

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 778

Short Title: Corporate Instruments.

(Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

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11 repealed.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),
23 such an instrument shall be as valid with respect to the rights of innocent third parties as
24 if executed pursuant to authorization from the board of directors, unless the instrument

1 reveals on its face a potential breach of fiduciary obligation. The subsection shall not
2 apply to parties who had actual knowledge of lack of authority or of a breach of
3 fiduciary obligation.

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

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

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

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

33 Sec. 3. G.S. 47-41 is repealed.

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

36 "**§ 47-41.01. Corporate conveyances.**

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

40 (b) If the deed or other instrument is executed by any officer signing the name of
41 such corporation by him as such officer, is sealed with its common or corporate seal,
42 and is attested by another person who is its secretary or assistant secretary, trust officer,
43 assistant trust officer, associate trust officer, or, in case of a bank, its secretary, assistant

1 secretary, cashier or assistant cashier, the following form of acknowledgment is
2 sufficient:

3

4 (State and county, or other
5 description of place where
6 acknowledgment is taken)

7 I,

8 (Name of officer taking
9 acknowledgment)

.....

(Official title of officer
taking acknowledgment)

10 certify that personally came before

11 **(NAME OF SECRETARY, ASSISTANT SECRETARY,**
12 **TRUST OFFICER, ASSISTANT TRUST OFFICER,**
13 **CASHIER OR ASSISTANT CASHIER)**

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

15 (Secretary, assistant
16 secretary, trust officer,
17 assistant trust officer,
18 cashier or assistant
19 cashier)

20 of, a corporation, and that by authority duly

21 (Name of corporation)

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

24 (Title of officer)

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

26

27 **(SECRETARY, ASSISTANT SECRETARY,**
28 **TRUST OFFICER, ASSISTANT TRUST OFFICER,**
29 **CASHIER OR ASSISTANT CASHIER)**

30 My commission expires

31 (Date of expiration of commission as notary
32 public)

33 Witness my hand and official seal, this theday of

34
35 (Month)

36
37 (Year)

38
39 (Signature of officer taking acknowledgment)

40 (Official seal, if officer taking
41 acknowledgment has one)

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

1 corporation affixed to said instrument by said president (or that he, the said A.B.,
2 secretary or assistant secretary as aforesaid, affixed said seal to said instrument), and
3 that he, the said A.B., signed his name in attestation of the execution of said instrument
4 in the presence of said president of said corporation. Witness my hand and (when an
5 official seal is required by law) official seal, this the..... day of (year).

6 (Official seal.)

7 _____
8 (Signature of officer.)

9 North Carolina, County.

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

22 (Official seal.)

23 _____
24 (Signature of officer.)

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

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

36 (Official seal.)

37 _____
38 (Signature of officer.)

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

42 (f) The following forms of probate for contracts in writing for the purchase of
43 personal property by corporations providing for a lien on the property or the retention of
44 a title thereto by the vendor as security for the purchase price or any part thereof, or

1 chattel mortgages, chattel deeds of trust, and conditional sales of personal property
2 executed by a corporation shall be deemed sufficient but shall not exclude other forms
3 of probate which would be deemed sufficient in law:

4 North Carolina

5 County

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

7 (Name of president,

8 secretary or treasurer)

9 personally came before me this day and acknowledged that he is

10 of and acknowledged,

11 (President, secretary (Name of corporation)

12 or treasurer)

13 on behalf of, the grantor, the due

14 (Name of corporation)

15 execution of the foregoing instrument.

16 Witness my hand and official seal, thisday of

17 19.....

18 (Official seal)

19
20 (Title of officer)

21
22 (Name of state)

23
24 (County)

25 I,

26 (Name of officer taking proof)

27 (Official title of officer
28 taking proof)

29 of, certify that

30 (County) (Name of state)

31 personally appeared before

32 (Name of subscribing witness)

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

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

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

37 Witness my hand and official seal, thisday of

38, 19.....

39 (Month) (Year)

40
41 (Signature of official taking proof)

42
43 (Official title of official taking proof)

44 My commission expires

