

Chapter 10B.

Notaries.

Article

1. Notary Public Act, §§ 10B-1 through 10B-66.
 2. Electronic Notary Act, §§ 10B-100 through 10B-146.
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ARTICLE 1.

Notary Public Act.

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PART 1.

GENERAL PROVISIONS.

§ 10B-1. Short title.

Statute text

This Article is the "Notary Public Act" and may be cited by that name.

History

(1991, c. 683, s. 2; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, ss. 3, 4, repealed former Chapter 10A, Notaries, and enacted new Chapter 10B, Notaries. Where appropriate, the historical citations in former Chapter 10A have been added to the corresponding sections in this chapter. Session Laws 2005-391, s. 2 provides that the Revisor of Statutes shall cause to be printed along with this Chapter all relevant portions of the official comments to the Uniform Real Property Electronic Recording Act and all explanatory comments of the drafters of this chapter as the Revisor deems appropriate.

Session Laws 2005-391, s. 11, provides: "As soon as practicable, or within 24 months of the effective date of this act, all North Carolina registers of deeds and clerks of superior court shall submit to the Department of the Secretary of State legible and reproducible copies of the pages contained in their "Records of Notaries Public" created prior to 1991 for archiving in permanent storage. The copies shall be reproduced pursuant to standards set by the Department to ensure the legibility of the copies and the compatibility with the Department's existing systems. The Department shall be responsible for any expense incurred relating to the shipment or transfer of these records. The original permanent records shall be returned to the Register of Deeds if submitted to the Secretary for copying."

Session Laws 2005-391, s. 12, provides: "This act shall not affect any civil or criminal litigation pending on December 1, 2005. Any act committed prior to December 1, 2005 which violated any provision of the statutes repealed or amended by this act shall be subject to enforcement, prosecution, conviction, and punishment as if this act had not been enacted. Any claim arising under any provisions of the statutes repealed or amended by this act prior to December 1, 2005 shall remain valid as if this act had not been enacted."

Session Laws 2005-391, s. 13, made this Chapter effective December 1, 2005, and applicable to notarial acts and applications for notary commissions and recommissions made on or after that date. Notary commissions issued under Chapter 10A of the General Statutes prior to December 1, 2005, shall remain valid unless otherwise revoked or suspended by the Secretary until those commissions expire as provided in Chapter 10A. G.S. 10B-60 and G.S. 10B-146 apply to offenses committed on or after December 1, 2005, without regard to whether a commission was issued under Chapter 10A or Chapter 10B of the General Statutes. Notary instructor certifications issued under G.S. 10A-7 shall remain valid until the date of expiration provided for on the certificate, and persons holding those certificates may provide instruction until their certificates expire.

§ 10B-2. Purposes.

Statute text

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

- (1) To promote, serve, and protect the public interests.
- (2) To simplify, clarify, and modernize the law governing notaries.
- (3) To prevent fraud and forgery.
- (4) To foster ethical conduct among notaries.

- (5) To enhance interstate recognition of notarial acts.
- (6) To integrate procedures for traditional paper and electronic notarial acts.

History

(1991, c. 683, s. 2; 1998-228, s. 1; 2005-391, s. 4.)

§ 10B-3. Definitions.

Statute text

The following definitions apply in this Chapter:

- (1) "Acknowledgment" means a notarial act in which an individual, at a single time and place:
 - a. Appears in person before the notary and presents a record; and
 - b. Is personally known to the notary or identified by the notary through satisfactory evidence and indicates to the notary that the signature on the record was voluntarily affixed by the individual for the purposes stated within the record.
- (2) "Affirmation" means a notarial act, or part thereof, which is legally equivalent to an oath and in which an individual at a single time and place:
 - a. Appears in person before the notary;
 - b. Is personally known to the notary or identified by the notary through satisfactory evidence; and
 - c. Makes a vow of truthfulness on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word "swear".
- (3) "Attest" or "attestation" means the act of completing the written evidence of a notarial act, to wit: completion of a certificate by a notary who has performed a notarial act by witnessing a signature or administering an oath or affirmation.
- (4) "Commission" means the empowerment to perform notarial acts and the written evidence of authority to perform those acts.
- (5) "Credible witness" means an honest, reliable, and impartial person who is personally known to the notary and takes an oath or affirmation from the notary to confirm a signer's identity.
- (6) "Department" means the North Carolina Department of the Secretary of State.
- (7) "Director" means the Division Director for the North Carolina Department of the Secretary of State Notary Public Section.
- (8) "Jurat" means a certification added to an affidavit or deposition that states when and before what authority an affidavit or deposition was made, to wit, "Subscribed and sworn to before me this the _____ day of _____ 20____." The notary's signature and seal shall be affixed below the sworn or affirmed statement and signature of the affiant. In so doing, the notary shall certify the following:
 - a. That the person signing the affidavit or deposition did so in the notary's presence and indicates the county in which the notarial act took place;
 - b. That the signer appeared before the notary on the date indicated;
 - c. That the notary administered an oath or affirmation to the signer, who swore to or affirmed the contents of the document.

(9) "Moral turpitude" means conduct contrary to expected standards of honesty, morality, or integrity.

(10) "Nickname" means a descriptive, familiar, or shortened form of a proper name.

(11) "Notarial act," "notary act," and "notarization" mean the act of taking an acknowledgment, taking a verification or proof or administering an oath or affirmation that a notary is empowered to perform under this Chapter, as authorized by G.S. 10B-31.

(12) "Notarial certificate" and "certificate" mean the portion of a notarized record that is completed by the notary, bears the notary's signature and seal, and states the facts attested by the notary in a particular notarization.

(13) "Notary public" and "notary" mean a person commissioned to perform notarial acts under this Chapter. A notary is a public officer of the State of North Carolina and shall act in full and strict compliance with this act.

(14) "Oath" means a notarial act, or part thereof, which is legally equivalent to an affirmation and in which an individual at a single time and place:

a. Appears in person before a notary;

b. Is personally known to the notary or identified by the notary through satisfactory evidence; and

c. Makes a vow of truthfulness on penalty of perjury while invoking a deity or using any form of the word "swear".

(15) "Official misconduct" means either of the following:

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

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

(16) "Personal appearance" and "appear in person before a notary" mean an individual and a notary are in close physical proximity to one another so that they may freely see and communicate with one another and exchange records back and forth during the notarization process.

(17) "Personal knowledge of identity" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

(18) "Principal" means an individual whose signature is notarized; or an individual other than a credible witness, taking an oath or affirmation from the notary.

(19) "Record" means information that is inscribed on a tangible medium and called a traditional or paper record.

(20) "Regular place of work or business" means a location, office or other workspace, where an individual regularly spends all or part of the individual's work time.

(21) "Revocation" means the cancellation of the notary's commission stated in the order of revocation.

(22) "Satisfactory evidence of a signer's identity" means identification of an individual based on either of the following:

a. At least one current document issued by a federal, state, or federal or state-recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual.

b. The oath or affirmation of one credible witness unaffected by the record or transaction who is personally known to the notary and who personally knows the individual seeking to be identified.

(23) "Seal" and "stamp" mean a device for affixing on a paper record an image containing a notary's name, the words "notary public," and other information as required in G.S. 10B-37.

(24) "Secretary" means the North Carolina Secretary of State or the Secretary's designee.

(25) "Signature" means the act of personally signing one's name in ink by hand.

(26) "Subscribing witness" means a person who either watches another individual sign a record or takes that individual's acknowledgment of an already-signed record and appears before the notary on behalf of the principal. The subscribing witness must sign the document in addition to the principal, must be personally known by the notary or prove identity to the notary by satisfactory evidence, and must take an oath or affirmation stating that he or she witnessed the principal sign.

(27) "Suspension" and "restriction" means the termination of a notary's commission for a period of time stated in an order of restriction or suspension. The terms "restriction" or "suspension" or a combination of both terms shall be used synonymously.

(28) "Verification" or "proof" means a notarial act where a person certifies under oath or affirmation that the person witnessed the principal either execute, record, or acknowledge the principal's signature on an already-executed record.

History

(1991, c. 683, s. 2; 1998-228, s. 2; 2005-391, s. 4.)

§ 10B-4: Reserved for future codification purposes.

PART 2.

COMMISSIONING.

§ 10B-5. Qualifications.

Statute text

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

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

(1) Be at least 18 years of age or legally emancipated as defined in Article 35 of Chapter 7B of the General Statutes.

