

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 761

Judiciary I Committee Substitute Adopted 4/22/99

Short Title: Update Corporate Conveyancing.

(Public)

Sponsors:

Referred to:

April 5, 1999

A BILL TO BE ENTITLED  
AN ACT TO REFORM AND MODERNIZE THE ACKNOWLEDGMENT OF  
CORPORATE REAL PROPERTY INSTRUMENTS AND THE EXECUTION OF  
REAL PROPERTY INSTRUMENTS GENERALLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-41.01 reads as rewritten:

**"§ 47-41.01. Corporate conveyances.**

(a) The following forms of probate for deeds and other conveyances executed by a corporation shall be deemed sufficient, but shall not exclude other forms of probate which would be deemed sufficient in law.

(b) If the deed or other instrument is executed by ~~the corporation's chairman, president, chief executive officer, a vice president or an assistant vice president, treasurer, or chief financial officer signing the name of such corporation by him as such officer,~~ an official of the corporation, signing the name of the corporation by him in his official capacity, or any other agent authorized by resolution pursuant to G.S. 47-18.3(e) is sealed with its common or corporate seal, and is attested by another person who is ~~its secretary or assistant secretary, trust officer, assistant trust officer, associate trust officer, or, in case of a bank, its secretary, assistant secretary, cashier or assistant cashier,~~ an attesting official of the corporation, the following form of acknowledgment is sufficient:

1 .....  
2 (State and county, or other  
3 description of place where  
4 acknowledgment is taken)  
5 I,.....,  
6 .....  
7 .....  
8 .....  
9 (Name of officer taking (Official title of officer  
10 acknowledgment) taking acknowledgment)  
11 certify that ..... personally came before  
12 (~~Name of secretary, assistant secretary,~~  
13 ~~trust officer, assistant trust officer,~~  
14 ~~cashier or assistant cashier~~)  
15 (Name of attesting official)  
16 me this day and acknowledged that he (or she) is .....  
17 (~~Secretary, — assistant — secretary, — trust~~  
18 ~~officer, assistant trust officer, cashier or~~  
19 ~~assistant cashier~~)  
20 (Title of attesting official)  
21  
22 of....., a corporation, and that by authority duly  
23 (Name of corporation)  
24 given and as the act of the corporation, the foregoing instrument was signed in its name  
25 by its.....,  
26 (~~Chairman, president, chief executive officer, vice-~~  
27 ~~president, assistant vice president, treasurer, or chief~~  
28 ~~financial officer~~) (Title of official)  
29  
30 sealed with its corporate seal, and attested by himself (or herself) as  
31 its.....  
32 (~~Secretary, assistant secretary,~~  
33 ~~trust officer, assistant trust officer,~~  
34 ~~cashier or assistant cashier~~)  
35 (Title of attesting official)  
36  
37 Witness my hand and official seal, this the..... day of  
38 .....  
39 (Month)  
40 .....  
41 (Year)  
42 .....  
43 (Signature of officer taking acknowledgment)

1 (Official seal, if officer taking  
2 acknowledgment has one)  
3 My commission expires.....  
4 (Date of expiration of commission as  
5 notary public)

6 (c) If the deed or other instrument is executed by an official of the corporation,  
7 signing the name of the corporation in his official capacity, or any other agent authorized  
8 by resolution pursuant to G.S. 47-18.3(e) the following form of acknowledgment is  
9 sufficient:

10  
11 (State and county, or other  
12 description of place where  
13 acknowledgment is taken)

14 I,.....

15  
16  
17 (Name of officer taking  
18 acknowledgment)

.....  
.....  
(Official title of officer  
taking acknowledgment)

19 certify that ..... personally came before  
20 (Name of official)  
21 me this day and acknowledged that he (or she) is .....  
22 (Title of official)

23  
24 of....., a corporation, and that he/she, as  
25  
26 ..... being authorized to do so, executed the  
27 (Title of official)  
28 foregoing on behalf of the corporation.

