March 24, 2005

S 934. NOTARY PUBLIC ACT. *TO ADD CHAPTER 10B TO THE GENERAL STATUTES RELATING TO NOTARIES*. Replaces GS Chapter 10A (Notary Public Act) with a new GS Chapter 10B, effective December 1, 2005. Adds to Act's purposes: (1) fostering ethical conduct among notaries, (2) enhancing cross-border recognition of notary acts, and (3) integrating traditional paper and electronic notarial acts.

Revisions to Notary Act. New GS Chapter 10B, Article 1 adds new definitions, including "jurat," "notarial certificate," "signature," and "subscribing witness." Adds new requirements for becoming a notary, including being a US resident; speaking, reading, and writing English; and possessing a high school diploma or its equivalent. Adds to grounds under which a notary commission may be denied submission of incomplete application or an application containing a material misstatement or omission of fact, and a finding or admission of liability against an applicant in a civil lawsuit based on the applicant's deceit. Expands educational requirements for commission of non-attorneys to include six hours (now, between 3 and 6 hours) approved by the Secretary of State and taken within the 3 months preceding the application, adds minimum passing grade of 80% on written exam, requires that non-attorney notaries seeking recommissioning pass a written exam, and provides for a Notary Public Special Fund to develop and administer exams. Changes time period in which an appointee must appear before the register of deeds to take an oath from 90 days to 45 days. Requires that registers of deeds and clerks of superior court send the pages and documents contained in their "Records of Notaries Public" created prior to 1991 to the Secretary of State for permanent storage within six months of the effective date of this act.

Adds execution of jurats to list of permitted notarial acts [GS 10B-14(a)]. Adds conditions that disqualify a notary from performing a notarial act [GS 10B-14(c)], including absence and inadequate identification of principal, a principal's demeanor that causes the notary to have compelling doubt about whether the principal knows the consequences of the transaction, and appearance that the principal is not acting with free will. Adds new prohibition on conducting a notarial act for a spouse, domestic partner, or relative by blood within two degrees of the principal, unless the notary is an employee or a partner of a licensed North Carolina attorney. Provides procedure for properly acknowledging a person's mark [GS 10B-29] and for acknowledging an instrument for a person who is unable to sign or make a mark [GS 10B-14(e)]. Adds new GS 10B-16 and 10B-17 prohibiting certain kinds of execution and notarization, including executing documents that contain information known by the notary to be false, that are incomplete, or that are not in the English language, notarizing blank signature lines, and notarizing or authenticating photographs. Requires that notary's official signature be in ink, and not by facsimile or stamp. Increases maximum fee for notarial act from $3 to $5. Expands description and requirements for official seal used by notaries (GS 10B-23 and 10B-24). Provides form requirements for certain acknowledgements, including general acknowledgment, verification or proof of acknowledgement, and affirmation of a subscribing witness of an absent signer. Expands statutes that outline process for a notary's change of status with the Secretary of State, including resignation and change of name, address, or county. Generally time-frame requirements are increased from 30 days to 45 days.

Authorization of Electronic Notarization. New GS Chapter 10B, Article 2, authorizes and creates standards for electronic notary (e-notary) acts. Outlines qualifications for a person to be an electronic notary, which include the basic requirements for being a notary, plus taking a course of at least 3 hours of instruction in electronic notarial acts. Establishes registration process for e-notaries and sets fees, including a maximum fee that an e-notary can charge of $10. Also outlines requirements for electronic document components, e-notary electronic signature (Secretary of State to establish standards via rules), e-notary seal, and an e-journal of electronically filed notarial acts to be maintained by each e-notary. E-journal is to contain date and time of each e-notarial act, names of each principal, evidence of identify of principles, county of notarization, and type of e-signature used by principal. Outlines how e-journal must be protected and how it may be accessed. Provides process for issuing certificate of authority for an e-notarial act. Makes it a Class G felony to wrongfully manufacture, distribute, or possess hardware that permits a person to act as an e-notary without being commissioned and registered. Makes it a Class I felony to wrongfully obtain, conceal, damage, or destroy hardware, media, or software that enables an e-notary to affix an official e-signature.

Intro. by Hartsell.
Ref. to Judiciary II GS 10A, 10B

May 12, 2005

S 934. NOTARY PUBLIC ACT. Intro. 3/24/05. Senate committee substitute makes the following changes to 1st edition.

Revisions to Notary Public Act. Modifies proposed Article 1 of GS Chapter 10B as follows. Provides that licensed members of the NC Bar are not required to satisfy education requirements, that no notarial commissions are effective prior to the administration of the oath of office, and that notarial acts performed before the oath is administered are invalid. Requires that NC registers of deeds submit copies of pre-1991 Records of Notaries Public for archiving within 24 (was, 6) months of the act's effective date and that copies be reproduced under standards established by the Dep't of the Secretary of State, which must pay the expense of shipment or transfer of the records. Enacts new GS Chapter 10B, Article 3, to establish the Notary Public Special Fund to be used for administration of Chapter and requires that instructor certification fee and electronic notary registration and reregistration fees be deposited in Fund. Amends GS 10B-14(c) to provide that a notary will also be disqualified from performing notarial acts if a subscribing witness does not satisfy requirements of subsection. Deletes prohibition against conducting a notarial act for a spouse, domestic partner, or relative. Requires that the notary store the notarial seal in a secure location that is accessible only to the notary and that a circular seal be at least one and a half inches in diameter. Requires that the Secretary of State destroy any notary seal received after a notary commission is resigned or revoked. Provides that a notary will be guilty of a Class I felony if notary takes an acknowledgment or verification or proof or jurat without the principal's appearance only if notary performed act with an intent to commit fraud. Validates document with a notarial seal even if document does not bear the name of the notary exactly as it appears on the commission.

Revisions to Electronic Notary Act. Modifies proposed Article 2 of Gs Chapter 10B as follows. Deletes definition of 'official electronic journal of notarial acts.' Clarifies that Notary Public Act applies to acts authorized under the Electronic Notary Act unless there is a direct conflict between the articles. Deletes requirement that electronic form used by electronic notary to register with the Secretary of State include the location of the notary's electronic journal and password. Enacts new GS 10B-52(d)-(f) to authorize the Secretary of State to adopt rules to ensure the authenticity of electronic notarizations, to require that an electronic notary maintain a record of each electronic notarial act, and to provide that an electronic notary's failure to produce required records within ten days of Department's request will result in the suspension of notary's power to act as a notary.

Other Changes. Provides that act applies to notarial acts and applications for notary commissions made on or after effective date of December 1, 2005, and that any notary commission issued prior to that date will remain valid (unless otherwise revoked or suspended by the Secretary). Criminal penalties imposed by act apply to offenses committed on or after December 1, 2005, regardless of whether commission was issued under new GS Chapter 10B or GS Chapter 10A (original notary act). Makes technical and conforming changes.