



The Many Flavors of Notarization in NC – Traditional, IPEN, EVN & REN

OZIE STALLWORTH, DIRECTOR ELECTRONIC NOTARIZATION
NC DEPARTMENT OF SECRETARY OF STATE



Honorable Elaine F. Marshall
North Carolina Secretary of State

Purpose of the Notary Act

[N.C.G.S. 10B-2]

- ▶ To promote, serve, and protect the public interest.
- ▶ To simplify, clarify, and modernize the law governing notaries.
- ▶ To prevent **fraud** & **forgery**.
- ▶ To foster ethical conduct among notaries.
- ▶ To enhance interstate recognition of notarial acts.
- ▶ To integrate procedures for traditional paper, electronic notarization and remote electronic notarization (REN).

Traditional Notary

- ▶ Must take a course of instruction
- ▶ Pass exam with 80%
- ▶ Attorneys are exempt
- ▶ Requires personal appearance & positive ID
- ▶ Wet signatures notarized with traditional notary signature and seal

Electronic Notarization - IPEN

- ▶ Must be a NC notary
- ▶ Take a course of instruction (including attorneys)
- ▶ Pass exam with 80%
- ▶ Personal appearance & positive ID required
- ▶ Electronic signatures notarized with eSignature & eSeal of the eNotary
- ▶ Expiration syncs with notary commission expiration

Emergency Video Notarization - EVN

- ▶ Temporary – expires on June 30, 2023
- ▶ Video Conference Technology required (Webex, Zoom, Teams etc.)
 - ▶ Traditional notarization may be performed
 - ▶ Paper docs signed with ink pen
 - ▶ Signed doc delivered to notary
 - ▶ Notary signs with ink pen & affixes seal
 - ▶ Notary returns notarized document
 - ▶ Electronic notarizations may be performed
 - ▶ Approved eNotary solution used by eNotary
 - ▶ eSignatures affixed by signer
 - ▶ eNotary signature and seal affixed by eNotary

Remote Electronic Notarization - REN

- ▶ July 1, 2023 is the effective date
- ▶ Rules being written by NC Department of SOS
 - ▶ ANPR requesting public feedback will be published
- ▶ Only eNotaries will be able to perform REN
- ▶ Approved platforms & communication technology must be used
- ▶ Personal knowledge or identity proofing, credential analysis, and comparison of the ID is required
- ▶ Principals may be in other US states or at embassies or military bases
- ▶ Journals must be kept
- ▶ Recording of the transaction must be made

Key Definitions

10B-134.1

- ▶ (1) Communication technology. – An electronic device, process, or system that allows a remote electronic notary and a remotely located principal to communicate with each other simultaneously by sight and sound using audiovisual technology and that makes reasonable accommodations for remotely located principals with vision, hearing, or speech impairments.
- ▶ (6) Platform. – The online platform utilizing the communication technology to perform the remote electronic notarial act.
- ▶ (9) Remote electronic notary public or remote electronic notary. – A notary public who is registered with the Secretary to perform remote electronic notarizations.

Key Definitions

10B-134.1

- ▶ (10) Remotely located principal. – A principal who is not in the physical presence of the remote electronic notary and who is located at the time of the remote electronic notarial act in any of the following places:
 - ▶ a. Inside the United States.
 - ▶ b. Outside the United States and physically on the military installation or vessel named in the military orders assigning the member to active duty for more than 120 days, provided the remotely located principal is a member, spouse of a member, or dependent of a member of the Armed Forces of the United States.
 - ▶ c. Outside the United States at any of the following locations:
 - ▶ 1. United States Embassy.
 - ▶ 2. United States Consulate.
 - ▶ 3. United States Diplomatic Mission.

