Greetings!

I am Frankie Jones and I am excited to serve as the 2017-18 Chair of the Real Property Section of the North Carolina Bar Association. The Real Property Section is one of the largest and most active sections in the NCBA, and we are always looking for opportunities to become larger and more active. This year’s Section Council will continue the legacy of excellent service to our Section members.

The other officers on the Section Council are:

- Vice Chair: Ellie Bradshaw (Patrick Harper & Dixon LLP)
- Secretary: Nancy Ferguson (Chicago Title Company)
- Treasurer: Brian Taylor (White & Allen PA)
- Immediate Past Chair: Tonya Powell (Shanahan Law Group)

The remaining Section Council members are the following:

Terms Expiring 2018
- Benjamin P. Drayton (The Hunoval Law Firm PLLC)
- Tara G. Eudy (Carolina Title)
- John T. Higgins, Jr. (Higgins Benjamin PLLC)
- Robert C. Lawson (Williams Mullen)
- Ted Shipley (Live Oak Bank)

Be Prepared: eMortgages and eNotaries Are Coming To a Law Firm Near You

“Good Fortune often happens when opportunity meets preparation.”
- Thomas Edison

By Jon Biggs

On my first day of law school at Wake Forest, we had homework. We had to “prepare” before we even darkened the door. Preparation was not a foreign concept to me or my classmates. We had all prepared for class and exams in high school and college; prepared for the LSAT; prepared for everything. We had prepared for so many things over our collective academic lives that we were well aware there was no substitute for good solid preparation. We were not aware, however, of a bulletin board in Carswell Hall that contained the assignments for our first day of class. Remember: There was no email to read, no website to check, and Mother certainly was not there to tell us about it. This little tidbit of information, that a bulletin board existed, would have been a good thing to know.

Many of the students had not even purchased the book yet. This fact was of little concern to Professor Rhoda Billings, the esteemed and respected former Chief Justice of the North Carolina Supreme Court, who was going to lead us through Civil Procedure. She looked down on her seating chart and called on Mike – his last name has been omitted in case his children may read this article. She asked Mike to tell us about Rule 15(a) – “Amended and Supplemental Pleadings.” I remember this rule to this day, even though I am a real estate attorney and have not filed an amended pleading in 20 years or more. I remember this rule because of what happened next.

Mike tried to fake it – pretend that he was prepared, that he had read the assignment, or that he had even purchased the book. Miscalculation! Professor Billings kept him standing and squirming the entire lecture as she challenged his preparation (or lack thereof) with every subtle and not-so-subtle form of embarrassment available in her Socratic Method arsenal. We all felt bad for Mike, but were grateful that we had avoided a similar fate. At some point in the inquisition, Professor Billings rhetorically asked if Mike was aware of the student announcement bulletin board. I, for one, found that bulletin board and was absolutely prepared for the next class. We would rather learn from others mistakes than our own. When the next class started, Mike was called upon in a similar fashion, and this continued in each of our next five class periods. Our full class rotation took two days. By the time we reached the first session of our last class on the second day of law school, Mike had been called upon in every single class. As Professor Castleman looked over his

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bifocals at his seating chart, there were whispers in the room – “it is going to be Mike.” As he called Mike’s name, the class burst out laughing. Mike rose to his feet and asked, “Did y’all have a meeting?” Professor Castleman responded, “No, but we have a bulletin board in the teachers’ lounge.”

So, why is this lesson important? You may or may not know Mike or have had the pleasure of studying in the classrooms of Professors Billings and Castleman, but you have been caught unprepared. So have I. In fact, we all have. I share this lesson so that you may learn from Mike’s experience, as I did, and take advantage of this opportunity to “Be Prepared.”

Be Prepared for Electronic Transactions

The future of commerce, real estate transactions (and of our profession) is moving from a paper platform to a digital one. It will not happen overnight, but eMortgages are coming, and they are bringing eNotaries with them. Ask yourself, “Are you prepared?”

First, let’s talk about definitions:

• **eClosing** – Closing the transaction through electronic or digital means. In this case, some or all of the documents are accessed or executed online. There are two types of eClosings:
  1) Hybrid Closing – This type of closing may be largely electronic but may also have some documents that are executed on paper (such as the note and/or deed of trust).
  2) eMortgage – It is a true eMortgage **ONLY if the Promissory Note is executed electronically**; therefore, all eMortgages are eClosed, but not all eClosed mortgages are eMortgages.
• **eNotary** – With a true eMortgage, all of the documents are executed electronically, and an eNotary (or Electronic Notary) will be required to acknowledge a digital or electronic signature. In North Carolina, this is the same as a paper notary, except that the signature to be acknowledged and the eNotary’s acknowledgement are digitally affixed to the document by electronic means.

