

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 1999

SENATE BILL 761  
RATIFIED BILL

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:

.....  
(State and county, or other  
description of place where  
acknowledgment is taken)  
I,.....  
.....  
.....  
(Name of officer taking  
acknowledgment) (Official title of officer  
taking acknowledgment)  
certify that ..... personally came before  
(Name of secretary, assistant secretary,  
trust officer, assistant trust officer,  
cashier or assistant cashier)  
(Name of attesting official)  
me this day and acknowledged that he (or she) is .....  
(Secretary, assistant secretary, trust  
officer, assistant trust officer, cashier or  
assistant cashier)  
(Title of attesting official)  
of....., a corporation, and that by authority duly  
(Name of corporation)  
given and as the act of the corporation, the foregoing instrument was signed in its name  
by its.....

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

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

~~(Secretary, assistant secretary, trust officer, assistant trust officer, cashier or assistant cashier) (Title of attesting official)~~

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

.....  
(Month)

.....  
(Year)

.....  
(Signature of officer taking acknowledgment)

(Official seal, if officer taking acknowledgment has one)

My commission expires.....

(Date of expiration of commission as notary public)

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

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

I,.....

(Name of officer taking acknowledgment)

(Official title of officer taking acknowledgment)

certify that ..... personally came before

(Name of official)

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

(Title of official)

of....., a corporation, and that he/she, as

....., being authorized to do so, executed the

(Title of official)

foregoing on behalf of the corporation.

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

.....  
(Month)

.....  
(Year)

.....  
(Signature of officer taking acknowledgment)

(Official seal, if officer taking

acknowledgment has one)

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

(d) For purposes of this section:

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

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

**"§ 39-6.5. Elimination of seal.**

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

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

**"§ 1-47. Ten years.**

Within ten years an action –

- (1) Upon a judgment or decree of any court of the United States, or of any state or territory thereof, from the date of its rendition. No such action may be brought more than once, or have the effect to continue the lien of the original judgment.
- (1a) Upon a judgment rendered by a justice of the peace, from its date.
- (2) Upon a sealed instrument or an instrument of conveyance of an interest in real property, against the principal thereto. Provided, however, that if action on a ~~sealed~~ an instrument is filed, the defendant or defendants in such action may file a counterclaim arising out of the same transaction or transactions as are the subject of plaintiff's claim, although a shorter statute of limitations would otherwise apply to defendant's counterclaim. Such counterclaim may be filed against such parties as provided in G.S. 1A-1, Rules of Civil Procedure.
- (3) For the foreclosure of a mortgage, or deed in trust for creditors with a power of sale, of real property, where the mortgagor or grantor has

- been in possession of the property, within ten years after the forfeiture of the mortgage, or after the power of sale became absolute, or within ten years after the last payment on the same.
- (4) For the redemption of a mortgage, where the mortgagee has been in possession, or for a residuary interest under a deed in trust for creditors, where the trustee or those holding under him has been in possession, within ten years after the right of action accrued.
  - (5) Repealed by Session Laws 1959, c. 879, s. 2.
  - (6) a. Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or for economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting, within 10 years after the last act or omission giving rise to the cause of action.
    - b. For purposes of this subdivision, "surveying and platting" means boundary surveys, topographical surveys, surveys of property lines, and any other measurement or surveying of real property and the consequent graphic representation thereof.
    - c. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c) and G.S. 1-52(16)."

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

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

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

(b) Any instrument registered in the office of the register of deeds, appearing on its face to be executed by a corporation, foreign or domestic, and bearing a seal which purports to be the corporate seal, setting forth the name of the corporation engraved, lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, is prima facie evidence that the seal is the duly adopted corporate seal of the corporation, that it has been affixed as such by a person duly authorized so to do, that the instrument was duly executed and signed by persons who were officers or agents of the corporation acting by authority duly given by the board of directors, and that any such instrument is the act of the corporation, and shall be admissible in evidence without further proof of execution.

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

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

(e) ~~The Home Owners Loan Corporation or any~~ Any corporation, the majority of whose stock is owned by the United States government, corporation may convey lands or other an interest in real property which is transferable by deed instrument which is duly executed by either an officer, manager, or agent of said ~~corporation, sealed with the common seal~~ corporation and has attached thereto a signed and attested ~~resolution, under seal, resolution~~ of the board of directors of said corporation authorizing the said

officer, manager, or agent to execute, sign, seal, and attest deeds, conveyances, or other instruments. This section shall be deemed to have been complied with if an attested resolution is recorded separately in the office of the register of deeds in the county where the land lies, which said resolution shall be applicable to all deeds executed subsequently thereto and pursuant to its authority. Notwithstanding the foregoing, this section shall not require a signed and attested resolution of the board of directors of the corporation to be attached to an instrument or separately recorded in the case of an instrument duly executed by the corporation's chairman, president, chief executive officer, a vice-president, assistant vice-president, treasurer, or chief financial officer. All deeds, conveyances, or other instruments which have been heretofore or shall be hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to the real or personal property described therein."

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

In the General Assembly read three times and ratified this the 17th day of June, 1999.

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Dennis A. Wicker  
President of the Senate

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James B. Black  
Speaker of the House of Representatives

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James B. Hunt, Jr.  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_ , 19