Chapter 47.

Probate and Registration.

Article 1.

Probate.

§ 47-1. Officials of State authorized to take probate.

The execution of all deeds of conveyance, contracts to buy, sell or convey lands, mortgages, deeds of trust, instruments modifying or extending the terms of mortgages or deeds of trust, assignments, powers of attorney, covenants to stand seized to the use of another, leases for more than three years, releases, affidavits concerning land titles or family history, any instruments pertaining to real property, and any and all instruments and writings of whatever nature and kind which are required or allowed by law to be registered in the office of the register of deeds or which may hereafter be required or allowed by law to be so registered, may be proved or acknowledged before any one of the following officials of this State: The justices, judges, magistrates, clerks, assistant clerks, and deputy clerks of the General Court of Justice, and notaries public. (Code, s. 1246; 1895, c. 161, ss. 1, 3; 1897, c. 87; 1899, c. 235; Rev., s. 989; C.S., s. 3293; 1951, c. 772; 1969, c. 44, s. 52; 1971, c. 1185, s. 9.)

§ 47-2. Officials of the United States, foreign countries, and sister states.

The execution of all such instruments and writings as are permitted or required by law to be registered may be proved or acknowledged before any one of the following officials of the United States, of the District of Columbia, of the several states and territories of the United States, of countries under the dominion of the United States and of foreign countries: Any judge of a court of record, any clerk of a court of record, any notary public, any commissioner of deeds, any commissioner of oaths, any mayor or chief magistrate of an incorporated town or city, any ambassador, minister, consul, vice-consul, consul general, vice-consul general, associate consul, or any other person authorized by federal law to acknowledge documents as consular officers, or commercial agent of the United States, any justice of the peace of any state or territory of the United States, any officer of the United States Army or Air Force or United States Marine Corps having the rank of warrant officer or higher, any officer of the United States Navy or Coast Guard having the rank of warrant officer, or higher, or any officer of the United States Merchant Marine having the rank of warrant officer, or higher. No official seal shall be required of a military or merchant marine officer, but the officer shall sign the officer's name, designate the officer's rank, and give the name of the officer's ship or military organization and the date, and for the purpose of certifying the acknowledgment, the officer shall use a form in substance as follows:

On this the ____ day of ____, ____, before me ____, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be accompanying or serving in or with the Armed Forces of the United States (or to be the spouse of a person accompanying or serving in or with the Armed Forces of the United States) and to be the person whose name is subscribed to the within instruments and acknowledged that ____ the person ____ executed the same for the purposes therein contained. And the undersigned does further certify that the undersigned is at the date of this certificate a commissioned officer of the rank stated below and is in the active service of the Armed Forces of the United States.

_____

Signature of Officer

_____
Rank of Officer and command to which attached.

If the proof or acknowledgment of the execution of an instrument is had before a justice of the peace of any state of the United States other than this State or of any territory of the United States, the certificate of the justice of the peace shall be accompanied by a certificate of the clerk of some court of record of the county in which the justice of the peace resides, which certificate of the clerk shall be under the clerk's hand and official seal, to the effect that the justice of the peace was at the time the certificate of the justice bears date an acting justice of the peace of the county and state or territory and that the genuine signature of the justice of the peace is set to the certificate. (1899, c. 235, s. 5; 1905, c. 451; Rev., s. 990; 1913, c. 39, s. 1; Ex. Sess. 1913, c. 72, s. 1; C.S., s. 3294; 1943, c. 159, s. 1; c. 471, s. 1; 1945, c. 6, s. 1; 1955, c. 658, s. 1; 1957, c. 1084, s. 1; 1967, c. 949; 1999-456, s. 59; 2004-199, s. 16; 2011-183, s. 30.)

§ 47-2.1. Validation of instruments proved before officers of certain ranks.

Any instrument or writing, required by law to be proved or acknowledged before an officer, which prior to the ratification of this section was proved or acknowledged before an officer of the United States Army or Marine Corps having the rank of second lieutenant or higher, or any officer of the United States Navy, or United States Coast Guard, or United States Merchant Marine, having the rank of ensign or higher, is hereby validated and declared sufficient for all purposes. (1945, c. 6, s. 2; 2011-183, s. 31.)

§ 47-2.2. Notary public of sister state; lack of seal or stamp or expiration date of commission.

