



E-Closing, E-Notary & E-Mortgage


Jonathan W. Biggs, J.D.
Investors Title

NCPA's 38th ANNUAL MEETING & SEMINAR
March 22, 2018 – March 24, 2018

Jonathan W. Biggs
Vice President & Director of Risk Management & Education

Jon Biggs oversees risk management functions related to Investors Title's approved provider system. In this role, he oversees the approval process, develops educational seminars and communications-based initiatives involving approved providers and agents, and manages provider data and analysis related to the company's risk management efforts.

Prior to joining Investors Title in 2012, he was partner at a firm in Durham, North Carolina where he practiced residential and commercial real estate law for more than 20 years. Mr. Biggs holds a bachelor's degree from Duke University and a Juris Doctor from Wake Forest University School of Law.



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eCLOSING, eMORTGAGE & eNOTARY

Jonathan W. Biggs, J.D.
 Vice President - Risk Management & Education
Investors Title Insurance Company
 Continuing Legal Education Seminar



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INNOVATIVE BY INSTINCT
Introduction

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Introduction

- 1) Introduction
- 2) Definitions & Terminology
 - Types of eClosings
 - Types of Notaries
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Introduction

What Does It Mean To "Be Prepared?"

prepare 

[pri-pair]

verb (used with object), prepared, preparing.

1. to put in proper condition or readiness:

prepared 

[pri-paird]

[Synonyms](#) [Examples](#) [Word Origin](#)

[See more synonyms on Thesaurus.com](#)

adjective

1. properly expectant, organized, or equipped; ready:

From Dictionary.com

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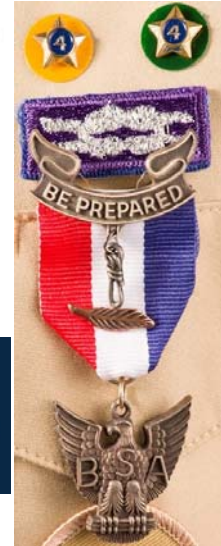
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Synonyms

See more synonyms on Thesaurus.com

1. provide, arrange, order. Prepare, contrive, devise imply planning for and making ready for something expected or thought possible. To prepare is to make ready beforehand for some approaching event, need, and the like: *to prepare a room, a speech*. Contrive and devise emphasize the exercise of ingenuity and inventiveness.



From Dictionary.com

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Introduction

August 20, 1990

First Day of Law School

I have prepared all my life:

- PSAT
- SAT
- AP Exams
- Graduated High School
- College Exams
- LSAT
- Graduated Duke University



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INNOVATIVE BY INSTINCT*Introduction*

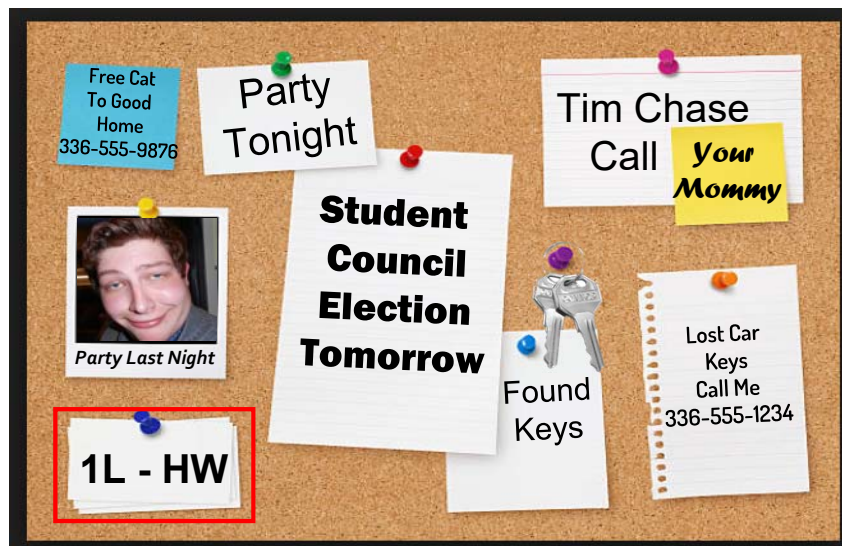
***Professor Rhoda Billings
Former Chief Justice
of NC Supreme Court***



