

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

HOUSE BILL 332
RATIFIED BILL

AN ACT MAKING CORRECTIONS AND OTHER AMENDMENTS TO THE NOTARY PUBLIC ACT, MAKING OTHER CONFORMING CHANGES, AND PROVIDING FOR AN ALTERNATIVE PROCEDURE FOR SATISFACTION OF SECURITY INSTRUMENTS.

The General Assembly of North Carolina enacts:

PART I. NOTARY PUBLIC ACT

SECTION 1. G.S. 10B-5(b) reads as rewritten:

"(b) A person qualified for a notarial commission shall meet all of the following requirements:

- ...
- (9) ~~Obtain the recommendation of one publicly elected official in North Carolina and submit the recommendation with the application. 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 5,250 active notaries public are on record on January 1 of the year when the application is filed.~~"

SECTION 1.1. G.S. 10B-20 reads as rewritten:

"§ 10B-20. Powers and limitations.

...

(c) A notary shall not perform a notarial act if any of the following apply:

- ...
- (5) The notary is a signer 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 ~~as~~ (i) the trustee in a deed of ~~trust~~, trust, (ii) the drafter of the ~~record~~, record, (iii) the person to whom a registered document should be mailed or sent after ~~recording~~, or recording, or (iv) 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. A notary who is an employee of a party shall not be disqualified under this subdivision solely because of the notary's employment by a party to the record or solely because the notary owns stock in a party to the record.

...."

SECTION 1.2. G.S. 10B-37 reads as rewritten:

"§ 10B-37. Seal image.

...

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

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

...."

SECTION 1.3. G.S. 10B-55 reads as rewritten:

"§ 10B-55. Disposition of seal; death of notary.

...

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



deliver the notary's seal to the Secretary for destruction. A personal representative who is not a notary does not have to comply with the provisions of this subsection if he or she provides a statement under oath in any enforcement proceeding that he or she was unaware that the decedent was a commissioned notary public at the time of death."

SECTION 1.4. G.S. 10B-60 reads as rewritten:

"§ 10B-60. Enforcement and penalties.

...
(l) The Secretary shall notify the North Carolina State Bar (State Bar) of any final decision finding a violation of subsection (a) of this section by a notary who is also an attorney-at-law licensed under Chapter 84 of the General Statutes. The Secretary shall endeavor to provide a copy of any court order rendered under subsection (b), (c), (d), (e), (f), or (j) of this section to the State Bar in cases where the notary is an attorney-at-law licensed under Chapter 84 of the General Statutes. Any referral by the Secretary to the State Bar under this subsection shall be considered a showing of professional unfitness under G.S. 84-28(d), and the State Bar shall administer discipline accordingly."

SECTION 1.5. G.S. 10B-65 reads as rewritten:

"§ 10B-65. Acts of notaries public in certain instances validated.

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

...
(5) The date of the acknowledgement, the verification or proof, or the oath or affirmation states the correct day and month but lacks a year or states an incorrect year.

...
(d) All notary acknowledgments performed before ~~January 1, 1953~~, December 1, 2005, bearing a notarial seal are hereby validated.

(e) This section applies to notarial acts performed on or before ~~May 1, 2008~~, April 1, 2013."

SECTION 1.6. G.S. 10B-67 reads as rewritten:

"§ 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. This section applies to notarial acts whenever performed."

SECTION 1.7. G.S. 10B-68 reads as rewritten:

"§ 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. ~~This subsection applies to notarial certificates made on or after December 1, 2005.~~

...
(c) 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~~ include, but are not limited to, 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)~~, G.S. 10B-20(b), the affixation of the notary's seal near the signature of the principal or subscribing witness rather than near the notary's signature, minor typographical mistakes in the spelling of the principal's name, the failure to acknowledge the principal's name exactly as signed by including or omitting initials, or the failure to specify the principal's title or office, if any. ~~This subsection applies to notarial certificates made on or after December 1, 2005.~~"

SECTION 1.8. G.S. 10B-69 reads as rewritten:

"§ 10B-69. Official forms cured.

(a) The notarial certificate contained in a form issued by a State agency prior to ~~October 1, 2006~~, April 1, 2013, is deemed to be a valid certificate provided the certificate complied with the law at the time the form was issued.

...."

SECTION 1.9. G.S. 10B-71 reads as rewritten:

"§ 10B-71. Certain notarial acts validated when recommissioned notary failed to again take oath.

Any acknowledgment taken and any instrument notarized by a person who after recommissioning failed to again take the oath as a notary public is hereby validated. The acknowledgment and instrument shall have the same legal effect as if the person qualified as a notary public at the time the person performed the act. This section shall apply to notarial acts performed on or after May 15, 2004, and before ~~July 8, 2009.~~April 1, 2013."

SECTION 1.10. G.S. 10B-99 reads as rewritten:

"§ 10B-99. Presumption of regularity.

...
(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. This section applies to notarial acts whenever performed."

SECTION 1.11. G.S. 41-2 reads as rewritten:

"§ 41-2. Survivorship in joint tenancy defined; proviso as to partnership; unequal ownership interests.

