



HOUSE BILL 332: Notary Act/Satisfaction of Security Interests

2013-2014 General Assembly

Committee: Senate Judiciary I
Introduced by: Reps. Bryan, Stam, Glazier
Analysis of: Third Edition

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SUMMARY: *House Bill 332 amends the Notary Public Act and provides for an alternative procedure for satisfaction of security interests.*

BILL ANALYSIS: Part I of the bill amends the Notary Public Act.

Section 1 removes the requirement that a notary must be recommended by an elected official in counties with 5,250 or fewer active notaries public.

Section 1.1 clarifies that a notary is not disqualified from performing notarial acts solely because of the notary's employment by a party to the record or because the notary owns stock in a party to the record.

Section 1.2 permits a notarial seal to include the abbreviation "N.C.".

Section 1.3 provides that in any enforcement proceeding for failure of the estate of a commissioned notary to notify the Secretary of State of the notary's death and deliver the notary's seal to the Secretary no later than the closing of the estate, a personal representative who is not a notary is exempt from this requirement if he or she provides a statement under oath that he or she was unaware that the decedent was a commissioned notary at the time of death.

Section 1.4 provides that the Secretary must notify the State Bar of any final decision finding that a notary who is also a licensed attorney has violated Chapter 10B of the General Statutes, which shall be considered a showing of professional unfitness under G.S. 84-28(d) for which the State Bar shall administer discipline accordingly.

Section 1.5 provides that a document bearing a notarial seal is validated and given the same legal effect if the date of acknowledgement, the verification or proof, or the oath or affirmation states the correct day and month, but lacks a year or has an incorrect year. It also validates all notary acknowledgments bearing a notary seal performed before December 1, 2005 (was January 1, 1953).

Sections 1.6 clarifies that the existing statutory validation of notarial acts taken by a lawfully commissioned notary, but involving an erroneous statement of the date that the commission expires, applies regardless of when the notarial acts were performed.

Section 1.7 expands the types of technical defects that are cured automatically and do not affect the validity of the document.

Section 1.8 makes notarial certifications contained in a form issued by a state agency prior to April 1, 2013 (was, October 1, 2006) valid, provided they complied with the law at the time the form was issued.

Section 1.9 provides that certain notarial acts are validated when a recommissioned notary failed to take the oath again. It clarifies that this applies to notarial acts performed on or after May 15, 2004, and before April 1, 2013 (was July 8, 2009).

Section 1.10 amends the statute dealing with the presumption of regularity to notarial acts. It clarifies that it applies to notarial acts whenever performed.

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Section 1.11 provides that upon conveyance to the trustee of a deed of trust by any or all of the joint tenants holding property in joint tenancy with right of survivorship to secure a loan, the joint tenancy will not be deemed to be severed. Upon satisfaction of the deed of trust, legal title to the property will revert to the grantors as joint tenants with right of survivorship in the respective shares as owned by respective grantors.

Section 1.12 provides that a proof or acknowledgment that does not require a seal or stamp of the notary must include either (1) a statement by the notary as to such, placed near the proof area or (2) a reference that purports to be the statute of the commissioning state which provides no seal or stamp is required along with a statement. 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. Such an instrument, when proofed and validated in this way, cannot be refused by a register of deeds. Acceptance of such a letter creates a presumption of the validity of such an instrument and that no seal or stamp was required. This presumption is rebuttable.

Section 1.13 clarifies that to render a subscribing witness incompetent to prove the execution of an instrument for registration because he or she is the grantee or beneficiary of the instrument, the subscribing witness must have been the grantee or beneficiary at the time of execution of the instrument.

Section 1.14 amends the statute providing that the acceptance of records with a notarial seal, even though the seal may be illegible, gives rise to presumption of validity of the seal, to clarify that the statute applies to all instruments filed and maintained by the register of deeds. It also provides that the presumption is rebuttable, and that a court finding otherwise does not affect the rights of a person whose interest in the real property was recorded before the finding and is otherwise enforceable.

Section 1.15 provides that that before any transfers of real property executed by an attorney-in-fact empowered by a power of attorney, the power of attorney must be registered. It sets forth the steps an attorney-in-fact must take depending on the different types of real property transaction taking place, as well as the requirements to record certain powers-of-attorney. This section applies to all real property utilizing powers-of-attorney on or after April 1, 2013.

