

SUBCHAPTER 2H - TORRENS ACT RULES AND FORMS

SECTION .0100 - RULES

12 NCAC 02H .0101 NOTICE TO BE FILED WITH CLERK OF COURT

Upon the filing of a petition for registration, the persons named upon whom process is served, and all who may come in and become parties, and those who may subsequently be made parties, shall, if nonresidents of the county within which the land described in the petition is situated, file with the clerk of court their post office address, the name and post office address of an agent or attorney residing in said county to whom notices may be given, by mail or otherwise. If such persons do not designate some such person as agent or attorney, notices sent by mail to them shall be deemed to have been given and received in time to give them opportunity to appear for the purposes for which such notices were given. A copy of this Rule shall be delivered to all such persons at the time summons is served upon them or at the time they come in and become parties.

*History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.*

12 NCAC 02H .0102 DEPOSIT AND SURETY REQUIREMENTS

A petitioner for registration, upon filing his petition, shall deposit with the clerk of the superior court the sum of twenty-five dollars (\$25.00). If any surplus remains after the requirements of Chapter 90, Public Laws of 1913, are met, it shall be returned to the petitioner. If such deposit be not sufficient to meet such requirements pending the proceeding, a further deposit, or further deposits, shall be made upon notice by the clerk. If any person shall file an answer, interplea, or other pleading, raising any issue of law or fact, the clerk of the superior court, upon motion, may order an undertaking with good and sufficient surety, in an amount to be fixed by the clerk, to be void upon condition that the obligor pay to the adverse party all such costs as such adverse party may have incurred on the hearing and determination of such issue or issues; provided, that the undertaking prescribed shall not be required in the case of any such petitioner or person filing answer, interplea, or other pleading, as the case may be, who shall satisfy the clerk that he is unable to comply with this requirement.

*History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.*

12 NCAC 02H .0103 DUTIES OF EXAMINER OF TITLES

Any examiner of titles appointed under said statute may examine titles assigned to him in any county. He shall not appear in or have any connection with any proceeding instituted under the provisions of this act, and he shall be subject to removal at will by the clerk or judge of the superior court.

No attorney for any petitioner shall appear or act for or in behalf of any respondent or adverse claimant.

*History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.*

12 NCAC 02H .0104 CHANGE OF ATTORNEYS

If a party shall change his attorney, pending any proceeding, the name of the new attorney shall be substituted on the docket for that of the former attorney, and notice thereof given to any adverse party; and until such notice of the change of an attorney all notices given to or by the attorney first appointed shall be considered in all respects as notice to or from his client, except in cases in which by law the notice is required to be given to the party personally: provided, however,

that nothing in these rules shall be construed to prevent any party interested from appearing for himself in the manner provided by law; and in such cases the party so appearing shall be subject to the same rules that are or may be provided for attorneys in like cases, so far as the same are applicable.

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

12 NCAC 02H .0105 APPOINTMENT OF GUARDIAN AD LITEM

In addition to making appointments of guardians ad litem in cases required by statute, whenever it shall appear that a minor is interested in any land in regard to which proceedings are pending, a guardian ad litem for such minor may be appointed by the court at its discretion, with or without notice.

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

12 NCAC 02H .0106 CUSTODY OF DEPOSITIONS

All depositions shall be opened and filed by the clerk when received. The deposition shall afterwards be in his custody or that of the examiner of titles, subject to the order of the court, as other documents in the case; and if not read on the trial by the party taking it, it may be used by any other party, if he sees fit, he paying the costs of taking the same.

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

12 NCAC 02H .0107 NOTICE REQUIREMENTS

Whenever, in any case, a notice given in accordance with Chapter 90 of the Public Laws of 1913 or the general forms of procedure, or otherwise, is held by the court to be insufficient, it may order such further notice as the case requires.

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

12 NCAC 02H .0108 AMENDMENT OF PLEADINGS AND SURVEY OF PROPERTY

The court may in its discretion allow the parties to amend their pleadings, and order or permit pleadings to be filed, notices to be given, or any proceedings to be had, at other times than are provided in these rules; and may in all cases impose just and reasonable terms upon the parties. The clerk may order a preliminary survey for the purpose of obtaining metes and bounds descriptions upon request of any party on the grounds that he is unable to state the metes and bounds, upon such terms as are just and reasonable. When such order is issued by the clerk, if it appears that title to any portion of the land sought to be registered is in dispute, the survey and plat shall designate such areas and no permanent markers shall be placed thereon until the filing of the examiners report and the entry of decree of title.

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

12 NCAC 02H .0109 HEARING BEFORE EXAMINER OF TITLES

When a petition shall be referred to an examiner he shall assign a time and place for hearing, which shall be not less than 10 days thereafter, and give notice thereof by mail not less than five days before such time, to the petitioners, and all persons mentioned in the petition as having or claiming any interest, or their attorneys or agents. In the meantime the examiner shall have examined the record title, and prepared a tentative abstract, which shall be exhibited to the petitioners and persons interested attending such hearing.

*History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.*

12 NCAC 02H .0110 PRELIMINARY REPORT OF EXAMINER

When the examiner has prepared a draft copy of his report he shall notify the parties or their attorneys of the time and place, not less than three days before such time, when and where they may attend to hear the same, and suggest such alterations, if any, as they may think proper; upon consideration whereof, the examiner will finally settle the draft of his report.

