
TO: North Carolina Chicago Title Approved Attorneys

FROM: Chicago Title, North Carolina State Office

DATE: November 8, 2020 (Updating May 6, 2020 and July 8, 2020 Bulletins)

RE: COVID-19, “Remote” Video Notarization in North Carolina
Under Temporary Legislation

In response to the COVID-19 Emergency, the NC General Assembly enacted [Session Law 2020-3](#), <https://www.ncleg.gov/BillLookup/2019/s704>, (the Temporary Legislation), §§ 4.1 and 4.2 of which includes temporary authority for notary services by North Carolina notaries with minimum in-person contact. The legislation was extended until March 1, 2021 under S.L. 2020-80, [H1023](#), § 2.9, and under [H308](#), S.L. 2020-74, § 27, as well. (NOTE: The temporary waiver of witnesses for health care powers of attorney and advanced directives for natural death under S.L. 2020-3, § 4.10, which added G.S. 32A-16.1 and G.S. 90-321.1, were *not* extended and sunset August 1, 2020 unless extended by further temporary legislation.)

Under the Temporary Legislation, a North Carolina notary can satisfy the requirement for a signer located in North Carolina to “personally appear” before the notary by using video conference technology. ***The Temporary Legislation went into effect immediately, was extended and now expires at 12:01 am on March 1, 2021.*** Important information and forms are available on the special website of the NC Secretary of State: https://www.sosnc.gov/divisions/notary/emergency_video_notarization

While Chicago Title Insurance Company will insure most transactions using documents notarized in compliance with the Temporary Legislation, the attorney and notary need to assure they have complied with their professional responsibilities for confidentiality and data security as well as integrity of the process. We offer the following overview and practice considerations to assist our approved attorneys and their staff in notarizing and in reviewing notary acknowledgments of documents that will be relevant to real-estate transactions for title insurance underwriting.

Video notarization under NC’s temporary authority uses two-way video between the signer and the notary either to patch together a traditional wet-ink-signed document, or to create an end-to-end electronic document. While this act applies to all notarizations, generally, in the state of North Carolina, **it may not comply with the more stringent requirements of lenders (banks, HUD, FHA, VA), GSE’s (Fannie Mae, Freddie Mac), title insurance underwriters or the State Bar’s professional responsibility requirements regarding protection of clients’ confidentiality and security.**

As outlined in more detail below, given the significant potential risk of failing to reliably verify the identity of any signers and the authority of the notary to perform the particular remote notarial action, it is CRITICAL that any attorney follow the below protocols to protect themselves and their clients! The attorney must verify the following:

1. **Verify** with ALL PARTIES, including any lender, in writing, that they agree to handling the particular documents under the remote notarial protocols.
2. **Verify** that the title insurance underwriter will accept the proposed type of remote notarization, and their additional requirements or understanding of the applicable law and security issues. For out of state notarizations, we can often provide input and should be consulted before assuming insurable.
3. **Verify** the compliance of the notary with the particular state's laws, since the laws vary dramatically state to state, including:

- a. The state in which the principal signing is located at time of signing.
- b. The state in which the notary is commissioned and is located at time of signing.
- c. The format of the notarial certificate, including clearly identifying that the notarial ceremony is being performed under the particular identified state's temporary or permanent remote notary act or executive order, as applicable.
- d. Recordation of the notarial ceremony.
- e. Notarial journal entry and details.
- f. The authentication of the principal, including governmental photo ID as well as additional authentication, such as random 6-digit number, private question or otherwise.

NOTE 1: The North Carolina temporary measure only applies to North Carolina notarizations notarizing principals also located within North Carolina at the time of signing.

NOTE 2: Using services such as Notarize or Notarycam can often provide some assurance of compliance, though they may have long waiting lists in these challenging times.

4. **Verify** the security of the particular audio/visual conferencing vendor used, and that all applicable security settings are properly engaged, in order to comply with North Carolina State Bar confidentiality responsibilities and Best Practices security standards.
5. **Verify** that the Register of Deeds in the county in which the property at issue is located will accept the particular type of notarization for recording the documents. More detail on each of the above is

Overview of the North Carolina Temporary Legislation in more detail:

For a traditional "wet-inked" signature and notarization, the below structure applies.

1. Witnessing signatures: The notary must be able to see the individual actually sign the documents, and hear the individual say which documents are being signed. The notary's ability

to see and hear via video technology satisfies the requirement for personal appearance of the individual before the notary.