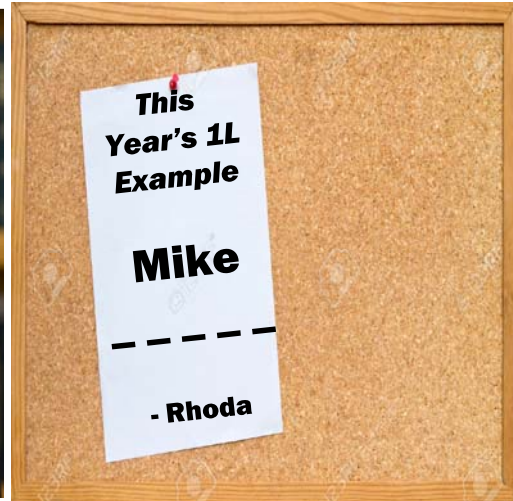
Mike _ _ _ _ _

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INNOVATIVE BY INSTINCT*Introduction***8**

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INNOVATIVE BY INSTINCT*Introduction****Professor Don Castleman*****9***Be Prepared! - eClosing Coming To an Office Near You > Jonathan W. Biggs, Vice President Risk Management and Education***BE PREPARED****eNotarize****Investors Title**
INNOVATIVE BY INSTINCT*Types of eClosings****Definitions***

- **eClosing** – Closing the transaction through electronic or digital means. In this case, some or all of the documents are accessed or executed online. However, a closing that is largely electronic can also have some documents that are executed on paper (such as the note).
- **eMortgage** – An eClosing only produces an eMortgage if the promissory note is signed electronically. Therefore, all eMortgages are eClosed, but not all eClosed mortgages are eMortgages.

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Types of eClosings

Types of Closings & Different Processes

- **P to P** – Paper to Paper Closing
 - Loan closes on paper and paper recorded
- **E to E** – Electronic to Electronic or Digital Closing
 - Loan closes on e-Docs /digital documents and eRecorded

Hybrid Closings Processes

- **E to P** – Closing
 - Loan closes on e-Docs /digital documents and printed for recording.
 - Not allowed by all eRecording counties because tough to tell what is an original
- **P to E** – Closing
 - Loan closes on Paper and then scanned into electronic format for eRecording

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Types of eClosings

eClosing –Consumer Interaction



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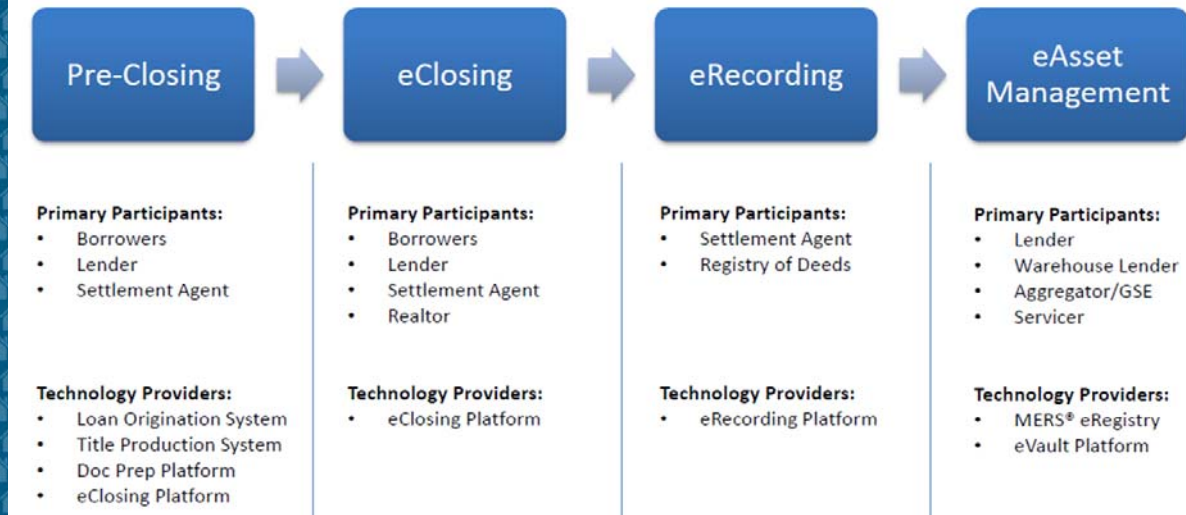
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Types of eClosings