Prohibited Documents

10B-134.3(c)

- ▶ (1) A **self-proved will** executed pursuant to Article 4A of Chapter 31 of the General Statutes.
- ▶ (2) A **revocable or irrevocable trust** or any other document amending the same except for a certification of trust or similar document.
- ▶ (3) A **death beneficiary form** that requires an acknowledgment.
- ▶ (4) A **codicil to a will**.
- ▶ (5) Any document related to the **relinquishment of parental rights** under Article 3 of Chapter 48 of the General Statutes.
- ▶ (6) Mail-in **absentee ballots** issued under Article 20 of Chapter 163 of the General Statutes.
- ▶ Except for those on a military installation or vessel

Prohibitions

10B-134.3(e)

- ▶ Prohibitions
10B-134.3(e)
- ▶ **No remotely notarized power of attorney may be used by the attorney-in-fact with any other remotely notarized document** to convey title to, or transfer any interest in, a remotely located principal's real property. A power of attorney executed by a remotely located principal under this Part shall be recorded in at least one county register of deeds office in this State. This subsection does not apply to powers of attorney executed by a remotely located principal described in G.S. 10B-134.1(10)b.

Prerequisites

10B-134.9.(a)

- ▶ (1) The remote electronic notary shall inform the participants that North Carolina law requires that a communication technology **recording be made** of the remote electronic notarization.
- ▶ (2) The remote electronic notary shall require the remotely located principal to demonstrate, to the satisfaction of the remote electronic notary, that the remotely located principal is **not under duress** and is not otherwise being coerced to complete the transaction.
- ▶ (3) The remote electronic notary shall **verify the identity** of the remotely located principal as provided in G.S. 10B-134.11.
- ▶ (4) The remote electronic notary shall ask the remotely located principal if the remotely located principal would like an **attorney to participate** in the remote notarization, and allow for such if so requested.
- ▶ (5) The remotely located principal shall **verbally state what documents are being signed** for the notarial record or describe the general nature of the transaction.
- ▶ (6) The location of the remotely located principal shall be verified by **geolocation** via communication technology.

Additional Prohibitions

10B-134.9.(b)

- ▶ (1) The remote electronic notary has reasonable grounds to believe the remotely located principal is acting under duress or is **being coerced** into completing the transaction.
- ▶ (2) The remote electronic notary becomes aware that the communication **technology is not secure**.
- ▶ (3) The **electronic signature** of the remotely located principal **cannot be attached** to the electronic document for signature.
- ▶ (4) Unless an oath is being administered, the remote electronic notary's electronic notarial **certificate and seal cannot be attached** to the electronic document using an electronic technology that renders any subsequent change or modification to the document evident.

Special Exception

10B-134.9.(d)

- ▶ In judicial actions or proceedings, any notary public registered with the Secretary, whether or not registered as a remote electronic notary, may administer an oath or affirmation to a witness that does not require remote electronic notarization of a record or a notarial certificate and seal when done in person, provided all of the following apply:
 - ▶ (1) The **notary is physically located in this State** at the time the oath or affirmation is administered to the remotely located witness.
 - ▶ (2) **Communication technology is utilized.** The notary shall not be required to select the medium of communication technology or to retain a communication technology recording of the performance of each remote oral oath or affirmation.
 - ▶ (3) All requirements of this Article relating to the **identity proofing** of the witness are satisfied.

Confidentiality

10B-134.9.(f)

- ▶ Information gained from a remotely located principal in the course of performing a remote electronic notarization shall be treated as confidential by the remote electronic notary. "§ 10B-134.10. Reserved for future codification purposes.

System Failure

10B-134.9.(e)

- ▶ Any non-material failure of the remote electronic notary to comply with the requirements of the remote electronic notarization does not invalidate the notarial act or the electronic record that was remotely notarized.
- ▶ An aggrieved person is not prevented from using failures in the remote electronic notarization process, along with other grounds, to challenge the validity or enforceability of the remote electronic notarization based on fraud, forgery, impersonation, duress, incapacity, undue influence, minority, illegality, unconscionability, or another basis not related to the remote electronic notarial act or constructive notice provided by recording of the electronic record.

Identification Requirements

10B-134.11

- ▶ Personal knowledge **or**
- ▶ a. **Credential analysis**, by a third-party vendor approved by the Secretary, of a current document issued by a federal, state, or federal or state-recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual.
- ▶ b. **Identity proofing** by a third-party vendor approved by the Secretary.
- ▶ c. **Comparison**, by the remote electronic notary, of the current document issued by a federal, state, or federal or state-recognized tribal government agency bearing the photographic image of the individual's face and either the signature or a physical description of the individual presented by the remotely located principal during credential analysis and the image of the remotely located principal via the communication technology.