(a) If the proof or acknowledgment of any instrument is had before a notary public of any state other than North Carolina and the instrument does not (i) show the seal or stamp of the notary public, (ii) provide evidence pursuant to subsection (b) of this section that a seal or stamp is not required and the expiration date of the commission of the notary public, or (iii) state, as part of the proof or acknowledgement or as part of the notary's seal, that the notary's commission does not expire or is a lifetime appointment, then the certificate of proof or acknowledgment made by the notary public shall be accompanied by the certificate of the county official before whom the notary qualifies for office or of a state officer authorized to issue certificates regarding notary commission status, stating that the notary public was at the time the certificate bears date an acting notary public of that state, and that the notary's genuine signature is set to the certificate. The certificate of the official shall be under the official's hand and official seal.

(b) A proof or acknowledgement that does not require a seal or stamp of the notary to be effective in the jurisdiction issuing the notary's commission shall include either (i) a statement by the notary within the proof or acknowledgement area of the instrument that the notary is not required to utilize a seal or stamp or (ii) a reference that purports to be the statute of the commissioning state which provides that no seal or stamp is required together with a statement that the notary is not required to utilize a seal or stamp. The register of deeds may rely upon this statement and is not responsible for confirming its validity or the authority of the person making it. A register of deeds shall not refuse to accept a record for registration because a notarial seal or stamp is omitted from the proof or acknowledgement if this subsection has been complied with in the proof or acknowledgement. The acceptance of a record for registration under this subsection gives rise to a presumption that the seal or stamp was not required to be affixed by the notary. This presumption is rebuttable and applies to all instruments whenever recorded. However, a court order finding the lack of a valid seal does not affect the rights of a person that (i) records an interest in the

real property described in the instrument before the finding of a lack of a valid seal and (ii) would otherwise have an enforceable interest in the real property. (1973, c. 1016; 2013-204, s. 1.12; 2021-91, s. 6.)

§ 47-3: Repealed by Session Laws 1987, c. 620, s. 3.

§ 47-4. Repealed by Session Laws 1971, c. 1185, s. 10.

§ 47-5. When seal of officer necessary to probate.

When proof or acknowledgment of the execution of any instrument by any maker of such instrument, whether a person or corporation, is had before any official authorized by law to take such proof and acknowledgment, and such official has an official seal, he shall set his official seal to his certificate. If the official before whom the instrument is proved or acknowledged has no official seal he shall certify under his hand, and his private seal shall not be essential. When the instrument is proved or acknowledged before the register of deeds of the county in which the instrument is to be registered, the official seal shall not be necessary. (1899, c. 235, s. 8; Rev., s. 993; C.S., s. 3297; 1969, c. 664, s. 3; 1977, c. 375, s. 12.)

§ 47-6. Officials may act although land or maker's residence elsewhere.

The execution of all instruments required or permitted by law to be registered may be proved or acknowledged before any of the officials authorized by law to take probates, regardless of the county in this State in which the subject matter of the instrument may be situated and regardless of the domicile, residence or citizenship of the person who executes such instrument, or of the domicile, residence or citizenship of the person to whom or for whose benefit such instrument may be made. (1899, c. 235, s. 13; Rev., s. 994; C.S., s. 3298.)

§ 47-7: Repealed by Session Laws 1987, c. 620, s. 3.

§ 47-8: Repealed by Session Laws 1991, c. 543, s. 1.

§ 47-8.1. Certain documents verified by attorneys validated.

Final judgments otherwise proper, entered in actions or proceedings in which the complaints or any other documents were verified in violation of G.S. 47-8 prior to its repeal shall not be void or voidable. (1991, c. 543, s. 2.)

§ 47-9. Probates before stockholders in building and loan associations.

No acknowledgment or proof of execution of any mortgage or deed of trust executed to secure the payment of any indebtedness to any building and loan association shall hereafter be held invalid by reason of the fact that the officer taking such acknowledgment or proof is a stockholder in said building and loan association. This section does not authorize any officer or director of a building and loan association to take acknowledgments or proofs. The provisions of this section shall apply to federal savings and loan associations having their principal offices in this State. Acknowledgments and proofs of execution, including private examinations of any married woman taken before March 20, 1939, by an officer who is or was a stockholder in any federal savings and loan association, are hereby validated. (1913, c. 110, ss. 1, 3; C.S., s. 3301; 1939, c. 136; 1977, c. 375, s. 12.)

§ 47-10. Probate before stockholders or directors in banking corporations.