...
(a1) Upon conveyance to the trustee of a deed of trust by any or all of the joint tenants holding property in joint tenancy with right of survivorship to secure a loan, the joint tenancy with right of survivorship shall be deemed not to be severed, and upon satisfaction of the deed of trust, legal title to the property subject to the joint tenancy shall revert to the grantors as joint tenants with right of survivorship in the respective shares as owned by the respective grantors at the time of the execution of the deed of trust, unless a contrary intent is expressed in the deed of trust or other instrument recorded subsequent to the deed of trust.

....
SECTION 1.12. G.S. 47-2.2 reads as rewritten:

"§ 47-2.2. Notary public of sister state; lack of seal or stamp or expiration date of commission.

(a) If the proof or acknowledgment of any instrument is had before a notary public of any state other than North Carolina and the instrument does ~~not~~ not (i) show the seal or stamp of the notary public, (ii) provide evidence pursuant to subsection (b) of this section that a seal or stamp is not required and the expiration date of the commission of the notary public, or (iii) state that the notary's commission does not expire or is a lifetime appointment, the certificate of proof or acknowledgment made by such notary public shall be accompanied by the certificate of the county official before whom the notary qualifies for ~~office,~~ office or of a state officer authorized to issue certificates regarding notary commission status, stating that such notary public was at the time his certificate bears date an acting notary public of such state, and that such notary's genuine signature is set to his certificate. The certificate of the official herein provided for shall be under his hand and official seal.

(b) A proof or acknowledgement which does not require a seal or stamp of the notary to be effective in the jurisdiction issuing the notary's commission shall include either (i) a statement by the notary within the proof or acknowledgement area of the instrument that the notary is not required to utilize a seal or stamp or (ii) a reference that purports to be the statute of the commissioning state which provides that no seal or stamp is required together with a statement that the notary is not required to utilize a seal or stamp. The register of deeds may rely upon this statement and is not responsible for confirming its validity or the authority of the person making it. A register of deeds may not refuse to accept a record for registration because a notarial seal or stamp is omitted from the proof or acknowledgement if the provisions of this subsection have been complied with in the proof or acknowledgement. The acceptance of a record for registration under this subsection shall give rise to a presumption that the seal or stamp was not required to be affixed by the notary. This presumption is rebuttable and shall apply to all instruments whenever recorded. However, a court order finding the lack of a valid seal shall not affect the rights of a person who (i) records an interest in the real property described in the instrument before the finding of a lack of a valid seal and (ii) would otherwise have an enforceable interest in the real property."

SECTION 1.13. G.S. 47-12.2 reads as rewritten:

"§ 47-12.2. Subscribing witness incompetent when grantee or beneficiary.

The execution of an instrument may not be proved for registration by a subscribing witness ~~who~~ who, at the time of the execution of the instrument by the subscribing witness, is the grantee or beneficiary therein nor by proof of his signature as such subscribing witness.

Nothing in this section invalidates the registration of any instrument registered prior to April 9, 1935."

SECTION 1.14. G.S. 47-14 reads as rewritten:

"§ 47-14. Register of deeds to verify the presence of proof or acknowledgement and register instruments and electronic documents; order by judge; instruments to which register of deeds is a party.

...
(f) Presumption of Notarial Seal. – 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 applies regardless of whether the image is legible or photographically reproduced in the records maintained by the register of deeds-deeds and applies to all instruments filed in the records maintained by the register of deeds regardless of when the instrument was presented for registration. 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. The presumption under this subsection is rebuttable and shall apply to all instruments whenever recorded. However, a court order finding the lack of a valid seal shall not affect the rights of a person who (i) records an interest in the real property described in the instrument before the finding of a lack of a valid seal and (ii) would otherwise have an enforceable interest in the real property."

SECTION 1.15. G.S. 47-28 reads as rewritten:

"§ 47-28. Powers of attorney.

~~Every power of attorney, wherever made or concerning whatsoever matter, may, on acknowledgment or proof of the same before any competent official, be registered in the county wherein the property or estate which it concerns is situate, if such power of attorney relate to the conveyance thereof; if it does not relate to the conveyance of any estate or property, then in the county in which the attorney resides or the business is to be transacted.~~

(a) Recording required for powers of attorney affecting real property:

- (1) Before any transfer of real property executed by an attorney-in-fact empowered by a power of attorney governed by Article 1, Article 2, or Article 2A of Chapter 32A of the General Statutes, the power of attorney or a certified copy of the power of attorney shall be registered in the office of the register of deeds of the county in which the principal is domiciled or where the real property lies. If the principal is not a resident of North Carolina, the power of attorney or a certified copy of the power of attorney may be recorded in any county in the State wherein the principal owns real property or has a significant business reason for registering in the county.
- (2) If the real property lies in more than one county or in a county other than where the principal is domiciled, the power of attorney or a certified copy of the power of attorney shall be registered in the office of the register of deeds in one of the counties, and the instrument of transfer shall refer to the recordation specifically by reference to the book, page, and county where recorded.
- (3) Any instrument subject to the provisions of G.S. 47-17.2, 47-18, or 47-20 and signed by an attorney-in-fact and recorded in a county other than the county where a power of attorney is recorded in this State shall include the recording information, including book, page, and county for the power of attorney.
- (4) The failure to comply with the provisions of this subsection shall not affect the sufficiency, validity, or enforceability of the instrument but shall constitute an infraction.