The eMortgage Workflow



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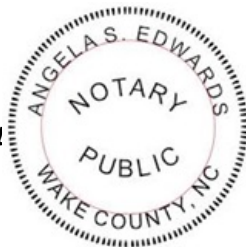
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Types of Notaries

Types of Notaries

1) Traditional

Allowed in NC
In Person Requirement



2) eNotary

Allowed in NC
In Person Requirement



3) Remote Online Notary

NOT Allowed in NC

Notary May Be Digitally Present



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Types of Notaries

Virtual Remote Notary / Remote Online Notarization

Are There Other States with eNotarization ? YES – 21 Total

- Arizona
- Arkansas
- California
- Colorado
- Delaware
- Florida
- Iowa
- Kansas
- Maryland
- Minnesota
- Nevada
- New Mexico
- **North Carolina**
- Oregon
- Pennsylvania
- Texas
- Utah
- Virginia
- Washington
- West Virginia
- Wisconsin

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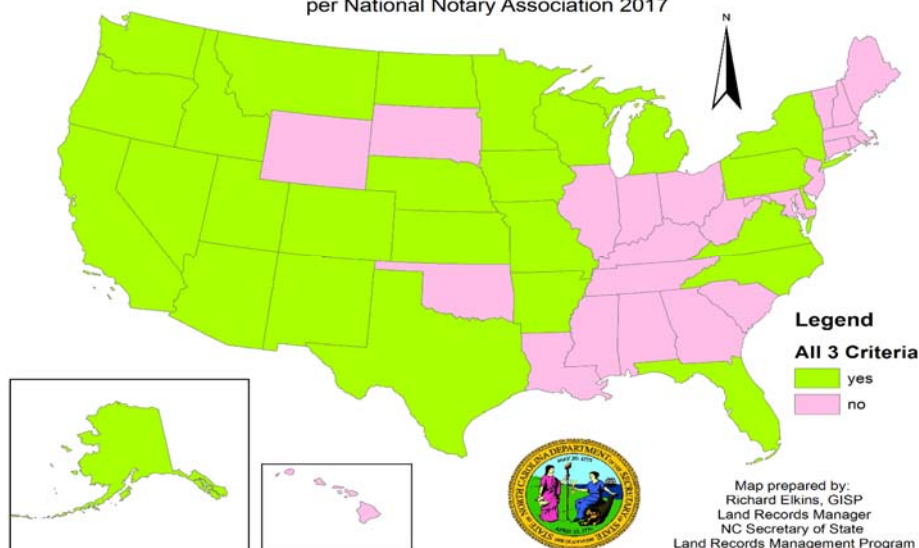
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States with eSignature, eNotary, and eRecording
per National Notary Association 2017



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Types of Notaries

Virtual Remote Notary / Remote Online Notarization

What States Allow Remote Online Notarization ? **4** Total

- Virginia • Texas
- Montana • Nevada

What States Have Pending Legislation for Remote Online Notarization?

