

North Carolina Real Estate Law

North Carolina Real Estate Law

Second Edition

Neal R. Bevans

PROFESSOR

WESTERN PIEDMONT COMMUNITY COLLEGE

CAROLINA ACADEMIC PRESS

Durham, North Carolina

Copyright © 2005, 2009
Neal R. Bevans
All Rights Reserved

Library of Congress Cataloging-in-Publication Data

Bevans, Neal R., 1961-

North Carolina real estate law / Neal R. Bevans. -- 2nd ed.

p. cm.

ISBN 978-1-59460-755-4 (alk. paper)

1. Real property--North Carolina. 2. Real estate business--Law and legislation--North Carolina. 3. Vendors and purchasers--North Carolina. I. Title.

KFN7512.B48 2009
346.75604'3--dc22

2009024432

Carolina Academic Press
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

*For my parents,
Robert and Patricia Bevans*

Contents

Preface	xxi
Chapter 1 Introduction to Real Estate	3
Chapter Objectives	3
I. Real Property versus Personal Property	3
A. What Makes Real Property So Unique?	4
B. Physical Characteristics of Land	5
C. Economic Characteristics of Land	5
II. The Real Estate Market	6
III. Classifying Property by Use	7
A. Unimproved Land	8
B. Residential Property	8
1. Single-Family Homes	8
2. Apartments	8
C. Condominiums and Townhouses	8
1. Townhouses	9
2. Cooperatives	9
D. Mobile Homes under North Carolina Law	9
E. Manufactured Housing and “Kit” Homes	10
F. Commercial Property	10
1. Retail/Wholesale	11
2. Shopping Centers and Malls	11
G. Industrial Property	11
1. Industrial Parks	11
2. Light Industry/Heavy Industry	11
H. Farm and Rural Property	12
I. Recreational Property	12
J. Government-Owned Land	12
IV. Air and Mineral Rights	12
A. Air Rights	12
B. Mineral Rights	13
Chapter Summary	13
Relevant Case	14
Review Questions	17
Assignment	17
Terms and Phrases	18
Chapter 2 Real Estate Professions	19
Chapter Objectives	19
I. Introduction to Real Estate Professions	19

II.	The Law of Agency	20
A.	What Is an Agency Relationship?	20
B.	Creating an Agency Relationship	20
C.	Agent's Duty to the Principal	21
1.	Obedience	21
2.	Care	21
3.	Loyalty	21
4.	Accounting	22
D.	Ratification	22
E.	Agent's Duty to Third Parties	22
1.	The Duty of Honesty and Fair Dealing	22
2.	Duty Not to Commit Fraud	23
a.	Material Facts	23
3.	Duty to Avoid Negligent Misrepresentation	23
F.	Principal's Duty to Agent	24
1.	Duty to Compensate the Agent	24
2.	Duty Not to Unfairly Injure the Agent's Reputation	24
3.	Duty to Cooperate	24
G.	Applying Agency Law to Real Estate Transactions	25
1.	A Real Estate Agent's Duty of Care	25
2.	An Agent's Responsibility to Disclose Information	25
III.	Real Estate Agents under North Carolina Law	26
A.	Real Estate Brokers	26
1.	Different Types of Real Estate Agents	26
a.	Seller's Agent	26
b.	Buyer's Agent	27
c.	Dual Agents	28
d.	Rules and Regulations Governing Real Estate Agents	28
B.	The North Carolina Real Estate Commission	28
C.	Becoming a Broker in North Carolina	28
D.	Sanctioning Real Estate Brokers	30
1.	Ethical Duties of Real Estate Agents	30
E.	Continuing Education Requirements for Real Estate Brokers	30
F.	Services Provided by Real Estate Agents	30
1.	Multiple Listing Service	31
IV.	Real Estate Professions	31
A.	Real Estate Investors	31
1.	Small Investors and "Fixer-Uppers"	31
2.	Real Estate Investment Trusts	32
B.	Loan Officers	32
C.	Appraisers	32
1.	Real Estate Valuation	33
2.	Real Estate Appraisal	33
3.	Comparative Market Analysis	34
D.	Surveyors	35
E.	The Legal Team	35
F.	Contractors	35
G.	Property Managers	36
H.	Inspectors	36

