E-Closing, E-Notary & E-Mortgage

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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.
Be Prepared! eClosing, eMortgage & eNotary

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Introduction

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1) Introduction
2) Definitions & Terminology
   • Types of eClosings
   • Types of Notaries
3) Short General History & Statutory Background
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5) Current Agendas – Political and Profit
   • NC Secretary of State
   • CFPB
   • Vendors
   • Millennials
   • Lenders
6) eNotaries in North Carolina
7) Conclusion

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

From Dictionary.com
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.

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**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
Introduction

Professor Rhoda Billings
Former Chief Justice
of NC Supreme Court

Mike __ __ __ __

Party Tonight
Student Council Election Tomorrow
Found Keys

1L - HW

Free Call To Good Home
336-555-9876

Tim Chase
Call Your Mommy

Lost Car Keys
Call Me
336-555-1234

Party Last Night
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.
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

eClosing – Consumer Interaction
Be Prepared! - eClosing Coming To an Office Near You > Jonathan W. Biggs, Vice President Risk Management and Education

Types of eClosings

The eMortgage Workflow

1. Pre-Closing
   - Primary Participants: Borrowers, Lender, Settlement Agent
   - Technology Providers: Loan Origination System, Title Production System, Doc Prep Platform, eClosing Platform

2. eClosing
   - Primary Participants: Borrowers, Lender, Settlement Agent, Realtor
   - Technology Providers: eClosing Platform

3. eRecording
   - Primary Participants: Settlement Agent, Registry of Deeds
   - Technology Providers: eRecording Platform

4. eAsset Management
   - Primary Participants: Lender, Warehouse Lender, Aggregator/GSE, Servicer
   - Technology Providers: MERS® eRegistry, eVault Platform

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
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

Types of Notaries

Virtual Remote Notary / Remote Online Notarization

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

Legend
- All 3 Criteria
  - yes
  - no

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

13 Total
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.

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.
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
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

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)
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.

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
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

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

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Currently Not Allowed In North Carolina
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.
Millennials – Why Do We Care?


Note: Annual averages plotted 1995-2014. For 2015 the first quarter average of 2015 is shown. Due to data limitations, the Silent generation is overestimated from 2008-2015.
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 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.
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.

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.
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.


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.
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.
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.

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

I learned this my first day of law school

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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Credits

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

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

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

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

You've Gotta Love Millennials - Micah Tyler
https://youtu.be/hLpE1Pa8vvI

Millennial Employment Interview
https://youtu.be/Uo0KjdDjR1c