Carry Over Bills

- Minnesota
- Nebraska
- Oklahoma
- Ohio

Active Bills This Year

- Colorado • South Dakota
- Indiana • Kentucky
- Florida • Tennessee
- Missouri • District of Columbia
- Pennsylvania

13 Total

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Currently Not Allowed In North Carolina

Types of Notaries



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INNOVATIVE BY INSTINCT*History & Statutory Background****Short General History & Statutory Background*****a) E-Sign (Electronic Signatures in Global & National Commerce Act)**

- Facilitates the use of electronic records and electronic signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.
- "A signature, contract, or other record relating to such transaction may not be denied legal effect, validity, or enforceability solely because it is in electronic form."
- Preserves the rights of individuals to NOT USE electronic signatures

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INNOVATIVE BY INSTINCT*History & Statutory Background***b) Previous Attempts**

- Private sector attempted to move toward electronic/digital closings ("eClosings") in 2007-2008
- Limited market penetration
- 2008 economic crisis put investment in eClosings on the shelf

c) Proposed Rule on TRID (July 2012)

- Required every settlement agent to store all settlement related data in "Machine Readable Format," which met large opposition
- CFPB wanted to be able to collect, aggregate and analyze data to monitor and form conclusions about the consumer protection initiatives and market stability

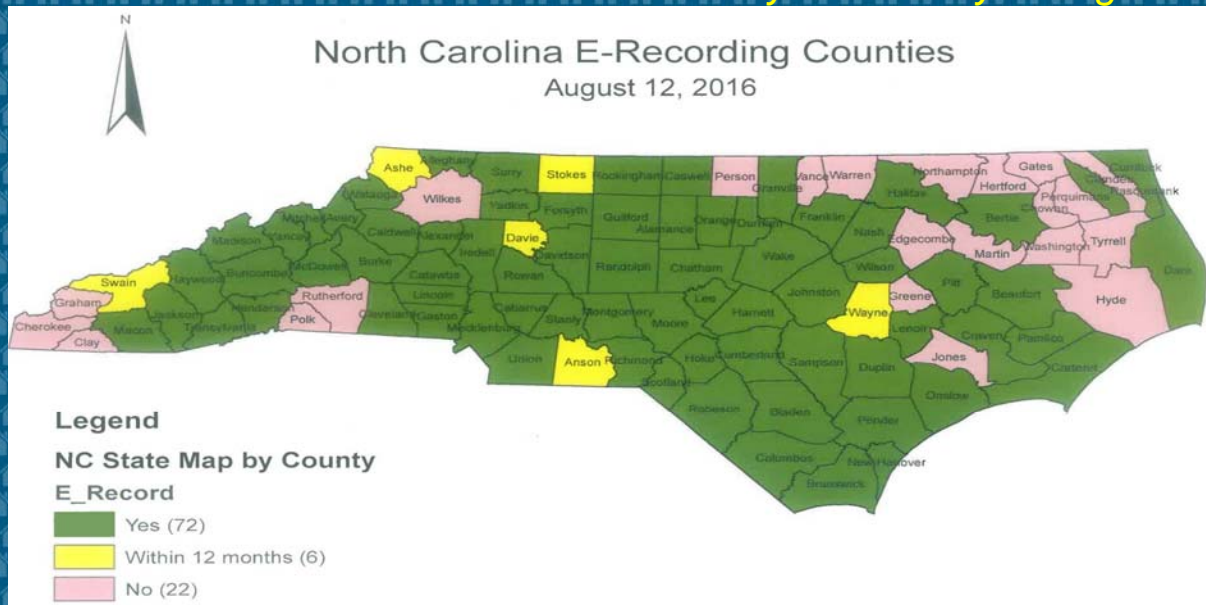
d) Final Rule on TRID (November 2014)

- Dropped the "Machine Readable Format" from the final rule
- Did not drop the desire for the data from the CFPB's agenda

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INNOVATIVE BY INSTINCT*History & Statutory Background***d) North Carolina's Brief History in Electronic Transactions**

