STATE OF NEW YORK

329--B

R. R. 88

2023-2024 Regular Sessions

IN ASSEMBLY

January 4, 2023

Introduced by M. of A. WALKER -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- amended on the special order of third reading, ordered reprinted as amended, retaining its place on the special order of third reading -- again amended on special order of third reading, ordered reprinted, retaining its place on the special order of third reading

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:

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

§ 135-d. Requirements of notaries public and commissioners of deeds related to certain instruments affecting real property. 1. This section shall apply to every notarial act in the state involving a document of conveyance that transfers or purports to transfer title with respect to residential real property located in the state. It shall also apply to commissioners of deeds appointed pursuant to section one hundred forty of this article.

2. As used in this section, the following terms shall have the following meanings:

a. "document of conveyance" shall mean a deed, indenture, or other written instrument that transfers or purports to transfer title effecting a change in ownership to residential real property, or otherwise presented to evidence the conveyance of real property ownership from one party to another excluding:

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

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(i) court ordered transfer or otherwise effected change of residential real property including but not limited to a transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation, or as a result of property settlement related thereto, or agreement incidental to a decree of divorce, dissolution of marriage, annulment, or legal separation;

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

(iii) a court ordered voiding of an instrument affecting real property;

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

(v) 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 four dwelling units where the square footage of the residential portion exceeds the square footage of any commercial portion.

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 and a commissioner of deeds 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 block and lot number 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 or the commissioner of deeds 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 resi-

dence street address, the notary's commission expiration date or the commissioner of deeds appointment 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: $

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

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

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

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

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

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

§ 170.10 Forgery in the second degree.

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

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

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

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

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

5. A prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device used in the taking or administering of drugs for which a prescription is required by law.

Forgery in the second degree is a class D felony.

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

§ 170.15 Forgery in the first degree.

A person is guilty of forgery in the first degree when, with intent to defraud, deceive or injure another, he or she falsely makes, completes

or alters a written instrument which is or purports to be, or which is calculated to become or to represent if completed:

1. Part of an issue of money, stamps, securities or other valuable 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.