

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 671*
Judiciary II Committee Substitute Adopted 5/4/05
House Committee Substitute Favorable 8/22/05
House Committee Substitute #2 Favorable 8/23/05

Short Title: Real Prop. Electronic Recording/Notary Act.

(Public)

Sponsors:

Referred to:

March 17, 2005

A BILL TO BE ENTITLED

AN ACT TO ENACT THE UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT, AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, TO REPEAL CHAPTER 10A OF THE GENERAL STATUTES REGARDING THE REGULATION OF NOTARIES PUBLIC, AND TO ENACT CHAPTER 10B RELATING TO NOTARIES.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 47 of the General Statutes is amended by adding a new Article to read:

"Article 1A.

"Uniform Real Property Electronic Recording Act.

"§ 47-16.1. Short title.

This Article may be cited as the Uniform Real Property Electronic Recording Act.

"§ 47-16.2. Definitions.

In this Article:

(1) "Document" means information that is:

a. Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

b. Eligible to be recorded in the land records maintained by the register of deeds.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by the register of deeds in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

1 (5) "Person" means an individual, corporation, business trust, estate, trust,
2 partnership, limited liability company, association, joint venture,
3 public corporation, government, or governmental subdivision, agency,
4 or instrumentality, or any other legal or commercial entity.

5 **"§ 47-16.3. Validity of electronic documents.**

6 (a) If a law requires, as a condition for recording, that a document be an original,
7 be on paper or another tangible medium, or be in writing, the requirement is satisfied by
8 an electronic document satisfying this Article.

9 (b) If a law requires, as a condition for recording, that a document be signed, the
10 requirement is satisfied by an electronic signature.

11 (c) A requirement that a document or a signature associated with a document be
12 notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the
13 electronic signature of the person authorized to notarize, acknowledge, verify, witness,
14 or administer the oath, and all other information required to be included, is attached to
15 or logically associated with the document or signature. A physical or electronic image
16 of a stamp, impression, or seal need not accompany an electronic signature. Nothing in
17 this act shall prohibit the North Carolina Board of Examiners for Engineers and
18 Surveyors from requiring that the image of a seal accompany any plat or map that is
19 presented electronically for recording.

20 **"§ 47-16.4. Recording of documents.**

21 (a) In this section, "paper document" means a document that is received by the
22 register of deeds in a form that is not electronic.

23 (b) A register of deeds:

24 (1) Who implements any of the functions listed in this section shall do so
25 in compliance with standards adopted by the Secretary of State.

26 (2) May receive, index, store, archive, and transmit electronic documents.

27 (3) May provide for access to, and for search and retrieval of, documents
28 and information by electronic means.

29 (4) Who accepts electronic documents for recording shall continue to
30 accept paper documents as authorized by law and shall place entries
31 for both types of documents in the same index.

32 (5) May convert paper documents accepted for recording into electronic
33 form.

34 (6) May convert into electronic form information recorded before the
35 register of deeds began to record electronic documents.

36 (7) May accept electronically any fee or tax that the register of deeds is
37 authorized to collect.

38 (8) May agree with other officials of this State or a political subdivision
39 thereof on procedures or processes to facilitate the electronic
40 satisfaction of conditions to recording and the electronic payment of
41 fees and taxes.

42 **"§ 47-16.5. Administration and standards.**

43 (a) Standard-Setting Agency. – The Secretary of State shall adopt standards to
44 implement this Article upon recommendation of the Electronic Recording Council. The

1 Secretary of State may direct the Council to revise any portion of the recommended
2 standards the Secretary deems inadequate or inappropriate. Technological standards and
3 specifications adopted by the Secretary of State to implement this Article are
4 engineering standards for the purposes of G.S. 150B-2(8a)h.

5 (b) Electronic Recording Council Created. – The Electronic Recording Council is
6 created in the Department of the Secretary of State to advise and assist the Secretary of
7 State in the adoption of standards to implement this Article. The Council shall review
8 the functions listed in G.S. 47-16.4 and shall formulate and recommend to the Secretary
9 standards for recording electronic documents and implementing the other functions
10 listed in G.S. 47-16.4. The Council shall report its findings and recommendations to the
11 Secretary of State at least once each calendar year. The Council shall advise the
12 Secretary of State on a continuing basis of the need to adopt, amend, revise, or repeal
13 standards. The Council may advise the Secretary of State on any other matter the
14 Secretary refers to the Council.

15 (c) Council Membership, Terms, and Vacancies. – The Council shall consist of
16 13 members as follows:

17 (1) Seven members appointed by the North Carolina Association of
18 Registers of Deeds. It is the intent of the General Assembly that the
19 North Carolina Association of Registers of Deeds shall appoint as
20 members a representative selection of registers of deeds from large,
21 medium, and small counties, urban and rural counties, and the different
22 geographic areas of this State.

23 (2) One member appointed by the North Carolina Bar Association.

24 (3) One member appointed by the North Carolina Society of Land
25 Surveyors.

26 (4) One member appointed by the North Carolina Bankers Association.

27 (5) One member appointed by the North Carolina Land Title Association.

28 (6) One member appointed by the North Carolina Association of
29 Assessing Officers.

30 (7) The Secretary of Cultural Resources or the Secretary's designee.

31 In making appointments to the Council, each appointing authority shall select
32 appointees with the ability and commitment to fulfill the purposes of the Council.

33 Appointed members shall serve four-year terms, except that the initial appointments
34 by the North Carolina Bar Association, the North Carolina Bankers Association, the
35 North Carolina Association of Assessing Officers, and three of the initial appointments
36 by the North Carolina Association of Registers of Deeds shall be for two years. All
37 initial terms shall commence on the effective date of this Article. Members shall serve
38 until their successors are appointed. An appointing authority may reappoint a member
39 for successive terms. A vacancy on the Council shall be filled in the same manner in
40 which the original appointment was made, and the term shall be for the balance of the
41 unexpired term.

42 (d) Council Meetings and Officers. – The Secretary of State shall call the first
43 meeting of the Council. At the first meeting and biennially thereafter, the Council shall
44 elect from its membership a chair and a vice-chair to serve two-year terms. Meetings

1 may be called by the chair, the vice-chair, or the Secretary of State. Meetings shall be
2 held as often as necessary, but at least once a year.

3 (e) Council Compensation. – None of the members of the Council shall receive
4 compensation for serving on the Council, but Council members shall receive per diem,
5 subsistence, and travel expenses in accordance with G.S. 138-5 and G.S. 138-6, as
6 applicable.

7 (f) Staff and Other Assistance. – As soon as practicable and as needed thereafter,
8 the Council shall identify the information technology expertise it needs and report its
9 needs to the Secretary of State. The Council shall also report any other expertise needed
10 to fulfill its responsibilities. The Secretary of State shall provide professional and
11 clerical staff and other services and supplies, including meeting space, as needed for the
12 Council to carry out its duties in an effective manner. The Secretary of State may
13 appoint additional committees to advise and assist the Council in its work.

14 The Council shall consult with the North Carolina Local Government Information
15 Systems Association, and may consult with any other person the Council deems
16 appropriate, to advise and assist the Council in its work.

17 (g) Uniformity of Standards. – To keep the standards and practices of registers of
18 deeds in this State in harmony with the standards and practices of recording offices in
19 other jurisdictions that enact substantially this Article and to keep the technology used
20 by registers of deeds in this State compatible with technology used by recording offices
21 in other jurisdictions that enact substantially this Article, the Secretary of State and the
22 Council shall consider all of the following in carrying out their responsibilities under
23 this Article, so far as is consistent with its purposes, policies, and provisions:

24 (1) Standards and practices of other jurisdictions.

