

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

**HOUSE BILL 1432
RATIFIED BILL**

AN ACT TO MAKE CORRECTIONS AND OTHER AMENDMENTS TO THE
NOTARY PUBLIC ACT, AND TO MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 10B-3 reads as rewritten:

"§ 10B-3. Definitions.

The following definitions apply in this Chapter:

- (1) ~~"Acknowledgment" means a Acknowledgment. – A notarial act in which an individual, a notary certifies that at a single time and place; place all of the following occurred:~~
 - a. ~~Appears~~ An individual appeared in person before the notary and ~~presents a record; and presented a record.~~
 - b. ~~Is~~ The individual was personally known to the notary or identified by the notary through satisfactory ~~evidence and evidence.~~
 - c. The individual did either of the following:
 - i. ~~indicates~~ Indicated to the notary that the signature on the record ~~was the individual's signature. was voluntarily affixed by the individual for the purposes stated within the record.~~
 - ii. Signed the record while in the physical presence of the notary and while being personally observed signing the record by the notary.
- (2) ~~"Affirmation" means a Affirmation. – A notarial act, or part thereof, act which is legally equivalent to an oath and in which a notary certifies that an individual at a single time and place; place all of the following occurred:~~
 - a. ~~Appears~~ An individual appeared in person before the ~~notary; notary.~~
 - b. ~~Is~~ The individual was personally known to the notary or identified by the notary through satisfactory ~~evidence; and evidence.~~
 - c. ~~Makes~~ The individual made a vow of truthfulness on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word "swear".
- (3) ~~"Attest" or "attestation" means the Attest or attestation. – The act of completing the written evidence of a notarial act, to wit: completion of a certificate by a notary who has performed a notarial act by witnessing a signature or administering an oath or affirmation. act.~~
- (4) ~~"Commission" means the Commission. – The empowerment to perform notarial acts and the written evidence of authority to perform those acts.~~
- (5) ~~"Credible witness" means an honest, reliable, and impartial person~~ Credible witness. – An individual who is personally known to the

~~notary and takes an oath or affirmation from the notary to confirm a signer's identity to whom all of the following also apply:~~

- a. ~~The notary believes the individual to be honest and reliable for the purpose of confirming to the notary the identity of another individual.~~
 - b. ~~The notary believes the individual is not a party to or beneficiary of the transaction.~~
- (6) ~~"Department" means the Department. – The North Carolina Department of the Secretary of State.~~
 - (7) ~~"Director" means the Director. – The Division Director for the North Carolina Department of the Secretary of State Notary Public Section.~~
 - (8) ~~"Jurat" means a Jurat. – A notary's certificate evidencing the administration of an oath or affirmation, certification added to an affidavit or deposition that states when and before what authority an affidavit or deposition was made, to wit, "Subscribed and sworn to before me this the ____ day of _____, 20__." The notary's signature and seal shall be affixed below the sworn or affirmed statement and signature of the affiant. In so doing, the notary shall certify the following:~~
 - a. ~~That the person signing the affidavit or deposition did so in the notary's presence and indicates the county in which the notarial act took place;~~
 - b. ~~That the signer appeared before the notary on the date indicated;~~
 - e. ~~That the notary administered an oath or affirmation to the signer, who swore to or affirmed the contents of the document.~~
- (9) ~~"Moral turpitude" means conduct. Moral turpitude. – Conduct contrary to expected standards of honesty, morality, or integrity.~~
 - (10) ~~"Nickname" means a Nickname. – A descriptive, familiar, or shortened form of a proper name.~~
 - (11) ~~"Notarial act," "notary act," and "notarization" mean the Notarial act, notary act, and notarization. – The act of taking an acknowledgment, taking a verification or proof or administering an oath or affirmation that a notary is empowered to perform under this Chapter, as authorized by G.S. 10B-31. G.S. 10B-20(a).~~
 - (12) ~~"Notarial certificate" and "certificate" mean the Notarial certificate and certificate. – The portion of a notarized record that is completed by the notary, bears the notary's signature and seal, and states the facts attested by the notary in a particular notarization.~~
 - (13) ~~"Notary public" and "notary" mean a Notary public and notary. – A person commissioned to perform notarial acts under this Chapter. A notary is a public officer of the State of North Carolina and shall act in full and strict compliance with this act.~~
 - (14) ~~"Oath" means a Oath. – A notarial act, or part thereof, act which is legally equivalent to an affirmation and in which a notary certifies that an individual at a single time and place; place all of the following occurred:~~
 - a. ~~Appears – An individual appeared in person before a notary; the notary.~~
 - b. ~~Is – The individual was personally known to the notary or identified by the notary through satisfactory evidence; and evidence.~~
 - c. ~~Makes – The individual made a vow of truthfulness on penalty of perjury while invoking a deity or using any form of the word "swear".~~

