

SUBCHAPTER 07C – ELECTRONIC NOTARY STANDARDS

SECTION .0100 – GENERAL PROVISIONS

18 NCAC 07C .0101 SCOPE

- (a) The rules in this Subchapter implement G.S. 10B, Article 2, the Electronic Notary Act. and G.S. 47-16.1.
- (b) The rules in this Subchapter are adopted pursuant to the provisions of Subchapter I of Chapter 96 of Title 15 of the United States Code, Electronic Records and Signatures in Commerce.

History Note: Authority G.S. 10B-125(b); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 07C .0102 DEFINITIONS

In addition to terms defined in Article 1 of Chapter 10B of the General Statutes and Subchapter 07B of this Chapter, and for purposes of Article 2 of Chapter 10B of the General Statutes and this Subchapter:

- (1) "Applicant" means a person applying for registration as a North Carolina electronic notary.
- (2) "Approved Electronic Notary Solution Provider" means a person or entity approved to provide an Electronic Notarization System by the Department pursuant to Article 2 of Chapter 10B of the General Statutes and Article 1A of Chapter 47 of the General Statutes.
- (3) "Biometric Authentication" means proving the identity of a user by requiring verification of the user's identity through technologies that require measurement and analysis of one or more human physiological or behavioral characteristics of the user in order to access and use an electronic notarization system. Biometric authentication technologies include fingerprint scanning devices, retinal scanning devices, and handwriting analysis devices.
- (4) "Department" means the North Carolina Department of the Secretary of State. Unless specifically noted in rule text, for the purposes of this Subchapter "Department" means the notary public section of the Department's certification and filing division.
- (5) "Electronic Notarization System" means a set of applications, programs, hardware, software, or technology designed to enable a notary to perform electronic notarizations.
- (6) "Independently Verifiable" means capable of government or third-party authentication of a notarial act, a notary's identity, and a notary's relevant authority.
- (7) "Password Authentication" means requiring the user to enter a secret word, phrase, or symbol set in order to access and use an electronic notarization system.
- (8) "Token Authentication" means requiring use of a physical device in addition to a password or personal identification number ("PIN" number) in order to access and use an electronic notarization system. Physical devices used in token authentication technologies include magnetic cards or "smart cards" and Universal Serial Bus (USB) memory sticks or "USB keys".
- (9) "Under the exclusive control of the notary", for the purposes of the Department's interpretation of the requirements of G.S. 10B-126(b), means "under the notary public's sole control" as defined in this subchapter.
- (10) "Under the notary public's sole control" means accessible by and attributable solely to the notary to the exclusion of all other persons and entities, either through being in the direct physical custody of the notary or through being secured with one or more biometric, password, token, or other authentication technologies in an electronic notarization system provided by an approved electronic notary solution provider approved pursuant to the Act and this Subchapter.

History Note: Authority G.S. 10B-125(b), 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

SECTION .0200 – REGISTRATION

18 NCAC 07C .0201 APPLICATION

- (a) Qualifications. An applicant shall provide:

- (1) All information required for registration pursuant to G.S. 10B-106(d);
 - (2) Verification that the applicant holds a valid North Carolina notary commission and continues to meet the qualifications to hold the notary commission;
 - (3) Verification that the applicant is in compliance with all provisions of the Notary Act;
 - (4) Any other information requested by the Department to prove the qualifications of the applicant.
- (b) Submission. The applicant shall:
- (1) Complete the registration form on line;
 - (2) Print the form;
 - (3) Have the form notarized; and
 - (4) Submit the form by:
 - (A) U.S. mail;
 - (B) In person delivery; or
 - (D) Courier service.

History Note: Authority G.S. 10B-125(b), 10B-126(d) ; 47-16.5; 47-16.7; 147-36; 15 USC 7002;
 Eff. January 1, 2007;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 07C .0202 OATH OF OFFICE AND DELIVERY OF COMMISSION

- (a) The applicant shall take the oath in the Register of Deeds office within 45 days of the issue date on the electronic notary oath notification letter.
- (b) Before taking the oath of office, an applicant shall present to the Register of Deeds evidence of the applicant's identity as defined in G.S. 10B-3(22).
- (c) After administering the oath of office, the Register of Deeds shall deliver the electronic notary registration certificate to the electronic notary.
- (d) The applicant's electronic notary registration shall not be effective until the applicant takes the oath.

