

Article 2.

Electronic Notary Act.

Part 1. General Provisions.

§ 10B-100. Short title.

This Article is the Electronic Notary Public Act and may be cited by that name. (2005-391, s. 4.)

§ 10B-101. Definitions.

The following definitions apply in this Article:

- (1) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (2) Electronic document. – Information that is created, generated, sent, communicated, received, or stored by electronic means.
- (3) Electronic notarial act and electronic notarization. – An official act by an electronic notary public that involves electronic documents and the personal appearance of the principal.
- (4) Electronic notary public and electronic notary. – A notary public who has registered with the Secretary the capability of performing electronic notarial acts and remote electronic notarial acts in conformance with this Article.
- (5) Electronic notary seal and electronic seal. – 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. – 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. – 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.
- (8) Repealed by Session Laws 2023-57, s. 7(a), effective July 1, 2024.
- (9) Remote electronic notarial act. – As defined in G.S. 10B-134.1. (2005-391, s. 4; 2022-54, s. 2(c); 2023-57, ss. 2, 7(a).)

§ 10B-102. Scope of this Article.

(a) Article 1 of this Chapter applies to all acts authorized under this Article unless the provisions of Article 1 directly conflict with the provisions of this Article, in which case provisions of Article 2 shall control.

(b) When conducting a remote electronic notarization, the electronic notary shall comply with the requirements of Article 1 of this Chapter. (2005-391, s. 4; 2022-54, s. 2(d); 2023-57, ss. 2, 7(b).)

§ 10B-103. Reserved for future codification purposes.

§ 10B-104. Reserved for future codification purposes.

Part 2. Registration.

§ 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.
- (4) Submit an electronic registration form containing no significant misstatement or omission of fact.

(b) The Secretary may deny a registration as an electronic notary as authorized in G.S. 10B-5(d). (2005-391, s. 4; 2022-54, s. 2(e); 2023-57, ss. 2, 7(c).)

§ 10B-106. Registration with the Secretary of State.

(a) A notary shall register the capability to notarize electronically or remotely with the Secretary in accordance with rules adopted by the Secretary before performing notarial acts pursuant to this Article.

(b) Registration as an electronic notary shall include authorization to perform remote electronic notarial acts if the electronic notary complies with all requirements of this Article and the rules related to remote electronic notarial acts.

(c) Before performing electronic notarial acts, an electronic notary shall register the capability to notarize electronically by notifying the Secretary of all technology the electronic notary will use to create an electronic signature and also all licensed platforms, if any, that the electronic notary will use to perform remote electronic notarizations.

(c1) The term of registration as an electronic notary shall coincide with the term of the notary's commission under Article 1 of this Chapter.

(c2) A notary may renew an electronic notary registration at the same time that the notary applies for recommissioning under the requirements of Article 1 of this Chapter.

(d) An electronic form shall be used by an electronic notary in registering with the Secretary and it shall include, at least all of the following:

- (1) The applicant's full legal name and the name to be used for commissioning, excluding nicknames.
- (2) The state and county of commissioning of the registrant.
- (3) The expiration date of the registrant's notary commission.
- (4) Proof of successful completion of the course of instruction on electronic notarization as required by this Article.
- (5) Repealed by Session Laws 2023-57, s. 7(d), effective July 1, 2024.
- (6) If the device used to create the registrant's electronic signature was issued or registered through a licensed certification authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.
- (7) The e-mail address of the registrant.

The information provided in a registration that relates to subdivision (7) of this section shall be considered confidential information and shall not be subject to disclosure under Chapter 132 of the General Statutes, except as provided by rule.

(e) The electronic registration form for an electronic notary shall be transmitted electronically to the Secretary and shall include any decrypting instructions, codes, keys, or software that allow the registration to be read.

(f) Within 10 business days after the change of any registration information required of an electronic notary, including any changes involving a licensed platform, the notary shall electronically transmit to the Secretary a notice of the change of information signed in the official name in which the electronic notary was commissioned. (2005-391, s. 4; 2006-59, s. 25; 2006-259, ss. 1, 3; 2022-54, s. 2(f); 2023-57, s. 7(d).)

