

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

FILED SENATE
Mar 31, 2021
S.B. 429
PRINCIPAL CLERK

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SENATE BILL DRS35188-MU-14

Short Title: Comm. Receivership and Real Property Amends. (Public)

Sponsors: Senators Galey and Edwards (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE AMENDMENTS RELATING TO THE NORTH CAROLINA
3 COMMERCIAL RECEIVERSHIP ACT, THE VALIDITY OF NOTARIAL ACTS, AND
4 CERTAIN STATUTES AFFECTING REAL PROPERTY.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. AMENDMENTS RELATING TO NC COMMERCIAL RECEIVERSHIP ACT**

8 **SECTION 1.** G.S. 1-502 reads as rewritten:

9 **"§ 1-502. In what cases appointed.**

10 A receiver may be appointed in any of the following cases:

11 ...

12 (4) ~~In cases provided in G.S. 1-507.1 and in similar cases, regarding property~~
13 ~~within this State of foreign corporations.~~

14 ...

15 ~~The provisions of Part 2 of Article 38 of Chapter 1 of the General Statutes apply to the~~
16 ~~appointment of a receiver of a corporation under this section."~~

17 **SECTION 2.** G.S. 1-507.20 reads as rewritten:

18 **"§ 1-507.20. Short title; definitions.**

19 (a) Short Title. – This Article may be cited as the North Carolina Commercial
20 Receivership Act.

21 (b) Definitions. – The following definitions apply throughout this ~~Article unless the~~
22 ~~context requires otherwise:~~ Article:

23 ...

24 (5) Court. – The superior or district court in which the receivership is pending,
25 except that in the case of a receiver appointed to partition real property
26 pursuant to ~~G.S. 46-3.1, G.S. 46A-28,~~ the term shall mean the clerk of
27 superior court that has jurisdiction over the receiver and the receivership.

28 ...

29 (16) Insider. – As to any person, includes the following:

30 ...

31 d. An affiliate, or insider of an affiliate, as if ~~such~~ the affiliate were the
32 person.

33 ...

34 (24) Property. – All of the debtor's right, title, and interest, both legal and equitable,
35 in real and personal property, regardless of the manner by which any of ~~the~~
36 ~~same were or are it was or is~~ acquired. The term includes any proceeds,



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1 products, offspring, rents, or profits of or from the property. The term does
 2 not include (i) any power that the debtor may exercise solely for the benefit of
 3 another person, (ii) a power of withdrawal exercisable by the debtor over
 4 property of a trust for which the debtor is not the settlor, to the extent that the
 5 power is not subject to the claims of the debtor's creditors pursuant to
 6 G.S. 36C-5-505(b), or (iii) if the debtor is an individual, any real property
 7 owned jointly by the debtor and the debtor's spouse that is held by them as a
 8 tenancy by the entireties, unless the debtor's spouse is also a debtor in the
 9 receivership and there is a joint debt owed to one or more creditors.

10 ...

11 (27) Receivership property. – In the case of a general receivership, all or
 12 substantially all of the nonexempt property of the debtor, or in the case of a
 13 limited receivership, the property of the debtor identified in the order
 14 appointing the receiver, or in any subsequent order, and, in each case, except
 15 for the debtor's property that is wholly exempt from the enforcement of claims
 16 of creditors pursuant to applicable law, including without limitation, pursuant
 17 to G.S. 1-362, 1C-1601(a), 1C-1602, 25C-4, 30-15, 30-17, 131E-91(d)(5), and
 18 135-9. ~~Notwithstanding the foregoing, receivership~~ Receivership property in
 19 a general receivership of an individual business ~~debtor shall~~ debtor, however,
 20 does not include (i) the principal residence of the individual business debtor
 21 if the value of the principal residence is less than the combined amount of all
 22 liens and all rights of redemption and allowed claims of exemption in the
 23 principal residence and (ii) any consumer good if the value of ~~such the~~
 24 consumer good is less than the combined amount of all liens and all rights of
 25 redemption and allowed claims of exemption in ~~such the~~ consumer good.

26"

27 **SECTION 3.** G.S. 1-507.24 reads as rewritten:

28 **"§ 1-507.24. Appointment of receivers; receivership not a trust.**

29 (a) Action in Which Receivers Appointed. – A receiver may be appointed under this
 30 Article by the filing of a civil action by a creditor or other party in interest in which the sole relief
 31 requested is the appointment of a receiver or is combined with, or is ancillary to, a civil action
 32 that seeks a money judgment or other relief, or in the case of a limited receivership, is part of a
 33 power of sale or judicial foreclosure proceeding. However, in the case of an individual business
 34 debtor, a creditor to whom only consumer debt is owing ~~may~~ shall not file a civil action or motion
 35 to appoint a receiver for the individual business debtor. If the debtor files the complaint
 36 commencing a civil action in which the sole relief requested is the appointment of a receiver,
 37 then no summons under Rule 4 of the North Carolina Civil Rules of Procedure shall be necessary
 38 and the title of the action required by Rule 10 of the North Carolina Civil Rules of Procedure
 39 shall be:

40 "In re: _____ [name of debtor]".

