

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1997

SESSION LAW 1998-228
SENATE BILL 1552

AN ACT TO MAKE CHANGES TO THE NOTARY PUBLIC ACT, TO EXEMPT SOME MAPS FROM THE CERTIFICATION REQUIREMENT, TO AUTHORIZE THE SECRETARY OF STATE TO AUTHENTICATE DOCUMENTS, AND TO GIVE RELIEF TO CORPORATIONS AND LIMITED LIABILITY COMPANIES THAT HAVE BEEN ADMINISTRATIVELY DISSOLVED OR MAY BE ADMINISTRATIVELY DISSOLVED BECAUSE OF FAILURE TO FILE A CORPORATE ANNUAL REPORT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 10A-2 reads as rewritten:

"§ 10A-2. Purposes.

This Chapter shall be construed and applied to advance its underlying purposes, which are:

- (1) To promote, serve, and protect the public interests.
- (2) To simplify, clarify, and modernize the law governing notaries.
- (3) To prevent fraud and forgery."

Section 2. G.S. 10A-3 reads as rewritten:

"§ 10A-3. Definitions.

The following definitions apply in this Chapter:

- (1) Acknowledgment. – A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily.
- (2) Commission. – The written authority to perform a notarial act.
- (2a) Director. – The Director of the Notary Section of the Department of the Secretary of State.
- (3) Notarial act, notary act, and notarization. – Any act that a notary is empowered to perform under G.S. 10A-9.
- (4) Notary public and notary. – A person commissioned to perform notarial acts under this Chapter.
- (5) Oath or affirmation. – A notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary, with reference made to a Supreme Being for an oath and with no reference made to a Supreme Being for an affirmation.
- (6) Official misconduct. – Either of the following:

- a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.
 - b. A notary's performance of a notarial act in a manner found by the Secretary ~~of State~~ to be negligent or against the public interest.
- (7) Personal knowledge of identity. – Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.
- (8) Satisfactory evidence of identity. – Identification of an individual based on either of the following:
- a. One current document issued by a federal or state government with the individual's photograph.
 - b. Identification by a credible person who is personally known to the notary and who has personal knowledge of the individual's identity.
- (8a) Secretary. – The Secretary of State.
- (9) Verification or proof. – A notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has, in the notary's presence, voluntarily signed a document and taken an oath or affirmation concerning the document."

Section 3. G.S. 10A-4 reads as rewritten:

"§ 10A-4. Commissioning.

(a) Except as provided in subsection (c) of this section, the Secretary ~~of State~~ shall commission as a notary any qualified person who submits an application in accordance with this Chapter.

(b) A person qualified for a notarial commission shall meet all of the following requirements:

- (1) Be at least 18 years of age.
- (2) Reside or work in this State.
- (3) Satisfactorily complete a course of study that is approved by the Secretary ~~of State~~ and consists of not less than three hours nor more than six hours of classroom instruction provided by community colleges throughout the State, unless the person is a licensed member of the Bar of this State.
- (4) Purchase and keep as a reference a manual approved by the Secretary ~~of State~~ that describes the duties, authority, and ethical responsibilities of notaries public.
- (5) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary ~~of State~~ and be available at the register of deeds office in each county. Every application shall bear the signature of the applicant

written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. The applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.

(6) Pay a nonrefundable fee of twenty-five dollars (\$25.00).

(c) ~~The Secretary of State—may deny an application for commission or recommission as a notary if any of the following applies to the applicant:~~

(1) The applicant has been convicted of a crime involving dishonesty or moral turpitude.

(1a) The applicant has been convicted of a felony and the applicant's rights have not been restored.

(2) The applicant has had a notarial commission or professional license revoked, suspended, or restricted by this or any other state.

(3) The applicant has engaged in official misconduct, whether or not disciplinary action resulted.

~~(d) The course of study required by subsection (b) of this section shall be taught by an instructor certified in accordance with rules adopted by the Secretary of State. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:~~

~~(1) Complete and pass a six-hour instructor's course taught by the notaries public director or other person approved by the Secretary of State.~~

~~(2) Have six months of active experience as a notary public.~~

~~(3) Maintain a current commission as a notary public.~~

~~(4) Purchase the current notary public guidebook.~~

~~Registers of deeds, assistant and deputy registers of deeds, clerks of court, and assistant and deputy clerks of court are exempt from the requirements set forth in subdivisions (2) and (3) of this subsection while they remain actively employed in the capacities named.~~

~~(e) Certification to teach a course of study shall be effective for two years and may be renewed by passing a recertification course taught by the notaries public director or other person approved by the Secretary of State."~~

Section 4. G.S. 10A-7 reads as rewritten:

"§ 10A-7. ~~Fee with commission application.~~ Instructor's certification.