Journals

10B-134.15

- ▶ SOS to develop rules
- ▶ Must be kept for 10 years after the remote notarization
- ▶ Third party depository
- ▶ May surrender to employer upon termination but must maintain a back-up

Rules

10B-134.21

- ▶ The Secretary shall adopt rules necessary to establish standards, procedures, practices, forms, and records relating to remote electronic notarial acts to implement this Part, including at least all of the following:
 - ▶ (1) Any additional educational requirements for remote electronic notaries.
 - ▶ (2) The contents and security of the electronic journal.
 - ▶ (3) The security standards, features, qualifications, measures, storage, and any other matter related to communication technology, credential analysis, and identity proofing.
 - ▶ (4) The requirements of secure storage of all communication technology recordings, the electronic journal, and any other documentation under the control of the remote electronic notary regarding the remote electronic notarial act.

Advance Notice of Proposed Rulemaking #1



Real estate transactions

10B-134.25.

- ▶ (a) Nothing in this Part shall be construed to alter or supersede the law as set forth in Chapter 84 of the General Statutes, G.S. 10B-20(i) through (k), G.S. 75-1.1, or any opinion or ruling by a North Carolina court of competent jurisdiction or the North Carolina State Bar ruling pertaining to the **unauthorized practice of law** in this State, including the requirements that a licensed North Carolina **attorney shall supervise a residential real estate closing** under Authorized Practice Advisory Opinion 2002-1 issued by the North Carolina State Bar and perform all services defined as the practice of law for real property located in this State.
- ▶ (b) A remote electronic notary who is not a licensed North Carolina attorney is prohibited from rendering services or advice that constitutes the practice of law in this State.

10B-31. Fees for notarial acts.

- ▶ (1) For acknowledgments, jurats, verifications or proofs, ten dollars (\$10.00) per principal signature.
- ▶ (2) For oaths or affirmations without a signature, ten dollars (\$10.00) per person, except for an oath or affirmation administered to a credible witness to vouch for the identity of a principal or subscribing witness.
- ▶ (3) For an electronic notarization under G.S. 10B-118, fifteen dollars (\$15.00).
- ▶ (4) For remote notarization under Part 4A of Article 2 of this Chapter, twenty-five dollars (\$25.00) per principal signature.
- ▶ (5) For any notarial act under this Chapter, actual mileage at the federal mileage rate if the travel reimbursement is agreed to by the principal in writing prior to the travel."

Recording Paper Copy Electronic Document. G.S. 47-14(a3)

- ▶ (1) One of the following applies to the county register of deeds:
 - ▶ a. The register has no electronic recording system.
 - ▶ b. The register's recording system does not accept the type of document being submitted.
 - ▶ c. The register's electronic recording system is not operational in the ordinary course of business at the time of submission.
- ▶ (2) The execution of the instrument by one or more signers appears to have been proved or acknowledged before an officer with the apparent authority to take proofs or acknowledgements, and the proof or acknowledgment includes the officer's signature, commission expiration date, and official seal, if required, based on the appearance of these elements on the document as it will appear on the public record.

Recording Paper Copy Electronic Document. G.S. 47-14(a3)

- ▶ (3) The paper copy of the instrument presented for recording has a certificate upon or attached to it, signed under oath or by affirmation, attesting to all of the following:
 - ▶ a. The title of the instrument, the date of the instrument, the number of pages in the instrument, and that the paper copy is a true and correct copy of an electronic record printed by, or under the supervision of, the attestor.
 - ▶ b. The electronic document was proved or acknowledged with an officer's signature that meets the requirements of subsection (a2) of this section.

Recording Paper Copy Electronic Document. G.S. 47-14(a3)

- ▶ c. No security features present on the electronic document indicated any changes or errors in an electronic signature or other information in the electronic document after the affixation of the electronic notarial certificate when the paper copy was printed by, or under the supervision of, the attestor.
- ▶ d. The attestor has made no changes or modifications to the electronic document since the affixation of the electronic notarial certificate.
- ▶ e. The office of the register of deeds shall be entitled to rely on this certification and the attestor's capacity and due authority to give it.



