

Remote Notarization – A Statute About Nothing?

Hello again readers. I hope everyone enjoyed the last few weeks of summer and is ready for some cooler fall weather. It seems that your Sellers have decided to take that one last end of summer vacation because I have been getting quite a few questions about notary issues where a Seller is out of the country. I addressed some of the ways to get your Seller documents notarized in foreign countries in the January 2026 Beacon article, but a new wrinkle has been added that I think merits a follow up article: What about Remote Online Notarization? NC's laws on this topic are still in flux, but I read all of Chapter 10B of the NC General Statutes so that you don't have to and we'll discuss the implications here today.

There are really two issues to address here: Electronic Notarization (e-Notaries)/Remote Electronic Notarization and Emergency Video Notarization. Emergency video notarization under N.C.G.S. § 10B-25 does not require any special licensing and can be performed by any currently licensed NC notary. In brief, it requires real time video conference technology be used to allow the notary to verify the identity of the principal and witness the principal sign the document. After signing, the principal sends the document to the notary, and the notary applies their signature and notary stamp.

Why the "Emergency" designation? This section was originally passed into law in 2020 at the height of the COVID pandemic when people were unable or unwilling per state and federal mandates to meet in close proximity for signing documents. The EVN bill was passed as a stopgap to allow business to proceed until further laws could be enacted to address this on a more permanent basis. Unfortunately, those laws and regulations have yet to be completed (more on that later) and so a bill has been passed every year since extending the EVN provision until July 1 of the following year. N.C.G.S. § 10B-25(n) from 2025:

(n) This section shall expire upon the earlier of (i) 12:01 A.M. July 1, 2026, or (ii) the date the Secretary issues the first license in accordance with G.S. 10B-134.19. If the Secretary issues the first license in accordance with G.S. 10B-134.19 prior to 12:01 A.M. July 1, 2026, the Secretary shall file that date with the Codifier of Rules to be published in the North Carolina Register as the expiration date of this section. Provided, however, all notarial acts made in accordance with this section and while this section is in effect shall remain effective and shall not need to be reaffirmed. (2020-3, s. 4.1(c); 2020-74, s. 27(b); 2020-80, s. 2.9(b); 2021-3, s. 2.10(a); 2022-54, s. 3(b); 2023-57, s. 1(a); 2024-47, s. 2(a); 2025-33, s. 9(a).)

Sounds useful for our travelling Seller, right? It would be, but note that there is one major limitation to the use of EVN in subsection (c) of §10B-25:

(c) The requirement of personal appearance, appear in person before a notary, physical presence, and presence, as those terms are used in this Chapter, are satisfied for the purpose of an emergency video notarization if the notary is physically present in North Carolina, the principal verifies to the notary that he or she is physically present in North Carolina at the time of the notarization, the principal identifies the county where he or she is located at the time of the notarial act, and the principal and notary use video conference technology that complies with the requirements of this section.

Yes, both the notary and the principal must be physically located in North Carolina at the time of the notarial act. Sadly, this renders EVN essentially worthless for principals located outside the state of NC.

This brings us the Electronic Notarization and its counterpart, Remote Electronic Notarization. This was the intended replacement for the EVN statute, and it allows for the use of technology to place electronic (rather than physical) notary seals on documents. Broadly, EN/REN under Article 2 of Chapter 10B requires the Secretary of State to create a system for licensing e-notaries and designate approved technology and service providers that must be used for EN/REN. To date, the Secretary has yet to designate service providers and finalize the licensing system; so, although the statutory framework is in place EN/REN are not yet truly available in practice and there are no licensed e-Notaries in North Carolina. Even then, there are limitations that, even when these do become available, preclude their use for our out-of-state principal.

E-Notarizations are not even intended to address this issue, as one of the base requirements is that the principal must be in the presence of the notary per N.C.G.S. § 10B-116(1):

§ 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.)

Remotely located principals are dealt with via REN, but again the devil is in the details of the statute. N.C.G.S. § 10B-134.1(10)b defines a “Remotely located principal” narrowly. The remote principal must still be inside the United States, active-duty military or their

spouse/dependent located outside of the United States, or outside the US at a United States Embassy, Consulate or official Diplomatic Mission:

- (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.

Once again, we see that even if these statutes were fully operational in practice, they do not cover the situation we are most concerned about. EVN, electronic notarization, and remote electronic notarization do not grant a properly licensed NC notary the right to notarize the signature of a principal who is not located within the United States except under very specific circumstances.

I know what you're thinking: "Brad, you've spent hundreds of words telling us nothing useful; what's the point of this?" I appreciate your patience as I get to the point here and trust me – there is light at the end of the tunnel. Recently, we've been addressing the question of notaries licensed in jurisdictions other than North Carolina. There is substantial variation in the exact requirements, and I am not about to hold myself out as an expert in notary laws for other states but suffice it to say that under certain circumstances other states' notaries are able to remotely notarize signatures for ordinary citizens located outside of the US where NC notaries would not be able to. There are even websites whose entire business model is to connect remote principals to US notaries for exactly this purpose. Is this legal in North Carolina? It depends on who you ask, but...maybe.

I call your attention to this catch all provision of N.C.G.S. § 10B-20(f):

(f) A notarial act performed in another jurisdiction in compliance with the laws of that jurisdiction is valid to the same extent as if it had been performed by a notary commissioned under this Chapter if the notarial act is performed by a notary public of that jurisdiction or by any person authorized to perform notarial acts in that jurisdiction under the laws of that jurisdiction, the laws of this State, or federal law.

As with so many business and transactional requirements, North Carolina recognizes the validity of the same act performed by similarly licensed individuals in other states. This is not just for practical purposes; it has a legal basis in the Full Faith and Credit Clause of the Constitution and its related jurisprudence requiring the states to recognize public acts, records, judicial proceedings, etc. of other states. We see this all the time – an out of state Seller signs before a California notary using a California notary form and no one blinks an eye. A court order from another state can be legally recognized in NC without re-litigating the underlying issue. Why would that same logic not apply to remote online notarization? That is a fair point, and one that some underwriters in NC are willing to lean on to approve insuring documents signed in this manner.

The counterpoint to this is that recognition of licensing and legal acts in other states is hardly unlimited. Could an NC licensed attorney walk into any other state and practice law? Could someone with a gun permit in North Carolina take that firearm into another state where it is illegal to carry or own? Are recreational drugs legally purchased in other states exempt from seizure or punitive action in NC where they are illegal? Typically, this recognition hinges on some level of parity among the laws and regulations of the states in question – a notarial act in California is recognized to the extent that the licensing requirements and powers of a California notary generally match those in North Carolina. Where there is a clear disparity, it raises the question of the limits of that recognition and opens the door for legal challenges.

This specific question has yet to be formally explored by the NC Courts as it applies to notaries. I defer to the legal expertise of other on this subject, but my two cents is that the value of allowing transactions to occur in a digital world where in person acts are less and less of a requirement and the fact that a remote notarization framework exists indicates that the disparity here seems unlikely to outweigh the potential harm.

So, for my practicing attorneys out there, ask your title counsel about the option of Remote Online Notarization by an out of state notary if it is requested by your Seller. You also have the options of getting a local foreign notary and having it certified under the Apostille Convention or making an appointment at a US Embassy or Consulate.

As always, I thank you for reading and welcome any comments, feedback or suggestions for future articles.

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