History Note: Authority G.S. 10B-125(b), 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002;
 Eff. January 1, 2007;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 07C .0203 RE-REGISTRATION

A notary applying to re-register as an electronic notary shall comply with application procedures found in the Act and this Subchapter.

History Note: Authority G.S. 10B-125, 10B-126; 47-16.5; 47-16.7; 147-36; 15 USC 7002;
 Eff. January 1, 2007;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

SECTION .0300 – COURSE OF INSTRUCTION

18 NCAC 07C .0301 APPROVED COURSE OF STUDY FOR ELECTRONIC NOTARIES PUBLIC

- (a) The Department shall administer the training course and testing for applicants for electronic notary registration.
- (b) Upon the Secretary's determination of a need for additional instructors, the Department may train certified notary public instructors who are also registered as electronic notaries public to administer the training course and testing for applicants for electronic notary registration.

History Note: Authority G.S. 10B-107; 10B-125, 10B-126; 47-16.5; 47-16.7; 147-36; 15 USC 7002;
 Eff. January 1, 2007;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

SECTION .0400 – ELECTRONIC NOTARY STANDARDS

18 NCAC 07C .0401 ELECTRONIC NOTARY SIGNATURE

- (a) The electronic notary signature shall be independently verifiable and unique to the electronic notary.
- (b) The electronic notary signature shall be retained under the electronic notary's sole control.
- (c) When the electronic notary performs an electronic notarization, the electronic signature used by the electronic notary must be accessible by and attributable solely to the electronic notary to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization.
- (d) The electronic notary signature shall be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination.
- (e) An image of the electronic notary's handwritten signature shall appear on any visual or printed representation of an electronic notary certificate regardless of the technology being used to affix the electronic notary's electronic signature.

History Note: Authority G.S. 10B-125(b), 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 07C .0402 ELECTRONIC NOTARY SEAL

- (a) The electronic notary seal shall be independently verifiable and unique to the electronic notary.
- (b) The electronic notary seal shall be retained under the electronic notary's sole control.
- (c) When the electronic notary performs an electronic notarization, the electronic seal used by the electronic notary shall be accessible by and attributable solely to the electronic notary to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization.
- (d) The electronic notary seal shall be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination.
- (e) An image of the electronic notary's electronic seal shall appear on any visual or printed representation of the electronic notary certificate regardless of the technology being used to affix the electronic notary's electronic seal.
- (f) The perimeter of the electronic notary seal shall contain a border such that the physical appearance of the seal replicates the appearance of an inked seal on paper.
- (g) The electronic notary seal must have, within its border, the electronic notary's name exactly as commissioned, the words "Electronic Notary Public", the words "North Carolina" or "N.C.", and the county of commission including the word "County" or "Co."

History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 07C .0403 PHYSICAL PRESENCE REQUIREMENT FOR ELECTRONIC NOTARIZATION

When an electronic notary performs an electronic notarization, the principal and the electronic notary shall be in each other's physical presence during the entire electronic notarization so that the principal and the electronic notary can see, hear, communicate with, and give identification documents as required under G.S. 10B-3(22) to each other without the use of electronic devices such as telephones, computers, video cameras, or facsimile machines.

History Note: Authority G.S. 10B-116(1); 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

SECTION .0500 –ELECTRONIC NOTARY SOLUTION PROVIDERS

18 NCAC 07C .0501 ELECTRONIC NOTARY SOLUTION PROVIDER APPLICATION

(a) Any person or entity applying to the Department for designation as an approved electronic notary solution provider must complete and submit an application to the Department for review and approval before authorizing any electronic notary seals or electronic signatures to North Carolina electronic notaries. The application shall include the following information:

- (1) Hardware and software specifications and requirements for the provider's electronic notarization system,
- (2) A description of the type(s) of technology used in the provider's electronic notarization system, and
- (3) A demonstration of how the technology is used to perform an electronic notarization.

(b) An electronic notary solution provider may appeal the Department's rejection of the provider's application for designation as an approved electronic notary solution provider as provided under Article 3 of Chapter 150B of the General Statutes.