- (2) Reside or have a regular place of work or business in this State.
 - (3) Reside legally in the United States.
 - (4) Speak, read, and write the English language.
 - (5) Possess a high school diploma or equivalent.
 - (6) Pass the course of instruction described in this Article, unless the person is a licensed member of the North Carolina State Bar.
 - (7) Purchase and keep as a reference the most recent manual approved by the Secretary that describes the duties and authority of notaries public.
 - (8) Submit an application containing no significant misstatement or omission of fact. The application form shall be provided by the Secretary and be available at the register of deeds office in each county. Every application shall include the signature of the applicant written with pen and ink, and the signature shall be acknowledged by the applicant before a person authorized to administer oaths. Except for any applicant who seeks to receive the oath of office from the register of deeds of a county where more than 15,000 active notaries public are on record on January 1 of the year when the application is filed, the applicant shall also obtain the recommendation of one publicly elected official in North Carolina whose recommendation shall be contained on the application.
- (c) The notary shall be commissioned in his or her county of residence, unless the notary is not a North Carolina resident, in which case he or she shall be commissioned in the county of his or her employment or business.
- (d) The Secretary may deny an application for commission or recommission if any of the following apply to an applicant:
- (1) Submission of an incomplete application or an application containing material misstatement or omission of fact.
 - (2) The applicant's conviction or plea of admission or nolo contendere to a felony or any crime involving dishonesty or moral turpitude. In no case may a commission be issued to an applicant within 10 years after release from prison, probation, or parole, whichever is later.
 - (3) A finding or admission of liability against the applicant in a civil lawsuit based on the applicant's deceit.
 - (4) The revocation, suspension, restriction, or denial of a notarial commission or professional license by this or any other state or nation. In no case may a commission be issued to an applicant within five years after the completion of all conditions of any disciplinary order.
 - (5) A finding that the applicant has engaged in official misconduct, whether or not disciplinary action resulted.
 - (6) An applicant knowingly using false or misleading advertising in which the applicant as a notary represents that the applicant has powers, duties, rights, or privileges that the applicant does not possess by law.
 - (7) A finding by a state bar or court that the applicant has engaged in the unauthorized practice of law.

History

(Code, ss. 3304, 3305; Rev., ss. 2347, 2348; C.S., s. 3172; 1927, c. 117; 1959, c. 1161, s. 2; 1969, c. 563, s. 1; c. 912, s. 1; 1973, c. 680, s. 1; 1983, c. 427, ss. 1, 2; c. 713, s. 22;

1991, c. 683, s. 2; 1995, c. 226, s. 1; 1998-228, s. 3; 1999-337, s.3(a); 2001-450, s. 1; 2002-126, s. 29A.21; 2005-75, s. 1; 2005-391, s. 4.)

Annotations

Cross References. - As to validation of defective acknowledgments before notaries public in certain conveyances, see G.S. 47-52, 47-53, 47-102.

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-4. It has been renumbered as this section at the direction of the Revisor of Statutes.

CASE NOTES

Editor's Note. - The cases below were decided under prior law.

Origin. - The office of notary public has long been known both to the civil and to the common law. State ex rel. Attorney Gen. v. Knight, 169 N.C. 333, 85 S.E. 418 (1915). In Loan Co. v. Turrell, 19 Ind. 469, it was said: "The office originated in the early Roman jurisprudence, and was known in England before the Conquest." State ex rel. Attorney Gen. v. Knight, 169 N.C. 333, 85 S.E. 418 (1915).

Modern Status of Office. - The office of notary public is in most of the states a state office, although in few states it has been regarded as a county office, and its functions, once simple, have now a wider scope. State ex rel. Attorney Gen. v. Knight, 169 N.C. 333, 85 S.E. 418 (1915).

Who Is Eligible. - It has been said that "at common law a minor is eligible to the position of notary public." State ex rel. Attorney Gen. v. Knight, 169 N.C. 333, 85 S.E. 418 (1915). But see now subdivision (b)(1) of this section.

Cited in Baker v. Martin, 330 N.C. 331, 410 S.E.2d 887 (1991).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. - The opinions below were issued under prior law.

Oath of Office for Notary Public. - The notary public to be duly qualified should now take the oath of office before the register of deeds, not the clerk of the superior court. See opinion of Attorney General to Mrs. Susan Lobinger, Governor's Office, 40 N.C.A.G. 605 (1969).

Copy of Commissions Issued to Non-Residents. - Along with the Secretary of State maintaining a copy of the commissions issued to non-residents, the register of deeds in the county wherein the appointee either works or intends to perform his notary functions

should be sent such commission. If the appointee will be working in more than one county, a copy of the commission should be sent to each county. See opinion of Attorney General to Mr. Ludelle Hatley, Notaries Public Deputy, Department of the Secretary of State, 55 N.C.A.G. 51 (1985).

Requirement of Being Registered Voter Not Constitutional. - The requirement of former G.S. 10-1.1 of being a registered voter in North Carolina in order to be a notary violated the privileges and immunity clause of U.S. Const., Art. IV, § 2. See opinion of Attorney General to Mr. Ludelle Hatley, Notaries Public Deputy, Department of the Secretary of State, 55 N.C.A.G. 51 (1985).

Under former Chapter 10, the Secretary of State had no authority to require that a notary applicant be employed in this State. See opinion of Attorney General to Mr. Ludelle Hatley, Notaries Public Deputy, Department of the Secretary of State, 55 N.C.A.G. 51 (1985).

A person who cannot read or write cannot hold a notary commission. See opinion of Attorney General to Ludelle R. Hatley, Notaries Public Deputy, Secretary of State's Office, 57 N.C.A.G. 1 (1987).

§ 10B-6. Application for commission.

Statute text

Every application for a notary commission shall be made on paper with original signatures, or in another form determined by the Secretary, and shall include all of the following:

- (1) A statement of the applicant's personal qualifications as required by this Chapter.
- (2) A certificate or signed statement by the instructor evidencing successful completion of the course of instruction as required by this Chapter.
- (3) A notarized declaration of the applicant, as required by this Chapter.
- (4) Any other information that the Secretary deems appropriate.
- (5) The application fee required by this Chapter.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-5. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-7. Statement of personal qualification.

Statute text

- (a) The application for a notary commission shall include at least all of the following:
- (1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.
 - (2) The applicant's date of birth.
 - (3) The mailing address for the applicant's residence, the street address for the applicant's residence, and the telephone number for the applicant's residence.
 - (4) The applicant's county of residence.
 - (5) The name of the applicant's employer, the street and mailing address for the applicant's employer, and telephone number for the applicant's employer.
 - (6) The applicant's last four digits of the applicant's social security number.
 - (7) The applicant's personal and business e-mail addresses.
 - (8) A declaration that the applicant is a citizen of the United States or proof of the applicant's legal residency in this country.
 - (9) A declaration that the applicant can speak, read, and writes in the English language.
 - (10) A complete listing of any issuances, denials, revocations, suspensions, restrictions, and resignations of a notarial commission, professional license, or public office involving the applicant in this or any other state or nation.
 - (11) A complete listing of any criminal convictions of the applicant, including any pleas of admission or nolo contendere, in this or any other state or nation.
 - (12) A complete listing of any civil findings or admissions of fault or liability regarding the applicant's activities as a notary, in this or any other state or nation.
- (b) The information contained in an application under this section is a public record as defined in G.S 132-1. The information contained in subdivisions (2), (3), (6) and (7) of subsection (a) of this section shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-6. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-8. Course of study and examination.

Statute text

(a) Every applicant for an initial notary commission shall, within the three months preceding application, take a course of classroom instruction of not less than six hours approved by the Secretary and take a written examination approved by the Secretary. An applicant must answer at least eighty percent (80%) of the questions correctly in order to pass the exam. This subsection shall not apply to a licensed member of the North Carolina State Bar.

(b) Every applicant for recommissioning shall pass a written examination approved by and administered by or under the direction of the Secretary, unless the person is a licensed member of the North Carolina State Bar.

(c) The content of the course of instruction and the written examinations shall be notarial laws, procedures, and ethics.

(d) The Secretary may charge such fees as are reasonably necessary to pay the cost associated with developing and administering examinations permitted by this Chapter and for conducting the training of notaries and notary instructors.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-7. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-9. Length of term and jurisdiction.

Statute text

A person commissioned under this Chapter may perform notarial acts in any part of this State for a term of five years, unless the commission is earlier revoked or resigned. No commissions shall be effective prior to the administration of the oath of office. Any notarial acts performed before the administration of the oath of office, either the original commissioning or recommissioning, are invalid.

History

(1891, c. 248; Rev., s. 2351; c.s., s. 3176; 1973, c. 680, s. 1; 1991, c. 683, s. 2; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-8. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-10. Commission; oath of office.

Statute text

(a) If the Secretary grants a commission to an applicant, the Secretary shall notify the appointee and shall instruct the appointee regarding the proper procedure for taking the oath at the register of deeds office in the county of the appointee's commissioning.

(b) The appointee shall appear before the register of deeds no later than 45 days after commissioning and shall be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7.

(c) The register of deeds shall then place the notary record in a book designated for that purpose, or the notary record may be recorded in the Consolidated Document Book and indexed in the Consolidated Real Property Index under the notary's name in the grantor index. The notary record may be kept in electronic format so long as the signature of the notary public may be viewed and printed. The notary record shall contain the name and the signature of the notary as commissioned, the effective date and expiration date of the commission, the date the oath was administered, and the date of any restriction, suspension, revocation, or resignation. The record shall constitute the official record of the qualification of notaries public.

(d) The register of deeds shall deliver the commission to the notary following completion of the requirements of this section and shall notify the Secretary of the delivery.

(e) If the appointee does not appear before the register of deeds within 45 days of commissioning, the register of deeds must return the commission to the Secretary, and the appointee must reapply for commissioning. If the appointee reapplies within one year of the granting of the commission, the Secretary may waive the educational requirements of this Chapter.

History

(Code, ss. 3304, 3305; Rev., ss. 2347, 2348; C.S., s. 3173; 1969,c. 912, s. 2; 1973, c. 680, s. 1; 1991, c. 683, s. 2; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-9. It has been renumbered as this section at the direction of the Revisor of Statutes.

OPINIONS OF ATTORNEY GENERAL

Editor's Note. - The opinion below was issued under prior law.

