

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2008-194
HOUSE BILL 545

AN ACT TO: (1) PROVIDE THE HOUSING FINANCE AGENCY TWO ADDITIONAL POWERS CONCERNING REAL PROPERTY AND SERVICES RETAINED FOR ISSUANCE OF BONDS; (2) AUTHORIZE A ONETIME BULK UPDATE OF REGISTERED AGENT INFORMATION; (3) AMEND THE LIST OF ENTITIES INCLUDED AS "ESTABLISHED LEGAL SERVICES PROGRAMS" TO WHICH THE NORTH CAROLINA STATE BAR MAY ALLOCATE FUNDS UNDER THE ACCESS TO CIVIL JUSTICE ACT AND THE DOMESTIC VIOLENCE ASSISTANCE ACT; (4) VALIDATE CERTAIN NOTARIAL ACTS FILED IN THE MECKLENBURG COUNTY REGISTER OF DEEDS OFFICE; (5) VALIDATE CERTAIN NOTARIAL ACTS PERFORMED ON OR BEFORE MAY 1, 2008; (6) MAKE A TECHNICAL CHANGE TO THE NAME OF THE NORTH CAROLINA STATE ART SOCIETY; (7) MAKE VARIOUS CHANGES RELATED TO THE VERIFICATION, RECORDATION, AND INDEXING OF DOCUMENTS PRESENTED TO REGISTERS OF DEEDS; (8) CLARIFY SCOPE OF AUTHORITY TO IMPOSE SANCTIONS IN MEDIATED SETTLEMENT CONFERENCES; (9) PROVIDE AN EXTENSION OF TIME FOR THE REALIGNMENT OF BUDGETS WITHIN THE DEPARTMENT OF PUBLIC INSTRUCTION; (10) AUTHORIZE INCREASED DORMITORY CAPACITY IN CERTAIN COUNTY DETENTION FACILITIES; AND (11) AUTHORIZE THE STATE TREASURER TO DISCLOSE THE NAMES AND ADDRESSES OF RETIRED STATE AND LOCAL EMPLOYEES TO CERTAIN ORGANIZATIONS.

The General Assembly of North Carolina enacts:

VALIDATION OF CERTAIN NOTARIAL ACTS

SECTION 4. G.S. 10B-70 reads as rewritten:

"§ 10B-70. Certain notarial acts for local government agencies validated.

(a) Any acknowledgment taken and any instrument notarized for a local government agency by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, by a person whose notary commission has expired, or by a person who failed to qualify within 45 days of commissioning as required by G.S. 10B-10, 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 for a local government agency on or after October 31, 2006, and before June 30, 2007.

(b) Any electronic document filed in the Mecklenburg County Register of Deeds office that purports to be notarized in the Commonwealth of Virginia and that contains the typed name of a Virginia notary together with the notary's expiration date shall be given the same legal effect as if the person performed a lawful notarization in Virginia."

SECTION 5. G.S. 10B-65 reads as rewritten:

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

...

(e) This section applies to notarial acts performed on or before ~~February 1, 2004~~ May 1, 2008."

REGISTER OF DEEDS CHANGES

SECTION 7.(a) G.S. 47-14 reads as rewritten:

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

(a) Verification of Instruments. – The register of deeds shall not accept for registration any instrument that requires proof or acknowledgement unless the execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the ~~said~~ proof or acknowledgement includes the officer's signature, commission expiration date, and official seal, if required. The register of deeds shall accept an instrument for registration that does not require proof or acknowledgement if the instrument otherwise satisfies the requirements of G.S. 161-14. Any ~~document-instrument~~ instrument previously recorded or any certified copy of any ~~document-instrument~~ instrument previously recorded may be rerecorded, regardless of whether it has been changed or altered, or it is being rerecorded pursuant to G.S. 47-36.1. rerecorded provided the instrument is conspicuously marked on the first page as a rerecording. The register of deeds may rely on the marking and the appearance of the original recording office's recording information to determine that an instrument is being presented as it was previously recorded. The register of deeds is not required to further verify the proof or acknowledgement of or determine whether any changes or alterations have been made after the original recording to an instrument presented for rerecording. The register of deeds shall not be is not required to verify or make inquiry concerning any of the following:

- (1) ~~(i) the~~ The legal sufficiency of any proof or acknowledgement, acknowledgement.
- (2) ~~(ii) the~~ The authority of any officer who took a proof or acknowledgement, acknowledgement.
- (3) ~~(iii) the~~ The legal sufficiency of any document presented for registration, registration, or (iv) upon presentation of the original document for re-recording, whether the original document has been changed or altered."