25 (2) The most recent standards adopted by national standard-setting bodies,
26 such as the Property Records Industry Association.

27 (3) The views of interested persons and other governmental officials and
28 entities.

29 (4) The needs of counties of varying size, population, and resources.

30 (5) Standards requiring adequate information security protection to ensure
31 that electronic documents are accurate, authentic, adequately
32 preserved, and resistant to tampering.

33 **"§ 47-16.6. Uniformity of application and construction.**

34 In applying and construing this Article, consideration shall be given to promoting
35 uniformity of interpretation of the Uniform Real Property Electronic Recording Act
36 among states that enact it.

37 **"§ 47-16.7. Relation to Electronic Signatures in Global and National Commerce**
38 **Act.**

39 This Article modifies, limits, and supersedes the federal Electronic Signatures in
40 Global and National Commerce Act (15 U.S.C. § 7001, et seq.) but does not modify,
41 limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize
42 electronic delivery of any of the notices described in section 103(b) of that act (15
43 U.S.C. § 7003(b))."

- 1 notary who has performed a notarial act by witnessing a signature or
2 administering an oath or affirmation.
- 3 (4) "Commission" means the empowerment to perform notarial acts and
4 the written evidence of authority to perform those acts.
- 5 (5) "Credible witness" means an honest, reliable, and impartial person
6 who is personally known to the notary and takes an oath or affirmation
7 from the notary to confirm a signer's identity.
- 8 (6) "Department" means the North Carolina Department of the Secretary
9 of State.
- 10 (7) "Director" means the Division Director for the North Carolina
11 Department of the Secretary of State Notary Public Section.
- 12 (8) "Jurat" means a certification added to an affidavit or deposition that
13 states when and before what authority an affidavit or deposition was
14 made, to wit, "Subscribed and sworn to before me this the ___ day of
15 _____ 20 __." The notary's signature and seal shall be
16 affixed below the sworn or affirmed statement and signature of the
17 affiant. In so doing, the notary shall certify the following:
- 18 a. That the person signing the affidavit or deposition did so in the
19 notary's presence and indicates the county in which the notarial
20 act took place;
- 21 b. That the signer appeared before the notary on the date
22 indicated;
- 23 c. That the notary administered an oath or affirmation to the
24 signer, who swore to or affirmed the contents of the document.
- 25 (9) "Moral turpitude" means conduct contrary to expected standards of
26 honesty, morality, or integrity.
- 27 (10) "Nickname" means a descriptive, familiar, or shortened form of a
28 proper name.
- 29 (11) "Notarial act," "notary act," and "notarization" mean the act of taking
30 an acknowledgment, taking a verification or proof or administering an
31 oath or affirmation that a notary is empowered to perform under this
32 Chapter, as authorized by G.S. 10B-20.
- 33 (12) "Notarial certificate" and "certificate" mean the portion of a notarized
34 record that is completed by the notary, bears the notary's signature and
35 seal, and states the facts attested by the notary in a particular
36 notarization.
- 37 (13) "Notary public" and "notary" mean a person commissioned to perform
38 notarial acts under this Chapter. A notary is a public officer of the
39 State of North Carolina and shall act in full and strict compliance with
40 this act.
- 41 (14) "Oath" means a notarial act, or part thereof, which is legally equivalent
42 to an affirmation and in which an individual at a single time and place:
- 43 a. Appears in person before a notary;

- 1 b. Is personally known to the notary or identified by the notary
2 through satisfactory evidence; and
- 3 c. Makes a vow of truthfulness on penalty of perjury while
4 invoking a deity or using any form of the word "swear".
- 5 (15) "Official misconduct" means either of the following:
- 6 a. A notary's performance of a prohibited act or failure to perform
7 a mandated act set forth in this Chapter or any other law in
8 connection with notarization.
- 9 b. A notary's performance of a notarial act in a manner found by
10 the Secretary to be negligent or against the public interest.
- 11 (16) "Personal appearance" and "appear in person before a notary" mean an
12 individual and a notary are in close physical proximity to one another
13 so that they may freely see and communicate with one another and
14 exchange records back and forth during the notarization process.
- 15 (17) "Personal knowledge of identity" means familiarity with an individual
16 resulting from interactions with that individual over a period of time
17 sufficient to eliminate every reasonable doubt that the individual has
18 the identity claimed.
- 19 (18) "Principal" means an individual whose signature is notarized; or an
20 individual other than a credible witness, taking an oath or affirmation
21 from the notary.
- 22 (19) "Record" means information that is inscribed on a tangible medium
23 and called a traditional or paper record.
- 24 (20) "Regular place of work or business" means a location, office or other
25 workspace, where an individual regularly spends all or part of the
26 individual's work time.
- 27 (21) "Revocation" means the cancellation of the notary's commission stated
28 in the order of revocation.
- 29 (22) "Satisfactory evidence of a signer's identity" means identification of an
30 individual based on either of the following:
- 31 a. At least one current document issued by a federal, state, or
32 federal or state-recognized tribal government agency bearing
33 the photographic image of the individual's face and either the
34 signature or a physical description of the individual.
- 35 b. The oath or affirmation of one credible witness unaffected by
36 the record or transaction who is personally known to the notary
37 and who personally knows the individual seeking to be
38 identified.
- 39 (23) "Seal" and "stamp" mean a device for affixing on a paper record an
40 image containing a notary's name, the words "notary public," and other
41 information as required in G.S. 10B-24.
- 42 (24) "Secretary" means the North Carolina Secretary of State or the
43 Secretary's designee.

1 publicly elected official in North Carolina whose recommendation
2 shall be contained on the application.

3 (c) The notary shall be commissioned in his or her county of residence, unless
4 the notary is not a North Carolina resident, in which case he or she shall be
5 commissioned in the county of his or her employment or business.

6 (d) The Secretary may deny an application for commission or recommission if
7 any of the following apply to an applicant:

8 (1) Submission of an incomplete application or an application containing
9 material misstatement or omission of fact.

10 (2) The applicant's conviction or plea of admission or nolo contendere to a
11 felony or any crime involving dishonesty or moral turpitude. In no
12 case may a commission be issued to an applicant within 10 years after
13 release from prison, probation, or parole, whichever is later.

14 (3) A finding or admission of liability against the applicant in a civil
15 lawsuit based on the applicant's deceit.

16 (4) The revocation, suspension, restriction, or denial of a notarial
17 commission or professional license by this or any other state or nation.
18 In no case may a commission be issued to an applicant within five
19 years after the completion of all conditions of any disciplinary order.

20 (5) A finding that the applicant has engaged in official misconduct,
21 whether or not disciplinary action resulted.

22 (6) An applicant knowingly using false or misleading advertising in which
23 the applicant as a notary represents that the applicant has powers,
24 duties, rights, or privileges that the applicant does not possess by law.

25 (7) A finding by a state bar or court that the applicant has engaged in the
26 unauthorized practice of law.

27 **§ 10B-5. Application for commission.**

28 Every application for a notary commission shall be made on paper with original
29 signatures, or in another form determined by the Secretary, and shall include all of the
30 following:

31 (1) A statement of the applicant's personal qualifications as required by
32 this Chapter.

33 (2) A certificate or signed statement by the instructor evidencing
34 successful completion of the course of instruction as required by this
35 Chapter.

36 (3) A notarized declaration of the applicant, as required by this Chapter.

37 (4) Any other information that the Secretary deems appropriate.

38 (5) The application fee required by this Chapter.