(b) If the instrument of conveyance is recorded prior to the registration of the power of attorney or a certified copy of the power of attorney pursuant to subsection (a) of this section, the power of attorney or a certified copy of the power of attorney may be registered in the office of the register of deeds as provided in subsection (a) of this section thereafter provided that the attorney-in-fact was empowered at the time of the original conveyance. Notwithstanding the provisions of subsection (a) of this section, no conveyance shall be rendered invalid by the recordation of the power of attorney or a certified copy of the power of

attorney after the instrument of conveyance, and the registration shall relate back to the date and time of registration of the instrument of conveyance.

(c) The provisions of subsection (a) of this section shall apply to all real property transfers utilizing an authority under any power of attorney whether made on or after April 1, 2013, and the provisions of subsection (b) of this section shall apply to all real property transfers utilizing an authority under any power of attorney whether made before, on, or after April 1, 2013."

SECTION 1.16. G.S. 47-36.1 reads as rewritten:

"§ 47-36.1. Correction of errors in recorded instruments.

(a) Notwithstanding G.S. 47-14 and G.S. 47-17, notice of typographical or other minor error in a deed or other instrument recorded with the register of deeds may be given by recording an affidavit. If an affidavit is conspicuously identified as a corrective or scrivener's affidavit in its title, the register of deeds shall index the name of the affiant, the names of the original parties in the instrument, the recording information of the instrument being corrected, and the original parties as they are named in the affidavit. A copy of the previously recorded instrument to which the affidavit applies may be attached to the affidavit and need not be a certified copy. Notice ~~To the extent the correction is inconsistent with the originally recorded instrument, and only to that extent, notice of the corrective information as provided by the affiant in the corrective affidavit is deemed to have been given as of the time the corrective affidavit is registered. Nothing in this section invalidates or otherwise alters the legal effect of any instrument of correction authorized by statute in effect on the date the instrument was registered.~~

(b) Nothing in this section requires that an affidavit be attached to an original or certified copy of a previously recorded instrument that is unchanged but rerecorded. Nothing in this section requires that an affidavit be attached to a previously recorded instrument with a copy of a previously recorded instrument that includes identified corrections or an original execution by a party or parties of the corrected instrument after the original recording, with proof or acknowledgment of their execution of the correction of the instrument.

(c) If the corrective affidavit is solely made by a notary public in order to correct a notarial certificate made by that notary public that was attached to an instrument already recorded with the register of deeds, the notary public shall complete the corrective affidavit identifying the correction and may attach a new acknowledgment completed as of the date the original acknowledgment took place, which shall be deemed attached to the original recording, and the instrument's priority shall remain the date and time originally recorded. The provisions of this subsection shall apply to corrective affidavits filed prior to, on, or after April 1, 2013."

SECTION 1.17. G.S. 47-41.2 reads as rewritten:

"§ 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. ~~This subsection applies to notarial certificates and forms of probate made on or after December 1, 2005.~~

...."

SECTION 1.18. G.S. 47-48 reads as rewritten:

"§ 47-48. Clerks' and registers of deeds' certificate failing to pass on all prior certificates.

When it appears that the clerk of the superior court, register of deeds, or other officer having the power to probate or certify deeds, in passing upon deeds or other instruments, and the certificates thereto, having more than one certificate of the same or a different date, by other officer or officers taking acknowledgment or probating the same, has in his certificate or order mentioned only one or more of the preceding or foregoing certificates or orders, but not all of them, but has admitted the same deed or other instrument to probate or recordation, it shall be conclusively presumed that all the certificates of said deed or instrument necessary to the admission of same to probate or recordation have been passed upon, and the certificate of said clerk, register of deeds, or other probating or certifying officer shall be deemed sufficient and the probate, certification and recordation of said deed or instrument is hereby made and declared valid for all intents and purposes. The provisions of this section shall apply to all instruments recorded in any county of this State prior to ~~April 1, 1980~~ April 1, 2013."

SECTION 1.19. G.S. 47-50 reads as rewritten:

"§ 47-50. Order of registration omitted.

In all cases prior to ~~December 31, 1992,~~October 1, 2005, where it appears from the records of the office of the register of deeds of any county in this State that the execution of a deed of conveyance or other instrument by law required or authorized to be registered was duly signed and acknowledged as required by the laws of the State of North Carolina, and the clerk of the superior court of such county or other officer authorized to pass upon acknowledgments and to order registration of instruments has failed either to adjudge the correctness of the acknowledgment or to order the registration thereof, or both, such registrations are hereby validated and the instrument so appearing in the office of the register of deeds of such county shall be effective to the same extent as if the clerk or other authorized officer had properly adjudged the correctness of the acknowledgment and had ordered the registration of the instrument."

SECTION 1.20. G.S. 47-50.1 reads as rewritten:

"§ 47-50.1. Register's certificate omitted.

In all cases prior to ~~October 1, 2004,~~October 1, 2005, where it appears from the records of the office of the register of deeds of any county in this State that the execution of a deed of conveyance or other instrument by law required or authorized to be registered was duly signed and acknowledged as required by the laws of this State, and the register of deeds has failed to certify the correctness of the acknowledgment as required by G.S. 47-14(a), the registrations are hereby validated and the instrument so appearing in the office of the register of deeds of that county is effective to the same extent as if the register of deeds had properly certified the correctness of the acknowledgment."

SECTION 1.21. G.S. 47-51 reads as rewritten:

"§ 47-51. Official deeds omitting seals.