Be Prepared for the Electronic Notary

In 2005, North Carolina passed the Electronic Notarization Act N.C.G.S. §10B-100 et. seq. (http://www.ncleg.net/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_10B/Article_2.pdf). To be properly prepared to perform electronic notaries, here is what you need to know:

**A. Qualifications:** In order to qualify to be an eNotary in North Carolina, you must first:

1) **Hold a valid commission** as a Notary Public in the State of North Carolina (N.C.G.S. §10B-105);
2) **Take and pass a three-hour course**

3) **Submit the proper forms and payment** to the North Carolina Secretary of State.

The course is offered exclusively by the North Carolina Community Colleges and anyone wishing to be an eNotary must take it. (For example, while attorneys are exempt from the notary course, they are **NOT** exempt from the additional three-hour class.) Check with your closest North Carolina Community College for course dates and times.

**B. Elements:** In order to perform an eNotary, you must include the following elements in the acknowledgement:

1) The **notary’s name, state, and county of commissioning**, exactly as stated on the commission issued by the Secretary;
2) The words “**Electronic Notary Public**”;
3) The words “**State of North Carolina**”;
4) The **expiration date** of the commission;
5) The **notary’s electronic signature**; and
6) The completed wording of one of the following notarial certificates:
   a. **Acknowledgment**;
   b. **Jurat**;
   c. **Verification or proof**; or
   d. **Oath or affirmation**.

If you are reviewing an eNotary acknowledgement on a document in your chain of title or your transaction, then you must review it for the presence of each of these elements.

**C. “In Person” Requirement:** In order to perform an eNotary, you must be **IN THE PRESENCE OF THE SIGNER** at the time of the notarization or acknowledgement.

Some states have authorized the use of video conferencing tools, such as FaceTime or Skype, to perform eNotary acknowledgements, most notably Virginia. North Carolina has specifically rejected this approach. N.C.G.S. §10B-3(16) defines this requirement as follows:

**Personal appearance and appear in person before a notary.** – An individual and a notary are in close physical proximity to one another so that they may freely see and communicate with one another and exchange records back and forth during the notarization process.

**D. Necessary Equipment:** In order to perform an eNotary, you must use approved equip-
Be Prepared For Change

The Electronic Notary Act has been around for 12 years - what is so important about getting prepared now? “I have not done this in the last decade and have not had any issues.” If this is your thought process, it is an understandable one; however, eMortgages are gaining momentum and everyone should take note.

“Why should I take note?” The industry is moving this way, and there are a lot of factors adding to its momentum. Here are the most influential:

1) North Carolina Secretary of State
- The North Carolina Secretary of State has initiated an eClosing Pilot Program to help create a banking environment that is "bank friendly" and "consumer friendly."

2) Director Richard Cordray and the Consumer Financial Protection Bureau
- "eClosing is something that we think is direction industry is intending and wanting to go. It is the future . . . the future can be here much sooner than maybe it otherwise would be . . . we are on board with that . . . We think the advantages for the industry, the efficiencies and accuracy that this kind of process will create can also incorporate some really consumer-friendly aspects, consumer education and the like . . . on the whole, it can be a win-win on both sides of the closing table."

3) GSE (Government Sponsored Entities) Such as Fannie Mae & Freddie Mac
- Fannie Mae and Freddie Mac are currently acquiring eMortgages and other mortgages that were eClosed.

4) Millennials – Generation Y – Born after 1980
- Millennials want the convenience to do everything from their smart phone or tablet.
- Millennials have now passed the “Baby Boomers” as the generation with the most people currently in the workforce. Millennials will drive

5) Banks
- eMortgages are a big part of many banks’ future plans to attract Millennials as customers.
- eMortgages provide traceable, compliant and enforceable documents that are easily retrievable, making them a cost-effective solution.
- Ultimately, the biggest driving forces come down to money. eMortgages can be moved to the secondary market much faster than paper mortgages, providing the lenders with faster liquidity and smaller interest carry costs.

Semper Paratus

My introduction to law school was one filled with lessons about preparation. I remember Rule 15a, but I do not remember the topics in the rest of the classes during those first two days. I do remember that both Mike and I were prepared for every other class in those first two days – after the defining object lesson in Professor Billings’ class. It was quite a lesson for me to be writing about it 30 years later. My goal in this article is not to tell you to what to do; rather, I just want to do the equivalent of showing you the student announcement bulletin board in the law school before the first day of class.

I want you to have the facts so that you can make an educated decision before you are caught “unprepared.” When you get that call from a lender, realtor, client, or other referral source asking if you can close an eMortgage, your response should be either a “Confident Yes” or an “Authoritative No.” In either case, you want to avoid the “Quizzical Huh?” The unfortunate reality is that if you are not prepared for this question, then the caller could scratch your name off their list of preferred attorneys and move on to the next name. The other potential outcome is that your referral source convinces you to take these additional steps, and you have to do so in a hurried manner -- not in a thoughtful and purposeful way. Ultimately, the decision to embrace this technology in providing professional and ethical representation to your clients is up to you.

By failing to prepare, you are preparing to fail. - Ben Franklin

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