1. Real Estate Inspections	36
2. Inspectors' Duties	37
Relevant Case	37
Chapter Summary	40
Review Questions	41
Assignment	41
Terms and Phrases	42
Chapter 3 Legal Estates in Property in North Carolina	43
Chapter Objectives	43
I. What Is an Estate?	43
II. Fee Simple Estate	44
A. Rights, Obligations and Limitations of Fee Simple Owners	45
B. Conditional Fee Simple Estates	45
1. The Rules Used to Interpret Fee Simple Defeasible Estates	45
2. Fee Simple Determinable	46
a. Court Tests for Fee Simple Determinable	47
Relevant Case: Determining a Fee Simple Determinable Estate	47
3. Fee Simple on a Condition Subsequent	50
III. Life Estates	51
A. Creating a Life Estate	51
1. Elective Share for Spouses	52
a. Waiver of Elective Share	52
B. Remaindermen	53
C. Waste	53
D. Merger	54
E. Rule in Shelley's Case	54
F. Renouncing a Life Estate	54
G. Life Estate Pur Autre Vie	55
IV. Concurrent Ownership in Real Estate	55
A. Tenants in Common	55
B. Joint Tenancy	56
1. The Right of Survivorship	56
C. Tenancy by Entirety	57
D. Tenancy in Partnership	57
E. Partition	58
Chapter Summary	59
Review Questions	60
Assignments	60
Terms and Phrases	61
Chapter 4 Landlord-Tenant Law	63
Chapter Objectives	63
I. Introduction	63
II. Freehold versus Non-Freehold Estates	63
III. Residential Rental Agreements Act	64
A. Landlords and Tenants Have Mutual Obligations	64
B. Landlord Duties under the Residential Rental Agreements Act	64
1. Tenant Suits under Residential Rental Agreements Act	66

2. Unfair or Deceptive Trade Practices	67
C. The Tenant's Duties to the Landlord	67
1. Ordinary Wear and Tear	68
IV. The Tenant Security Deposit Act	68
A. Pet Deposits	69
B. Late Fees	69
V. Discriminatory Practices	69
VI. Lead-Based Disclosure	70
VII. Specific Types of Tenancies	70
A. Tenancy for Years (Estate for a Stated Period)	70
1. Termination of an Estate for a Stated Period of Time	71
2. Notice of Termination	71
B. Estate from Year to Year (Estate from Period to Period)	71
1. Termination of an Estate from Year to Year	71
C. Tenancy at Will	72
1. Termination of a Tenancy at Will	72
D. Tenancy at Sufferance	72
1. Termination of a Tenancy at Sufferance	72
VIII. Real Estate Leases	72
A. Types of Leases	73
1. Fixed Rent Leases	73
2. Percent Leases	73
3. Net Leases	73
4. Ground Leases	73
5. Mineral Leases	73
6. Oil and Gas Leases	73
B. Creating the Landlord-Tenant Relationship	73
1. Required Provisions under North Carolina Law	74
2. Common Lease Clauses and Provisions	74
a. Renewal	74
b. Deposits	74
c. Persons Permitted to Be on the Premises	74
d. Fixtures	75
4. Commercial Leases	77
a. Trade Fixtures	77
C. Lease Assignments and Sub-Letting	77
D. Statute of Frauds Concerns in Leases	78
IX. Eviction	78
A. Eviction Procedures	79
B. Wrongful Eviction	79
C. Act Prohibiting Retaliatory Eviction	79
D. Expedited Evictions	80
Relevant Case	81
Chapter Summary	84
Review Questions	85
Assignment	85
Terms and Phrases	86

