



December 16, 2022

Ann B. Wall  
General Counsel and Rulemaking Coordinator  
N.C. Department of the Secretary of State  
P.O. Box 29622  
Raleigh, NC 27676-0622  
CC: Bill Toole, Ozie Stallworth, Kevin Earley, and Kyle Barefoot

Dear Ms. Wall

We once again thank the members of the Secretary of State's team for taking the time to meet with DocuSign on November 30, 2022 to discuss the Remote Electronic Notarization Act. DocuSign appreciates the continued partnership with North Carolina and is providing written comments related to the N.C. Department of the Secretary of State's (SoS) remote electronic notarization (REN, also known as remote online notarization or RON) rulemaking. We recognize official comments in response to the Advance Notice of Proposed Rulemaking were requested by November 30. However, we respectfully request your consideration of our comments, which were delayed due to the timing of our meeting with the staff members.

## **I. Introduction**

DocuSign applauds North Carolina for enacting the Remote Electronic Notarization Act (RENA) and providing an opportunity for REN platform vendors, notaries, and other stakeholders to provide input on the SoS's REN rulemaking.

DocuSign is a leading REN platform vendor with our DocuSign Notary product available in 25 states enabling customers to send, sign, and notarize critical documents built on our #1 electronic signature platform. To learn more, see the DocuSign Notary [website](#).

## **II. DocuSign's Comments on the Advance Notice of Proposed Rulemaking**

The Remote Electronic Notarization Act (RENA) requires the Secretary to adopt rules to establish standards and procedures for REN. Because REN and the technology involved is changing and improving, we recommend having flexibility in the rules. This allows REN platform vendors, notaries, and customers to take advantage of advancements in technology. DocuSign recognizes the importance of ensuring the security and integrity of notarial acts through the rulemaking process, but also cautions against unnecessary specificity, which may prevent North Carolina notaries and vendors from embracing technological improvements.

Question D.1: It is not necessary to require that platform vendors exclusively contract with remote electronic notaries public (RENPs). Platform vendors can structure their terms and conditions with the employer and the notary so that the RENPs are able to meet their statutory obligations. For example, access to the electronic journal and the recording can be restricted so that the notary maintains sole control over them, and only parties authorized under the laws have access to them. In addition, the DocuSign platform allows and encourages notaries to export their electronic journal and the recordings so that they can be retained by the notary, even if the notary is no longer using the platform.

Question D.2: There are alternative ways for the Secretary to ensure that the platform vendor communicates appropriately with the RENP. For example, some states include requirements that a platform vendor notify the Secretary of State and notaries commissioned in the state when specific circumstances arise, such as a data breach or if there are material changes to the vendor's technology. This would allow platform vendors to contract with either the RENP or the employer, and ensure that the RENP receives these important vendor communications.

Question E.8.d: G.S. 10B-134.19(e)(3) states that the communication technology must be capable of "ensuring that real-time communications are secure from unauthorized interception, access, or viewing." Like other platform vendors, DocuSign Notary has security measures in place to prevent unauthorized access to the real-time communication. These security measures include only allowing authorized parties to join the notarial session and using encryption technology to secure the signal transmission from interception and unauthorized access. Nevertheless, there are limits to what technology can do, and this should be considered when deciding whether and how to define "unauthorized interception" in the rules. For example, a platform vendor would not be able to prevent someone from looking over the shoulder of the RENP during a RON transaction.

Question E.12.c and E.12.d: DocuSign Notary stores the electronic journal and CT recording for the statutorily required period. Additionally, the notary is able to download the journal and recordings from the platform. This functionality allows notaries to obtain an electronic journal entry or recording if the journal entry or recording in the notary's possession is no longer fully accessible. G.S. 10B-134.15(a) clearly states that the electronic journal is the exclusive property of the notary and that the notary must not allow another person to make entries in the electronic journal. The rules should not require the vendor to note an event in the notary's electronic journal because this would conflict with the requirements in G.S. 10B-134.15(a).

Question F.1.b and G.4: As it relates to the content of the recording, DocuSign would point out that G.S. 10B-134.19(e)(2) requires the communication technology to keep "confidential the questions asked as part of any identity proofing and the means and methods used to generate the credential analysis." To avoid a conflict with this statutory requirement, any rules regarding the required contents of the recording should not require the identity proofing and credential analysis process to be included in the recording.

Question I.18.a: In reviewing RENA, there is various terminology used in sections about maintaining the electronic journal and recording, including "repository" (G.S. 10B-134.17(a)(1)), "depository" (G.S. 10B-134.15(b)(4)) and "steward" (G.S. 10B-134.17(a)(1)). DocuSign's interpretation is that "repository" or "depository" is a vendor who stores the electronic journal and/or recording, but the notary maintains

control of journal and recording and is responsible for responding to requests for access to them. In contrast, DocuSign interprets a “steward” to mean a vendor who stores and takes custody of the electronic journal and recordings, so the notary would no longer maintain control of them or be responsible for responding to requests for access to them. Based on this interpretation, the platform vendor providing the communication technology should not be prohibited from serving as the steward for the electronic journal and recordings. G.S. 10B-134.17(a)(1) requires the steward to be a third-party vendor approved by the Secretary. Similarly, the platform vendor is required to be licensed and approved by the Secretary. Since the platform vendor facilitates the creation of the electronic journal and the recording for the notary, there are efficiencies to allowing, but not requiring, the platform vendor to serve as the steward, if the notary so chooses.

Question L.4: The rules should not require a platform vendor to know if documents are prohibited from being notarized remotely. DocuSign Notary allows customers to upload and send documents that require notarization to a notary on the platform and the signer(s). Because the customer is responsible for uploading and preparing the documents, DocuSign Notary and other platform vendors should not be responsible for knowing if the document is prohibited from being remotely notarized under North Carolina law. Instead, the rules could allow the notary to refuse to perform a notarization if the notary reasonably believes that the document is prohibited from being remotely notarized. By allowing the notary to refuse based on a reasonable belief, notaries can use their best judgment about a document and avoid engaging in the unauthorized practice of law.

Question M.1: Remote online notarization is a relatively new industry so we are seeing improvements in this technology all the time. DocuSign supports providing reasonable accommodations for remotely located principals with vision, hearing, or speech impairments and is making progress towards our goal of providing an accessible RON experience. If the Secretary chooses to include specific requirements regarding reasonable accommodations in the rules, platform vendors may not be able to take advantage of changes in technology that may provide a better experience for signers with vision, hearing, or speech impairments.

### **III. Conclusion**

We humbly ask the N.C. Department of the Secretary of State to take our input into consideration during the rulemaking process. DocuSign thanks the Department for all their effort in drafting this Advance Notice of Proposed Rulemaking and allowing stakeholders to provide comments and feedback. Our desire is to see remote electronic notarization implemented in North Carolina in a way that maintains the integrity of the notarial act while still allowing businesses and notaries to serve consumers utilizing technology.

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If you have any questions regarding our comments, please do not hesitate to contact us.

DocuSign, Inc.

Danielle Johnson-Kutch  
Director of Government Affairs  
[d.johnsonkutch@docusign.com](mailto:d.johnsonkutch@docusign.com)

Caroline Fieroh  
Senior Product Manager  
[caroline.fieroh@docusign.com](mailto:caroline.fieroh@docusign.com)