§ 10B-107. Course of instruction.

(a) Before performing electronic or remote electronic notarial acts, a notary shall take a course of instruction of least four 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 pertaining to electronic notarization and remote electronic notarization. (2005-391, s. 4; 2023-57, s. 7(e).)

§ 10B-108. Fees for registration.

The fee payable to the Secretary for registering or reregistering as an electronic notary is fifty dollars (\$50.00), which shall be in addition to the fee required in G.S. 10B-13. All funds received by the Secretary under this section shall be deposited into the General Fund. (2005-391, s. 4.)

§ 10B-109: Reserved for future codification purposes.

§ 10B-110: Reserved for future codification purposes.

§ 10B-111: Reserved for future codification purposes.

§ 10B-112: Reserved for future codification purposes.

§ 10B-113: Reserved for future codification purposes.

§ 10B-114: Reserved for future codification purposes.

Part 3. Electronic Notarial Acts, Powers, and Limitations.

§ 10B-115. Types of electronic notarial acts.

The following types of notarial acts may be performed electronically:

- (1) Acknowledgments;
- (2) Jurats;
- (3) Verifications or proofs; and
- (4) Oaths or affirmations. (2005-391, s. 4.)

§ 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. (2005-391, s. 4.)

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

In performing an electronic or remote 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" or Electronic Notary Public Utilizing Communication Technology.
- (3) The words State of North Carolina.
- (4) The expiration date of the commission.
- (5) The notary's electronic signature.
- (6) The completed wording of one of the following notarial certificates:
 - a. Acknowledgment.
 - b. Jurat.
 - c. Verification or proof.
 - d. Repealed by Session Laws 2022-54, s. 2(g), effective July 1, 2024. (2005-391, s. 4; 2022-54, s. 2(g); 2023-57, ss. 2, 7(f).)

§ 10B-118. (Repealed effective July 1, 2024) Maximum fees.

For performing electronic notarial acts, the maximum fees that may be charged by an electronic notary are as follows:

- (1) For acknowledgments, \$10.00 per signature.
- (2) For jurats, \$10.00 per signature.
- (3) For verifications or proofs, \$10.00 per signature.
- (4) For oaths or affirmations, \$10.00 per signature. (2005-391, s. 4; repealed by 2022-54, s. 2(h), effective July 1, 2024; 2023-57, s. 2.)

§ 10B-118. Repealed by Session Laws 2022-54, s. 2(h), as amended by Session Laws 2023-57, s. 2, effective July 1, 2024.

§ 10B-119: Reserved for future codification purposes.

§ 10B-120: Reserved for future codification purposes.

§ 10B-121: Reserved for future codification purposes.

§ 10B-122: Reserved for future codification purposes.

§ 10B-123: Reserved for future codification purposes.

§ 10B-124: Reserved for future codification purposes.

Part 4. Electronic Notary Records, Maintenance, and Disposition.

§ 10B-125. Electronic signature, electronic seal.

(a) The notary's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing electronic notarial acts.

(b) The Secretary shall adopt rules necessary to establish standards, procedures, practices, forms, and records relating to a notary's electronic signature and electronic seal. The notary's electronic seal and electronic signature shall conform to any standards adopted by the Secretary. (2005-391, s. 4.)

§ 10B-126. Security measures.

(a) A notary shall safeguard the notary's electronic signature, the notary's electronic seal, and all other notarial records. Notarial records shall be maintained by the notary, and the notary shall not surrender or destroy the records except as required by a court order or as allowed under rules adopted by the Secretary.

(b) When not in use, the notary shall keep the notary's electronic signature, electronic seal, and all other notarial records secure, under the exclusive control of the notary, and shall not allow them to be used by any other notary or any other person.

