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I N A S S E M B L Y

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COOK, HYNDMAN, TITUS -- Multi-Sponsored by -- M. of A. BARRON, NOLAN
-- read once and referred to the Committee on Judiciary

AN ACT to amend the executive law, in relation to the requirements for
notaries public and commissioners of deeds relating to certain instru-
ments affecting real property

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

- 1 Section 1. The executive law is amended by adding a new section 135-c
2 to read as follows:
3 S 135-C. REQUIREMENTS OF NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS
4 RELATED TO CERTAIN INSTRUMENTS AFFECTING REAL PROPERTY. 1. THIS SECTION
5 SHALL APPLY TO EVERY NOTARIAL ACT IN THE STATE INVOLVING A DOCUMENT OF
6 CONVEYANCE THAT TRANSFERS OR PURPORTS TO TRANSFER TITLE WITH RESPECT TO
7 RESIDENTIAL REAL PROPERTY LOCATED IN THE STATE. IT SHALL ALSO APPLY TO
8 COMMISSIONERS OF DEEDS APPOINTED PURSUANT TO SECTION ONE HUNDRED FORTY
9 OF THIS ARTICLE.
10 2. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOW-
11 ING MEANINGS:
12 A. "DOCUMENT OF CONVEYANCE" SHALL MEAN A WRITTEN INSTRUMENT THAT
13 TRANSFERS OR PURPORTS TO TRANSFER TITLE EFFECTING A CHANGE IN OWNERSHIP
14 TO RESIDENTIAL REAL PROPERTY, EXCLUDING:
15 (I) COURT ORDERED AND COURT-AUTHORIZED TRANSFER OF RESIDENTIAL REAL
16 PROPERTY INCLUDING BUT NOT LIMITED TO A TRANSFER BETWEEN SPOUSES OR
17 FORMER SPOUSES AS A RESULT OF A DECREE OF DIVORCE, DISSOLUTION OF
18 MARRIAGE, ANNULMENT, OR LEGAL SEPARATION, OR AS A RESULT OF PROPERTY
19 SETTLEMENT, OR AGREEMENT INCIDENTAL TO A DECREE OF DIVORCE, DISSOLUTION
20 OF MARRIAGE, ANNULMENT, OR LEGAL SEPARATION;
21 (II) A TRANSFER ORDER BY A PROBATE COURT DURING THE ADMINISTRATION OF
22 A DECEDENT'S ESTATE;
23 (III) A JUDGMENT OF A FORECLOSURE AND SALE, OR A LEVY PURSUANT TO AN
24 EXECUTION;
25 (IV) A COURT ORDERED VOIDING OF AN INSTRUMENT AFFECTING REAL PROPERTY;

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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(V) A TRANSFER OF PROPERTY TO A TRUST IN WHICH THE BENEFICIARY IS OR INCLUDES THE GRANTOR; AND

(VI) A DEED FROM A GRANTOR TO HIMSELF OR HERSELF THAT IS INTENDED TO CHANGE THE NATURE OR TYPE OF TENANCY BY WHICH HE OR SHE OWNS RESIDENTIAL REAL PROPERTY.

B. "FINANCIAL INSTITUTION" SHALL MEAN A BANK, TRUST COMPANY, SAVINGS INSTITUTION, OR CREDIT UNION, CHARTERED AND SUPERVISED UNDER STATE OR FEDERAL LAW.

C. "NOTARIAL RECORD" SHALL MEAN THE WRITTEN DOCUMENT CREATED IN CONFORMITY WITH THE REQUIREMENTS OF THIS SECTION.

D. "RESIDENTIAL REAL PROPERTY" SHALL MEAN A BUILDING OR BUILDINGS CONSISTING OF ONE TO THREE DWELLING UNITS.

E. "SIGNATORY" SHALL MEAN THE PERSON OR PERSONS WHOSE SIGNATURE IS BEING ACKNOWLEDGED BY A NOTARY PUBLIC OR COMMISSIONER OF DEEDS.

