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PUBLIC OFFICERS AND EMPLOYEES Notarial Acts: Change Requirements

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PUBLIC OFFICERS AND EMPLOYEES

Notaries Public: Notarial Acts: Change Requirements

CODE SECTIONS:	O.C.G.A. §§ 45-17-1 (amended), 45-17-1.1 (new), 45-17-2 (amended), 45-17-2.1 (amended), 45-17-6 (amended), 45-17-8 (amended), 45-17-8.1 (amended), 45-17-10 (amended), and 44-7-50 (amended)
BILL NUMBER:	HB 1283
ACT NUMBER:	1630
SUMMARY:	The Act amends the Code sections relating to notarial acts to clarify the powers and duties of notaries public; to change the requirements for performance of notarial acts; to exempt real property documents from the date requirement and to provide retroactive effect as to certain documents; to provide for subscription of attachment, garnishment, and dispossessory affidavits; and to make other corrective and conforming amendments.
EFFECTIVE DATE:	April 11, 1986

History

In 1984, the Code was amended to establish a new Notary Public Act,¹ which represented a major overhaul of existing laws relating to the practice of "notarial acts".² Prior to this revision, the notary public laws in Georgia had not been substantially revised since 1947³ and were relatively

1. The 1984 Act repealed existing Code sections and reenacted chapter 17 of Title 45 to amend some sections, restate other sections without change, and enact new sections. O.C.G.A. §§ 45-17-1—45-17-31 (Supp. 1986) (see Editor's notes to article 1). The 1984 Act had an effective date of July 1, 1985, which was intended to give practitioners an opportunity to become aware of the changes in the law and to revise their procedures accordingly. Telephone interview with Valerie A. Hepburn, Director of Administration of the Secretary of State (Apr. 2, 1986) [hereinafter cited as Hepburn Interview].

2. Letter to Floor Leader Larry Walker, Georgia House of Representatives, from Valerie A. Hepburn, Director of Administration of the Secretary of State (Dec. 24, 1986) (comments and recommendations from Secretary of State on proposed changes to notary laws) [hereinafter cited as Hepburn Letter].

3. 1947 Ga. Laws 1108.

lax in comparison to those of other states.⁴ The 1984 Act was a comprehensive revision aimed at strengthening the laws governing notarial practices,⁵ and was based in part on the Uniform Law on Notarial Acts.⁶

After the effective date of the 1984 Act, some confusion arose among court clerks and attorneys as to its correct interpretation and practical application, particularly with regard to the sufficiency of notarial certification on documents to be recorded in the real property records.⁷ It required that the notary affix his or her seal and enter the date of the notarial act on the notary's certification.⁸ These requirements as applied to attestation of deeds were the most common areas of concern. The recordability of many documents relating to real estate transactions entered into after the effective date of the 1984 Act was uncertain.⁹ Due to these and other concerns, the Secretary of State, in cooperation with the Attorney General's office, clerks of various courts, and interested legislators, drafted corrective legislation, which became HB 1283.¹⁰

HB 1283

In part, the 1986 Act is intended to clarify the intent of the 1984 Act.¹¹ It defines terms used throughout the Notary Public Act, distinguishing "attestation", "notarial act", and "notarial certificate",¹² and expands the subsection dealing with powers and duties of notaries to include attesta-

4. Hepburn Interview, *supra* note 1.

5. *Id.*; see also Hepburn Letter, *supra* note 2.

6. See 14 U.L.A. 10 (Supp. 1986).

7. See Hepburn Letter, *supra* note 2. In a memorandum from John B. Ballard, Jr., Senior Assistant Attorney General, to Attorney General Michael J. Bowers, the problem was stated as follows:

It appears that when these changes took effect, they were not common knowledge, and in addition, there has been uncertainty and disagreement about their meaning. As a result some deeds have been recorded whose recordability might be questioned; other deeds have been refused recording by clerks citing the changes. The most common issues concern the new requirement of a date. It had not previously been common to include a date in attestations. Other questions concern the seal. Although not universal, use of a seal had been common, in spite of [the language of the former statute] saying the seal was not necessary.

