

April 21, 2005

H 1432. REGISTER OF DEEDS—CERTIFICATIONS. AFFECTING CERTIFICATIONS BY REGISTERS OF DEEDS. Rewrites GS 47-14(a) to provide that register of deeds may not accept for recording any instrument that requires proof or acknowledgment unless the execution by one or more of the signers has been proved or acknowledged as required before an officer authorized to take proofs or acknowledgments, and that the proof or acknowledgment includes the officer's signature, commission expiration date, and official seal, if required. Requires register of deeds to file instruments that do not require proof or acknowledgment if they meet all other statutory requirements. Allows rerecording of documents without further certification if they are not being recorded pursuant to GS 47-36.1. Repeals GS 47-37 (form of certification and adjudication of registration). Revises procedures for discharge of record of mortgages, deeds of trust, and other instruments, recording satisfaction of deeds of trust and mortgages, and recording foreclosure. Enacts new GS 45.37.2(b1) approving form for record of satisfaction. Repeals GS 45-40 (requiring register of deeds to enter satisfaction on index). Amends GS 161-14.1 to require register of deeds to index parties to original instrument as stated on subsequent instrument. Repeals GS 47-46 (verification and form of entry). Effective October 1, 2005.

Intro. by Stam, Ross.

Ref. to Judiciary I

GS 45, 47, 161

May 11, 2005

H 1432. REGISTER OF DEEDS—CERTIFICATIONS. Intro. 4/21/05. House committee substitute makes the following changes to 1st edition. Adds language to proposed amendment to GS 47-14 to specify that register of deeds may not file instruments that do not require proof or acknowledgment unless the instrument meets all the requirements of GS 161-14. Shifts proposed definition of "recording data" from GS 45-37(e) to GS 45-36.2 and 161-14.1(b), and makes technical changes.

June 14, 2006

H 1432. NOTARY PUBLIC CORRECTIONS (NEW). Filed 4/20/05. Senate committee substitute deletes all provisions of second edition and replaces it with a new act *TO MAKE CORRECTIONS AND OTHER AMENDMENTS TO THE NOTARY PUBLIC ACT, AND TO MAKE OTHER CONFORMING CHANGES*, which makes technical, clarifying, and conforming changes as well as the following substantive changes to the Notary Public Act, Article 1 of GS Chapter 10B, effective October 1, 2006.

Amends the definition of "acknowledgement" in GS 10B-3 to state that an individual is required to either indicate to the notary that the signature on the record is the individual's signature or sign the record in the presence of and personally observed by the notary. Clarifies the definition of "credible witness." Amends the definition of "principal" to distinguish between cases of acknowledgements, verifications or proofs, and oaths or affirmations. Amends the definition of "verification or proof" to specify in more detail all the required elements of a verification or proof.

Amends GS 10B-7(b) to delete a statement that certain information in an application for a notary commission is a public record. Amends GS 10B-11(b) (notary recommission requirements) to provide that the requirements that the notary retake the notary course, have a high school diploma, and obtain another recommendation from a public official do not apply if the notary's commission has not expired.

Amends GS 10B-20 (powers and limitations) to (1) clarify that "execute jurats" is not a notarial act; (2) provide that the notary's typed or printed name must appear on the notarial certificate exactly as shown on the notary's commission; and (3) clarify where the statement of the date that the notary's commission expires may appear. Amends GS 10B-20(c) as follows. (1) Provides that a notary cannot perform a notarial act if the credible witness is not personally known to the notary. (2) Deletes provisions that disqualified a notary from performing a notarial act if the notary had a compelling doubt about whether the principal knows the consequences of the transaction or if the notary believes that the subscribing witness is not acting of the principal's or witnesses own free will. (3) Provides that a disqualification of a notary because the notary is a

party to or beneficiary of the record to be notarized does not apply to a notary who is solely the trustee in a deed of trust, the drafter of the record, the person to whom a registered document should be mailed or sent after recording, or the attorney for a party to the record. Amends GS 10B-23(a) (improper records) to provide that a notary may administer an oath or affirmation without completing a jurat.

Amends GS 10B-35 (official signature) to delete language that was identical to GS 10B-36 and to provide that when notarizing a paper record, the notary must sign the notarial certificate by hand, must comply with the requirements of GS 10B-20(b)(1) and (b)(2), must affix the official signature only after the notarial act is performed, and must not sign a paper record using the facsimile stamp or an electronic or other printing method. Amends GS 10B-36 (official seal) to (1) remove the requirement that the seal or stamp be kept in a location accessible only to the notary; (2) clarify that the notary's signature and seal must appear on the same page of a record as the text of the notarial certificate; and (3) eliminate the requirement that the notary inform law enforcement or the Secretary of State about a damaged seal. Amends GS 10B-37 (seal image) to grandfather pre-October 2006 circular seals that do not meet the size requirements, to prohibit alterations to any information contained within the seal as embossed or stamped on the record, and to provide that the failure of a notarial seal to comply with the requirements of the statute does not affect the validity of the notarial certificate.