- (15) ~~"Official misconduct" means either Official misconduct. – Either of the following:~~
- a. A notary's performance of a prohibited act or failure to perform a mandated act set forth in this Chapter or any other law in connection with notarization.
 - b. A notary's performance of a notarial act in a manner found by the Secretary to be negligent or against the public interest.
- (16) ~~"Personal appearance" and "appear in person before a notary" mean an~~ Personal appearance and appear in person before a notary. – An individual and a notary are in close physical proximity to one another so that they may freely see and communicate with one another and exchange records back and forth during the notarization process.
- (17) ~~"Personal knowledge of identity" means familiarity~~ Personal knowledge or personally know. – Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.
- (18) ~~"Principal" means an Principal. – One of the following:~~
- a. In the case of an acknowledgment, the individual whose signature is notarized; or an identity and due execution of a record is being certified by the notary.
 - b. In the case of a verification or proof, the individual other than a credible subscribing witness, taking an oath or affirmation from the notary whose:
 - i. Identity and due execution of the record is being proven;
or
 - ii. Signature is being identified as genuine.
 - c. In the case of an oath or affirmation, the individual who makes a vow of truthfulness on penalty of perjury.
- (19) ~~"Record" means information~~ Record. – Information that is inscribed on a tangible medium and called a traditional or paper record.
- (20) ~~"Regular place of work or business" means a~~ Regular place of work or business. – A location, office or other workspace, where an individual regularly spends all or part of the individual's work time.
- (21) ~~"Revocation" means the~~ Revocation. – The cancellation of the notary's commission stated in the order of revocation.
- (22) ~~"Satisfactory evidence of a signer's identity" means identification~~ Satisfactory evidence. – Identification of an individual based on either of the following:
- a. At least one current document issued by a federal, state, or federal or state-recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual.
 - b. The oath or affirmation of one credible witness ~~unaffected by the record or transaction who is personally known to the notary and~~ who personally knows the individual seeking to be identified.
- (23) ~~"Seal" and "stamp" mean a~~ Seal or stamp. – A device for affixing on a paper record an image containing a notary's name, the words "notary public," and other information as required in G.S. 10B-37.
- (24) ~~"Secretary" means the~~ Secretary. – The North Carolina Secretary of State or the Secretary's designee.
- (25) ~~"Signature" means the act of personally signing one's name in ink by hand.~~

- (26) ~~"Subscribing witness" means a Subscribing witness. – A person who either watches another individual sign a record or takes that individual's acknowledgment of an already signed record and appears before the notary on behalf of the principal. The subscribing witness must sign the document in addition to the principal, must be personally known by the notary or prove identity to the notary by satisfactory evidence, and must take an oath or affirmation stating that he or she witnessed the principal sign.~~ signs a record for the purpose of being a witness to the principal's execution of the record or to the principal's acknowledgment of his or her execution of the record. A subscribing witness may give proof of the execution of the record as provided in subdivision (28) of this section.
- (27) ~~"Suspension" and "restriction" means the Suspension and restriction. – The termination of a notary's commission for a period of time stated in an order of restriction or suspension. The terms "restriction" or "suspension" or a combination of both terms shall be used synonymously.~~
- (28) ~~"Verification" or "proof" means a Verification or proof. – A notarial act in which a notary certifies that all of the following occurred:~~
- a. An individual appeared in person before the notary.
 - b. The individual was personally known to the notary or identified by the notary through satisfactory evidence.
 - c. The individual was not a party to or beneficiary of the transaction.
 - d. ~~where a person certifies under oath or affirmation that the person witnessed the principal either execute, record, or acknowledge the principal's signature on an already executed record. The individual took an oath or gave an affirmation and testified to one of the following:~~
 - i. The individual is a subscribing witness and the principal who signed the record did so while being personally observed by the subscribing witness.
 - ii. The individual is a subscribing witness and the principal who signed the record acknowledged his or her signature to the subscribing witness.
 - iii. The individual recognized either the signature on the record of the principal or the signature on the record of the subscribing witness and the signature was genuine."

SECTION 2. G.S. 10B-5(b) reads as rewritten:

- "(b) A person qualified for a notarial commission shall meet all of the following requirements:
- (1) Be at least 18 years of age or legally emancipated as defined in Article 35 of Chapter 7B of the General Statutes.
 - (2) Reside or have a regular place of work or business in this State.
 - (3) Reside legally in the United States.
 - (4) Speak, read, and write the English language.
 - (5) Possess a high school diploma or equivalent.
 - (6) Pass the course of instruction described in this Article, unless the person is a licensed member of the North Carolina State Bar.
 - (7) Purchase and keep as a reference the most recent manual approved by the Secretary that describes the duties and authority of notaries public.
 - (8) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each county. Every application shall include the signature of the applicant

written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths.

- (9) Obtain the recommendation of one publicly elected official in North Carolina and submit the recommendation with the application. Except for The requirement of this subdivision shall not apply to any applicant who seeks to receive the oath of office from the register of deeds of a county where more than 15,000 active notaries public are on record on January 1 of the year when the application is filed, the applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application filed."