39 **§ 10B-6. Statement of personal qualification.**

40 (a) The application for a notary commission shall include at least all of the
41 following:

42 (1) The applicant's full legal name and the name to be used for
43 commissioning, excluding nicknames.

44 (2) The applicant's date of birth.

- 1 (3) The mailing address for the applicant's residence, the street address for
2 the applicant's residence, and the telephone number for the applicant's
3 residence.
- 4 (4) The applicant's county of residence.
- 5 (5) The name of the applicant's employer, the street and mailing address
6 for the applicant's employer, and telephone number for the applicant's
7 employer.
- 8 (6) The applicant's last four digits of the applicant's social security
9 number.
- 10 (7) The applicant's personal and business e-mail addresses.
- 11 (8) A declaration that the applicant is a citizen of the United States or
12 proof of the applicant's legal residency in this country.
- 13 (9) A declaration that the applicant can speak, read, and writes in the
14 English language.
- 15 (10) A complete listing of any issuances, denials, revocations, suspensions,
16 restrictions, and resignations of a notarial commission, professional
17 license, or public office involving the applicant in this or any other
18 state or nation.
- 19 (11) A complete listing of any criminal convictions of the applicant,
20 including any pleas of admission or nolo contendere, in this or any
21 other state or nation.
- 22 (12) A complete listing of any civil findings or admissions of fault or
23 liability regarding the applicant's activities as a notary, in this or any
24 other state or nation.

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

30 **"§ 10B-7. Course of study and examination.**

31 (a) Every applicant for an initial notary commission shall, within the three
32 months preceding application, take a course of classroom instruction of not less than
33 six hours approved by the Secretary and take a written examination approved by the
34 Secretary. An applicant must answer at least eighty percent (80%) of the questions
35 correctly in order to pass the exam. This subsection shall not apply to a licensed
36 member of the North Carolina State Bar.

37 (b) Every applicant for recommissioning shall pass a written examination
38 approved by and administered by or under the direction of the Secretary, unless the
39 person is a licensed member of the North Carolina State Bar.

40 (c) The content of the course of instruction and the written examinations shall be
41 notarial laws, procedures, and ethics.

42 (d) The Secretary may charge such fees as are reasonably necessary to pay the
43 cost associated with developing and administering examinations permitted by this
44 Chapter and for conducting the training of notaries and notary instructors. All funds

1 received by the Secretary under this section shall be deposited into the Notary Public
2 Special Fund and used for the purposes authorized under G.S. 10B-58.

3 **"§ 10B-8. Length of term and jurisdiction.**

4 A person commissioned under this Chapter may perform notarial acts in any part of
5 this State for a term of five years, unless the commission is earlier revoked or resigned.
6 No commissions shall be effective prior to the administration of the oath of office. Any
7 notarial acts performed before the administration of the oath of office, either the original
8 commissioning or recommissioning, are invalid.

9 **"§ 10B-9. Commission; oath of office.**

10 (a) If the Secretary grants a commission to an applicant, the Secretary shall
11 notify the appointee and shall instruct the appointee regarding the proper procedure for
12 taking the oath at the register of deeds office in the county of the appointee's
13 commissioning.

14 (b) The appointee shall appear before the register of deeds no later than 45 days
15 after commissioning and shall be duly qualified by taking the general oath of office
16 prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7.

17 (c) The register of deeds shall then place the notary record in a book designated
18 for that purpose, or the notary record may be recorded in the Consolidated Document
19 Book and indexed in the Consolidated Real Property Index under the notary's name in
20 the grantor index. The notary record may be kept in electronic format so long as the
21 signature of the notary public may be viewed and printed. The notary record shall
22 contain the name and the signature of the notary as commissioned, the effective date
23 and expiration date of the commission, the date the oath was administered, and the date
24 of any restriction, suspension, revocation, or resignation. The record shall constitute the
25 official record of the qualification of notaries public.

26 (d) The register of deeds shall deliver the commission to the notary following
27 completion of the requirements of this section and shall notify the Secretary of the
28 delivery.

29 (e) If the appointee does not appear before the register of deeds within 45 days of
30 commissioning, the register of deeds must return the commission to the Secretary, and
31 the appointee must reapply for commissioning. If the appointee reapplies within one
32 year of the granting of the commission, the Secretary may waive the educational
33 requirements of this Chapter.

34 **"§ 10B-10. Recommissioning.**

35 (a) A commissioned notary may apply for recommissioning no earlier than 10
36 weeks prior to the expiration date of the notary's commission.

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

39 (1) Submit a new application under G.S. 10B-5.

40 (2) Meet the requirements of G.S. 10B-4(b).

41 (3) Pass the written examination required under G.S. 10B-7, unless the
42 notary is a licensed member of the North Carolina State Bar.

43 (c) An individual may apply for recommissioning within one year after the
44 expiration of the individual's commission. The individual must comply with the

1 requirement of subsection (b) of this section. The individual must also fulfill the
2 educational requirement under G.S. 10B-7(a), unless the Secretary waives that
3 requirement.

4 **"§ 10B-11. Notarized declaration.**

5 The application for a notary public commission shall contain the following
6 declaration to be executed by each applicant under oath:

7 **Declaration of Applicant**

8
9 I, _____ (name of applicant), solemnly swear or affirm under
10 penalty of perjury that the information in this application is true, complete, and correct;
11 that I understand the official duties and responsibilities of a notary public in this State,
12 as described in the statutes; and that I will perform to the best of my ability all notarial
13 acts in accordance with the law.

14
15 _____
(signature of applicant)

16 **"§ 10B-12. Application fee.**

17 Every applicant for a notary commission shall pay to the Secretary a nonrefundable
18 application fee of fifty dollars (\$50.00).

19 **"§ 10B-13. Instructor's certification.**

20 (a) The course of study required by G.S. 10B-4(b) shall be taught by an
21 instructor certified under rules adopted by the Secretary. An instructor must meet the
22 following requirements to be certified to teach a course of study for notaries public:

- 23 (1) Complete and pass an instructor certification course of not less than six
24 hours taught by the Director or other person approved by the
25 Secretary.
- 26 (2) Have at least one year of active experience as a notary public.
- 27 (3) Maintain a current commission as a notary public.
- 28 (4) Possess the current notary public guidebook.
- 29 (5) Pay a nonrefundable fee of fifty dollars (\$50.00).

30 (b) Certification to teach a course of study for notaries shall be effective for two
31 years. A certification may be renewed by passing a recertification course taught by the
32 Director or other person approved by the Secretary and by paying a nonrefundable fee
33 of fifty dollars (\$50.00). All funds received by the Secretary under this section shall be
34 deposited into the Notary Public Special Fund and used for the purposes authorized
35 under G.S. 10B-60.

36 (c) The following individuals may be certified to teach a course of study for
37 notaries public without paying the fee required by this section, and they may renew their
38 certification without paying the renewal fee, so long as they remain actively employed
39 in the capacities named:

- 40 (1) Registers of deeds.
- 41 (2) Clerks of court.
- 42 (3) The Director and other duly authorized employees of the Secretary.

43 (d) Former registers of deeds and clerks of court who have been certified as
44 notary public instructors must apply for commissioning as a notary public but are

1 exempt from the education requirements of G.S. 10B-7 after successful completion of
2 an examination administered by the Secretary.

3 (e) Assistant and deputy registers of deeds and assistant and deputy clerks of
4 court must have a regular notary commission prior to receiving a certification or
5 recertification as a notary public instructor.