(c) A notary shall do the following within 10 days of discovering that the notary's electronic seal or electronic signature has been stolen, lost, damaged, compromised, or otherwise rendered incapable of affixing a legible image:

- (1) Inform the appropriate law enforcement agency in the case of theft or vandalism.
- (2) Notify the appropriate register of deeds and the Secretary in writing and signed in the official name in which he or she was commissioned.

(d) The Secretary may adopt rules necessary to insure the integrity, security, and authenticity of electronic notarizations.

(e) The Secretary may require an electronic notary to create and to maintain a record, journal, or entry of each electronic notarial act. The rule-making authority contained in this subsection shall become effective 18 months after December 1, 2005.

(f) The failure of an electronic notary to produce within the time period set out in the Department's request any record required by a rule adopted under this section shall result in the suspension of the electronic notary's power to act as a notary under the provision of this Chapter until the Secretary reinstates the notary's commission.

(g) Upon resignation, revocation, or expiration of an electronic notary commission, or death of the notary, all notarial records required by statute or rule shall be delivered to an approved custodian selected by the notary. (2005-391, s. 4; 2023-57, s. 8(a).)

§ 10B-127. Maintenance of electronic device.

(a) An electronic notary shall take reasonable steps to ensure that any registered device used to create the notary's electronic signature is current and has not been revoked or terminated by its issuing or registering authority.

(b) If an electronic notary contracts with an approved provider of an electronic seal and electronic signature or licensed platform for a device used to create electronic signatures or for electronic notarization or remote electronic notarization services, and the contract either expires or is changed during the electronic notary's term of office, the notary shall cease performing electronic and remote electronic notarizations until:

- (1) A new contract is executed or a new device is duly issued or registered to the notary; and
- (2) An electronically signed notice is sent to the Secretary that shall include the starting and expiration dates of any new registration or contract term and any other new information at variance with information in the most recently executed electronic registration form. (2005-391, s. 4; 2023-57, s. 8(b).)

§ 10B-128. Disposition of records.

(a) Upon compliance with G.S. 10B-127 and except as provided in subsection (b) of this section, when an electronic notary's commission expires or is resigned or revoked, or when an electronic notary dies, the notary or the notary's duly authorized representative shall (i) erase, delete, or destroy the coding, disk, certificate, card, software, file, or program that enables electronic affixation of the notary's official electronic signature and (ii) notify the Secretary within 45 days.

(b) A former electronic notary whose previous commission or application was not revoked or denied by the Secretary need not erase, delete, or destroy the coding, disk, certificate, card, software, file, or program enabling electronic affixation of the official electronic signature if he or she is recommissioned and reregistered as an electronic notary using the same electronic signature and the same licensed platform, if any, within three months after commission expiration. (2005-391, s. 4; 2023-57, s. 8(c).)

§ 10B-129: Reserved for future codification purposes.

§ 10B-130: Reserved for future codification purposes.

§ 10B-131: Reserved for future codification purposes.

§ 10B-132: Reserved for future codification purposes.

§ 10B-133: Reserved for future codification purposes.

Part 4A. (Effective July 1, 2024) Remote Electronic Notarization.

§ 10B-134. (Reserved)

§ 10B-134.1. Definitions.

The following definitions shall apply in this Article:

- (1) Communication technology. – An electronic device, process, or system that allows an 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.

