

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

5

SENATE BILL 426

Judiciary II Committee Substitute Adopted 4/15/91
Finance Committee Substitute #2 Adopted 4/25/91
Judiciary II Committee Substitute #3 Adopted 5/6/91
House Committee Substitute Favorable 5/23/91

Short Title: Notary Public Act.

(Public)

Sponsors:

Referred to:

April 1, 1991

A BILL TO BE ENTITLED
AN ACT TO REVISE AND RECODIFY AS CHAPTER 10A THE STATUTES
RELATING TO NOTARIES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 10 of the General Statutes is repealed.

Sec. 2. The General Statutes are amended by adding a new Chapter to read:

CHAPTER 10A.
NOTARIES.

10A-1. Short title.

This act may be cited as the Notary Public Act.

10A-2. Purposes.

This act shall be construed and applied to advance its underlying purposes, which are:

- (1) To promote, serve, and protect the public interests; and
(2) To simplify, clarify, and modernize the law governing notaries.

10A-3. Definitions.

Unless the context otherwise requires, the following definitions apply throughout this Chapter:

- (1) 'Acknowledgment' means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on

1 the basis of satisfactory evidence, had admitted, in the notary's
2 presence, having signed a document voluntarily.

3 (2) 'Commission' means the written authority to perform notarial acts.

4 (3) 'Notarial act' and 'notary act' and 'notarization' mean any act that a
5 notary is empowered to perform under G.S. 10A-9.

6 (4) 'Notarial certificate' and 'certificate' mean the part of or attachment to
7 a notarized document for completion by the notary and bearing the
8 notary's signature, seal, or stamp and expiration date.

9 (5) 'Notary public' and 'notary' mean any person commissioned to
10 perform notarial acts under this act.

11 (6) 'Oath' or 'affirmation' means a notarial act or part thereof in which a
12 notary certifies that a person made a vow or affirmation in the
13 presence of the notary, with reference made to a Supreme Being for an
14 oath, and without such reference for affirmation.

15 (7) 'Official misconduct' means (i) a notary's performance of a prohibited
16 act or failure to perform a mandated act set forth in this Chapter or any
17 other law in connection with notarization, or (ii) a notary's
18 performance of a notarial act in a manner found by the Secretary of
19 State to be negligent or against the public interest.

20 (8) 'Personal knowledge of identity' means familiarity with an individual
21 resulting from interactions with that individual over a period of time
22 sufficient to eliminate every reasonable doubt that the individual has
23 the identity claimed.

24 (9) 'Satisfactory evidence of identity' means identification of an individual
25 based on (i) one current document issued by a federal or state
26 government with the individual's photograph, or (ii) the identification
27 by a credible person who is personally known to the notary and who
28 personally knows the individual.

29 (10) 'Verification or proof' means a notarial act in which a notary certifies
30 that a signer, whose identity is personally known to the notary or
31 proven on the basis of satisfactory evidence, has made, in the notary's
32 presence, a voluntary signature and taken an oath or affirmation
33 vouching for the truthfulness of the signed document.

34 **"§ 10A-4. Commissioning.**

35 (a) Except as provided in subsection (c) of this section, the Secretary of State
36 shall commission as a notary any qualified person who submits an application in
37 accordance with this Chapter.

38 (b) A person qualified for a notarial commission shall:

39 (1) Be at least 18 years of age;

40 (2) Reside or work in this State;

41 (3) Satisfactorily complete a course of study approved by the Secretary of
42 State which shall consist of not less than three hours nor more than six
43 hours of classroom instruction approved by the Secretary of State,
44 except for licensed members of the Bar of this State;

- 1 (4) Purchase a manual approved by the Secretary of State that describes
2 the duties, authority, and ethical responsibilities of notaries public; and
3 (5) Submit an application containing no significant misstatement or
4 omission of fact. The application form shall be provided by the
5 Secretary of State and be available at the register of deeds office in
6 each county. Every application shall bear the signature of the
7 applicant written with pen and ink, and the signature shall be
8 acknowledged by the applicant before a person authorized to
9 administer oaths. The applicant shall also obtain the recommendation
10 of one publicly elected official in North Carolina whose
11 recommendation shall be contained on the application.

12 (c) The Secretary of State may deny an application if:

- 13 (1) The applicant has been convicted of a crime involving dishonesty or
14 moral turpitude;
15 (2) The applicant has had a notarial commission or professional license
16 revoked, suspended, or restricted by this or any other state; or
17 (3) The applicant has engaged in official misconduct as defined in G.S.
18 10A-3(7), whether or not disciplinary action resulted.

