

TO: North Carolina Chicago Title Approved Attorneys and Agents

FROM: Chicago Title, North Carolina State Office

DATE: July 6, 2023, UPDATE

RE: Notarizing Documents Remotely for NC Notaries – Updates, reminders, forewarnings!
Emergency Video Notarization (“EVN”) renewed through June 30, 2024 (for principals located in NC)
Remote Electronic Notarization (“REN”) Coming *ON OR AFTER* July 1, 2024

Under Session Law 2023-57, The North Carolina Emergency Video Notarization Act, G.S. 10B-25 and G.S. 10B-200, has been extended through June 30, 2024. The Secretary of State is now involved in the rule-making process, but the permanent Remote Electronic Notarization Act (or “RENA”) will not take effect prior to July 1, 2024. The statutory revision is on-line at: <https://www.ncleg.gov/BillLookup/2023/S552>.

Along with some technical changes to the prior S.L. 2022-54 (2021 H776), G.S. 10B-134.9(a)(3) regarding geolocation of military personnel and families provides:

(3) If the remotely located principal is a member of the Armed Forces of the United States, or the spouse or dependent of the member, as described in G.S. 10B-134.1(10)b., the electronic notary may rely on that remotely located principal’s written, verbal, or electronic declaration and confirmation under penalty of perjury as to remotely located principal’s location and military or familial status.

In addition, G.S. 10B-134.9(a)(6) regarding geolocation of any remotely located principal provides:

(6) The location of the remotely located principal shall be verified by geolocation via communication technology or by self-attestation.

And since the entire Act requires that remote notarization be provided by an e-notary and be based on an electronic document (other than a very limited papering out provision), the definitions and provisions have been adapted to reflect that any mention of electronic notary or notarization encompasses both in-person and remote appearance.

The North Carolina Secretary of State had already begun the rule-making process under Session Law 2022-54, H776, <https://www.ncleg.gov/BillLookup/2021/h776> the North Carolina Remote Electronic Notarization Act, or “RENA.” The first Advanced Notice of Proposed Rulemaking (or ANPR1) was published for Comment on October 12, 2022, with deadline for Comments by November 30, 2022. The second, ANPR2, was published for comment on March 31, focusing on the more technical aspects of the electronic process and security, with deadline for comments on May 15, 2023. The link for the ANPR process and responses is on-line at: https://sosnc.gov/divisions/general_counsel/open_rulemaking_anpr_home

***THE IMPLEMENTATION PROCESS:** After the ANPR Comments are reviewed, proposed rules will then be published for public comment and input, after which they will be revised, rules adopted, standards developed, vendors reviewed for compliance and approved, and REN notary training offered statewide. After these steps are in place, REN will become a reality in North Carolina.

Notarization is not just a “clerical” act! It is a critical component of every real estate transaction. Notarization must be properly performed for the transaction to be valid and documents effectively recorded. Every real estate attorney knows that. But reliable notarization has become increasingly the focus in recent years in the face of ever-changing types of fraudulent transactions, changes in our increasingly technological world, as well as the new developments necessitated by the COVID pandemic!

As before, for North Carolina attorneys and clients needing to perform notarial services remotely, three current and future possibilities apply.

During this transition, however, ***BEWARE THE PITFALLS OF NOT FULLY UNDERSTANDING THE CURRENT TEMPORARY EMERGENCY VIDEO NOTARIZATION REQUIREMENTS***, as compared to RON authority in other states and the eventual NC REN which will not take effect until on or after **July 1, 2024**.

SO, WHERE IN THE WORLD ARE WE IN NORTH CAROLINA WITH REMOTE NOTARIZATIONS? WHAT’S AN ATTORNEY (AND NOTARY) TO DO OR NOT DO?

The below chart may help you with an overview of these critical distinctions.

