

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of the Secretary of State

RULE CITATION: 18 NCAC 07K .0101

DEADLINE FOR RECEIPT: Friday, December 8, 2023.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

In (25)(a), p.3, line 23, define "satisfactory evidence".

In (25)(c), line 25, a cross reference to the statute defining "passing grade" would likely aid clarity for your regulated public.

In (27), line 34, spell out AVEN since this acronym isn't spelled out elsewhere in this subchapter.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 18 NCAC 07K .0101 is adopted with changes as published in 38:04 NCR 209-211 as follows:

2
3 **SUBCHAPTER 07K – MISCELLANEOUS RULES**

4
5 **SECTION .0100 – GENERAL**

6
7 **18 NCAC 07K .0101 DEFINITIONS**

8 ~~(a) The definitions in this Rule apply to this Chapter.~~

9 ~~(b)~~ For purposes of Chapter 10B of the General Statutes and the rules Rules in this Chapter:

10 ~~(1) — "Accepted" means the Department has reviewed a filing and determined that:~~

11 ~~(A) — the filing satisfies the applicable information requirements in Chapter 10B of the General~~
12 ~~Statutes and this Chapter; and~~

13 ~~(B) — all required fees associated with the filing have been tendered without dishonor.~~

14 ~~"Accepted" shall not mean that the Department has determined that the filer is qualified and will be~~
15 ~~appointed, approved, or licensed.~~

16 ~~(2)~~(1) "Approved" means that an applicant has been authorized by the Department to provide services as
17 a technology provider in compliance with Chapter 10B of the General Statutes and the rules Rules
18 in this Chapter. Technology providers licensed by the Department are deemed approved.

19 ~~(3)~~(2) "Armed Forces of the United States" means the persons described in 10 U.S.C. ~~401(4)~~ 101(a)(4)
20 and G.S. 143B-1224(2), including their reserve components.

21 ~~(4)~~(3) "Bank or financial institution" means a "depository institution" as defined in ~~G.S. 53-208.42~~ G.S.
22 53-208.42(7).

23 ~~(5)~~(4) "Certificate of appointment" means a document issued by the Department notifying a Register of
24 Deeds that:

25 ~~(A)~~(a) the named appointee is authorized to take the oath of office; ~~or the office specified in the~~
26 ~~document~~; and

27 ~~(B)~~(b) the Register of Deeds or designee shall provide the commission certificate to the notary
28 public after:

29 (i) administering the oath of office to the appointee; and

30 (ii) signing of the certificate by both the Register of Deeds or designee, and the notary.

31 ~~(6)~~(5) "Commission certificate" means the document confirming that an individual:

32 ~~(A)~~(a) has complied with all requirements of Chapter 10B of the General Statutes and the rules
33 Rules in this Chapter; and

34 ~~(B)~~(b) is authorized to act as ~~the type of a~~ notary public. ~~named in the document.~~

35 ~~(7)~~(6) "Commit" means the final step in the notarial act after which:

36 ~~(A)~~(a) the notarial act is complete;

37 ~~(B)~~(b) all entries are permanent; and

1 ~~(19)~~(18) "Initial appointment" means the first issuance by the Department of a commission certificate to a
2 notary public.

3 ~~(20)~~(19) "Instructor," "certified notary public instructor," "certified instructor," "notary instructor," and
4 "certified notary instructor" mean a notary public who has complied with:

5 ~~(A)~~(a) the requirements of G.S. 10B-14; and

6 ~~(B)~~(b) the ~~rules~~ **Rules** in Subchapter 07E of this Chapter.

7 ~~(21)~~(20) "Location" means a description establishing that a principal is present in a jurisdiction where the
8 notarial act may take place. ~~NOTE:~~ Note: a A statement that the principal is then located inside the
9 U.S. embassy in Paris, France, would suffice to establish that the principal is present in a jurisdiction
10 where the notarial act may take place.

11 ~~(22)~~(21) "Long-term" means a period of at least one year.

12 ~~(23)~~(22) "Notarial transaction process" includes:

13 ~~(A)~~(a) steps before the notarial act takes place. ~~NOTE:~~ Note: ~~the~~ The interactions establishing the
14 date and location of a notarial act, obtaining advance consent to travel fees, and the steps
15 required by G.S. 10B-134.9(a) are examples of steps before the notarial act;

16 ~~(B)~~(b) the notarial act; and

17 ~~(C)~~(c) steps following the notarial act. Note: Affixing the notary's seal and signature are examples
18 of steps following the notarial act.

19 ~~(24)~~(23) "Person" means the term as defined in G.S. 12-3(6).

20 ~~(25)~~(24) "State recognized tribe" means a group listed in G.S. 143B-407(a).

21 ~~(26)~~(25) "Successfully complete" and "successful completion" mean that a notarial applicant has complied
22 with Chapter 10B and the ~~rules~~ **Rules** in this Chapter and has:

23 ~~(A)~~(a) presented satisfactory evidence of identity;

24 ~~(B)~~(b) attended a notarial course taught by a certified notary instructor; and

25 ~~(C)~~(c) achieved a passing grade on the course examination.

26 ~~(27)~~(26) "Technological failure" means a deficiency in:

27 ~~(A)~~(a) any component of the electronic notarization system;

28 ~~(B)~~(b) any component of the computer systems of the notary or principals; or

29 ~~(C)~~(c) the connections linking the components described in Parts (b)(27)(A) and (b)(27)(B) Sub-
30 Items (a) and (b) of this Rule Item.

