

Article 4.

Limitations, Real Property.

§ 1-35. Title against State.

The State will not sue any person for, or in respect of, any real property, or the issue or profits thereof, by reason of the right or title of the State to the same –

- (1) When the person in possession thereof, or those under whom he claims, has been in the adverse possession thereof for thirty years, this possession having been ascertained and identified under known and visible lines or boundaries; which shall give a title in fee to the possessor.
- (2) When the person in possession thereof, or those under whom he claims, has been in possession under color of title for twenty-one years, this possession having been ascertained and identified under known and visible lines or boundaries. (R.C., c. 65, s. 2; C.C.P., s. 18; Code, s. 139; Rev., s. 380; C.S., s. 425.)

§ 1-36. Title presumed out of State.

In all actions involving the title to real property title is conclusively deemed to be out of the State unless it is a party to the action, but this section does not apply to the trials of protested entries laid for the purpose of obtaining grants, nor to actions instituted prior to May 1, 1917. (1917, c. 195; C.S., s. 426.)

§ 1-37. Such possession valid against claimants under State.

All such possession as is described in G.S. 1-35, under such title as is therein described, is hereby ratified and confirmed, and declared to be good and legal bar against the entry or suit of any person, under the right or claim of the State. (C.C.P., s. 19; Code, s. 140; Rev., s. 381; C.S., s. 427.)

§ 1-38. Seven years' possession under color of title.

(a) When a person or those under whom he claims is and has been in possession of any real property, under known and visible lines and boundaries and under color of title, for seven years, no entry shall be made or action sustained against such possessor by a person having any right or title to the same, except during the seven years next after his right or title has descended or accrued, who in default of suing within that time shall be excluded from any claim thereafter made; and such possession, so held, is a perpetual bar against all persons not under disability: Provided, that commissioner's deeds in judicial sales and trustee's deeds under foreclosure shall also constitute color of title.

(b) If

- (1) The marking of boundaries on the property by distinctive markings on trees or by the implacement of visible metal or concrete boundary markers in the boundary lines surrounding the property, such markings to be visible to a height of 18 inches above the ground, and
- (2) The recording of a map prepared from an actual survey by a surveyor registered under the laws of North Carolina, in the book of maps in the office of the register of deeds in the county where the real property is located, with a certificate attached to said map by which the surveyor certifies that the

boundaries as shown by the map are those described in the deed or other title instrument or proceeding from which the survey was made, the surveyor's certificate reciting the book and page or file number of the deed, other title instrument or proceeding from which the survey was made,

then the listing and paying of taxes on the real property marked and for which a survey and map have been certified and recorded as provided in subdivisions (1) and (2) above shall constitute prima facie evidence of possession of real property under known and visible lines and boundaries. Maps recorded prior to October 1, 1973 may be qualified under this statute by the recording of certificates prepared in accordance with subdivision (b)(2) above. Such certificates must contain the book and page number where the map is filed, in addition to the information required by subdivision (b)(2) above, and shall be recorded and indexed in the deed books. When a certificate is filed to qualify such a recorded map, the register of deeds shall make a marginal notation on the map in the following form: "Certificate filed pursuant to G.S. 1-38(b), book_____ (enter book where filed), page _____"

(c) Maps recorded prior to October 1, 1973 shall qualify as if they had been certified as herein provided if said maps can be proven to conform to the boundary lines on the ground and to conform to instruments of record conveying the land which is the subject matter of the map, to the person whose name is indicated on said recorded map as the owner thereof. Maps recorded after October 1, 1973 shall comply with the provisions for a certificate as hereinbefore set forth. (C.C.P., s. 20; Code, s. 141; Rev., s. 382; C.S., s. 428; 1963, c. 1132; 1973, c. 250; 1975, c. 207.)

§ 1-39. Seizin within twenty years necessary.

No action for the recovery or possession of real property shall be maintained, unless it appears that the plaintiff, or those under whom he claims, was seized or possessed of the premises in question within 20 years before the commencement of the action, unless he was under the disabilities prescribed by law. (C.C.P., s. 22; Code, s. 143; Rev., s. 383; C.S., s. 429.)

§ 1-40. Twenty years adverse possession.