6 (f) The Secretary may suspend or revoke the certification of a notary instructor
7 for violating the provisions of this Chapter or any of the administrative rules
8 implementing it.

9 "Part 3. Notarial Acts, Powers, and Limitations.

10 **"§ 10B-14. Powers and limitations.**

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

12 (1) Acknowledgments.

13 (2) Oaths and affirmations.

14 (3) Execute jurats.

15 (4) Verifications or proofs.

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

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

19 (2) The readable appearance of the notary's name, from the notary's typed
20 or printed name near the signature.

21 (3) The clear and legible appearance of the notary's stamp or seal.

22 (4) A statement of the date the notary's commission expires.

23 (c) A notary is disqualified from performing a notarial act if any of the following
24 apply:

25 (1) The principal or subscribing witness is not in the notary's presence at
26 the time the notarial act is to be performed; however, nothing in this
27 Chapter shall require a notary to complete the certificate in the
28 presence of the principal or subscribing witness.

29 (2) The principal or subscribing witness is not personally known to the
30 notary or identified by the notary through satisfactory evidence.

31 (3) The principal or subscribing witness shows a demeanor that causes the
32 notary to have a compelling doubt about whether the principal knows
33 the consequences of the transaction requiring a notarial act.

34 (4) The principal or subscribing witness, in the notary's judgment, is not
35 acting of the principal's or the subscribing witness's own free will.

36 (5) The notary is a signer of or is named, other than as a trustee in a deed
37 of trust, in the document that is to be notarized.

38 (6) The notary will receive directly from a transaction connected with the
39 notarial act any commission, fee, advantage, right, title, interest, cash,
40 property, or other consideration exceeding in value the fees specified
41 in G.S. 10B-20, other than fees or other consideration paid for services
42 rendered by a licensed attorney, a licensed real estate broker or
43 salesperson, a motor vehicle dealer, or a banker.

1 (d) A notary may certify the affixation of a signature by mark on a record
2 presented for notarization if:

3 (1) The mark is affixed in the presence of the notary;

4 (2) The notary writes below the mark: "Mark affixed by (name of signer
5 by mark) in presence of undersigned notary"; and

6 (3) The notary notarizes the signature by performing an acknowledgment,
7 oath or affirmation, jurat, or verification or proof.

8 (e) If a principal is physically unable to sign or make a mark on a record
9 presented for notarization, that principal may designate another person as his or her
10 designee, who shall be a disinterested party, to sign on the principal's behalf pursuant to
11 the following procedure:

12 (1) The principal directs the designee to sign the record in the presence of
13 the notary and two witnesses unaffected by the record;

14 (2) The designee signs the principal's name in the presence of the
15 principal, the notary, and the two witnesses;

16 (3) Both witnesses sign their own names to the record near the principal's
17 signature;

18 (4) The notary writes below the principal's signature: "Signature affixed
19 by designee in the presence of (names and addresses of principal and
20 witnesses)"; and

21 (5) The notary notarizes the signature through an acknowledgment, oath
22 or affirmation, jurat, or verification or proof.

23 (f) A notarial act performed in another jurisdiction in compliance with the laws
24 of that jurisdiction is valid to the same extent as if it had been performed by a notary
25 commissioned under this Chapter if the notarial act is performed by a notary public of
26 that jurisdiction or by any person authorized to perform notarial acts in that jurisdiction
27 under the laws of that jurisdiction , the laws of this State, or federal law.

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

32 (h) The Secretary and register of deeds in the county in which a notary qualified
33 may certify to the commission of the notary.

34 (i) A notary public who is not an attorney licensed to practice law in this State
35 who advertises the person's services as a notary public in a language other than English,
36 by radio, television, signs, pamphlets, newspapers, other written communication, or in
37 any other manner, shall post or otherwise include with the advertisement the notice set
38 forth in this subsection in English and in the language used for the advertisement. The
39 notice shall be of conspicuous size, if in writing, and shall state: "I AM NOT AN
40 ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF NORTH
41 CAROLINA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR
42 LEGAL ADVICE." If the advertisement is by radio or television, the statement may be
43 modified but must include substantially the same message.

1 (j) A notary public who is not an attorney licensed to practice law in this State is
2 prohibited from representing or advertising that the notary public is an "immigration
3 consultant" or expert on immigration matters unless the notary public is an accredited
4 representative of an organization recognized by the Board of Immigration Appeals
5 pursuant to Title 8, Part 292, section 2(a-e) of the Code of Federal Regulations (8 C.F.R.
6 § 292.2(a-e)).

7 (k) A notary public who is not an attorney licensed to practice law in this State is
8 prohibited from rendering any service that constitutes the unauthorized practice of law.
9 A nonattorney notary shall not assist another person in drafting, completing, selecting,
10 or understanding a record or transaction requiring a notarial act.

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

17 (m) If notarial certificate wording is not provided or indicated for a record, a
18 nonattorney notary shall not determine the type of notarial act or certificate to be used.
19 This does not prohibit a notary from offering the selection of certificate forms
20 recognized in this Chapter or as otherwise authorized by law.

21 (n) A notary shall not claim to have powers, qualifications, rights, or privileges
22 that the office of notary does not provide, including the power to counsel on
23 immigration matters.

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

27 (1) Notwithstanding the provisions of this section or G.S. 10B-22(b), a
28 notary shall not be required to complete, cross out, or mark through
29 blank lines or spaces in the notary certificate form provided for in
30 G.S. 47-43 indicating when and where a power of attorney is recorded
31 if that recording information is not known to the notary at the time the
32 notary completes and signs the certificate;

33 (2) A notary's failure to cross out or mark through blank lines or spaces in
34 a notarial certificate shall not affect the sufficiency, validity, or
35 enforceability of the certificate or the related record; and

36 (3) A notary's failure to cross out or mark through blank lines or spaces in
37 a notarial certificate shall not be grounds for a register of deeds to
38 refuse to accept a record for registration.

39 **"§ 10B-15. Notaries ex officio.**

40 (a) The clerks of the superior court may act as notaries public in their several
41 counties by virtue of their offices as clerks and may certify their notarial acts only under
42 the seals of their respective courts. Assistant and deputy clerks of superior court, by
43 virtue of their offices, may perform the following notarial acts and may certify these
44 notarial acts only under the seals of their respective courts:

1 (1) Oaths and affirmations.

2 (2) Verifications or proofs.

3 Upon completion of the course of study provided for in G.S. 10B-4(b), assistant and
4 deputy clerks of superior court may, by virtue of their offices, perform all other notarial
5 acts and may certify these notarial acts only under the seals of their respective courts. A
6 course of study attended only by assistant and deputy clerks of superior court may be
7 taught at any mutually convenient location agreed to by the Secretary and the
8 Administrative Office of the Courts.

9 (b) Registers of deeds may act as notaries public in their several counties by
10 virtue of their offices as registers of deeds and may certify their notarial acts only under
11 the seals of their respective offices. Assistant and deputy registers of deeds, by virtue of
12 their offices, may perform the following notarial acts and may certify these notarial acts
13 only under the seals of their respective offices:

14 (1) Oaths and affirmations.

15 (2) Verifications or proofs.

16 Upon completion of the course of study provided for in G.S. 10B-4(b), assistant and
17 deputy registers of deeds may, by virtue of their offices, perform all other notarial acts
18 and may certify these notarial acts only under the seals of their respective offices. A
19 course of study attended only by assistant and deputy registers of deeds may be taught
20 at any mutually convenient location agreed to by the Secretary and the North Carolina
21 Association of Registers of Deeds.

