



# THE TITLE COMPANY OF NORTH CAROLINA

A PUBLICATION OF THE TITLE COMPANY OF NORTH CAROLINA

## **Think Globally . . . Deed Globally, too!**

In his bestselling 2005 book, *N.Y. Times* Foreign Affairs columnist Thomas L. Friedman contends “*The World is Flat*.” He points to such global trends as “outsourcing” and “off-shoring” to show how the world is becoming smaller and smaller. The book contends that Americans will have to shift their perspectives in order to compete in a world where the playing field is essentially flat.

Less than two years later, the N.C. State Bar is contemplating allowing paralegals in India to assist with document review and preparation (Proposed 2007 FEO 12). The Title Company of North Carolina regularly receives inquiries about the validity of acknowledgments performed in foreign countries and the proper notarization procedure when a document to be recorded in a foreign country is acknowledged in North Carolina. To assist you in making the necessary shift to a global perspective, this article will provide a review of the basic law, suggest some practice pointers, and provide website references for additional detail and discussion. It is intended as a beginning point only.

## **FOREIGN ACKNOWLEDGMENT FOR USE IN NORTH CAROLINA:**

These are documents which are to be recorded in North Carolina, but where one or more of the signers is out of the country and so the acknowledging official is also out of the country. There appear to be three types of acknowledgments used regularly: acknowledgment by a foreign official; acknowledgment by diplomatic or consular official; and acknowledgment by military personnel.



NCGS §47-2 provides that any “instruments and writings as are permitted or required by law to be registered may be proved or acknowledged before any one of the following officials . . . of foreign

countries: Any judge of a court of record, any clerk of a court of record, any notary public, any commissioner of deeds, any commissioner of oaths, any mayor or chief magistrate of an incorporated town or city, any ambassador, minister, consul, vice-consul, consul general, vice-consul general, associate consul, or any other person authorized by federal law to acknowledge documents as consular officers.”

## ***Foreign Official’s Acknowledgment***

The necessary acknowledgment should be in English and will need to be accompanied by an English statement that the official had the power to take the acknowledgment at the time it was acknowledged. This is called an “apostille”. If the document is acknowledged by a foreign official of a country that is a member of the Hague Convention Abolishing the Requirement of Legalization for Foreign Documents (“Hague Convention”), there is a simplified certification of public (including notarized) documents to be used in countries that have joined the Hague Convention. To determine if a particular country is a member of the Hague Convention, go to the Convention website [[http://www.hcch.net/index\\_en.php?act=conventions.authorities&cid=41](http://www.hcch.net/index_en.php?act=conventions.authorities&cid=41)].

The US State Department maintains a website regarding apostilles: [<http://www.state.gov/m/a/auth/c16921.htm>] The US State Department has an Office of Verification and Authentication which will answer specific questions. Their website is: [<http://www.state.gov/m/a/auth/>]. You can also reach them by phone: 202-647-5002; email: [aoprgsmauth@state.gov](mailto:aoprgsmauth@state.gov) , or fax: 202-663-3636.

### ***US Consular Official's Acknowledgment***

Another possible solution to getting your document acknowledged in another country is to rely on the consular services of the US State Department. A US Consul acts as a Notary Public abroad, notarizing affidavits, acknowledgments and other legal documents **to be used in the US only**. The acknowledgment should be in English for recording in North Carolina. The signature of a US Consul is not recognized in most foreign countries on documents to be used and recorded in the foreign country. You can locate the offices of US Consuls by looking at <http://usembassy.state.gov>. There is a fee associated with having a US Consular official notarize a document, and the fee varies from country to country.

For specific questions regarding getting foreign documents authenticated for use in the United States by a consular official overseas, call the US Department of State, Overseas Citizens Services, American Citizens Services and Crisis Management - (202) 647-5225.

### ***US Military Official's Acknowledgment***

If your client is out of the country with the military, you are in luck. Military personnel have access to the Judge Advocate General's staff in their location. The JAG Corps is very familiar with the necessities for getting a document acknowledged and should provide the necessary assistance to you and your client.

NCGS §47-2 spells out the requirements for an acknowledgment by a military officer and provides a form for such an acknowledgment. Note that no official seal is needed. Federal authority for

military personnel to act as a notary is found in 10 USC 1044, et. seq.

### ***Register of Deeds is Final Arbiter***

No matter what form of acknowledgment you intend to use, the Register of Deeds in the county where you propose to record has the final authority to pass on the certificate under NCGS §47-14. It would be wise to make sure the Registrar is happy with the acknowledgment you propose to use before you send it off to a foreign country for acknowledgment.

### **NORTH CAROLINA ACKNOWLEDGMENT FOR USE IN FOREIGN COUNTRY**

The US is a signer of the Hague Convention, so acknowledgments in North Carolina for public documents to be used or recorded in other countries may be accompanied by an apostille. Check to see if the Hague Convention is applicable [[http://www.hcch.net/index\\_en.php?act=conventions.authorities&cid=41](http://www.hcch.net/index_en.php?act=conventions.authorities&cid=41)] If not, your document will need to be accompanied by a certificate of authentication.

Whether you need an apostille or a certificate of authentication, the NC Secretary of State's office is the designated authority to issue the necessary form allowing a North Carolina notary to acknowledge a document for recording in another country. They issued over 37,000 apostilles and certificates last year. The Secretary of State's Authentication office has a useful website [<http://www.secretary.state.nc.us/authen/ThePage.aspx>].

If the document to be acknowledged is not in English, you will need to have it translated and the English translation will need to accompany the foreign language document. NCGS §66-274(a).

By NCGS §66-273, all of the following conditions must be met before a document can be authenticated: (1) all seals and signatures must be originals; (2) all dates must follow in chronological order on all certifications; and (3) all acknowledgments to be authenticated must be in English and must comply with Chapter 10B of the General Statutes.