Oath of Office for Notary Public. - The notary public to be duly qualified should now take the oath of office before the register of deeds, not the clerk of the superior court. See opinion of Attorney General to Mrs. Susan Lobinger, Governor's Office, 40 N.C.A.G. 605 (1969).

Notary Public Commission and Effective Date of Oath. - A notary may take the oath of office anytime within 90 days of commissioning; there is no requirement that a notary seeking recommissioning take the oath after the commission date. See opinion of Attorney General to Ms. Haley Haynes Montgomery, Deputy Secretary of State, 2004 N.C.A.G. 11 (9/23/04).

§ 10B-11. Recommissioning.

Statute text

- (a) A commissioned notary may apply for recommissioning no earlier than 10 weeks prior to the expiration date of the notary's commission.
- (b) A notary whose commission has not expired must comply with the following requirements to be recommissioned:
- (1) Submit a new application under G.S. 10B-6.
 - (2) Meet the requirements of G.S. 10B-5(b).
 - (3) Pass the written examination required under G.S. 10B-8, unless the notary is a licensed member of the North Carolina State Bar.
- (c) An individual may apply for recommissioning within one year after the expiration of the individual's commission. The individual must comply with the requirement of subsection (b) of this section. The individual must also fulfill the educational requirement under G.S. 10B-8(a), unless the Secretary waives that requirement.

History

(1991, c. 683, s. 2; 1995, c. 226, s. 2; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-10. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-12. Notarized declaration.

Statute text

The application for a notary public commission shall contain the following declaration to be executed by each applicant under oath:

Declaration of Applicant

I, _____ (name of applicant), solemnly swear or affirm under penalty of perjury that the information in this application is true, complete, and correct; that I understand the official duties and responsibilities of a notary public in this State, as described in the statutes; and that I will perform to the best of my ability all notarial acts in accordance with the law.

(signature of applicant)

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-11. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-13. Application fee.

Statute text

Every applicant for a notary commission shall pay to the Secretary a nonrefundable application fee of fifty dollars (\$50.00).

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-12. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-14. Instructor's certification.

Statute text

(a) The course of study required by G.S. 10B-5(b) shall be taught by an instructor certified under rules adopted by the Secretary. An instructor must meet the following requirements to be certified to teach a course of study for notaries public:

(1) Complete and pass an instructor certification course of not less than six hours taught by the Director or other person approved by the Secretary.

(2) Have at least one year of active experience as a notary public.

(3) Maintain a current commission as a notary public.

(4) Possess the current notary public guidebook.

(5) Pay a nonrefundable fee of fifty dollars (\$50.00).

(b) Certification to teach a course of study for notaries shall be effective for two years. A certification may be renewed by passing a recertification course taught by the Director or other person approved by the Secretary and by paying a nonrefundable fee of fifty dollars (\$50.00).

(c) The following individuals may be certified to teach a course of study for notaries public without paying the fee required by this section, and they may renew their certification without paying the renewal fee, so long as they remain actively employed in the capacities named:

(1) Registers of deeds.

(2) Clerks of court.

(3) The Director and other duly authorized employees of the Secretary.

(d) Former registers of deeds and clerks of court who have been certified as notary public instructors must apply for commissioning as a notary public but are exempt from

the education requirements of G.S. 10B-8 after successful completion of an examination administered by the Secretary.

(e) Assistant and deputy registers of deeds and assistant and deputy clerks of court must have a regular notary commission prior to receiving a certification or recertification as a notary public instructor.

(f) The Secretary may suspend or revoke the certification of a notary instructor for violating the provisions of this Chapter or any of the administrative rules implementing it.

History

(1991, c. 683, s. 2; 1998-212, s. 29A.9(a); 1998-228, s. 4; 1999-337, s. 3(b); 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-13. It has been renumbered as this section at the direction of the Revisor of Statutes.

Session Laws 2005-391, s. 13, provides in part: "Notary instructor certifications issued under G.S. 10A-7 shall remain valid until the date of expiration provided for on the certificate, and persons holding those certificates may provide instruction until their certificates expire."

§§ 10B-15 through 10B-19: Reserved for future codification purposes.

PART 3. NOTARIAL ACTS, POWERS, AND LIMITATIONS.

§ 10B-20. Powers and limitations.

Statute text

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

- (1) Acknowledgments.
- (2) Oaths and affirmations.
- (3) Execute jurats.
- (4) Verifications or proofs.

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

- (1) The signature of the notary, exactly as shown on the notary's commission.
- (2) The readable appearance of the notary's name, from the notary's typed or printed name near the signature.
- (3) The clear and legible appearance of the notary's stamp or seal.
- (4) A statement of the date the notary's commission expires.

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

(1) The principal or subscribing witness is not in the notary's presence at the time the notarial act is to be performed; however, nothing in this Chapter shall require a notary to complete the certificate in the presence of the principal or subscribing witness.

(2) The principal or subscribing witness is not personally known to the notary or identified by the notary through satisfactory evidence.

(3) The principal or subscribing witness shows a demeanor that causes the notary to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act.

(4) The principal or subscribing witness, in the notary's judgment, is not acting of the principal's or the subscribing witness's own free will.

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

(6) The notary will receive directly from a transaction connected with the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in G.S. 10B-31, other than fees or other consideration paid for services rendered by a licensed attorney, a licensed real estate broker or salesperson, a motor vehicle dealer, or a banker.

(d) A notary may certify the affixation of a signature by mark on a record presented for notarization if:

(1) The mark is affixed in the presence of the notary;

(2) The notary writes below the mark: "Mark affixed by (name of signer by mark) in presence of undersigned notary"; and

(3) The notary notarizes the signature by performing an acknowledgment, oath or affirmation, jurat, or verification or proof.

(e) If a principal is physically unable to sign or make a mark on a record presented for notarization, that principal may designate another person as his or her designee, who shall be a disinterested party, to sign on the principal's behalf pursuant to the following procedure:

(1) The principal directs the designee to sign the record in the presence of the notary and two witnesses unaffected by the record;

(2) The designee signs the principal's name in the presence of the principal, the notary, and the two witnesses;

(3) Both witnesses sign their own names to the record near the principal's signature;

(4) The notary writes below the principal's signature: "Signature affixed by designee in the presence of (names and addresses of principal and witnesses)"; and

(5) The notary notarizes the signature through an acknowledgment, oath or affirmation, jurat, or verification or proof.

(f) A notarial act performed in another jurisdiction in compliance with the laws of that jurisdiction is valid to the same extent as if it had been performed by a notary commissioned under this Chapter if the notarial act is performed by a notary public of that jurisdiction or by any person authorized to perform notarial acts in that jurisdiction under the laws of that jurisdiction, the laws of this State, or federal law.

(g) Commissioned officers on active duty in the United States armed forces who are authorized to perform notarial acts and other persons authorized by federal law or

regulation to perform notarial acts may perform the acts for persons serving in or with the United States armed forces, their spouses, and their dependents.

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

(i) A notary public who is not an attorney licensed to practice law in this State who advertises the person's services as a notary public in a language other than English, by radio, television, signs, pamphlets, newspapers, other written communication, or in any other manner, shall post or otherwise include with the advertisement the notice set forth in this subsection in English and in the language used for the advertisement. The notice shall be of conspicuous size, if in writing, and shall state: "I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF NORTH CAROLINA, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE." If the advertisement is by radio or television, the statement may be modified but must include substantially the same message.

(j) A notary public who is not an attorney licensed to practice law in this State is prohibited from representing or advertising that the notary public is an "immigration consultant" or expert on immigration matters unless the notary public is an accredited representative of an organization recognized by the Board of Immigration Appeals pursuant to Title 8, Part 292, section 2(a-e) of the Code of Federal Regulations (8 C.F.R. § 292.2(a-e)).

(k) A notary public who is not an attorney licensed to practice law in this State is prohibited from rendering any service that constitutes the unauthorized practice of law. A nonattorney notary shall not assist another person in drafting, completing, selecting, or understanding a record or transaction requiring a notarial act.

(l) A notary public required to comply with the provisions of subsection (g) [subsection (i)] of this section shall prominently post at the notary public's place of business a schedule of fees established by law, which a notary public may charge. The fee schedule shall be written in English and in the non-English language in which the notary services were solicited and shall contain the notice required in subsection (i) of this section, unless the notice is otherwise prominently posted at the notary public's place of business.

(m) If notarial certificate wording is not provided or indicated for a record, a nonattorney notary shall not determine the type of notarial act or certificate to be used. This does not prohibit a notary from offering the selection of certificate forms recognized in this Chapter or as otherwise authorized by law.

(n) A notary shall not claim to have powers, qualifications, rights, or privileges that the office of notary does not provide, including the power to counsel on immigration matters.

(o) Before signing a notarial certificate and except as provided in this subsection, a notary shall cross out or mark through all blank lines or spaces in the certificate.

However:

(1) Notwithstanding the provisions of this section or G.S. 10B-35(b), a notary shall not be required to complete, cross out, or mark through blank lines or spaces in the notary certificate form provided for in G.S. 47-43 indicating when and where a power of attorney is recorded if that recording information is not known to the notary at the time the notary completes and signs the certificate;

(2) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not affect the sufficiency, validity, or enforceability of the certificate or the related record; and

(3) A notary's failure to cross out or mark through blank lines or spaces in a notarial certificate shall not be grounds for a register of deeds to refuse to accept a record for registration.