Memorandum from John B. Ballard, Jr., Senior Assistant Attorney General, to Michael J. Bowers, Attorney General (Nov. 25, 1985), at 2 [hereinafter cited as Ballard Memorandum].

8. 1984 Ga. Laws 1105. Prior to the 1984 Act, this section of the statute stated: "No seal is required for the notary's attestation of deeds." O.C.G.A. § 45-17-6 (1982).

9. See Ballard Memorandum, *supra* note 7.

10. See Synopsis of HB 1283 (SCS): Amendments to the Notary Public Act, 1986 Governor's Press Packet (copy on file at Georgia State University Law Review Office).

11. Hepburn Interview, *supra* note 1.

12. O.C.G.A. § 45-17-1 (Supp. 1986). The 1986 Act substitutes the definitions section for O.C.G.A. § 45-17-1, and redesignates the text of the existing § 45-17-1 as § 45-17-1.1. *Id.*

tion and verifications.¹³ It also lowers the age requirement for persons endorsing the appointment of a notary public from twenty-one to eighteen.¹⁴ The 1986 Act deletes the requirement that the ink used by a notary be "indelible."¹⁵

Provisions from other proposed legislation regarding notarial authority in connection with attachment, garnishment, and dispossessory actions¹⁶ were incorporated into the Act by House Committee Substitute.¹⁷ These additions clarify that a notary may subscribe affidavits in connection with these actions, but that issuance of a writ or summons is subject to judicial review.¹⁸

The most significant changes provided by the 1986 Act deal with the date and seal requirements and the recordability of documents relating to real property transactions.¹⁹ The 1984 Act's requirement of a seal to document a notarial act is restated to clearly establish that a seal, either embossed or rubber-stamped, is necessary for authentication of a document.²⁰ The seal must contain the name of the notary, the name of the state, the county of appointment, and the words "Notary Public".²¹ The requirement of a seal to authenticate a notarial certificate from the 1984 Act will be mandatory for all notarial acts after July 1, 1986.²² However, documents relating to real property held to be unrecordable for lack of a date or seal executed after the effective date of the 1984 Act but before the effective date of the 1986 Act will not be ineligible for recording for failure to comply with the 1984 Act.²³ In addition to the curative provisions giving limited retroactive relief for failure to comply, the attestation of "deeds or any other instruments pertaining to real property" has been exempted entirely from the requirement that the notary enter the date of the notarial act.²⁴

13. O.C.G.A. § 45-17-8 (Supp. 1986) (amending O.C.G.A. § 45-17-8). The power to "attest signatures and executions of papers" was inadvertently left out of the 1984 Act. See Hepburn Letter, *supra* note 2 (attachment to letter).

14. O.C.G.A. § 45-17-2 (Supp. 1986).

15. O.C.G.A. § 45-17-8.1 (Supp. 1986); see also 1984 Ga. Laws 1105.

16. Hepburn Interview, *supra* note 1; see also HB 1170, 1986 Ga. Gen. Assem. (not enacted) (concerning issuance of attachments or garnishments); HB 1275, 1986 Ga. Gen. Assem. (not enacted) (concerning dispossessory actions).

17. See O.C.G.A. § 44-7-50 (Supp. 1986).

18. *Id.*

19. Hepburn Interview, *supra* note 1; see also Ballard Memorandum, *supra* note 7 (see accompanying cover letter).

20. O.C.G.A. § 45-17-6 (Supp. 1986); see *infra* note 23; see also *infra* notes 19 & 20 and accompanying text (curative provisions as to real property documents).

21. O.C.G.A. § 45-17-6 (Supp. 1986).

22. The Secretary of State recommended that the seal requirement be retained as to all attestations "[to ensure] that the notary actually witnessed the signatures and [to assist] in tracking the notary in future." Hepburn Letter, *supra* note 2.

23. O.C.G.A. § 45-17-6(a)(2) (Supp. 1986) (as to the seal requirement) and O.C.G.A. § 45-17-8.1(c) (Supp. 1986) (as to the date requirement).

24. O.C.G.A. § 45-17-8.1(b) (Supp. 1986).