

GENERAL ASSEMBLY OF NORTH CAROLINA

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SENATE BILL 426

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Finance Committee Substitute #2 Adopted 4/25/91
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House Committee Substitute Favorable 5/23/91
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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 Chapter 10 of the General Statutes is repealed.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 is the Notary Public Act and may be cited by that name.

10A-2. Purposes.

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

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

10A-3. Definitions.

The following definitions apply in this Chapter:

- (1) Acknowledgment. - 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, has admitted, in the notary's
2 presence, having signed a document voluntarily.

3 (2) Commission. – The written authority to perform a notarial act.

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

6 (4) Notary public and notary. – A person commissioned to perform
7 notarial acts under this Chapter.

8 (5) Oath or affirmation. – A notarial act in which a notary certifies that a
9 person made a vow or affirmation in the presence of the notary, with
10 reference made to a Supreme Being for an oath and with no reference
11 made to a Supreme Being for an affirmation.

12 (6) Official misconduct. – Either of the following:

13 a. A notary's performance of a prohibited act or failure to perform
14 a mandated act set forth in this Chapter or any other law in
15 connection with notarization.

16 b. A notary's performance of a notarial act in a manner found by
17 the Secretary of State to be negligent or against the public
18 interest.

19 (7) Personal knowledge of identity. – Familiarity with an individual
20 resulting from interactions with that individual over a period of time
21 sufficient to eliminate every reasonable doubt that the individual has
22 the identity claimed.

23 (8) Satisfactory evidence of identity. – Identification of an individual
24 based on either of the following:

25 a. One current document issued by a federal or state government
26 with the individual's photograph.

27 b. Identification by a credible person who is personally known to
28 the notary and who has personal knowledge of the individual's
29 identity.

30 (9) Verification or proof. A notarial act in which a notary certifies that a
31 signer, whose identity is personally known to the notary or proven on
32 the basis of satisfactory evidence, has, in the notary's presence,
33 voluntarily signed a document and taken an oath or affirmation
34 concerning the document.

35 **§ 10A-4. Commissioning.**

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

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

41 (1) Be at least 18 years of age.

42 (2) Reside or work in this State.

43 (3) Satisfactorily complete a course of study that is approved by the
44 Secretary of State and consists of not less than three hours nor more

1 than six hours of classroom instruction provided by community
2 colleges throughout the State, unless the person is a licensed member
3 of the Bar of this State.

4 (4) Purchase and keep as a reference a manual approved by the Secretary
5 of State that describes the duties, authority, and ethical responsibilities
6 of notaries public.

7 (5) Submit an application containing no significant misstatement or
8 omission of fact. The application form shall be provided by the
9 Secretary of State and be available at the register of deeds office in
10 each county. Every application shall bear the signature of the
11 applicant written with pen and ink, and the signature shall be
12 acknowledged by the applicant before a person authorized to
13 administer oaths. The applicant shall also obtain the recommendation
14 of one publicly elected official in North Carolina whose
15 recommendation shall be contained on the application.

16 (c) The Secretary of State may deny an application if any of the following
17 applies to the applicant:

18 (1) The applicant has been convicted of a crime involving dishonesty or
19 moral turpitude.

20 (2) The applicant has had a notarial commission or professional license
21 revoked, suspended, or restricted by this or any other state.

22 (3) The applicant has engaged in official misconduct, whether or not
23 disciplinary action resulted.

24 **"§ 10A-5. Length of term and jurisdiction.**

25 A person commissioned under this Chapter may perform notarial acts in any part of
26 this State for a term of five years, unless the commission is revoked under G.S. 10A-
27 13(d) or resigned under G.S. 10A-13(c).

28 **"§ 10A-6. Recommissioning.**

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

31 **"§ 10A-7. Fee with commission application.**

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

35 **"§ 10A-8. Oath of office.**

36 If granted, a commission shall be sent to the register of deeds of the county where
37 the appointee lives or works and a copy of the letter of transmittal sent to the appointee.
38 The appointee shall appear before the register of deeds to which the commission was
39 delivered within 90 days of commissioning and shall be duly qualified by taking the
40 general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in
41 G.S. 11-7. The notary shall then place the appointee's signature in a book designated as
42 'The Record of Notaries Public.' This Record shall contain the name and signature of
43 the notary, the effective date and expiration date of the commission, the date the oath
44 was administered, and the date of any revocation or resignation. The Record shall

1 constitute the official record of the qualification of notaries public. The register of
2 deeds shall deliver the commission to the notary following completion of the
3 requirements of this section and shall notify the Secretary of State of the delivery.