22 (c) The Director may act as a notary public by virtue of the Director's
23 employment in the Department of the Secretary and may certify a notarial act performed
24 in that capacity under the seal of the Secretary.

25 (d) Unless otherwise provided by law, a person designated a notary public by this
26 section may charge a fee for a notarial act performed in accordance with G.S. 10B-20.
27 The fee authorized by this section is payable to the governmental unit or agency by
28 whom the person is employed.

29 (e) Nothing in this section shall authorize a person to act as a notary public other
30 than in the performance of the official duties of the person's office unless the person
31 complies fully with the requirements of G.S. 10B-4.

32 **"§ 10B-16. False certificate.**

33 (a) A notary shall not execute a notarial certificate containing information known
34 or believed by the notary to be false.

35 (b) A notary shall not execute a certificate that is not written in the English
36 language. A notary may execute a certificate written in the English language that
37 accompanies a record written in another language, which record may include a
38 translation of the notarial certificate into the other language. In those instances, the
39 notary shall execute only the English language certificate.

40 **"§ 10B-17. Improper records.**

41 (a) A notary shall not notarize a signature on a record without a notarial
42 certificate indicating what type of notarial act was performed.

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

1 **"§ 10B-18. Testimonials.**

2 A notary shall not use the official notary title or seal in a manner intended to
3 endorse, promote, denounce, or oppose any product, service, contest, candidate, or other
4 offering. This section does not prohibit a notary public from performing a notarial act
5 upon a record executed by another individual.

6 "Part 4. Fees.

7 **"§ 10B-19. Imposition and waiver of fees.**

8 (a) For performing a notarial act, a notary may charge up to the maximum fee
9 specified in this Chapter.

10 (b) A notary shall not discriminatorily condition the fee for a notarial act on any
11 attribute of the principal that would constitute unlawful discrimination.

12 (c) Nothing in this Chapter shall compel a notary to charge a fee.

13 **"§ 10B-20. Fees for notarial acts.**

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

15 (1) For acknowledgments, jurats, verifications or proofs, five dollars
16 (\$5.00) per principal signature.

17 (2) For oaths or affirmations without a signature, five dollars (\$5.00) per
18 person, except for an oath or affirmation administered to a credible
19 witness to vouch for a principal's identity.

20 **"§ 10B-21. Notice of fees.**

21 Notaries who charge for their notarial services shall conspicuously display in their
22 places of business, or present to each principal outside their places of business, an
23 English-language schedule of fees for notarial acts. No part of any notarial fee schedule
24 shall be printed in smaller than 10-point type.

25 "Part 5. Signature and Seal.

26 **"§ 10B-22. Official signature.**

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

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

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

38 (1) Inform the appropriate law enforcement agency in the case of theft or
39 vandalism.

40 (2) Notify the appropriate register of deeds and the Secretary in writing
41 and signed in the official name in which he or she was commissioned.

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

"§ 10B-23. 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. 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-24. Seal image.

(a) 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.

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

(1) The notary's name exactly as commissioned;

(2) The words "Notary Public";

(3) The county of commissioning, including the word "County" or the abbreviation "Co."; and

(4) The words "North Carolina" or the abbreviation "NC".

(c) The notary seal may be either circular or rectangular in shape. The circular seal shall not be less than 1 1/2 inches, nor more than 2 inches in diameter. The rectangular seal shall not be over 1 inch high and 2 1/2 inches long. The perimeter of the seal shall contain a border that is visible when impressed.

(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.

"Part 6. Certificate Forms.

"§ 10B-25. Notarial certificates in general.

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

(b) 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 taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth

1 in G.S. 10B-26, if it is substantially in a form otherwise prescribed by the law of this
2 State, or if it:

- 3 (1) Identifies the state and county in which the acknowledgment occurred;
- 4 (2) Names the principal who appeared in person before the notary;
- 5 (3) States that the notary has either (i) personal knowledge of the identity
6 of the principal or (ii) satisfactory evidence of the principal's identity,
7 indicating the nature of that satisfactory evidence;
- 8 (4) Indicates that the principal who appeared in person before the notary
9 acknowledged that the signature on the record presented is his or her
10 signature, that the principal voluntarily signed the record for the
11 purpose stated therein;
- 12 (5) States the date of the acknowledgment;
- 13 (6) Contains the signature and seal or stamp of the notary who took the
14 acknowledgment; and
- 15 (7) States the notary's commission expiration date.

16 (c) A notarial certificate for the verification or proof of the signature of a
17 principal by a subscribing witness taken by a notary is sufficient and shall be accepted
18 in this State if it is substantially in the form set forth in G.S. 10B-27, if it is substantially
19 in a form otherwise prescribed by the law of this State, or if it:

- 20 (1) Identifies the state and county in which the verification or proof
21 occurred;
- 22 (2) Names the subscribing witness who appeared in person before the
23 notary;
- 24 (3) States that the notary has either (i) personal knowledge of the identity
25 of the subscribing witness or (ii) satisfactory evidence of the
26 subscribing witness's identity, indicating the nature of that satisfactory
27 evidence;
- 28 (4) Names the principal whose signature on the record is to be verified or
29 proven;
- 30 (5) Indicates that the subscribing witness certified to the notary under oath
31 or by affirmation that the subscribing witness is not a named party to
32 the record in question, has no interest in the transaction, signed the
33 record as a subscribing witness, and either (i) witnessed the principal
34 sign the record, or (ii) witnessed the principal acknowledge the
35 principal's signature on the already-signed record;
- 36 (6) States the date of the verification or proof;
- 37 (7) Contains the signature and seal or stamp of the notary who took the
38 verification or proof; and
- 39 (8) States the notary's commission expiration date.

40 (d) A notarial certificate for an oath or affirmation taken by a notary is sufficient
41 and shall be accepted in this State if it is substantially in the form set forth in
42 G.S. 10B-28, if it is substantially in a form otherwise prescribed by the law of this State,
43 or if it:

(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.

"§ 10B-27. Notarial certificate for a verification or proof.

(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 of subscribing 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, signed the foregoing document as a subscribing witness, and either (i) witnessed *name of principal* (the principal) sign the foregoing document or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Date: _____

_____ *Official Signature of Notary* _____

(Official Seal)

Notary's printed or typed name, Notary Public

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.

"§ 10B-28. Notarial certificate for an oath or affirmation.

(a) When properly completed by a notary, a notarial certificate in substantially 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.

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 subscribed before me this day by 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
- (4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.

"Part 7. Changes in Status.

"§ 10B-29. Change of address.

1 Within 45 days after the change of a notary's residence, business, or any mailing
2 address or telephone number, the notary shall send to the Secretary by fax, e-mail, or
3 certified mail, return receipt requested, a signed notice of the change, giving both old
4 and new addresses or telephone numbers.

5 **"§ 10B-30. Change of name.**

6 (a) Within 45 days after the legal change of a notary's name, the notary shall send
7 to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed
8 notice of the change. The notice shall include both the notary's former name and the
9 notary's new name.

10 (b) A notary with a new name may continue to use the former name in
11 performing notarial acts until all of the following steps have been completed:

12 (1) The notary receives a confirmation of Notary's Name Change from the
13 Secretary.

14 (2) The notary obtains a new seal bearing the new name exactly as that
15 name appears in the confirmation from the Secretary.

16 (3) The notary appears before the register of deeds to which the
17 commission was delivered within 45 days of the effective date of the
18 change to be duly qualified by taking the general oath of office
19 prescribed in G.S. 11-11 and the oath prescribed for officers in
20 G.S. 11-7 under the new name and to have the notary public record
21 changed to reflect the new commissioned name.

