

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 778  
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Short Title: Corporate Instruments.

(Public)

Sponsors:

Referred to:

April 24, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE LAWS REGARDING THE EXECUTION OF  
3 CORPORATE INSTRUMENTS.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 55-17-05 reads as rewritten:  
6 "**§ 55-17-05. Curative statute.**

7 All deeds, conveyances and other instruments executed prior to the effective date of  
8 this Chapter and validated by the curative provisions of former G.S. 55-36.1 and former  
9 Article 12 of Chapter 55 as they were immediately prior to such effective date shall be  
10 valid and effective to the same extent as if those provisions had not been amended or  
11 repealed. The provisions of former G.S. 55-36 shall continue to apply to all instruments  
12 executed before July 1, 1990, to which that section applied."

13 Sec. 2. Article 2 of Chapter 47 of the General Statutes is amended by adding  
14 a new section to read:

15 "**§ 47-18.2. Execution of corporate instruments; authority and proof.**

16 (a) Notwithstanding anything to the contrary in the bylaws or articles of  
17 incorporation, when it appears on the face of an instrument registered in the office of the  
18 register of deeds that the instrument was signed in the ordinary course of business on  
19 behalf of a domestic or foreign corporation by its chairman, president, chief executive  
20 officer, a vice-president or an assistant vice-president, or chief financial officer, and  
21 attested or countersigned by another person who is its secretary or an assistant secretary,  
22 (or, in the case of a bank, its secretary, assistant secretary, cashier, or assistant cashier),

1 such an instrument shall be as valid with respect to the rights of innocent third parties as  
2 if executed pursuant to authorization from the board of directors, unless the instrument  
3 reveals on its face a potential breach of fiduciary obligation. The subsection shall not  
4 apply to parties who had actual knowledge of lack of authority or of a breach of  
5 fiduciary obligation.

6 (b) Any instrument registered in the office of the register of deeds, appearing on  
7 its face to be executed by a corporation, foreign or domestic, and bearing a seal which  
8 purports to be the corporate seal, setting forth the name of the corporation engraved,  
9 lithographed, printed, stamped, impressed upon, or otherwise affixed to the instrument,  
10 is **prima facie** evidence that the seal is the duly adopted corporate seal of the  
11 corporation, that it has been affixed as such by a person duly authorized so to do, that  
12 the instrument was duly executed and signed by persons who were officers or agents of  
13 the corporation acting by authority duly given by the board of directors, and that any  
14 such instrument is the act of the corporation, and shall be admissible in evidence  
15 without further proof of execution.

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

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

22 (e) The Home Owners Loan Corporation or any corporation, the majority of  
23 whose stock is owned by the United States government, may convey lands or other  
24 property which is transferable by deed which is duly executed by either an officer,  
25 manager, or agent of said corporation, sealed with the common seal and has attached  
26 thereto a signed and attested resolution, under seal, of the board of directors of said  
27 corporation authorizing the said officer, manager, or agent to execute, sign, seal, and  
28 attest deeds, conveyances, or other instruments. This section shall be deemed to have  
29 been complied with if an attested resolution is recorded separately in the office of the  
30 register of deeds in the county where the land lies, which said resolution shall be  
31 applicable to all deeds executed subsequently thereto and pursuant to its authority. All  
32 deeds, conveyances, or other instruments which have been heretofore or shall be  
33 hereafter so executed shall, if otherwise sufficient, be valid and shall have the effect to  
34 pass the title to the real or personal property described therein."

35 Sec. 3. G.S. 47-41 is repealed. The provisions of G.S. 47-41 shall continue  
36 to apply to all instruments executed before the effective date of this section of this act.

37 Sec. 4. Article 3 of Chapter 47 of the General Statutes is amended by adding  
38 a new section to read:

39 "**§ 47-41.01. Corporate conveyances.**

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

43 (b) If the deed or other instrument is executed by the corporation's chairman,  
44 president, chief executive officer, a vice-president or an assistant vice-president, or chief

1 financial officer signing the name of such corporation by him as such officer, is sealed  
2 with its common or corporate seal, and is attested by another person who is its secretary  
3 or assistant secretary, trust officer, assistant trust officer, associate trust officer, or, in  
4 case of a bank, its secretary, assistant secretary, cashier or assistant cashier, the  
5 following form of acknowledgment is sufficient:

6 .....

7 (State and county, or other  
8 description of place where  
9 acknowledgment is taken)

10 I, .....

11 (Name of officer taking  
12 acknowledgment)

.....

13 (Official title of officer  
14 taking acknowledgment)

15 certify that .....personally came before

16 **(NAME OF SECRETARY, ASSISTANT SECRETARY,**  
17 **TRUST OFFICER, ASSISTANT TRUST OFFICER,**  
18 **CASHIER OR ASSISTANT CASHIER)**

19 me this day and acknowledged that he (or she) is.....