41 (b) Appointment by Judge. – Either a judge of the Superior Court Division or the District
 42 Court Division may appoint a receiver for a debtor that is an individual business debtor. Only a
 43 judge of the Superior Court Division may appoint a receiver for an entity. Once a receiver is
 44 appointed, the following provisions apply:

- 45 (1) If a receiver is appointed for an individual business debtor or if a limited
 46 receiver is appointed for an entity, the clerk shall provide a copy of the order
 47 appointing the receiver to the senior resident superior court judge or the ~~senior~~
 48 chief district court judge for the court in which the receivership is pending. If
 49 the receivership is pending in the Superior Court Division, the senior resident
 50 superior court judge for the court in which the receivership is pending shall
 51 designate either one of the resident judges for the court in which the

1 receivership is pending, or one of the nonresident judges of the Superior Court
 2 Division then assigned to the district in which the receivership is pending, to
 3 be the presiding judge over the receiver and the receivership. The presiding
 4 judge shall retain jurisdiction and supervision of the receiver and the
 5 receivership until the receivership is terminated and the receiver discharged
 6 pursuant to G.S. 1-507.37, or until the senior resident superior court judge
 7 enters an order transferring jurisdiction and supervision of the receiver to
 8 another superior court judge. The judge of the Superior Court Division so
 9 designated shall retain jurisdiction and supervision notwithstanding the
 10 judge's rotation out of the district. If the receivership is pending in the District
 11 Court Division, the chief district court judge for the court in which the
 12 receivership is pending shall designate one of the judges of the District Court
 13 Division to retain jurisdiction and supervision of the receiver and the
 14 receivership until the receivership is terminated and the receiver is discharged
 15 pursuant to G.S. 1-507.37, or until the chief district court judge enters an order
 16 transferring jurisdiction and supervision of the receiver to another district
 17 court judge.

18 ...

19 This subsection ~~shall~~does not apply to the appointment of a receiver in a pending action to
 20 partition real property pursuant to G.S. 46A-28.

21 ...

22 (e) Receiver for Entities and Individual Business Debtors. – In addition to those situations
 23 specifically provided for by law, a limited or general receiver may be appointed when an entity
 24 or an individual business debtor meets any of the following criteria:

25 ...

26 (8) The person is the subject of an action to dissolve ~~such~~the person.

27 ...

28 (k) Bad Faith Filing. – If the court denies a motion to appoint a receiver for an individual
 29 business debtor other than on consent of the party or parties seeking the appointment of the
 30 receiver and the debtor, and if the debtor does not waive the right to judgment under this
 31 subsection, the court may grant judgment against the party or parties seeking the appointment of
 32 the receiver for any damages proximately caused by ~~such~~the filing, including costs and
 33 reasonable attorneys' fees, and punitive damages, if the court determines, after notice and hearing,
 34 that the motion was filed in bad faith."

35 **SECTION 4.** G.S. 1-507.30 reads as rewritten:

36 "**§ 1-507.30. Duties of debtor.**

37 (a) Duties. – In addition to those duties conferred by statute or order of the court, the
 38 debtor ~~shall have~~has the following duties:

- 39 (1) To assist and cooperate fully with the receiver in the administration of the
 40 receivership and the receivership property and the discharge of the receiver's
 41 ~~duties, duties and to~~ comply with all rules and orders of the court.
- 42 (2) To deliver to the receiver, immediately upon the receiver's ~~appointment,~~
 43 appointment and demand, all of the receivership property in the debtor's
 44 possession, custody, or control, including all books and records, electronic
 45 data, passwords, access codes, statements of accounts, deeds, titles or other
 46 evidence of ownership, financial statements, financial and lien information,
 47 bank account statements, and all other papers and documents related to the
 48 receivership property.
- 49 (3) To supply to the receiver information as requested relating to the
 50 administration of the receivership and the receivership property, including

1 information necessary to complete any reports or other documents that the
2 receiver may be required to file.

- 3 (4) To remain responsible for the filing of all tax returns, including those returns
4 applicable to periods which include those in which the receivership is in effect,
5 except as otherwise ordered by the court.

