

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

AGENCY: Department of Secretary of State

RULE CITATION: 18 NCAC 07F .0102

**DEADLINE FOR RECEIPT: January 16, 2024**

***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:

*To avoid a potential ambiguity in item 3, on p.1 lines 21 and 22 “or technology **approved by the Department that is** designed to enable a notary to perform electronic or remote electronic notarizations.”*

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

Seth Ascher  
Commission Counsel

Date submitted to agency: December 22, 2023

1 18 NCAC 07F .0102 is amended with changes as published in 38:04 NCR 197-198 as follows:

2  
3 **18 NCAC 07F .0102 DEFINITIONS**

4 ~~In addition to terms defined in Article 1 of Chapter 10B of the General Statutes and for~~ For purposes of Article 2 of  
5 Chapter 10B of the General Statutes and this Subchapter:

6 (1) ~~"Applicant" means a person applying for registration as a North Carolina electronic notary.~~

7 (2)(1) ~~"Approved Electronic Notary Solution Provider" "Approved vendor for electronic notarizations,"~~  
8 ~~"approved electronic notary solution provider," or "AVEN" means a person or entity approved by~~  
9 ~~the Department to provide an Electronic Notarization System by the Department~~ electronic  
10 notarization system pursuant to Article 2 of Chapter 10B of the General Statutes ~~and Article 1A of~~  
11 ~~Chapter 47 of the General Statutes.~~

12 (3)(2) ~~"Biometric Authentication" means proving the identity of a user by requiring verification of the~~  
13 ~~user's identity through technologies that require measurement and analysis of one or more human~~  
14 ~~physiological or behavioral characteristics of the user in order to access and use an electronic~~  
15 ~~notarization system. Biometric authentication technologies include fingerprint scanning devices,~~  
16 ~~retinal scanning devices, and handwriting analysis devices.~~

17 (4) ~~"Department" means the North Carolina Department of the Secretary of State. Unless specifically~~  
18 ~~noted in rule text, for the purposes of this Subchapter "Department" means the notary public section~~  
19 ~~of the Department's certification and filing division.~~

20 (5)(3) ~~"Electronic Notarization System" notarization [system -] system" means a set of applications,~~  
21 ~~programs, hardware, software, or technology designed to enable a notary to perform electronic or~~  
22 ~~remote electronic notarizations. notarizations approved by the Department.~~

23 (4) ~~"Electronic notary applicant" means a commissioned North Carolina notary public who applies to~~  
24 ~~be registered or reregistered [re-registered] as an electronic notary public.~~

25 (5) ~~"Electronic notary's electronic signature" means:~~

26 (a) ~~an electronic image of the handwritten signature of the electronic notary public in the name~~  
27 ~~of the notary as it appears on the notary's commission; and~~

28 (b) ~~the AVEN's or other technology provider's security features attached to the signature in~~  
29 ~~[SubItem (5)(a)] Sub-Item (5)(a) of this Rule.~~

30 (6) ~~"Independently Verifiable" verifiable" means capable of government or third-party authentication~~  
31 ~~of a notarial act, a an electronic notary's identity, identity and a notary's relevant authority. current~~  
32 ~~status with the Department.~~

33 (7) ~~"In the presence of the electronic notary at the time of notarization" means that an individual and an~~  
34 ~~electronic notary public are in close physical proximity to one another without using technology to~~  
35 ~~establish personal appearance.~~

36 (7)(8) ~~"Password Authentication" authentication" means requiring the user to enter a secret word, phrase,~~  
37 ~~or symbol set in order to access and use an electronic notarization system.~~

1       ~~(8)~~(9) "~~Token Authentication~~ authentication" means requiring use of a physical device in addition to a  
2       password or personal identification number ("PIN" number) in order to access and use an electronic  
3       notarization system. Physical devices used in token authentication technologies include magnetic  
4       cards or "smart cards" and Universal Serial Bus (USB) memory sticks or "USB ~~keys~~ keys."

5       ~~(9)~~ "~~Under the exclusive control of the notary~~", for the purposes of the Department's interpretation of  
6       the requirements of G.S. 10B-126(b), means "~~under the notary public's sole control~~" as defined in  
7       this subchapter.