31 For purposes of this Rule, "component of the electronic notarization system" means any
32 combination of hardware, software, a ~~notary's~~ notary public's electronic journal, and
33 communications technology recordings.

34 ~~(28)~~(27) "Technology provider" means an AVEN, platform, depository, or custodial service.

35 ~~(29)~~(28) "Termination of employment" means the cessation of permanent or temporary ~~work,~~ work for
36 another, whether compensated or not, ~~for an employer or contractor~~ for any reason, including
37 voluntary and involuntary cessation of work.

1 ~~(30)~~(29) "Traditional notarization" means a notarial act in which:

2 ~~(A)~~(a) there is personal appearance as defined in G.S. 10B-3(16); and

3 ~~(B)~~(b) ~~either;~~ one of the following occurs:

4 (i) a document is executed and notarized with ink signatures signed by hand or
5 facsimile stamp and affixed with the physical notary seal as defined in G.S. 10B-
6 3(23); ~~or~~

7 (ii) an oath or affirmation is administered without the execution of a ~~document.~~
8 document; or

9 (iii) creating an inventory as described in G.S. 53C-6-13(a).

10 ~~(31)~~(30) "Traditional notary public" means an individual commissioned to perform traditional notarizations.

11 ~~(32)~~(31) "Type of notarial act" means an acknowledgement, an oath or affirmation, verification or proof,
12 inventory of an abandoned safe deposit box, or notarization of an absentee ballot.

13 ~~(33)~~(32) "Under the exclusive control of the notary" means accessible by and attributable solely to the notary
14 public to the exclusion of all other persons through being:

15 ~~(A)~~(a) in the case of a physical seal:

16 (i) in the direct physical custody of the notary; or

17 (ii) physically secured; or

18 ~~(B)~~(b) in the case of an electronic ~~seal,~~ seal or electronic signature, secured with one or more
19 methods of authentication in an approved electronic notarization system.

20 ~~(34)~~(33) "United States" or "U.S." means the term as defined in G.S. 12-3(11).

21
22 *History Note:* Authority G.S. 10B-4; 10B-14; 10B-36; 10B-38; 10B-106; 10B-125; 10B-126; 10B-134.15; 10B-
23 134.19; 10B-134.21;
24 *Eff. July 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of the Secretary of State

RULE CITATION: 18 NCAC 07K .0201

DEADLINE FOR RECEIPT: Friday, December 8, 2023.

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In reviewing this Rule, the staff recommends the following changes be made:

Please consider including the URL for the IRS website where the milage rate can be found.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: November 27, 2023

1 18 NCAC 07K .0201 is adopted with changes as published in 38:04 NCR 212 as follows:

2

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SUBCHAPTER 07K – MISCELLANEOUS RULES

4

5

SECTION .0200 – CHARGING FEES FOR NOTARIAL ACTS

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18 NCAC 07K .0201 TRAVEL FEE RATE

8

A notary public who charges travel fees shall refer to the IRS website for the current federal business mileage rate
9 prior to charging the travel fee.

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11

History Note: Authority G.S. 10B-4; ~~10B-126;~~

12

Eff. January 1, 2024.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of the Secretary of State

RULE CITATION: 18 NCAC 07K .0204

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In reviewing this Rule, the staff recommends the following changes be made:

On line 5, what do you mean by “electronically”? I’m assuming this means a traditional notary may simply email or call the principal to get consent for the fees, but given the context of the electronic platform e-notaries will have to use, I think some clarity is warranted.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: November 27, 2023

1 18 NCAC 07K .0204 is adopted with changes as published in 38:04 NCR 212 as follows:

2

3 **18 NCAC 07K .0204 CONSENT TO TRAVEL FEES MAY BE ELECTRONIC**

4 A notary public who charges travel fees pursuant to G.S. 10B-31(5) may obtain the advance written consent of the
5 principal electronically.

6

7 *History Note: Authority G.S. 10B-4; ~~10B-126; 10B-134.15;~~*

8 *Eff. January 1, 2024.*

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Department of the Secretary of State

RULE CITATION: 18 NCAC 07K .0206

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In reviewing this Rule, the staff recommends the following changes be made:

I am confused by (3). (1) and (2) seem to cover all the ground here—the notary can put the consent in his or her journal, or shall maintain a separate record, if the notary elects not to record in the journal. What gap is (3) intended to fill?

Also, in (3), line 8, what is “a supplemental information entry”? If the notary can enter this “supplemental” entry, why can’t they just enter the advance written consent itself as a “supplemental” entry?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: November 27, 2023

1 18 NCAC 07K .0206 is adopted with changes as published in 38:04 NCR 212 as follows:

2

3 **18 NCAC 07K .0206 NOTARIAL RECORD OF WRITTEN CONSENT TO TRAVEL FEES**

4 A notary public who charges travel fees shall preserve the advance written consent as a notarial record:

5 (1) in the notary's journal; ~~or~~

6 (2) separately, if the written consent ~~cannot be~~ is not included in ~~the journal,~~ a journal;

7 ~~(3) for a notary who maintains a journal that does not include the advance written consent to travel fees,~~

8 ~~along with~~ a supplemental ~~journal~~ information entry shall be made including:

9 (a) ~~describing the fact~~ date of written ~~consent,~~ consent;

10 (b) the name of the principal associated with the consent; and

11 (c) the location where the written consent is preserved.

12

13 *History Note: Authority G.S. 10B-4; 10B-126; 10B-134.15;*

14 *Eff. January 1, 2024.*