2. Location: The notary *and* the signer must be located within the state of North Carolina. When the notary takes the acknowledgment of the signer, the signer must verify that they are physically located within the state of North Carolina and indicate the county where they are physically located.
3. Same-Day Verification: After the notary takes the acknowledgement of the signer, the notary must receive a copy of the signed documents via fax, or photo or scanned image transmitted via text or email. The notary must then compare the transmitted image with the original wet-ink signatures when the wet-ink signatures are received by the notary.
4. Acknowledging Signatures: Though the notarial certificate (acknowledgment or jurat) will be in the traditional form, dated the date of the video conference when the signer acknowledged or swore/affirmed before the notary, the written acknowledgement form on the signed document must include:
 - a. the North Carolina county in which the signer is located at the time of the notarial act,
 - b. the county in which the North Carolina notary is located at the time of the notarial act, and
 - c. the statement:

I signed this notarial certificate on _____ (date on which notary is completing the notarial certificate) according to the emergency video notarization requirements contained in G.S. 10B-25.
5. Recordation: The Temporary Legislation does not change requirements for recording with a Register of Deeds. In most cases (other than end-to-end digital documents, see NOTE below), the recorder must have the original wet-signed, video-notarized document for recording. The signer will have to sign before and acknowledge to the notary using video technology, then have the wet-signed document delivered to the notary so that the notary can affix their notarization and date the notarial act as of the date the video notarization took place via videotechnology.

NOTE RE *ELECTRONIC* SIGNING AND NOTARIZATION: The exception to wet-ink documents is an end-to-end digital document -- e-signed, e-notarized, and delivered through secure tamper-proof digital portals through to e-recording with the register of deeds who will accept same.

This must be accomplished by an NC notary who is validly commissioned as an *electronic* notary and may combine the video notarization provisions of the Temporary Legislation with an electronic notarization that qualifies under *both* the existing Electronic Notary Act, NCGS Chapter 10B, Article 2, and the existing Uniform Real Property Electronic Recording Act, NCGS 47, Chapter 1A.)

Many lenders will require retention of the recording of the notarial ceremony. For example, Freddie Mac's FAQ's and Bulletin 2020-35 require:

Freddie Mac is not prescribing whether the [Lender] must obtain a copy and store it or if the [Lender] can have a Remote Online Notary technology provider store it for them and provide access to the [Lender]. Regardless of the storage method chosen, the [Lender] is responsible to ensure they can obtain the recording of the notarial ceremony, upon [Freddie Mac's] request, for greater of (a) 10 years, or (b) the time period specified in the RON law(s) of the State in which the notary is licensed.

6. Notary Journal: The notary is required to keep a journal entry for each emergency video notarization performed. The journal must include the following information:
 - a. The time of day when the notary observed the signing of the document by each principal and was presented with the principal's acceptable form of identification
 - b. The date of the completion of the emergency video notarization notarial certificate

- c. The last and first name of each principal.
- d. The type of notarial act performed.
- e. The type of document notarized or proceeding performed.
 - f. The type of acceptable form of identification presented including, if applicable, the issuing agency and identification number on the identification presented.
 - g. The type of video conference technology used during the emergency video notarization.
 - h. A statement that the notary and each principal could see and hear each other.
 - i. Whether any other person was present with the principal at the time of signature and if so, the name of that person

PRACTICAL HINT: Electronic notaries using the providers approved by the Secretary of State as required for their commissions may be able to use their electronic notarial journals for wet-ink notarization as well, since journals are highly recommended in normal times, and are now *mandatory* under this temporary legislation.

- 7. Video Conference Technology: For purposes of the Temporary Legislation, video conference technology is electronic communication which must:
 - a. Occur in real time
 - b. Allow direct simultaneous interaction between the notary and the signer, via both sight and sound
 - c. Utilize audio with sufficient volume clarity to be heard and understood by all participants
 - d. Provide clear view of the face of each signer and their identification in order for the notary to determine whether the identification is sufficient evidence of the signer's identity
 - e. Be live, not pre-recorded
 - f. The video communication may be recorded by:
 - The technology's recording and storage service
 - Another video recording device
 - Clear electronic screen shots of the signer's face, the signer's identification and the document to be notarized

We encourage you to refer to the full text of the North Carolina [Temporary Legislation](#) (§§ 4.1 and 4.2) and the North Carolina Secretary of State's guidance at [guidance at their website](#) for more specific information.

Additional Practice, Professional Responsibility and Regulatory Considerations:

In addition to the specific requirements of the Temporary Legislation, we recommend that anyone planning to notarize documents under the North Carolina Temporary Legislation consider the following points:

- Terminology can be confusing. The procedure authorized by the Temporary Legislation is not remote online notarization (RON) as that term has been used for some time in states, such as Virginia, which have enacted legislation authorizing RON. However, to the extent that the entire document execution, notarization, and delivery through to ultimate recipient, including through e-recording with the register of deeds, is *totally electronic* in compliance with the NC Electronic Notary Act, as noted above, this temporary legislation can replace the "personal appearance" requirement only; all other requirements would still apply. A helpful chart "Notarization Types and Terminology" produced by ALTA is on-line at: <https://www.alta.org/media/pdf/advocacy/alta-notarization-types-and-terminology.pdf>