All deeds executed prior to ~~January 1, 1991,~~April 1, 2013, by any sheriff, commissioner, receiver, executor, executrix, administrator, administratrix, or other officer authorized to execute a deed by virtue of his office or appointment, in which the officer has omitted to affix his seal after his signature, shall not be invalid on account of the omission of such seal."

SECTION 1.22. G.S. 47-53 reads as rewritten:

"§ 47-53. Probates omitting official seals, etc.

In all cases where the acknowledgment, private examination, or other proof of the execution of any deed, mortgage, or other instrument authorized or required to be registered has been taken or had by or before any commissioner of affidavits and deeds of this State, or clerk or deputy clerk of a court of record, or notary public of this or any other state, territory, or district, and such deed, mortgage, or other instrument has heretofore been recorded in any county in this State, but such commissioner, clerk, deputy clerk, or notary public has omitted to attach his or her official or notarial seal thereto, or if omitted, to insert his or her name in the body of the certificate, or if omitted, to sign his or her name to such certificate, if the name of such officer appears in the body of said certificate or is signed thereto, or it does not appear of record that such seal was attached to the original deed, mortgage, or other instrument, or such commissioner, clerk, deputy clerk, or notary public has certified the same as under his or her "official seal," or "notarial seal," or words of similar import, and no such seal appears of record or where the officer uses "notarial" in his or her certificate and signature shows that "C.S.C.," or "clerk of superior court," or similar exchange of capacity, and the word "seal" follows the signature, then all such acknowledgments, private examinations or other proofs of such deeds, mortgages, or other instruments, and the registration thereof, are hereby made in all respects valid and binding. The provisions of this section apply to acknowledgments, private examinations, or proofs taken prior to ~~January 1, 1991;~~April 1, 2013. Provided, this section does not apply to pending litigation."

SECTION 1.23. G.S. 47-53.1 reads as rewritten:

"§ 47-53.1. Acknowledgment omitting seal of clerk or notary public.

Where any person has taken an acknowledgment as either a notary public or a clerk of a superior court, deputy clerk of a superior court, or assistant clerk of a superior court and has failed to affix his or her seal and this acknowledgment has been otherwise duly probated and recorded then this acknowledgment is hereby declared to be sufficient and valid. This section applies only to those deeds and other instruments acknowledged prior to ~~January 1, 1991.~~April 1, 2013."

SECTION 1.24. G.S. 47-64 reads as rewritten:

"§ 47-64. Probates before officers, stockholders or directors of corporations prior to January 1, 1945.

No acknowledgment or proof of execution, including privity examination of married women, of any deed, mortgage or deed of trust to which instrument a corporation is a party, executed prior to the first day of January, 1945, shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof or privity examination was an officer, stockholder, or director in said corporation; but such proofs and acknowledgments and the registration thereof, if in all other respects valid, are declared to be valid. Nor shall the registration of any such instrument ordered to be registered be held invalid by reason of the fact that the clerk or deputy clerk ordering the registration was an officer, stockholder or director in any corporation which is a party to any such instrument."

SECTION 1.25. G.S. 47-71.1 reads as rewritten:

"§ 47-71.1. Corporate seal omitted prior to January 1, 1991. January 1, 2000.

Any corporate deed, or conveyance of land in this State, made prior to ~~January 1, 1991,~~ January 1, 2000, which is defective only because the corporate seal is omitted therefrom is hereby declared to be a good and valid conveyance by such corporation for all purposes and shall be sufficient to pass title to the property therein conveyed as fully as if the said conveyance were executed according to the provisions and forms of law in force in this State at the date of the execution of such conveyance."

SECTION 1.26. G.S. 47-72 reads as rewritten:

"§ 47-72. Corporate name not affixed, but signed otherwise prior to January, 1973. April 1, 2013.

In all cases prior to ~~the first day of January, 1973,~~ April 1, 2013, where any deed conveying lands purported to be executed by a corporation, but the corporate name was in fact not affixed to said deed, but same was signed by the president and secretary of said corporation, or by the president and two members of the governing body of said corporation, and said deed has been registered in the county where the land conveyed by said deed is located, said defective execution above described shall be and the same is hereby declared to be in all respects valid, and such deed shall be deemed to be in all respects the deed of said corporation."

SECTION 1.27. G.S. 47-81.2 reads as rewritten:

"§ 47-81.2. Before United States Army, etc., officers, officers, and other service members.

In all cases where instruments and writings have been proved or acknowledged before any ~~commissioned officer of the United States Army or Marine Corps~~ Army, Navy, Air Force, Marine Corps, or Coast Guard having the rank of captain or higher, before any officer of the United States Navy or Coast Guard having the rank of lieutenant, senior grade, or higher, or any officer of the United States Merchant Marine having the rank of lieutenant, senior grade, or higher, such proofs or acknowledgments, where valid in other respects, are hereby ratified, confirmed and declared valid. All proofs or acknowledgments made by any military personnel authorized by the Congress of the United States are hereby ratified, confirmed, and declared valid and shall not require the affixation of a seal where valid in other respects."

SECTION 1.28. G.S. 47-92 reads as rewritten:

"§ 47-92. Probates before stockholders and directors of banks.

No acknowledgment or proof of execution, including privity examination of married women, of any mortgage, or deed of trust executed to secure the payment of any indebtedness to any banking corporation, taken prior to the first day of January, 1923, shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof, or privity examination was a stockholder or director in such banking corporation."