- 1998 – NC eCommerce Act
- 2000 – NC Uniform Electronic Transaction Act (NCUETA)
- 2005 – NC Uniform Real Property Electronic Recording Act (URPERA)
- 78 NC Counties have eRecording
- 22 NC Counties have not reported plans for eRecording at this time
- 2005 Electronic Notarization Act
 - Still requires **"in person"** requirement
 - Primary difference is that the notary's signature & seal are digital
- 2007 Electronic Notarization Administrative Rules
- 2007 Electronic Recording Standards

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INNOVATIVE BY INSTINCT*History & Statutory Background***22***Be Prepared! - eClosing Coming To an Office Near You > Jonathan W. Biggs, Vice President Risk Management and Education*

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History & Statutory Background

e) Existing CFPB eClosing Pilot Program Published Conclusions

- CFPB Proclaimed Benefits of eClosing over Paper
 - Less Time for eClosing than Paper
 - Consumer Perceived Empowerment is Higher
 - Consumer Perceived Understanding is Higher
 - Actual Testing on Understanding is Higher
 - Consumer Perceived Efficiency is Higher
- CFPB Conclusions about eClosing over Paper
 - eClosings have a better consumer experience technology is available for eClosings

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History & Statutory Background

f) Model Legislation for Remote Online Notarization

Sec. 5. AUTHORITY TO PERFORM REMOTE ONLINE NOTARIZATIONS.

A remote online notary public physically located in this state may perform a remote online notarial act using communication technology in accordance with this Chapter and any rules or regulations adopted by the Secretary of State for a remotely located individual who is physically located:

- (1) In this State;
- (2) Outside this State but within the United States; or
- (3) Outside the United States if: *(certain conditions are met)*

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INNOVATIVE BY INSTINCT*History & Statutory Background***f) Model Legislation for Remote Online Notarization**

- Supported by ALTA and MBA
- Secretary of State in charge of Commission and Rule Making
- The electronic journal must be maintained for a least ten years after the date of the transaction or proceeding.
- The remote online notary public's electronic signature must kept secure and used only to perform online notarial acts The notary may not allow another person to use the notary's electronic signature.
- The remote online notary public must attach their electronic signature and seal to an online notarial certificate in a way that renders subsequent changes to the document as evidence of tampering.

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INNOVATIVE BY INSTINCT*GSE Acceptance****Current GSE Acceptance***

- GSE acceptance of electronically closed documents extremely important
- Fannie Mae and Freddie Mac purchase eNotes/eMortgages
- Fannie Mae and Freddie Mac openly verbally embrace the eClosing and their purchase of the instrument
- Federal Home Loan Bank does **not** currently purchase eNotes/eMortgages
- National and State laws have evolved and are continuing to evolve to allow eClosings
- Technology providers are ready
- 130,000 eNotes currently registered with MERS
- 400 New eNotes registered with MERS every week

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Current Agendas

Secretary of State

- Wants to Be the Best Place for a Bank to Locate
- Wants to Be "Bank Friendly" and "Forward Thinking" in Commerce and Regulation
- Wants Notary Present in the Room
- Wants Access to Attorney at Closing

CFPB / Director Cordray

- Wants Data to Protect Consumers & the Market
- Wants Consumer Convenience
- Wants Speed of Commerce

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Current Agendas

CFPB - Director Cordray at MBA Conference

*"[eClosings] is something that we think is **direction industry is intending and wanting to go**. It is the future. But the future can be here much sooner than maybe it otherwise would be . . . **we are on board** with that . . . We think the advantages for 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. And on the whole, it can be a win-win on both sides of the closing table."*

Note: Richard Cordray is no longer director of CFPB

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Current Agendas

Vendors

- New Technology
- Make Remote Online Notary "King"
- "First Hog To the Trough Eats Best"
- Pushing Technology to Lenders
- Pushing Technology to Millennials
- Heavy Video and Social Media Outlets
- Will Not See Ads on TV or Hear Them on the Radio