29  
30 Witness my hand and official seal, this the..... day of  
31 .....  
32 (Month)  
33 .....  
34 (Year)

35  
36 (Signature of officer taking acknowledgment)  
37 (Official seal, if officer taking  
38 acknowledgment has one)  
39 My commission expires.....  
40 (Date of expiration of commission as  
41 notary public)

42  
43 (d) For purposes of this section:

- 1 (1) The words "a corporation" following the blank for the name of the  
2 corporation may be omitted when the name of the corporation ends with  
3 the word "Corporation" or "Incorporated."
- 4 (2) The words "My commission expires" and the date of expiration of the  
5 notary public's commission may be omitted except when a notary public  
6 is the officer taking the acknowledgment. The fact that these words and  
7 this date may be located in a position on the form different from the  
8 position indicated in this subsection does not by itself invalidate the  
9 form.
- 10 (3) The ~~words phrase~~ "and official seal" and the seal itself may be omitted  
11 when the officer taking the acknowledgment has no seal or when such  
12 officer is the clerk, assistant clerk, or deputy clerk of the superior court  
13 of the county in which the deed or other instrument acknowledged is to  
14 be registered.
- 15 (4) The official of the corporation is the corporation's chairman, president,  
16 chief executive officer, a vice-president or an assistant vice-president,  
17 treasurer, or chief financial officer, or any other agent authorized by  
18 resolution pursuant to G.S. 47-18.3(e).
- 19 (5) The attesting official of the corporation is the corporation's secretary or  
20 assistant secretary, trust officer, assistant trust officer, associate trust  
21 officer, or in the case of a bank, its secretary, assistant secretary, cashier  
22 or assistant cashier.
- 23 (6) The phrase "sealed with its corporate seal" may be omitted if the seal of  
24 the corporation has not been affixed to the instrument being  
25 acknowledged."

26 Section 2. Article 1 of Chapter 39 of the General Statutes is amended by  
27 adding a new section to read:

28 **"§ 39-6.5. Elimination of seal.**

29 The seal of the signatory shall not be necessary to effect a valid conveyance of an  
30 interest in real property; provided, that this section shall not affect the requirement for  
31 affixing a seal of the officer taking an acknowledgment of the instrument."

32 Section 3. G.S. 1-47 reads as rewritten:

33 **"§ 1-47. Ten years.**

34 Within ten years an action –

- 35 (1) Upon a judgment or decree of any court of the United States, or of any  
36 state or territory thereof, from the date of its rendition. No such action  
37 may be brought more than once, or have the effect to continue the lien  
38 of the original judgment.
- 39 (1a) Upon a judgment rendered by a justice of the peace, from its date.
- 40 (2) Upon a sealed instrument or an instrument of conveyance of an interest  
41 in real property, against the principal thereto. Provided, however, that if  
42 action on ~~a sealed~~ an instrument is filed, the defendant or defendants in  
43 such action may file a counterclaim arising out of the same transaction

1 or transactions as are the subject of plaintiff's claim, although a shorter  
2 statute of limitations would otherwise apply to defendant's  
3 counterclaim. Such counterclaim may be filed against such parties as  
4 provided in G.S. 1A-1, Rules of Civil Procedure.

5 (3) For the foreclosure of a mortgage, or deed in trust for creditors with a  
6 power of sale, of real property, where the mortgagor or grantor has been  
7 in possession of the property, within ten years after the forfeiture of the  
8 mortgage, or after the power of sale became absolute, or within ten  
9 years after the last payment on the same.

10 (4) For the redemption of a mortgage, where the mortgagee has been in  
11 possession, or for a residuary interest under a deed in trust for creditors,  
12 where the trustee or those holding under him has been in possession,  
13 within ten years after the right of action accrued.

14 (5) Repealed by Session Laws 1959, c. 879, s. 2.

15 (6) a. Against any registered land surveyor as defined in G.S. 89C-3(9) or  
16 any person acting under his supervision and control for physical damage  
17 or for economic or monetary loss due to negligence or a deficiency in  
18 the performance of surveying or platting, within 10 years after the last  
19 act or omission giving rise to the cause of action.