SECTION 1.29. G.S. 47-93 reads as rewritten:

"§ 47-93. Acknowledgments taken by stockholder, officer, or director of bank.

No acknowledgment or proof of execution, including privity examination of married women, of any mortgage or deed of trust executed to secure the payment of any indebtedness to any banking corporation taken prior to the first day of January, 1924, shall be held invalid by reason of the fact that the officer taking such acknowledgment, proof, or privity examination was a stockholder, officer, or director in such banking corporation."

SECTION 1.30. G.S. 47-94 reads as rewritten:

"§ 47-94. Acknowledgment and registration by officer or stockholder in building and loan or savings and loan association.

All acknowledgments and proofs of execution, including privity examination of married women, of any mortgage or deed of trust executed to secure the payment of any indebtedness to

any State or federal building and loan or savings and loan association ~~prior to the first day of January, 1955,~~ shall not be, nor held to be, invalid by reason of the fact that the clerk of the superior court, justice of the peace, notary public, or other officer taking such acknowledgment, proof of execution or privy examination, was an officer or stockholder in such building and loan association; but such proofs and acknowledgments of all such instruments, and the registration thereof, if in all other respects valid, are hereby declared to be valid.

Nor shall the registration of any such mortgage or deed of trust ordered to be registered by the clerk of the superior court, or by any deputy or assistant clerk of the superior court, be or held to be invalid by reason of the fact that the clerk of the superior court, or deputy, or assistant clerk of the superior court, ordering such mortgages or deeds of trust to be registered was an officer or stockholder in any State or federal building and loan or savings and loan association, whose indebtedness is secured in and by such mortgage or deed of trust."

SECTION 1.31. G.S. 47-95 reads as rewritten:

"§ 47-95. Acknowledgments taken by notaries interested as trustee or holding other office.

In every case where deeds and other instruments have been acknowledged and privy examination of wives had before notaries public, or justices of the peace, prior to ~~January 1, 1975,~~ October 1, 1991, when the notary public or justice of the peace at the time was interested as trustee in said instrument or at the time was also holding some other office, and the deed or other instrument has been duly probated and recorded, such acknowledgment and privy examination taken by such notary public or justice of the peace is hereby declared to be sufficient and valid."

SECTION 1.32. G.S. 47-97 reads as rewritten:

"§ 47-97. Validation of corporate deed with mistake as to officer's name.

In all cases where the deed of a corporation executed before ~~the first day of January, 1918,~~ April 1, 2013, is properly executed, properly recorded and there is error in the probate of said corporation's deed as to the name or names of the officers in said probate, said deed shall be construed to be a deed of the same force and effect as if said probate were in every way proper."

SECTION 1.33. G.S. 47-97.1 reads as rewritten:

"§ 47-97.1. Validation of corporate deeds containing error in acknowledgment or probate.

In all cases where the deed of a corporation executed and filed for registration prior to ~~the fifteenth day of June, 1947,~~ April 1, 2013, is properly executed and properly recorded and there is error in the acknowledgment or probate of said corporation's deed as to the name or names of the officer or officers named therein and error as to the title or titles of the officer or officers named therein, said deed shall be construed to be a deed of the same force and effect as if said probate or acknowledgment were in every way proper."

SECTION 1.34. G.S. 47-102 reads as rewritten:

"§ 47-102. Absence of notarial seal.

Any deed executed prior to ~~the first day of January, 1945,~~ October 1, 2005, and duly acknowledged before a North Carolina notary public, and the probate recites "witness my hand and notarial seal," or words of similar import, and no seal was affixed to the said deed, shall be ordered registered by the clerk of the superior court of the county in which the land lies, upon presentation to him: Provided, the probate is otherwise in due form."

SECTION 1.35. G.S. 47-108.6 reads as rewritten:

"§ 47-108.6. Validation of certain conveyances of foreign dissolved corporations.

In all cases when, prior to ~~the first day of January, 1947,~~ April 1, 2013, any dissolved foreign corporation has, prior to its dissolution, by deed of conveyance purported to convey real property in this State, and said instrument recites a consideration, is signed by the proper officers in the name of said corporation, sealed with the corporate seal and duly registered in the office of the register of deeds of the county where the land described in said instrument is located, but there is error in the attestation clause and acknowledgment in failing to identify the officers signing said deed and to recite that authority was duly given and that the same was the act of said corporation, said deed shall be construed to be a deed of the same force and effect as if said attestation clause and acknowledgment were in every way proper."

SECTION 1.36. G.S. 47-108.11 reads as rewritten:

"§ 47-108.11. Validation of recorded instruments where seals have been omitted.

In all cases of any deed, deed of trust, mortgage, lien or other instrument authorized or required to be registered in the office of the register of deeds of any county in this State where it appears of record or it appears that from said instrument, as recorded in the office of the register of deeds of any county in the State, there has been omitted from said recorded or registered instrument the word "seal," "notarial seal" and that any of said recorded or registered instruments shows or recites that the grantor or grantors "have hereunto fixed or set their hands and seals" and the signature of the grantor or grantors appears without a seal thereafter or on the recorded or registered instrument or in all cases where it appears there is an attesting clause which recites "signed, sealed and delivered in the presence of," and the signature of the grantor or grantors appears on the recorded or registered instrument without any seal appearing thereafter or of record, then all such deeds, mortgages, deeds of trust, liens or other instruments, and the registration of same in the office of the register of deeds, are hereby declared to be in all respects valid and binding and are hereby made in all respects valid and binding to the same extent as if the word "seal" or "notarial seal" had not been omitted, and the registration and recording of such instruments in the office of the register of deeds in any county in this State are hereby declared to be valid, proper, legal and binding registrations.