No action for the recovery or possession of real property, or the issues and profits thereof, shall be maintained when the person in possession thereof, or defendant in the action, or those under whom he claims, has possessed the property under known and visible lines and boundaries adversely to all other persons for 20 years; and such possession so held gives a title in fee to the possessor, in such property, against all persons not under disability. (C.C.P., s. 23; Code, s. 144; Rev., s. 384; C.S., s. 430.)

§ 1-41. Action after entry.

No entry upon real estate shall be deemed sufficient or valid, as a claim, unless an action is commenced thereupon within one year after the making of the entry, and within the time prescribed in this Chapter. (C.C.P., s. 24; Code, s. 145; Rev., s. 385; C.S., s. 431.)

§ 1-42. Possession follows legal title; severance of surface and subsurface rights.

In every action for the recovery or possession of real property, or damages for a trespass on such possession, the person establishing a legal title to the premises is presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person is deemed to have been under, and in subordination to, the legal title, unless it appears that the premises have been held and possessed adversely to the legal title for the time prescribed

by law before the commencement of the action. Provided that a record chain of title to the premises for a period of thirty years next preceding the commencement of the action, together with the identification of the lands described therein, shall be prima facie evidence of possession thereof within the time required by law.

In all controversies and litigation wherein it shall be made to appear from the public records that there has been at some previous time a separation or severance between the surface and the subsurface rights, title or properties of an area, no holder or claimant of the subsurface title or rights therein shall be entitled to evidence or prove any use of the surface, by himself or by his predecessors in title or of lessees or agents, as adverse possession against the holder of said surface rights or title; and likewise no holder or claimant of the surface rights shall be entitled to evidence or prove any use of the subsurface rights, by himself, or by his predecessors in title or of lessees or agents, as adverse possession against the holder of said subsurface rights, unless, in either case, at the time of beginning such allegedly adverse use and in each year of the same, said party or his predecessor in title so using shall have placed or caused to be placed upon the records of the register of deeds of the county wherein such property lies and in a book therein kept or provided for such purposes, a brief notice of intended use giving (i) the date of beginning or recommencing of the operation or use, (ii) a brief description of the property involved but sufficiently adequate to make said property readily locatable therefrom, (iii) the name and, if known, the address of the claimant of the right under which the operation or use is to be carried on or made and (iv) the deed or other instrument, if any, under which the right to conduct such operation or to make such use is claimed or to which it is to be attached. (C.C.P., s. 25; Code, s. 146; Rev., s. 386; C.S., s. 432; 1945, c. 869; 1959, c. 469; 1965, c. 1094.)

§ 1-42.1. Certain ancient mineral claims extinguished in certain counties.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, or that the record title holder of any such oil, gas or mineral interests has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of ten (10) years prior to January 1, 1965, any person, having the legal capacity to own land in this State, who has on September 1, 1965 an unbroken chain of title of record to such surface estate of such area of land for fifty (50) years or more, and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate as provided in the succeeding subsections of this section, subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed.

(b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interests in such area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which was executed or recorded fifty (50) years or more prior to September 1, 1965, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any such fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two (2) years after September 1, 1965, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and page where recorded. Such notice shall be probated as required for registration of instruments by

G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) All oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership must be listed for ad valorem taxes and notice of such interest must be filed in writing in the manner provided by G.S. 1-42.1(b) and recorded in the local registry in the book provided by G.S. 1-42 within two years from September 1, 1967, to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina. The board of county commissioners shall publish a notice of this subsection in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to September 1, 1967.

The provisions of this subsection shall apply to the following counties: Anson, Buncombe, Durham, Franklin, Guilford, Hoke, Jackson, Montgomery, Person, Richmond, Swain, Transylvania, Union, Wake and Warren. (1965, c. 1072, s. 1; 1967, c. 905.)

§ 1-42.2. Certain additional ancient mineral claims extinguished; oil, gas and mineral interests to be recorded and listed for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, or that the record titleholder of any such oil, gas or mineral interests has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of 10 years prior to January 1, 1971, any person, having the legal capacity to own land in this State, who has on September 1, 1971, an unbroken chain of title of record to such surface estate of such area of land for at least 50 years and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate as provided in the succeeding subsections of this section, subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed.

