

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 761

Short Title: Update Corporate Conveyancing.

(Public)

Sponsors: Senator Wellons.

Referred to: Judiciary I.

April 5, 1999

A BILL TO BE ENTITLED

AN ACT TO REFORM AND MODERNIZE THE ACKNOWLEDGMENT OF CORPORATE REAL PROPERTY INSTRUMENTS AND THE EXECUTION OF REAL PROPERTY INSTRUMENTS GENERALLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-41.01 reads as rewritten:

"§ 47-41.01. Corporate conveyances.

(a) The following forms of probate for deeds and other conveyances executed by a corporation shall be deemed sufficient, but shall not exclude other forms of probate which would be deemed sufficient in law.

(b) If the deed or other instrument is executed by ~~the corporation's chairman, president, chief executive officer, a vice president or an assistant vice president, treasurer, or chief financial officer signing the name of such corporation by him as such officer, an official of the corporation, signing the name of the corporation by him in his official capacity, or any other agent authorized by resolution pursuant to G.S. 47-18.3(e)~~ is sealed with its common or corporate seal, and is attested by another person who is ~~its secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or, in case of a bank, its secretary, assistant secretary, cashier or assistant cashier, an attesting official of the corporation,~~ the following form of acknowledgment is sufficient:

.....

1 (State and county, or other
2 description of place where
3 acknowledgment is taken)

4 I,.....,

5
6
7,

8 (Name of officer taking (Official title of officer
9 acknowledgment) taking acknowledgment)

10 certify that personally came before

11 ~~(Name of secretary, assistant secretary,
12 trust officer, assistant trust officer,
13 cashier or assistant cashier)~~

14 (Name of attesting official)

15 me this day and acknowledged that he (or she) is

16 ~~(Secretary, assistant secretary, trust
17 officer, assistant trust officer, cashier or
18 assistant cashier)~~

19 (Title of attesting official)

20
21 of....., a corporation, and that by authority duly

22 (Name of corporation)

23 given and as the act of the corporation, the foregoing instrument was signed in its name
24 by its.....,

25 ~~(Chairman, president, chief executive officer, vice-
26 president, assistant vice president, treasurer, or chief
27 financial officer) (Title of official)~~

28
29 sealed with its corporate seal, and attested by himself (or herself) as
30 its.....

31 ~~(Secretary, assistant secretary,
32 trust officer, assistant trust officer,
33 cashier or assistant cashier)~~

34 (Title of attesting official)

35
36 Witness my hand and official seal, this the..... day of

37,

38 (Month)

39

40 (Year)

41

42 (Signature of officer taking acknowledgment)

43 (Official seal, if officer taking

1 acknowledgment has one)
2 My commission expires.....
3 (Date of expiration of commission as
4 notary public)

5 (c) If the deed or other instrument is executed by an official of the corporation,
6 signing the name of the corporation in his official capacity, or any other agent authorized
7 by resolution pursuant to G.S. 47-18.3(e) the following form of acknowledgment is
8 sufficient:

10 (State and county, or other
11 description of place where
12 acknowledgment is taken)

13 I.....

16 (Name of officer taking
17 acknowledgment)

.....
.....
(Official title of officer
taking acknowledgment)

18 certify that personally came before
19 (Name of official)
20 me this day and acknowledged that he (or she) is
21 (Title of official)

23 of....., a corporation, and that he/she, as
24
25 being authorized to do so, executed the
26 (Title of official)
27 foregoing on behalf of the corporation.

29 Witness my hand and official seal, this the..... day of
30
31 (Month)
32
33 (Year)

34
35 (Signature of officer taking acknowledgment)

36 (Official seal, if officer taking
37 acknowledgment has one)

38 My commission expires.....
39 (Date of expiration of commission as
40 notary public)

41
42 (d) For purposes of this section:

- 1 (1) The words "a corporation" following the blank for the name of the
2 corporation may be omitted when the name of the corporation ends with
3 the word "Corporation" or "Incorporated."
- 4 (2) The words "My commission expires" and the date of expiration of the
5 notary public's commission may be omitted except when a notary public
6 is the officer taking the acknowledgment. The fact that these words and
7 this date may be located in a position on the form different from the
8 position indicated in this subsection does not by itself invalidate the
9 form.
- 10 (3) The ~~words phrase~~ "and official seal" and the seal itself may be omitted
11 when the officer taking the acknowledgment has no seal or when such
12 officer is the clerk, assistant clerk, or deputy clerk of the superior court
13 of the county in which the deed or other instrument acknowledged is to
14 be registered.
- 15 (4) The official of the corporation is the corporation's chairman, president,
16 chief executive officer, a vice-president or an assistant vice-president,
17 treasurer, or chief financial officer, or any other agent authorized by
18 resolution pursuant to G.S. 47-18.3(e).
- 19 (5) The attesting official of the corporation is the corporation's secretary or
20 assistant secretary, trust officer, assistant trust officer, associate trust
21 officer, or in the case of a bank, its secretary, assistant secretary, cashier
22 or assistant cashier.
- 23 (6) The phrase "sealed with its corporate seal" may be omitted if the seal of
24 the corporation has not been affixed to the instrument being
25 acknowledged."

26 Section 2. Article 1 of Chapter 39 of the General Statutes is amended by
27 adding a new section to read:

28 **"§ 39-6.5. Elimination of seal.**

29 The seal of the signatory shall not be necessary to effect a valid conveyance of an
30 interest in real property; provided, that this section shall not affect the requirement for
31 affixing a seal of the officer taking an acknowledgment of the instrument."