History

(1866, c. 30; 1879, c. 128; Code, s. 3307; Rev., ss. 2350, 2351a, 2352; C.S., ss. 3175, 3177, 3179; 1951, c. 1006, s. 1; 1953, c. 836; 1961, c. 733; 1967, c. 24, s. 22; c. 984; 1973, c. 680, s. 1; 1977, c. 375, s. 5; 1991, c. 683, s. 2; 1998-228, s. 5; 2001-450, s. 2; 2001-487, s. 121; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-14. It has been renumbered as this section at the direction of the Revisor of Statutes.

Subsection (l) of this section contains a citation to "subsection (g)" which probably should be a citation to "subsection (i)."

Legal Periodicals. - For comment on the seal in North Carolina and the need for reform, see 15 Wake Forest L. Rev. 251 (1979).

CASE NOTES

Editor's Note. - The cases below were decided under prior law.

Scope of Powers. - A notary public is recognized by the universal law of civilized and commercial nations, but his powers are confined to the authentication of commercial papers and to the protesting of bills of exchange and the like. *Benedict, Hall & Co. v. Hall*, 76 N.C. 113 (1877).

By statute in this State the powers of notaries public have been extended beyond those which were incident to the office by the universal law merchant, and pertained to the presentment of bills of exchange for acceptance or payment and the protest thereof for nonpayment or refusal to accept; they may now take and certify the acknowledgment or proof of powers of attorney, mortgages, deeds and other instruments of writing, etc. *McNeal Pipe & Foundry Co. v. Woltman, Keith & Co.*, 114 N.C. 178, 19 S.E. 109 (1894).

Duty in Taking Acknowledgments. - The notary was required "to take and certify the acknowledgment or proof" and this imposed upon him the duty of ascertaining (1) that the persons who presented themselves were the grantors in the deed; (2) that they acknowledged the executions of it; (3) that the wife signed the deed freely and voluntarily, and that she voluntarily assented thereto. *Young v. Jackson*, 92 N.C. 144 (1885); *Darden v. Neuse & Trent River Steamboat Co.*, 107 N.C. 437, 12 S.E. 46 (1890); *State ex rel. Att'y Gen. v. Knight*, 169 N.C. 333, 85 S.E. 418 (1915).

Acknowledgment Is a Judicial or Quasi Judicial Act. - An acknowledgment of a deed, taken before a notary public, is a judicial, or at least a quasi judicial, act. *Long v. Crews*, 113 N.C. 256, 18 S.E. 499 (1893).

Protest as Evidence. - The protest of a notary establishes the facts stated in it in respect to each and all of these points to the full extent the notary could do it if he were examined as a witness and were believed. *McNeal Pipe & Foundry Co. v. Woltman, Keith & Co.*, 114 N.C. 178, 19 S.E. 109 (1894).

This was for convenience of commerce and to dispense with the necessity of bringing witnesses from a distance or of taking depositions to prove the facts certified to in the protest, the certificate being prima facie true. *Elliott v. White*, 51 N.C. 98 (1858); *McNeal Pipe & Foundry Co. v. Woltman, Keith & Co.*, 114 N.C. 178, 19 S.E. 109 (1894).

Certificate as Prima Facie Evidence. - The certificate of the notary established prima facie that electors were sworn as required by statute when they signed the affidavits accompanying their absentee ballots. *State ex rel. Owens v. Chaplin*, 229 N.C. 797, 48 S.E.2d 37 (1948).

With the extension of the powers of notaries to take probate of deeds, the same quality attaches to their certificates of probate or acknowledgment; it is prima facie evidence of the truth of its pertinent recitals. *McNeal Pipe & Foundry Co. v. Woltman, Keith & Co.*, 114 N.C. 178, 19 S.E. 109 (1894).

Notary Public Was Not Disqualified to Act because He Was Employed by Grantee. - A notary public was not disqualified to take acknowledgment of grantors and privy examination of married women to conveyances of land when he was an employee of the grantee, without any interest in the land conveyed. *Smith v. Ayden Lumber Co.*, 144 N.C. 47, 56 S.E. 555 (1907).

Where a notary public was interested in a deed of trust, he was disqualified to take the acknowledgment, his attempted action was a nullity, and such defect could not be cured by probate upon such acknowledgment before the clerk and registration. *Long v. Crews*, 113 N.C. 256, 18 S.E. 499 (1893).

Signing of documents for corporation solely in capacity as notary public. - Where defendant signed subcontractor corporation's applications for payment solely in her capacity as a notary public, she did not act in her capacity as director of the corporation or certify the documents individually; therefore, it was error to include her as named individual defendant in issues and instructions submitted to the jury in an action for fraud and gross negligence based upon representations contained in the applications. *Myers & Chapman, Inc. v. Thomas G. Evans, Inc.*, 323 N.C. 559, 374 S.E.2d 385 (1988), rehearing denied, 324 N.C. 117, 377 S.E.2d 235 (1989).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. - The opinions below were issued under prior law.

An attorney may notarize a document for a client and then represent that client in a legal matter relating to the same document. See opinion of Attorney General to Ms. Sheila Stafford Pope, General Counsel, N.C. Secretary of State, 2001 N.C. AG LEXIS 34 (8/9/01).

A person who cannot read or write cannot hold a notary commission. See opinion of Attorney General to Ludelle R. Hatley, Notaries Public Deputy, Secretary of State's Office, 57 N.C.A.G 1 (1987).

Verification by Partner of Firm Representing Client. - It is not advisable for a notary who is also a partner in a lawfirm acting of counsel to an attorney filing a divorce complaint to notarize the verification of the client. A divorce complaint which is not properly notarized is subject to dismissal. See opinion of Attorney General to Mr. James Lee Knight, Notary Public, Guilford County, 58 N.C.A.G. 35 (1988).

When one partner of Firm A appears as attorney for a plaintiff in a divorce proceeding, the other partners in the firm also "appear," and they could be prohibited under G.S. 47-8 from notarizing the verification of the client. This would be true whether or not the firm appears as "of counsel" to the individual partner on the face of the complaint or answer. Therefore, such practice should be avoided, and an attorney/notary who acts in this fashion proceeds at his own risk. See opinion of Attorney General to Mr. James Lee Knight, Notary Public, Guilford County, 58 N.C.A.G. 35 (1988).

Pleadings not requiring verification by one of the parties are not subject to dismissal if they are verified anyway and a partner of the firm representing that client acts as the notary. However, G.S. 47-8 would still seem to say that that partner is without power to act as notary in that situation. The signature of the attorney signing the pleadings would be adequate under G.S. 1A-1, Rule 11(a). See opinion of Attorney General to Mr. James Lee Knight, Notary Pubic, Guilford County, 58 N.C.A.G. 35 (1988).

It Is Essential That Notary Specify Expiration Date of His Commission. - See opinion of Attorney General to Mr. Alex T. Wood, Register of Deeds, Franklin County, 41 N.C.A.G. 225 (1971).

§ 10B-21. Notaries ex officio.

Statute text

(a) The clerks of the superior court may act as notaries public in their several counties by virtue of their offices as clerks and may certify their notarial acts only under the seals of their respective courts. Assistant and deputy clerks of superior court, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective courts:

(1) Oaths and affirmations.

(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10B-5(b), assistant and deputy clerks of superior court may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective courts. A course of study attended only by assistant and deputy clerks of superior court may be taught at any mutually convenient location agreed to by the Secretary and the Administrative Office of the Courts.

(b) Registers of deeds may act as notaries public in their several counties by virtue of their offices as registers of deeds and may certify their notarial acts only under the seals of their respective offices. Assistant and deputy registers of deeds, by virtue of their offices, may perform the following notarial acts and may certify these notarial acts only under the seals of their respective offices:

(1) Oaths and affirmations.

(2) Verifications or proofs.

Upon completion of the course of study provided for in G.S. 10B-5(b), assistant and deputy registers of deeds may, by virtue of their offices, perform all other notarial acts and may certify these notarial acts only under the seals of their respective offices. A course of study attended only by assistant and deputy registers of deeds may be taught at any mutually convenient location agreed to by the Secretary and the North Carolina Association of Registers of Deeds.

(c) The Director may act as a notary public by virtue of the Director's employment in the Department of the Secretary and may certify a notarial act performed in that capacity under the seal of the Secretary.

(d) Unless otherwise provided by law, a person designated a notary public by this section may charge a fee for a notarial act performed in accordance with G.S. 10B-31. The fee authorized by this section is payable to the governmental unit or agency by whom the person is employed.

(e) Nothing in this section shall authorize a person to act as a notary public other than in the performance of the official duties of the person's office unless the person complies fully with the requirements of G.S. 10B-5.

History

(1833, c. 7, ss. 1, 2; R.C., c. 75, s. 3; Code, s. 3306; Rev., s. 2349; C.S., s. 3174; 1973, c. 680, s. 1; 1991, c. 683, s. 2; 1998-228, s. 8.; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-15. It has been renumbered as this section at the direction of the Revisor of Statutes.

CASE NOTES

Editor's Note. - The case below was decided under prior law.

A clerk of the superior court is, by virtue of his office, a notary public, and the taking of acknowledgments must be referred to the exercise of his notarial authority. *Lawrence v. Hodges*, 92 N.C. 672 (1885).

§ 10B-22. False certificate; foreign language certificates.