EMERGENCY VIDEO NOTARIZATION
TEMPORARY LAW (EVN)

EXPIRES JUNE 30, 2023

10B-25 Emergency Video Notarization (EVN)

- ▶ Temporarily allows video notarization where the Notary and signer are in different locations (Zoom, Webex, GoTo Meetings etc.)
 - ▶ Must be live two-way audio & video (no pre-recordings)
 - ▶ Must have the ability to record the session through
 - ▶ The selected video conference technology
 - ▶ An independent video recording device
 - ▶ Screenshots of each participant's face, ID and the document
(recording is not required but the system must be able to if needed)

10B-25 Emergency Video Notarization (EVN)

- ▶ Notaries & eNotaries may use EVN
 - ▶ Notaries - use traditional wet inked signatures & seals
 - ▶ eNotaries – use electronic signatures & electronic seals

Limitations of EVN

- ▶ Expires on June 30, 2023
- ▶ Notaries are NOT required to perform EVN
- ▶ A permanent remote electronic notarization (REN) law becomes effective July 1, 2023
 - ▶ Only eNotaries will be able to perform REN acts
- ▶ Not allowed on:
 - ▶ Absentee voter ballots or
 - ▶ Verifications and proofs

Impact on Register of Deeds

- ▶ ROD's may administer the notary oath using video conference technology.

Performing the Video Notarization

- ▶ Both parties log in to a video conference.
- ▶ Notary positively identifies the signer(s):
 - ▶ Personal knowledge
 - ▶ Credible Witness
 - ▶ Satisfactory evidence – Must hold the card up to the camera long enough for the notary to determine that it is the person.
 - ▶ Current
 - ▶ Issued by State, Federal or Tribal government agency
 - ▶ Picture of the persons face
 - ▶ Physical description **AND** signature (This is new for EVN)

Performing the Video Notarization

- ▶ Each principal signer(s) must state what **N.C. county** they are in.
- ▶ The notary must see them sign document(s)
- ▶ In the case of an oath or affirmation the notary must administer the oath or affirmation to the affiant in real time over the live video feed.

Performing the Video Notarization

- ▶ If Documents need an **original wet signature**:
 - ▶ Notary must observe the signing of document(s)
 - ▶ Principal must send a copy of the signed document by electronic means on the **same day**
 - ▶ The principal must **send the original signed** paper copy to the notary by mail or other delivery method

Performing the Video Notarization

- ▶ **Wet signature process Cont.:**
 - ▶ Upon receiving the originally signed paper copy the notary will **compare** it to the electronic copy that was previously sent and complete the notarial certificate, signing with an **INK PEN** and send the document back to the principal or their designee
 - ▶ The date on the **NOTARY CERTIFICATE** will reflect the date the notary observed the signing on the video conference technology

Performing the Video Notarization

- ▶ For signed documents that **do not** require an original signature:
 - ▶ Notary must observe the signing of document(s)
 - ▶ Principal must fax or email the signed document to the notary on **the same day**
 - ▶ Notary must print the document and complete the notary certificate using an **INK PEN** and send it back to the signer on the same day (fax, email, snail mail)

Requirements for the EVN Notary Certificate

I signed this notarial certificate on _____ according to the emergency video notarization
Date
requirements contained in G.S. 10B-25.

Notary Public location during video notarization: _____ County
Stated physical location of principal during video notarization: _____ County

OPTIONAL

This certificate is attached to a _____, signed by _____
Title/Type of Document *Name of Principal Signer(s)*

on _____, and includes _____ pages.
Date *# of pages*

If this wording is not on the notary certificate, the notary MUST write it by hand or use one of our newly created certificates from our website.

https://www.sosnc.gov/divisions/notary/Emergency_Video_Notarization

Electronic Notarization EVN

- ▶ The electronic notary must use:
 - ▶ Approved electronic notary solution
 - ▶ Video conference tool – Zoom, Webex, GotoMeeting etc.