19 **"§ 10A-5. Length of term and jurisdiction.**

20 A person commissioned under this Chapter may perform notarial acts in any part of
21 this State for a term of five years, unless the commission is revoked under G.S. 10A-
22 13(d) or resigned under G.S. 10A-13(c).

23 **"§ 10A-6. Recommissioning.**

24 An applicant for recommissioning as a notary shall submit a new application and
25 comply anew with the provisions of G.S. 10A-4, except for subdivision (b)(3).

26 **"§ 10A-7. Fee with commission application.**

27 Every applicant for a notarial commission shall pay to this State a nonrefundable fee
28 of twenty-five dollars (\$25.00). Every applicant for recommissioning shall pay to this
29 State a nonrefundable fee of twenty-five dollars (\$25.00).

30 **"§ 10A-8. Oath of office.**

31 If granted, the commission shall be sent to the register of deeds of the county where
32 the appointee lives or works and a copy of the letter of transmittal sent to the appointee.
33 The appointee shall appear before the register of deeds to which the commission was
34 delivered within 90 days of commissioning and shall be duly qualified by taking the
35 general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in
36 G.S. 11-7. The notary shall then place his or her signature in a book designated as 'The
37 Record of Notaries Public.' This Record shall contain the name and signature of the
38 notary, the effective date and expiration date of the commission, the date the oath was
39 administered, and the date of revocation or resignation if such event occurs. The
40 Record shall constitute the official record of the qualification of notaries public, and the
41 register of deeds shall deliver the commission to the notary following his completion of
42 the requirements of this section and so notify the Secretary of State. If the appointee
43 does not appear before the register of deeds within 90 days, the appointee must reapply
44 for commissioning and the register of deeds shall return the commission to the Secretary

1 of State. If such reapplication occurs within one year of the granting of the commission,
2 the Secretary of State may waive the requirements of subdivisions (3) and (4) of
3 G.S. 10A-4(b).

4 **"§ 10A-9. Powers and limitations.**

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

- 6 (1) Acknowledgments;
7 (2) Oaths and affirmations; and
8 (3) Verifications or proofs.

9 (b) Except as provided in subsection (g) of this section, a notary is disqualified
10 from performing a notarial act if the notary:

- 11 (1) Is a signer of or named in the document that is to be notarized except
12 as a trustee in a deed of trust; or
13 (2) Will receive directly from a transaction connected with the notarial act
14 any commission, fee, advantage, right, title, interest, cash, property, or
15 other consideration exceeding in value the fees specified in G.S. 10A-
16 10, except for fees paid for services rendered by a licensed attorney,
17 licensed real estate broker or salesman, motor vehicle dealer, or a
18 banker.

19 (c) Except as provided in subsection (g) of this section, a notary shall not
20 influence a person to enter into or not enter into a lawful transaction involving a notarial
21 act by the notary.

22 (d) Any act within the scope of subsection (a) of this section performed in
23 another jurisdiction by a notary public of that jurisdiction has the same force and effect
24 in this State as fully as if such act were performed in this State by a notary
25 commissioned under the laws of this State.

26 (e) Commissioned officers on active duty in the United States armed forces who
27 are authorized under 10 U.S.C. § 936 to exercise powers of a notary public may perform
28 such acts as a notary public pursuant to the laws of this State for persons serving in or
29 with the United States armed forces, their spouses, and their dependents.

30 (f) The Secretary of State and register of deeds in the county in which the notary
31 qualified may certify to the official authority of a notary.

32 (g) A licensed attorney may notarize all documents, except where the attorney is
33 a party to the document.

34 **"§ 10A-10. Fees of notaries.**

35 (a) The maximum fees that may be charged by a notary for notarial acts are:

- 36 (1) For acknowledgments, two dollars (\$2.00) per signature;
37 (2) For oaths or affirmations without a signature, two dollars (\$2.00) per
38 person; and
39 (3) For verifications, two dollars (\$2.00) per signature.

40 (b) Official acts of notaries public in the State of North Carolina shall be attested:

- 41 (1) By their signature exactly as shown on their commission;
42 (2) By the readable appearance of their names, either from their signatures
43 or otherwise;

- 1 (3) By the clear and legible appearance of their notarial stamps or seals;
2 and
3 (4) By a statement of the date of expiration of their commission.