6 (b) Debtor Not Individual. – If the debtor is not an individual, this section applies to each
7 officer, director, manager, member, partner, trustee, or other person exercising or having the
8 power to exercise control over the affairs of the debtor immediately before the appointment of
9 the receiver.

10 (c) Enforcement. – If a person knowingly fails to perform a duty imposed by this section,
11 the court may (i) compel the person to comply with that duty, (ii) award the receiver actual
12 damages caused by the person's ~~failure~~, failure and reasonable attorneys' fees and costs, and (iii)
13 sanction the person for civil contempt."

14 **SECTION 5.** G.S. 1-507.40 reads as rewritten:

15 **"§ 1-507.40. Turnover of receivership property.**

16 (a) Demand by Receiver. – Except as expressly provided in this section, and unless
17 otherwise ordered by the court, upon demand by a receiver: (i) subject to subsection (b) of this
18 section, any person shall turn over to the receiver any receivership property that is within the
19 possession, custody, or control of that person and (ii) any person that owes a debt that is
20 receivership property and is matured or payable on demand or on order shall pay the debt to or
21 on the order of the receiver, except to the extent that the debt is subject to setoff or recoupment.

22 ...

23 (c) Turnover Motion by Receiver. – A receiver may seek to compel turnover of
24 receivership property required by ~~subdivision clause~~ (i) of subsection (a) of this section by motion
25 in the receivership. If there exists a bona fide dispute with respect to the existence or nature of
26 the receiver's or the debtor's interest in the receivership property, turnover shall be sought by
27 means of an action under G.S. 1-507.38. Unless a bona fide dispute exists about a receiver's right
28 to possession, custody, or control of receivership property, the court may sanction as civil
29 contempt a person's failure to turn over the property when required by this section.

30 (d) Payment Only to Receiver. – A person that has notice of the appointment of a receiver
31 and owes a debt that is receivership property ~~may~~ shall not satisfy the debt by payment to the
32 debtor."

33 **SECTION 6.** G.S. 1-507.42 reads as rewritten:

34 **"§ 1-507.42. Stays.**

35 ...

36 (f) Inapplicability of Stay. – The entry of an order appointing a receiver does not operate
37 as a stay of any of the following:

38 ...

- 39 (9) Any other exception as provided in United States Code, Title 11, ~~§ 326(b)~~, §
40 362(b), as to the automatic stay in federal bankruptcy cases in effect from time
41 to time.

42 ...

43 (h) Enforcement. – If a person knowingly violates a stay under this section, the court may
44 award actual damages caused by the violation, reasonable attorneys' fees, and ~~costs~~, costs and
45 may sanction the violation as civil contempt."

46 **SECTION 7.** G.S. 46A-28 reads as rewritten:

47 **"§ 46A-28. Court's authority to make orders before final determination of proceeding;
48 notice and hearing.**

49 (a) Before final determination of a proceeding to partition real property, on application
50 of any of the parties, the court may make any orders that it finds to be in the best interest of the
51 parties, including, but not limited to, orders relating to possession, payment of secured debt or

1 other liens on the property, occupancy and payment of rents, the appointment of a receiver
2 pursuant to G.S. 1-502(6) or a limited receiver for the real property pursuant to Article 38A of
3 Chapter 1 of the General Statutes, and access to the property for the purpose of inspecting,
4 surveying, appraising, or selling the property.

5"

6 **SECTION 8.** G.S. 53C-9-401 reads as rewritten:

7 "**§ 53C-9-401. Statute Article relating to receivers applicable to insolvent banks.**

8 ~~The provisions of G.S. 1-507.1 through 1-507.11, Article 38A of Chapter 1 of the General~~
9 ~~Statutes, relating to receivers, when not inconsistent with the provisions of this Article, shall~~
10 ~~apply-applies~~ to the liquidation of banks under this Article."

11 **PART II. AMENDMENTS AFFECTING THE VALIDITY OF NOTARIAL ACTS**

12 **SECTION 9.(a)** G.S. 10B-65 reads as rewritten:

13 "**§ 10B-65. Acts of notaries public in certain instances validated.**

14 (a) Any acknowledgment taken and any instrument notarized by a person prior to
15 qualification as a notary public but after commissioning or recommissioning as a notary public,
16 or by a person whose notary commission has expired, is ~~hereby~~-validated. The acknowledgment
17 and instrument ~~shall have~~-have the same legal effect as if the person qualified as a notary public
18 at the time the person performed the act.

19 (b) All documents bearing a notarial seal and ~~which-that~~ contain any of the following
20 errors are validated and given the same legal effect as if the errors had not occurred:

21 (1) The date of the expiration of the notary's commission is stated, whether
22 correctly or erroneously.