Chapter 5 Buying, Selling and Transferring Interest in Real Estate	87
Chapter Objectives	87
I. Introduction	87
A. Voluntary Transfers	87
1. By Sale	87
a. A Real Estate Sale Is a Contract	88
b. Other Legal Aspects of a Real Estate Sale	89
2. By Will	90
a. By Intestate Succession	90
3. By Gift	91
B. Involuntary or Unwilling Title Transfers	92
1. By Foreclosure	92
a. Deeds of Trust	92
b. Foreclosing a Deed of Trust	92
2. By Condemnation (Eminent Domain)	96
a. Inverse Condemnation	96
3. Partition	97
4. Accretion	97
5. Escheat	97
6. Adverse Possession	98
7. Tax Auctions	101
Relevant Case: Adverse Possession	101
Chapter Summary	104
Review Questions	105
Assignment	105
Terms and Phrases	106
Chapter 6 Deeds	107
Chapter Objectives	107
I. Introduction to Deeds	107
A. Defining a Deed under North Carolina Law	108
1. Deeds Have a Dual Nature	108
a. Contractual Elements of Deeds	108
b. Statutory Requirements of Deeds	109
B. Types of Deeds	109
1. Gift Deeds	109
2. Quitclaim Deeds	109
3. General Warranty Deeds	110
a. Seizin	110
b. Quiet Enjoyment	110
c. Against Encumbrances	110
d. Further Assurance	111
e. Warranty Forever	111
4. Special Warranty Deeds	111
5. Deeds of Trust	111
6. Timber Deeds	111
7. Deed of Correction	111
8. Sheriff's Deed	111
9. Tax Deeds	111

II. Minimum Legal Requirements of Deeds	112
A. Deeds Must Be in Writing	112
B. Contractual Elements	112
C. Clearly Identifiable Parties	112
1. Grantor	112
2. Grantee	113
a. Misnomer	113
D. Description of the Property Conveyed	113
1. Plat Reference	113
2. Reference to Other Public Records	114
E. Signature	114
F. Words of Conveyance	114
G. Deed Must Be Properly Executed	114
H. Delivery and Acceptance	115
2. Delivery in Escrow	115
I. Non-Essential Deed Terms	116
1. Consideration	116
2. Acknowledgment	116
3. Seal	116
4. Witnesses	117
5. Revenue Stamps	117
6. Date	117
III. Specific Deed Clauses	117
A. Granting Clause	117
B. Habendum Clause	118
C. Exceptions and Exclusions	118
IV. Construing the Language in Deeds	118
V. Recording Statutes	120
Relevant Cases	121
Chapter Summary	124
Review Questions	125
Assignment	125
Terms and Phrases	126
Chapter 7 Property Descriptions, Boundaries, Rights and Liabilities Arising from Land Ownership	127
Chapter Objectives	127
I. Introduction	127
II. Property Descriptions in Deeds	127
A. Patent Ambiguities	129
1. Parol Evidence Not Allowed to Correct Patently Ambiguous Description	129
B. Latent Ambiguities	130
C. Metes and Bounds Descriptions	130
1. Drawing Metes and Bounds Descriptions	131
D. Other Methods to Describe Property: Government Survey System	133
E. Other Methods to Describe Property: Reference to a Plat	133
F. Other Methods to Describe Property: Torrens Registration	133
III. Water Rights	135