Notarize



eNotary Now

Remote Notary Services

docVerify

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Currently Not Allowed In North Carolina

Current Agendas



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INNOVATIVE BY INSTINCT*Current Agendas***Millennials – Generation Y**

- Born 1977 – 1995
- Want Closing at Kitchen Table – Not Conference Table
- Want Flexibility
 - Less than a third of Millennials expect to work regular office hours
- Want Convenience over Formality
- Equate Speed & Convenience with Efficiency (*not necessarily true*)
- Millennials will drive the way that banks interact with them because they will probably buy more houses and investment property in the next decade than other generational age groups.
- Millennials do not remember a world without the internet as the primary form of social interaction and commerce.

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INNOVATIVE BY INSTINCT*Current Agendas*

You've Gotta Love Millennials

by Micah Tyler

<https://youtu.be/hLpE1Pa8vvI>**32***Be Prepared! - eClosing Coming To an Office Near You > Jonathan W. Biggs, Vice President Risk Management and Education*

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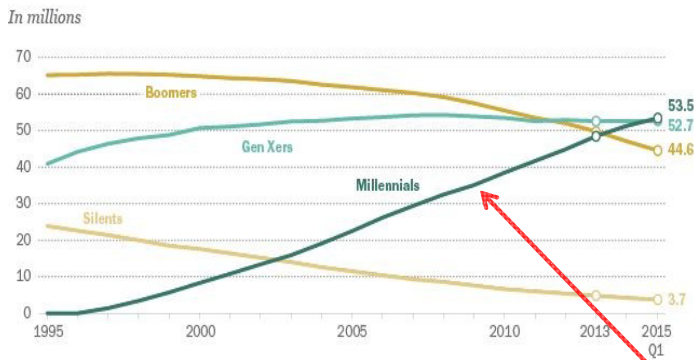
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Current Agendas

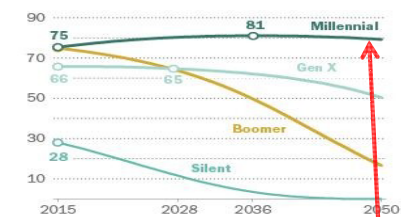
Millennials – Why Do We Care?

U.S. Labor Force by Generation, 1995-2015



Projected population by generation

In millions



Note: Millennials refers to the population ages 18 to 34 as of 2015.
Source: Pew Research Center tabulations of U.S. Census Bureau population projections released December 2014 and 2015 population estimates
PEW RESEARCH CENTER

Silent Gen – Before 1945
Baby Boomers – 1945-64
Gen X – 1965-76
Gen Y “Millennials” – 1977-95
Gen Z – 1995-Today

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Current Agendas



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Current Agendas

Banks & Lenders

- Want Traceable Documents
- Want Compliant Documents
- Want Enforceable Documents at Foreclosure
- Want to Offer More Competitive Closing Opportunities for Customers to Gain Larger Market Share.
 - Eye Toward Millennials
- Do NOT want to Repurchase Documents Once Sold

- **Want Quick LIQUIDITY**

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eNotaries in NC

eNotaries in North Carolina (Since 2005)

NCGS § 10B-101. Definitions.

The following definitions apply in this Article:

- (1) "**Electronic**" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (2) "**Electronic Document**" means information that is created, generated, sent, communicated, received, or stored by electronic means.
- (3) "**Electronic Notarial Act**" and "Electronic Notarization" mean an official act by an electronic notary public that involves electronic documents.
- (4) "**Electronic Notary Public**" and "Electronic Notary" mean a notary public who has registered with the Secretary the capability of performing electronic notarial acts in conformance with this Article.

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eNotaries in NC

NCGS § 10B-101. Definitions (cont.)