23 (2) The notarial seal does not contain a readable impression of the notary's name,
24 contains an incorrect spelling of the notary's name, or does not bear the name
25 of the notary exactly as it appears on the commission, as required under
26 G.S. 10B-37.

27 (3) The notary's signature does not comport exactly with the name on the notary
28 commission or on the notary seal, as required by G.S. 10B-20.

29 (4) The notarial seal contains typed, printed, drawn, or handwritten material
30 added to the seal, fails to contain the words "North Carolina" or the
31 abbreviation "NC", or contains correct information except that instead of the
32 abbreviation for North Carolina contains the abbreviation for another state.

33 (5) The date of the acknowledgement, the verification or proof, or the oath or
34 affirmation states the correct day and month but lacks a year or states an
35 incorrect year.

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

38 (d) All notary acknowledgments performed before ~~December 1, 2005, July 1, 2013,~~
39 bearing a notarial seal are ~~hereby~~-validated.

40 (e) This section applies to notarial acts performed on or before April 1, ~~2013, 2021.~~"

41 **SECTION 9.(b)** G.S. 10B-69 reads as rewritten:

42 "**§ 10B-69. Official forms cured.**

43 (a) The notarial certificate contained in a form issued by a State agency prior to April 1,
44 ~~2013, 2021,~~ is deemed to be a valid certificate ~~provided-so long as~~ the certificate complied with
45 the law at the time the form was issued.

46 (b) The notarization using a certificate under subsection (a) of this section ~~shall be~~-is
47 deemed valid if executed in compliance with the law at the time the form was issued."

48 **SECTION 9.(c)** G.S. 10B-71 reads as rewritten:

49 "**§ 10B-71. Certain notarial acts validated when recommissioned notary failed to again take**
50 **oath.**

1 Any acknowledgment taken and any instrument notarized by a person who after
2 recommissioning failed to again take the oath as a notary public is ~~hereby~~ validated. The
3 acknowledgment and instrument ~~shall~~ have the same legal effect as if the person qualified as a
4 notary public at the time the person performed the act. This section ~~shall apply~~ applies to notarial
5 acts performed on or after May 15, 2004, and before April 1, ~~2013-2021.~~"

6 **SECTION 9.(d)** G.S. 47-48 reads as rewritten:

7 "**§ 47-48. Clerks' and registers of deeds' certificate failing to pass on all prior certificates.**

8 When it appears that the clerk of the superior court, register of deeds, or other officer having
9 the power to probate or certify deeds, in passing upon deeds or other instruments, and ~~the~~
10 ~~certificates thereto, having related certificates, consisting of~~ more than one certificate of the same
11 or a different ~~date, by date~~ by other officer or officers taking acknowledgment or probating the
12 ~~same, certificates,~~ has in his or her certificate or order mentioned only one or more of the
13 preceding or foregoing certificates or orders, but not all of them, but has admitted the same deed
14 or other instrument to probate or recordation, it ~~shall be~~ is conclusively presumed that all the
15 certificates of ~~said the~~ deed or instrument necessary ~~to the admission of same to for~~ probate or
16 recordation have been passed upon, and the certificate of ~~said the~~ clerk, register of deeds, or other
17 probating or certifying officer ~~shall be~~ is deemed sufficient and the probate, ~~certification~~
18 ~~certification,~~ and recordation of ~~said the~~ deed or instrument is ~~hereby made and declared~~ valid
19 for all intents and purposes. ~~The provisions of this~~ This section shall apply applies to all
20 instruments recorded in any county of this State prior to April 1, ~~2013-2021.~~"

21 **SECTION 9.(e)** G.S. 47-51 reads as rewritten:

22 "**§ 47-51. Official deeds omitting seals.**

23 All deeds executed prior to April 1, ~~2013, 2021,~~ by any sheriff, commissioner, receiver,
24 executor, executrix, administrator, administratrix, or other officer authorized to execute a deed
25 by virtue of ~~his~~ office or appointment, in which the officer has omitted to affix ~~his a~~ seal after ~~his~~
26 ~~the officer's~~ signature, ~~shall are~~ not be invalid on account of the omission of ~~such the~~ seal."