SECTION 3. G.S. 10B-7(b) reads as rewritten:

"(b) ~~The information contained provided in an application that relates to subdivisions (2), (3), (6), and (7) of subsection (a) of this section under this section is a public record as defined in G.S. 132-1. The information contained in subdivisions (2), (3), (6) and (7) of subsection (a) of this section shall be considered confidential information and shall not be subject to disclosure except as provided in under Chapter 132 of the General Statutes.~~"

SECTION 4. G.S. 10B-10(c) reads as rewritten:

"(c) ~~The After the appointee qualifies by taking the oath of office required under subsection (b) of this section, the register of deeds shall then place the notary record in a book designated for that purpose, or the notary record may be recorded in the Consolidated Document Book and indexed in the Consolidated Real Property Index under the notary's name in the grantor index. The notary record may be kept in electronic format so long as the signature of the notary public may be viewed and printed. The notary record shall contain the name and the signature of the notary as commissioned, the effective date and expiration date of the commission, the date the oath was administered, and the date of any restriction, suspension, revocation, or resignation. The record shall constitute the official record of the qualification of notaries public.~~"

SECTION 5. G.S. 10B-11(b) reads as rewritten:

"(b) A notary whose commission has not expired must comply with the following requirements to be recommissioned:

- (1) Submit a new application under G.S. 10B-6, meeting the requirements of G.S. 10B-6, except for G.S. 10B-6(2).
- (2) Meet all the requirements of G.S. 10B-5(b)G.S. 10B-5(b), except for G.S. 10B-5(b)(5), (6), and (9).
- (3) Pass-Achieve a passing score on the written examination required under G.S. 10B-8, unless G.S. 10B-8(b). This requirement does not apply if the notary is a licensed member of the North Carolina State Bar. Bar, or if the notary has been continuously commissioned in North Carolina since July 10, 1991, and has never been disciplined by the Secretary."

SECTION 6. G.S. 10B-20(a) reads as rewritten:

"§ 10B-20. Powers and limitations.

(a) A notary may perform any of the following notarial acts:

- (1) Acknowledgments.
- (2) Oaths and affirmations.
- ~~(3) Execute jurats.~~
- (4) Verifications or proofs."

SECTION 7. G.S. 10B-20(b) reads as rewritten:

"(b) A notarial act shall be attested by all of the following:

- (1) The signature of the notary, exactly as shown on the notary's commission.

- (2) ~~The readable- legible appearance of the notary's name, name exactly as shown on the notary's commission. The legible appearance of the name may be ascertained from the notary's typed or printed name near the signature- notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible.~~
- (3) The clear and legible appearance of the notary's stamp or seal.
- (4) A statement of the date the notary's commission expires. The statement of the date that the notary's commission expires may appear in the notary's stamp or seal or elsewhere in the notarial certificate."

SECTION 8. G.S. 10B-20(c) reads as rewritten:

"(c) A notary is ~~disqualified from performing~~ shall not perform a notarial act if any of the following apply:

- (1) ~~The principal or subscribing witness is not in the notary's presence at the time the notarial act is to be performed; however, performed. However, nothing in this Chapter shall require a notary to complete the notarial certificate attesting to the notarial act in the presence of the principal or subscribing witness.~~
- (2) The principal or subscribing witness is not personally known to the notary or identified by the notary through satisfactory evidence.
- ~~(2a) The credible witness is not personally known to the notary.~~
- ~~(3) The principal or subscribing witness shows a demeanor that causes the notary to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act.~~
- (4) ~~The principal or subscribing witness, in the notary's judgment, is not acting of the principal's or the subscribing witness's own free will.~~
- (5) ~~The notary is a signer of or is named, other than as a trustee in a deed of trust, in the document of, party to, or beneficiary of the record, that is to be notarized. However, a disqualification under this subdivision shall not apply to a notary who is named in a record solely as 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, so long as the notary is not also a party to the record individually or in some other representative or fiduciary capacity.~~
- (6) The notary will receive directly from a transaction connected with the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in G.S. 10B-31, other than fees or other consideration paid for services rendered by a licensed attorney, a licensed real estate broker or salesperson, a motor vehicle dealer, or a banker."

SECTION 9. G.S. 10B-20(g) reads as rewritten:

"~~(g) Commissioned officers on active duty in the United States armed forces who are authorized to perform notarial acts and other persons~~ Persons authorized by federal law or regulation to perform notarial acts may perform the acts for persons serving in or with the United States armed forces, their spouses, and their dependents."

SECTION 10. G.S. 10B-20(l) reads as rewritten:

"(l) A notary public required to comply with the provisions of subsection ~~(g)~~ (i) of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business."

SECTION 11. G.S. 10B-20(m) reads as rewritten:

"(m) If notarial certificate wording is not provided or indicated for a record, a ~~nonattorney~~ notary who is not also a licensed attorney shall not determine the type of

notarial act or certificate to be used. This does not prohibit a notary from offering the selection of certificate forms recognized in this Chapter or as otherwise authorized by law."

SECTION 12. G.S. 10B-20(o) reads as rewritten:

"(o) Before signing a notarial certificate and except as provided in this subsection, a notary shall cross out or mark through all blank lines or spaces in the certificate. However:

- (1) Notwithstanding the provisions of this ~~section or G.S. 10B-35(b), section,~~ a notary shall not be required to complete, cross out, or mark through blank lines or spaces in the notary certificate form provided for in G.S. 47-43 indicating when and where a power of attorney is recorded if that recording information is not known to the notary at the time the notary completes and signs the certificate;
- (2) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the certificate or the related record; and
- (3) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not be grounds for a register of deeds to refuse to accept a record for registration."

SECTION 13. G.S. 10B-23 reads as rewritten:

"§ 10B-23. Improper records.

(a) A notary shall not notarize a signature on a record without a notarial certificate indicating what type of notarial act was performed. However, a notary may administer an oath or affirmation without completing a jurat.

(b) A notary shall neither certify, notarize, nor authenticate a photograph. A notary may notarize an affidavit regarding and attached to a photograph."

