

# SUMMARY OF CHANGES

## Chapter 10B, Article I, Notaries



**Effective December 1, 2005**

**(The new Notary Act has been renumbered since it was enacted. Please note the new cites as the Act will be codified in the General Statutes.)**

## Purposes of the Chapter

- Three new purposes added in 10B-2:
  - (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.**

## Definitions: Twenty-eight new or amended definitions added to 10B-3, including:

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- Affirmation
  - Attest
  - Credible Witness
  - Jurat
  - Moral Turpitude
  - Nickname
  - Notarial Certificate
  - Personal Appearance
  - Principal
  - Record
  - Regular Place or work or business
  - Revocation
  - Seal/Stamp
  - Signature (Notary's)
  - Subscribing Witness
  - Suspension & Restriction
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## Qualifications

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- Three new qualifications and one amended qualification added to 10B-5(b):

- (1) 18 years or older or legally emancipated
  - (3) Reside legally in the United States.
  - (4) Speak, read, and write the English language.
  - (5) Possess a high school diploma or equivalent.
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## Elected Official Recommendation – 10B-5(b)(8)

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- # As of December 1<sup>st</sup> notaries who are commissioned in counties with 15,000 or more notaries on January 1 of the year the application is filed do not have to receive an elected official's recommendation on their Initial Application.
    - Wake County is the only county that this would apply to December 1<sup>st</sup>.
    - On January 1, 2006, other counties may join the list.
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## Denial of Application – 10B-5(d)

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- # Four new reasons for denying applications:
    - (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.
    - (7) A finding by a state bar or court that the applicant has engaged in the unauthorized practice of law.
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## Denial of Application – Amended 10B-5(d)

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- (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.
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## The Application – 10B-6 and 7

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- ✦ Initial and Reappointment Application combined into one application.
  - ✦ Applicant must enter legal name, but may also use a different commissioning name, excluding nicknames. Two initials for both the first and middle names will not be accepted.
  - ✦ Permanent Resident Card is required for non-citizens of the U. S. (Form I-551).
  - ✦ Last 4 digits of the Social Security number.
  - ✦ **Current** guidebook! (The School of Government will be publishing the 2006, 10<sup>th</sup> Edition. As of December 1, 2005, however, the most current guidebook is the 2004 9<sup>th</sup> Edition until the 10<sup>th</sup> Edition is published.)
  - ✦ Notary's information on application is public record *except for* date of birth, mailing and residence addresses, telephone number, last 4 digits of Social Security number, and e-mail addresses.
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## Course of Study – 10B-8

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- # Applicant must apply for initial commission within 3 months of taking class.
- # Instruction must not be less than 6 hours.
- # Applicant must pass final notary exam with at least an 80% score.
- # Re-commissioning requires a written exam, except for licensed members of the N.C. State Bar.
- # An on-line **re-appointment** exam will be available by going to the Department's website at [www.sosnc.com](http://www.sosnc.com). There you will find instructions for taking the exam.

## Oath of Office – 10B-10

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- # **New Time Frame for taking the Oath - Notary has only 45 days after commissioning to take oath in the Register of Deeds office. *If later than 45 days, commission will be cancelled.***



## Re-commissioning – 10B-11

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- # Notary may apply for re-commissioning no earlier than *10 weeks* prior to expiration date.
  - # 3 new requirements for re-commissioning:
    - Submit a new application.
    - Meet all requirements for initial commissioning except for the educational and elected official recommendation requirements.
    - Pass a written (on-line) exam unless a licensed member of the N. C. State Bar.
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## Re-commissioning after expiration of Notary Commission – 10B-11

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- # Notary may reapply for re-commissioning within one year after expiration of commission.
  - # Must comply with all other re-commissioning requirements.
  - # Must also fulfill educational requirement (notary class).
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## Sworn/Affirmed Declaration of Applicant on Application-10B-12

### 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 can speak, read, and write the English language; 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)

## Notary Instructor's Certification – 10B-14

- ⚡ Four new provisions:
- At least one year active notary experience
  - **Former** Registers of Deeds and Clerks of Court must apply for regular notary commissioning.
  - Assistant and Deputy Registers and Clerks must have regular notary commissioning.
  - Secretary may suspend or revoke instructor certification for violating any provisions of the Notary Act.



## Powers and Limitations – 10B-20

### # “New power” includes executing jurats:

- "Jurat" means the language contained in 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.

## Disqualifications to Perform a Notary Act – 10B-20(c)

### # Four new disqualifications:

- Principal signer or subscribing witness not in notary's presence.
- Principal signer or subscribing witness not known to notary or is unable to produce satisfactory evidence of I.D.
- Notary doubts principal's or subscribing witness's understanding of the document.
- Notary doubts principal or subscribing witness acting on his or her own free will.