27 **SECTION 9.(f)** G.S. 47-53 reads as rewritten:

28 "**§ 47-53. Probates omitting official seals, etc.**

29 ~~In all cases where~~ If the acknowledgment, private examination, or other proof of the
30 execution of any deed, mortgage, or other instrument authorized or required to be registered has
31 been taken ~~or had~~ by or before any commissioner of affidavits and deeds of this State, ~~or~~ clerk
32 or deputy clerk of a court of record, or notary public of this or any other state, territory, or district,
33 and ~~such the~~ deed, mortgage, or other instrument has ~~heretofore~~ been recorded in any county in
34 this State, but ~~such the~~ commissioner, clerk, deputy clerk, or notary public ~~has~~ omitted to attach
35 his or her official or notarial ~~seal thereto,~~ seal to it, or if omitted, to insert his or her name in the
36 body of the certificate, or if omitted, to sign his or her name to ~~such the~~ certificate, if the name
37 of ~~such the~~ officer appears in the body of ~~said the~~ certificate or is signed ~~thereto,~~ to it, or it does
38 not appear of record that ~~such the~~ seal was attached to the original deed, mortgage, or other
39 instrument, or ~~such the~~ commissioner, clerk, deputy clerk, or notary public has certified the ~~same~~
40 certificate as under his or her "official seal," or "notarial seal," or words of similar import, and
41 no such seal appears of record or where the officer uses "notarial" in his or her certificate and
42 signature shows that "C.S.C.," or "clerk of superior court," or similar exchange of capacity, and
43 the word "seal" follows the signature, then all such acknowledgments, private examinations or
44 other proofs of such deeds, mortgages, or other instruments, and ~~the their~~ registration ~~thereof,~~ are
45 ~~hereby made~~ are in all respects valid and binding. ~~The provisions of this~~ This section apply
46 applies to acknowledgments, private examinations, or proofs taken prior to April 1, ~~2013-~~
47 ~~Provided, this~~ 2021. This section does not apply to pending litigation."

48 **SECTION 9.(g)** G.S. 47-53.1 reads as rewritten:

49 "**§ 47-53.1. Acknowledgment omitting seal of clerk or notary public.**

50 ~~Where~~ If any person has taken an acknowledgment as either a notary public or a clerk of a
51 superior court, deputy clerk of a superior court, or assistant clerk of a superior court and has

1 failed to affix his or her seal and this acknowledgment has been otherwise duly probated and
2 ~~recorded-recorded~~, then this acknowledgment is hereby declared to be sufficient and valid. This
3 section applies only to those deeds and other instruments acknowledged prior to April 1,
4 ~~2013-2021~~."

5 **SECTION 9.(h)** G.S. 47-72 reads as rewritten:

6 "**§ 47-72. Corporate name not affixed, but signed otherwise prior to April 1, 2013,2021.**

7 In all cases prior to April 1, ~~2013,2021~~, where any deed conveying lands purported to be
8 executed by a corporation, but the corporate name was in fact not affixed to ~~said-the~~ deed, but
9 ~~same-the deed~~ was signed by the president and secretary of ~~said-the~~ corporation, or by the
10 president and two members of the governing body of ~~said-the~~ corporation, and ~~said-the~~ deed has
11 been registered in the county where the land conveyed by ~~said-the~~ deed is located, ~~said-the~~
12 defective execution ~~above-described shall be and the same is hereby declared to be is~~ in all
13 respects valid, and ~~such-the deed shall be-is~~ deemed to be in all respects the deed of ~~said-the~~
14 corporation."

15 **SECTION 9.(i)** G.S. 47-97 reads as rewritten:

16 "**§ 47-97. Validation of corporate deed with mistake as to officer's name.**

17 In all cases where the deed of a corporation executed before April 1, ~~2013,2021~~, is properly
18 executed, properly recorded and there is error in the probate of ~~said-the~~ corporation's deed as to
19 the name or names of the officers in ~~said-the~~ probate, ~~said-the~~ deed shall be construed to be a
20 deed of ~~has~~ the same force and effect as if ~~said-the~~ probate were in every way proper."

21 **SECTION 9.(j)** G.S. 47-97.1 reads as rewritten:

22 "**§ 47-97.1. Validation of corporate deeds containing error in acknowledgment or probate.**

23 In all cases where the deed of a corporation executed and filed for registration prior to April
24 1, ~~2013,2021~~, is properly executed and properly ~~recorded-recorded~~, and there is error in the
25 acknowledgment or probate of ~~said-the~~ corporation's deed as to the name or names of the officer
26 or officers named ~~therein~~ and error as to the title or titles of the officer or officers ~~named therein~~,
27 ~~said deed shall be construed to be a deed of~~ named, the deed has the same force and effect as if
28 ~~said-the~~ probate or acknowledgment were in every way proper."