Statute text

(a) A notary shall not execute a notarial certificate containing information known or believed by the notary to be false.

(b) A notary shall not execute a certificate that is not written in the English language. A notary may execute a certificate written in the English language that accompanies a record written in another language, which record may include a translation of the notarial certificate into the other language. In those instances, the notary shall execute only the English language certificate.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-16. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-23. Improper records.

Statute text

(a) A notary shall not notarize a signature on a record without a notarial certificate indicating what type of notarial act was performed.

(b) A notary shall neither certify, notarize, nor authenticate a photograph. A notary may notarize an affidavit regarding and attached to a photograph.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-17. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-24. Testimonials.

Statute text

A notary shall not use the official notary title or seal in a manner intended to endorse, promote, denounce, or oppose any product, service, contest, candidate, or other offering. This section does not prohibit a notary public from performing a notarial act upon a record executed by another individual.

History
(2005-391, s. 4.)

Annotations
Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-18. It has been renumbered as this section at the direction of the Revisor of Statutes.

§§ 10B-25 through 10B-29: Reserved for future codification purposes.

PART 4.
FEES.

§ 10B-30. Imposition and waiver of fees.

Statute text

- (a) For performing a notarial act, a notary may charge up to the maximum fee specified in this Chapter.
- (b) A notary shall not discriminatorily condition the fee for a notarial act on any attribute of the principal that would constitute unlawful discrimination.
- (c) Nothing in this Chapter shall compel a notary to charge a fee.

History
(2005-391, s. 4.)

Annotations
Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-19. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-31. Fees for notarial acts.

Statute text

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

(1) For acknowledgments, jurats, verifications or proofs, five dollars (\$5.00) per principal signature.

(2) For oaths or affirmations without a signature, five dollars (\$5.00) per person, except for an oath or affirmation administered to a credible witness to vouch for a principal's identity.

History

(Code, s. 3749; 1889, c. 446; 1895, c. 296; 1903, c. 734; Rev., s. 2800; C.S., s. 3178; 1973, c. 680, s. 1; 1977, c. 429, ss. 1, 2; 1981, c. 872; 1991, c. 683, s. 2; 1998-228, s. 6; 2005-328, s. 1; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-20. It has been renumbered as this section at the direction of the Revisor of Statutes.

CASE NOTES

Editor's Note. - The case below was decided under prior law.

Fees Created by Statute. - The fees of notaries public are created and regulated by statute. *Price & Luca Cider & Vinegar Co. v. Carroll*, 124 N.C. 555, 32 S.E. 959 (1899).

§ 10B-32. Notice of fees.

Statute text

Notaries who charge for their notarial services shall conspicuously display in their places of business, or present to each principal outside their places of business, an English-language schedule of fees for notarial acts. No part of any notarial fee schedule shall be printed in smaller than 10-point type.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-21. It has been renumbered as this section at the direction of the Revisor of Statutes.

§§ 10B-33, 10B-34: Reserved for future codification purposes.

PART 5.
SIGNATURE AND SEAL.

§ 10B-35. (See Editor's note) Official signature.

Annotations

Editor's Note. - As enacted, the text of this section duplicates the text of the following section, G.S. 10B-36. Because of this error, the text is not being set out at the direction of the Revisor of Statutes.

Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-22. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-36. Official seal.

Statute text

(a) A notary shall keep an official seal or stamp (herein "seal") that is the exclusive property of the notary. The notary shall keep the seal in a secure location that is accessible only to the notary. A notary shall not allow another person to use or possess the seal, and shall not surrender the seal to the notary's employer upon termination of employment.

(b) The seal shall be affixed only after the notarial act is performed. The notary shall place the image or impression of the seal near the notary's signature on every paper record notarized. The seal and the signature shall appear on the same page.

(c) A notary shall do the following within 10 days of discovering that the notary's seal has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:

(1) Inform the appropriate law enforcement agency in the case of theft or vandalism.

(2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) As soon as is reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be delivered to the Secretary for disposal.

History

(1973, c. 680, s. 1; 1991, c. 683, s. 2; 1998-228, s. 7; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-23. It has been renumbered as this section at the direction of the Revisor of Statutes.

Cross References. - As to validation of certain acts of notaries public where notarial seals on documents contain certain errors, see G.S. 10A-16(b).

As to validation of deeds and probate and registration thereof where notarial seals have been omitted, see G.S. 47-102 and 47-103.

CASE NOTES

Editor's Note. - The cases below were decided under prior law.

Courts Take Judicial Notice. - It was said in *Pierce v. Indseth*, 106 U.S. 546, 1 S. Ct. 418, 27 L. Ed. 254 (1882): "The court will take judicial notice of the seals of notaries public, for they are officers recognized by the commercial law of the world." *State ex rel. Att'y Gen. v. Knight*, 169 N.C. 333, 85 S.E. 418 (1915).

Name in Seal. - The statute authorizing a notary public to take acknowledgment of deeds did not formerly require that his name or any name be used in the notarial seal, and the seal appended to the certificate was presumably his in the absence of evidence to the contrary; hence, where the fact of the execution of deed by a notary public was adjudged to have been proved by such seal and certificate, it was not rebutted by the mere fact that the notary signed his name "Geo. Theo. Somner" and the seal had on it the name of "Theo. Somner." *Deans v. Pate*, 114 N.C. 194, 19 S.E. 146 (1894). But see now § 10B-20.

Failure to Attest by Seal. - A motion for judgment for want of an answer was properly allowed when the complaint was duly verified and what purported to be the verification of the answer was attested only by a person signing his name with the letters "N. P." added thereto, but without an official seal. *Tucker v. Inter-States Life Ass'n*, 112 N.C. 796, 17 S.E. 532 (1893).

Under prior law, the acknowledgment of a deed before a notary public in due form was not defective because not attested by his notarial seal. *Peel v. Corey*, 196 N.C. 79, 144 S.E. 559 (1928).

OPINIONS OF ATTORNEY GENERAL

Editor's Note. - The opinion below was issued under prior law.

Notarial Stamp Need Not Contain the Word "Stamp". - See opinion of Attorney General to Mr. Mark Stewart, Guilford County Register of Deeds, 40 N.C.A.G. 604 (1970).

§ 10B-37. Seal image.

Statute text

- (a) Near the notary's official signature on the notarial certificate of a paper record, the notary shall place a sharp, legible, permanent, and photographically reproducible image of the official seal.
- (b) A notary's official seal shall include only the following elements:
- (1) The notary's name exactly as commissioned;
 - (2) The words "Notary Public";
 - (3) The county of commissioning, including the word "County" or the abbreviation "Co."; and
 - (4) The words "North Carolina" or the abbreviation "NC".
- (c) The notary seal may be either circular or rectangular in shape. The circular seal shall not be less than 1 1/2 inches, nor more than 2 inches in diameter. The rectangular seal shall not be over 1 inch high and 2 1/2 inches long. The perimeter of the seal shall contain a border that is visible when impressed.
- (d) A notarial seal may contain the notary's commission expiration date; however, a notarial act shall be invalid if the expiration date contained on the seal is incorrect at that time that the notarial act is performed.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-24. It has been renumbered as this section at the direction of the Revisor of Statutes.

§§ 10B-38, 10B-39: Reserved for future codification purposes.

PART 6. CERTIFICATE FORMS.

§ 10B-40. Notarial certificates in general.

Statute text

- (a) A notary shall not make or give a notarial certificate unless the notary has either (i) personal knowledge of the identity of the principal or, if applicable, the subscribing witness, or (ii) satisfactory evidence of a signer's identity.
- (b) A notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity taken by a notary is sufficient

and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-41, if it is substantially in a form otherwise prescribed by the law of this State, or if it:

- (1) Identifies the state and county in which the acknowledgment occurred;
- (2) Names the principal who appeared in person before the notary;
- (3) States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;
- (4) Indicates that the principal who appeared in person before the notary acknowledged that the signature on the record presented is his or her signature, that the principal voluntarily signed the record for the purpose stated therein;
- (5) States the date of the acknowledgment;
- (6) Contains the signature and seal or stamp of the notary who took the acknowledgment; and
- (7) States the notary's commission expiration date.

(c) A notarial certificate for the verification or proof of the signature of a principal by a subscribing witness taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-42, if it is substantially in a form otherwise prescribed by the law of this State, or if it:

- (1) Identifies the state and county in which the verification or proof occurred;
- (2) Names the subscribing witness who appeared in person before the notary;
- (3) States that the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity, indicating the nature of that satisfactory evidence;
- (4) Names the principal whose signature on the record is to be verified or proven;
- (5) Indicates that the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a named party to the record in question, has no interest in the transaction, signed the record as a subscribing witness, and either (i) witnessed the principal sign the record, or (ii) witnessed the principal acknowledge the principal's signature on the already-signed record;
- (6) States the date of the verification or proof;
- (7) Contains the signature and seal or stamp of the notary who took the verification or proof; and
- (8) States the notary's commission expiration date.

