the other
 27 sides shall be deemed to meet the size requirements for recording under this section.
 28 ~~Registers of deeds may require a one and one-half inch border on one side for binding. Where~~
 29 ~~size of land areas, or suitable scale to assure legibility require, plats may be placed on~~
 30 ~~two or more sheets with appropriate match lines. Counties may specify a specific size~~
 31 ~~within the limits of these requirements: either:~~

32 (1) Only 18 inches by 24 inches;

33 (2) A combination of 18 inches by 24 inches and 21 inches by 30 inches;

34 (3) A combination of 18 inches by 24 inches and 24 inches by 36 inches;

35 or

36 (4) A combination of all three sizes.

37 ~~Provided, that all registers of deeds where a specific size is specified specific sizes other~~
 38 than the combination of all three sizes have been specified, shall be required to submit
 39 said size specifications to the North Carolina Association of Registers of Deeds for
 40 inclusion on a master list of all such counties. The list shall be available in each register
 41 of deeds office by October 1, 1991. ~~posted in each register of deeds office. All counties~~
 42 ~~currently operating under statutes or other laws setting forth regulatory size will be allowed to~~
 43 ~~continue to use such sizes as are currently in use until January 1, 1984, on or before which time~~

1 ~~they shall modify their size to conform to those shown above. For purposes of this section,~~
2 the terms 'plat' and 'map' are synonymous.

3 (b) Plats to Be Reproducible. – Each plat presented for recording shall be a
4 reproducible plat in linen, film, mylar or other similar, transparent and permanent material
5 plat, either original ink on polyester film (mylar), or a reproduced drawing, transparent
6 and archival (as defined by the American National Standards Institute), and submitted in
7 this form. ~~White prints may be submitted provided the filing officer has access to reproductive~~
8 ~~facilities to make a permanent master copy thereof by a process from which a direct copy can~~
9 ~~be made. In any case the process~~ The recorded plat must be such that the public may
10 obtain legible copies. A direct or photographic copy of each recorded plat shall be
11 placed in the plat book or plat file maintained for that purpose and properly indexed for
12 use. All filing officers are authorized to make permanent master copies of plats that have been
13 ~~recorded and filed before January 1, 1984, and may return the originals to the person offering~~
14 ~~them for recordation.~~

15 (c) Information Contained in Title of Plat. – The title of each plat shall contain the
16 following information: property designation, name of ~~owner,~~ owner (the name of owner
17 shall be shown for indexing purposes only and is not to be construed as title
18 certification), location to include township, county and state, the date or dates the survey
19 was made; scale ~~in feet per inch~~ or scale ratio in words or figures and bar graph; name
20 and address of surveyor or firm preparing the plat.

21 (d) Certificate; Form. – There shall appear on each plat a certificate by the person
22 under whose supervision such survey or such plat was made, stating the origin of the
23 information shown on the plat, including recorded deed and plat references shown
24 thereon. The ratio of precision ~~as calculated by latitudes and departures~~ before any
25 adjustments must be shown. Any lines on the plat that were not actually surveyed must
26 be clearly indicated and a statement included revealing the source of information. The
27 execution of such certificate shall be acknowledged before any officer authorized to
28 take acknowledgments by the registered land surveyor preparing the plat. All plats to be
29 recorded shall be probated as required by law for the registration of deeds. Where a plat
30 consists of more than one sheet, ~~only the first one~~ sheet must contain the certification
31 and all ~~subsequent other~~ sheets must be signed and sealed.

32 The certificate required above shall include the source of information for the survey
33 and data indicating the ~~accuracy of closure of the plat~~ ratio of precision of the survey
34 before adjustments and shall be in substantially the following form:

35 'I,, certify that this plat was drawn under my supervision from ~~(an actual~~
36 ~~survey made under my supervision)~~ an actual survey made under my supervision (deed
37 description recorded in Book, page, etc.) (other); that the boundaries not
38 surveyed are ~~shown as broken lines~~ plotted clearly indicated as drawn from information
39 found in Book, page, that the ratio of precision as calculated is 1:.....; that
40 this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original
41 signature, registration number and seal this day of, A.D., 19.....

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43 Seal or Stamp
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Surveyor

Registration Number'

The certificate of the Notary shall read as follows:

'North Carolina,County.

I, a Notary Public of the County and State aforesaid, certify that....., a registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this..... day of, 19.....

~~Seal Stamp~~ Seal or Stamp

Notary Public My Commission

expires.....'