3. A NOTARY APPOINTED AND COMMISSIONED AS A NOTARY IN THIS STATE SHALL CREATE A NOTARIAL RECORD OF EACH NOTARIAL ACT PERFORMED IN CONNECTION WITH A DOCUMENT OF CONVEYANCE. THE NOTARIAL RECORD SHALL CONTAIN:

A. THE DATE OF THE NOTARIAL ACT;

B. THE TYPE, TITLE OR DESCRIPTION OF THE DOCUMENT OF CONVEYANCE BEING NOTARIZED, THE PROPERTY INDEX NUMBER ("PIN") USED TO IDENTIFY THE RESIDENTIAL REAL PROPERTY FOR ASSESSMENT OR TAXATION PURPOSES, AND THE COMMON STREET ADDRESS FOR THE RESIDENTIAL REAL PROPERTY THAT IS THE SUBJECT OF THE DOCUMENT OF CONVEYANCE;

C. THE SIGNATURE, PRINTED NAME AND RESIDENCE STREET ADDRESS OF EACH PERSON WHOSE SIGNATURE IS THE SUBJECT OF THE NOTARIAL ACT, AND A CERTIFICATION BY THE PERSON THAT THE PROPERTY IS RESIDENTIAL REAL PROPERTY AS DEFINED IN THIS SECTION;

D. A DESCRIPTION OF THE SATISFACTORY EVIDENCE REVIEWED BY THE NOTARY TO DETERMINE THE IDENTITY OF THE PERSON WHOSE SIGNATURE IS THE SUBJECT OF THE NOTARIAL ACT. SATISFACTORY EVIDENCE SHALL INCLUDE PRESENTATION OF ANY ONE OF THE FOLLOWING DOCUMENTS IDENTIFYING THE SIGNATORY OR SIGNATORIES:

(I) A VALID DRIVER'S LICENSE OR NON-DRIVER IDENTIFICATION CARD ISSUED BY THE COMMISSIONER OF MOTOR VEHICLES, THE FEDERAL GOVERNMENT, ANY UNITED STATES TERRITORY, COMMONWEALTH OR POSSESSION, THE DISTRICT OF COLUMBIA, OR A STATE GOVERNMENT WITHIN THE UNITED STATES;

(II) A VALID PASSPORT ISSUED BY THE UNITED STATES GOVERNMENT;

(III) A VALID PASSPORT ISSUED BY A FOREIGN GOVERNMENT; OR

(IV) A VALID MUNICIPAL IDENTIFICATION CARD ISSUED PURSUANT TO SECTION 3-115 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK; AND

E. THE DATE OF NOTARIZATION, THE FEE CHARGED FOR THE NOTARIAL ACT, THE NOTARY'S HOME OR BUSINESS PHONE NUMBER, THE NOTARY'S BUSINESS OR RESIDENCE STREET ADDRESS, THE NOTARY'S COMMISSION EXPIRATION DATE, THE CORRECT LEGAL NAME OF THE NOTARY'S EMPLOYER OR PRINCIPAL, AND THE BUSINESS STREET ADDRESS OF THE NOTARY'S EMPLOYER OR PRINCIPAL.

4. THE NOTARIAL RECORD REQUIRED UNDER SUBDIVISION THREE OF THIS SECTION SHALL BE CREATED AND MAINTAINED FOR EACH PERSON OR REPRESENTATIVE WHOSE SIGNATURE IS THE SUBJECT OF A NOTARIAL ACT REGARDING A DOCUMENT OF CONVEYANCE. IT SHALL BE IN SUBSTANTIALLY THE FOLLOWING FORM: NOTARIAL RECORD:

DEED TRANSFER

I, _____ (GRANTOR) HEREBY AUTHORIZE THE TRANSFER OF OWNERSHIP OF MY PROPERTY TO THE GRANTEE DESIGNATED BELOW. I UNDERSTAND I MAY BE TRANSFERRING OWNERSHIP OF MY HOME.