History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 07C .0502 CRITERIA FOR APPROVAL OF ELECTRONIC NOTARY SOLUTION PROVIDERS

Each applicant and each approved electronic notary solution provider shall:

- (1) Provide a free and readily available viewer/reader so as to enable all parties relying on the electronically notarized record or document to view the electronic notary signature and the electronic notary seal without incurring any cost;
- (2) Comply with the laws, policies, and rules that govern North Carolina notaries;
- (3) Provide an electronic notarization system or solution that complies with the technical specifications of the rules and standards that govern electronic notarization processes and procedures in North Carolina;
- (4) Require such of the provider's principals or employees to take the mandatory electronic notary education course online and pass the required examination as is necessary to ensure the provider possesses sufficient familiarity with North Carolina's electronic notary laws and requirements;
- (5) Require notaries to present the NC Secretary of State's Electronic Notary Certificate to Perform Electronic Notary Acts prior to authorizing an electronic notary seal and signature;
- (6) Verify the authorization of a North Carolina notary to perform electronic notary acts by logging on to the Department's website and comparing the name, notary commission number and commission expiration date with the information on the Electronic Notary Certificate to Perform Electronic Notary Acts prior to authorizing an electronic notary seal and signature;
- (7) Provide prorated fees to align the usage and cost of the electronic notary system or solution with the commission term limit of the electronic notary purchasing the electronic notary seal and signature;
- (8) Suspend the use of any electronic notarization system or solution for any notary whose commission has been revoked or suspended by the North Carolina Secretary of State; and
- (9) Submit an exemplar of the electronic notary signature and the electronic notary seal to the Department for each electronic notary who subscribes to the provider's electronic notary solution.

History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 07C .0503 ELECTRONIC NOTARY SOLUTION PROVIDER CHANGES

(a) An electronic notary solution provider shall notify the Department within 45 days of changes, modifications or updates to information previously submitted to the Department.

(b) An approved electronic notary solution provider shall obtain approval of the Department pursuant to the Act and this Subchapter before making available to North Carolina electronic notaries any updates or subsequent versions of the provider's electronic notarization system.

History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

SECTION .0600 – SECURITY REQUIREMENTS

18 NCAC 07C .0601 SEPARATE ATTESTATIONS

Each electronic signature requiring notarization and attestation in the form of an acknowledgment shall be individually affixed to the electronic document by the principal signer and shall be acknowledged separately by the principal signer, except in the following situation:

- (1) The notarized document is executed on behalf of an entity as defined in G.S. 55-1-40(9)(a) or (c); and
- (2) The notarized document does not adversely affect the claim, right or obligation of another.

History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 07C .0602 ELECTRONIC NOTARY SEALS

The electronic notary seal is the property of the electronic notary and shall be subject to laws governing private property.

History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 07C .0603 EMPLOYERS OF ELECTRONIC NOTARIES

(a) Neither the employer nor any of the employer's employees or agents shall use or permit the use of an electronic notary seal or signature by anyone other than the electronic notary to whom it is registered.

(b) Upon the cessation of employment of an electronic notary, the employer of the notary shall:

- (1) Relinquish control of the electronic notary seal;
- (2) Transfer possession of the electronic notary seal to the electronic notary; or
- (3) Eliminate the ability of any other person to use the former employee's electronic notary seal if the electronic notarization system used by the employer does not permit transfer of possession of the electronic notary seal.

History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

18 NCAC 07C .0604 PROTECTED ACCESS

Access to electronic notary signatures and electronic notary seals shall be protected by the use of a password, token, biometric, or other form of authentication approved by the Department according to Article 2 of Chapter 10B of the General Statutes, and Article 1A of Chapter 47 of the General Statutes.

History Note: Authority G.S. 10B-125(b); 10B-126(d); 47-16.5; 47-16.7; 147-36; 15 USC 7002; Eff. January 1, 2007; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 6, 2016.

SECTION .0700 – RECORDS OF ELECTRONIC NOTARIAL ACTS - RESERVED

SECTION .0800 – ELECTRONIC NOTARY ACT INVESTIGATION AND ENFORCEMENT- RESERVED