

STATE OF NEW YORK

5688--A

2023-2024 Regular Sessions

IN SENATE

March 13, 2023

Introduced by Sen. COMRIE -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to the requirements for notaries public and commissioners of deeds relating to certain instruments affecting real property; and to amend the penal law, in relation to forgery and the offering of false documents concerning residential real property

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new section 135-d
2 to read as follows:

3 § 135-d. 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 deed, indenture, or other
13 written instrument that transfers or purports to transfer title effect-
14 ing a change in ownership to residential real property, or otherwise
15 presented to evidence the conveyance of real property ownership from one
16 party to another excluding:

17 (i) court ordered transfer or otherwise effected change of residential
18 real property including but not limited to a transfer between spous-
19 es or former spouses as a result of a decree of divorce, dissol-
20 ution of marriage, annulment, or legal separation, or as a result of

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

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1 property settlement related thereto, or agreement incidental to a
2 decree of divorce, dissolution of marriage, annulment, or legal sepa-
3 ration;

4 (ii) a transfer order by a probate court during the administration of
5 a decedent's estate;

6 (iii) a court ordered voiding of an instrument affecting real proper-
7 ty;

8 (iv) a transfer of property to a trust in which the beneficiary is or
9 includes the grantor; and

10 (v) a deed from a grantor to himself or herself that is intended to
11 change the nature or type of tenancy by which he or she owns residential
12 real property.

13 b. "financial institution" shall mean a bank, trust company, savings
14 institution, or credit union, chartered and supervised under state or
15 federal law.

16 c. "notarial record" shall mean the written document created in
17 conformity with the requirements of this section.

18 d. "residential real property" shall mean a building or buildings
19 consisting of one to four dwelling units where the square footage of the
20 residential portion exceeds the square footage of any commercial
21 portion.

22 e. "signatory" shall mean the person or persons whose signature is
23 being acknowledged by a notary public or commissioner of deeds.

24 3. A notary appointed and commissioned as a notary in this state and a
25 commissioner of deeds shall create a notarial record of each notarial
26 act performed in connection with a document of conveyance. The notarial
27 record shall contain:

28 a. the date of the notarial act;

29 b. the type, title or description of the document of conveyance being
30 notarized, the block and lot number used to identify the residential
31 real property for assessment or taxation purposes, and the common street
32 address for the residential real property that is the subject of the
33 document of conveyance;

34 c. the signature, printed name and residence street address of each
35 person whose signature is the subject of the notarial act, and a certif-
36 ication by the person that the property is residential real property as
37 defined in this section;

38 d. a description of the satisfactory evidence reviewed by the notary
39 or the commissioner of deeds to determine the identity of the person
40 whose signature is the subject of the notarial act. Satisfactory
41 evidence shall include presentation of any one of the following docu-
42 ments identifying the signatory or signatories:

43 (i) a valid driver's license or non-driver identification card issued
44 by the commissioner of motor vehicles, the federal government, any
45 United States territory, Commonwealth or possession, the District of
46 Columbia, or a state government within the United States;

47 (ii) a valid passport issued by the United States government;

48 (iii) a valid passport issued by a foreign government; or

49 (iv) a valid municipal identification card issued pursuant to section
50 3-115 of the administrative code of the city of New York; and

51 e. the date of notarization, the fee charged for the notarial act, the
52 notary's home or business phone number, the notary's business or resi-
53 dence street address, the notary's commission expiration date or the
54 commissioner of deeds appointment expiration date, the correct legal
55 name of the notary's employer or principal, and the business street
56 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: \$

The undersigned grantor hereby certifies that the real property identified in this notarial record is residential real property as defined in section 135-d of the executive law.

Grantor's (Signer's) Printed Name:

Grantor's (Signer's) Signature:

Grantor's (Signer's) Residential Street Address, City, State and Zip Code:

Grantee's Relationship to Grantor:

Grantee's (Signer's) Printed Name:

Grantee's (Signer's) Signature:

Grantee's (Signer's) Residential Street Address, City, State and Zip Code:

Type or Name of Document of Conveyance:

PIN No. of Residential Real Property:

Common Street Address of Residential Real Property:

Description of Means of Identification:

Additional Comments:

Name of Notary or Commissioner of Deeds Printed:

Notary Phone Number:

Commission or Appointment Expiration Date:

Street Address of Notary, City, State and Zip Code:

Name of Notary's Employer or Principal:

Business Street Address of Notary's Employer or Principal, City, State and Zip Code:

5. Filing of the notarial record. The notary or commissioner of deeds shall file the notarial record in accordance with the procedures set forth in this subdivision.

a. The notarial record shall be delivered no later than fourteen days after it is created to the clerk or office of the register of the county or city within which the residential property that is the subject of the conveyance is located.

b. If the notarial record was created by a notary public in the scope of his or her work for a title insurance company, title insurance agent, financial institution, law firm or attorney at law, the notary public shall deliver the notarial record no later than fourteen days after it is created to such title insurance company, financial institution, law firm or attorney at law. Such title insurance company, financial institution, law firm or attorney at law, or any successor or assignee of such title insurance company, financial institution, law firm or attorney at law within the seven-year retention period.