Nothing in this requirement shall prevent the recording of a map that was prepared in accordance with a previous version of G.S. 47-30 as amended, properly signed, and notarized under the statutes applicable at the time of the signing of the map. However, it shall be the responsibility of the person presenting the map to prove that the map was so prepared.

(e) Method of Computation. – An accurate method of computation shall be used to determine the acreage and ratio of precision shown on the plat. Area by estimation is not acceptable nor is area by planimeter, area by scale, or area ~~copies~~ copied from another source, except in the case of tracts containing inaccessible sections or areas. In such case the surveyor may make use of aerial photographs or other appropriate aids to determine the acreage of such inaccessible areas when such areas are bounded by natural and visible monuments. In such case the ~~The~~ methods used must be ~~fully~~ stated and explained on the face of the plat and all accessible areas of the tract shall remain subject to all applicable standards of this section.

(f) Plat to Contain Specific Information. – Every plat shall contain the following specific information:

- (1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to whether the north index is true, magnetic, North Carolina ~~grid,~~ grid ('NAD 83' or 'NAD 27'), or is referenced to old deed or plat bearings. If the north index is magnetic or referenced to old deed or plat bearings, the date and the source (if known) such index was originally determined shall be clearly indicated.
- (2) The azimuth or ~~courses~~ course and ~~distances as surveyed of every line~~ distance of every property line surveyed shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required.

- 1 (3) All plat ~~lines~~ distances shall be by horizontal (~~level~~) or grid
2 measurements. All ~~information~~ lines shown on the plat shall be
3 correctly plotted to the scale shown. Enlargement of portions of a plat
4 are acceptable in the interest of clarity, where shown as ~~inserts on the~~
5 ~~same sheet~~ inserts. Where the North Carolina grid system is used the
6 grid factor shall be shown on the face of the ~~plat and a designation as to~~
7 ~~whether horizontal ground distances or grid distances were used~~ plat. If
8 grid distances are used, it must be shown on the plat.
- 9 (4) Where a boundary is formed by a curved line, the following data must
10 be given: actual survey data from the point of curvature to the point of
11 tangency shall be shown as standard curve data, or as a traverse of
12 bearings and distances around the curve. If standard curve data is used
13 the bearing and distance of the long chord (from point of curvature to
14 point of tangency) must be shown on ~~the face of the~~ plat.
- 15 (5) Where a subdivision of land is set out on the plat, all streets and lots
16 shall be ~~carefully~~ accurately plotted with dimension lines indicating
17 widths and all other information pertinent to reestablishing all lines in
18 the field. This shall include bearings and distances sufficient to form a
19 continuous closure of the entire perimeter.
- 20 (6) Where control corners have been established in compliance with G.S.
21 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the location and
22 pertinent information as required in the reference statute shall be
23 plotted on the plat. All other corners which are marked by monument
24 or natural object shall be so identified on all plats, and where practical
25 all corners of adjacent owners ~~in~~ along the boundary lines of the
26 subject tract which are marked by monument or natural object ~~must~~
27 shall be shown with a distance from one or more of the subject tract's
28 corners ~~shown~~.
- 29 (7) The names of adjacent ~~landowners along with~~ landowners, or lot, block
30 or block, parcel identifier and parcel, subdivision designations or other
31 legal reference where applicable, shall be shown where they could be
32 determined by the surveyor.
- 33 (8) All visible and apparent rights-of-way, watercourses, utilities,
34 roadways, and other such improvements shall be accurately located
35 where crossing or forming any boundary line of the property shown.
- 36 (9) Where the plat is the result of a survey, one or more corners shall, by a
37 system of azimuths or courses and distances, be accurately tied to and
38 coordinated with a horizontal control monument of some United States
39 or State Agency survey system, such as the ~~National~~ North Carolina
40 Geodetic Survey (formerly U.S. Coast and Geodetic Survey) system,
41 where such monument is within 2,000 feet of ~~said corner~~ the subject
42 property. Where the North Carolina Grid System coordinates of said
43 monument are on file in the North Carolina Department of
44 Environment, Health, and Natural Resources, the coordinates of both

1 the referenced corner ~~shall be computed and~~ the monuments used shall
2 be shown in X (easting) and Y (northing) ~~ordinates~~ coordinates on the
3 map-plat. The coordinates shall be identified as based on 'NAD 83,'
4 indicating North American Datum of 1983, or as 'NAD 27,' indicating
5 North American Datum of 1927. The tie lines to the monuments shall
6 also be sufficient to establish true north or grid north bearings for the
7 plat if the monuments exist in pairs. Within a previously recorded
8 subdivision that has been tied to grid control, control monuments
9 within the subdivision may be used in lieu of additional ties to grid
10 control. Within a previously recorded subdivision that has not been
11 tied to grid control, if horizontal control monuments are available
12 within 2,000 feet, the above requirements shall be met; but in the
13 interest of bearing consistency with previously recorded plats, existing
14 bearing control should be used where practical. In the absence of Grid
15 Control, other appropriate natural monuments or landmarks shall be
16 used. In all cases, the tie lines shall be sufficient to accurately
17 reproduce the subject lands from the control or reference points used.