SECTION 14. G.S. 10B-31 reads as rewritten:

"§ 10B-31. Fees for notarial acts.

The maximum fees that may be charged by a notary for notarial acts are as follows:

- (1) For acknowledgments, jurats, verifications or proofs, five dollars (\$5.00) per principal signature.
- (2) For oaths or affirmations without a signature, five dollars (\$5.00) per person, except for an oath or affirmation administered to a credible witness to vouch for ~~a principal's identity; the identity of a principal or subscribing witness.~~

SECTION 15. G.S. 10B-22 as enacted in Section 4 of S.L. 2005-391 and as codified as G.S. 10B-35 reads as rewritten:

~~"§ 10B-22. Official signature.~~

~~(a) A notary shall keep an official seal or stamp (herein "seal") that is the exclusive property of the notary. The notary shall keep the seal in a secure location that is accessible only to the notary. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.~~

~~(b) The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the signature shall appear on the same page.~~

~~(c) A notary shall do the following within 10 days of discovering that the notary's seal has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:~~

- ~~(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.~~
- ~~(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.~~

~~(d) As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal.~~

"§ 10B-35. Official signature.

When notarizing a paper record, a notary shall sign by hand in ink on the notarial certificate. The notary shall comply with the requirements of G.S. 10B-20(b)(1) and (b)(2). The notary shall affix the official signature only after the notarial act is performed. The notary shall not sign a paper record using the facsimile stamp or an electronic or other printing method."

SECTION 16. G.S. 10B-36 reads as rewritten:

"§ 10B-36. Official seal.

(a) A notary shall keep an official seal or stamp (~~herein "seal"~~)—that is the exclusive property of the notary. The notary shall keep the seal in a secure ~~location that is accessible only to the notary.~~ location. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.

(b) The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the notary's signature shall appear on the same page. ~~page of a record as the text of the notarial certificate.~~

(c) A notary shall do the following within 10 days of discovering that the notary's seal has been ~~stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:~~ lost or stolen:

- (1) Inform the appropriate law enforcement agency in the case of theft or vandalism.
- (2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal."

SECTION 17. G.S. 10B-37 reads as rewritten:

"§ 10B-37. Seal image.

(a) ~~Near~~ A notary shall affix the notary's official seal near the notary's official signature on the notarial certificate of a paper record, the notary shall place a sharp, legible, permanent, and photographically reproducible image of the official seal. ~~record.~~

(b) A notary's official seal shall include ~~only~~ all of the following elements:

- (1) The notary's name exactly as ~~commissioned;~~ commissioned.
- (2) The words "~~Notary Public~~"; "Notary Public".
- (3) The county of commissioning, including the word "County" or the abbreviation "~~Co.~~"; and "Co.".
- (4) The words "North Carolina" or the abbreviation "NC".

(c) The notary seal may be either circular or rectangular in shape. Upon receiving a commission or a recommission on or after October 1, 2006, a notary shall not use a ~~The circular seal shall not be that is less than 1 ½ inches, nor more than 2 inches in diameter. The rectangular seal shall not be over 1 inch high and 2 ½ inches long. The perimeter of the seal shall contain a border that is visible when impressed.~~

(c1) Alterations to any information contained within the seal as embossed or stamped on the record are prohibited.

(d) ~~A notarial seal may contain the notary's commission expiration date; however, a notarial act shall be invalid if the expiration date contained on the seal is incorrect at that time that the notarial act is performed.~~ seal, as it appears on a record, may contain the permanently imprinted, handwritten, or typed date the notary's commission expires.

(e) Any reference in the General Statutes to the seal of a notary shall include the stamp of a notary, and any reference to the stamp of a notary shall include the seal of the notary.

(f) The failure of a notarial seal to comply with the requirements of this section shall not affect the sufficiency, validity, or enforceability of the notarial certificate, but shall constitute a violation of the notary's duties."

SECTION 18. G.S. 10B-40 reads as rewritten:

"§ 10B-40. Notarial certificates in general.

(a) A notary shall not make or give a notarial certificate unless the notary has either ~~(i) personal knowledge or~~ satisfactory evidence of the identity of the principal or, if applicable, the subscribing witness, ~~or (ii) satisfactory evidence of a signer's identity-witness.~~

(a1) By making or giving a notarial certificate, whether or not stated in the certificate, a notary certifies as follows:

- (1) As to an acknowledgment, all those things described in G.S. 10B-3(1).
- (2) As to an affirmation, all those things described in G.S. 10B-3(2).
- (3) As to an oath, all those things described in G.S. 10B-3(14).
- (4) As to a verification or proof, all those things described in G.S. 10B-3(28).

(a2) In addition to the certifications under subsection (a1) of this section, by making or giving a notarial certificate, whether or not stated in the certificate, a notary certifies to all of the following:

- (1) At the time the notarial act was performed and the notarial certificate was signed by the notary, the notary was lawfully commissioned, the notary's commission had neither expired nor been suspended, the notarial act was performed within the geographic limits of the notary's commission, and the notarial act was performed in accordance with the provision of this Chapter.
- (2) If the notarial certificate is for an acknowledgment or the administration of an oath or affirmation, the person whose signature was notarized did not appear in the judgment of the notary to be incompetent, lacking in understanding of the nature and consequences of the transaction requiring the notarial act, or acting involuntarily, under duress, or undue influence.
- (3) The notary was not prohibited from acting under G.S. 10-20(c).