(b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interests in such area of

land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which was executed or recorded at least 50 but not more than 56 years prior to September 1, 1971, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any such fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two years after September 1, 1971, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and page where recorded. Such notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) Within two years from November 1, 1971, all oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership must be listed for ad valorem taxes and notice of such interest must be filed in writing in the manner provided by G.S. 1-42.2(b) and recorded in the local registry in the book provided by G.S. 1-42, to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina. The board of county commissioners shall publish a notice of this subsection in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to November 1, 1971.

The provisions of this subsection shall apply to the following counties: Rowan, Anson, Buncombe, Catawba, Davidson, Durham, Franklin, Guilford, Haywood, Hoke, Iredell, Jackson, Madison, Montgomery, Moore, Person, Richmond, Robeson, Scotland, Swain, Transylvania, Union, Wake, Warren and Yancey. (1971, c. 235, s. 1; c. 855.)

§ 1-42.3. Additional ancient mineral claims extinguished in certain counties; oil, gas and mineral interests to be recorded and listed for taxation in such counties.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, or that the record titleholder of any such oil, gas or mineral interests has not listed the same for ad valorem tax purposes in the county in which the same is

located for a period of 10 years prior to January 1, 1974, any person having the legal capacity to own land in this State, who has on September 1, 1974, an unbroken chain of title of record to such surface estate of such area of land for at least 50 years and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate as provided in the succeeding subsections of this section, subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed.

(b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interest in such area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which was executed or recorded at least 50 years or more prior to September 1, 1974, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any such fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two years after September 1, 1974, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and page where recorded. Such notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) Within two years from November 1, 1974, all oil, gas or mineral interest in lands severed or separated from the surface fee simple ownership must be listed for ad valorem taxes and notice of such interest must be filed in writing in the manner provided by G.S. 1-42.3(b) and recorded in the local registry in the book provided by G.S. 1-42, to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina. The board of county commissioners shall publish a notice of this subsection in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to November 1, 1974.

The provisions of this subsection shall apply to the following counties: Alleghany, Burke, Caldwell, Cherokee, Clay, Cleveland, Gaston, Gates, Graham, Halifax, Henderson, Macon,

McDowell, Mitchell, Polk, Randolph, Stanly, Surry, Watauga, and Wilkes. (1973, c. 1435; 1981, c. 329, s. 2.)

§ 1-42.4. Additional ancient mineral claims extinguished in Ashe County; oil, gas and mineral interests to be recorded and listed for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interest in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, or that the record titleholder of any such oil, gas or mineral interest has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of 10 years prior to January 1, 1977, any person having the legal capacity to own land in this State, who has on September 1, 1977, an unbroken chain of title of record to such surface estate of such area of land for at least 50 years, and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate as provided in the succeeding subsections of this section, subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed.

(b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interests in such area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which was executed or recorded at least 50 years or more prior to September 1, 1977, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any such fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two years after September 1, 1977, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and page where recorded. Such notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) Within two years from November 1, 1977, all oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership must be listed for ad valorem taxes and notice of such interests must be filed in writing in the manner provided by G.S. 1-42.4(b) and

recorded in the local registry in the book provided by G.S. 1-42, to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina. The board of county commissioners shall publish a notice of this subsection in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to November 1, 1977. The provisions of this subsection shall apply to the following county: Ashe. (1977, c. 751.)

§ 1-42.5. Additional ancient mineral claims extinguished in Avery County; oil, gas and mineral interests to be recorded in such county.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interest in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, any person having legal capacity to own land in this State, who has an unbroken chain of title of record to such surface estate of such area of land for at least 30 years and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate as provided in the succeeding subsections of this section, subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed.

(b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interest in such area of land, the existence of which depends upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which was recorded prior to such 30-year period, and such oil, gas or mineral interests are hereby declared null and void and of no effect whatever at law or in equity: Provided, however, that any such fee simple oil, gas or mineral interest may be preserved and kept effective by recording within such 30-year period, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and page where recorded. Such notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land, or any part thereof lies, and in the book thereof kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant, and the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) The board of county commissioners shall publish a notice of this section within 90 days after the ratification date, and within 90 days prior to June 30, 1982. Such notice shall be published once per week for four consecutive weeks in a newspaper published in the counties of Avery, Burke, Mitchell and Watauga, or a newspaper having general circulation in those counties.