No acknowledgment or proof of execution, including privy examination of married women, of any mortgage, or deed of trust executed to secure the payment of any indebtedness to any banking corporation, taken prior to the first day of January, 1929, shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof or privy examination, was a stockholder or director in such banking corporation. (1929, c. 302, s. 1.)

§ 47-11. Subpoenas to maker and subscribing witnesses.

The grantee or other party to an instrument required or allowed by law to be registered may at his own expense obtain from the clerk of the superior court of the county in which the instrument is required to be registered a subpoena for any or all of the makers of or subscribing witnesses to such instrument, commanding such maker or subscribing witness to appear before such clerk at his office at a certain time to give evidence concerning the execution of the instrument. The subpoena shall be directed to the sheriff of the county in which the person upon whom it is to be served resides. If any person refuses to obey such subpoena he is liable to a fine of forty dollars ($40.00) or to be attached for contempt by the clerk, upon its being made to appear to the satisfaction of the clerk that such disobedience was intentional, under the same rules of law as are prescribed in the cases of other defaulting witnesses. (Code, s. 1268; 1897, c. 28; 1899, c. 235, s. 16; Rev., s. 996; C.S., s. 3302.)

§ 47-12. Proof of attested instrument by subscribing witness.

Except as provided by G.S. 47-12.2, the execution of any instrument required or permitted by law to be registered, which has been witnessed by one or more subscribing witnesses, may be proved for registration before any official authorized by law to take proof of such an instrument, by a statement under oath of any such subscribing witness that the maker either signed the instrument in his presence or acknowledged to him the execution thereof. Nothing in this section in anywise affects any of the requirements set out in G.S. 52-10 or 52-10.1. (1899, c. 235, s. 12; Rev., s. 997; C.S., s. 3303; 1935, c. 168; 1937, c. 7; 1945, c. 73, s. 11; 1947, c. 991, s. 1; 1949, c. 815, ss. 1, 2; 1951, c. 379, s. 1; 1953, c. 1078, s. 1; 1977, c. 375, s. 12.)

§ 47-12.1. Proof of attested instrument by proof of handwriting.

(a) If all subscribing witnesses have died or have left the State or have become of unsound mind or otherwise incompetent or unavailable, the execution of such instrument, except as provided by G.S. 47-12.2, may be proved for registration, before any official authorized by law to take proof of such an instrument, by a statement under oath that the affiant knows the handwriting of the maker and that the purported signature of the maker is in the handwriting of the maker, or by a statement under oath that the affiant knows the handwriting of a particular subscribing witness and that the purported signature of such subscribing witness is in the handwriting of such subscribing witness.

(b) Nothing in this section in anywise affects any of the requirements set out in G.S. 52-10 or 52-10.1. (1899, c. 235, s. 12; Rev., s. 997; C.S., s. 3303; 1935, c. 168; 1937, c. 7; 1945, c. 73, s. 11; 1947, c. 991, s. 1; 1949, c. 815, ss. 1, 2; 1951, c. 379, s. 1; 1977, c. 375, s. 12.)

§ 47-12.2. Subscribing witness incompetent when grantee or beneficiary.

The execution of an instrument may not be proved for registration by a subscribing witness who, at the time of the execution of the instrument by the subscribing witness, is the grantee or beneficiary therein nor by proof of his signature as such subscribing witness. Nothing in this section invalidates the registration of any instrument registered prior to April 9, 1935. (1899, c. 235, s. 12; Rev., s. 997; C.S., s. 3303; 1935, c. 168; 1937, c. 7; 1945, c. 73, s. 11; 1947, c. 991, s. 1; 1949, c. 815, ss. 1, 2; 1951, c. 379, s. 1; 2013-204, s. 1.13.)

§ 47-13. Proof of unattested writing.

If an instrument required or permitted by law to be registered has no subscribing witness, the execution of the same may be proven before any official authorized to take the proof and acknowledgment of such instrument by proof of the handwriting of the maker and this shall likewise apply to proof of execution of instruments by married persons. (1899, c. 235, s. 11; Rev., s. 998; C.S., s. 3304; 1945, c. 73, s. 12; 1977, c. 375, s. 12.)

§ 47-13.1. Certificate of officer taking proof of instrument.

The person taking proof of an instrument pursuant to G.S. 47-12, 47-12.1 or 47-13 shall execute a certificate on or attached to the instrument being proved, certifying to the fact of proof substantially as provided in the certificate forms set out in G.S. 47-43.2, 47-43.3 and 47-43.4, and such certificate shall be prima facie evidence of the facts therein certified. (1951, c. 379, s. 2; 1953, c. 1078, s. 2.)