4 If the appointee does not appear before the register of deeds within 90 days, the
5 appointee must reapply for commissioning and the register of deeds must return the
6 commission to the Secretary of State. If the appointee reapplies within one year of the
7 granting of the commission, the Secretary of State may waive the requirements of
8 subdivisions G.S. 10A-4(b)(3) and (4).

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

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

11 (1) Acknowledgments.

12 (2) Oaths and affirmations.

13 (3) Verifications or proofs.

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

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

17 (2) The readable appearance of the notary's name, either from the notary's
18 signature or otherwise.

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

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

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

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

25 (2) The notary will receive directly from a transaction connected with the
26 notarial act any commission, fee, advantage, right, title, interest, cash,
27 property, or other consideration exceeding in value the fees specified
28 in G.S. 10A-10, other than fees or other consideration paid for services
29 rendered by a licensed attorney, a licensed real estate broker or
30 salesperson, a motor vehicle dealer, or a banker.

31 (d) A notarial act performed in another jurisdiction by a notary public of that
32 jurisdiction is valid to the same extent as if it had been performed by a notary
33 commissioned under this Chapter.

34 (e) Commissioned officers on active duty in the United States armed forces who
35 are authorized under 10 U.S.C. § 936 to perform notarial acts may perform the acts for
36 persons serving in or with the United States armed forces, their spouses, and their
37 dependents.

38 (f) The Secretary of State and register of deeds in the county in which a notary
39 qualified may certify to the commission of the notary.

40 **"§ 10A-10. Fees of notaries.**

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

42 (1) For acknowledgments, two dollars (\$2.00) per signature.

43 (2) For oaths or affirmations without a verification or proof, two dollars
44 (\$2.00) per person.

1 (3) For verifications or proofs, two dollars (\$2.00) per signature.

2 **"§ 10A-11. Notarial stamp or seal.**

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

13 **"§ 10A-12. Penalties.**

14 (a) Any person who holds himself or herself out to the public as a notary or who
15 performs notarial acts and is not commissioned is guilty of a misdemeanor and is
16 punishable by a fine, imprisonment, or both, in the discretion of the court.

17 (b) Any notary who takes an acknowledgment or performs a verification or proof
18 without personal knowledge of the signer's identity or without satisfactory evidence of
19 the signer's identity is guilty of a misdemeanor and is punishable by a fine not to exceed
20 five hundred dollars (\$500.00), imprisonment not to exceed 60 days, or both.

21 (c) Any notary who takes an acknowledgment or performs a verification or proof
22 knowing it is false or fraudulent is guilty of a Class J felony.

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

26 **"§ 10A-13. Change of status.**

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

30 (b) Within 30 days after changing names, a notary shall notify the Secretary of
31 State of the change by submitting a new application. The Secretary of State shall cancel
32 the notary's commission under the old name, issue a commission under the new name,
33 direct the notary to reappear before the register of deeds to take the oath of office, and
34 direct the register of deeds to correct The Record of Notaries Public.

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

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

40 **"§ 10A-14. Clerks are notaries ex officio and may certify own seals.**

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

44 **"§ 10A-15. Registers of deeds are notaries ex officio and may certify own seals.**

1 Registers of deeds and their assistants and deputies may act as notaries public in
2 their several counties by virtue of their offices as register of deeds and may certify their
3 notarial acts under the seals of their respective offices.

4 **"§ 10A-16. Acts of notaries public in certain instances validated.**

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

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

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

18 (d) This section applies to notarial acts performed before October 1, 1991."

19 Sec. 3. G.S. 161-10(a)(12) reads as rewritten:

20 "(12) Acknowledgment. Notarial acts. – For taking an acknowledgment,
21 oath, or affirmation or ~~for the performance of any performing any~~
22 other notarial act —one dollar (\$1.00)—the maximum fee set in G.S.
23 10A-10. This fee shall not be charged if the act is performed as a
24 part of one of the services for which a fee is provided by this
25 subsection; except that this fee shall be charged in addition to the
26 fees for registering, ~~filing-filing~~, or recording instruments or plats as
27 provided by subdivisions (1) and (3) of this subsection."

28 Sec. 4. This act becomes effective October 1, 1991, and applies to all original
29 applications and recommission applications made on or after that date. Except as
30 provided in G.S. 10A-16, as enacted by this act, this act does not affect the validity of
31 notarial acts performed prior to the effective date.