32 Section 3. G.S. 1-47 reads as rewritten:

33 **"§ 1-47. Ten years.**

34 Within ten years an action –

- 35 (1) Upon a judgment or decree of any court of the United States, or of any
36 state or territory thereof, from the date of its rendition. No such action
37 may be brought more than once, or have the effect to continue the lien
38 of the original judgment.
- 39 (1a) Upon a judgment rendered by a justice of the peace, from its date.
- 40 (2) Upon a sealed instrument or an instrument of conveyance of an interest
41 in real property, against the principal thereto. Provided, however, that if
42 action on ~~a sealed~~ an instrument is filed, the defendant or defendants in
43 such action may file a counterclaim arising out of the same transaction

1 or transactions as are the subject of plaintiff's claim, although a shorter
2 statute of limitations would otherwise apply to defendant's
3 counterclaim. Such counterclaim may be filed against such parties as
4 provided in G.S. 1A-1, Rules of Civil Procedure.

5 (3) For the foreclosure of a mortgage, or deed in trust for creditors with a
6 power of sale, of real property, where the mortgagor or grantor has been
7 in possession of the property, within ten years after the forfeiture of the
8 mortgage, or after the power of sale became absolute, or within ten
9 years after the last payment on the same.

10 (4) For the redemption of a mortgage, where the mortgagee has been in
11 possession, or for a residuary interest under a deed in trust for creditors,
12 where the trustee or those holding under him has been in possession,
13 within ten years after the right of action accrued.

14 (5) Repealed by Session Laws 1959, c. 879, s. 2.

15 (6) a. Against any registered land surveyor as defined in G.S. 89C-3(9) or
16 any person acting under his supervision and control for physical damage
17 or for economic or monetary loss due to negligence or a deficiency in
18 the performance of surveying or platting, within 10 years after the last
19 act or omission giving rise to the cause of action.

20 b. For purposes of this subdivision, "surveying and platting" means
21 boundary surveys, topographical surveys, surveys of property
22 lines, and any other measurement or surveying of real property
23 and the consequent graphic representation thereof.

24 c. The limitation prescribed by this subdivision shall apply to the
25 exclusion of G.S. 1-15(c) and G.S. 1-52(16)."

26 Section 4. G.S. 47-18.3 reads as rewritten:

27 "**§ 47-18.3. Execution of corporate instruments; authority and proof.**

28 (a) Notwithstanding anything to the contrary in the bylaws or articles of
29 incorporation, when it appears on the face of an instrument registered in the office of the
30 register of deeds that the instrument was signed in the ordinary course of business on
31 behalf of a domestic or foreign corporation by its chairman, president, chief executive
32 officer, a ~~vice president or an assistant vice president, treasurer, vice-president,~~ or chief
33 financial officer, ~~and attested or countersigned by another person who is its secretary or an~~
34 ~~assistant secretary, (or, in the case of a bank, its secretary, assistant secretary, cashier, or assistant~~
35 ~~cashier),~~ such an instrument shall be as valid with respect to the rights of innocent third
36 parties as if executed pursuant to authorization from the board of directors, unless the
37 instrument reveals on its face a potential breach of fiduciary obligation. The subsection
38 shall not apply to parties who had actual knowledge of lack of authority or of a breach of
39 fiduciary obligation.

40 (b) Any instrument registered in the office of the register of deeds, appearing on its
41 face to be executed by a corporation, foreign or domestic, and bearing a seal which
42 purports to be the corporate seal, setting forth the name of the corporation engraved,
43 lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, is

1 prima facie evidence that the seal is the duly adopted corporate seal of the corporation,
2 that it has been affixed as such by a person duly authorized so to do, that the instrument
3 was duly executed and signed by persons who were officers or agents of the corporation
4 acting by authority duly given by the board of directors, and that any such instrument is
5 the act of the corporation, and shall be admissible in evidence without further proof of
6 execution.

7 (c) Nothing in this section shall be deemed to exclude the power of any corporate
8 representatives to bind the corporation pursuant to express, implied, inherent or apparent
9 authority, ratification, estoppel, or otherwise.

10 (d) Nothing in this section shall relieve corporate officers from liability to the
11 corporation or from any other liability that they may have incurred from any violation of
12 their actual authority.

13 (e) ~~The Home Owners Loan Corporation or any~~ Any corporation, the majority of whose
14 ~~stock is owned by the United States government,~~ corporation may convey lands or other
15 property which is transferable by deed which is duly executed by either an officer,
16 manager, or agent of said ~~corporation, sealed with the common seal~~ corporation and has
17 attached thereto a signed and attested ~~resolution, under seal,~~ resolution of the board of
18 directors of said corporation authorizing the said officer, manager, or agent to execute,
19 sign, seal, and attest deeds, conveyances, or other instruments. This section shall be
20 deemed to have been complied with if an attested resolution is recorded separately in the
21 office of the register of deeds in the county where the land lies, which said resolution
22 shall be applicable to all deeds executed subsequently thereto and pursuant to its
23 authority. Notwithstanding the foregoing, this section shall not require a signed and
24 attested resolution of the board of directors of the corporation to be attached to a deed or
25 separately recorded in the case of a deed duly executed by the corporation's chairman,
26 president, chief executive officer, a vice-president, treasurer, or chief financial officer.
27 All deeds, conveyances, or other instruments which have been heretofore or shall be
28 hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect to
29 pass the title to the real or personal property described therein."

30 Section 5. Sections 1 and 4 of this act become effective October 1, 1999. The
31 remaining sections of this act become effective when they become law and apply to
32 instruments registered prior to or after that date, except that they shall not apply to
33 litigation pending on that date or to any instrument directly or indirectly involved in
34 litigation pending on that date.