6. The notarial record shall be retained for ten years in accordance with the procedures described in subdivision five of this section. No copies of the original notarial record may be made or retained by the notary. The notary's employer or principal pursuant to paragraph b of subdivision five of this section, or a notary attorney acting within the

1 scope of his or her employment may retain copies of the notarial records
2 as business records.

3 7. Any person or entity violating the provisions of this section
4 shall, in addition to all other penalties provided by law, be required
5 to file an official bond in the amount of twenty-five thousand dollars
6 for a first offense and fifty thousand dollars for a subsequent offense.
7 The secretary of state shall assess such penalty following an adjudica-
8 tory proceeding conducted in accordance with the state administrative
9 procedure act.

10 8. The failure of a notary or a commissioner of deeds to comply with
11 the procedure set forth in this section shall not affect the validity of
12 the residential real property transaction in connection to which the
13 document of conveyance is executed, in the absence of fraud and forgery.

14 § 2. Section 136 of the executive law is amended by adding a new
15 subdivision 4 to read as follows:

16 4. For performing a notarial act related to a document of conveyance
17 for which a notarial record is required pursuant to section one hundred
18 thirty-five-d of this article, the notary or commissioner of deeds may
19 charge a fee of twenty-five dollars in addition to any fees required to
20 file the notarial record.

21 § 3. Section 170.10 of the penal law, subdivision 1 as amended by
22 chapter 949 of the laws of 1984, is amended to read as follows:

23 § 170.10 Forgery in the second degree.

24 A person is guilty of forgery in the second degree when he or she
25 forges an owner's signature on a document purporting to be a document of
26 conveyance under false pretenses or, with intent to defraud, deceive or
27 injure another, he or she falsely makes, completes or alters a written
28 instrument which is or purports to be, or which is calculated to become
29 or to represent if completed:

30 1. A [~~deed,~~] document of conveyance, will, codicil, contract, assign-
31 ment, commercial instrument, credit card, as that term is defined in
32 subdivision seven of section 155.00 of this chapter, or other instrument
33 which does or may evidence, create, transfer, terminate or otherwise
34 affect a legal right, interest, obligation or status; or

35 2. A public record, or an instrument filed or required or authorized
36 by law to be filed in or with a public office or public servant; or

37 3. A written instrument officially issued or created by a public
38 office, public servant or governmental instrumentality; or

39 4. Part of an issue of tokens, public transportation transfers,
40 certificates or other articles manufactured and designed for use as
41 symbols of value usable in place of money for the purchase of property
42 or services; or

43 5. A prescription of a duly licensed physician or other person author-
44 ized to issue the same for any drug or any instrument or device used in
45 the taking or administering of drugs for which a prescription is
46 required by law.

47 Forgery in the second degree is a class D felony.

48 § 4. Section 170.15 of the penal law is amended to read as follows:

49 § 170.15 Forgery in the first degree.

50 A person is guilty of forgery in the first degree when, with intent to
51 defraud, deceive or injure another, he or she falsely makes, completes
52 or alters a written instrument which is or purports to be, or which is
53 calculated to become or to represent if completed:

54 1. Part of an issue of money, stamps, securities or other valuable
55 instruments issued by a government or governmental instrumentality; [~~or~~]

2. Part of an issue of stock, bonds or other instruments representing interests in or claims against a corporate or other organization or its property; or

3. Part of a deed or a part of any type of a deed or other instrument that transfers or otherwise affects residential real property, including a mortgage, an assignment of mortgage, a satisfaction of mortgage, a contract of sale, and any document that is required for recording a deed with a governmental agency.

Forgery in the first degree is a class C felony.

§ 5. The penal law is amended by adding two new sections 175.31 and 175.32 to read as follows:

§ 175.31 Offering a false instrument for filing in the second degree; real property.

A person is guilty of offering a false instrument for filing in the second degree; real property when, knowing that a written instrument contains a false statement or false information concerning a deed or a part of any type of a deed or other instrument that transfers or otherwise affects residential real property, including a mortgage, an assignment of mortgage, a satisfaction of mortgage, a contract of sale, and any document that is required for recording a deed with a governmental agency, he or she offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree; real property is a class E felony.

§ 175.32 Offering a false instrument for filing in the first degree; real property.

A person is guilty of offering a false instrument for filing in the first degree; real property when:

1. knowing that a written instrument contains a false statement or false information concerning a deed or a part of any type of a deed or other instrument that transfers or otherwise affects residential real property, including a mortgage, an assignment of mortgage, a satisfaction of mortgage, a contract of sale, and any document that is required for recording a deed with a governmental agency, and with intent to defraud the state or any political subdivision, public authority or public benefit corporation of the state, he or she offers or presents it to a public office, public servant, public authority or public benefit corporation with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office, public servant, public authority or public benefit corporation.

Offering a false instrument for filing in the first degree; real property is a class D felony.

§ 6. This act shall take effect immediately.