~~Every applicant for a notarial commission shall pay to this State a nonrefundable fee of twenty five dollars (\$25.00). Every applicant for recommissioning shall pay to this State a nonrefundable fee of twenty five dollars (\$25.00).~~

(a) The course of study required by G.S. 10A-4(b) shall be taught by an instructor certified in accordance with rules adopted by the Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass a six-hour instructor's course taught by the Director or other person approved by the Secretary.

(2) Have six months of active experience as a notary public.

- (3) Maintain a current commission as a notary public.
- (4) Purchase the current notary public guidebook.
- (5) Pay a nonrefundable fee of fifty dollars (\$50.00).

(b) Certification to teach a course of study for notaries public shall be effective for two years. A certification may be renewed by passing a recertification course taught by the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars (\$50.00).

(c) The following people may be certified to teach a course of study for notaries public without meeting the requirements of subdivisions (a)(2), (a)(3), and (a)(5) of this section, and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:

- (1) Registers of deeds.
- (2) Clerks of court.
- (3) The Director."

Section 5. G.S. 10A-9(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

- (1) The signature of the notary, exactly as shown on the notary's commission.
- (2) The readable appearance of the notary's name, either from the notary's signature or ~~otherwise~~ from the notary's typed, printed, or embossed name near the signature.
- (3) The clear and legible appearance of the notary's stamp or seal.
- (4) A statement of the date the notary's commission expires."

Section 6. G.S. 10A-10 reads as rewritten:

"§ 10A-10. Fees of notaries.

The maximum fees that may be charged by a notary for notarial acts are as follows:

- (1) For acknowledgments, ~~two dollars (\$2.00)~~ three dollars (\$3.00) per signature.
- (2) For oaths or affirmations without a verification or proof, ~~two dollars (\$2.00)~~ three dollars (\$3.00) per person.
- (3) For verifications or proofs, ~~two dollars (\$2.00)~~ three dollars (\$3.00) per signature."

Section 7. G.S. 10A-11 reads as rewritten:

"§ 10A-11. Notarial stamp or seal.

A notary public shall provide and keep an official stamp or seal. The stamp or seal shall clearly show and legibly reproduce under photographic methods, when embossed, stamped, impressed, or affixed to a document, the name of the notary exactly as it appears on the commission, the name of the county in which appointed and qualified, the words 'North Carolina' or an abbreviation thereof, and the words 'Notary Public'. The official stamp or seal, as it appears on a document, may contain a permanently imprinted or a handwritten expiration date of the notary's commission. A notary public shall replace a seal that has become so worn that it can no longer clearly show or legibly reproduce under photographic methods the information required by this section. The stamp or seal is the property and responsibility of the notary whose name appears on it.

However, upon revocation, the notary shall immediately surrender the stamp or seal to the ~~Secretary of State~~. Secretary."

Section 8. G.S. 10A-14 reads as rewritten:

"§ 10A-14. ~~Clerks are notaries ex officio and may certify own seals.~~ Notaries ex officio.

(a) ~~The clerks of the superior court and their assistants and deputies may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts only under the seals of their respective courts. Assistant and deputy clerks of superior court, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective courts:~~

- (1) Oaths and affirmations.
- (2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10A-4(b), assistant and deputy clerks of superior court may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective courts. A course of study attended only by assistant and deputy clerks of superior court may be taught at any mutually convenient location agreed to by the Secretary and the Administrative Officer of the Courts.

(b) Registers of deeds may act as notaries public in their several counties by virtue of their offices as registers of deeds and may certify their notarial acts only under the seals of their respective offices. Assistant and deputy registers of deeds, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective offices:

- (1) Oaths and affirmations.
- (2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10A-4(b), assistant and deputy registers of deeds may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective offices. A course of study attended only by assistant and deputy registers of deeds may be taught at any mutually convenient location agreed to by the Secretary and the North Carolina Association of Registers of Deeds.

(c) The Director may act as a notary public by virtue of the Director's employment in the Department of the Secretary of State and may certify a notarial act performed in that capacity under the seal of the Secretary of State.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10A-10. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed.

(e) Nothing in this section shall authorize a person to act as a notary public other than in the performance of the official duties of the person's office unless the person complies fully with the requirements of G.S. 10A-4."

Section 9. G.S. 10A-15 is repealed.

Section 10. G.S. 10A-16 reads as rewritten:

"§ 10A-16. Acts of notaries public in certain instances validated.

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act.

(b) All documents bearing a notarial seal in which the date of the expiration of the notary's commission is ~~erroneously~~—stated, whether correctly or erroneously, or having a notarial seal that does not contain a readable impression of the notary's name, or contains an incorrect spelling of the notary's name, or contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words 'North Carolina' or the abbreviation 'N. C.', or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for ~~Georgia~~, another state are validated and given the same legal effect as if the errors had not occurred.

