

§ 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).)