(a1) Verification of Electronic Documents. – The requirements of subsection (a) of this section for verification of the execution of an instrument are satisfied with respect to an electronic document if all of the conditions in this subsection are met. For purposes of this subsection, the term "electronic document" is as defined in G.S. 47-16.2(3). The conditions are:

- (1) The register of deeds has authorized the submitter to electronically register the electronic document.
- (2) The document is submitted by a United States federal or state governmental unit or instrumentality or a trusted submitter. For purposes of this subsection, "a trusted submitter" means a person or entity that has entered into a memorandum of understanding regarding electronic recording with the register of deeds in the county in which the electronic document is to be submitted.
- (3) The execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the proof or acknowledgment includes the officer's signature, commission expiration date, and official seal, if required, based on the appearance of these elements on the digitized image of the document as it will appear on the public record.

- (4) Evidence of other required governmental certification or annotation appears on the digitized image of the document as it will appear on the public record.
- (5) With respect to a document submitted by a trusted submitter, the digitized image of the document as it will appear on the public record contains the submitter's name in the following completed statement on the first page of the document image: "Submitted electronically by _____ (submitter's name) in compliance with North Carolina statutes governing recordable documents and the terms of the submitter agreement with the _____ (insert county name) County Register of Deeds."
- (6) Except as otherwise provided in this subsection, the digitized image of the electronic document conforms to all other applicable laws and rules that prescribe recordation.

(a2) Verification of Officer's Signature. – Submission to a register of deeds of an electronic document requiring proof or acknowledgement is a representation by the submitter that, prior to submission, the submitter verified the officer's signature required under subdivision (a1)(3) of this section to be one of the types of signatures listed in this subsection. The register of deeds may rely on this representation for purposes of determining compliance with the signature requirements of this section. The electronic registration of a document with a register of deeds prior to the effective date of this statute is not invalid based on whether the register verified the officer's signature in accordance with this subsection. The types of signatures are:

- (1) A signature in ink by hand.
- (2) An electronic signature as defined in G.S. 10B-101(7).

(b) Order by Judge. – If a register of deeds denies registration pursuant to subsection (a), the person offering the instrument for registration may ~~present the instrument apply to any judge of the district court in the district, including the county in which the instrument is to be registered, for an order for registration.~~ a judge, as provided in subsection (c), and the Upon finding all of the requirements in this subsection, the judge shall determine that if order the instrument to be registered, together with the certificates, and the register of deeds shall register them accordingly. The requirements are:

- (1) ~~If the instrument requires proof or acknowledgement and if acknowledgement, that the signature of one or more signers has been proved or acknowledged before an officer authorized to take proofs and acknowledgements, and if said acknowledgements.~~
- (2) ~~That the proof or acknowledgement includes the officer's signature and commission expiration date and official seal, if required.~~ required, the judge shall so adjudge, and shall order the instrument to be registered, together with the certificates, and the register of deeds shall register them accordingly.

~~(e) Application for an order for registration pursuant to subsection (b) of this section shall be made to any judge of the district court in the district including the county in which the instrument is to be registered.~~

(d) Scope. – Registration of an instrument pursuant to this section is not effective with regard to parties who have not executed the instrument or whose execution thereof has not been duly proved or acknowledged.

(e) Register of Deeds as Party. – Any instrument required or permitted by law to be registered in which the register of deeds of the county of registration is a party may be proved or acknowledged before any magistrate or any notary public. ~~Any such~~ The clerk of superior court of the county of registration shall examine any instrument presented for registration. ~~registration shall be examined by the clerk of superior court of the county of registration and if~~ If it appears that the execution and

acknowledgment are in due ~~form~~ he-form, the clerk shall so certify and the instrument shall then be recorded in the office of the register of deeds.

(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 ~~shall apply~~ applies regardless of whether the image is legible or photographically reproduced in the records maintained by the register of deeds. 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."

SECTION 7.(b) G.S. 47-31(a) reads as rewritten:

"(a) A duly certified copy of any deed or writing required or allowed to be registered may be registered in any county ~~county without further certification pursuant to G.S. 47-14; and the~~ The register of deeds may rely on the record keeper's certification on a presented document that the document is a certified copy and is not required to further verify the proof or acknowledgement otherwise required by G.S. 47-14 or to determine whether the document has been changed or altered after it was certified. The registered or duly certified copy of any deed or writing that has been registered in the county where the land is situate may be given in evidence in any court of the State."

SECTION 7.(c) G.S. 47-36.1 reads as rewritten:

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

Notwithstanding G.S. 47-14 and G.S. 47-17, ~~an obvious 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 of the corrective information as provided by the affiant 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. ~~corrected by rerecording the original instrument with the correction clearly set out on the face of the instrument and with a statement of explanation attached. The parties who signed the original instrument or the attorney who drafted the original instrument shall initial the correction and sign the statement of explanation. If the statement of explanation is not signed by the parties who signed the original instrument, it shall state that the person signing the statement is the attorney who drafted the original instrument. The statement of explanation need not be acknowledged. Notice of the correction made pursuant to this section shall be effective from the time the instrument is rerecorded.~~"

SECTION 7.(d) G.S. 161-21 reads as rewritten:

"§ 161-21. General index kept.