29 **SECTION 9.(k)** G.S. 47-108.6 reads as rewritten:

30 "**§ 47-108.6. Validation of certain conveyances of foreign dissolved corporations.**

31 In all cases when, prior to April 1, ~~2013,2021~~, any dissolved foreign corporation has, prior
32 to its dissolution, by deed of conveyance purported to convey real property in this State, and ~~said~~
33 the instrument recites a consideration, is signed by the proper officers in the name of ~~said-the~~
34 corporation, sealed with the corporate seal and duly registered in the office of the register of
35 deeds of the county where the land described in ~~said-the~~ instrument is located, but there is error
36 in the attestation clause and acknowledgment in failing to identify the officers signing ~~said-the~~
37 deed and to recite that authority was duly given and that ~~the same-it~~ was the act of ~~said-the~~
38 corporation, ~~said-the~~ deed shall be construed to be a deed of has the same force and effect as if
39 ~~said-the~~ attestation clause and acknowledgment were in every way proper."

40 **SECTION 9.(l)** G.S. 47-108.11 reads as rewritten:

41 "**§ 47-108.11. Validation of recorded instruments where seals have been omitted.**

42 In all cases of any deed, deed of trust, mortgage, lien-lien, or other instrument authorized or
43 required to be registered in the office of the register of deeds of any county in this ~~State~~ State,
44 where it appears of record or it appears that from ~~said-the~~ instrument, as recorded in the office of
45 the register of deeds of any county in the State, that there has been omitted from ~~said-the~~ recorded
46 or registered instrument the word "~~seal,~~" "seal" or "notarial seal" and that any of ~~said-the~~ recorded
47 or registered instruments shows or recites that the grantor or grantors "have hereunto fixed or set
48 their hands and seals" and the signature of the grantor or grantors appears without a seal thereafter
49 or on the recorded or registered instrument or in all cases where it appears there is an attesting
50 clause ~~which-that~~ recites "signed, sealed and delivered in the presence of," and the signature of
51 the grantor or grantors appears on the recorded or registered instrument without any seal

1 appearing thereafter or of record, then all such deeds, mortgages, deeds of trust, ~~liens-liens,~~ or
2 other instruments, and ~~the-their~~ registration ~~of-same~~ in the office of the register of deeds, are
3 ~~hereby declared to be~~ in all respects valid and binding and are ~~hereby made~~ in all respects valid
4 and binding to the same extent as if the word "seal" or "notarial seal" had not been omitted, and
5 the registration and recording of ~~such-the~~ instruments in the office of the register of deeds in any
6 county in this State are ~~hereby declared to be~~ valid, proper, ~~legal-legal,~~ and binding registrations.

7 This section ~~shall~~ does not apply in any respect to any instrument recorded or registered
8 subsequent to April 1, ~~2013, 2021,~~ or to pending litigation or to any ~~such~~ instruments now directly
9 or indirectly involved in pending litigation."

10 **SECTION 9.(m)** G.S. 47-108.20 reads as rewritten:

11 **"§ 47-108.20. Validation of certain recorded instruments that were not acknowledged.**

12 All instruments recorded before April 1, ~~2013, 2021,~~ that were not reexecuted and
13 reacknowledged and that correct an obvious typographical or other minor error in a recorded
14 instrument that was previously properly executed and acknowledged are ~~declared to be~~ valid
15 instruments."

16 **SECTION 10.** G.S. 10B-72 is repealed.

17 **SECTION 11.** G.S. 47-2.2 reads as rewritten:

18 **"§ 47-2.2. Notary public of sister state; lack of seal or stamp or expiration date of**
19 **commission.**

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

32 (b) A proof or acknowledgement ~~which-that~~ does not require a seal or stamp of the notary
33 to be effective in the jurisdiction issuing the notary's commission shall include either (i) a
34 statement by the notary within the proof or acknowledgement area of the instrument that the
35 notary is not required to utilize a seal or stamp or (ii) a reference that purports to be the statute of
36 the commissioning state which provides that no seal or stamp is required together with a
37 statement that the notary is not required to utilize a seal or stamp. The register of deeds may rely
38 upon this statement and is not responsible for confirming its validity or the authority of the person
39 making it. A register of deeds ~~may~~ shall not refuse to accept a record for registration because a
40 notarial seal or stamp is omitted from the proof or acknowledgement if ~~the provisions of this~~
41 subsection ~~have~~ has been complied with in the proof or acknowledgement. The acceptance of a
42 record for registration under this subsection ~~shall give~~ gives rise to a presumption that the seal or
43 stamp was not required to be affixed by the notary. This presumption is rebuttable and ~~shall apply~~
44 applies to all instruments whenever recorded. However, a court order finding the lack of a valid
45 seal ~~shall~~ does not affect the rights of a person ~~who-that~~ (i) records an interest in the real property
46 described in the instrument before the finding of a lack of a valid seal and (ii) would otherwise
47 have an enforceable interest in the real property."

