

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 1552
Finance Committee Substitute Adopted 7/15/98

Short Title: Changes to the Notary Public Act.

(Public)

Sponsors:

Referred to:

June 1, 1998

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES TO THE NOTARY PUBLIC ACT, TO EXEMPT
3 SOME MAPS FROM THE CERTIFICATION REQUIREMENT, AND TO
4 AUTHORIZE THE SECRETARY OF STATE TO AUTHENTICATE
5 DOCUMENTS.

6 The General Assembly of North Carolina enacts:

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

8 **"§ 10A-2. Purposes.**

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

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

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

15 **"§ 10A-3. Definitions.**

16 The following definitions apply in this Chapter:

- 17 (1) Acknowledgment. – A notarial act in which a notary certifies that a
18 signer, whose identity is personally known to the notary or proven on

1 the basis of satisfactory evidence, has admitted, in the notary's presence,
2 having signed a document voluntarily.

3 (2) Commission. – The written authority to perform a notarial act.

4 (2a) Director. – The Director of the Notary Section of the Department of the
5 Secretary of State.

6 (3) Notarial act, notary act, and notarization. – Any act that a notary is
7 empowered to perform under G.S. 10A-9.

8 (4) Notary public and notary. – A person commissioned to perform notarial
9 acts under this Chapter.

10 (5) Oath or affirmation. – A notarial act in which a notary certifies that a
11 person made a vow or affirmation in the presence of the notary, with
12 reference made to a Supreme Being for an oath and with no reference
13 made to a Supreme Being for an affirmation.

14 (6) Official misconduct. – Either of the following:

15 a. A notary's performance of a prohibited act or failure to perform a
16 mandated act set forth in this Chapter or any other law in
17 connection with notarization.

18 b. A notary's performance of a notarial act in a manner found by the
19 Secretary of State to be negligent or against the public interest.

20 (7) Personal knowledge of identity. – Familiarity with an individual
21 resulting from interactions with that individual over a period of time
22 sufficient to eliminate every reasonable doubt that the individual has the
23 identity claimed.

24 (8) Satisfactory evidence of identity. – Identification of an individual based
25 on either of the following:

26 a. One current document issued by a federal or state government
27 with the individual's photograph.

28 b. Identification by a credible person who is personally known to
29 the notary and who has personal knowledge of the individual's
30 identity.

31 (8a) Secretary. – The Secretary of State.

32 (9) Verification or proof. – A notarial act in which a notary certifies that a
33 signer, whose identity is personally known to the notary or proven on
34 the basis of satisfactory evidence, has, in the notary's presence,
35 voluntarily signed a document and taken an oath or affirmation
36 concerning the document."

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

38 "**§ 10A-4. Commissioning.**

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

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

- 1 (1) Be at least 18 years of age.
- 2 (2) Reside or work in this State.
- 3 (3) Satisfactorily complete a course of study that is approved by the
4 Secretary of State—and consists of not less than three hours nor more
5 than six hours of classroom instruction provided by community colleges
6 throughout the State, unless the person is a licensed member of the Bar
7 of this State.
- 8 (4) Purchase and keep as a reference a manual approved by the Secretary of
9 State—that describes the duties, authority, and ethical responsibilities of
10 notaries public.
- 11 (5) Submit an application containing no significant misstatement or
12 omission of fact. The application form shall be provided by the
13 Secretary of State—and be available at the register of deeds office in each
14 county. Every application shall bear the signature of the applicant
15 written with pen and ink, and the signature shall be acknowledged by
16 the applicant before a person authorized to administer oaths. The
17 applicant shall also obtain the recommendation of one publicly elected
18 official in North Carolina whose recommendation shall be contained on
19 the application.
- 20 (c) ~~The Secretary of State~~—may deny an application for commission or
21 recommission as a notary if any of the following applies to the applicant:
- 22 (1) The applicant has been convicted of a crime involving dishonesty or
23 moral turpitude.
- 24 (1a) The applicant has been convicted of a felony and the applicant's rights
25 have not been restored.
- 26 (2) The applicant has had a notarial commission or professional license
27 revoked, suspended, or restricted by this or any other state.
- 28 (3) The applicant has engaged in official misconduct, whether or not
29 disciplinary action resulted.
- 30 (d) The course of study required by subsection (b) of this section shall be taught by
31 an instructor certified in accordance with rules adopted by the ~~Secretary of State.~~
32 Secretary. An instructor must meet the following requirements to be certified to teach a
33 course of study for notaries public:
- 34 (1) Complete and pass a six-hour instructor's course taught by the notaries
35 public director or other person approved by the ~~Secretary of State.~~
36 Secretary.
- 37 (2) Have six months of active experience as a notary public.
- 38 (3) Maintain a current commission as a notary public.
- 39 (4) Purchase the current notary public guidebook.
- 40 (5) Pay a nonrefundable fee of fifty dollars (\$50.00).
- 41 ~~Registers of deeds, assistant and deputy registers of deeds, clerks of court, and assistant~~
42 ~~and deputy clerks of court are exempt from the requirements set forth in subdivisions (2)~~
43 ~~and (3) of this subsection while they remain actively employed in the capacities named.~~

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

4 ~~(e) Certification to teach a course of study shall be effective for two years and may~~
5 ~~be renewed by passing a recertification course taught by the notaries public director or~~
6 ~~other person approved by the Secretary of State. The following people may be certified to~~
7 ~~teach a course of study required under subsection (b) of this section without meeting the~~
8 ~~requirements of subdivisions (d)(2), (d)(3), and (d)(5), and they may renew their~~
9 ~~certification without paying the renewal fee, so long as they remain actively employed in~~
10 ~~the capacities named:~~

11 (1) Registers of deeds, assistant registers of deeds, and deputy registers of
12 deeds.