(c) All deeds of trust in which the notary was named in the document as a trustee only are validated.

(d) This section applies to notarial acts performed before ~~June 1, 1997~~. October 1, 1998."

Section 11. G.S. 47-30(m) reads as rewritten:

"(m) ~~Except as provided in subsection (n), any map submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall be prepared by a registered land surveyor. Maps attached to deeds or other instruments and submitted for recording in that form must be no larger than 8 1/2 inches by 14 inches and comply with either this subsection or subsection (n) of this section. Such a map shall either (i) have an original personal signature and original seal as approved by the North Carolina State Board of Registration for Professional Engineers and Land Surveyors~~ the original signature of a registered land surveyor and the surveyor's seal as approved by the State Board of Registration for Professional Engineers and Land Surveyors, or (ii) be a copy of a map, already on file in the public ~~record, records~~, that is certified by the custodian of the public record to be a true and accurate copy of a map bearing an original personal signature and original seal. The presence of the original personal signature and seal shall constitute a certification that the map conforms to the standards of practice for land surveying in North Carolina, as defined in the rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors."

Section 12. G.S. 47-30(n) reads as rewritten:

"(n) A map that does not meet the requirements of subsection (m) of this section may be attached to a deed or other instrument submitted for ~~inclusion in the public record only for illustrative purposes and only if the map is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND NO RELIANCE MAY BE PLACED IN ITS ACCURACY."~~ recording in that form for illustrative purposes only if it meets both of the following requirements:

(1) It is no larger than 8 1/2 inches by 14 inches.

- (2) It is conspicuously labelled, "THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS."

Section 13. G.S. 47-30.2(c) reads as rewritten:

"(c) A map or plat must be presented to the Review Officer unless one or more of the following conditions are applicable:

- (1) the The certificate required by G.S. 47-30(f)(11) shows that the map or plat is a survey within the meaning of G.S. 47-30(f)(11)b. or c.
(2) The map or plat is exempt from the requirements of G.S. 47-30 pursuant to G.S. 47-30(j) or (l).
(3) The map is an attachment that is being recorded pursuant to G.S. 47-30(n)."

Section 14. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 34.

"Certificates of Authentication.

"§ 66-270. Authority of Secretary of State to authenticate documents.

The Secretary, or the Secretary's designee, may sign and issue a certificate of authentication for a document that has been executed or issued in this State so that it can be recognized in a foreign jurisdiction. The certificate may be issued under the seal of the Department of the Secretary of State or under the Great Seal of the State of North Carolina. The Secretary may adopt rules to implement this Article in accordance with Chapter 150B of the General Statutes.

"§ 66-271. Definitions.

The following definitions apply in this Article:

- (1) Authentication. – Certification of the genuineness of an official's signature, seal, or position within the State of North Carolina so the document can be recognized in a foreign jurisdiction.
(2) Department. – The Department of the Secretary of State.
(3) Foreign jurisdiction. – A jurisdiction outside the State of North Carolina.
(4) Foreign official. – An individual authorized by a foreign jurisdiction to attest to the genuineness of a document or to the position of an individual within that foreign jurisdiction.
(5) Notary public. – Defined in G.S. 10A-3.
(6) Official. – An individual who is a notary public, an individual who is elected or appointed to hold an office in State government, or an individual who is elected or appointed to hold an office in a local governmental unit of this State.
(7) Secretary. – The Secretary of State.
(8) Specimen. – A record of a person's signature, seal, or position as an official within the State maintained in the Department.

"§ 66-272. Certificate of authentication.

To authenticate a document, the Secretary must compare the official's seal and signature on the document with a specimen of the official's seal and signature on file in the Department. If no specimen is on file in the Department, the Secretary must require that the document be authenticated by an official for whom the Department does have a specimen. The Secretary must also verify the official's authority to perform a particular act when the law of a foreign jurisdiction requires it to be verified before it will recognize the authenticity of the document. When the Secretary is able to authenticate the official's seal, signature, position, and authority, the Secretary shall sign and issue a certificate of authentication. The certificate of authentication may be placed on the document itself, if space is available, or by appending it to the document on a separate sheet.

"§ 66-273. Prerequisites for authentication.

All of the following conditions must be met before a document can be authenticated:

- (1) All seals and signatures must be originals.
- (2) All dates must follow in chronological order on all certifications.
- (3) All acknowledgments to be authenticated by the Secretary shall be in English or accompanied by a certified or notarized English translation.
- (4) Whenever a copy is used, it must include a statement that it is a true and accurate copy.

"§ 66-274. Limitations on authentication.