4 **"§ 10A-11. Notarial stamp or seal.**

5 A notary public shall provide and keep an official stamp or seal which shall clearly
6 show and legibly reproduce under photographic methods, when embossed, stamped,
7 impressed, or affixed to a document, the name of the notary exactly as it appears on the
8 commission, the name of the county in which appointed and qualified, the words 'North
9 Carolina' or an abbreviation thereof, and the words 'Notary Public'. It shall be the duty
10 of a notary public to replace a seal which has become so worn that it can no longer
11 clearly show or legibly reproduce under photographic methods the information required
12 by this section. The stamp or seal is the property and responsibility of the
13 commissioned notary whose name appears on the instrument. However, upon
14 revocation, the notary shall immediately surrender the stamp or seal to the Secretary of
15 State.

16 **"§ 10A-12. Penalties.**

17 (a) Any person holding himself out to the public as a notary or who performs
18 notarial acts and is not commissioned shall be guilty of a misdemeanor punishable by a
19 fine, imprisonment, or both, in the discretion of the court.

20 (b) Any notary who takes an acknowledgment or performs a verification of a
21 signature of a person without personal knowledge of identity or without satisfactory
22 evidence of identity is guilty of a misdemeanor punishable by a fine not to exceed five
23 hundred dollars (\$500.00), imprisonment not to exceed 60 days, or both.

24 (c) Any notary who takes an acknowledgment or performs a verification
25 knowing the same to be false or fraudulent shall be guilty of a Class J felony.

26 (d) Any person who knowingly solicits or coerces a notary to commit official
27 misconduct is guilty of a misdemeanor punishable by a fine, imprisonment, or both, in
28 the discretion of the court.

29 **"§ 10A-13. Change of status.**

30 (a) Within 30 days after the change of a notary's residence address, the notary
31 shall notify the Secretary of State, by certified or registered mail, and provide a signed
32 notice of the change, giving both the old and new addresses.

33 (b) A notary with a change of name shall notify the Secretary of State within 30
34 days after the change of name by submitting a new application. The Secretary of State
35 shall cancel the commission under the old name and issue an acknowledgment of the
36 name change authorizing and directing the notary to reappear before the register of
37 deeds to take the oath of office and directing the register of deeds to correct The Record
38 of Notaries Public.

39 (c) A notary who resigns a commission shall deliver to the Secretary of State, by
40 certified or registered mail, a notice indicating the effective date of resignation.
41 Notaries who neither reside nor work in the State shall resign their commission.

42 (d) The Secretary of State may revoke a notarial commission on any ground for
43 which an application for a commission may be denied under G.S. 10A-4(c).

44 **"§ 10A-14. Clerks notaries ex officio; may certify own seals.**

1 The clerks of the superior court and their assistants and deputies may act as notaries
2 public in their several counties by virtue of their offices as clerks and may certify their
3 notarial act under the seals of their respective courts.

4 **"§ 10A-15. Registers of deeds notaries ex officio; may certify own seals.**

5 Registers of deeds and their assistants and deputies may act as notaries public, in
6 their several counties, by virtue of their offices as register of deeds, and may certify
7 their notarial act under the seals of their respective office.

8 **"§ 10A-16. Acts of notaries public in certain instances validated.**

9 (a) Any acknowledgment taken and any instrument notarized by a person prior to
10 qualification as a notary public but after commissioning or recommissioning as a notary
11 public, or by a person whose notary commission has expired, is hereby validated. The
12 acknowledgment and instrument shall have the same legal effect as if the person
13 qualified as a notary public at the time the person performed the act.

14 (b) All documents bearing a notarial seal in which the date of the expiration of
15 the notary's commission is erroneously stated, or which does not contain a readable
16 impression of the notary's name, or which fails to contain the words 'North Carolina' or
17 the abbreviation 'N. C.', or which contains correct information except that instead of the
18 abbreviation for North Carolina contains the abbreviation for Georgia, are hereby
19 validated and given the same legal effect as if such errors had not occurred.

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

22 (d) This section applies to notarial acts prior to July 1, 1990."

23 Sec. 3. G.S. 47-8 is repealed.

24 Sec. 4. Section 3 of this act is effective upon ratification. The remainder of
25 this act becomes effective on October 1, 1991, and applies to all original applications
26 and recommission applications made on or after that date but does not affect the validity
27 of notarial acts performed prior to that date.