The provisions of this section shall apply to the following county: Avery. (1981, c. 329, s. 1.)

§ 1-42.6. Additional ancient oil, gas or mineral interests extinguished in Alleghany County; recording interests; listing interests for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land and this interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, or that the record titleholder of any oil, gas or mineral interests has not listed the same for ad valorem tax purposes in the county in which it is located for a period of 10 years prior to February 1, 1981, any person having the legal capacity to own land in this State who has on July 1, 1981, an unbroken chain of title of record to the surface estate of the area of land for at least 50 years, and provided the surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to the surface estate as provided in the succeeding subsections of this section, subject to any interests and defects as are inherent in the provisions and limitations contained in the muniments that form the chain of record title.

(b) This marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all fee simple oil, gas or mineral interests in the area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple that was executed or recorded at least 50 years or more prior to July 1, 1981, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two years after July 1, 1981, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of the oil, gas or mineral interest and gives the book and page where recorded. This notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein the area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make the property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. The notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) Within two years from July 1, 1981, all oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership must be listed for ad valorem taxes and notice of such interest must be filed in writing in the manner provided by G.S. 1-42.3(b) and recorded in the local registry in the book provided by G.S. 1-42 to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina. The board of county commissioners shall publish a notice of this section within 180 days after May 6, 1981. Such notice shall be published once per week for four consecutive weeks in a newspaper published in the county, or a newspaper of general circulation in the county.

This section applies only to Alleghany County. (1981, c. 333, ss. 1, 2.)

§ 1-42.7. Additional amount mineral claims extinguished in Chatham County; oil, gas and mineral interests to be recorded and listed for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interest in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, or that the record titleholder of any such oil, gas or mineral interest has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of 10 years prior to January 1, 1979, any person having the legal capacity to own land in this State, who has on September 1, 1979, an unbroken chain of title of record to such surface estate of such area of land for at least 50 years, and provided such surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to such surface estate as provided in the succeeding subsections of this section, subject to such interests and defects as are inherent in the provisions and limitations contained in the muniments of which such chain of record title is formed.

(b) Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all such fee simple oil, gas or mineral interests in such area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple which was executed or recorded at least 50 years or more prior to September 1, 1979, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any such fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two years after September 1, 1979, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of such oil, gas or mineral interest and gives the book and page where recorded. Such notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein such area of land or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make said property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. Such notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is either under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) Within two years from November 1, 1979, all oil, gas or mineral interests in land severed or separated from the surface fee simple ownership must be listed for ad valorem taxes and notice of such interests must be filed in writing in the manner provided by G.S. 1-42.5(b) and recorded in the local registry in the book provided by G.S. 1-42, to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina. The board of county commissioners shall publish a notice of this subsection in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to November 1, 1979.

This section shall apply to Chatham County only. (1979, c. 343, ss. 1, 2.)

§ 1-42.8. Ancient mineral claims extinguished in Rutherford County; oil, gas and mineral interests to be recorded and listed for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land, and this interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another; or that the record titleholder of any oil, gas or mineral interests has not listed the same for ad valorem tax purposes in the county in which it is located for a period of 10 years prior to February 1, 1982, any person having the legal capacity to own land in this State who has on September 1, 1982, an unbroken chain of title of record to the surface estate of the area of land for at least 50 years, and provided the surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to the surface estate as provided in the succeeding subsections of this section, subject to any interests and defects as are inherent in the provisions and limitations contained in the muniments that form the chain of record title.

(b) This marketable title shall be held by such persons and shall be taken by his successors in interest free and clear of any and all fee simple, oil, gas or mineral interests in the area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple that was executed or recorded at least 50 years or more prior to September 1, 1982, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity: Provided, however, that any fee simple oil, gas or mineral interest not already extinguished by existing laws may be preserved and kept effective by recording within two years after September 1, 1982, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of the oil, gas or mineral interest and gives the book and page where recorded. This notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein the area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner, and shall also contain either a sufficient description of the area of land

involved as to make the property readily located or due incorporation by reference of the recorded instrument containing the reservation or exception of the oil, gas or mineral interest. The notice may be made and recorded by the claimant or by any other person acting on behalf of any claimant who is under a disability, unable to assert a claim on his own behalf, or one of a class but whose identity cannot be established or is uncertain at the time of filing the notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished include those of persons whether within or without the State, and whether natural or corporate, but do not include governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral releases.