18 (10) A vicinity map (location map) shall appear on the face of the plat.

19 (11) Notwithstanding any other provision contained in this section, it is the
20 duty of the surveyor, by a certificate on the face of the plat, to certify
21 to one of the following:

22 a. That the survey creates a subdivision of land within the area of
23 a county or municipality that has an ordinance that regulates
24 parcels of land;

25 b. That the survey is located in such portion of a county or
26 municipality that is unregulated as to an ordinance that
27 regulates parcels of land;

28 c. That the survey is of an existing parcel or parcels of land;

29 d. That the survey is of another category, such as the
30 recombination of existing parcels, a court-ordered survey, or
31 other exception to the definition of subdivision;

32 e. That the information available to the surveyor is such that the
33 surveyor is unable to make a determination to the best of his or
34 her professional ability as to provisions contained in (a) through
35 (d) above.

36 However, if the plat contains the certificate of a surveyor as stated in
37 a., d., or e. above, then the plat shall have, in addition to said
38 surveyor's certificate, a certification of approval, or no approval
39 required, as may be required by local ordinance from the appropriate
40 government authority before the plat is presented for recordation. If
41 the plat contains the certificate of a surveyor as stated in b. or c. above,
42 nothing shall prevent the recordation of the plat if all other provisions
43 have been met.

1 (g) Recording of Plat. – For purposes of recording, the register of deeds shall not
2 be responsible for:

3 (1) The provisions of subsection (b), as to archival;

4 (2) The provisions of subsection (d), except for the notary certificate;

5 (3) The provisions of subsection (e); or

6 (4) The provisions of subdivisions (2) through (9) of subsection (f).

7 A plat, when proven and probated as provided herein for deeds and other conveyances,
8 when presented for recording, shall be recorded in the plat book or plat file and when so
9 recorded shall be duly indexed. Reference in any instrument hereafter executed to the
10 record of any plat herein authorized shall have the same effect as if the description of
11 the lands as indicated on the record of the plat were set out in the instrument.

12 (h) Nothing in this section shall be deemed to prevent the filing of any plat
13 prepared by a registered land surveyor but not recorded prior to the death of the
14 registered land surveyor. However, it is the responsibility of the person presenting the
15 map to prove that the plat was so prepared. For preservation these plats may be filed
16 without signature, notary acknowledgement or probate, in a special plat file.

17 (i) Nothing in this section shall be deemed to invalidate any instrument or the
18 title thereby conveyed making reference to any recorded plat.

19 (j) The provisions of this section shall not apply to boundary plats of areas
20 annexed by municipalities nor to plats of municipal boundaries, whether or not required
21 by law to be recorded.

22 (k) The provisions of this section shall apply to all ~~400~~—counties in North
23 Carolina. Where local law is in conflict with this section, the provisions in this section
24 shall apply. Failure of a plat to conform in all requirements of this statute shall be
25 sufficient grounds for the register of deeds to refuse to accept the plat for recordation.

26 (l) The provisions of this section shall not apply to the registration of highway
27 right-of-way plans provided for in G.S. 136-19.4 nor to registration of roadway corridor
28 official maps provided in Article 2E of Chapter 136.

29 (m) Any map prepared by a registered land surveyor and submitted for inclusion
30 on the public record, whether submitted alone or attached to a deed or other instrument,
31 shall conform to the standards of practice for land surveying in North Carolina, as
32 defined in the Board rules of the North Carolina State Board of Registration for
33 Professional Engineers and Land Surveyors. In the interest of the public welfare, and to
34 assure that maps have not been altered prior to submission for recording, and in
35 accordance with G.S. 89C-26, the maps shall have an original personal signature and
36 original seal as approved by the North Carolina State Board for Registration for
37 Professional Engineers and Land Surveyors. Nothing in this subsection shall prohibit
38 the recordation of a document that includes an attachment not prepared by a registered
39 land surveyor."

40 Sec. 4. Section 3 of this act becomes effective October 1, 1991. The
41 remainder of this act is effective upon ratification and applies to any action filed on or
42 after that date.