(a3) The inclusion of additional information in a notarial certificate, including the representative or fiduciary capacity in which a person signed or the means a notary used to identify a principal, shall not invalidate an otherwise sufficient notarial certificate.

(b) A notarial certificate for the acknowledgment ~~taken by a notary~~ of a principal who is an individual acting in his or her own right or ~~who is an individual acting in a representative or fiduciary capacity taken by a notary~~ is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-41, if it is substantially in a form otherwise prescribed by the ~~law~~-laws of this State, or if ~~it~~ includes all of the following:

- (1) Identifies the state and county in which the acknowledgment ~~occurred~~; occurred.
- (2) Names the principal who appeared in person before the ~~notary~~; notary.
- (3) States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;
- (4) Indicates that the principal ~~who~~ appeared in person before the notary and the principal acknowledged that the signature on the record presented is his or her signature, that the principal voluntarily signed the record for the purpose stated therein; he or she signed the record.
- (5) States the date of the ~~acknowledgment~~; acknowledgment.

- (6) Contains the signature and seal or stamp of the notary who took the ~~acknowledgment; and acknowledgment.~~
- (7) States the notary's commission expiration date.

(c) A notarial certificate for the verification or proof of the signature of a principal by a subscribing witness taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-42, if it is substantially in a form otherwise prescribed by the ~~law~~ laws of this State, or if ~~it~~ it includes all of the following:

- (1) Identifies the state and county in which the verification or proof ~~occurred; occurred.~~
- (2) Names the subscribing witness who appeared in person before the ~~notary; notary.~~
- (3) ~~States that the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity, indicating the nature of that satisfactory evidence;~~
- (4) Names the principal whose signature on the record is to be verified or ~~proven; proven.~~
- (5) Indicates that the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a party to or beneficiary of the transaction, named party to the record in question, ~~has no interest in the transaction,~~ signed the record as a subscribing witness, and either (i) witnessed the principal sign the record, or (ii) witnessed the principal acknowledge the principal's signature on the ~~already signed record; record.~~
- (6) States the date of the verification or ~~proof; proof.~~
- (7) Contains the signature and seal or stamp of the notary who took the verification or ~~proof; and proof.~~
- (8) States the notary's commission expiration date.

(c1) A notarial certificate for the verification or proof of the signature of a principal or a subscribing witness by a nonsubscribing witness taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-42.1, if it is substantially in a form otherwise prescribed by the laws of this State, or if it includes all of the following:

- (1) Identifies the state and county in which the verification or proof occurred.
- (2) Names the nonsubscribing witness who appeared in person before the notary.
- (3) Names the principal or subscribing witness whose signature on the record is to be verified or proven.
- (4) Indicates that the nonsubscribing witness certified to the notary under oath or by affirmation that the nonsubscribing witness is not a party to or beneficiary of the transaction and that the nonsubscribing witness recognizes the signature of either the principal or the subscribing witness and that the signature is genuine.
- (5) States the date of the verification or proof.
- (6) Contains the signature and seal or stamp of the notary who took the verification or proof.
- (7) States the notary's commission expiration date.

(d) A notarial certificate for an oath or affirmation taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-43, if it is substantially in a form otherwise prescribed by the ~~law~~ laws of this State, or if ~~it~~ it includes all of the following:

- (1) ~~Identifies the state and county in which the oath or affirmation occurred;~~

- (2) Names the principal who appeared in person before the ~~notary;~~notary unless the name of the principal otherwise is clear from the record itself.
- (3) ~~States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;~~
- (4) Indicates that the principal who appeared in person before the notary signed the record in question and certified to the notary under oath or by affirmation as to the truth of the matters stated in the ~~record;~~record.
- (5) States the date of the oath or ~~affirmation;~~affirmation.
- (6) Contains the signature and seal or stamp of the notary who took the oath or ~~affirmation;~~and affirmation.
- (7) States the notary's commission expiration date.

(e) Any notarial certificate made in another jurisdiction shall be sufficient in this State if it is made in accordance with federal law or the laws of the jurisdiction where the notarial certificate is made.

(f) On records to be filed, registered, recorded, or delivered in another state or jurisdiction of the United States, a North Carolina notary may complete any notarial certificate that may be required in that other state or jurisdiction.

(g) Nothing in this Chapter shall be deemed to authorize the use of a notarial certificate authorized by this Part in place of or as an alternative to a notarial certificate required by any other provision of the General Statutes outside of Chapter 47 of the General Statutes that prescribes the specific form or content for a notarial certificate ~~(including, but not limited to, including G.S. 31-11.6, Chapter 32A of the General Statutes, and G.S. 90-321).~~ G.S. 90-321. However, any statute that permits or requires the use of a notarial certificate contained within Chapter 47 of the General Statutes may also be satisfied by the use of a notarial certificate permitted by this Part. Any form of acknowledgment or probate authorized under Chapter 47 of the General Statutes shall be conclusively deemed in compliance with the requirements of this section.