- (2) Communication technology recording. – The simultaneous, synchronous audio and visual recording of the notarial act.
- (3) Credential analysis. – A process or service through which a third-party vendor performs a remote analysis of the characteristics and security features of each identification of the remotely located principal pursuant to G.S. 10B-3(22)a.
- (3a) Custodial services. – Services approved by the Secretary and selected by the notary to provide long-term storage of the electronic journal and communications technology recordings.
- (3b) Custodian. – The person providing the custodial services. The custodian may but need not be the same as the depository.
- (3c) Depository. – The person or platform providing the depository services.
- (3d) Depository services. – Storage services provided by the platform of the electronic journal entries and communications technology recordings as they are entered.
- (4) Electronic journal. – A secure record of remote electronic notarial acts that contains the information required under G.S. 10B-134.15.
- (4a) Geolocation. – Identification of the geographical location of a remotely located principal or device used by a remotely located principal through digital information processed via the internet.
- (5) Identity proofing. – A process or service through which a third-party vendor affirms the identity of a remotely located principal through review of personal information from public or proprietary data sources.
- (6) Platform. – The online platform utilizing the communication technology, credential analysis, and identity proofing and including communication technology recordings, geolocation, electronic journals, and depository services in order to perform the remote electronic notarial act.
- (7) Remote electronic notarial certificate. – The portion of a notarized electronic document that is completed by the electronic notary and contains all of the following:
 - a. The electronic notary's electronic signature and the electronic notary's electronic seal.
 - b. The facts attested to by the electronic notary in a particular notarization.
 - c. A statement in the acknowledgement, jurat, or verification certificate identifying where the remotely located principal was physically located at the time of the remote electronic notarization.
 - d. A statement that the notarization is a remote electronic notarization performed using communication technology by an electronic notary.
- (8) Remote electronic notarization or remote electronic notarial act. – A notarial act performed by means of communication technology.
- (9) Repealed by Session Laws 2023-57, s. 9(a), effective July 1, 2024.
- (10) Remotely located principal. – A principal who is not in the physical presence of the 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.
- (10a) Self-attestation. – A remotely located principal's written, verbal, or electronic declaration and confirmation of that remotely located principal's geographical location at the time of the remote electronic notarial act given under penalty of perjury.
- (11) Tamper-evident. – Any change, interference, or alteration to a record that is patently plain and obvious.
- (12) Third-party vendor. – Any person providing credential analysis, identity proofing, or custodial services to electronic notaries. (2022-54, s. 1; 2023-57, ss. 2, 9(a).)

§ 10B-134.2. Reserved for future codification purposes.

§ 10B-134.3. Types of remote electronic notarial acts; prohibitions.

(a) Upon registration with the Secretary under this Article, an electronic notary may perform any of the notarial acts listed in G.S. 10B-115 by means of communication technology in accordance with this Part. An electronic notary may perform any authorized remote notarial act with respect to electronic documents.

(b) An electronic notary shall not perform a remote electronic notarial act if any of the following applies:

- (1) The remotely located principal's identity cannot be verified under G.S. 10B-134.11.
- (2) Any reason set forth in G.S. 10B-20.
- (3) Any reason set forth in G.S. 10B-134.9.
- (4) The notarial act would be a verification or proof.

(c) Notwithstanding subsection (a) of this section, an electronic notary shall not perform any remote electronic notarial act with regard to any of the following documents:

- (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) Repealed by Session Laws 2023-57, s. 9(b), effective July 1, 2024.
- (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.

(d) The prohibitions in subsection (c) of this section shall not apply when, at the time the remote electronic notarial act is performed, the remotely located principal meets the description in G.S. 10B-134.1(10)b.

(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. (2022-54, s. 1; 2023-57, ss. 2, 9(b).)

§ 10B-134.4. Reserved for future codification purposes.

§ 10B-134.5. Use of communication technology.

(a) The communication technology used by an electronic notary to perform remote electronic notarial acts for remotely located principals shall comply with all of the following requirements:

- (1) Host the meeting between the electronic notary and the remotely located principal in real time.
- (2) Allow direct interaction between the remotely located principal seeking the electronic notary's services and the electronic notary so that each can communicate simultaneously by sight and sound through communication technology.
- (3) Include audio with sound clear enough that each participant in the remote electronic notarial act can hear and understand all other participants.
- (4) Have sufficient video quality to allow a clear and unobstructed visual observation of the face of each participant and the document presented by the remotely located principal during credential analysis for a sufficient time to allow the electronic notary to verify the remotely located principal's identity under G.S. 10B-134.11. The electronic notary shall determine if the time is sufficient.
- (5) Not include prerecorded video or audio or both.
- (6) Be capable of recording using the communication technology's recording and storage services.
- (7) Be capable of geolocating the remotely located principal to corroborate the location of the remotely located principal.