- ▶ Only eNotaries can:
 - ▶ perform electronic notarizations
 - ▶ use electronic signatures

Journal Requirements

- ▶ The notary is **required** to keep a journal of each emergency video notarization in a secure location for at least 10 years, including:
 - ▶ Time of day
 - ▶ Date of the completion of the emergency video notarization notarial certificate
 - ▶ Name of the principal signer
 - ▶ Type of notarial act performed
 - ▶ Type of document notarized or proceeding performed

Journal Requirements cont.

- ▶ Type of identification presented including, if applicable, issuing agency and identification number on the identification presented
 - ▶ Type of video conference technology used during the emergency video notarization (Zoom, Webex etc.)
 - ▶ Statement that the notary and each principal signer could see and hear each other
 - ▶ Name of any other people who were in the room
-
- ▶ SOS created a special Covid-19 EVN Journal:
<https://www.sosnc.gov/imaging/dime/webportal/55574300.pdf>



Emergency Video Notarization Journal

Entry No.	Date of Completion:	Time:	Last, First Name [Signer (s)]:	Type of Notarial Act:	Type Of ID:
					ID No.: Issuing Agency:
Were Other Person(s) Present? YES NO			Name(s) of Person(s) Present:		
Was original wet signature notarized? YES NO					
If "YES", On What Date: _____					
County (Where the principal is located at time of notarization):					
Signature: _____			What Type of Audio-Visual Technology/Software Was Used: _____		
Notes: _____			Could the Notary and Principal both see each other? YES NO		

Important Reminders

- ▶ **Electronic signatures & seals** may ONLY be used by **Electronic Notaries**.
- ▶ Traditional Notaries **MUST** sign all certificates with an ink pen and use their handheld seal.

Emergency Video Notarization Instructional Video

<https://www.youtube.com/watch?v=moH3fhXTTA>

WHAT DOES THIS ALLOW & WHO IT APPLIES TO

- ▶ Notaries and electronic notaries may perform oaths/affirmations and acknowledgments over video conference technology (Webex, GoTo Meeting etc)
- ▶ This allows for wet inked signatures to be notarized as well as electronic signatures associated with an electronic notarization to be notarized using video conferencing technology.
- ▶ Notaries are NOT required to perform video notarizations and can refuse if they are not satisfied with the identification presented.





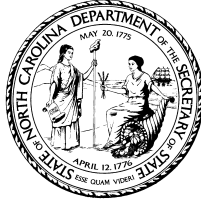
Thank You!

OZIE STALLWORTH

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State of North Carolina
Department of the Secretary of State

ELAINE F. MARSHALL
SECRETARY OF STATE

OZIE H. STALLWORTH
Electronic Notarization Director

Ozie H. Stallworth
Biography

Mr. Stallworth was the 2020 recipient of the Governor's Award for Excellence in Innovation and Efficiency for directing North Carolina's Electronic Mortgage Closing Initiative. With arguably more experience in the unique area of electronic notarization than any other individual in the country he easily qualifies as the nation's foremost expert on eNotary policies, procedures and implementation and is the Department's resident expert on eCommerce.

Among his many accomplishments in the field of eCommerce is launching the North Carolina eClosing Initiative after successfully overseeing the execution of the first electronic mortgage closing in the history of North Carolina. The first electronic recording of a plat in the nation also was completed under his direction in addition to directing the efforts of the Secretary of State's office to promulgate rules for electronic notarization and electronic recording, resulting in 99% of the state's population having access to electronic recording. He also organizing the first international conference on electronic notarizations and electronic apostilles with the Hague Conference, the International Union of Latin Notaries and the National Notary Association.

Stallworth served on the North Carolina Office of the State Controller's Digital Signature Higher Assurance Work Group to procure an enterprise eSignature solution (DocuSign) for use by state and local government agencies, and routinely consults with officials within state government, principals in the business community as well as trade association executives on electronic signature laws, practices and policies.

He also developed the Secretary of State's Continuing Legal Education Series where he develops and presents courses on eCommerce and notary subject matter as a means to educate the state's legal community on the laws governing electronic commerce. Stallworth also regularly teaches notary and electronic notary courses at North Carolina State University and Wake Tech Community College.