22 (c) Upon completion of the requirements in subsection (b) of this section, the
23 notary shall use the new name.

24 **"§ 10B-31. Change of county.**

25 (a) A notary who has moved to another county in North Carolina remains
26 commissioned until the current commission expires, is not required to obtain a new seal,
27 and may continue to notarize without changing his or her seal.

28 (b) When a notary who has moved applies to be recommissioned, if the
29 commission is granted the, Secretary shall issue a notice of recommissioning. The
30 commission applicant shall then do all of the following:

31 (1) Obtain a new seal bearing the new county exactly as in the notice of
32 recommissioning.

33 (2) Appear before the register of deeds to which the commission was
34 delivered within 45 days of recommissioning, to be duly qualified by
35 taking the general oath of office prescribed in G.S. 11-11 and the oath
36 prescribed for officers in G.S. 11-7 under the new county and to have
37 the notary public record changed to reflect the new county name.

38 **"10B-32. Change of both name and county.**

39 (a) Within 45 days after the legal change of a notary's name, and if the notary has
40 also moved to a different county than as last commissioned, the notary shall submit to
41 the Secretary a recommissioning application and fee pursuant to this Chapter. The
42 notary may continue to perform notarial acts under the notary's previous name and seal
43 until all of the following steps have been completed:

- 1 (1) The notary receives a transmittal receipt of reappointment due to name
2 and county change from the Secretary.
- 3 (2) The notary obtains a new seal bearing the new name and county
4 exactly as those items appear in the transmittal receipt.
- 5 (3) The notary appears before the register of deeds to which the
6 commission was delivered within 45 days of recommissioning to be
7 duly qualified by taking the general oath of office prescribed in
8 G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the
9 new name and county and to have the notary public record changed to
10 reflect the new name and county.

11 **"§ 10B-33. Resignation.**

12 (a) A notary who resigns the notary's commission shall send to the Secretary by
13 fax, e-mail, or certified mail, return receipt requested, a signed notice indicating the
14 effective date of resignation.

15 (b) Notaries who cease to reside in or to maintain a regular place of work or
16 business in this State, or who become permanently unable to perform their notarial
17 duties, shall resign their commissions and shall deliver their seals to the Secretary by
18 certified mail, return receipt requested.

19 **"§ 10B-34. Disposition of seal; death of notary.**

20 (a) When a notary commission is resigned or revoked, the notary shall deliver the
21 notary's seal to the Secretary within 45 days of the resignation or revocation. Delivery
22 shall be accomplished by certified mail, return receipt requested. The Secretary shall
23 destroy any seal received under this subsection.

24 (b) A notary whose commission has expired and whose previous commission or
25 application was not revoked or denied by this State, is not required to deliver the seal to
26 the Secretary as provided under subsection (a) of this section if the notary intends to
27 apply to be recommissioned and is recommissioned within three months after the
28 notary's commission expires.

29 (c) If a notary dies while commissioned or before fulfilling the disposition of seal
30 requirements in this section, the notary's estate shall, as soon as is reasonably
31 practicable and no later than the closing of the estate, notify the Secretary in writing of
32 the notary's death and deliver the notary's seal to the Secretary for destruction.

33 "Part 8. Enforcement, Sanctions, and Remedies.

34 **"§ 10B-35. Enforcement and penalties.**

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

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

- 41 (1) Holding one's self out to the public as a notary if the person does not
42 have a commission.
- 43 (2) Performing a notarial act if the person's commission has expired or
44 been suspended.

1 public, or by a person whose notary commission has expired, is hereby validated. The
2 acknowledgment and instrument shall have the same legal effect as if the person
3 qualified as a notary public at the time the person performed the act.

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

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

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

12 (3) The notary's signature does not comport exactly with the name on the
13 notary commission or on the notary seal, as required by G.S. 10B-14.

14 (4) The notarial seal contains typed, printed, drawn, or handwritten
15 material added to the seal, fails to contain the words "North Carolina"
16 or the abbreviation "NC", or contains correct information except that
17 instead of the abbreviation for North Carolina contains the
18 abbreviation for another state.

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

21 (d) All notary acknowledgments performed before January 1, 1953, bearing a
22 notarial seal are hereby validated.

23 (e) This section applies to notarial acts performed on or before February 1, 2004.

24 **"§ 10B-37. Certain notarial acts validated.**

25 (a) Any acknowledgment taken and any instrument notarized by a person whose
26 notarial commission was revoked on or before January 30, 1997, is hereby validated.

27 (b) This section applies to notarial acts performed on or before August 1, 1998.

28 "Article 2.

29 "Electronic Notary Act.

30 "Part 1. General Provisions.

31 **"§ 10B-38. Short title.**

32 This act is the Electronic Notary Public Act and may be cited by that name.

33 **"§ 10B-39. Definitions.**

34 The following definitions apply in this Article:

35 (1) "Electronic" means relating to technology having electrical, digital,
36 magnetic, wireless, optical, electromagnetic, or similar capabilities.

37 (2) "Electronic Notary Public" and "Electronic Notary" mean a notary
38 public who has registered with the Secretary the capability of
39 performing electronic notarial acts in conformance with this Article.

40 (3) "Electronic Document" means information that is created, generated,
41 sent, communicated, received, or stored by electronic means.

42 (4) "Electronic Notarial Act" and "Electronic Notarization" mean an
43 official act by an electronic notary public that involves electronic
44 documents.

1 (5) "Electronic Notary Seal" and "Electronic Seal" mean information
2 within a notarized electronic document that includes the notary's name,
3 jurisdiction, and commission expiration date, and generally
4 corresponds to data in notary seals used on paper documents.

5 (6) "Electronic Signatures" means an electronic symbol or process
6 attached to or logically associated with an electronic document and
7 executed or adopted by a person with the intent to sign the document.

8 (7) "Notary's Electronic Signature" means those forms of electronic
9 signature which have been approved by the Secretary as authorized in
10 G.S. 10B-49, as an acceptable means for an electronic notary to affix
11 the notary's official signature to an electronic record that is being
12 notarized.

13 **"§ 10B-40. Scope of this Article.**

14 Article 1 of this Chapter applies to all acts authorized under this Article unless the
15 provisions of Article 1 directly conflict with the provisions of this Article, in which case
16 provisions of Article 2 shall control.

17 "Part 2. Registration.

18 **"§ 10B-41. Qualifications.**

19 (a) A person qualified for electronic notary registration shall meet all of the
20 following requirements:

21 (1) Hold a valid commission as a notary public in the State of North
22 Carolina.

23 (2) Except as otherwise provided, abide by all the provisions of Article 1
24 of this Chapter.

25 (3) Satisfy the requirements of G.S. 10B-43.

26 (4) Submit an electronic registration form containing no significant
27 misstatement or omission of fact.

28 (b) The Secretary may deny a registration as an electronic notary as authorized in
29 G.S. 10B-4(d). All funds received by the Secretary under this section shall be deposited
30 into the Notary Public Special Fund and used for the purposes authorized under
31 G.S. 10B-58.

32 **"§ 10B-42. Registration with the Secretary of State.**

33 (a) Before performing notarial acts electronically, a notary shall register the
34 capability to notarize electronically with the Secretary.

35 (b) The term of registration as an electronic notary shall coincide with the term of
36 the notary's commission under Article 1 of this Chapter.

37 (c) An electronic notary shall reregister the capability to notarize electronically at
38 the same time the notary applies for recommissioning under the requirements of Article
39 1 of this Chapter.

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

42 (1) The applicant's full legal name and the name to be used for
43 commissioning, excluding nicknames.