This section shall not apply in any respect to any instrument recorded or registered subsequent to ~~January 1, 1999~~ April 1, 2013, or to pending litigation or to any such instruments now directly or indirectly involved in pending litigation."

SECTION 1.37. Article 4 of Chapter 47 of the General Statutes is amended by adding the following new sections to read as follows:

"§ 47-108.18A. Registration of certain instruments containing a notarial acknowledgment.

A notarial acknowledgment constitutes a jurat in due form for all instruments that have heretofore been accepted for filing and registration under this Chapter or which relate to real estate located within this State.

"§ 47-108.18B. Registration of certain instruments containing a notarial jurat.

A notarial jurat constitutes an acknowledgment in due form for all instruments that have heretofore been accepted for filing and registration under this Chapter or which relate to real estate located within this State."

SECTION 1.38. G.S. 47-108.20 reads as rewritten:

"§ 47-108.20. Validation of certain recorded instruments that were not acknowledged.

All instruments recorded before ~~June 30, 1986~~ April 1, 2013, that were not reexecuted and reacknowledged and that correct an obvious typographical or other minor error in a recorded instrument that was previously properly executed and acknowledged are declared to be valid instruments."

PART II. SATISFACTION OF SECURITY INTEREST/ALTERNATIVE PROCEDURE

SECTION 2.1. G.S. 45-36.9 reads as rewritten:

"§ 45-36.9. Secured creditor to submit satisfaction or release for recording; liability for failure.

...

(b) Except as otherwise provided in G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security instrument or a release for recording pursuant to this section and does not do so by the end of the period specified in subsection (a) or (a1) of this section is liable to the landowner for any actual damages caused by the failure, but not punitive damages.

(c) Except as otherwise provided in subsection (d) of this section and in G.S. 45-36.12, a secured creditor that is required to submit a satisfaction of a security instrument or a release for recording pursuant to this section and does not do so by the end of the period specified in subsection (a) or (a1) of this section is also liable to the landowner for one thousand dollars (\$1,000) and any reasonable attorneys' fees and court costs incurred if, after the expiration of the period specified in subsection (a) or (a1) of this section, all of the following occur:

- (1) The landowner gives the secured creditor a notification, by any method authorized by G.S. 45-36.5 that provides proof of receipt, demanding that the secured creditor submit a satisfaction or release for recording.
- (2) The secured creditor does not submit a satisfaction or release for recording within 30 days after the secured creditor's receipt of the notification.

- (3) The security instrument is not satisfied of record by any of the methods provided in G.S. 45-37(a) or the release is not filed within 30 days after the secured creditor's receipt of the notification.

The right to receive the additional one thousand dollars (\$1,000) is personal to the landowner who gives the secured creditor notification under this subsection and may not be assigned.

...."

SECTION 2.2. G.S. 45-36.14 reads as rewritten:

"§ 45-36.14. Affidavit of satisfaction: notification to secured creditor.

...

(d) A satisfaction agent does not have to give the notification described in this section if (i) the secured creditor has authorized the satisfaction agent to sign and submit an affidavit of satisfaction; (ii) the satisfaction agent has in his or her possession the instruments described in G.S. 45-36.15(a)(3), (a)(4), or (a)(5); or (iii) after diligent inquiry, the satisfaction agent has been unable to determine the identity of the secured creditor because, for example, the last known secured creditor no longer exists and the satisfaction agent has been unable to identify any successor-in-interest to the last known secured creditor."

SECTION 2.3. G.S. 45-36.15 reads as rewritten:

"§ 45-36.15. Affidavit of satisfaction: authorization to submit for recording.

(a) Subject to subsections (b) and (c) of this section, a satisfaction agent may sign and submit for recording an affidavit of satisfaction of a security instrument complying with G.S. 45-36.16 ~~if~~if the satisfaction agent has reasonable grounds to believe that the secured creditor has received full payment or performance of the secured obligation and one or more of the following apply:

- (1) The secured creditor has not, to the knowledge of the satisfaction agent, submitted for recording a satisfaction of a security instrument or otherwise caused the security instrument to be satisfied of record pursuant to any of the methods provided in G.S. 45-37(a) within 30 days after the effective date of a notification complying with ~~G.S. 45-36.14(a); or~~ G.S. 45-36.14(a).
- (2) The secured creditor ~~authorizes~~ has authorized the satisfaction agent to ~~do~~ ~~so~~ sign and submit for recording an affidavit of satisfaction.
- (3) The satisfaction agent has in his or her possession the original security instrument and the original bond, note, or other instrument secured thereby, with an endorsement of payment and satisfaction appearing thereon made by one or more of the following: (i) the secured creditor; (ii) the trustee or substitute trustee, if the security instrument is a deed of trust; (iii) an assignee of the secured creditor; or (iv) any bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or any other state or the United States having an office or branch in North Carolina, when so endorsed in the name of the institution by an officer thereof.
- (4) The satisfaction agent has in his or her possession the original security instrument intended to secure the payment of money or the performance of any other obligation, together with the original bond, note, or other instrument secured, or the original security instrument alone if the security instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond, or other instrument secured by it if, at the time the affidavit of satisfaction is to be signed and submitted, all such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments secured by the security instrument have an endorsement of partial payment, satisfaction, performance, or discharge within the period of 10 years, the period of 10 years shall be counted from the date of the most recent endorsement.
- (5) The satisfaction agent has in his or her possession the original security instrument given to secure the bearer or holder of any negotiable instruments transferable solely by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.