48 **SECTION 12.** G.S. 47-37.1 reads as rewritten:

49 **"§ 47-37.1. Other forms of proof.**

50 (a) The proof and acknowledgment forms set forth in this Article are not exclusive.
51 Without regard to whether an instrument presented for registration was signed by an individual

1 acting in his or her own right or by an individual acting in a representative or fiduciary capacity,
2 a notarial certificate that complies with the provisions of Part 6 of Article 1 or Part 5 of Article 2
3 of Chapter 10B ~~shall be of the General Statutes~~ is deemed a sufficient form of probate or
4 acknowledgment for purposes of this Chapter. Use of a notarial certificate that satisfies the
5 requirements of Part 6 of Article 1 or Part 5 of Article 2 of Chapter 10B ~~shall not be grounds of~~
6 the General Statutes is not a ground for a register of deeds to refuse to accept a record for
7 registration.

8 (b) When an instrument presented for registration purports to be signed by an individual
9 in a representative or fiduciary capacity, the acknowledgment or proof of that individual's
10 signature ~~may~~ may do any of the following:

11 (1) State that the individual signed the instrument in a representative or fiduciary
12 capacity.

13 (2) State that the individual who signed the instrument in a representative or
14 fiduciary capacity had ~~due~~ authority to do so.

15 (3) Identify the represented person or the fiduciary capacity.

16 (c) This section relates only to the form of proof or acknowledgment. The capacity and
17 authority of the individual who signs an instrument presented for registration are governed by
18 other provisions of law.

19 ~~(d) This section applies to proofs and acknowledgments made before, on, or after~~
20 ~~December 1, 2005."~~

21 **PART III. AMENDMENTS AFFECTING REAL PROPERTY**

22 **SECTION 13.** G.S. 41-56 reads as rewritten:

23 **"§ 41-56. Creation of tenancy by the entirety.**

24 (a) Unless a contrary intention is expressed in the conveyance, a conveyance of real
25 property, or any interest ~~therein, in real property,~~ to spouses vests title in them as tenants by the
26 entirety when the conveyance is to one of the following:

27 ...

28
29 (b) A conveyance by a grantor of real property, or any interest ~~therein, to an individual~~
30 in real property, to the grantor and his or her spouse vests the property in ~~the grantees them~~ as
31 tenants by the entirety, unless a contrary intention is expressed in the conveyance. The joinder of
32 a spouse in a conveyance made by the grantor under this subsection is not necessary, but the
33 conveyance is subject to the provisions of G.S. 52-10 or ~~G.S. 52-11, G.S. 52-10.1,~~ except
34 acknowledgement of the spouse of the grantor is not necessary.

35 (c) When an individual owns an undivided interest in real property as a tenant in common
36 with some individual or individuals other than his or her spouse and there occurs an actual
37 partition of the property, a tenancy by the entirety may be created in the individual who owned
38 the undivided interest and his or her spouse as follows:

39 (1) In a division by crossdeed or deeds between or among the tenants in ~~common-~~
40 common, if the instrument contains both of the following:

41 a. The intent of the tenant in common to create a tenancy by the entirety
42 with his or her spouse in this exchange of deeds is clearly stated in the
43 granting clause of the deed or deeds to the tenant in common and his
44 or her spouse.

45 b. The deed or deeds to the tenant in common and his or her spouse is
46 signed by the tenant in common and is acknowledged before a
47 certifying officer in accordance with G.S. 52-10.

48 ...

49 (d) When spouses become co-owners of a mobile home, in the absence of a contrary
50 intention appearing in the instrument of title, the spouses become tenants by the entirety with all
51 the incidents of an estate by the entirety in real property, including the right of survivorship in

1 the case of death of either spouse. For the purposes of this subsection, it is immaterial whether
2 the property at any particular time ~~shall be~~ is classified for any purpose as either real or personal.
3 Nothing in this subsection ~~shall be~~ is deemed to limit or prohibit any other type of ownership
4 otherwise authorized by law. For the purposes of this subsection, the term "mobile home" means
5 a portable manufactured housing unit designed for transportation on its own chassis and
6 placement on a temporary or semipermanent foundation having a measurement of over 32 feet
7 in length and over eight feet in width. As used in this subsection, the term "mobile home" also
8 means a double-wide mobile home ~~which is consisting of~~ two or more portable manufactured
9 housing units that are designed for transportation on their own chassis, which connect chassis
10 and are connected on site for placement on a temporary or semipermanent foundation having a
11 measurement of over 32 feet in length and over eight feet in width."