(d) A notarial certificate for an oath or affirmation taken by a notary is sufficient and shall be accepted in this State if it is substantially in the form set forth in G.S. 10B-43, if it is substantially in a form otherwise prescribed by the law of this State, or if it:

- (1) Identifies the state and county in which the oath or affirmation occurred;
- (2) Names the principal who appeared in person before the notary;
- (3) States that the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity, indicating the nature of that satisfactory evidence;
- (4) Indicates that the principal who appeared in person before the notary signed the record in question and certified to the notary under oath or by affirmation as to the truth of the matters stated in the record;
- (5) States the date of the oath or affirmation;

- (6) Contains the signature and seal or stamp of the notary who took the oath or affirmation; and
- (7) States the notary's commission expiration date.
- (e) Any notarial certificate made in another jurisdiction shall be sufficient in this State if it is made in accordance with federal law or the laws of the jurisdiction where the notarial certificate is made.
- (f) On records to be filed, registered, recorded, or delivered in another state or jurisdiction of the United States, a North Carolina notary may complete any notarial certificate that may be required in that other state or jurisdiction.
- (g) Nothing in this Chapter shall be deemed to authorize the use of a notarial certificate authorized by this Part in place of or as an alternative to a notarial certificate required by any other provision of the General Statutes outside of Chapter 47 of the General Statutes that prescribes the specific form or content for a notarial certificate (including, but not limited to, G.S. 31-11.6, Chapter 32A of the General Statutes, and G.S. 90-321). However, any statute that permits or requires the use of a notarial certificate contained within Chapter 47 of the General Statutes may also be satisfied by the use of a notarial certificate permitted by this Part.

History
 (2005-391, s. 4.)

Annotations
 Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-25. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-41. Notarial certificate for an acknowledgment.

Statute text

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: name(s) of principal(s).

Date: _____ Official Signature of Notary
 Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

(b) By signing a notarial certificate for the acknowledgment of a principal who is an individual acting in his or her own right or in a representative capacity substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:

- (1) That the principal acknowledging his or her signature appeared in person before the notary on the date indicated;
- (2) That the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;
- (3) That, if the principal signed the record in a representative capacity, the principal stated that he or she signed the record in the particular representative capacity; and
- (4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-26. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-42. Notarial certificate for a verification or proof.

Statute text

(a) When properly completed by a notary, a notarial certificate in substantially the following form may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness. The authorization of the form in this section does not preclude the use of other forms.

_____ County, North Carolina

I certify that name of subscribing witness personally appeared before me this day and certified to me under oath or by affirmation that he or she is not a named party to the foregoing document, has no interest in the transaction, signed the foregoing document as a subscribing witness, and either (i) witnessed name of principal (the principal) sign the foregoing document or (ii) witnessed the principal acknowledge the principal's signature on the already-signed document.

Date: _____ Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

(b) By signing a notarial certificate for the verification or proof of the signature of a principal by a subscribing witness substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:

- (1) That the subscribing witness appeared in person before the notary on the date indicated;
- (2) That the subscribing witness certified to the notary under oath or by affirmation that the subscribing witness is not a named party to the record in question, has no interest in the transaction, signed the record as a subscribing witness, and either (i) witnessed the named principal sign the record, or (ii) witnessed the named principal acknowledge the principal's signature on the already-signed record; and
- (3) That the notary has either (i) personal knowledge of the identity of the subscribing witness or (ii) satisfactory evidence of the subscribing witness's identity.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-27. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-43. Notarial certificate for an oath or affirmation.

Statute text

(a) When properly completed by a notary, a notarial certificate in substantially either of the following forms may be used and shall be sufficient under the law of this State to satisfy the requirements for a notarial certificate for an oath or affirmation. The authorization of the forms in this section does not preclude the use of other forms.

_____ County, North Carolina

Signed and sworn to (or affirmed) before me this day by name of principal.

Date: _____ Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

-OR-

_____ County, North Carolina

Sworn to (or affirmed) and ascribed before me this day by name of principal.

Date: _____ Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal) My commission expires: _____

(b) By signing a notarial certificate for an oath or affirmation substantially in the form set forth in subsection (a) of this section, the notary thereby certifies:

- (1) That the principal appeared in person before the notary on the date indicated;
- (2) That either (i) the notary witnessed the principal sign the record or (ii) the principal stated to the notary that he or she voluntarily signed the record for the purpose stated therein;
- (3) That the principal certified to the notary under oath or by affirmation as to the truth of the matters stated in the record; and
- (4) That the notary has either (i) personal knowledge of the identity of the principal or (ii) satisfactory evidence of the principal's identity.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-28. It has been renumbered as this section at the direction of the Revisor of Statutes.

§§ 10B-44 through 10B-49: Reserved for future codification purposes.

PART 7.

CHANGES IN STATUS.

§ 10B-50. Change of address.

Statute text

Within 45 days after the change of a notary's residence, business, or any mailing address or telephone number, the notary shall send to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed notice of the change, giving both old and new addresses or telephone numbers.

History

(1991, c. 683, s. 2; 1995, c. 226, s. 3; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-29. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-51. Change of name.

Statute text

(a) Within 45 days after the legal change of a notary's name, the notary shall send to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed notice of the change. The notice shall include both the notary's former name and the notary's new name.

(b) A notary with a new name may continue to use the former name in performing notarial acts until all of the following steps have been completed:

(1) The notary receives a confirmation of Notary's Name Change from the Secretary.

(2) The notary obtains a new seal bearing the new name exactly as that name appears in the confirmation from the Secretary.

(3) The notary appears before the register of deeds to which the commission was delivered within 45 days of the effective date of the change to be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the new name and to have the notary public record changed to reflect the new commissioned name.

(c) Upon completion of the requirements in subsection (b) of this section, the notary shall use the new name.

History

(1991, c. 683, s. 2; 1995, c. 226, s. 3; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-30. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-52. Change of county.

Statute text

(a) A notary who has moved to another county in North Carolina remains commissioned until the current commission expires, is not required to obtain a new seal, and may continue to notarize without changing his or her seal.

(b) When a notary who has moved applies to be recommissioned, if the commission is granted the, Secretary shall issue a notice of recommissioning. The commission applicant shall then do all of the following:

(1) Obtain a new seal bearing the new county exactly as in the notice of recommissioning.

(2) Appear before the register of deeds to which the commission was delivered within 45 days of recommissioning, to be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the new county and to have the notary public record changed to reflect the new county name.

History

(1991, c. 683, s. 2; 1995, c. 226; s. 3; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-31. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-53. Change of both name and county.

Statute text

Within 45 days after the legal change of a notary's name, and if the notary has also moved to a different county than as last commissioned, the notary shall submit to the Secretary a recommissioning application and fee pursuant to this Chapter. The notary may continue to perform notarial acts under the notary's previous name and seal until all of the following steps have been completed:

- (1) The notary receives a transmittal receipt of reappointment due to name and county change from the Secretary.
- (2) The notary obtains a new seal bearing the new name and county exactly as those items appear in the transmittal receipt.
- (3) The notary appears before the register of deeds to which the commission was delivered within 45 days of recommissioning to be duly qualified by taking the general oath of office prescribed in G.S. 11-11 and the oath prescribed for officers in G.S. 11-7 under the new name and county and to have the notary public record changed to reflect the new name and county.

History

(1991, c. 683, s. 2; 1995, c. 226, s. 3; 2005-391, s. 4.)

Annotations

Editor's Note. - As enacted, this section contains a subsection (a), but no subsection (b). This section has been set out in the form above at the direction of the Revisor of Statutes. Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-32. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-54. Resignation.

Statute text

- (a) A notary who resigns the notary's commission shall send to the Secretary by fax, e-mail, or certified mail, return receipt requested, a signed notice indicating the effective date of resignation.

(b) Notaries who cease to reside in or to maintain a regular place of work or business in this State, or who become permanently unable to perform their notarial duties, shall resign their commissions and shall deliver their seals to the Secretary by certified mail, return receipt requested.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-33. It has been renumbered as this section at the direction of the Revisor of Statutes.

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

Statute text

(a) When a notary commission is resigned or revoked, the notary shall deliver the notary's seal to the Secretary within 45 days of the resignation or revocation. Delivery shall be accomplished by certified mail, return receipt requested. The Secretary shall destroy any seal received under this subsection.

(b) A notary whose commission has expired and whose previous commission or application was not revoked or denied by this State, is not required to deliver the seal to the Secretary as provided under subsection (a) of this section if the notary intends to apply to be recommissioned and is recommissioned within three months after the notary's commission expires.

(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.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-34. It has been renumbered as this section at the direction of the Revisor of Statutes.

§§ 10B-56 through 10B-59: Reserved for future codification purposes.

PART 8.
ENFORCEMENT, SANCTIONS, AND REMEDIES.

§ 10B-60. Enforcement and penalties.