Section 1.16 provides that when a correction is inconsistent with the original recorded instrument, notice of the correction is deemed to have been given as of the time of registering the corrective affidavit. For corrective affidavits, regardless of when filed, it makes the following changes: (1) limits the need for an affidavit when an instrument is unchanged but re-recorded; and (2) permits a notary public to complete a corrective affidavit identifying the correction and to attach a new acknowledgment with no change in priority occurring.

Sections 1.17-1.26 make clarifying and technical changes, including changes to applicability dates.

Section 1.27 establishes that instruments or writings that have been proved or acknowledged before any commissioned officer of the Army, Navy, Air Force, Marine Corps, Coast Guard, or specified officer of the Merchant Marine (was, only Army or Marine Corps) are ratified, confirmed, and declared valid.

Sections 1.28-1.36 make clarifying and technical changes, including changes to applicability dates.

Section 1.37 provides that a notarial acknowledgment constitutes a jurat in due form, and a notarial jurat constitutes an acknowledgment in due form, for all instruments that have so far been accepted for filing and registration or which relate to real estate in this state.

Section 1.38 provides that all instruments recorded before April 1, 2013 (was June 30, 1986) that were not re-executed and re-acknowledged and that correct an obvious typographical or other minor error in a recorded instrument that was previously properly executed and acknowledged are declared to be valid.

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Part II of the bill addresses an alternative procedure for the satisfaction of security interests.

Section 2.1 makes technical and clarifying changes.

Section 2.2 provides that a satisfaction agent does not have to give the notification if (i) the secured creditor has authorized the satisfaction agent to sign and submit an affidavit of satisfaction; (ii) the satisfaction agent has in his or her possession the instruments described in statute; or (iii) after diligent inquiry, the satisfaction agent has been unable to determine the identity of the secured creditor.

Section 2.3 provides that a satisfaction agent may sign and submit for recording an affidavit of satisfaction of a security instrument if the satisfaction agent has reasonable grounds to believe that the secured creditor has received full payment or performance of the secured obligation and one or more of the following apply:

- The satisfaction agent has the original security instrument and the original bond, note, or other instrument with an endorsement of payment and satisfaction made by one or more of the following: (i) the secured creditor; (ii) the trustee or substitute trustee, if the security instrument is a deed of trust; (iii) an assignee of the secured creditor; or (iv) any bank, savings and loan association, savings bank, or credit union chartered in North Carolina or any other state having an office or branch in North Carolina.
- The satisfaction agent has the original security instrument intended to secure the payment of money or the performance of any other obligation, together with the original bond, note, or other instrument secured, or the original security instrument alone if the security instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond, or other instrument secured by it if, at the time the affidavit of satisfaction is to be signed and submitted, all such instruments are more than 10 years old.
- The satisfaction agent has the original security instrument given to secure the bearer or holder of any negotiable instruments transferable solely by delivery, together with all the evidences of indebtedness secured thereby, marked paid in full and signed by the bearer or holder.
- After diligent inquiry, the satisfaction agent has been unable to determine the identity of the secured creditor.

Section 2.4 adds a number of requirements with which an affidavit of satisfaction of a security instrument must comply.

Section 2.5 makes technical, clarifying, and conforming changes to the affidavit of satisfaction form.

Section 2.6 makes clarifying and technical changes to the statute governing affidavits of satisfaction.

Section 2.7 provides that a satisfaction agent that erroneously records an affidavit of satisfaction of a security interest is not liable if the agent complied with the statutes and gave notification to the secured creditor and the secured creditor did not respond in a timely manner.

Section 2.8 makes technical and clarifying changes.

EFFECTIVE DATE: Section 1 becomes effective July 1, 2013; the remainder of Part I becomes effective April 1, 2013; and the remainder of the act is effective when it becomes law.

BACKGROUND: House Bill 332 was recommended by the Real Property Section of the NC Bar Association and approved by the Bar Association's Board of Governors.

Brad Krehely, counsel to House Judiciary Subcommittee B, substantially contributed to this summary.