20 (Secretary, assistant  
21 secretary, trust officer,  
22 assistant trust officer,  
23 cashier or assistant  
24 cashier)

25 of ..... a corporation, and that by authority duly

26 (Name of corporation)

27 given and as the act of the corporation, the foregoing instrument was signed in its name  
28 by its.....

29 **(CHAIRMAN, PRESIDENT, CHIEF EXECUTIVE**  
30 **OFFICER, VICE-PRESIDENT, ASSISTANT**  
31 **VICE-PRESIDENT, OR CHIEF FINANCIAL OFFICER)**

32 sealed with its corporate seal, and attested by himself (or herself) as its

33 .....

34 **(SECRETARY, ASSISTANT SECRETARY,**  
35 **TRUST OFFICER, ASSISTANT TRUST OFFICER,**  
36 **CASHIER OR ASSISTANT CASHIER)**

37 My commission expires .....

38 (Date of expiration of commission as notary  
39 public)

40 Witness my hand and official seal, this the .....day of

41 .....  
42 (Month)

43 .....  
44 (Year)

.....  
(Signature of officer taking acknowledgment)

1 (Official seal, if officer taking  
2 acknowledgment has one)

3 (1) The words 'a corporation' following the blank for the name of the  
4 corporation may be omitted when the name of the corporation ends  
5 with the word 'Corporation' or 'Incorporated.'

6 (2) The words 'My commission expires' and the date of expiration of the  
7 notary public's commission may be omitted except when a notary  
8 public is the officer taking the acknowledgment.

9 (3) The words 'and official seal' and the seal itself may be omitted when  
10 the officer taking the acknowledgment has no seal or when such  
11 officer is the clerk, assistant clerk, or deputy clerk of the superior court  
12 of the county in which the deed or other instrument acknowledged is to  
13 be registered."

14 Sec. 5. Article 3 of Chapter 47 of the General Statutes is amended by adding  
15 a new section to read:

16 **"§ 47-41.02. Other forms of probate for corporate conveyances.**

17 (a) The following forms of probate for deeds and other conveyances executed by  
18 a corporation shall also be deemed sufficient but shall not exclude other forms of  
19 probate with would be deemed sufficient in law.

20 (b) If the instrument is executed by the president or presiding member or trustee  
21 and two other members of the corporation, and sealed with the common seal, the  
22 following form shall be sufficient:

23 North Carolina, ..... County.

24 This ..... day of ....., A.D. ...., personally came before me (here give the name  
25 and official title of the officer who signs this certificate) A.B. (here give the name of the  
26 subscribing witness), who, being by me duly sworn, says that he knows the common  
27 seal of the (here give the name of the corporation), and is also acquainted with C.D.,  
28 who is the president (or presiding member or trustee), and also with E.F. and G.H., two  
29 other members of said corporation; and that he, the said A.B., saw the said president (or  
30 presiding member or trustee) and the two said other members sign the said instrument,  
31 and saw the said president (or presiding member or trustee) affix the said common seal  
32 of said corporation thereto, and that he, the said subscribing witness, signed his name as  
33 such subscribing witness thereto in their presence. Witness my hand and (when an  
34 official seal is required by law) official seal, this ..... day of ..... (year).

35 (Official seal.)

36 .....  
37 (Signature of officer.)

38 (c) If the deed or other instrument is executed by the president, presiding  
39 member or trustee of the corporation, and sealed with its common seal, and attested by  
40 its secretary or assistant secretary, either of the following forms of proof and certificate  
41 thereof shall be deemed sufficient:

42 North Carolina, ..... County.

43 This ..... day of ....., A.D. ...., personally came before me (here give name and  
44 official title of the officer who signs the certificate) A.B. (here give the name of the

1 attesting secretary or assistant secretary), who, being by me duly sworn, says that he  
 2 knows the common seal of (here give the name of the corporation), and is acquainted  
 3 with C.D., who is the president of said corporation, and that he, the said A.B., is the  
 4 secretary (or assistant secretary) of the said corporation, and saw the said president sign  
 5 the foregoing (or annexed) instrument, and saw the said common seal of said  
 6 corporation affixed to said instrument by said president (or that he, the said A.B.,  
 7 secretary or assistant secretary as aforesaid, affixed said seal to said instrument), and  
 8 that he, the said A.B., signed his name in attestation of the execution of said instrument  
 9 in the presence of said president of said corporation. Witness my hand and (when an  
 10 official seal is required by law) official seal, this the..... day of ..... (year).

11 (Official seal.)

12 \_\_\_\_\_  
 13 (Signature of officer.)

14 North Carolina, ..... County.

15 This is to certify that on the ..... day of....., 19 ....., before me personally came .....  
 16 (president, vice-president, secretary or assistant secretary, as the case may be), with  
 17 whom I am personally acquainted, who, being by me duly sworn, says that..... is the  
 18 president (or vice-president), and..... is the secretary (or assistant secretary) of the .....  
 19 the corporation described in and which executed the foregoing instrument; that he  
 20 knows the common seal of said corporation; that the seal affixed to the foregoing  
 21 instrument is said common seal, and the name of the corporation was subscribed thereto  
 22 by the said president (or vice-president), and that said president (or vice-president) and  
 23 secretary (or assistant secretary) subscribed their names thereto, and said common seal  
 24 was affixed, all by order of the board of directors of said corporation, and that the said  
 25 instrument is the act and deed of said corporation. Witness my hand and (when an  
 26 official seal is required by law) official seal, this the ..... day of ..... (year).