(h) If an individual signs a record and purports to be acting in a representative or fiduciary capacity, that individual is also deemed to represent to the notary that he or she is signing the record with proper authority to do so and also is signing the record on behalf of the person or entity represented and identified therein or in the fiduciary capacity indicated therein. In performing a notarial act in relation to an individual described under this subsection, a notary is under no duty to verify whether the individual acted in a representative or fiduciary capacity or, if so, whether the individual was duly authorized so to do. A notarial certificate may include any of the following:

- (1) A statement that an individual signed a record in a particular representative or fiduciary capacity.
- (2) A statement that the individual who signed the record in a representative or fiduciary capacity had due authority so to do.
- (3) A statement identifying the represented person or entity or the fiduciary capacity."

SECTION 19. G.S. 10B-41 reads as rewritten:

"§ 10B-41. Notarial certificate for an acknowledgment.

(a) When properly completed by a notary, a notarial certificate ~~in that~~ substantially complies with the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or who is an individual acting in a representative or fiduciary capacity. The authorization of the form in this section does not preclude the use of other forms.

County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she ~~voluntarily~~ signed the

~~foregoing document for the purpose stated therein and in the capacity indicated: document: name(s) of principal(s).~~

Date: _____

Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires: _____

~~(b) By signing a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:~~

- ~~(1) That the principal acknowledging his or her signature appeared in person before the notary on the date indicated;~~
- ~~(2) That the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;~~
- ~~(3) That, if the principal signed the record in a representative capacity, the principal stated that he or she signed the record in the particular representative capacity; and~~
- ~~(4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.~~

~~(c) The notary's printed or typed name as shown in the form provided in subsection (a) of this section is not required if the legible appearance of the notary's name may be ascertained from the notary's typed or printed name near the notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible."~~

SECTION 20. G.S. 10B-42 reads as rewritten:

"§ 10B-42. Notarial certificate for a verification or proof, of subscribing witness.

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that ~~name (name of subscribing witness-witness)~~ personally appeared before me this day and certified to me under oath or by affirmation that he or she is not a ~~named party to the foregoing document, has no interest in the transaction, grantee or beneficiary of the transaction,~~ signed the foregoing document as a subscribing witness, and either (i) witnessed ~~name (name of principal (the principal))~~ sign the foregoing document or (ii) witnessed ~~(name of the principal-principal)~~ acknowledge the ~~principal's his or her~~ signature on the already-signed document.

Date: _____

Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires: _____

~~(b) By signing a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:~~

- ~~(1) That the subscribing witness appeared in person before the notary on the date indicated;~~
- ~~(2) That the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a named party to the record in question, has no interest in the transaction, signed the record as a subscribing witness, and either (i) witnessed the named principal sign the record, or (ii) witnessed the named principal acknowledge the principal's signature on the already signed record; and~~
- ~~(3) That the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity.~~

(c) The notary's printed or typed name as shown in the form provided in subsection (a) of this section is not required if the legible appearance of the notary's name may be ascertained from the notary's typed or printed name near the notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible."

SECTION 21. Article 1 of Chapter 10B is amended by adding a new section to read:

"§ 10B-42.1. Notarial certificate for a verification of nonsubscribing witness.

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the verification or proof of the signature of a principal or subscribing witness by a nonsubscribing witness. The authorization of the form in this section does not preclude the use of other forms.

County, North Carolina

I certify (name of nonsubscribing witness) personally appeared before me this day and certified to me under oath or by affirmation that he or she is not a grantee or beneficiary of the transaction, that (name of nonsubscribing witness) recognizes the signature of (name of the principal or the subscribing witness) and that the signature is genuine.

Date: _____

(Official Seal)

Official Signature of Notary

Notary's printed or typed name, Notary Public

My commission expires: _____

(b) The notary's printed or typed name as shown in the form provided in subsection (a) of this section is not required if the legible appearance of the notary's name may be ascertained from the notary's typed or printed name near the notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible."

SECTION 22. G.S. 10B-43 reads as rewritten:

"§ 10B-43. Notarial certificate for an oath or affirmation.

(a) When properly completed by a notary, a notarial certificate ~~in that~~ substantially complies with either of the following forms may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for an oath or affirmation. The authorization of the forms in this section does not preclude the use of other forms.

County, North Carolina

Signed and sworn to ~~(or affirmed)~~ before me this day by ~~name of principal~~ (name of principal).

Date: _____

(Official Seal)

Official Signature of Notary

Notary's printed or typed name, Notary Public

My commission expires: _____

-OR-

County, North Carolina

Sworn to ~~(or affirmed)~~ and ~~ascribed~~ subscribed before me this day by ~~name of principal~~ (name of principal).

Date: _____

(Official Seal)

Official Signature of Notary

Notary's printed or typed name, Notary Public

My commission expires: _____

(b) By signing a notarial certificate for an oath or affirmation substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:

(1) That the principal appeared in person before the notary on the date indicated;

- (2) ~~That either (i) the notary witnessed the principal sign the record or (ii) the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;~~
- (3) ~~That the principal certified to the notary under oath or by affirmation as to the truth of the matters stated in the record; and record.~~
- (4) ~~That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.~~

(c) The notary's printed or typed name as shown in the form provided in subsection (a) of this section is not required if the legible appearance of the notary's name may be ascertained from the notary's typed or printed name near the notary's signature or from elsewhere in the notarial certificate or from the notary's seal if the name is legible.

(d) In either of the forms provided under subsection (a) of this section all of the following shall apply:

- (1) The name of the principal may be omitted if the name of the principal is located near the jurat, and the principal who so appeared before the notary is clear from the record itself.
- (2) The words "affirmed" or "sworn to or affirmed" may be substituted for the words "sworn to".