8       ~~(10)~~ "~~Under the notary public's sole control~~" means ~~accessible by and attributable solely to the notary to~~  
9       ~~the exclusion of all other persons and entities, either through being in the direct physical custody of~~  
10       ~~the notary or through being secured with one or more biometric, password, token, or other~~  
11       ~~authentication technologies in an electronic notarization system provided by an approved electronic~~  
12       ~~notary solution provider approved pursuant to the Act and this Subchapter.~~

13  
14       *History Note:*     ~~Authority G.S. 10B-4; 10B-106; 10B-125(b); 10B-125(b); 10B-126(d); 10B-126; 10B-134.15; 10B-~~  
15       ~~134.17; 10B-134.21; 47-16.5; 47-16.7; 147-36; 15-150-7002;~~  
16       ~~Eff. January 1, 2007;~~  
17       ~~Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December~~  
18       ~~6, 2016;~~  
19       ~~Transferred from 18 NCAC 07C .0102 Eff. June 1, 2023. 2023;~~  
20       ~~Amended Eff. July 1, 2024.~~

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

AGENCY: Department of Secretary of State

RULE CITATION: 18 NCAC 07F .0704

**DEADLINE FOR RECEIPT: January 16, 2024**

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

*I still think that “attached to” and “logically associated with” have potential ambiguity in this rule. Note that it may be worth discussing this point before you respond to make sure we understand the issue here. But below are some questions/changes that already appear to me.*

*Your answer to my pre-review question was that this term was “well understood among the regulated community of technology providers.” But it looks to me like this rule is directed at the electronic notary, who is presumably the one attaching the signature. I am skeptical that all notaries would consistently understand what this rule requires. If this rule is meant to direct the action of notaries, I think it needs to be clarified.*

*Consider if incorporating your response to the pre-review would work, on line 6 something like: “be attached to, or logically associated ~~with the document~~ with, the notarized ~~document;~~ document such that there is no question that the signature and the notarized document are related; and”*

*Alternatively, if this meant to be a requirement on the software provider, consider if there are really two rules here. I.e. “The electronic notary shall sign documents by means of approved software.” and “The Department will only approve software that...”. In the second case, you still may need to provide context for exactly what the Department is looking for.*

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

Seth Ascher  
Commission Counsel

Date submitted to agency: December 22, 2023

1 18 NCAC 07F .0704 is amended with changes as published in 38:04 NCR 201 as follows:

2

3 **18 NCAC 07F .0704 LOGICALLY ATTACHED ELECTRONIC ATTRIBUTES OF ELECTRONIC**  
4 **SIGNATURE**

5 The electronic notary public's signature ~~shall~~ shall:

6 (1) be attached to, or logically associated ~~with the document~~, with, the notarized document; and

7 (2) ~~linking link~~ the data in such a manner that any subsequent alterations are observable through visual  
8 examination of:

9 (a) ~~to the underlying document~~ document; or

10 (b) the electronic notary ~~certificate~~ certificate. ~~are observable through visual examination.~~

11

12 *History Note: Authority G.S. 10B-4; ~~40B-125(b); 10B-125(b); 10B-126(d); 10B-127; ~~10B-136;~~ 10B-134.21; 47-~~*  
13 *16.5; 47-16.7; 147-36; 15 USC 7002;*

14 *Eff. January 1, 2007;*

15 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*  
16 *6, 2016;*

17 *Transferred from 18 NCAC 07C .0401(d) Eff. June 1, ~~2023-~~ 2023;*

18 *Amended Eff. July 1, 2024.*

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

AGENCY: Department of Secretary of State

RULE CITATION: 18 NCAC 07F .0808

**DEADLINE FOR RECEIPT: January 16, 2024**

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

*I still don't understand what this rule means or why the statutes you reference in the response to the pre-review require it. This may also merit a discussion before you respond.*

*Concretely, when you say a physical notary seal is the property of the notary, I think I understand what that means. The physical object used to apply a seal to a notarized document belongs to the notary. The State doesn't take it back when a person stops being a notary. If someone steals or damages it, they are committing a property crime against the notary. Per 10B-101(5), the electronic notary seal is the "information within a notarized document." Presumably, the document that was notarized would still be the property of the person who asked that document be notarized. But that document would contain an electronic notary seal (because it contained the information required), so the document owned by the customer would in part be owned by the notary? That doesn't seem like the intent, and I'm not even sure what it would mean.*

*One way to clarify this might be to identify what property rights would a notary be able to enforce regarding their electronic seal? What could someone else do that would violate their property rights?*

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

Seth Ascher  
Commission Counsel

Date submitted to agency: December 22, 2023

1 18 NCAC 07F .0808 is amended as published in 38:04 NCR 202 as follows:

2

3 **18 NCAC 07F .0808 ELECTRONIC NOTARY SEALS ARE PRIVATE PROPERTY**

4 The electronic notary seal is the private property of the electronic notary public, ~~and shall be subject to laws governing~~  
5 ~~private property.~~

6

7 *History Note: Authority G.S. 10B-4; 10B-125(b); 10B-126(d); ~~47-16.5; 47-16.7; 147-36; 15-UNC 7002~~;*

8 *Eff. January 1, 2007;*

9 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*  
10 *6, 2016;*

11 *Transferred from 18 NCAC 07C .0602 Eff. June 1, ~~2023~~; 2023;*

12 *Amended Eff. July 1, 2024.*