*History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.*

12 NCAC 02H .0111 FILING OF EXCEPTIONS TO REPORT

Upon the filing of the examiner's report, the clerk shall forthwith give notice thereof by mail to all the parties interested, or their agents or attorneys, notifying them to appear on or before a day named, not less than seven days from the date of mailing such notices, and file written objections, if any they have, to said report. No exception to the report shall be allowed, without a special order of the court, founded upon a showing of mistake, surprise, or excusable neglect, unless such exception is filed within the time stated in the notice.

*History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.*

12 NCAC 02H .0112 NOTICE OF AND ARGUMENT PURSUANT TO EXCEPTIONS

When exceptions shall be taken to the report notice thereof shall forthwith be given by mail to the adverse parties, their agents or attorneys, and the exceptions shall then be set down for argument. In every case the exceptions shall briefly and clearly specify the matter excepted to, and the cause thereof; and the exceptions shall not be valid as to any matter not so specified.

*History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.*

12 NCAC 02H .0113 DATE OF TRANSCRIPTION OF DECREE

The date of the transcription of the decree into the registration book shall be taken to be the time at which the register of deeds receives the certified copy of the decree for transcription; and he shall minute upon such copy and also in the registration book the day, hour and minute of its reception.

Every new certificate shall bear date as of the time of reception noted on the instrument of transfer.

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

12 NCAC 02H .0114 METHOD OF CONVEYANCE

When a deed of conveyance of registered land is presented to the clerk of the court in the county where the land lies, such clerk shall not receive the same or direct its registration and the issue of the certificate of title for such land to the grantee, unless the grantor being unmarried or having no husband or wife to join, it contains a statement to that effect.

The deed shall be received and a new certificate shall be entered and issued when a deed of transfer is executed as aforesaid and acknowledged in the manner now required in this state for recording in the office of the register of deeds by the registered owner, conveying in fee simple the entire parcel of land registered under one certificate of title, and there is presented to such register of deeds the registered owner's duplicate certificate: provided, the land conveyed by such deed is described in the same terms as in the grantor's original certificate; and provided, the grantor or grantors in such deed are the same as the registered owner or owners in such certificate.

If the land conveyed by such deed is not described in the same terms as in the certificate of title to such land, or the grantor or grantors in such deed are not the same as the registered owner or owners, the clerk of the court shall not receive the deed or direct the issue of a new certificate.

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

12 NCAC 02H .0115 PARTIAL CONVEYANCE OF REGISTERED LAND

When the owner of registered land transfers a part of it, his transfer shall be accompanied by a plan, showing the land transferred, which shall be signed by such owner and by his grantee as correct.

The register of deeds shall enter and issue a certificate for such part to the grantee, when the description of the land in the deed of transfer agrees with such plan; and shall enter and issue to the grantor a certificate of the remainder described as in the surrendered certificate, omitting the land transferred, the plan and certificate of which shall be referred to.

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

12 NCAC 02H .0116 NOTATION OF TERMINATION OF LEASES

When a lease has been noted upon the registration book and upon the owner's duplicate certificate as an incumbrance, and the lease has been determined by lapse of time, merger, surrender, reentry or otherwise, the register of deeds may note its determination in the registration book, and upon the owner's duplicate certificate, upon the surrender of the lessee's duplicate certificate, if such certificate has been issued; but if no such certificate has been issued, the register of deeds shall note the determination of the lease only upon the written consent of the lessee, or order of the court as hereinafter provided.

In case the lessee neglects or refuses to give his consent in writing to the entry of a memorandum of the determination of the lease, the owner of the registered land or any person interested in it may apply to the clerk of the superior court for an order directing the entry of such memorandum, and upon notice of such application to the lessee and other persons

interested, and the production of such evidence as shall satisfy the court that the lease has terminated, the court shall make such order.

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

12 NCAC 02H .0117 OATH PURSUANT TO LETTERS OF ATTORNEY

When an instrument executed by an attorney under letters of attorney duly acknowledged is filed or presented for registration, the attorney shall make and subscribe an oath before a justice of the peace, or other officer empowered to administer oaths, that the principal was alive at the date of the execution of the instrument, and that the power was then in force and not revoked.

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

12 NCAC 02H .0118 CORRECTION OF NAME ON CERTIFICATE

A registered owner or mortgagee whose name has been changed since the entry of a certificate, either by marriage, divorce or adoption, or whose name was by mistake wrongly expressed in the certificate, may, upon satisfying the court of the fact, surrender the certificate and take out a new one in his new or correct name; or a memorandum of such change or correction may by order of the court be entered on the certificate.

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

SECTION .0200 - FORMS

12 NCAC 02H .0201 AVAILABILITY OF FORMS

(a) Copies of the forms to be used in Torrens proceedings are available upon request by writing to:
Office of the Attorney General
Public Lands and Contracts Section
Post Office Box 629
Raleigh, North Carolina 27602

(b) A charge of twenty-five cents (\$0.25) per page shall be made to defray the cost of copying the requested forms.

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4, 2016.

12 NCAC 02H .0202 DESCRIPTION OF FORMS

History Note: Authority G.S. 43-3;
Eff. February 1, 1976;
Readopted Eff. January 5, 1978;
Repealed Eff. July 16, 1988 in accordance with G.S. 150B-59(c).