12 **SECTION 14.** G.S. 41-75 reads as rewritten:

13 **"§ 41-75. Inapplicability of Article.**

14 This Article does not apply to any of the following:

- 15 (1) Executors or trustees in their representative capacity.
- 16 (2) Partnerships governed by Chapter 59 of the General Statutes.
- 17 (3) Business entities.
- 18 (4) Accounts established under ~~G.S. 42-2.1~~ G.S. 41-2.1 or ~~G.S. 42-2.2~~
19 G.S. 41-2.2 to the extent inconsistent with the provisions of this Article.
- 20 (5) Life estates."

21 **SECTION 15.** G.S. 47-18 reads as rewritten:

22 **"§ 47-18. Conveyances, contracts to convey, options and leases of land.**

23 (a) No (i) conveyance of land, ~~or~~ (ii) contract to convey, ~~or~~ (iii) option to convey, ~~or~~ (iv)
24 lease of land for more than three ~~years shall be~~ years, (v) right of first refusal, (vi) right of first
25 offer, or (vii) option to purchase is valid to pass any property interest as against lien creditors or
26 purchasers for a valuable consideration from the donor, ~~bargainor~~ bargainor, or lessor but from
27 the time of its registration thereof in the county where the land lies, or if the land is located in
28 more than one county, then in each county where any portion of the land lies to be effective as
29 to the land in that county. Unless otherwise stated either on the registered instrument or on a
30 separate registered instrument duly executed by the party whose priority interest is adversely
31 affected, (i) instruments registered in the office of the register of deeds ~~shall have~~ priority based
32 on the order of registration as determined by the time of registration, and (ii) if instruments are
33 registered simultaneously, then the instruments ~~shall be~~ are presumed to have priority as
34 determined ~~by~~ as follows:

- 35 (1) The earliest document number set forth on the registered instrument.
- 36 (2) The sequential book and page number set forth on the registered instrument if
37 no document number is set forth on the registered instrument.

38 The presumption created by this subsection is rebuttable.

39"

40 **SECTION 16.** G.S. 93A-12 reads as rewritten:

41 **"§ 93A-12. Disputed monies.**

42 (a) ~~A real estate broker licensed under this Chapter or an attorney licensed to practice law~~
43 ~~in this State~~ An escrow agent may deposit with the clerk of court in accordance with this section
44 monies, other than a residential security deposit, the ownership of which are in dispute and that
45 ~~the real estate broker or attorney received~~ were received while the escrow agent was acting in a
46 fiduciary capacity.

47 (b) The disputed monies shall be deposited with the clerk of court in the county in which
48 the property for which the disputed monies are being held is located. At the time of depositing
49 the disputed monies, the ~~real estate broker or attorney~~ escrow agent shall certify to the clerk of
50 court that the persons ~~who are~~ claiming ownership of the disputed monies have been notified in
51 accordance with subsection (c) of this section that the disputed monies are to be deposited with

1 the clerk of court and that the persons may initiate a special proceeding with the clerk of court to
2 recover the disputed monies.

3 (c) Notice to the persons ~~who are~~ claiming ownership to the disputed monies required
4 under subsection (b) of this section shall be provided by delivering a copy of the notice to the
5 person or by mailing it to the person by first-class mail, postpaid, properly addressed to the person
6 at the person's last known address.

7 (d) ~~A real estate broker or attorney~~ An escrow agent shall not deposit disputed monies
8 with the clerk of court until 90 days following notification of the persons claiming ownership of
9 the disputed monies.

10 (e) Upon the filing of a special proceeding to recover the disputed monies, the clerk shall
11 determine the rightful ownership of the monies and distribute the disputed monies accordingly.
12 If no special proceeding is filed with the clerk of court within one year of the disputed monies
13 being deposited with the clerk of court, the disputed monies shall be deemed unclaimed and shall
14 be delivered by the clerk of court to the State Treasurer in accordance with the provisions of
15 Article 4 of Chapter 116B of the General Statutes.

16 (f) For the purposes of this section, an escrow agent is defined as a real estate broker
17 licensed under this Chapter, a title insurance company or title insurance agent licensed to conduct
18 business in this State, or an attorney licensed to practice law in this State."

19 **SECTION 17.** Section 5 of S.L. 2017-110 reads as rewritten:

20 "**SECTION 5.** This act becomes effective August 31, 2018, and applies to ~~curative affidavits~~
21 instruments filed on or after that date."

22 23 **PART IV. EFFECTIVE DATE**

24 **SECTION 18.** Parts II and III of this act become effective October 1, 2021. The
25 remainder of this act is effective when it becomes law.