



2023-2024 General Assembly

HOUSE BILL 556: Tenancy in Common/E-Notary/Small Claims Changes, Sec. 2-6: Notary Public Changes

Committee:		Date:	September 12, 2024
Introduced by:		Prepared by:	Erika Churchill Staff Attorney
Analysis of:	Sec. 2-6 of S.L. 2024-47		

OVERVIEW: Sections 2-6 of S.L. 2024-47 extend the expiration dates on emergency video notarizations and emergency video witnessing from June 30, 2024, to July 1, 2025, and amend confidentiality and geolocation technology requirements in North Carolina's notary public laws.

This bill was vetoed by the Governor on July 3, 2024, and that veto was overridden by the General Assembly on September 9, 2024. Sections 3, 4, and 5 of this act became effective July 1, 2024. Sections 2 and 6 became effective September 9, 2024.

CURRENT LAW:

The Secretary of State regulates, educates, tests, qualifies, and commissions notaries public under the authority of Chapter 10B of the General Statutes. A notarial act is the taking of an acknowledgement, verification or proof, or the administration of an oath or affirmation, and must be done in the presence of the notary. North Carolina recognizes various methods of notarization.

Chapter 10B of the General Statutes sets forth the requirements for a notary public to qualify for and obtain a commission as a notary public in this State authorized to perform notarial acts. Generally, a notary can take an acknowledgement, verification or proof, or administer an oath or affirmation. The parties to the notarial act must be personally known to the notary or be identified by the notary through satisfactory evidence. The notary is required to maintain confidentiality of the principal's documents and information. Notarizations fall into one of three categories:

- Traditional notarizations, where the notarial act is done in this State and in the physical presence of the notary.
- Electronic notarizations, where the notarial act is accomplished through the use of electronic documents where information is created, generated, sent, communicated, received, or stored by electronic means. The electronic notarial act must be performed in this State and all parties must be in the physical presence of the electronic notary.
- Remote electronic notarizations, where the notarial act can be performed outside the physical presence of the principal. The remote electronic notary must be located in North Carolina but the remotely located principal can be anywhere inside the United States, and in certain circumstances, can be located outside of the United States. Except in limited circumstances involving military members and their dependents stationed outside of the United States, self proving wills, will codicils, trust documents, death beneficiary forms, parental rights relinquishments, and mail in absentee ballots cannot be remotely notarized. Remotely notarized powers of attorney cannot be used by an attorney in fact to transfer title to the

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principal's real property except those for military members and their dependents stationed outside of the United States. The remote notarial act must be performed using communication technology approved by the Secretary of State that records the remote notarial act and allows the remote electronic notary and remotely located principal to simultaneously communicate with each other by sight and sound. Prior to the notarial act, the remote electronic notary must verify (i) the principal's location through geolocation, and (ii) the principal's identity through personal knowledge or credential analysis, identity proofing, and document comparison.

Temporary Emergency Video Notarization

In 2020, the General Assembly temporarily authorized emergency video notarization in G.S. 10B-25, where the requirement for parties to personally appear before a notary was deemed satisfied by the use of video conference technology meeting certain enumerated criteria. This authorization originally expired August 1, 2020, but has been extended various times by the General Assembly. This authorization was most recently extended to June 30, 2024, by S.L. 2023-57.

Temporary Video Witnessing

Also in 2020, the General Assembly temporarily authorized video witnessing in G.S. 10B-200, allowing, during a state of emergency, any person who witnesses the signature of a record through video conference technology to be considered an "in-person" witness, and the record to be considered to have been signed by the principal signer "in the presence of" such witness, if the video conference technology allowed for direct, real-time audio and video interaction between each principal signer and the witness. This temporary authority originally expired December 31, 2021, but was reinstated in 2022 and extended to June 30, 2024, by S.L. 2023-57.

BILL ANALYSIS:

Section 2 extends the expiration dates on emergency video notarizations and emergency video witnessing from June 30, 2024, to July 1, 2025.

Section 3 clarifies when a notary must maintain the confidentiality of a principal's documents and information and when the information may be disclosed including in response to a valid subpoena, court order, warrant, written request from the Secretary of State in connection with investigations into the conduct of a notary or a licensee or third-party vendor, or a written request from all principals to a specific notarial transaction.

Section 4 specifies that a notary public administers an oath to a "principal" not a "witness" and makes conforming changes.

Section 5 no longer require geolocation technology for licensure of remote electronic notarization platforms. An applicant for licensure would only be required to have geolocation capability when the remotely located principal is conducting the remote electronic notarization via a device capable of identifying the geographic location of the remotely located principal at the time of the remote electronic notarization.

Section 6 requires the Secretary of State to amend its permanent rules to include processes and requirements for the use of geolocation technology in remote electronic notarization if technology becomes available so that geolocation may be broadly utilized without global positioning systems to determine the location of a remotely located principal.

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EFFECTIVE DATE: This bill was vetoed by the Governor on July 3, 2024, and that veto was overridden by the General Assembly on September 9, 2024. Sections 3, 4, and 5 of this act became effective July 1, 2024. Sections 2 and 6 became effective September 9, 2024.