- (6) After diligent inquiry, the satisfaction agent has been unable to determine the identity of the secured creditor because, for example, the last known secured creditor no longer exists and the satisfaction agent has been unable to identify any successor-in-interest to the last known secured creditor.

...
(c) ~~If~~ Unless the satisfaction agent has in his or her possession the instruments described in subdivision (a)(3), (a)(4), or (a)(5) of this section or the satisfaction agent is unable to determine the identity of the secured creditor because, for example, the last known assignee of the security instrument no longer exists and the satisfaction agent has been unable to identify any successor-in-interest to the last known assignee, a satisfaction agent who receives a notification under G.S. 45-36.14(a)(5)c. stating that the security instrument has been assigned, the satisfaction agent assigned may not submit for recording an affidavit of satisfaction of the security instrument without first:

- (1) Giving a notification of intent to submit for recording an affidavit of satisfaction to the identified assignee at the identified address; and
- (2) Complying with G.S. 45-36.14 with respect to the identified assignee."

SECTION 2.4. G.S. 45-36.16 reads as rewritten:

"§ 45-36.16. Affidavit of satisfaction: content.

An affidavit of satisfaction of a security instrument must comply with all of the following:

...
(4a) Reserved.

(4b) Reserved.

(5) State ~~that~~ one or more of the following, as applicable:

- a. ~~the~~ The person signing the affidavit, acting with the authority of the owner of the real property described in the security instrument, gave notification to the secured creditor of its in the manner prescribed by G.S. 45-36.14 of his or her intention to sign and submit for recording an affidavit of satisfaction. More than 30 days have elapsed since the effective date of that notification, and the person signing the affidavit (i) has no knowledge that the secured creditor has submitted a satisfaction for recording and (ii) has not received a notification that the secured obligation remains unsatisfied.
- b. The secured creditor authorized the person signing the affidavit to sign and record an affidavit of satisfaction.
- c. The person signing the affidavit has in his or her possession the original security instrument and the original bond, note, or other instrument secured thereby, with an endorsement of payment and satisfaction appearing thereon made by one or more of the following: (i) the secured creditor; (ii) the trustee or substitute trustee, if the security instrument is a deed of trust; (iii) an assignee of the secured creditor; or (iv) a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or any other state or the United States having an office or branch in North Carolina, endorsed in the name of the institution by an officer thereof.
- d. The person signing the affidavit has in his or her possession the original security instrument intended to secure the payment of money or the performance of any other obligation together with the original bond, note, or other instrument secured thereby, or the original security instrument alone if the security instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond, or other instrument secured by it. All such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments secured by the security instrument have an endorsement of partial payment, satisfaction, performance, or discharge within the period of 10 years, the period of 10 years has been counted from the date of the most recent endorsement.

- e. The person signing the affidavit has in his or her possession the original security instrument given to secure the bearer or holder of any negotiable instruments transferable solely by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.
- f. After diligent inquiry, the person signing the affidavit has been unable to determine the identity of the secured creditor.
- (6) ~~Describe the method by which the person signing the affidavit gave notification in compliance with this Article.~~
- (7) ~~State that:~~
 - a. ~~More than 30 days have elapsed since the effective date of that notification, and the person signing the affidavit has no knowledge that the secured creditor has submitted a satisfaction for recording and has not received a notification that the secured obligation remains unsatisfied; or~~
 - b. ~~The secured creditor authorized the person signing the affidavit to sign and record an affidavit of satisfaction.~~
- (8) ~~Be signed and (i) acknowledged as required by law for a conveyance of an interest in real property or (ii) sworn to or affirmed before an officer authorized to administer oaths and affirmations.~~
- (9) Copies of all or any part or parts of the instruments described in subdivision (5) of this section may be attached to and recorded with the affidavit of satisfaction."

SECTION 2.5. G.S. 45-36.17 reads as rewritten:

"§ 45-36.17. Affidavit of satisfaction: form.

No particular phrasing of an affidavit of satisfaction is required. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of G.S. 45-36.16:

**"AFFIDAVIT OF SATISFACTION
(G.S. 45-36.16, 45-36.17, 45-36.18)**

(Date of Affidavit) _____

The undersigned hereby states as follows:

1. I am an attorney licensed to practice law in the State of North Carolina.
2. I am signing this Affidavit of Satisfaction to evidence full payment or performance of the obligations secured by real property covered by the following security instrument (the "security instrument")-instrument", which I believe is currently or was most recently held by _____ (the "secured creditor");

Type of security instrument: _____

~~Original parties to security instrument:~~

~~Original Grantor(s):~~ _____

~~County and state of recording:~~

~~Original Secured Party(ies):~~ _____

~~Recording data for~~Data: The ~~security instrument~~instrument is recorded in Book

at Page _____ or as document number _____
in the Office of the Register of Deeds for _____ County, North
Carolina.