27 (Official seal.)

28 \_\_\_\_\_  
 29 (Signature of officer.)

30 (d) If the deed or other instrument is executed by the signature of the president,  
 31 vice-president, presiding member or trustee of the corporation, and sealed with its  
 32 common seal and attested by its secretary or assistant secretary, the following form of  
 33 proof and certificate thereof shall be deemed sufficient:

34 This ..... day of ....., A.D. ...., personally came before me (here give name and  
 35 official title of officer who signs the certificate) A.B., who, being by me duly sworn,  
 36 says that he is president (vice-president, presiding member or trustee) of the.....  
 37 Company, and that the seal affixed to the foregoing (or annexed) instrument in writing  
 38 is the corporate seal of said company, and that said writing was signed and sealed by  
 39 him in behalf of said corporation by its authority duly given. And the said A.B.  
 40 acknowledged the said writing to be the act and deed of said corporation.

41 (Official seal.)

42 \_\_\_\_\_  
 43 (Signature of officer.)

(e) All corporate conveyances probated and recorded prior to February 14, 1939, wherein the same was attested by the assistant secretary, instead of the secretary, and otherwise regular, are hereby validated as if attested by the secretary of the corporation.

(f) The following forms of probate for contracts in writing for the purchase of personal property by corporations providing for a lien on the property or the retention of a title thereto by the vendor as security for the purchase price or any part thereof, or chattel mortgages, chattel deeds of trust, and conditional sales of personal property executed by a corporation shall be deemed sufficient but shall not exclude other forms of probate which would be deemed sufficient in law:

North Carolina

..... County

I, ....., do hereby certify that.....

(Name of president, secretary or treasurer)

personally came before me this day and acknowledged that he is

..... of ..... and acknowledged,

(President, secretary (Name of corporation)

or treasurer)

on behalf of ....., the grantor, the due

(Name of corporation)

execution of the foregoing instrument.

Witness my hand and official seal, this .....day of .....

19.....

(Official seal)

..... (Title of officer)

..... (Name of state)

..... (County)

I, .....

(Name of officer taking proof)

(Official title of officer taking proof)

of ....., certify that

(County)

(Name of state)

..... personally appeared before

(Name of subscribing witness)

me, and being duly sworn, stated that in his presence

**(NAME OF PRESIDENT, SECRETARY OR TREASURER OF MAKER)**

(signed the foregoing instrument) (acknowledged the execution of the foregoing instrument.) (Strike out the words not applicable.)

Witness my hand and official seal, this .....day of

....., 19.....

1 (Month) (Year)

2  
3 .....  
(Signature of official taking proof)

4  
5 .....  
(Official title of official taking proof)

6 My commission expires .....  
7 (Date of expiration of official's  
8 commission)

9 (g) All deeds and other conveyances executed on or before April 12, 1974, by the  
10 president, any vice-president, assistant vice-president, manager, comptroller, treasurer,  
11 assistant treasurer, trust officer or assistant trust officer, or chairman or vice-chairman of  
12 a corporation are hereby validated to the extent that such deeds or other conveyances  
13 were otherwise properly executed, probated, and recorded."

14 Sec. 6. G.S. 45-42 reads as rewritten:

15 "**§ 45-42. Release Satisfaction of corporate mortgages by corporate officers.**

16 All mortgages and deeds in trust executed to a corporation may be satisfied and so  
17 marked of record as by law provided for the satisfaction of mortgages and deeds in trust,  
18 by ~~the president, any vice president, assistant to the president, assistant vice president,~~  
19 ~~manager, credit manager, comptroller, cashier, assistant cashier, secretary, assistant secretary,~~  
20 ~~treasurer, assistant treasurer, trust officer or assistant trust~~ any officer of such the corporation  
21 signing the name of such corporation by him as such officer, indicating the office held. For  
22 the purposes of recordation and cancellation, such signature shall be deemed to be a  
23 certification by the signer that he is an officer and is authorized to execute the  
24 satisfaction on behalf of such corporation. Where mortgages or deeds in trust were  
25 marked 'satisfied' on the records before the twenty-third day of February, 1909, by any  
26 president, secretary, treasurer or cashier of any corporation by such officer writing his  
27 own name and affixing thereto the title of his office in such corporation, such  
28 satisfaction is validated, and is as effective to all intents and purposes as if a deed of  
29 release duly executed by such corporation had been made, acknowledged and recorded."

30 Sec. 7. Sections 1 and 2 of this act are effective July 1, 1990, but shall not  
31 apply in any action or proceeding filed on or after July 1, 1990, and before the  
32 ratification of this act. The remainder of this act becomes effective October 1, 1991.