	NC Temp. EVN (until June 30, 2024)	NC REN (not effective until ON OR AFTER July 1, 2024)	RON (other states, check state law applicable)
Digital / electronic notary & document through e-notary & secure portal	Yes	Yes	Yes
Paper “wet-ink” notary & document	Yes	No (limited NC papering out provision, rev. GS 47-14)	State-by-state (papering out provisions in most states)
Transmit docs (mail, UPS, FedEx) to notary	Yes, if wet-ink paper; N/A if on-line simultaneous	N/A	Only if allows paper documents (above)
Notary reverify entire document same as notarized	Yes, if wet-ink paper; N/A if on-line simultaneous	N/A since electronic simultaneous	Only if allows paper documents (above)

Location of Principal	NC only	Within US, military bases/vessels (IF active duty over 120 days), US Embassies, Consulates & Diplomatic Missions	Most have no boundary limitations
Adequate security & identity analysis	No	Yes	Yes
Software to support notary's ability to understand & comply	No, attorney & notary must obtain all case-by-case to protect clients, themselves, and title insurers	Yes	Yes
Document limitations (other than wills or other non-electronic documents)	Not in G.S. 10B-25	Yes – No REN POA's for REN closing	Some, see statute
Identification limitations (<i>in addition to</i> photo and either signature <i>or</i> physical description, on current government issued ID)	Physical description <u>and</u> signature; ID did not expire before March 10, 2020	Credential analysis & identity proofing	Credential analysis & identity proofing

Chicago Title may be willing to insure transactions involving remotely notarized documents based on compliance with certain conditions **AND PRIOR APPROVAL**. These are critically necessary conditions for the security and legality of these transactions to prevent fraud as well as assure the integrity of the record title.

More detailed information is below and attached. But please DO NOT HESITATE TO CONTACT OUR UNDERWRITING COUNSEL TO DISCUSS YOUR PARTICULAR SITUATION! As always, we look to our experienced, responsible approved attorneys to provide able, professional services to protect your clients!

North Carolina Temporary Emergency Audio-Video Notarization
(G.S. 10B-25)
RENEWED & EXTENDED through June 30, 2024

The North Carolina temporary Emergency Video Notarization legislation, G.S. 10B-25, allowing North Carolina notaries to perform remote notarizations for *principals located in North Carolina*, which had previously expired on December 31, 2021, has **been renewed through June 30, 2024**. So regularly commissioned notaries can perform “wet-ink” document executions and notarizations, and e-notaries can perform on-line digital executions and notarizations remotely under that procedure.

NOTE: To fulfill professional responsibilities to clients and to assure that any such remotely notarized transaction is valid, enforceable, and insurable; the attorney will need to address security, credential analysis, confidentiality and other concerns if using this method, in addition to the statutory minimums. See prior Chicago Title Underwriting Bulletin, “COVID-19, Remote Video Notarization in North Carolina under Temporary Legislation” attached at the end of this Bulletin.

See also G.S. 10B-25, now extended through June 30, 2024.

CAUTION: We have seen many misunderstandings and misuses of this statute, such as confusing a digital with a wet ink “paper” notarization and using passports which do not have the required principal’s photograph, signature *and* a physical description, among other things. So, any attorney using it should CAREFULLY REVIEW THE REQUIREMENTS AND CONSULT THE TITLE INSURER PRIOR TO CLOSING.

North Carolina Remote Electronic Notarization **Coming ON OR AFTER July 1, 2024**

ON OR AFTER July 1, 2024, and after rulemaking, availability of notary training and vendor approvals, a North Carolina specific version of permanent remote electronic notarization (“REN”) will be available for *electronic* notaries for on-line digital documents, under S.L. 2022-54, as amended by S.L. 2023-57, under new Chapter 10B, Article 2, Part 4A. “Remote Electronic Notarization.” The Secretary of State will be drafting regulations to support the bill, and e-notary vendors will be addressing the additional requirements of the North Carolina statute. So, attorneys planning to handle remote closings on-line will want to begin preparation NOW. Have a closer look at the statute itself. It has some significant variations from other states, such as prohibiting REN powers of attorney for REN closings, limiting the location of the principal and requiring geolocation, and additional costs. And consider having office notaries obtain e-notary commissions. Since these are not yet in effect and may change as regulations and potential clarifications or amendments are considered in 2023-2024, this Bulletin is not going into detail about that at this time.

NOTE: A limited “papering out” provision was added to GS 47-14 in the event a digital document is to be recorded in a county that is not accepting e-recording at the time (whether a temporary issue, the document type or one of the few counties that is not e-recording at all still).