- The Temporary Legislation authorizes an accessible emergency procedure that bypasses the traditional safeguards of physical proximity between signer and notary. The features that make video notarization accessible also make it potentially less secure.
- Participants in a transaction need to consent to use of video notarization. These include:
 - The parties to the transaction itself.
 - The lender, which must permit video notarization in its closing instructions. Note that a lender's closing instructions should reflect any Fannie Mae or Freddie Mac requirements that go beyond the requirements of the Temporary Legislation. The remote notarization requirements (as of the date of this bulletin) of these government-sponsored entities can be found at the below links, but are constantly being updated:
 - Fannie Mae RIN Job Aid: <https://singlefamily.fanniemae.com/media/22666/display>
 - Fannie Mae FAQs (updated November 6, 2020): <https://singlefamily.fanniemae.com/media/22326/display>
 - Fannie Mae Lender Letter (LL-2020-03) updated Oct. 19, 2020 (see page 10): <https://singlefamily.fanniemae.com/media/22316/display>
 - Freddie Mac FAQs (Updated Nov. 3, 2020): <https://sf.freddie.mac.com/content/assets/resources/pdf/faq/covid-19-selling-related-frequently-asked-questions.pdf>
 - Freddie Mac Bulletin 2020-8, Selling Guidance Related to COVID-19, issued 03/31/2020: <https://guide.freddie.mac.com/app/guide/bulletin/2020-8>.
 - Freddie Mac COVID-19 Selling-related FAQs (Updated Nov. 3, 2020): <https://sf.freddie.mac.com/faqs/covid-19-selling-faqs#title-closing-and-notarization>
 - Freddie Mac Bulletin 2020-35, updating the above:
 - <https://guide.freddie.mac.com/app/guide/bulletin/2020-35>
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 - The title insurer. As noted above, we will insure most transactions using video notarization performed in compliance with the Temporary Legislation, but, please consult an underwriter with our office or agent if your transaction:
 - Involves coverage of \$1,000,000 or more,
 - Involves notarization of a signer who is not a US citizen, or
 - Involves notarization in situations other than as specifically permitted by the Temporary Legislation, such as:
 - A non-NC notary
 - A signer outside NC
- The attorney should assure that the notary uses videoconferencing systems which are secure, private and protect both client confidentiality and non-public information, and that all the appropriate settings are chosen to assure that protection. 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 Zoom may not yet, and FaceTime and Skype would not. The most-accessible (and cheapest) video conferencing platforms may prone to hacking and other security vulnerabilities. The 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/news-publications/news-notices/2020/04/professional-responsibility-in-a-pandemic/>

- The same considerations apply to recording of the notarization session. While the Temporary Legislation does not require recording, it requires that the session be capable of recording. 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.
- In addition to the identification requirements of the Temporary Legislation, the attorney and notary should assure the signer’s identity as follows:
 - The driver’s license or other government-issued identification be shown to the camera both front and back.
 - NOTE: Just because a form of identification is a government-issued photo ID does not mean that it satisfies the Temporary Legislation. The ID must include not only a photo, but also a “physical description.” It may be surprising what government IDs (e.g., passports) do not include a “physical description” along with a photo of the holder.
 - A second means of identification be required. These can include the following:
 - Notary can text a random 6-digit number (www.numbergenerator.org) to a known safe phone number; signer to repeat number back during the video conference. A safe phone number is one that has been confirmed prior to closing other than by email. Note the file with the 6-digit number and phone number texted; or
 - Notary can ask the signer a question during the video conference gleaned from personal data contained in the loan file that only the signer would know; or
 - In the context of a borrower in a refinance transaction, or a seller in a sale transaction, during the video conference, signer can display a copy of a utility bill dated within the last 30 days for the party’s known address in the name of the signer; or
 - Use of a third-party identity verification service, with evidence of same retained in the file.

Notarizations Out of State or Out of Country

CONTACT US PRIOR TO CLOSING FOR ADDITIONAL REQUIREMENTS, *especially if they anticipate a remote notarization*. Questions to be addressed include:

- Location of the notary
- Compliance with the law of the state of the location and commissioning of the notary?
- Who is providing assurance of compliance?
- Location of the signers
- Are the signers U.S. Citizens with valid identifications?
- What mechanisms are the attorney and the notary using to assure the authenticity, identification and validity of the notarization, the parties, the documents being notarized and the documents ultimately delivered for closing?
- If out of country, are they obtaining notarization at the U.S. Embassy or Consulate, or are they obtaining apostilles?
- Is there a reason they cannot return for the closing?
- Do they have a power of attorney instead?
- Or could you use a known subscribing witness familiar both to the principal and to the notary instead sufficient to comply with G.S. 10B-40 and 10B-201 (subject to above considerations regarding identification and document verification and technology issues with regard to remote video ceremonies) ?

As always, any consideration of out of state notarizations should be discussed with title insurance underwriting counsel.

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