20 b. For purposes of this subdivision, "surveying and platting" means  
21 boundary surveys, topographical surveys, surveys of property  
22 lines, and any other measurement or surveying of real property  
23 and the consequent graphic representation thereof.

24 c. The limitation prescribed by this subdivision shall apply to the  
25 exclusion of G.S. 1-15(c) and G.S. 1-52(16)."

26 Section 4. G.S. 47-18.3 reads as rewritten:

27 **"§ 47-18.3. Execution of corporate instruments; authority and proof.**

28 (a) Notwithstanding anything to the contrary in the bylaws or articles of  
29 incorporation, when it appears on the face of an instrument registered in the office of the  
30 register of deeds that the instrument was signed in the ordinary course of business on  
31 behalf of a domestic or foreign corporation by its chairman, president, chief executive  
32 officer, a vice-president or an assistant vice-president, treasurer, or chief financial officer,  
33 ~~and attested or countersigned by another person who is its secretary or an assistant secretary, (or,~~  
34 ~~in the case of a bank, its secretary, assistant secretary, cashier, or assistant cashier),~~ such an  
35 instrument shall be as valid with respect to the rights of innocent third parties as if  
36 executed pursuant to authorization from the board of directors, unless the instrument  
37 reveals on its face a potential breach of fiduciary obligation. The subsection shall not  
38 apply to parties who had actual knowledge of lack of authority or of a breach of fiduciary  
39 obligation.

40 (b) Any instrument registered in the office of the register of deeds, appearing on its  
41 face to be executed by a corporation, foreign or domestic, and bearing a seal which  
42 purports to be the corporate seal, setting forth the name of the corporation engraved,  
43 lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument, is

1 prima facie evidence that the seal is the duly adopted corporate seal of the corporation,  
2 that it has been affixed as such by a person duly authorized so to do, that the instrument  
3 was duly executed and signed by persons who were officers or agents of the corporation  
4 acting by authority duly given by the board of directors, and that any such instrument is  
5 the act of the corporation, and shall be admissible in evidence without further proof of  
6 execution.

7 (c) Nothing in this section shall be deemed to exclude the power of any corporate  
8 representatives to bind the corporation pursuant to express, implied, inherent or apparent  
9 authority, ratification, estoppel, or otherwise.

10 (d) Nothing in this section shall relieve corporate officers from liability to the  
11 corporation or from any other liability that they may have incurred from any violation of  
12 their actual authority.

13 (e) ~~The Home Owners Loan Corporation or any~~ Any corporation, the majority of  
14 ~~whose stock is owned by the United States government, corporation~~ may convey lands or  
15 ~~other an interest in real property which is transferable by deed instrument which is duly~~  
16 executed by either an officer, manager, or agent of said corporation, sealed with the  
17 ~~common seal corporation~~ and has attached thereto a signed and attested resolution, under  
18 ~~seal, resolution~~ of the board of directors of said corporation authorizing the said officer,  
19 manager, or agent to execute, sign, seal, and attest deeds, conveyances, or other  
20 instruments. This section shall be deemed to have been complied with if an attested  
21 resolution is recorded separately in the office of the register of deeds in the county where  
22 the land lies, which said resolution shall be applicable to all deeds executed subsequently  
23 thereto and pursuant to its authority. Notwithstanding the foregoing, this section shall not  
24 require a signed and attested resolution of the board of directors of the corporation to be  
25 attached to an instrument or separately recorded in the case of an instrument duly  
26 executed by the corporation's chairman, president, chief executive officer, a vice-  
27 president, assistant vice-president, treasurer, or chief financial officer. All deeds,  
28 conveyances, or other instruments which have been heretofore or shall be hereafter so  
29 executed shall, if otherwise sufficient, be valid and shall have the effect to pass the title to  
30 the real or personal property described therein."

31 Section 5. Sections 1 and 4 of this act become effective October 1, 1999. The  
32 remaining sections of this act become effective when they become law and apply to  
33 instruments registered before, on, or after that date, except that they shall not apply to  
34 litigation pending on that date or to any instrument directly or indirectly involved in  
35 litigation pending on that date.