13 (2) Clerks of court, assistant clerks of court, and deputy clerks of court.

14 (3) The Director and any employee of the Notary Section of the Department
15 of the Secretary of State designated by the Director."

16 Section 4. G.S. 10A-9(b) reads as rewritten:

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

18 (1) The signature of the notary, exactly as shown on the notary's
19 commission.

20 (2) The readable appearance of the notary's name, either from the notary's
21 signature or ~~otherwise~~ from the notary's typed, printed, or embossed
22 name near the signature.

23 (3) The clear and legible appearance of the notary's stamp or seal.

24 (4) A statement of the date the notary's commission expires."

25 Section 5. G.S. 10A-10 reads as rewritten:

26 "**§ 10A-10. Fees of notaries.**

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

28 (1) For acknowledgments, ~~two dollars (\$2.00)~~ three dollars (\$3.00) per
29 signature.

30 (2) For oaths or affirmations without a verification or proof, ~~two dollars~~
31 ~~(\$2.00)~~ three dollars (\$3.00) per person.

32 (3) For verifications or proofs, ~~two dollars (\$2.00)~~ three dollars (\$3.00) per
33 signature."

34 Section 6. G.S. 10A-11 reads as rewritten:

35 "**§ 10A-11. Notarial stamp or seal.**

36 A notary public shall provide and keep an official stamp or seal. The stamp or seal
37 shall clearly show and legibly reproduce under photographic methods, when embossed,
38 stamped, impressed, or affixed to a document, the name of the notary exactly as it
39 appears on the commission, the name of the county in which appointed and qualified, the
40 words "North Carolina" or an abbreviation thereof, and the words "Notary Public". The
41 official stamp or seal, as it appears on a document, may contain a permanently imprinted
42 or a handwritten expiration date of the notary's commission. A notary public shall
43 replace a seal that has become so worn that it can no longer clearly show or legibly

1 reproduce under photographic methods the information required by this section. The
2 stamp or seal is the property and responsibility of the notary whose name appears on it.
3 However, upon revocation, the notary shall immediately surrender the stamp or seal to
4 the ~~Secretary of State~~-Secretary."

5 Section 7. G.S. 10A-14 reads as rewritten:

6 "**§ 10A-14. Clerks are notaries ex officio and may certify own seals. Notaries ex**
7 **officio.**

8 (a) The clerks of the superior court and their assistants and deputies may act as
9 notaries public in their several counties by virtue of their offices as clerks and may certify
10 their notarial acts under the seals of their respective courts.

11 (b) Registers of deeds and their assistants and deputies may act as notaries public
12 in their several counties by virtue of their offices as register of deeds and may certify
13 their notarial acts under the seals of their respective offices.

14 (c) The Director, and any employee of the Notary Section of the Department of the
15 Secretary of State designated by the Director, may act as a notary public by virtue of the
16 person's employment in the Department of the Office of the Secretary of State and may
17 certify a notarial act performed in that capacity under the seal of the Secretary of State.

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

22 Section 8. G.S. 10A-15 is repealed.

23 Section 9. G.S. 10A-16 reads as rewritten:

24 "**§ 10A-16. Acts of notaries public in certain instances validated.**

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

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

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

40 (d) This section applies to notarial acts performed before ~~June 1, 1997.~~ July 1,
41 1998."

42 Section 10. G.S. 47-30(m) reads as rewritten:

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

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

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

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

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

28 Section 12. G.S. 47-30.2(c) reads as rewritten:

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

31 (1) ~~the~~ The certificate required by G.S. 47-30(f)(11) shows that the map or
 32 plat is a survey within the meaning of G.S. 47-30(f)(11)b. or c.

33 (2) The map or plat is exempt from the requirements of G.S. 47-30 pursuant
 34 to G.S. 47-30(j) or (l).

35 (3) The map is an attachment that is being recorded pursuant to G.S. 47-
 36 30(n)."

37 Section 13. Chapter 66 of the General Statutes is amended by adding a new
 38 Article to read:

39 **"ARTICLE 34.**

40 **"CERTIFICATES OF AUTHENTICATION.**

41 **"§ 66-270. Authority of Secretary of State to authenticate documents.**

42 The Secretary, or the Secretary's designee, may sign and issue a certificate of
 43 authentication for a document that has been executed or issued in this State so that it can

1 be recognized in a foreign jurisdiction. The certificate may be issued under the seal of
2 the Department of the Secretary of State or under the Great Seal of the State of North
3 Carolina. The Secretary may adopt rules to implement this Article in accordance with
4 Chapter 150B of the General Statutes.

5 **"§ 66-271. Definitions.**

6 The following definitions apply in this Article:

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

24 **"§ 66-272. Certificate of authentication.**

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

35 **"§ 66-273. Prerequisites for authentication.**

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

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

43 **"§ 66-274. Limitations on authentication.**

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

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

11 (1) A seal or signature that cannot be authenticated by either the Secretary
12 or another official.

13 (2) A seal or signature of a foreign official.

14 (3) A facsimile, photostat, photographic or other reproduction of a signature
15 or seal.

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

21 Section 14. Section 9 of this act is effective when it becomes law. Sections 10
22 and 11 of this act become effective December 1, 1998. The remainder of this act
23 becomes effective September 1, 1998.