(a) The Secretary shall not issue a certificate of authentication for a document if the Secretary has cause to believe that the certificate is desired for an unlawful or improper purpose. The Secretary may examine not only the document for which a certificate is requested, but also any documents to which the previous seals or other certifications may have been affixed by other authorities. The Secretary may request any additional information that may be necessary to establish that the requested certificate will serve the interests of justice and is not contrary to public policy, including a certified or notarized English translation of document text in a foreign language.

(b) The Secretary shall not issue a certificate of authentication for any one or more of the following:

- (1) A seal or signature that cannot be authenticated by either the Secretary or another official.
- (2) A seal or signature of a foreign official.
- (3) A facsimile, photostat, photographic, or other reproduction of a signature or seal.

(c) The Secretary may not include within the certificate of authentication any statement that is not within the Secretary's power or knowledge to authenticate. The Secretary may not certify that a document has been executed or certified in accordance with the law of any particular jurisdiction or that a document is a valid document in a particular jurisdiction.

"§ 66-275. Other methods of authentication not precluded.

Nothing in this Article shall preclude or invalidate any other method that is provided by statute or common law for certifying or exemplifying the authenticity of a document

or preclude the recognition in a foreign jurisdiction of a document whose authenticity is so certified or exemplified."

Section 15. Part 2 of Article 16 of Chapter 55 of the General Statutes is amended by adding a new section to read:

"§ 55-16-22.1. Curative provision.

(a) A corporation that is delinquent in filing an annual report for any one or more of the years 1991 through 1997 may satisfy the annual report requirement and avoid administrative dissolution or revocation of its certificate of authority by completing all of the following on or before November 30, 1999:

- (1) File a current annual report.
- (2) Pay the current annual report filing fee provided in G.S. 55-1-22.
- (3) Pay the annual report filing fee for each delinquent annual report.

(b) A corporation that has been issued a certificate of administrative dissolution under G.S. 55-14-21 or a certificate of revocation of authority under G.S. 55-15-31 for failure to file an annual report for any one or more of the years 1991 through 1997 may be granted a certificate of reinstatement or a new certificate of authority by completing all of the following on or before November 30, 1999:

- (1) File a current annual report.
- (2) Pay the current annual report filing fee provided in G.S. 55-1-22.
- (3) Pay the annual report filing fee for each delinquent annual report.
- (4) File an application for reinstatement or an application for a new certificate of authority, whichever is appropriate. The filing fee is waived.
- (5) Comply with G.S. 55-4-01.

The certificate of reinstatement and the certificate of authority, when it is effective, relates back to and takes effect as of the date of the administrative dissolution or of the certificate of revocation of authority. The corporation may resume carrying on its business as if the administrative dissolution or certificate of revocation of authority had never occurred, subject to the rights of any persons who are or have been prejudiced by such reinstatement.

(c) The relief provided by this section shall not be available to a corporation that receives a certificate of dissolution or a certificate of authority revoked for a reason other than the failure to file an annual report under G.S. 55-14-20 or G.S. 55-15-30."

Section 16. Article 6 of Chapter 57C of the General Statutes is amended by adding a new section to read:

"§ 57C-6-03.1. Curative provision.

(a) A limited liability company that is delinquent in filing an annual report for any one or more of the years 1993 through 1997 may satisfy the annual report requirement and avoid administrative dissolution by completing all of the following on or before November 30, 1999:

- (1) File a current annual report.
- (2) Pay the annual report filing fee provided in G.S. 57C-1-22.

(b) A limited liability company that has been issued a certificate of administrative dissolution under G.S. 57C-6-03 for failure to file an annual report for

any one or more of the years 1993 through 1997 may be granted a certificate of reinstatement by completing all of the following on or before November 30, 1999:

- (1) File a current annual report.
- (2) Pay the annual report filing fee provided for in G.S. 57C-1-22.
- (3) File an application for reinstatement. The filing fee is waived.
- (4) Comply with G.S. 57C-2-30.

The certificate of reinstatement, when it is effective, relates back to and takes effect as of the date of the administrative dissolution. The limited liability company may resume carrying on its business as if the administrative dissolution of authority had never occurred, subject to the rights of any persons who are or have been prejudiced by the reinstatement.

(c) The relief provided by this section shall not be available to a limited liability company that receives a certificate of dissolution for a reason other than the failure to file an annual report under G.S. 57C-6-03."

Section 17. Sections 3 and 4 of this act become effective January 1, 1999. Sections 11 and 12 of this act become effective December 1, 1998. The remainder of this act becomes effective when it becomes law. Sections 5, 7, and 10 of this act apply retroactively to October 1, 1998. Sections 15 and 16 of this act are repealed December 1, 1999.

In the General Assembly read three times and ratified this the 28th day of October, 1998.

s/ Dennis A. Wicker
President of the Senate

s/ Harold J. Brubaker
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 4:35 p.m. this 6th day of November, 1998