§ 47-14. Register of deeds to verify the presence of proof or acknowledgement and register instruments and electronic documents; order by judge; instruments to which register of deeds is a party.

(a) Verification of Instruments. – The register of deeds shall not accept for registration any instrument that requires proof or acknowledgement unless the execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the proof or acknowledgement includes the officer's signature, commission expiration date, and official seal, if required. The register of deeds shall accept an instrument for registration that does not require proof or acknowledgement if the instrument otherwise satisfies the requirements of G.S. 161-14. Any instrument previously recorded or any certified copy of any instrument previously recorded may be rerecorded provided the instrument is conspicuously marked on the first page as a rerecording. The register of deeds may rely on the marking and the appearance of the original recording office's recording information to determine that an instrument is being presented as it was previously recorded. The register of deeds is not required to further verify the proof or acknowledgement of or determine whether any changes or alterations have been made after the original recording to an instrument presented for rerecording. The register of deeds is not required to verify or make inquiry concerning any of the following:

(1) The legal sufficiency of any proof or acknowledgement.
(2) The authority of any officer who took a proof or acknowledgement.
(3) The legal sufficiency of any document presented for registration.

(a1) Verification of Electronic Documents. – The requirements of subsection (a) of this section for verification of the execution of an instrument are satisfied with respect to an electronic document if all of the conditions in this subsection are met. For purposes of this subsection, the term "electronic document" is as defined in G.S. 47-16.2(3). The conditions are:

(1) The register of deeds has authorized the submitter to electronically register the electronic document.
(2) The document is submitted by a United States federal or state governmental unit or instrumentality or a trusted submitter. For purposes of this subsection, "a trusted submitter" means a person or entity that has entered into a memorandum of understanding regarding electronic recording with the register of deeds in the county in which the electronic document is to be submitted.
(3) The execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the proof or acknowledgment includes the officer's signature, commission expiration date, and official seal, if required, based on the appearance of these elements on the digitized image of the document as it will appear on the public record.
(4) Evidence of other required governmental certification or annotation appears on the digitized image of the document as it will appear on the public record.
(5) With respect to a document submitted by a trusted submitter, the digitized image of the document as it will appear on the public record contains the submitter's name in the following completed statement on the first page of the document image: "Submitted electronically by ___ (submitter's name) in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the ___ (insert county name) County Register of Deeds."
(6) Except as otherwise provided in this subsection, the digitized image of the electronic document conforms to all other applicable laws and rules that prescribe recordation.

(a2) Verification of Officer's Signature. – Submission to a register of deeds of an electronic document requiring proof or acknowledgement is a representation by the submitter that, prior to submission, the submitter verified the officer's signature required under subdivision (a1)(3) of this section to be one of the types of signatures listed in this subsection. The register of deeds may rely on this representation for purposes of determining compliance with the signature requirements of this section. The electronic registration of a document with a register of deeds prior to the effective date of this statute is not invalid based on whether the register verified the officer's signature in accordance with this subsection. The types of signatures are:

(1) A signature in ink by hand.
(2) An electronic signature as defined in G.S. 10B-101(7).

(a3) Recordation of Paper Copy of Electronic Document. – A register of deeds shall record a paper copy of an electronic document as defined in G.S. 47-16.2(3) that is otherwise eligible under State law to be recorded in the real property records if all of the following conditions have been met:

(1) One of the following applies to the county register of deeds:
a. The register has no electronic recording system.
b. The register's recording system does not accept the type of document being submitted.
c. The register's electronic recording system is not operational in the ordinary course of business at the time of submission.

(2) The execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the proof or acknowledgment includes the officer's signature, commission expiration date, and official seal, if required, based on the appearance of these elements on the document as it will appear on the public record.

(3) The paper copy of the instrument presented for recording has a certificate upon or attached to it, signed under oath or by affirmation, attesting to all of the following:

a. The title of the instrument, the date of the instrument, the number of pages in the instrument, and that the paper copy is a true and correct copy of an electronic record printed by, or under the supervision of, the attestor.

b. The electronic document was proved or acknowledged with an officer's signature that meets the requirements of subsection (a2) of this section.

c. No security features present on the electronic document indicated any changes or errors in an electronic signature or other information in the electronic document after the affixation of the electronic notarial certificate when the paper copy was printed by, or under the supervision of, the attestor.

d. The attestor has made no changes or modifications to the electronic document since the affixation of the electronic notarial certificate.

e. The office of the register of deeds shall be entitled to rely on this certification and the attestor's capacity and due authority to give it.