Statute text

- (a) The Secretary may warn, restrict, suspend, or revoke a notarial commission for a violation of this Chapter and on any ground for which an application for a commission may be denied under this Chapter. Any period of restriction, suspension, or revocation shall not extend the expiration date of a commission.
- (b) Except as otherwise permitted by law, a person who commits any of the following acts is guilty of a Class 1 misdemeanor:
- (1) Holding one's self out to the public as a notary if the person does not have a commission.
 - (2) Performing a notarial act if the person's commission has expired or been suspended.
 - (3) Performing a notarial act before the person had taken the oath of office.
- (c) A notary shall be guilty of a Class 1 misdemeanor if the notary does any of the following:
- (1) Takes an acknowledgment, performs an oath, affirmation, or jurat without the principal personally appearing before the notary;
 - (2) Takes a verification or proof of a subscribing witness without personal knowledge of the subscribing witness's identity, or without satisfactory evidence of the subscribing witness's identity;
- (d) A notary shall be guilty of a Class I felony if the notary does any of the following:
- (1) Takes an acknowledgment, verification, proof, or jurat, or performs an oath or affirmation if the notary knows it is false or fraudulent.
 - (2) Takes an acknowledgment, or jurat without the principal appearing if the notary does so with the intent to commit fraud.
 - (3) Takes a verification or proof without the subscribing witness appearing in person before the notary if the notary does so with the intent to commit fraud.
- (e) It is a Class I felony for any person to perform notarial acts in this State with the knowledge that the person is not commissioned under this Chapter.
- (f) Any person who without authority obtains, uses, conceals, defaces, or destroys the seal or notarial records of a notary is guilty of a Class I felony.
- (g) For purposes of enforcing this Chapter and Article 34 of Chapter 66 of the General Statutes, the law enforcement agents of the Department of the Secretary of State have statewide jurisdiction and have all of the powers and authority of law enforcement officers. The agents have the authority to assist local law enforcement agencies in their investigations and to initiate and carry out, on their own or in coordination with local law enforcement agencies, investigations of violations.
- (h) Resignation or expiration of a notarial commission does not terminate or preclude an investigation into a notary's conduct by the Secretary, who may pursue the investigation to a conclusion, whereupon it may be a matter of public record whether or not the finding would have been grounds for disciplinary action.

(i) The Secretary may seek injunctive relief against any person who violates the provisions of this Chapter. Nothing in this Chapter diminishes the authority of the North Carolina State Bar.

(j) Any person who knowingly solicits, coerces, or in any material way influences a notary to commit official misconduct, is guilty as an aider and abettor and is subject to the same level of punishment as the notary.

(k) The sanctions and remedies of this Chapter supplement other sanctions and remedies provided by law, including, but not limited to, forgery and aiding and abetting.

History

(1991, c. 683, s. 2; 1993, c. 539, ss. 6-8, 1121; 1994 Ex. Sess., c. 24, s. 14(c); 1995, c. 226, s. 4; 2001-450, s. 3; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-35. It has been renumbered as this section at the direction of the Revisor of Statutes.

Session Laws 2005-391, s. 12, provides: "This act shall not affect any civil or criminal litigation pending on the December 1, 2005. Any act committed prior to December 1, 2005 which violated any provision of the statutes repealed or amended by this act shall be subject to enforcement, prosecution, conviction, and punishment as if this act had not been enacted. Any claim arising under any provisions of the statutes repealed or amended by this act prior to December 1, 2005 shall remain valid as if this act had not been enacted."

Session Laws 2005-391, s. 13, provides in part: "G.S. 10B-60 and G.S. 10B-146 apply to offenses committed on or after December 1, 2005, without regard to whether a commission was issued under Chapter 10A or Chapter 10B of the General Statutes."

§§ 10B-61 through 10B-64: Reserved for future codification purposes.

PART 9.

VALIDATION OF NOTARIAL ACTS.

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

Statute text

(a) Any acknowledgment taken and any instrument notarized by a person prior to qualification as a notary public but after commissioning or recommissioning as a notary public, or by a person whose notary commission has expired, 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.

(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:

(1) The date of the expiration of the notary's commission is stated, whether correctly or erroneously.

(2) The notarial seal does not contain a readable impression of the notary's name, contains an incorrect spelling of the notary's name, or does not bear the name of the notary exactly as it appears on the commission, as required under G.S. 10B-37.

(3) The notary's signature does not comport exactly with the name on the notary commission or on the notary seal, as required by G.S. 10B-20.

(4) The notarial seal contains typed, printed, drawn, or handwritten material added to the seal, fails to contain the words "North Carolina" or the abbreviation "NC", or contains correct information except that instead of the abbreviation for North Carolina contains the abbreviation for another state.

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

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

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

History

(1945, c. 665; 1947, c. 313; 1949, c. 1; 1953, c. 702; 1961, cc. 483, 734; 1965, c. 37; 1969, c. 83; c. 716, s. 1; 1971, c. 229, s. 1; 1973, c. 680, s. 1; 1977, c. 734, s. 1; 1979, c. 226, s. 2; c. 643, s. 1; 1981, c. 164, ss. 1, 2; 1983, c. 205, s. 1; 1985, c. 71, s. 1; 1987, c. 277, s. 9; 1989, c. 390, s. 9; 1991, c. 683, s. 2; 1997-19, s. 1; 1997-469, s. 2; 1998-228, s. 10; 1999-21, s. 2; 2001-154, s. 1; 2002-159, s. 27; 2003-38, s. 1; 2004-199, s. 6; 2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-36. It has been renumbered as this section at the direction of the Revisor of Statutes.

Effect of Amendments. - Session Laws 2004-199, s. 6, effective August 17, 2004, substituted "February 1, 2004" for "March 1, 2003" in subsection (d).

§ 10B-66. Certain notarial acts validated.

Statute text

(a) Any acknowledgment taken and any instrument notarized by a person whose notarial commission was revoked on or before January 30, 1997, is hereby validated.

(b) This section applies to notarial acts performed on or before August 1, 1998.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-37. It has been renumbered as this section at the direction of the Revisor of Statutes.

§§ 10B-67 through 10B-99: Reserved for future codification purposes.

ARTICLE 2.

Electronic Notary Act.

Part 1. General Provisions.

Sec.

10B-100. Short title.

10B-101. Definitions.

10B-102. Scope of this Article.

10B-103, 10B-104. [Reserved.]

Part 2. Registration.

10B-105. Qualifications.

10B-106. Registration with the Secretary of State.

10B-107. Course of instruction.

10B-108. Fees for registration.

10B-109 through 10B-114.

Part 3. Electronic Notarial Acts, Powers, and Limitations.

10B-115. Types of electronic notarial acts.

10B-116. Prohibitions.

10B-117. Notarial components of electronic document.

10B-118. Maximum fees.

10B-119 through 10B-124. [Reserved.]

Part 4. Electronic Notary Records, Maintenance, and Disposition.

10B-125. Electronic signature, electronic seal.

10B-126. Security measures.

10B-127. Maintenance of electronic device.

10B-128. Disposition of records.

10B-129 through 10B-134. [Reserved.]

Part 5. Certificate Forms.

10B-135. Validity of notarial certificates.

10B-136. Form of evidence of authority of electronic notarial act.

10B-137. Certificate of authority for electronic notarial act.

10B-138 through 10B-144. [Reserved.]

Part 6. Enforcement.

10B-145. Restriction or revocation of registration.

10B-146. Wrongful manufacture, distribution, or possession of software or hardware.

PART 1.

GENERAL PROVISIONS.

§ 10B-100. Short title.

Statute text

This Article is the Electronic Notary Public Act and may be cited by that name.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-38. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-101. Definitions.

Statute text

The following definitions apply in this Article:

(1) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(2) "Electronic Document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

(3) "Electronic Notarial Act" and "Electronic Notarization" mean an official act by an electronic notary public that involves electronic documents.

(4) "Electronic Notary Public" and "Electronic Notary" mean a notary public who has registered with the Secretary the capability of performing electronic notarial acts in conformance with this Article.

(5) "Electronic Notary Seal" and "Electronic Seal" mean information within a notarized electronic document that includes the notary's name, jurisdiction, and commission expiration date, and generally corresponds to data in notary seals used on paper documents.

(6) "Electronic Signatures" means an electronic symbol or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document.

(7) "Notary's Electronic Signature" means those forms of electronic signature which have been approved by the Secretary as authorized in G.S. 10B-125, as an acceptable means for an electronic notary to affix the notary's official signature to an electronic record that is being notarized.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-39. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-102. Scope of this Article.

Statute text

Article 1 of this Chapter applies to all acts authorized under this Article unless the provisions of Article 1 directly conflict with the provisions of this Article, in which case provisions of Article 2 shall control.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-40. It has been renumbered as this section at the direction of the Revisor of Statutes.

§§ 10B-103, 10B-104: Reserved for future codification purposes.

PART 2. REGISTRATION.

§ 10B-105. Qualifications.

Statute text

- (a) A person qualified for electronic notary registration shall meet all of the following requirements:
- (1) Hold a valid commission as a notary public in the State of North Carolina.
 - (2) Except as otherwise provided, abide by all the provisions of Article 1 of this Chapter.
 - (3) Satisfy the requirements of G.S. 10B-107.
 - (4) Submit an electronic registration form containing no significant misstatement or omission of fact.
- (b) The Secretary may deny a registration as an electronic notary as authorized in G.S. 10B-5(d).

History
(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-41. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-106. Registration with the Secretary of State.

Statute text

- (a) Before performing notarial acts electronically, a notary shall register the capability to notarize electronically with the Secretary.
- (b) The term of registration as an electronic notary shall coincide with the term of the notary's commission under Article 1 of this Chapter.
- (c) An electronic notary shall reregister the capability to notarize electronically at the same time the notary applies for recommissioning under the requirements of Article 1 of this Chapter.
- (d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:
- (1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.
 - (2) The state and county of commissioning of the registrant.
 - (3) The expiration date of the registrant's notary commission.
 - (4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
 - (5) A description of the technology the registrant will use to create an electronic signature in performing official acts.
 - (6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.
 - (7) The e-mail address of the registrant.

The information contained in a registration under this section is a public record as defined in G.S. 132-1, except for information contained in subsection (7) [subdivision (7)], which shall be considered confidential information and shall not be subject to disclosure except as provided in Chapter 132 of the General Statutes or as provided by rule.

