

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

3

SENATE BILL 761

Judiciary I Committee Substitute Adopted 4/22/99

House Committee Substitute Favorable 6/7/99

Short Title: Update Corporate Conveyancing.

(Public)

Sponsors:

Referred to:

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,~~

1 or, in case of a bank, its secretary, assistant secretary, cashier or assistant cashier, an
2 attesting official of the corporation, the following form of acknowledgment is sufficient:

3

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

7 I,.....,

8

9

10

11 (Name of officer taking
12 acknowledgment)

(Official title of officer
taking acknowledgment)

13 certify that personally came before

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

(Name of attesting official)

18 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)

24 of....., a corporation, and that by authority duly

(Name of corporation)

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

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

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

(~~Secretary, assistant secretary,
trust officer, assistant trust officer,
cashier or assistant cashier~~)

(Title of attesting official)

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

40

41 (Month)

42

43 (Year)

1
2 (Signature of officer taking acknowledgment)

3 (Official seal, if officer taking
4 acknowledgment has one)

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

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

12
13 (State and county, or other
14 description of place where
15 acknowledgment is taken)

16 I,.....

17
18
19 (Name of officer taking
20 acknowledgment)

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

21 certify that personally came before
22 (Name of official)

23 me this day and acknowledged that he (or she) is
24 (Title of official)

25
26 of....., a corporation, and that he/she, as

27
28 being authorized to do so, executed the
29 (Title of official)

30 foregoing on behalf of the corporation.

31
32 Witness my hand and official seal, this the..... day of

33
34 (Month)

35
36 (Year)

37
38 (Signature of officer taking acknowledgment)

39 (Official seal, if officer taking
40 acknowledgment has one)

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

1
2 (d) For purposes of this section:

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

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

30 **"§ 39-6.5. Elimination of seal.**

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

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

35 **"§ 1-47. Ten years.**

36 Within ten years an action –

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

1 action on ~~a sealed~~ an instrument is filed, the defendant or defendants in
2 such action may file a counterclaim arising out of the same transaction
3 or transactions as are the subject of plaintiff's claim, although a shorter
4 statute of limitations would otherwise apply to defendant's
5 counterclaim. Such counterclaim may be filed against such parties as
6 provided in G.S. 1A-1, Rules of Civil Procedure.

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

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

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

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

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

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

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

29 **"§ 47-18.3. Execution of corporate instruments; authority and proof.**

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

42 (b) Any instrument registered in the office of the register of deeds, appearing on its
43 face to be executed by a corporation, foreign or domestic, and bearing a seal which

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

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

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

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

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