(4) The copy of the document bears evidence of all other required governmental certification or annotation.

(5) Except as otherwise provided in this subsection, the document conforms to all other applicable laws and rules that prescribe recordation.

(b) Order by Judge. – If a register of deeds denies registration pursuant to subsection (a), the person offering the instrument for registration may apply to any judge of the district court in the district, including the county in which the instrument is to be registered, for an order for registration. Upon finding all of the requirements in this subsection, the judge shall order the instrument to be registered, together with the certificates, and the register of deeds shall register them accordingly. The requirements are:

(1) If the instrument requires proof or acknowledgement, that the signature of one or more signers has been proved or acknowledged before an officer authorized to take proofs and acknowledgements.

(2) That the proof or acknowledgement includes the officer's signature and commission expiration date and official seal, if required.

(c) Repealed by Session Laws 2008-194, s. 7(a), effective October 1, 2008.

(d) Scope. – Registration of an instrument pursuant to this section is not effective with regard to parties who have not executed the instrument or whose execution thereof has not been duly proved or acknowledged.

(e) Register of Deeds as Party. – Any instrument required or permitted by law to be registered in which the register of deeds of the county of registration is a party may be proved or acknowledged before any magistrate or any notary public.

(f) Presumption of Notarial Seal. – The acceptance of a record for registration by the register of deeds shall give rise to a presumption that, at the time the record was presented for registration, a clear and legible image of the notary's official seal was affixed or embossed on the record near the notary's official signature. This presumption applies regardless of whether the image is legible or photographically reproduced in the records maintained by the register of deeds and applies to all instruments filed in the records maintained by the register of deeds regardless of when the instrument was presented for registration. A register of deeds may not refuse to accept a record for registration because a notarial seal does not satisfy the requirements of G.S. 10B-37. The presumption under this subsection is rebuttable and shall apply to all instruments whenever recorded. However, a court order finding the lack of a valid seal shall not affect the rights of a person who (i) records an interest in the real property described in the instrument before the finding of a lack of a valid seal and (ii) would otherwise have an enforceable interest in the real property. (1899, c. 235, s. 7; 1905, c. 414; Rev., s. 999; C.S., s. 3305; 1921, c. 91; 1939, c. 210, s. 2; 1967, c. 639, s. 1; 1969, c. 664, s. 2; 1973, c. 60; 2005-123, s. 2; 2006-59, s. 26; 2006-259, s. 52(a)-(b); 2006-264, s. 40(c); 2008-194, s. 7(a); 2012-18, s. 1.4; 2013-204, s. 1.14; 2022-54, s. 4(a).)

§ 47-14.1. Repeal of laws requiring private examination of married women.

All deeds, contracts, conveyances, leaseholds or other instruments executed from and after February 7, 1945, shall be valid for all purposes without the separate, privy, or private examination of married woman where she is a party to or a grantor in such deed, contract, conveyance, leasehold or other instrument, and it shall not be necessary nor required that the separate or privy examination of such married woman be taken by the certifying officer. From and after February 7, 1945, all laws and clauses of laws contained in any section of the General Statutes requiring the privy or private examination of a married woman are hereby repealed. (1945, c. 73, s. 21; 1951, c. 893, s. 1.)

§ 47-15. Repealed by Session Laws 1985, c. 589, s. 26, effective January 1, 1986.

§ 47-16. Probate of corporate deeds, where corporation has ceased to exist.

It is competent for the clerk of the superior court in any county in this State, on proof before him upon the oath and examination of the subscribing witness to any contract or instrument required to be registered under the laws of this State, to adjudge and order that such contract or instrument be registered as by law provided, when such contract or instrument is signed by any corporation in its corporate name by its president, and when such corporation has been out of existence for more than 10 years when the said contract or instrument is offered for probate and registration, and when the grantee and those claiming under any such grantee have been in the uninterrupted possession of the property described in said contract or instrument since the date of its execution; and said contract or instrument so probated and registered shall be as effective to all intents and purposes as if signed, sealed, and acknowledged, or proven, as provided under the existing laws of this State. (1911, c. 44, s. 1; C.S., s. 3307.)