



CHICAGO BULL

EDITION 34

New Notary Act (NCGS Chapter 10B) -- CAUTION: Read It Again . . . and Again!!

Beginning 12/1/05, an **entirely new and very detailed Notary Act** is in effect as Chapter 10B of the North Carolina General Statutes! Attorneys and staff need to be aware of these changes and consider how they affect day-to-day practice!

- **Notarial certificate additional requirements** applicable to acknowledgments, oaths, affirmations, jurate, verifications or proofs, *old or new forms* (including AOC forms & affidavits) (G.S. 10B-20 & 10B-40 *et seq.*):
 - **County of act**
 - **Typed or printed name of notary near signature**
 - **Blank spaces or lines** must be crossed out or marked through

- **Notarial certificate forms** (including the old “*sworn to and subscribed*” jurats, oaths and affirmations) are *significantly different* from those in common usage. Forms (old & new) still applicable include:
 - **Other statutorily forms** (other than Chapter 47) were not replaced but *must include*:
 - county of acknowledgment and
 - typed or printed name of notary near signature
 - **“Safe harbor” forms** provided in the act can be used in lieu of Chapter 47 forms or whenever no other statutory form is required. (G.S. 10B-41(a), 10B-42(a) or 10B-43(a)).
 - **Chapter 47 forms** can still be used, but are only for:
 - individual (G.S. 47-38)
 - husband and wife (G.S. 47-40)
 - corporation (G.S. 47-41.01 & G.S. 47-41.02)
 - attorney in fact signing for principal (G.S. 47-43)
 - subscribing witness (G.S. 47-13.1; however, compare new G.S. 10B-42)
 - **CAUTION: Partnerships, limited partnership, limited liability companies, fiduciary executions**, among others, are **not** clearly covered by a Chapter 47 form currently, so acknowledgments should comply with *new* Chapter 10B requirements or “safe harbor” forms.
 - **Detailed requirements** for any other form are provided (G.S. 10B-40 *et seq.*)

- **“Official seal” detailed requirements** apply at initial or re-commissioning. (G.S. 10B-36 & -37)
CAUTION: Most current seals will not comply and will need replacement!
CAUTION: DO NOT rely on seal manufacturers to know the new rules!!!

- **Disqualifications** of notary from providing a notarial act, if:
 - 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.” G.S. 10B-20(c)(3)
 - In the notary’s judgment, the principal or subscribing witness is not acting of their “own free will.” G.S. 10B-20(c)(4)
 - The notary is a signer or named (other than as trustee of a deed of trust). G.S. 10B-20(c)(5)
CAUTION: Earlier familial or relationship disqualifications have been removed.
CAUTION: Disqualification includes not just “parties”, but anyone named, for example, attorney named in separation agreement or will or in a deed.

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- **Foreign state or federal notarial certificates** are valid if complying with that state's or federal laws, even if not conforming to NC forms. **GS 10B-20(f) & (g) & GS 10B-40(e)** Statutes and forms for out-of-state acknowledgments are available at: ntiweb.com
- **Exam** (to be on-line) required at initial and re-commissioning for all notaries. G.S. 10B-8 & -11
- **6-hour class** for new notary applicants (other than NC licensed attorneys)
- **Criminal penalties, including aiding and abetting**, are increased (G.S. 10B-60), including upon violation of requirements under G.S. 10B-20 for:
 - **Personal appearance of the signer before the notary (defined in G.S. 10B-3(16))**
 - **Personal identification of signer or "credible witness" or "personal knowledge" of notary (defined in G.S. 10B-3(5), (17) & (22))**
- **Electronic notarization**, subject to technology standards & additional requirements. G.S. 10B-100

A new Guidebook should be available by summer 2006. In the interim, the Secretary of State is posting useful Highlights, FAQ's and new forms on her notary public website: <http://www.secretary.state.nc.us/notary/>

Powerpoint presentations on-line at:

Secretary of State, Summary of Changes: <http://www.sosnc.com/notarypublicact.pdf>
Chicago Title, Bulls Bulletins Articles & Forms: <http://www.northcarolina.ctt.com/chicagobulls.asp>

NOTE: The act is available in Lexis and was recodified from the initial Session Law numbering.

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