3. I have reasonable grounds to believe that the secured creditor has received full payment or performance of the balance of the obligations secured by the security instrument.

4. Check appropriate box
 ~~With the~~Acting with authorization ~~of~~from the owner of the real property described in the security instrument, I gave notification to the secured creditor ~~by method authorized in the manner prescribed by G.S. 45-36.5 that provides proof of receipt that I would~~G.S. 45-36.14 of my intention to sign and record an affidavit of satisfaction of the security instrument if, within 30 days after the effective date of the notification, the secured creditor did not submit a satisfaction of the security interest for recording or give notification that the secured obligation remains unsatisfied. The 30-day period has elapsed. I have no

knowledge that the secured creditor has submitted a satisfaction for recording, and I have not received notification that the secured obligation remains unsatisfied.

- I have been authorized by the secured creditor to execute and record this Affidavit of Satisfaction.
- I have in my possession the original security instrument and the original bond, note, or other instrument secured thereby, with an endorsement of payment and satisfaction appearing thereon made by one or more of the following: (i) the secured creditor; (ii) the trustee or substitute trustee, if the security instrument is a deed of trust; (iii) an assignee of the secured creditor; or (iv) a bank, savings and loan association, savings bank, or credit union chartered under the laws of North Carolina or any other state or the United States having an office or branch in North Carolina, endorsed in the name of the institution by an officer thereof.
- I have in my possession the original security instrument together with the original bond, note, or other instrument secured thereby, or the original security instrument alone if the security instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond, or other instrument secured by it. All such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments secured by the security instrument have an endorsement of partial payment, satisfaction, or performance or discharge within the period of 10 years, the period of 10 years has been counted from the date of the most recent endorsement.
- I have in my possession the original security instrument given to secure the bearer or holder of any negotiable instruments transferable solely by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.
- After diligent inquiry, I have been unable to determine the identity of the secured creditor.

5. ~~{Check appropriate box}~~

~~The 30-day period identified in paragraph 4 has elapsed, I have no knowledge that the secured creditor has submitted a satisfaction for recording, and I have not received notification that the secured obligation remains unsatisfied.~~

~~The secured creditor responded to the notification in paragraph 4 by authorizing me to execute and record this Affidavit of Satisfaction.~~

6. (If applicable) Attached to and filed with this Affidavit of Satisfaction are copies of all or part(s) of the following instruments: (Describe attached copies)
This Affidavit of Satisfaction constitutes a satisfaction of the security instrument pursuant to G.S. 45-36.18.

(Signature of Satisfaction Agent)

~~[Acknowledgment-Acknowledgment, oath, or affirmation before officer authorized to take acknowledgments and administer oaths and affirmations]"~~

SECTION 2.6. G.S. 45-36.18 reads as rewritten:

"§ 45-36.18. Affidavit of satisfaction: effect.

...
(c) The register of deeds may not refuse to accept for recording an affidavit of satisfaction of a security instrument unless:

- (2) The affidavit is not signed by the satisfaction agent and either (i) acknowledged as required by law for a conveyance of an interest in real property, property or (ii) sworn to or affirmed before an officer authorized to administer oaths and affirmations. The register of deeds shall not be required to verify or make inquiry concerning (i) the truth of the matters stated in any affidavit of satisfaction, or (ii) the authority of the person executing any affidavit of satisfaction to do so."

SECTION 2.7. G.S. 45-36.19 reads as rewritten:

"§ 45-36.19. Liability of satisfaction agent.

...

(b) A satisfaction agent that records or submits for recording an affidavit of satisfaction of a security instrument erroneously is not liable if the agent properly complied with this ~~Article~~Article, gave notification to the secured creditor in the manner prescribed by G.S. 45-36.14, and the secured creditor did not respond in a timely manner to the notification pursuant to G.S. 45-36.14(a)(5).

...."

SECTION 2.8. G.S. 45-36.24 reads as rewritten:

"§ 45-36.24. Expiration of lien of security instrument.

(b) Automatic Lien Expiration. – Except as provided in subsection (g) of this section, unless the lien of a security instrument has been extended in the manner prescribed in subsection (c), (d), or (e) of this section, the security instrument has been foreclosed, or the security instrument has been satisfied of record pursuant to G.S. 45-37, the lien of a security instrument automatically expires, and the security instrument is conclusively deemed satisfied of record pursuant to G.S. 45-37, at the earliest of the following times:

(1) If the security instrument was first recorded before October 1, 2011:

...

b. If the maturity date of the secured obligation is not stated in the security instrument, 35 years after the date the security instrument was recorded in the office of the register of ~~deeds or acknowledged as required by law for a conveyance of an interest in real property, whichever is later.~~deeds.

(2) If the security instrument was first recorded on or after October 1, 2011:

...

b. If the maturity date of the secured obligation is not stated in the security instrument, 35 years after the date the security instrument was recorded in the office of the register of ~~deeds or October 1, 2011, whichever is later.~~deeds."

PART III. EFFECTIVE DATE

SECTION 3. Section 1 of this act becomes effective July 1, 2013. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 18th day of June, 2013.

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____,m. this _____ day of _____, 2013