A. Right to Draw Water	135
1. Reasonable Use Test	135
B. Natural Forces That Affect Property Descriptions	135
1. Accretion	135
2. Erosion	136
3. Avulsion	136
4. Reliction	136
C. Determining Water Boundaries	136
a. Boundary Lines along Navigable Bodies of Water	137
2. Non-Navigable Water	137
IV. Lateral Support	138
V. Premises Liability	138
A. Classifying Visitors to the Property	138
1. Trespassers	138
a. Exceptions to the General Rule of No Duty to Trespassers	139
2. Licensees	139
3. Invitees	139
4. North Carolina Has Abolished the Distinctions between Invitees and Licensees	140
Relevant Case	140
Chapter Summary	143
Review Questions	144
Assignment	144
Terms and Phrases	145
Chapter 8 Real Estate Contracts	147
Chapter Objectives	147
I. Introduction to Contract Law	147
A. Defining a Contract	147
1. Offer	148
2. Acceptance	149
a. The Power of Acceptance	149
b. Counter-Offers	150
3. Mutual Assent	150
4. Consideration	150
5. Legality of Contracts	151
6. Capacity	151
II. The Statute of Frauds	151
III. Formation Issues in Contract Law	152
A. Mistake	152
B. Interpreting Contract Language	153
C. Fraud and Misrepresentation	153
1. Two Types of Fraud Involved in Contracts	153
a. Fraud in the Execution of a Contract	153
b. Fraud in the Inducement	153
2. The Effect of Fraud on a Contract	153
3. Statements That Are Not Fraudulent	153
a. Opinions	154
b. Sales Statements or “Puffing”	154

D. Duress, Coercion and Undue Influence	154
1. Duress	154
2. Coercion	154
3. Undue Influence	154
E. Unfair and Deceptive Trade Practices	154
IV. Types of Contracts	155
A. Unilateral and Bilateral Contracts	155
1. Bilateral Contracts	155
V. Real Estate Contracts	155
A. Listing Agreement	156
1. Open Listing	156
2. Exclusive Listing	156
3. Multiple Listing	156
B. Offer of Purchase and Contract	156
1. Property Description	157
2. Purchase of Personal Property	157
3. Purchase Price Details	157
4. Conditions	157
5. Evidence of Title	157
6. Property Disclosures	157
7. Risk of Loss Provisions	158
8. Closing Provisions	158
9. Signature Provisions	158
10. Particular Clauses: Time Is of the Essence	158
C. Options	158
VI. Breach of Contract	158
A. Remedies for Breach	160
1. Remedies for the Seller	160
2. Remedies for the Buyer	160
3. Remedies for the Broker	161
Relevant Case	161
Chapter Summary	163
Review Questions	164
Assignment	164
Terms and Phrases	165
Chapter 9 Deeds of Trust, Mortgages and Financing Real Estate	167
Chapter Objectives	167
I. Financing the Purchase of Real Estate	167
II. Mortgage Markets	167
A. Primary Mortgage Market	168
B. Secondary Mortgage Market	168
1. Federal Agencies in the Secondary Mortgage Market	168
III. Introduction to Mortgages	169
A. The Title Theory of Mortgages in North Carolina	169
B. Mortgages versus Deed of Trust	169
IV. The Basic Components of a Mortgage or Deed of Trust	170
A. Mortgages and Deeds of Trusts Are Recorded Like Deeds	170
B. Priority of Mortgages	170

1. Subordination Agreement	171
V. Deeds of Trust	171
A. Typical Deed of Trust Clauses	172
1. Acceleration Clause	172
2. Due on Sale Clause	172
3. Default Provisions	172
4. The Promissory Note Clause	173
5. Power of Sale Clause	173
VI. Foreclosure	173
A. Foreclosure under Power of Sale	173
1. Procedure to Institute a Foreclosure under Power of Sale	174
B. The Right to Foreclose	174
1. The First Step in a Foreclosure: The Borrower's Default	174
2. The Second Step in a Foreclosure: The Acceleration Clause	174
3. Notice of Hearing	174
4. Hearing before the Clerk of Court	174
5. Advertising the Foreclosure Sale	175
6. The Foreclosure Auction	175
7. Upset Bid	175
C. The Equity of Redemption	175
VII. Types of Mortgages	176
A. Fixed Rate Mortgages	176
B. Adjustable Rate Mortgages	176
Relevant Case	176
Chapter Summary	179
Review Questions	180
Assignment	180
Terms and Phrases	181
Chapter 10 Public and Private Limitations on Real Estate	183
Chapter Objectives	183
I. Introduction to Public and Private Limitations on Real Estate	183
II. Public Restrictions on Land Use	183
A. Zoning	184
1. The Government's Authority to Impose Zoning Regulations	184
2. Zoning Ordinances	184
3. Typical Zoning Districts and Classifications	185
4. Zoning Violations and Exceptions	185
a. Nonconforming Use	186
b. Variance	186
c. Conditional Use Permit	186
5. Unconstitutional Zoning Ordinances	186
a. Spot Zoning	186
B. Designating Subdivisions	187
C. Building Codes	187
D. North Carolina Coastal Area Management Act	187
III. Private Restrictions on Land Use	188
A. Restrictive Covenants	188
1. Defining Restrictive Covenants	189