(d) Within two years from September 1, 1982, all oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership must be listed for ad valorem taxes, and notice of this interest must be filed in writing in the manner provided by G.S. 1-42.3(b) and recorded in the local registry in the book provided by G.S. 1-42 to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina.

(e) The board of county commissioners shall publish a notice of this section in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to September 1, 1982.

(f) This act applies only to Rutherford County. (1981 (Reg. Sess., 1982), c. 1391, s. 1.)

§ 1-42.9. Ancient mineral claims extinguished; oil, gas and mineral interests to be recorded and listed for taxation.

(a) Where it appears on the public records that the fee simple title to any oil, gas or mineral interests in an area of land has been severed or separated from the surface fee simple ownership of such land and such interest is not in actual course of being mined, drilled, worked or operated, or in the adverse possession of another, and that the record titleholder of any such oil, gas or mineral interests has not listed the same for ad valorem tax purposes in the county in which the same is located for a period of five years prior to January 1, 1986, any person, having the legal capacity to own land in this State, who has on January 1, 1986, an unbroken chain of title of record to the surface estate of the area of land for at least 30 years and provided the surface estate is not in the adverse possession of another, shall be deemed to have a marketable title to the fee estate as provided in the succeeding subsections of this section, subject to the interests and defects as are inherent in the provisions and limitations contained in the muniments of which the chain of record is formed.

(b) This marketable title shall be held by such person and shall be taken by his successors in interest free and clear of any and all fee simple oil, gas or mineral interests in the area of land founded upon any reservation or exception contained in an instrument conveying the surface estate in fee simple that was executed or recorded at least 30 years or more prior to January 1, 1986, and such oil, gas or mineral interests are hereby declared to be null and void and of no effect whatever at law or in equity. Provided, however, that

any fee simple oil, gas or mineral interest may be preserved and kept effective by recording within two years after January 1, 1986, a notice in writing duly sworn to and subscribed before an official authorized to take probate by G.S. 47-1, which sets forth the nature of the oil, gas or mineral interest and gives the book and page where recorded. This notice shall be probated as required for registration of instruments by G.S. 47-14 and recorded in the office of the register of deeds of the county wherein the area of land, or any part thereof lies, and in the book therein kept or provided under the terms of G.S. 1-42 for the purpose of recording certain severances of surface and subsurface land rights, and shall state the name and address of the claimant and, if known, the name of the surface owner and also contain either such a description of the area of land involved as to make the property readily located thereby or due incorporation by reference of the recorded instrument containing the reservation or exception of such oil, gas or mineral interest. The notice may be made and recorded by the claimant, by any person authorized by the claimant to act on his behalf, or by any person acting on behalf of any claimant who is under a disability, unable to assert a claim on his own behalf, or one of a class whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

(c) This section shall be construed to effect the legislative purpose of facilitating land title transactions by extinguishing certain ancient oil, gas or mineral claims unless preserved by recording as herein provided. The oil, gas or mineral claims hereby extinguished shall include those of persons whether within or without the State, and whether natural or corporate, but shall exclude governmental claims, State or federal, and all such claims by reason of unexpired oil, gas or mineral leases.

(d) Within two years from January 1, 1986, all oil, gas or mineral interests in lands severed or separated from the surface fee simple ownership and forfeitable under the terms of G.S. 1-42.9(b) must be listed for ad valorem taxes, and notice of this interest must be filed in writing in the manner provided by G.S. 1-42.9(b) and recorded in the local registry in the book provided by G.S. 1-42 to be effective against the surface fee simple owner or creditors, purchasers, heirs or assigns of such owner. Subsurface oil, gas and mineral interests shall be assessed for ad valorem taxes as real property and such taxes shall be collected and foreclosed in the manner authorized by Chapter 105 of the General Statutes of North Carolina.