Do the acknowledgment as you would normally for the transaction (in English) and using the “new” Section 10B-41(a) notary (as the statute specifically refers to a Chapter 10B notary certificate). Be sure the local notary uses his or her name exactly as is shown on the notary seal and as it is on record at the Secretary of State’s office (as that office will be comparing signatures, etc. to their records). Once everything is correct, send the document to:

**NC Authentication Office,**  
NC Secretary of State  
PO Box 29622  
Raleigh NC 27626-0622

with a cover letter, money order or check and the original documents with all certifications attached. There is a sample cover letter posted by the NC Secretary of State’s office: [<http://www.secretary.state.nc.us/authen/coverletter.htm>]. The processing fee is currently \$10.00 (in US dollars) per document to be processed.

Once you get the paperwork back from the NC Secretary of State for a recording in a Hague Convention country, it is ready to send to the foreign country—you don’t have to involve the US State Department. If you are dealing with a Certificate of Authentication, all of the documents (the Certificate, the acknowledgment and the original document) should be forwarded to the US Department of State:

**Authentications Office**  
US Department of State  
518 23rd Street, N.W. SA-1  
Washington, D.C. 20520

That office currently charges \$8.00 per document and suggests that you include a self-addressed, stamped envelope to avoid a two to three week delay in returning your materials to you.

For more detailed information, look at the NC Secretary of State’s website, esp. the FAQ section: [<http://www.secretary.state.nc.us/authen/authFAQ.aspx>] and the US State Department website: [<http://www.state.gov/m/a/auth/>].

If all else fails, feel free to contact your local office of The Title Company of North Carolina.

**Free Trader Agreement— Waiver of Equitable Distribution—*McIntyre v. McIntyre*, \_\_\_ N.C. App. \_\_\_, \_\_\_ S.E.2d \_\_\_, (COA07-235, Jan. 15, 2008).** A valid prenuptial agreement which recites that it “releases, renounces and forever quitclaims” “all right, title, interest, claim and demand whatsoever including **all marital rights** in the real estate and personal property” of the other spouse **does not** bar a later action for equitable distribution, according to the Court of Appeals. A prenuptial agreement must actually contain the words “**equitable distribution**” in order to release Chapter 50 rights. The Court found that the prenuptial agreement was ambiguous as to the intent of the parties as to equitable distribution, and the lack of the actual words “equitable distribution” was determinative, as was the lack of the words, “now owned or hereafter acquired”. Without those words, the prenuptial agreement was only a “free trader” agreement, according to the majority. A dissent was filed, which argued that the intent of the parties from the four corners of the document was plain and unambiguous, and the words “all marital rights” meant the parties waived any claim to equitable distribution.

*Practice Pointer:* Pursuant to NCGS §50-20(h) a non-owner spouse must file a lis pendens when claiming that certain real property is marital property subject to equitable distribution. Prior to the filing of a lis pendens any recorded conveyance or encumbrance of the real property is free and clear of the non-owner spouse’s equitable distribution rights. So in this case any conveyance of real property by the owner spouse would be free and clear of the non-owner spouse’s marital interests pursuant to the premarital agreement and free and clear of the non-owner spouse’s equitable distribution rights, if any, provided no lis pendens was filed prior to the conveyance.

**TCNC WEBSITE**  
**[www.oldrepublictitle.com/nc](http://www.oldrepublictitle.com/nc)**  
*All of our newsletters and an up to date index are on the website. The index will be kept up to date with each new issue.*

## OFFICES

### STATE ADMINISTRATION

(910) 343-8374  
(800) 222-6613

#### GARY CHADWICK

*President & Counsel*  
gchadwick@tcnc.biz  
(910) 343-8374  
(800) 222-6613

#### NICK LONG, Jr.

*State Counsel*  
nlong@tcnc.biz  
(919) 861-4441  
(866) 437-9172

### ASHEVILLE

(828) 253-7988  
(800) 743-8262

#### STEVE JONES

*Sr. Vice Pres. & Counsel*  
sjones2@tcnc.biz

### CHARLOTTE

(704) 342-4278  
(866) 229-4803

#### CANDICE WILLIAMS

*Vice Pres. & Counsel*  
cwilliams@tcnc.biz

#### STACIE JACOBS

*Vice President*  
sjacobs@tcnc.biz

### OUTER BANKS

(252) 441-2877  
(800) 666-2258

#### GENEVA PERRY

*Vice President*  
gperry@tcnc.biz

### RALEIGH

(919) 832-0252  
(800) 277-0081

#### ALTON RUSSELL

*Chairman Emeritus & Counsel*  
arussell@tcnc.biz

#### ALICE BRACEY

*Senior Vice President*  
abracey@tcnc.biz

### STATESVILLE

(704) 878-0439  
(800) 649-0439

#### KATHY QUINN

*Vice President*  
kquinn@tcnc.biz

### WILMINGTON

(910) 343-8374  
(800) 222-6613

#### GARY CHADWICK

*President & Counsel*  
gchadwick@tcnc.biz

### WINSTON-SALEM

(336) 631-8004  
(800) 631-8086

#### JAY HEDGPETH

*Sr. Vice Pres. & General Counsel*  
jhedgpeth@tcnc.biz

### OREXCO - 1031 EXCH.

(704) 333-0308  
(866) 543-1031

#### DAVE PAWLOWSKI

*Reg. Acct. Manager & Counsel*  
dpawlowski@orexco1031.com

#### LAURA HUCKABY

*Sales Associate*  
lhuckaby@orexco1031.com

PRSRRT STD  
US Postage Paid  
Greensboro, NC  
Permit No. 590

THE TITLE COMPANY OF  
THE NORTH CAROLINA