



Explanation for Proposed Rules

This rulemaking package is the third of three rulemaking tranches which the Department of the Secretary of State (Department) has undertaken in order to comply with, implement and interpret the Remote Electronic Notarization Act (RENA), adopted July 8, 2022, S.L. 2022-54. RENA was modified on June 23, 2023 by S.L. 2023-57, on September 28, 2023 by S.L. 2023-124, and on September 9, 2024 by S.L. 2024-47. G.S. 10B-4 and various other provisions in RENA provide authority for the Department to promulgate rules addressing all aspects of the notary public program.

G.S. 150B-21.3A separately requires all state agencies to review existing rules every ten years in accordance with a prescribed process that includes rule readoption. Many of the existing notary rules are nearing the end of their decadal cycle and thus are due for review and readoption. This third rulemaking tranche is undertaken to satisfy the mandates found in both RENA and G.S. 150B-21.3A.

Notaries public are public officers. The main function of a notary public is to serve as an impartial witness to the execution of legal and other documents upon which members of the public may rely, whether in private transactions or upon placement into the public record. RENA directs the Secretary of State to adopt rules on a large number of topics. The rules must fulfill the purposes of the Notary Public Act, including:

- To simplify, clarify, and modernize the law governing notaries,
- To prevent fraud and forgery,
- To foster ethical conduct among notaries,
- To enhance interstate recognition of notarial acts, and
- To integrate procedures for all of the following notarial acts: Traditional paper, electronic notarization, and remote electronic notarization.

RENA requirements for remote electronic notarial acts (RENs) are based on requirements for traditional notaries and notarial acts, as well as the requirements for eNotaries and electronic notarial acts. To the extent feasible, the RENA rules, must, therefore, harmonize the requirements for traditional notaries, eNotaries performing in-person notarizations, and eNotaries performing remote electronic notarial acts.

The General Assembly mandated that the Department adopt rules that promote public confidence in the reliability of the identification of principals and signatures made by those principals, whether appearing in person or remotely. Rules adopted by the Department help to ensure that transactions are not repudiated as a result of:

- Mental incapacity of the principal,
- Coercion or duress, or
- Fraud.

By enhancing reliability and accountability, the Secretary facilitates economic growth while reducing costly and avoidable litigation.

In order to achieve these goals, the Secretary promulgated two Advance Notices of Proposed Rulemaking (ANPRs). The ANPRs were published on the Department's website and emailed to stakeholders and others. The ANPRs requested comments on a number of issues to help the Department address requirements in RENA in a manner that remains true to the statute and also provides stakeholders useful instruction. The first ANPR focused primarily on issues related to the eNotary and the REN act. The second ANPR focused on issues related to the technology notaries will use to perform remote electronic notarial acts. Neither ANPR was required by RENA or North Carolina's Administrative Procedure Act.

Due to the scope and scale of the requirements for this rulemaking process, the Secretary has proposed the rules in three sets. The first set of proposed rules dealt with fundamental issues related to all three methods of performing notarial acts and established certain common rules. The second set of rules focused on updating existing rules and harmonizing them with the requirements of RENA. The first and second sets of rules were approved by the Rules Review Commission (RRC) in December 2023, January 2024, and April 2024, with varying effective dates.

This final set of rules: (1) establishes performance criteria for the technology used to perform remote electronic notarial acts; (2) the licensure and approval processes for the providers of that technology, as well as certain other ancillary requirements of RENA; (3) directs notaries on proper use of the technology; (4) makes changes to previously approved RENA-related rules necessary for harmonization with this latest tranche; and (5) addresses recently adopted statutory requirements applicable to manufacturers and sellers of physical notary seals. The rules are intended to be:

- A. Technology agnostic;
- B. Provide clear direction to the regulated community;
- C. Be sufficiently flexible to adjust to technological advances; and
- D. Assert no more regulatory oversight than necessary to satisfy statutory directives.

In preparing these rules, the Department comprehensively researched the statutes and regulations of other states implementing remote notarization programs. The Department also researched industry, state, and federal standards and sought input from various academics, colleagues in other state agencies and states, and industry experts. Although providing useful information, ideas, and insights, the laws, regulations, and standards identified seldom met the level of specificity, clarity, and lack of ambiguity required for rules promulgated pursuant to the North Carolina Administrative Procedures Act.

The Department has to date expended between 8500 and 9000 hours in connection with its RENA rulemaking efforts. While recognizing the need for positions to conduct the rulemaking, the General Assembly has not appropriated funds to support the rulemaking effort mandated by statute in 2022, despite repeated Departmental requests. Departmental allocation of resources to the mandatory rulemaking has been at the expense of other statutorily mandated Departmental duties.

Specific topics addressed in these proposed rules include:

(1) Assuring the statutorily mandated security and reliability of the RENA process and the underlying technologies used in the remote electronic notarization process. Security considerations have included the risks of known exploits arising from ransomware attacks and deepfake insertions. Together, these considerations have mandated rulemaking attention to:

- * digital and physical security;

- * disaster recovery;

- * business continuity; and

- * establishing a means to measure the reliability of the required identity proofing and credential analysis technologies that can then be disclosed in a uniform way for stakeholder evaluation and vendor accountability.

(2) Defining the circumstances when geolocation technology must be used to verify the location of a remotely located principal under RENA, and the precision that must be delivered by geolocation technology. Geolocation technology currently is reliable only when a global positioning system is enabled on a device. Geolocation technology may not be appropriate for use due to national security where the remotely located principal is actively deployed under military orders.

(3) Addressing the statutory requirement that the technologies make reasonable accommodations for remotely located principals with vision, hearing or speech impairments. Generally, a notary must be able to communicate directly with a principal and without an intermediary in order to establish identity, mental capacity and the absence of fraud or duress.

(4) Protecting the personal information of RENA participants and the confidential nature of matters subject to notarization.

(5) Establishing retention requirements for mandated communication technology recordings and journal entries, chain of custody tracking and the circumstances under which and to whom these journal entries and recordings may be released.

(6) The licensing and approval process for these technologies. RENA requires that the Department award platform licenses only to applicants who are of good moral character and who can meet security and reliability standards. The statutory licensing process also requires a background investigation of the applicant and key individuals. Other technology providers must go through an approval process that is not as exhaustive as the licensing process.

(7) Assuring accurate fee remission to the Department of the \$5 statutorily-required fee that a platform must collect for every REN act. This fee is to be used to fund implementation and enforcement of RENA. The fee must be reliably collected and

accounted for in an auditable manner that meets State of North Carolina fiscal management laws and regulations.

(8) Establishing the process by which physical and electronic seal vendors and manufacturers identify and confirm the authority of an individual to obtain a North Carolina notarial seal. RENA sets out that failure on the part of seal vendors and manufacturers to meet these requirements exposes those parties to a \$1,000 fine per violation and a possible felony charge.