Remote On-Line Notarizations by Sister State RON Notaries

However, many attorneys and clients involved in a North Carolina real estate transaction (especially those located outside of North Carolina) still need remote notarizations *using remote notaries commissioned in other states*. Below is a more detailed overview of the key considerations for the attorney to consider in fulfilling their professional responsibilities to their clients, assuring compliance with the state’s laws and validity and insurability of the transactions relying on remote notarizations.

Chicago Title may be willing to insure North Carolina real estate transactions involving RON documents notarized in a sister state based on compliance with certain conditions **AND PRIOR APPROVAL**. These are critically necessary conditions for the security and legality of these transactions, to prevent fraud as well as assure the integrity of the record title.

1. Currently **44 other states do have a Remote On-line Notarization or “RON” statute**. So engaging a notary in another state may be appropriate by the attorney (presumably through a reliable notarial service), with clear oversight and requirements (more below) to assure that the remote notary complies with their commissioned state’s laws AND evidences security checks – *secure* real-time audio-visual connections, credential analysis, identity proofing and verification, recording of the notarial ceremony (required to be reviewed by the closing attorney as explained below) and e-

journal entry, *whether or not their state requires all of these security features*. The attorney needs to assure they have complied with their professional responsibilities for confidentiality and data security as well as integrity of the process. A map with links to the particular statutes *as well as links to the statutory provisions of the respective states* is on-line on the website of the American Land Title Association at: <https://www.alta.org/advocacy/online-notarization.cfm>.

2. **All transaction parties must consent in writing** to the use of electronic signatures and the RON process. Any closing instructions must explicitly authorize the use of RON. RON may not be used if the lender objects.
3. The online notary public that performs the notarization must **be licensed or commissioned by a State with a RON statute currently in effect** and the notary must be **physically located** within that State at the time of notarization.
4. The notarial certificate must indicate that the notarial act was performed online by way of **secure audio/video communication technology** to assure protection of privacy and confidentiality of non-public information by using appropriate settings. While not promoting any system over another, and since providers may increase or lessen their security over time, currently our companies recognize that Microsoft Teams, WebEx and GoToMeeting may provide this level of security, while according to public press information some other platforms may not. The most accessible (and cheapest) video conferencing platforms may be prone to hacking and other security vulnerabilities. The NC State Bar cautions users to keep in mind that confidential or other non-public information could be compromised, for example when the signer holds up their driver's license, giving not only the notary but also any video intruder a long, clear opportunity to copy and steal. *See NC State Bar "Professional Responsibility in a Pandemic," and 2011 FEO 6, 2005 FEO 10 referenced therein.* <https://www.ncbar.gov/for-lawyers/ethics/ethics-articles/professional-responsibility-in-a-pandemic/>
5. The same considerations apply to **recording of the notarization session**. While some states' RON statutes do not require recording, the closing attorney needs the recording to verify that the notarization, presentation of credentials, identity proofing and credential analysis were properly handled by the notary. If using the recording capability of the same video conferencing platform used for the notarization conference, the same security questions should be asked about the platform's storage features.
6. Principals whose signatures are being notarized must be **U.S. citizens or resident aliens with a social security number** for the notary to complete knowledge-based authentication (or "KBA").
7. The County recorder where the property is located in North Carolina must accept for recording **electronic documents** containing electronic signatures and electronic notarization. If not, applicable State law where the notarization occurred must provide for or include a "papering out" provision for electronic documents and notarizations. The state-specific statutory process for certifying a paper copy of an electronic document must be followed. **REMEMBER:** RON is remote *on-line* notarizations. RON involves **totally digital end-to-end documents** -- (e-signed, e-notarized remotely and then e-recorded without going outside of a secure digital document delivery system (*i.e.*, not being emailed about). So, as noted above, S.L. 2022-54 added a very limited "papering out" procedure for counties not allowing e-recording at the time of closing. And many states have a papering out process for any digital e-notarized document.

8. If the Lender does not use digital eNotes, you must **confirm with the Lender** the process for obtaining the borrower's wet ink signature on the traditional note.

As always, any consideration of a remote, an out-of-state and/or a foreign country notarization related to a real estate transaction for North Carolina property should be discussed with title insurance underwriting counsel as soon as possible.

View this and more articles on our website at <https://www.northcarolina.ctic.com>.