SECTION 23. G.S. 10B-60 reads as rewritten:

"§ 10B-60. Enforcement and penalties.

(a) The Secretary may ~~warn,~~ issue a warning to a notary or restrict, suspend, or revoke a notarial commission for a violation of this Chapter and on any ground for which an application for a commission may be denied under this Chapter. Any period of restriction, suspension, or revocation shall not extend the expiration date of a commission.

(b) Except as otherwise permitted by law, a person who commits any of the following acts is guilty of a Class 1 misdemeanor:

- (1) Holding one's self out to the public as a notary if the person does not have a commission.
- (2) Performing a notarial act if the person's commission has expired or been ~~suspended.~~ suspended or restricted.
- (3) Performing a notarial act before the person had taken the oath of office.

(c) A notary shall be guilty of a Class 1 misdemeanor if the notary does any of the following:

- (1) ~~Takes an acknowledgment, performs acknowledgment or administers an oath, affirmation, or jurat oath or affirmation without the principal personally appearing in person before the notary; notary.~~
- (2) ~~Takes a verification or proof of a without the subscribing witness without personal knowledge of the subscribing witness's identity, or without satisfactory evidence of the subscribing witness's identity; appearing in person before the notary.~~
- (3) Takes an acknowledgment or administers an oath or affirmation without personal knowledge or satisfactory evidence of the identity of the principal.
- (4) Takes a verification or proof without personal knowledge or satisfactory evidence of the identity of the subscribing witness.

(d) A notary shall be guilty of a Class I felony if the notary does any of the following:

- (1) ~~Takes an acknowledgment, verification, proof, or jurat, acknowledgment or a verification or a proof, or performs administers an oath or affirmation if the notary knows it is false or fraudulent.~~

- (2) Takes an ~~acknowledgment, or jurat acknowledgment~~ or administers an oath or affirmation without the principal appearing in person before the notary if the notary does so with the intent to commit fraud.
- (3) Takes a verification or proof without the subscribing witness appearing in person before the notary if the notary does so with the intent to commit fraud.

(e) It is a Class I felony for any person to perform notarial acts in this State with the knowledge that the person is not commissioned under this Chapter.

(f) Any person who without authority obtains, uses, conceals, defaces, or destroys the seal or notarial records of a notary is guilty of a Class I felony.

(g) For purposes of enforcing this Chapter and Article 34 of Chapter 66 of the General Statutes, the law enforcement agents of the Department of the Secretary of State have statewide jurisdiction and have all of the powers and authority of law enforcement officers. The agents have the authority to assist local law enforcement agencies in their investigations and to initiate and carry out, on their own or in coordination with local law enforcement agencies, investigations of violations.

(h) Resignation or expiration of a notarial commission does not terminate or preclude an investigation into a notary's conduct by the Secretary, who may pursue the investigation to a conclusion, whereupon it may be a matter of public record whether or not the finding would have been grounds for disciplinary action.

(i) The Secretary may seek injunctive relief against any person who violates the provisions of this Chapter. Nothing in this Chapter diminishes the authority of the North Carolina State Bar.

(j) Any person who knowingly solicits, coerces, or in any material way influences a notary to commit official misconduct, is guilty as an aider and abettor and is subject to the same level of punishment as the notary.

(k) The sanctions and remedies of this Chapter supplement other sanctions and remedies provided by law, including, but not limited to, forgery and aiding and abetting."

SECTION 24. Part 9 of Article 1 of Chapter 10B of the General Statutes is amended by adding the following new sections to read:

"§ 10B-67. Erroneous commission expiration date cured.

An erroneous statement of the date that the notary's commission expires shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related record if the notary is, in fact, lawfully commissioned at the time of the notarial act.

"§ 10B-68. Technical defects cured.

(a) Technical defects, errors, or omissions in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the notarial certificate or the related instrument or document.

(b) As used in this section, a technical defect includes those cured under G.S. 10B-37(f) and G.S. 10B-67. Other technical defects include the absence of the legible appearance of the notary's name exactly as shown on the notary's commission as required in G.S. 10B-20(b) and defects in the commissioning or recommissioning of the notary that were approved by the Department under this Chapter.

"§ 10B-69. Official forms cured.

(a) The notarial certificate contained in a form issued by a State agency prior to October 1, 2006, is deemed to be a valid certificate provided the certificate complied with the law at the time the form was issued.

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

"§ 10B-99. Presumption of regularity.

(a) In the absence of evidence of fraud on the part of the notary, or evidence of a knowing and deliberate violation of this Article by the notary, the courts shall grant a presumption of regularity to notarial acts so that those acts may be upheld, provided there has been substantial compliance with the law. Nothing in this Chapter modifies or

repeals the common law doctrine of substantial compliance in effect on November 30, 2005.

(b) A notarial act performed before October 1, 2006, shall be deemed valid if it complies with the law as it existed on or before December 1, 2005."

SECTION 25. G.S. 10B-106(d) reads as rewritten:

"(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

- (1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.
- (2) The state and county of commissioning of the registrant.
- (3) The expiration date of the registrant's notary commission.
- (4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
- (5) A description of the technology the registrant will use to create an electronic signature in performing official acts.
- (6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.
- (7) The e-mail address of the registrant.