(b) The electronic notary shall take reasonable steps to provide that the communication technology used in a remote electronic notarization is secure from unauthorized interception. An electronic notary shall select one or more tamper-evident technologies to perform remote electronic notarial acts with respect to electronic documents. In addition to any requirements of this Article or established by the Secretary, the communication technology shall provide automated backup of the communication technology recording.

(c) No person may require an electronic notary to perform any remote electronic notarial act using communication technology that the electronic notary has not selected. (2022-54, s. 1; 2023-57, ss. 2, 9(c).)

§ 10B-134.6. Reserved for future codification purposes.

§ 10B-134.7. Authority to perform remote electronic notarial acts.

(a) An electronic notary may perform a remote electronic notarial act authorized under this Part only while the electronic notary is physically located in this State.

(b) A remote electronic notarization performed by an electronic notary of this State under this Part is governed by the laws of this State. (2022-54, s. 1; 2023-57, ss. 2, 9(d).)

§ 10B-134.8. Reserved for future codification purposes.

§ 10B-134.9. Requirements and procedures for remote electronic notarial acts.

(a) All of the following shall occur prior to the performance of a remote electronic notarial act:

- (1) The 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 remotely located principal does not appear in the judgment of the electronic notary to be incompetent, lacking in understanding of the nature and consequences of the transaction requiring the notarial act, or acting involuntarily, under duress, or undue influence.
- (3) The electronic notary shall verify the identity of the remotely located principal as provided in G.S. 10B-134.11. 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.
- (4) The 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 or by self-attestation.

(b) In addition to the prohibitions contained in G.S. 10B-134.3 and G.S. 10B-20, an electronic notary shall refuse to perform a remote electronic notarial act if any of the following applies:

- (1) The electronic notary has reasonable grounds to believe the remotely located principal appears in the judgment of the electronic notary to be incompetent, lacking in understanding of the nature and consequences of the transaction requiring the notarial act, or acting involuntarily, under duress, or undue influence.
- (2) The 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 that is not associated with a document is being administered, the 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.

(c) Except as provided in subsection (d) of this section, if the remote electronic notarial act is an oath or affirmation, the electronic notary shall administer the oath or affirmation to the remotely located principal utilizing a licensed platform.

(d) In judicial actions or proceedings, any notary public registered with the Secretary, whether or not registered as an 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.

(e) Any non-material failure of the 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, incompetence, 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.

(f) Information gained from a remotely located principal in the course of performing a remote electronic notarization shall be treated as confidential by the electronic notary. (2022-54, s. 1; 2023-57, ss. 2, 9(e).)

§ 10B-134.10. Reserved for future codification purposes.

§ 10B-134.11. Verification of identity; identity proofing; credential analysis.

(a) Prior to the remote electronic notarial act, the electronic notary shall verify each remotely located principal's identity through one of the following methods:

- (1) The remotely located principal creating the electronic signature is personally known to the electronic notary.
- (2) All of the following:
 - 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 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.

(b) Notwithstanding subsection (a) of this section, an electronic notary may require the remotely located principal to provide additional information or identification credentials necessary to confirm the identity of the remotely located principal. (2022-54, s. 1; 2023-57, ss. 2, 9(f).)

§ 10B-134.12. Reserved for future codification purposes.

§ 10B-134.13. Electronic notarization and remote electronic notarization.

When conducting a remote electronic notarization, the electronic notary shall comply with the requirements of this Chapter. Each remote electronic notarization shall include a communication technology recording. There shall be no requirement that the communication technology recording further include any transactions other than the remote electronic notarial act unless the Secretary specifies a requirement to also record interactions of those particular transactions. (2022-54, s. 1; 2023-57, ss. 2, 9(g).)

§ 10B-134.14. Reserved for future codification purposes.

§ 10B-134.15. Electronic journal of remote electronic notarial acts.