## Signature by Mark – 10B-20(d)

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- # Same validity as any other signature.
- # Notary must write below signer's mark "**Mark affixed by (name of signer by mark) in presence of undersigned notary**".

## Principal signer is physically unable to sign. – 10B-20(e)

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- # Signer may designate another person to sign on the principal's behalf. Designee may not be an interested party to the record.
- # Record must also have two witnesses.
- # Notary must write below principal's signature: "**Signature affixed by designee in the presence of (names and addresses of principal and witnesses)**".

## If the record does not contain a notarial certificate.....

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- # A non-attorney notary *shall not* determine the type of notarial act or certificate to be used.
  - # A non-attorney notary may, however, offer a selection of certificate forms....let the signer choose.
  - # It is ultimately the *preparer's* responsibility to have the correct notary certificate on the document.
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## Which Certificates to Use????

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- # Any certificate that is already prescribed by law including G. S. 47 – Probate and Registration; G. S. 32A – Health Care Powers of Atty., Short-Form Power of Atty., etc.
  - # The certificates that are contained in G. S. 10B-41, 10B-42; 10B-43 and in any administrative rules such as proposed 18 NCAC 7A .0600 (see next page.)
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# Proposed Certificates in 18 North Carolina Administrative Code 7A .0600

## Acknowledgment

\_\_\_\_\_ County  
North Carolina

I certify that the following person(s) personally appeared before me this day, and (I have personal knowledge of the identity of the principal (s)) (I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principle's photograph in the form of a \_\_\_\_\_) (a credible witness has sworn to the identity of the principal(s)); 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: \_\_\_\_\_

# Proposed Certificates in 18 North Carolina Administrative Code 7A .0600

## Proof

\_\_\_\_\_ County  
North Carolina

I certify that (*name of subscribing witness*) personally appeared before me this day and (I have personal knowledge of the identity of the principal(s)) (I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principle's photograph in the form of a \_\_\_\_\_) (a credible witness has sworn to the identity of the principal(s)); 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: \_\_\_\_\_

## Proposed Certificates in 18 North Carolina Administrative Code 7A .0600

Oath or Affirmation

\_\_\_\_\_ County  
North Carolina

Sworn to (or affirmed) and subscribed before me this day by *name of principal*. (I have personal knowledge of the identity of the principal(s)) (I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a \_\_\_\_\_) (a credible witness has sworn to the identity of the principal(s)).

Date: \_\_\_\_\_

*(Official Signature of Notary)*

(Notary's printed or typed name), Notary Public

*(Official Seal)*

My commission expires: \_\_\_\_\_

## Acknowledgment, Proof, and Oath Certificates In General For All Other Certificates Not Otherwise Prescribed by Law. – 10B-40

- (1) Identifies the state and county in which the act occurred;
- (2) Names the signer 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 signer 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.

## Additional Proof Certificate Components If Not Using a Proof Certificate Otherwise Prescribed by Law. – 10B-40

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- # “Signer” is the subscribing witness.
- # Proof certificate also names the principal whose signature on the record is to be verified or proven.
- # Subscribing witness (signer) certifies under oath or affirmation that he or she is not a named party, has no interest in the transaction and either witnessed the signing of the record or was told by the principal that he or she acknowledged record.

*Approved Certificates will also be posted on the Department’s website at [www.sosnc.com](http://www.sosnc.com).*

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## Blank Lines in the Certificate – 10B-20(o)

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- # Notary shall cross out or mark through all blank lines or spaces in the notarial certificate except when the blank lines or spaces are left to be filled in later indicating when and where a power of attorney is recorded.
  - # Failure to cross out or mark though blank lines or spaces will not affect the validity of the certificate or related record, and shall not be grounds for record refusal in a Register of Deeds office.
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## False Certificate – 10B-22

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- #Notary knows information in certificate is false.
- #Notarial certificate is in a language other than English.

## Improper Notarizations – 10B-23

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- #Notarial certificate is missing.
- #Notary certifies, notarizes or authenticates a photograph.

## Testimonials – 10B-24

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- ⚡ **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.**

## Notarial Fees – 10B-31

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- ⚡ A notary may charge **\$5.00** per signature for acknowledgments, jurats, verifications or proofs, and **\$5.00** per person for an oath or affirmation without a signature.
- ⚡ A notary may not charge a credible witness to verify a principal's identity.
- ⚡ A notary may not condition the fee for an act on any attribute of the principal that would constitute unlawful discrimination.
- ⚡ A notary does not have to charge a fee at all.

## Notice of Fees – 10B-32

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**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.**

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## Official Signature (the notary's) should read...\*

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### **10B-35. Official Signature.**

**When notarizing a paper record, a notary shall sign by hand in ink on the notarial certificate exactly and only the name indicated on the notary's commission. The notary shall print or type his or her name directly below the official signature. The notary shall affix the official signature only after the notarial act is performed. The notary shall not sign a paper record using a facsimile stamp or an electronic or other printing method.**

**\* This language was omitted in the Act – technical amendments to include this language are planned.**

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## Official Seal – 10B-36

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- # Exclusive property of the notary.
- # Kept by the notary in a secure location.
- # Not to be used or possessed by any other person.
- # Shall not be surrendered to employer after termination of employment.