(e) The electronic registration form for an electronic notary shall be transmitted electronically to the Secretary and shall include any decrypting instructions, codes, keys, or software that allow the registration to be read.

(f) Within 10 business days after the change of any registration information required of an electronic notary, the notary shall electronically transmit to the Secretary a notice of the change of information signed with the notary's official electronic signature.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-42. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-107. Course of instruction.

Statute text

(a) Before performing electronic notarial acts, a notary shall take a course of instruction of least three hours approved by the Secretary and pass an examination of this course, which shall be in addition to the educational requirements provided in Article 1 of this Chapter.

(b) The content of the course and the basis for the examination shall be notarial laws, procedures, technology, and ethics as they pertain to electronic notarization.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-43. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-108. Fees for registration.

Statute text

The fee payable to the Secretary for registering or reregistering as an electronic notary is fifty dollars (\$50.00), which shall be in addition to the fee required in G.S. 10B-13. All funds received by the Secretary under this section shall be deposited into the General Fund.

History
(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-44. It has been renumbered as this section at the direction of the Revisor of Statutes.

§§ 10B-109 through 10B-114: Reserved for future codification purposes.

History
(2005-391, s. 4.)

PART 3.
ELECTRONIC NOTARIAL ACTS, POWERS, AND LIMITATIONS.

§ 10B-115. Types of electronic notarial acts.

Statute text

The following types of notarial acts may be performed electronically:

- (1) Acknowledgments;
- (2) Jurats;
- (3) Verifications or proofs; and
- (4) Oaths or affirmations.

History
(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-45. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-116. Prohibitions.

Statute text

An electronic notarization shall not be performed if the signer of the electronic document:

- (1) Is not in the presence of the electronic notary at the time of notarization; and

- (2) Is not personally known to the notary or identified by the evidence in accordance with other provisions of this Chapter; or
- (3) For any reason set forth in G.S. 10B-20.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-46. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-117. Notarial components of electronic document.

Statute text

In performing an electronic notarial act, all of the following components shall be attached to, or logically associated with, the electronic document by the electronic notary, all of which shall be immediately perceptible and reproducible in the electronic record to which the notary's electronic signature is attached:

- (1) The notary's name, state, and county of commissioning exactly as stated on the commission issued by the Secretary;
- (2) The words "Electronic Notary Public";
- (3) The words "State of North Carolina";
- (4) The expiration date of the commission;
- (5) The notary's electronic signature; and
- (6) The completed wording of one of the following notarial certificates:
 - a. Acknowledgment;
 - b. Jurat;
 - c. Verification or proof; or
 - d. Oath or affirmation.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-47. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-118. Maximum fees.

Statute text

For performing electronic notarial acts, the maximum fees that may be charged by an electronic notary are as follows:

- (1) For acknowledgments, \$10.00 per signature.
- (2) For jurats, \$10.00 per signature.
- (3) For verifications or proofs, \$10.00 per signature.
- (4) For oaths or affirmations, \$10.00 per signature.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-48. It has been renumbered as this section at the direction of the Revisor of Statutes.

§§ 10B-119 through 10B-124: Reserved for future codification purposes.

PART 4.

ELECTRONIC NOTARY RECORDS, MAINTENANCE, AND DISPOSITION.

§ 10B-125. Electronic signature, electronic seal.

Statute text

- (a) The notary's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing electronic notarial acts.
- (b) The Secretary shall adopt rules necessary to establish standards, procedures, practices, forms, and records relating to a notary's electronic signature and electronic seal. The notary's electronic seal and electronic signature shall conform to any standards adopted by the Secretary.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-49. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-126. Security measures.

Statute text

- (a) A notary shall safeguard the notary's electronic signature, the notary's electronic seal, and all other notarial records. Notarial records shall be maintained by the notary, and the notary shall not surrender or destroy the records except as required by a court order or as allowed under rules adopted by the Secretary.
- (b) When not in use, the notary shall keep the notary's electronic signature, electronic seal, and all other notarial records secure, under the exclusive control of the notary, and shall not allow them to be used by any other notary or any other person.
- (c) A notary shall do the following within 10 days of discovering that the notary's electronic seal or electronic signature has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image:
- (1) Inform the appropriate law enforcement agency in the case of theft or vandalism.
 - (2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.
- (d) The Secretary may adopt rules necessary to insure the integrity, security, and authenticity of electronic notarizations.
- (e) The Secretary may require an electronic notary to create and to maintain a record, journal, or entry of each electronic notarial act. The rule-making authority contained in this subsection shall become effective 18 months after December 1, 2005.
- (f) The failure of an electronic notary to produce within 10 days of the Department's request any record required by a rule adopted under this section shall result in the suspension of the electronic notary's power to act as a notary under the provision of this Chapter until the Secretary reinstates the notary's commission.
- (g) Upon resignation, revocation, or expiration of an electronic notary commission, or death of the notary, all notarial records required by statute or rule shall be delivered to the Secretary.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-50. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-127. Maintenance of electronic device.

Statute text

- (a) An electronic notary shall take reasonable steps to ensure that any registered device used to create the notary's electronic signature is current and has not been revoked or terminated by its issuing or registering authority.
- (b) If the registration of the device used to create electronic signatures either expires or is changed during the electronic notary's term of office, the notary shall cease performing electronic notarizations until:
- (1) A new device is duly issued or registered to the notary; and

(2) An electronically signed notice is sent to the Secretary that shall include the starting and expiration dates of any new registration term and any other new information at variance with information in the most recently executed electronic registration form.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-51. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-128. Disposition of records.

Statute text

(a) Upon compliance with G.S. 10B-127 and except as provided in subsection (b) of this section, when an electronic notary's commission expires or is resigned or revoked, or when an electronic notary dies, the notary or the notary's duly authorized representative shall erase, delete, or destroy the coding, disk, certificate, card, software, file, or program that enables electronic affixation of the notary's official electronic signature.

(b) A former electronic notary whose previous commission or application was not revoked or denied by the Secretary need not erase, delete, or destroy the coding, disk, certificate, card, software, file, or program enabling electronic affixation of the official electronic signature if he or she is recommissioned and reregistered as an electronic notary using the same electronic signature within three months after commission expiration.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-52. It has been renumbered as this section at the direction of the Revisor of Statutes.

§§ 10B-129 through 10B-134: Reserved for future codification purposes.

§ 10B-135. Validity of notarial certificates.

Statute text

The provisions contained in Article 1, Part 6, of this Chapter, with regard to notarial certificate forms, are applicable for the purposes of this Article.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-53. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-136. Form of evidence of authority of electronic notarial act.

Statute text

Electronic evidence of the authenticity of the official electronic signature and electronic seal of an electronic notary of this State, if required, shall be attached to, or logically associated with, a notarized electronic document transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the government of the United States.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-54. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-137. Certificate of authority for electronic notarial act.

Statute text

(a) An electronic certificate of authority evidencing the authenticity of the official electronic signature and electronic seal of an electronic notary of this State shall contain substantially the following words:

Certificate of Authority for an Electronic Notarial Act

I, _____ (name, title, jurisdiction of commissioning official) certify that _____ (name of electronic notary), the person named as an electronic notary public in the attached or associated document, was indeed registered as an electronic notary public for the State of North Carolina and authorized to act as such at the time of the document's electronic notarization.

To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic signature this _____ day of _____, 20____.

(Electronic signature (and seal) of commissioning official)

(b) The Secretary may charge ten dollars (\$10.00) for issuing an electronic certificate of authority.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-55. It has been renumbered as this section at the direction of the Revisor of Statutes.

§§ 10B-138 through 10B-144: Reserved for future codification purposes.

PART 6.

ENFORCEMENT.

§ 10B-145. Restriction or revocation of registration.

Statute text

The Secretary or the Secretary's designee shall have the authority to warn, restrict, suspend, or revoke an electronic notary registration for a violation of this Chapter and on any ground for which electronic notary registration may be denied under this Chapter.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-56. It has been renumbered as this section at the direction of the Revisor of Statutes.

§ 10B-146. Wrongful manufacture, distribution, or possession of software or hardware.

Statute text

(a) Any person who knowingly creates, manufactures, or distributes software for the purpose of allowing a person to act as an electronic notary without being commissioned and registered in accordance with this act shall be guilty of a Class G felony.

(b) Any person who wrongfully obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, file, or hardware enabling an electronic notary to affix an official electronic signature is guilty of a Class I felony.

History

(2005-391, s. 4.)

Annotations

Editor's Note. - Session Laws 2005-391, s. 4, enacted this section as G.S. 10B-57. It has been renumbered as this section at the direction of the Revisor of Statutes.

Session Laws 2005-391, s. 12, provides: "This act shall not affect any civil or criminal litigation pending on December 1, 2005. Any act committed prior to December 1, 2005 which violated any provision of the statutes repealed or amended by this act shall be subject to enforcement, prosecution, conviction, and punishment as if this act had not been enacted. Any claim arising under any provisions of the statutes repealed or amended by this act prior to December 1, 2005 shall remain valid as if this act had not been enacted."

Session Laws 2005-391, s. 13, provides in part: "G.S. 10B-60 and G.S. 10B-146 apply to offenses committed on or after December 1, 2005, without regard to whether a commission was issued under Chapter 10A or Chapter 10B of the General Statutes."