Amends GS 10B-40 (notarial certificates in general) to (1) specify the effect of giving a notarial certificate, including, in the case of an acknowledgment or an oath or affirmation, certification that the person did not appear to be incompetent, to lack understanding, or to act involuntarily or under undue influence; (2) provide that the inclusion of additional information in a notarial certificate does not invalidate an otherwise sufficient notarial certificate; (3) add a new subsection (c1) setting out the requirements for a notarial certificate for verification or proof of the signature of a principal or a subscribing witness by a non-subscribing witness; (4) modify the requirements for a notarial certificate for an oath or affirmation; (5) provide that any form of acknowledgement or probate authorized under GS Chapter 47 is conclusively in compliance with the notarial certificate requirements; and (6) regulate situations in which a person purports to be acting in a representative capacity.

Amends GS 10B-41 (notarial certificate for an acknowledgment), GS 10B-42 (notarial certificate for a verification or proof of subscribing witness), and GS 10B-43 (notarial certificate for an oath or affirmation) by (1) deleting subsection (b), the provisions of which are similar to new GS 10B-40(a1) and (a2), and (2) adding a new subsection (c) to provide that the notary's printed or typed name is not required if the legible appearance of the notary's name may be ascertained elsewhere. Further amends GS 10B-43 (notarial certificate for an oath or affirmation) by adding a new subsection (d) to provide (1) that the name of the principal may be omitted if the name is located near the jurat and the principal who appeared before the notary is clear from the record itself and (2) that the words "affirmed" or "sworn to or affirmed" may be substituted for the words "sworn to." Enacts a new statute between GS 10B-42 and GS 10B-43 to create a statutory certificate form for the verification and proof of non-subscribing witnesses.

Amends GS 10B-60(c) (enforcement and penalties) to clarify the specific acts that constitute a Class 1 misdemeanor. Enacts new GS 10B-67, 10B-68, and 10B-69, curing erroneous statements of the commission's expiration date, technical defects in notarial certificates, and the use of certain forms, respectively. Enacts new GS 10B-99 (presumption of regularity) to provide that unless there is evidence of fraud or a knowing violation on the part of the notary, courts will grant a presumption of regularity to notarial acts, but that nothing in GS Chapter 10B modifies or repeals the common law doctrine of substantial compliance in effect on November 30, 2005. Validates notarial acts performed before October 1, 2006, that comply with the law as of December 1, 2005.

Enacts new GS 47-14(f) to provide that the acceptance of a record for registration by the register of deeds gives rise to a legal presumption that the notary seal was clear and legible at the time it was accepted. Also provides that a register of deeds may not refuse to accept a record for registration because a notarial seal does not satisfy the requirements of GS 10B-37 (seal image). Amends GS 47-38 (acknowledgment by grantor) by clarifying that an acknowledgment for a grantor can be used generically for multiple persons acting in their own or in a representative capacity, including for any form of a business entity. Enacts new GS 47-41.01(e) and GS

47-41.02(h) to provide that the forms of probate set forth in each section can be modified and used in the probate of deeds or other conveyances executed by entities other than corporations, effective December 1, 2005. Enacts new GS 47-41.2 to (1) provide that technical defects and errors or omissions in a form of probate or other notarial certificate do not affect validity or enforceability, (2) prohibit a register of deeds from refusing to accept an instrument or document for registration because of technical defects, errors, or omissions in a form of probate or other notarial certificate, and (3) provide that a register of deeds cannot accept for registration an instrument that does not comply with the registration requirements of GS 47-14(a).

June 20, 2006

H 1432. NOTARY PUBLIC CORRECTIONS. Filed 4/20/05. Senate amendment makes the following changes to 3rd edition. Amends GS 10B-11(b)(3) effective July 1, 2006, to exempt from the written examination requirement those notaries seeking to be recommissioned who have been continuously commissioned in NC since July 1, 1991, and have never been disciplined by the Secretary of State.

July 5, 2006

SL 2006-59 (H 1432). NOTARY PUBLIC CORRECTIONS. AN ACT TO MAKE CORRECTIONS AND OTHER AMENDMENTS TO THE NOTARY PUBLIC ACT, AND TO MAKE OTHER CONFORMING CHANGES. Summarized in *Daily Bulletin* 6/14/06 and 6/20/06. Enacted July 3, 2006. GS 10B-11(b)(3), as amended in Section 5, is effective July 1, 2006. The remainder is effective October 1, 2006, and except as otherwise provided, applies to notarial acts performed on or after that date.