The board of county ~~commissioners,~~ commissioners shall, at the expense of the county, ~~shall cause to be made and maintain a consolidated into one book a general index of all the deeds and other documents affecting real property in the register's office. The board of county commissioners shall also have the authority to install the modern "Family" index system and wherever the "Family" index system is in use, no instruments shall be lawfully recorded until indexed and cross-indexed under the~~

appropriate family name and the appropriate alphabetical subdivision of said family name, according to the particular system in use."

SECTION 7.(e) G.S. 161-22 reads as rewritten:

"§ 161-22. Index of registered instruments.

(a) ~~The~~ Except as otherwise provided by statute, the register of deeds shall provide and keep in ~~her or his~~ the register's office full and complete alphabetical indexes of the names of the parties to all liens, grants, deeds, mortgages, bonds, and other instruments required or authorized to be registered, and ~~such~~ the indexes shall state in full the names of all parties, whether grantors, grantees, vendors, vendees, obligors, or obligees. The full names of parties shall be entered in the indexes in accordance with the minimum indexing standards adopted pursuant to G.S. 147-54.3(b) and (b1). Reference shall be made, opposite each name, to the book and page or other location where the instrument is registered. All instruments shall be indexed on either the temporary or permanent index within 24 hours of registration. The register of deeds ~~shall~~ is not ~~be~~ required to index an instrument that is part of a document containing multiple instruments, as defined in G.S. 161-10(a)(1), unless the title of that instrument is shown on the first page of the document and the additional registration fee is paid as required by G.S. 161-10(a)(1).

(b) ~~In offices using the "Family" index system, the index entry shall show the name of each party under the appropriate family name and the initials of the party under the appropriate alphabetical arrangement of the index. In offices using indexing systems having subdivisions of the letters of the alphabet, a registered instrument shall be deemed properly registered only when it has been indexed under the correct subdivision of the appropriate letter of the alphabet.~~

(c) ~~Instruments affecting real property shall be indexed in the appropriate real property indexes, and instruments affecting personal property shall be indexed in the appropriate personal property indexes. Instruments affecting both real and personal property shall be indexed in both the real and personal property indexes.~~

(d) Deeds of trust may be indexed in the names of the grantor and beneficiary only.

(e) Certificates filed for recording pursuant to G.S. 59-2, the Uniform Limited Partnership Act, shall be indexed only under the names of the partnership and each of the general partners. The register of deeds shall cause a statement to be affixed or printed on the index page of the book or books in which limited partnership agreements are filed that ~~such~~ the documents are indexed only in the names of the partnership and of each of the general partners.

(f) The alphabetical indexes required by this section may be maintained in index books, on index cards, on film, or in computers or other automated data-processing machines. If the index is maintained in a computer or other automated data processing machine, the register of deeds shall, at least once each month, obtain from the computer or other automated data-processing machine a printed copy on paper or film, or a tape or disk, of all index entries made since the previous printed or filmed copy, or tape or disk, was obtained. These printed or filmed copies, tapes or disks, shall be retained as security copies and may not be altered or destroyed until a subsequent security copy is made containing the index entries from all previous security copies.

(g) The register of deeds may adopt rules establishing indexing procedures and the format of the indexes. The rules shall ~~be in conformity~~ conform with the requirements of this section and of other applicable statutes. The rules may address such subjects, by way of example and not limitation, as the indexing of business firms, the indexing of names containing numerals, and the indexing of government agencies. The rules shall be posted in at least two prominent places in the office of register of ~~deeds'~~ deeds and shall also be placed near the index books or in user manuals in offices using

automated indexing systems. ~~From and after the effective date of such rules, a registered instrument shall be deemed properly registered only when it has been indexed according to the rules.~~

(h) No instrument shall be deemed registered until it has been indexed ~~as provided in this section~~ in a manner to put a reasonably careful and prudent examiner on notice upon inquiry, and, if upon inquiry, the instrument would have been found.

(i) ~~A violation of this section shall constitute a Class 1 misdemeanor."~~

SECTION 12. Subsections (a) and (c) of Section 7 of this act become effective October 1, 2008. The repeal of subsection (c) of G.S. 161-22 in Section 7(e) of this act becomes effective July 1, 2008. Section 8 of this act becomes effective January 1, 2009. Section 9 of this act becomes effective June 30, 2008. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14th day of July, 2008.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 8:33 a.m. this 8th day of August, 2008