(a) Notwithstanding G.S. 10B-38, an electronic notary who performs a remote electronic notarization shall enter information about the remote electronic notarization in an electronic journal. The electronic journal shall be the exclusive property of the electronic notary. The electronic notary shall not allow another person to make entries in the electronic journal.

(b) The Secretary shall adopt rules specifying the content and secure storage of the electronic journal. The rules adopted by the Secretary shall comply with all of the following:

- (1) Allow for electronic and paper mediums of the electronic journal.
- (2) Require retention for 10 years after the remote electronic notarization.
- (3) Allow a party involved in a transaction that utilizes remote electronic notarization to require additional information regarding that transaction be included in the electronic journal.
- (4) Authorize a third-party vendor, including a licensed platform, to act as a depository or custodian of electronic journals.
- (5) Specify to whom the electronic journal shall be delivered upon resignation, revocation, or expiration of a notary commission or death or adjudication of incompetency of an electronic notary.

(c) An electronic notary may surrender the electronic journal to the electronic notary's employer upon termination of employment if the electronic journal consists of remote electronic notarizations made in the conduct of the employer's business, but the electronic notary shall also keep and maintain an accurate backup copy of the journal for 10 years after the last remote electronic notarization entered into the electronic journal.

(d) Except as provided in subsection (c) of this section, the notary shall not surrender or destroy the electronic journal or the communication technology recordings of remote electronic notarial acts except as required by a court order or as allowed under rules adopted by the Secretary. (2022-54, s. 1; 2023-57, ss. 2, 9(h); 2023-124, s. 4.2.)

§ 10B-134.16. Reserved for future codification purposes.

§ 10B-134.17. Security measures by notary; surrender of journal; etc.

- (a) An electronic notary shall comply with all of the following security requirements:
- (1) All records of journal entries and communication technology recordings shall be securely stored in a depository under the control of the electronic notary or with a custodian duly appointed under the terms of this Part. If a custodian is appointed, the custodian shall be a third-party vendor approved by the Secretary.
 - (2) Take reasonable steps to ensure that the communication technology recordings are secure from unauthorized interception during transmission between participants involved in a electronic notarial act. The communication technology used by the electronic notary shall employ data protection safeguards consistent with generally accepted information security standards.
- (b) Within 10 calendar days of discovering any permanent loss of data, unauthorized use, loss of use, or compromise of security of the electronic journal or the communication technology recordings of remote electronic notarial acts, the remote electronic notary shall do both of the following:
- (1) Inform the appropriate law enforcement agency in the case of theft, tampering, or vandalism.
 - (2) Notify the register of deeds in the county of the electronic notary's commissioning under G.S. 10B-10 and the Secretary in writing and signed in the official name in which the electronic notary was commissioned. The notice shall indicate whether there was any permanent loss of data, unauthorized use, loss of use, or compromise of security of the electronic journal or the communication technology recordings of remote electronic notarial acts.
- (c) The failure of an electronic notary to produce within the time period set out in the Secretary's request any record required by a rule adopted under this Part shall result in the suspension of the electronic notary's power to act as a notary under the provisions of this Chapter until the Secretary reinstates the notary's commission. (2022-54, s. 1; 2023-57, ss. 2, 9(i).)

§ 10B-134.18. Reserved for future codification purposes.

§ 10B-134.19. Platform licensure by Secretary.

- (a) An electronic notary shall use only a communication technology through a platform licensed by the Secretary.
- (b) The Secretary shall review and issue platform licenses to qualified applicants. The applicant shall complete and submit an application on a form prescribed by the Secretary and pay a licensing fee of five thousand dollars (\$5,000).
- (c) The application shall set forth at least all of the following:
- (1) The name and address of the applicant and its registered agent.
 - (2) The names of all officers or directors directly involved in the operation, management, or control of the platform and all employees who exercise substantial influence or control over the platform.