~~The information contained provided in a registration that relates to subdivision (7) of this section under this section is a public record as defined in G.S. 132-1, except for information contained in subsection (7), which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or Statutes, except as provided by rule."~~

SECTION 26. G.S. 47-14 is amended by adding a new subsection to read:

"(f) The acceptance of a record for registration by the register of deeds shall give rise to a presumption that, at the time the record was presented for registration, a clear and legible image of the notary's official seal was affixed or embossed on the record near the notary's official signature. This presumption shall apply regardless of whether the image is legible or photographically reproduced in the records maintained by the register of deeds. A register of deeds may not refuse to accept a record for registration because a notarial seal does not satisfy the requirements of G.S. 10B-37."

SECTION 27. G.S. 47-37.1 reads as rewritten:

"§ 47-37.1. Other forms of proof.

(a) The proof and acknowledgment forms set forth in this Article are not exclusive. Without regard to whether an instrument presented for registration was signed by an individual acting in his or her own right or by an individual acting in a representative or fiduciary capacity, a notarial certificate that complies with the provisions of Part 6 of Article 1 of Chapter 10B (~~G.S. 10B-25 et. seq.~~) shall be deemed a sufficient form of probate or acknowledgment for purposes of this Chapter. Use of a notarial certificate that satisfies the requirements of Part 6 of Article 1 of Chapter 10B shall not be grounds for a register of deeds to refuse to accept a record for registration.

(b) When an instrument presented for registration purports to be signed by an individual in a representative or fiduciary capacity, the acknowledgment or proof of that individual's signature ~~may, but is not required to:~~ may:

- (1) State that the individual signed the instrument in a representative or fiduciary capacity.
- (2) State that the individual who signed the instrument in a representative or fiduciary capacity had due authority to do so.
- (3) Identify the represented person or ~~entity.~~ the fiduciary capacity.

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

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

SECTION 28. G.S. 47-38 reads as rewritten:

"§ 47-38. Acknowledgment by grantor.

~~Where the instrument is acknowledged by the grantor or maker, the form of acknowledgment shall be in substance as follows:~~

When properly completed, a certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for one or more individuals, acting in his, her, or their own right or, whether or not so stated in the notarial certificate, in a representative or fiduciary capacity, including one or more individuals acting on behalf of an unincorporated association, as an officer or director of a corporation, as a partner of a general or limited partnership, as a manager or member of a limited liability company, as the trustee of a trust, as the personal representative of a decedent's estate, as an agent or attorney in fact for another, as the guardian of a minor or an incompetent, or as a public official. The authorization of the form in this section does not preclude the use of other forms. This section applies to notarial certificates made before, on, and after December 1, 2005.

North Carolina, _____ County.

I (here give the name of the official and his official title), do hereby certify that (here give the name of the ~~grantor or maker~~ individual whose acknowledgment is being taken) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an official seal is required by law) official seal this the _____ day of _____ (year).

(Official seal.)

(Signature of officer.)

(Title)"

SECTION 29. G.S. 47-41.01 is amended by adding a new subsection to read:

"(e) The forms of probate set forth in this section may be modified and adopted for use in the probate of deeds and other conveyances and instruments executed by entities other than corporations, including general and limited partnerships, limited liability companies, trusts, and unincorporated associations. This subsection applies to notarial certificates and forms of probate made before, on, or after December 1, 2005."

SECTION 30. G.S. 47-41.02 is amended by adding a new subsection to read:

"(h) The forms of probate set forth in this section may be modified and adopted for use in the probate of deeds and other conveyances and instruments executed by entities other than corporations, including general and limited partnership, limited liability companies, trusts, and unincorporated associations. This subsection applies to notarial certificates and forms of probate made before, on, or after December 1, 2005."

SECTION 31. Chapter 47 of the General Statutes is amended by adding a new section to read:

"§ 47-41.2. Technical defects.

(a) Technical defects, including technical defects under G.S. 10B-68, and errors or omissions in a form of probate or other notarial certificate, shall not affect the sufficiency, validity, or enforceability of the form of probate or the notarial certificate or the related instrument or document. A register of deeds may not refuse to accept an instrument or document for registration because of technical defects, errors, or omissions in a form of probate or other notarial certificate.

(b) This section does not apply to the requirements for registration contained in G.S. 47-14(a) and a register of deeds shall not accept for registration an instrument that does not comply with the requirements of G.S. 47-14(a)."

SECTION 32. The General Statutes Commission shall study the need for additional changes to laws relating to notaries public, the notarization of documents, and the registration of instruments notarized in other jurisdictions. The Commission shall determine whether there is a need for additional conforming changes in the law that arise from changes made by this act and recommend to the General Assembly any legislation to address the needs identified by this study. The General Statutes Commission shall report the results of its study to either the 2007 or 2009 General Assembly.

SECTION 33. G.S. 10B-11(b)(3) as amended in Section 5 of this act becomes effective July 1, 2006. The remainder of this act becomes effective October 1, 2006, and except as otherwise set forth in this act, applies to notarial acts performed on or after that date.

In the General Assembly read three times and ratified this the 30th day of June, 2006.

Beverly E. Perdue
President of the Senate

Richard T. Morgan
Speaker Pro Tempore of the House of Representatives

Michael F. Easley
Governor

Approved _____ .m. this _____ day of _____, 2006