## Only 4 Components to be in Seal – 10B-37

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- # Name as Commissioned
- # Notary Public
- # North Carolina
- # County Name in which commissioned
- # Still optional but not recommended: Expiration Date of Commission

**Note: Anything else in the seal is not acceptable and this includes graphics or additional language. Existing notaries will be required to purchase a new seal that meets these requirements *upon re-commissioning.***

## Affixing and Positioning the Seal – 10B-37

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- # Affixed only after the notarial act is performed.
- # On the same page and as near as possible to the signature.

## Stolen, Lost, or Damaged Seal – 10B-36(c)

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- # Within 10 days of discovering that the notary's seal has been stolen, lost, damaged, or otherwise rendered incapable of affixing a legible seal:
  - Inform local law enforcement agency in the case of theft or vandalism.
  - Notify, in writing, the Register of Deeds in the county in which commissioned and the Secretary of State.

## Seal Delivered to the Secretary for Disposal – 10B-36(d)

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- ‡ **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.**

## Seal Size and Expiration Date – 10B-37(c)

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- ‡ **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.**
- ‡ **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 the time that the notarial act is performed.**



## Changes in Status

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- # Address change – 10B-50
  - Within **45** days, notary shall send the Secretary changes to the notary's residence, ***business, or any mailing address or telephone numbers by fax, e-mail, or certified mail...***
- # Name change – 10B-51
  - Within **45** days, notary shall send the Secretary a ***signed notice*** of the ***legal name change by fax, e-mail, or certified mail...*** ***The notice shall include both the notary's former name and the notary's new name.***

## Former Name Use – 10B-51(b)

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- # A notary may use his or her former name after notice is sent to the Secretary of a name change until the notary completes all of the following:
  - Receives confirmation from the Secretary.
  - Obtains a new seal.
  - Appears before the Register of Deeds within **45** days of the effective date of the change.

## County Change – 10B-52

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- # Remains commissioned in previous county until applies for re-commissioning upon commission expiration.
- # After applying for re-commissioning and receiving notice from the Secretary the notary:
  - Obtains a new seal.
  - Appears before the Register of Deeds within 45 days of re-commissioning to take oath in new county.

## Change of Both Name and County – 10B-53

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- # Within *45* days of legal name change and move to another county, notary shall submit a re-commissioning application.
- # Notary may continue notarizing under previous name until the notary:
  - Receives confirmation from the Secretary.
  - Obtains a new seal.
  - Appears before the Register of Deeds to take oath in new County.

## Resignation – 10B-54

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- # Upon resignation of commission, a notary shall send a signed notice to the Secretary *via fax, email or certified mail*.
- # *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.*

## Disposition of Seal – 10B-55

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- # Within 45 days of resignation or revocation of commission, notary shall deliver seal to Secretary via certified mail, return receipt requested. The Secretary then destroys seal.
- # If a notary dies, the notary's estate shall notify the Secretary in writing and shall deliver the notary's seal to the Secretary for destruction.



## Notary Violations and Enforcement – 10B-60

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### # *New Class 1 Misdemeanors:*

- *Performing a notarial act before the person had taken the oath of office.*
- *Takes an acknowledgment, performs an oath, affirmation, or jurat without the principal personally appearing before the notary.*

### # *New Class I Felonies:*

- *Performance of notarial acts in this State with the knowledge that the person is not commissioned under this Chapter.*
  - *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.*
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## Notary Violation by a Non-Notary – 10B-60

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- *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.*
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# G.S. 47-37.1. Other forms of Proof.

- (a) The proof and acknowledgment forms set forth in this Article are not exclusive. Without regard to whether an instrument presented for registration was signed by an individual acting in his or her own right or by an individual acting in a representative capacity, a notarial certificate that complies with the provisions of Part 6 of Article 1 of Chapter 10B (G.S. 10B-25 et. seq.) shall be deemed a sufficient form of probate or acknowledgment for purposes of this Chapter. Use of a notarial certificate that satisfies the requirements of Part 6 of Article 1 of Chapter 10B shall not be grounds for a register of deeds to refuse to accept a record for registration.
- (b) When an instrument presented for registration purports to be signed by an individual in a representative capacity, the acknowledgment or proof of that individual's signature may, but is not required to:
- # (1) State that the individual signed the instrument in a representative capacity.
  - # (2) State that the individual who signed the instrument in a representative capacity had due authority to do so.
  - # (3) Identify the represented person or entity.

## ***Division of Certification & Filing***

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