- (3) The proposed technology to address identity verification and geolocation requirements and explanations regarding security governance and the designation of a chief security officer or its equivalent.
 - (4) Any other information the Secretary may deem necessary.
- (d) The Secretary shall conduct a background investigation on the applicant and persons described in subdivision (2) of subsection (c) of this section as deemed necessary by the Secretary. The background investigation shall include a criminal history record check, to which the applicant and person described in subdivision (2) of subsection (c) of this section must consent.
- (e) The Secretary shall award a license only to applicants who are of good moral character and who provide a communication technology capable of all of the following:
- (1) A manner of ensuring that the electronic record presented for remote electronic notarization is the same record electronically signed by the remotely located principal.
 - (2) Securely creating and storing, or transmitting securely to be securely stored, the communication technology recording, keeping confidential the questions asked as part of any identity proofing and the means and methods used to generate the credential analysis.
 - (3) A manner of ensuring that real-time communications are secure from unauthorized interception, access, or viewing.
 - (4) Reasonable security measures to prevent unauthorized access to all of the following:
 - a. The live transmission of the remote electronic notarial act.
 - b. Any communication technology recording of the remote electronic notarial act.
 - c. The verification methods and credentials used to verify the identity of the remotely located principal.
 - d. The electronic documents presented for remote electronic notarization.
 - (5) Geolocation of the remotely located principal.
- (f) No platform license is assignable or transferable without the approval of the Secretary and shall be renewed annually in a manner set by the Secretary and upon payment of a fee of five thousand dollars (\$5,000).
- (g) Each platform licensee shall collect a five dollar (\$5.00) per remote notarial act fee and remit fees collected at least monthly to the Secretary in a manner determined by the Secretary. All fees so remitted to the Secretary shall be placed in a nonreverting agency reserve account to be used by the Secretary in the implementation and enforcement of this Part. (2022-54, s. 1; 2023-57, ss. 2, 9(j).)

§ 10B-134.20. Reserved for future codification purposes.

§ 10B-134.21. Rules.

- (a) 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 electronic notaries regarding remote electronic notarizations.
 - (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, identity proofing, and depository and custodial services.
- (4) The requirements of secure storage of all communication technology recordings, the electronic journal, and any other documentation under the control of the electronic notary regarding the electronic notarial act.
- (5) Any necessary actions upon notification of permanent loss of data, unauthorized use, loss of use, or compromise of security of the electronic journal or the communication technology recordings of remote electronic notarial acts.

(b) The Secretary may utilize emergency and temporary rulemaking as needed to implement this Part. (2022-54, s. 1; 2023-57, ss. 2, 9(k).)

§ 10B-134.22. Reserved for future codification purposes.

§ 10B-134.23. Standards for services provided to electronic notaries; enforcement.

(a) All licensees and third-party vendors shall meet all standards established by the Secretary under this Part for the provision of services to electronic notaries in this State for remote electronic notarization services. If the Secretary has not adopted rules establishing standards for a service, a licensee or third-party vendor may not furnish that service to an electronic notary public until the Secretary has determined that the provided service meets security standards generally accepted within the industry for that service.

(b) The Secretary may adopt rules establishing, supplementing, or amending third-party vendor guidelines for standards and processes for identity proofing and credential analysis services so that third-party vendors interacting with electronic notaries satisfy the security qualifications of establishing the identity of the remotely located principal.

(c) The Secretary, in the Secretary's discretion, may do any one or more of the following if a licensee or third-party vendor violates this Part or the rules adopted by the Secretary under this Part:

- (1) Require a licensee or third-party vendor to provide an electronic notary with proof that a remote electronic notarization issue was caused in whole or in part by the licensee or third-party vendor's technology.
- (2) Issue a letter of warning, suspension, or revocation to the licensee or third-party vendor. The Secretary may require the licensee or third-party vendor to provide proof that it has come into compliance to reinstate any license or use of a third-party vendor's services.
- (3) Restrict use of a licensee or third-party vendor's technology by electronic notaries until it has come into compliance.
- (4) Assess a civil penalty of not more than one thousand dollars (\$1,000) per violation against any licensee or third-party vendor that violates a provision of this Part. In determining the amount of a penalty, the Secretary shall give due consideration to aggravating and mitigating factors presented to the Secretary by the licensee or third-party vendor and electronic notaries.
- (5) Any other appropriate remedy.