2. Types of Restrictive Covenants	189
a. Personal Covenants	189
b. Real Covenants	190
c. Equitable Servitude	190
3. Creating a Restrictive Covenant	190
a. Including Restrictive Covenants in a Deed	190
b. Recording a Declaration of Restrictive Covenants	190
c. Recording a Plat with Restrictive Covenants	190
4. Common Features Found in Restrictive Covenants	191
a. Interpreting Restrictive Covenants	191
5. Recording Restrictive Covenants	191
6. Enforcing Restrictive Covenants	191
7. Unconstitutional or Illegal Restrictive Covenant Provisions	191
8. Removing Restrictive Covenants	192
B. Easements	192
1. Appurtenant Easements	192
2. Easements in Gross	192
3. Creating Easements	193
a. Express Grant	193
b. Reservation in a Deed	193
c. By Implication	193
d. By Necessity	193
e. By Prescription	194
f. By Cartway Proceeding	194
g. By Condemnation (Eminent Domain)	195
4. Terminating Easements	195
a. Loss of Purpose	195
b. Merger	195
c. Expiration of a Stated Time Period	196
d. Release	196
e. Abandonment	196
Relevant Case	196
Chapter Summary	199
Review Questions	200
Assignment	200
Terms and Phrases	201
Chapter 11 Title Searches	203
Chapter Objectives	203
I. Introduction to Title Searches	203
A. Why Is a Title Search Necessary?	203
B. Beginning a Title Search	204
1. Attorney Approval	204
2. Information Needed to Begin a Title Search	204
a. Names of the Current Owners	205
b. Description of the Property to Be Conveyed	205
c. Time Period	205
d. Tax ID Number	206
e. Deed Book and Page Number	206

f. Additional, Helpful Information	207
C. Title Search Banks	207
II. Steps in a Title Search	207
A. Step 1: Establishing the Chain of Title	207
1. The Tax Office	208
a. Tax Maps	208
2. Creating the Links in the Chain of Ownership	208
3. The Grantor/Grantee Index	209
B. Step 2: Establishing the Out Conveyances	210
1. Reviewing Title Documents	212
a. Deed of Trust Issues in Title Searches	212
b. Liens	212
2. UCC Listings	213
3. Index of Vital Statistics (Birth and Death Records)	214
C. Step 3: Checking for Judgments	214
1. The Clerk of Courts Office	214
a. The Index to Special Proceedings	215
D. Step 4: Putting All the Information Together	215
1. Preparing Abstract Title Forms	215
E. Step 5: The Preliminary and Final Title Certificates	216
III. Legal Malpractice Issues in Title Searches	217
A. Tacking	217
B. The Paralegal's Role in Title Searches	217
IV. Common Problems in Title Searches	218
A. Sub-Divided Properties	218
B. "Missing" Transactions	218
V. Payment for Title Searches	218
Relevant Case	219
Chapter Summary	221
Review Questions	222
Assignment	222
Terms and Phrases	223
Chapter 12 The Closing	225
Chapter Objectives	225
I. Introduction to Loan Closings	225
A. Loan Closings Require Close Attention to Detail	225
II. Preparing for the Closing	225
A. Financing	226
B. Contacting the Attorney	226
C. Setting a Closing Date	226
1. The Fine Art of Scheduling Closings	226
D. Gathering Information Necessary to Complete the Closing	226
1. Loan Payoff Amounts	227
a. The Seller's Attorney	227
2. The Title Search	227
a. Encroachments	227
b. Repairing Title Defects	228
c. The Preliminary Opinion on Title	228