DATE NOTARIZED:

FEE: \$

1 THE UNDERSIGNED GRANTOR HEREBY CERTIFIES THAT THE REAL PROPERTY IDENTI-
2 FIED IN THIS NOTARIAL RECORD IS RESIDENTIAL REAL PROPERTY AS DEFINED IN
3 SECTION 135-C OF THE EXECUTIVE LAW.
4 GRANTOR'S (SIGNER'S) PRINTED NAME:
5 GRANTOR'S (SIGNER'S) SIGNATURE:
6 GRANTOR'S (SIGNER'S) RESIDENTIAL STREET ADDRESS, CITY, STATE AND ZIP
7 CODE:
8 GRANTEE'S RELATIONSHIP TO GRANTOR:
9 GRANTEE'S (SIGNER'S) PRINTED NAME:
10 GRANTEE'S (SIGNER'S) SIGNATURE:
11 GRANTEE'S (SIGNER'S) RESIDENTIAL STREET ADDRESS, CITY, STATE AND ZIP
12 CODE:
13 TYPE OR NAME OF DOCUMENT OF CONVEYANCE:
14 PIN NO. OF RESIDENTIAL REAL PROPERTY:
15 COMMON STREET ADDRESS OF RESIDENTIAL REAL PROPERTY:
16 DESCRIPTION OF MEANS OF IDENTIFICATION:
17 ADDITIONAL COMMENTS:
18 NAME OF NOTARY PRINTED:
19 NOTARY PHONE NUMBER:
20 COMMISSION EXPIRATION DATE:
21 STREET ADDRESS OF NOTARY, CITY, STATE AND ZIP CODE:
22 NAME OF NOTARY'S EMPLOYER OR PRINCIPAL:
23 BUSINESS STREET ADDRESS OF NOTARY'S EMPLOYER OR PRINCIPAL, CITY, STATE
24 AND ZIP CODE:
25 5. FILING OF THE NOTARIAL RECORD. THE NOTARY SHALL FILE THE NOTARIAL
26 RECORD IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN THIS SUBDIVISION.
27 A. EXCEPT AS PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, THE NOTARIAL
28 RECORD SHALL BE DELIVERED NO LATER THAN FOURTEEN DAYS AFTER IT IS
29 CREATED TO THE CLERK OR OFFICE OF THE REGISTER OF THE COUNTY OR CITY
30 WITHIN WHICH THE RESIDENTIAL PROPERTY THAT IS THE SUBJECT OF THE CONVEY-
31 ANCE IS LOCATED.
32 B. IF THE NOTARIAL RECORD WAS CREATED BY A NOTARY PUBLIC IN THE SCOPE
33 OF HIS OR HER EMPLOYMENT WITH A TITLE INSURANCE COMPANY, FINANCIAL
34 INSTITUTION, LAW FIRM OR ATTORNEY AT LAW, THE NOTARY PUBLIC SHALL DELIV-
35 ER THE NOTARIAL RECORD NO LATER THAN FOURTEEN DAYS AFTER IT IS CREATED
36 TO SUCH TITLE INSURANCE CORPORATION, FINANCIAL INSTITUTION, LAW FIRM OR
37 ATTORNEY AT LAW. SUCH TITLE INSURANCE CORPORATION, FINANCIAL INSTITU-
38 TION, LAW FIRM OR ATTORNEY AT LAW, OR ANY SUCCESSOR OR ASSIGNEE OF SUCH
39 TITLE INSURANCE CORPORATION, FINANCIAL INSTITUTION, LAW FIRM OR ATTORNEY
40 AT LAW WITHIN THE SEVEN-YEAR RETENTION PERIOD, SHALL RETAIN THE NOTARIAL
41 RECORD AND MAY DISCLOSE SUCH RECORD ONLY AS PERMITTED UNDER SUBDIVISION
42 SEVEN OF THIS SECTION.
43 6. THE NOTARIAL RECORD SHALL BE RETAINED FOR SEVEN YEARS IN ACCORDANCE
44 WITH THE CONFIDENTIALITY AND DISCLOSURE PROVISIONS ESTABLISHED IN SUBDI-
45 VISION SEVEN OF THIS SECTION. NO COPIES OF THE ORIGINAL NOTARIAL RECORD
46 MAY BE MADE OR RETAINED BY THE NOTARY. THE NOTARY'S EMPLOYER OR PRINCI-
47 PAL PURSUANT TO PARAGRAPH B OF SUBDIVISION FIVE OF THIS SECTION, OR A
48 NOTARY ATTORNEY ACTING WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT MAY
49 RETAIN COPIES OF THE NOTARIAL RECORDS AS BUSINESS RECORDS, SUBJECT TO
50 APPLICABLE PRIVACY AND CONFIDENTIALITY STANDARDS OUTLINED IN SUBDIVISION
51 SEVEN OF THIS SECTION.
52 7. THE NOTARIAL RECORD SHALL NOT BE DISCLOSED NOR SHALL ITS CONTENTS
53 BE MADE KNOWN EXCEPT AS PROVIDED IN THIS SUBDIVISION.
54 A. A CERTIFIED COPY OF A NOTARIAL RECORD SHALL BE PROVIDED TO THE
55 UNITED STATES OR ANY DEPARTMENT THEREOF, THE STATE OR ANY DEPARTMENT