(d) A licensee or third-party vendor whose technology is restricted, suspended, discontinued, revoked, or not renewed for any reason shall work with electronic notaries using the

services of that licensee or third-party vendor to ensure access and, if necessary, ease transition to a different licensee or third-party vendor and may not deny its electronic notary customers access.

(e) A licensee or third-party vendor is liable to any person who suffers damages from a remote electronic notarial act if both of the following apply:

- (1) The damage is proximately caused by a service provided by the licensee or third-party vendor that failed to meet any standard under this Part.
- (2) The person damaged was a party to, or in privity with a party to, the remote electronic notarial act proximately causing the damage.

(f) An electronic notary who exercised reasonable care in selecting and using a licensee or third-party vendor in connection with a remote electronic notarial act shall not be liable for any damages resulting from the licensee's or third-party vendor's failure to comply with the requirements of this Part. Any provision in a contract between the electronic notary and a licensee or third-party vendor that attempts to waive the immunity conferred by this subsection shall be null, void, and of no effect. (2022-54, s. 1; 2023-57, ss. 2, 9(l).)

§ 10B-134.24. Reserved for future codification purposes.

§ 10B-134.25. Real estate transactions.

(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) An 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. (2022-54, s. 1; 2023-57, ss. 2, 9(m).)

§ 10B-134.26. Reserved for future codification purposes.

Part 5. Certificate Forms.

§ 10B-135. Validity of notarial certificates.

The provisions contained in Article 1, Part 6, of this Chapter, with regard to notarial certificate forms, are applicable for the purposes of this Article. (2005-391, s. 4.)

§ 10B-136. Form of evidence of authority of electronic notarial act.

Electronic evidence of the authenticity of the official electronic signature and electronic seal of an electronic notary of this State, if required, shall be attached to, or logically associated with, a notarized electronic document transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the government of the United States. (2005-391, s. 4.)

§ 10B-137. Certificate of authority for electronic notarial act.

(a) An electronic certificate of authority evidencing the authenticity of the official electronic signature and electronic seal of an electronic notary of this State shall contain substantially the following words:

Certificate of Authority for an Electronic Notarial Act

I, _____ (name, title, jurisdiction of commissioning official) certify that _____ (name of electronic notary), the person named as an electronic notary public in the attached or associated document, was indeed registered as an electronic notary public for the State of North Carolina and authorized to act as such at the time of the document's electronic notarization.

To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic signature this _____ day of _____, 20__.

(Electronic signature (and seal) of commissioning official)

(b) The Secretary may charge ten dollars (\$10.00) for issuing an electronic certificate of authority. (2005-391, s. 4.)

§ 10B-138: Reserved for future codification purposes.

§ 10B-139: Reserved for future codification purposes.

§ 10B-140: Reserved for future codification purposes.

§ 10B-141: Reserved for future codification purposes.

§ 10B-142: Reserved for future codification purposes.

§ 10B-143: Reserved for future codification purposes.

§ 10B-144: Reserved for future codification purposes.

Part 6. Enforcement.

§ 10B-145. Restriction or revocation of registration.

The Secretary or the Secretary's designee shall have the authority to warn, restrict, suspend, or revoke an electronic notary registration for a violation of this Chapter and on any ground for which electronic notary registration may be denied under this Chapter. (2005-391, s. 4.)

§ 10B-146. Wrongful manufacture, distribution, or possession of software or hardware.

(a) Any person who knowingly creates, manufactures, or distributes software for the purpose of allowing a person to act as an electronic notary without being commissioned and registered in accordance with this act shall be guilty of a Class G felony.

(b) Any person who wrongfully obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, file, or hardware enabling an electronic notary to affix an official electronic signature is guilty of a Class I felony. (2005-391, s. 4.)