(e) The board of county commissioners shall publish a notice of this section in a newspaper published in the county or having general circulation in the county once a week for four consecutive weeks prior to January 1, 1986.

(f) This section applies to a county that failed to publish a notice as required by subsection (e) but that published a notice of this section in a newspaper having general circulation in the county once a week for four consecutive weeks prior to January 1, 1986. In applying this section to that county, however, the date "1984" shall be substituted for the date "1983" each time it appears in this section. (1983, c. 502; 1983 (Reg. Sess., 1984), c. 1096, ss. 1-3; 1985, c. 160; c. 573, s. 1.)

§ 1-43. Tenant's possession is landlord's.

When the relation of landlord and tenant has existed, the possession of the tenant is deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy; or where there has been no written lease, until the expiration of twenty years from the time of the last payment of rent, notwithstanding that the tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions shall not be made after the periods herein limited. (C.C.P., s. 26; Code, s. 147; Rev., s. 387; C.S., s. 433.)

§ 1-44. No title by possession of right-of-way.

No railroad, plank road, turnpike or canal company may be barred of, or presumed to have conveyed, any real estate, right-of-way, easement, leasehold, or other interest in the soil which has been condemned, or otherwise obtained for its use, as a right-of-way, depot, station house or place of landing, by any statute of limitation or by occupation of the same by any person whatever. (R.C., c. 65, s. 23; C.C.P., s. 29; Code, s. 150; Rev., s. 388; C.S., s. 434.)

§ 1-44.1. Presumption of abandonment of railroad right-of-way.

Any railroad which has removed its tracks from a right-of-way and has not replaced them in whole or in part within a period of seven (7) years after such removal and which has not made any railroad use of any part of such right-of-way after such removal of tracks for a period of seven (7) years after such removal, shall be presumed to have abandoned the railroad right-of-way. (1955, c. 657.)

§ 1-44.2. Presumptive ownership of abandoned railroad easements.

(a) Whenever a railroad abandons a railroad easement, all right, title and interest in the strip, piece or parcel of land constituting the abandoned easement shall be presumed to be vested in those persons, firms or corporations owning lots or parcels of land adjacent to the abandoned easement, with the presumptive ownership of each adjacent landowner extending to the centerline of the abandoned easement. In cases where the railroad easement adjoins a public road right-of-way, the adjacent property owner's right, title and interest in the abandoned railroad easement shall extend to the nearest edge of the public road right-of-way.

The side boundaries of each parcel so presumptively vested in the adjacent property owner shall be determined by extending the side property lines of the adjacent parcels to the centerline of the abandoned easement, or as the case may be, the nearest edge of the public road right-of-way. In the event the side property lines of two adjacent property owners intersect before they meet the centerline or nearest edge of the public road right-of-way, as the case may be, such side property lines shall join and run together from the point of intersection to the centerline of the easement or nearest edge of the public road right-of-way, as the case may be, perpendicular to said centerline or edge.

(b) The presumption established by this section is rebuttable by showing that a party has good and valid title to the land.

(c) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1071, s. 6. (1987, c. 433, s. 1; 1987 (Reg. Sess., 1988), c. 1071, s. 6; 2004-203, s. 14.)

§ 1-45. No title by possession of public ways.

No person or corporation shall ever acquire any exclusive right to any part of a public road, street, lane, alley, square or public way of any kind by reason of any occupancy thereof or by encroaching upon or obstructing the same in any way, and in all actions, whether civil or criminal,

against any person or corporation on account of an encroachment upon or obstruction or occupancy of any public way it shall not be competent for a court to hold that such action is barred by any statute of limitations. (1891, c. 224; Rev., s. 389; C.S., s. 435.)

§ 1-45.1. No adverse possession of property subject to public trust rights.

Title to real property held by the State and subject to public trust rights may not be acquired by adverse possession. As used in this section, "public trust rights" means those rights held in trust by the State for the use and benefit of the people of the State in common. They are established by common law as interpreted by the courts of this State. They include, but are not limited to, the right to navigate, swim, hunt, fish, and enjoy all recreational activities in the watercourses of the State and the right to freely use and enjoy the State's ocean and estuarine beaches and public access to the beaches. (1985, c. 277, s. 1.)