1 THEREOF, AND THE CITY OF NEW YORK OR ANY DEPARTMENT THEREOF, PROVIDED
2 THAT SUCH NOTARIAL RECORD IS REQUIRED FOR OFFICIAL BUSINESS.

3 B. A CERTIFIED COPY OF A NOTARIAL RECORD SHALL BE PROVIDED IN ACCORD-
4 ANCE WITH A JUDICIAL ORDER.

5 C. UPON WRITTEN REQUEST BY THE GRANTOR OR A LEGAL REPRESENTATIVE OF
6 THE GRANTOR WHO IS NAMED IN THE NOTARIAL RECORD.

7 8. ANY PERSON OR ENTITY VIOLATING THE PROVISIONS OF THIS SECTION
8 SHALL, IN ADDITION TO ALL OTHER PENALTIES PROVIDED BY LAW, BE LIABLE FOR
9 A CIVIL PENALTY OF UP TO TWO HUNDRED FIFTY DOLLARS FOR EACH SUCH
10 VIOLATION. THE SECRETARY OF STATE MAY ASSESS SUCH PENALTY FOLLOWING AN
11 ADJUDICATORY PROCEEDING CONDUCTED IN ACCORDANCE WITH THE STATE ADMINIS-
12 TRATIVE PROCEDURE ACT.

13 9. THE FAILURE OF A NOTARY TO COMPLY WITH THE PROCEDURE SET FORTH IN
14 THIS SECTION SHALL NOT AFFECT THE VALIDITY OF THE RESIDENTIAL REAL PROP-
15 ERTY TRANSACTION IN CONNECTION TO WHICH THE DOCUMENT OF CONVEYANCE IS
16 EXECUTED, IN THE ABSENCE OF FRAUD.

17 S 2. Section 136 of the executive law is amended by adding a new
18 subdivision 3 to read as follows:

19 3. FOR PERFORMING A NOTARIAL ACT RELATED TO A DOCUMENT OF CONVEYANCE
20 FOR WHICH A NOTARIAL RECORD IS REQUIRED PURSUANT TO SECTION ONE HUNDRED
21 THIRTY-FIVE-C OF THIS ARTICLE, THE NOTARY MAY CHARGE A FEE OF
22 TWENTY-FIVE DOLLARS IN ADDITION TO ANY FEES REQUIRED TO FILE THE NOTA-
23 RIAL RECORD.

24 S 3. This act shall take effect immediately.