44 (2) The state and county of commissioning of the registrant.

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

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

18 (e) The electronic registration form for an electronic notary shall be transmitted
19 electronically to the Secretary and shall include any decrypting instructions, codes,
20 keys, or software that allow the registration to be read.

21 (f) Within 10 business days after the change of any registration information
22 required of an electronic notary, the notary shall electronically transmit to the Secretary
23 a notice of the change of information signed with the notary's official electronic
24 signature.

25 **"§ 10B-43. Course of instruction.**

26 (a) Before performing electronic notarial acts, a notary shall take a course of
27 instruction of least three hours approved by the Secretary and pass an examination of
28 this course, which shall be in addition to the educational requirements provided in
29 Article 1 of this Chapter.

30 (b) The content of the course and the basis for the examination shall be notarial
31 laws, procedures, technology, and ethics as they pertain to electronic notarization.

32 **"§ 10B-44. Fees for registration.**

33 The fee payable to the Secretary for registering or reregistering as an electronic
34 notary is fifty dollars (\$50.00), which shall be in addition to the fee required in
35 G.S. 10B-12. All funds received by the Secretary under this section shall be deposited
36 into the Notary Public Special Fund and used for the purposes authorized under
37 G.S. 10B-58.

38 "Part 3. Electronic Notarial Acts, Powers, and Limitations.

39 **"§ 10B-45. Types of electronic notarial acts.**

40 The following types of notarial acts may be performed electronically:

- 41 (1) Acknowledgments;
- 42 (2) Jurats;
- 43 (3) Verifications or proofs; and
- 44 (4) Oaths or affirmations.

"§ 10B-46. Prohibitions.

An electronic notarization shall not be performed if the signer of the electronic document:

- (1) Is not in the presence of the electronic notary at the time of notarization; and
- (2) Is not personally known to the notary or identified by the evidence in accordance with other provisions of this Chapter; or
- (3) For any reason set forth in G.S. 10B-14.

"§ 10B-47. Notarial components of electronic document.

In performing an electronic notarial act, all of the following components shall be attached to, or logically associated with, the electronic document by the electronic notary, all of which shall be immediately perceptible and reproducible in the electronic record to which the notary's electronic signature is attached:

- (1) The notary's name, state, and county of commissioning exactly as stated on the commission issued by the Secretary;
- (2) The words "Electronic Notary Public";
- (3) The words "State of North Carolina";
- (4) The expiration date of the commission;
- (5) The notary's electronic signature; and
- (6) The completed wording of one of the following notarial certificates:
 - a. Acknowledgment;
 - b. Jurat;
 - c. Verification or proof; or
 - d. Oath or affirmation.

"§ 10B-48. Maximum fees.

For performing electronic notarial acts, the maximum fees that may be charged by an electronic notary are as follows:

- (1) For acknowledgments, \$10.00 per signature.
- (2) For jurats, \$10.00 per signature.
- (3) For verifications or proofs, \$10.00 per signature.
- (4) For oaths or affirmations, \$10.00 per signature.

"Part 4. Electronic Notary Records, Maintenance, and Disposition.

"§ 10B-49. Electronic signature, electronic seal.

(a) The notary's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing electronic notarial acts.

(b) The Secretary shall adopt rules necessary to establish standards, procedures, practices, forms, and records relating to a notary's electronic signature and electronic seal. The notary's electronic seal and electronic signature shall conform to any standards adopted by the Secretary.

"§ 10B-50. Security measures.

(a) A notary shall safeguard the notary's electronic signature, the notary's electronic seal, and all other notarial records. Notarial records shall be maintained by the notary, and the notary shall not surrender or destroy the records except as required by a court order or as allowed under rules adopted by the Secretary.

1 (b) When not in use, the notary shall keep the notary's electronic signature,
2 electronic seal, and all other notarial records secure, under the exclusive control of the
3 notary, and shall not allow them to be used by any other notary or any other person.

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

7 (1) Inform the appropriate law enforcement agency in the case of theft or
8 vandalism.

9 (2) Notify the appropriate register of deeds and the Secretary in writing
10 and signed in the official name in which he or she was commissioned.

11 (d) The Secretary may adopt rules necessary to insure the integrity, security, and
12 authenticity of electronic notarizations.

13 (e) The Secretary may require an electronic notary to create and to maintain a
14 record, journal, or entry of each electronic notarial act. The rule-making authority
15 contained in this subsection shall become effective 18 months after the effective date of
16 this act.

17 (f) The failure of an electronic notary to produce within 10 days of the
18 Department's request any record required by a rule adopted under this section shall
19 result in the suspension of the electronic notary's power to act as a notary under the
20 provision of this Chapter until the Secretary reinstates the notary's commission.

21 (g) Upon resignation, revocation, or expiration of an electronic notary
22 commission, or death of the notary, all notarial records required by statute or rule shall
23 be delivered to the Secretary.

24 **"§ 10B-51. Maintenance of electronic device.**

25 (a) An electronic notary shall take reasonable steps to ensure that any registered
26 device used to create the notary's electronic signature is current and has not been
27 revoked or terminated by its issuing or registering authority.

28 (b) If the registration of the device used to create electronic signatures either
29 expires or is changed during the electronic notary's term of office, the notary shall cease
30 performing electronic notarizations until:

31 (1) A new device is duly issued or registered to the notary; and

32 (2) An electronically signed notice is sent to the Secretary that shall
33 include the starting and expiration dates of any new registration term
34 and any other new information at variance with information in the
35 most recently executed electronic registration form.

36 **"§ 10B-52. Disposition of records.**

37 (a) Upon compliance with G.S. 10B-51 and except as provided in subsection (b)
38 of this section, when an electronic notary's commission expires or is resigned or
39 revoked, or when an electronic notary dies, the notary or the notary's duly authorized
40 representative shall erase, delete, or destroy the coding, disk, certificate, card, software,
41 file, or program that enables electronic affixation of the notary's official electronic
42 signature.

43 (b) A former electronic notary whose previous commission or application was
44 not revoked or denied by the Secretary need not erase, delete, or destroy the coding,

1 disk, certificate, card, software, file, or program enabling electronic affixation of the
2 official electronic signature if he or she is recommissioned and reregistered as an
3 electronic notary using the same electronic signature within three months after
4 commission expiration.

5 "Part 5. Certificate Forms.

6 **"§ 10B-53. Validity of notarial certificates.**

7 The provisions contained in Article 1, Part 6, of this Chapter, with regard to notarial
8 certificate forms, are applicable for the purposes of this Article.

9 **"§ 10B-54. Form of evidence of authority of electronic notarial act.**

10 Electronic evidence of the authenticity of the official electronic signature and
11 electronic seal of an electronic notary of this State, if required, shall be attached to, or
12 logically associated with, a notarized electronic document transmitted to another state or
13 nation and shall be in the form of an electronic certificate of authority signed by the
14 Secretary in conformance with any current and pertinent international treaties,
15 agreements, and conventions subscribed to by the government of the United States.

16 **"§ 10B-55. Certificate of authority for electronic notarial act.**

17 (a) An electronic certificate of authority evidencing the authenticity of the
18 official electronic signature and electronic seal of an electronic notary of this State shall
19 contain substantially the following words:

20
21 Certificate of Authority for an Electronic Notarial Act

22 I, _____ (name, title, jurisdiction of commissioning official) certify that _____
23 (name of electronic notary), the person named as an electronic notary public in the
24 attached or associated document, was indeed registered as an electronic notary public
25 for the State of North Carolina and authorized to act as such at the time of the
26 document's electronic notarization.