3. Tax Information	228
4. The Legal Description	228
5. Termite and Other Inspections	228
E. Loan Closing Software	229
III. The Closing Procedure	229
A. Preparing the Loan Package	229
B. Verifying Hazard Insurance	230
C. Documents Required at the Closing	230
1. The General Warranty Deed	230
a. Preparing the Deed	230
2. Deed of Trust	231
a. Promissory Note	231
3. Subordination Agreements	231
4. Lien Waiver Affidavits	231
5. IRS Forms	231
a. IRS Form 4506	231
b. W-9 Form	231
6. HUD-1 Settlement Closing Form	232
7. Bill of Sale for Personal Property	232
8. Compliance Agreement	232
9. Credit Insurance or Protection Plan Addendum	232
10. Loan Application	232
11. U.S. Patriot Act Requirements	232
12. PMI Disclosure	232
13. Trust Disbursement Records	233
14. Federal Truth-in-Lending	233
15. Termite Inspection Letter	233
16. Survey	233
a. Seller's Affidavit	234
IV. Conducting the Closing	234
A. People Normally Present at a Closing	234
1. Attorney	234
2. Paralegal	234
3. The Buyers	235
4. The Sellers	235
5. Real Estate Agent	235
B. Disbursing the Funds	235
1. Lender's Fees	236
a. Escrow Accounts for Insurance and Taxes	236
2. Attorney's Fees	236
3. Recording Fees	236
4. Seller's Profit on the Transaction	236
5. Certified Funds from the Buyer	236
6. Real Estate Agent's Commission	237
7. Tax Payments	237
a. Pro-Rated Taxes	237
V. Other Closing Issues	237
A. "Escrow" Closings	237
1. The Doctrine of Relation Back	238

B. Dual Representation	238
C. Disclosures	239
D. Refinances	239
E. Title Insurance	239
VI. After the Closing	239
A. Filing Issues	240
Relevant Case	240
Chapter Summary	243
Review Questions	244
Assignment	244
Terms and Phrases	245
Chapter 13 Taxes, Liens and Assessments	247
Chapter Objectives	247
I. Real Property Taxes	247
A. The Power to Levy Taxes	247
B. The Types of Property That Can Be Taxed	247
1. Homestead Exclusion	248
2. Property Excluded from Tax Calculations	248
C. Determining the Value of Real Property for Tax Purposes	248
1. Calculating the Tax Rate	249
D. Reassessment	249
E. Enforcing Tax Regulations	249
1. Tax Liens	249
a. Tax Lien Priorities	250
2. Foreclosing a Tax Lien	250
II. Assessments	250
III. Liens	250
A. What Is a Lien?	251
B. Types of Liens under North Carolina Law	251
1. Statutory Liens (Mechanics and Materialmen's Liens)	251
a. Statutory Liens	252
C. The Importance of Liens	252
D. Judgment Liens	252
E. Perfecting and Enforcing a Lien	252
Relevant Case	253
Chapter Summary	257
Review Questions	258
Assignment	258
Terms and Phrases	259
Appendix	261
Index	265

Preface

This is a textbook designed to teach the basics of North Carolina real estate law. Designed with both the instructor and paralegal students in mind, this text seeks a balance between two competing interests: theory and practice. The theoretical underpinnings of real estate law are essential for anyone studying the topic, but a student must also have a solid grasp of the practical aspects, from liens to title searches. The text includes not only discussions of the theoretical basics of real estate law, but also places a premium on practical applications, which form the core of a real estate practice.