- (5) "**Electronic Notary Seal**" and "**Electronic Seal**" mean information within a notarized electronic document that includes the notary's name, jurisdiction, and commission expiration date, and generally corresponds to data in notary seals used on paper documents.
- (6) "**Electronic Signatures**" means an electronic symbol or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document.
- (7) "**Notary's Electronic Signature**" means those forms of electronic signature which have been approved by the Secretary as authorized in G.S. 10B-125, as an acceptable means for an electronic notary to affix the notary's official signature to an electronic record that is being notarized.

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eNotaries in NC

NCGS § 10B-105. Qualifications.

- (a) A person qualified for electronic notary registration shall meet all of the following requirements:
- (1) Hold a **valid commission as a notary public** in the State of North Carolina.
 - (2) Except as otherwise provided, abide by all the provisions of Article 1 of this Chapter.
 - (3) Satisfy the requirements of G.S. 10B-107. **(Take the 3 hr. Course)**
 - (4) Submit an **electronic registration form containing no significant misstatement or omission of fact.**

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eNotaries in NC

NCGS § 10B-107. Course of Instruction.

(a) Before performing electronic notarial acts, a notary shall take a course of instruction of least three hours approved by the Secretary and pass an examination of this course, which shall be in addition to the educational requirements provided in Article 1 of this Chapter.

(b) The content of the course and the basis for the examination shall be notarial laws, procedures, technology, and ethics as they pertain to electronic notarization.

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NCGS § 10B-117. Notarial components of electronic document.

In performing an electronic notarial act, all of the following components shall be attached to, or logically associated with, the electronic document by the electronic notary, all of which shall be immediately perceptible and reproducible in the electronic record to which the notary's electronic signature is attached:

- (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.

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NCGS § 10B-116. Prohibitions.

An electronic notarization shall not be performed if the signer of the electronic document:

- (1) **Is not in the presence of the electronic notary at the time of notarization**; and
- (2) **Is not personally known to the notary or identified by the evidence** in accordance with other provisions of this Chapter; or
- (3) For any reason set forth in G.S. 10B-20.

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NCGS § 10B-3 Definitions

The following definitions apply in this Chapter:

- ...
- (16) **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.**
 - (17) **Personal knowledge or personally know.** – Familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed.

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eNotaries in NC

Frequently Asked Questions

How Long Does an Electronic Notary Commission Last?

The electronic notary commission will expire on the same date the notary's regular commission expires. The electronic notary commission will need to be renewed at the same time the notary commission is renewed.

What is the Difference Between eNotary & Paper Notary?

All aspects of the notarization remain the same, including requirement for personal appearance, positive identification of the principal, completion of the notarial certificate and affixing the electronic signature and seal.

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eNotaries in NC

- **What Are These Different Tools?**



- **What Is the Cost?**

Generally Less Than \$100

- **Where Do I Find Them?**

<https://www.sosnc.gov/enotary/thepage.aspx>



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BE PREPARED**eNotarize****Investors Title**
INNOVATIVE BY INSTINCT*Conclusion*

***By failing to prepare, you are
preparing to fail.***

- Ben Franklin

I learned this my first day of law school

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INNOVATIVE BY INSTINCT*Conclusion*

When you get a call from a lender, realtor, client or other referral source asking:

Are You Prepared For eNotaries, e Closings & eMortgages?

Confident YES!

Authoritative NO!

Quizzical Huh?

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BE PREPARED **eNotarize** **Investors Title**
INNOVATIVE BY INSTINCT
Conclusion

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INNOVATIVE BY INSTINCT
Conclusion

THE END

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Credits

Notarize Retail Consumer Demo
<https://vimeo.com/182025753>

You've Gotta Love Millennials - Micah Tyler
<https://youtu.be/hLpE1Pa8vWI>

Notarize!
<https://youtu.be/5GeR8XTWR3M>

Millennial Employment Interview
<https://youtu.be/Uo0KjdDJr1c>

Notarize for Mortgage
<https://youtu.be/-kmqC0JrAnQ>

The Lion King: Be Prepared | Sing-A-Long | Disney
<https://youtu.be/zPUe7O3ODHQ>

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