27
28 To verify this Certificate of Authority for an Electronic Notarial Act, I have included
29 herewith my electronic signature this _____ day of _____, 20 ____.

30 (Electronic signature (and seal) of commissioning official)

31 (b) The Secretary may charge ten dollars (\$10.00) for issuing an electronic
32 certificate of authority.

33 "Part 6. Enforcement.

34 **"§ 10B-56. Restriction or revocation of registration.**

35 The Secretary or the Secretary's designee shall have the authority to warn, restrict,
36 suspend, or revoke an electronic notary registration for a violation of this Chapter and
37 on any ground for which electronic notary registration may be denied under this
38 Chapter.

39 **"§ 10B-57. Wrongful manufacture, distribution, or possession of software or**
40 **hardware.**

41 (a) Any person who knowingly creates, manufactures, or distributes software for
42 the purpose of allowing a person to act as an electronic notary without being
43 commissioned and registered in accordance with this act shall be guilty of a Class G
44 felony.

1 (b) Any person who wrongfully obtains, conceals, damages, or destroys the
2 certificate, disk, coding, card, program, software, file, or hardware enabling an
3 electronic notary to affix an official electronic signature is guilty of a Class I felony.

4 "Article 3.

5 "Notary Public Special Fund.

6 "**§ 10B-58. Notary Public Special Fund; established.**

7 There is established the Notary Public Special Fund in the Secretary of State's
8 Office. The Secretary shall hold the Fund separate and apart from all other moneys,
9 funds, and accounts. Investment earnings credited to the assets of the Fund shall become
10 part of the Fund. Any balance remaining in the Fund at the end of any fiscal year shall
11 be carried-forward in the Fund for the next succeeding fiscal year. Moneys from the
12 Fund are appropriated annually and shall be used for the administration of this Chapter."

13 **SECTION 5.** G.S. 66-271 reads as rewritten:

14 "**§ 66-271. Definitions.**

15 The following definitions apply in this Article:

16 ...

17 (5) Notary public. – Defined in ~~G.S. 10A-3~~G.S. 10B-3.

18"

19 **SECTION 6.** G.S. 66-272 reads as rewritten:

20 "**§ 66-272. Certificate of authentication.**

21 To authenticate a document, the Secretary must compare the official's seal and
22 signature on the document with a specimen of the official's seal and signature on file in
23 the Department. If no specimen is on file in the Department, the Secretary must require
24 that the document be authenticated by an official for whom the Department does have a
25 specimen. The Secretary must also verify the official's authority to perform a particular
26 act when the law of a foreign jurisdiction requires it to be verified before it will
27 recognize the authenticity of the document. When the Secretary is able to authenticate
28 the official's seal, signature, position, and authority, the Secretary shall sign and issue a
29 certificate of authentication. The certificate of authentication ~~may be placed on the~~
30 ~~document itself, if space is available, or by appending it~~ shall be appended to the
31 document on a separate sheet."

32 **SECTION 7.** G.S. 66-273 reads as rewritten:

33 "**§ 66-273. Prerequisites for authentication.**

34 All of the following conditions must be met before a document can be authenticated:

35 (1) All seals and signatures must be originals.

36 (2) All dates must follow in chronological order on all certifications.

37 (3) All acknowledgments to be authenticated by the Secretary shall be in
38 ~~English or accompanied by a certified or notarized English translation.~~
39 English and must comply with Chapter 10B of the General Statutes.

40 (4) Whenever a copy is used, it must include a statement that it is a true
41 and accurate copy.

42 (5) Whenever a document is to be authenticated by the United States
43 Department of State, it must comply with all applicable statutes, rules,
44 and regulations of that office."

1 **SECTION 8.** G.S. 161-10(a) reads as rewritten:

2 "(a) Except as provided in G.S. 161-11.1 or 161-11.2, all fees collected under this
3 section shall be deposited into the county general fund. While performing the duties of
4 the office, the register of deeds shall collect the following fees which shall be uniform
5 throughout the State:

6 ...

7 (12) Notarial Acts. – For taking an acknowledgment, oath, or affirmation or
8 performing any other notarial act the maximum fee set in ~~G.S. 10A-10.~~
9 G.S. 10B-20 or G.S. 10B-48 for electronic notarial acts. This fee shall
10 not be charged if the act is performed as a part of one of the services
11 for which a fee is provided by this subsection; except that this fee shall
12 be charged in addition to the fees for registering, filing, or recording
13 instruments or plats as provided by subdivisions (1) and (3) of this
14 subsection.

15

16 (17) Qualification of Notary Public. – For administering the oaths of office
17 to a notary public and making the appropriate record entries as
18 provided in ~~G.S. 10A-8~~ G.S. 10B-9 ten dollars (\$10.00).

19 ..."

20 **SECTION 9.** Article 3 of Chapter 47 of the General Statutes is amended by
21 adding a new section to read:

22 "**§ 47-37.1. Other forms of proof.**

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

31 (b) When an instrument presented for registration purports to be signed by an
32 individual in a representative capacity, the acknowledgment or proof of that individual's
33 signature may, but is not required to, (i) state that the individual signed the instrument in
34 a representative capacity, (ii) state that the individual who signed the instrument in a
35 representative capacity had due authority to do so, and/or (iii) identify the represented
36 person or entity."

37 **SECTION 10.** Of the funds appropriated to the Department of the Secretary,
38 the Secretary of State is authorized to utilize the Department of the Secretary of State's
39 Information Technology staff and to expend up to \$200,000 from the Department of the
40 Secretary of State E-Commerce Transaction Fund for the implementation of this act.

41
42 **SECTION 11.** As soon as practicable, or within 24 months of the effective
43 date of this act, all North Carolina registers of deeds and clerks of superior court shall
44 submit to the Department of the Secretary of State legible and reproducible copies of the

1 pages contained in their "Records of Notaries Public" created prior to 1991 for archiving
2 in permanent storage. The copies shall be reproduced pursuant to standards set by the
3 Department to ensure the legibility of the copies and the compatibility with the
4 Department's existing systems. The Department shall be responsible for any expense
5 incurred relating to the shipment or transfer of these records. The original permanent
6 records shall be returned to the Register of Deeds if submitted to the Secretary for
7 copying.

8 **SECTION 12.** This act shall not affect any civil or criminal litigation
9 pending on the effective date of this act. Any act committed prior to the effective date of
10 this act which violated any provision of the statutes repealed or amended by this act
11 shall be subject to enforcement, prosecution, conviction, and punishment as if this act
12 had not been enacted. Any claim arising under any provisions of the statutes repealed or
13 amended by this act prior to the effective date of this act shall remain valid as if this act
14 had not been enacted.

15 **SECTION 13.** Sections 1, 2, 10, and 13 of this act are effective when they
16 become law. The remainder of the act becomes effective December 1, 2005, and
17 applies to notarial acts and applications for notary commissions and recommissions
18 made on or after that date. Notary commissions issued under Chapter 10A of the
19 General Statutes prior to December 1, 2005, shall remain valid unless otherwise revoked
20 or suspended by the Secretary until those commissions expire as provided in Chapter
21 10A. G.S. 10B-37 and G.S. 10B-59 apply to offenses committed on or after December
22 1, 2005, without regard to whether a commission was issued under Chapter 10A or
23 Chapter 10B of the General Statutes. Notary instructor certifications issued under
24 G.S. 10A-7 shall remain valid until the date of expiration provided for on the certificate,
25 and persons holding those certificates may provide instruction until their certificates
26 expire.