

# AMENDMENT TO REVISED UNIFORM LAW ON NOTARIAL ACTS

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

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MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIFTH YEAR  
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*WITH COMMENTS*

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By  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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**AMENDMENT TO REVISED UNIFORM LAW ON NOTARIAL ACTS**

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**AMENDMENT TO REVISED UNIFORM LAW ON NOTARIAL ACTS**  
**[SECTION 14A. INDIVIDUAL LOCATED OUTSIDE UNITED STATES.**

(a) In this section:

(1) “Communication technology” means an electronic device or process that allows an individual located outside the United States and a notary public located in this state to communicate with each other simultaneously by sight and sound.

(2) “Identity proofing” means a process or service by which a third person provides a notary public with a reasonable means to verify the identity of an individual by a review of personal information from public or proprietary data sources.

(3) “Outside the United States” means outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(b) A notary public in this state may perform by means of communication technology a notarial act relating to a statement made in or signature executed on a record by an individual located outside the United States if:

(1) the notary public has:

(A) personal knowledge under Section 7(a) of the identity of the individual; or

(B) satisfactory evidence under subsection (d) of the identity of the individual;

(2) the record:

(A) is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity located in the territorial jurisdiction of the United States; or

(B) involves property located in the territorial jurisdiction of, or a transaction substantially connected with, the United States;

(3) the notary public is able, by use of tamper-evident technology or personal acknowledgement of the individual, reasonably to identify the record before the notary public as the same record in which the individual made the statement or on which the individual executed the signature; and

(4) the act of making the statement or signing the record is not prohibited by the foreign state, as defined in Section 14(a), in which the individual is located.

(c) If a notarial act relates to a statement made in or a signature executed on a record by an individual located outside the United States, the individual may comply with Section 6 by appearing before the notary public by means of communication technology.

(d) In addition to the methods permitted by Section 7(a) for identification of an individual, a notary public has satisfactory evidence of the identity of an individual appearing before the notary public by means of communication technology if the notary public reasonably can identify the individual by means of identity proofing.

(e) In addition to the authority of a notary public under Section 8 to refuse to perform a notarial act, a notary public may refuse to perform a notarial act under this section if the notary public is not satisfied that the individual is located outside the United States.

(f) If a notarial act involves a statement made in or a signature executed on a record by an individual by means of communication technology, the certificate of notarial act required by Section 15 must indicate that the individual making the statement or signing the record declared to the notary public that the individual was located outside the United States at the time the notarial act was performed.

(g) If a notarial act involves the use of communication technology, the notary public shall retain a video and audio copy of the performance of the notarial act.

(h) The following short-form certificates of notarial acts performed with regard to an individual located outside the United States are sufficient for the purposes indicated, if completed with the information required by subsection (f) and Section 15(a) and (b):

(1) For a verification on oath or affirmation by an individual located outside the United States:

State of \_\_\_\_\_

[County] of \_\_\_\_\_

Signed and sworn to (or affirmed) before me by use of communication technology on

\_\_\_\_\_ by \_\_\_\_\_, who declared that (he)(she)(they) (is)(are) located  
Date Name(s) of individual(s)

in \_\_\_\_\_ and that this record is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity located in the territorial jurisdiction of the United States, or involves property located in the territorial jurisdiction of, or a transaction substantially connected with, the United States.

\_\_\_\_\_  
Signature of notary public

(Place stamp here)

[\_\_\_\_\_] Title of office

[My commission expires: \_\_\_\_\_]

(2) For an acknowledgment in an individual capacity by an individual located outside the United States:

State of \_\_\_\_\_

[County] of \_\_\_\_\_

This record was acknowledged before me by use of communication technology on

\_\_\_\_\_ by \_\_\_\_\_, who declared that (he)(she)(they) (is)(are) located  
Date Name(s) of individual(s)

in \_\_\_\_\_ and that this record is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity located in the territorial jurisdiction of the United States, or involves property located in the territorial jurisdiction of, or a transaction substantially connected with, the United States.

\_\_\_\_\_  
Signature of notary public

(Place stamp here)

[\_\_\_\_\_] \_\_\_\_\_  
Title of office

[My commission expires: \_\_\_\_\_]

(3) For an acknowledgment in a representative capacity by an individual located outside the United States:

State of \_\_\_\_\_

[County] of \_\_\_\_\_

This record was acknowledged before me by use of communication technology on

\_\_\_\_\_ by \_\_\_\_\_ as (type of authority, such as officer or trustee) of (name  
Date Name(s) of individual(s)

of party on behalf of whom record was executed), who declared that (he)(she)(they) (is)(are) located in \_\_\_\_\_ and that this record is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity located in the territorial

jurisdiction of the United States, or involves property located in the territorial jurisdiction of, or a transaction substantially connected with, the United States.

\_\_\_\_\_  
Signature of notary public

(Place stamp here)

[\_\_\_\_\_]\_\_\_\_\_  
Title of office

[My commission expires: \_\_\_\_\_]

(4) For witnessing or attesting a signature by an individual located outside the United States:

State of \_\_\_\_\_

[County] of \_\_\_\_\_

Signed [or attested] before me by use of communication technology on

\_\_\_\_\_ by \_\_\_\_\_, who declared that (he)(she)(they) (is)(are) located  
Date Name(s) of individual(s)

in \_\_\_\_\_ and that this record is to be filed with or relates to a matter before a court, governmental entity, public official, or other entity located in the territorial jurisdiction of the United States, or involves property located in the territorial jurisdiction of, or a transaction substantially connected with, the United States.

\_\_\_\_\_  
Signature of notary public

(Place stamp here)

[\_\_\_\_\_]\_\_\_\_\_  
Title of office

[My commission expires: \_\_\_\_\_]

(i) Before a notary public performs the notary public's initial notarial act under this section, the notary public must notify the [commissioning officer or agency] that the notary public will be performing notarial acts by communication technology and identify the communication technology and any provider of third-person identity verification on whom the notary public intends to rely on for identity proofing. If the [commissioning officer or agency] has established standards for approval of communication technology under subsection (j) and Section 27, the communication technology must conform to the standards. If the communication technology conforms to the standards, the [commissioning officer or agency] shall approve the use of the communication technology.

(j) The [commissioning officer or agency] may adopt rules regarding performance of a notarial act with respect to an individual located outside the United States. The rules may:

(1) prescribe the means of performing a notarial act involving communication technology to communicate with an individual located outside the United States;

(2) establish standards for the approval of communication technology;

(3) approve providers of third-person identity verification and the process of identity proofing; and

(4) establish standards for the retention of a video and audio copy of the performance of a notarial act under this [act].]

**Legislative Note:** Section 14A is promulgated by the Uniform Law Commission as an amendment to and part of the Revised Uniform Law on Notarial Acts (RULONA). A jurisdiction that has already adopted RULONA should adopt Section 14A as an amendment to RULONA. A jurisdiction that is newly adopting RULONA should adopt Section 14A as part of its initial enactment.

A jurisdiction that wishes to adopt only Section 14A without the balance of RULONA will need to make significant adjustments, and should consider at least the following provisions of RULONA to which Section 14A refers or on which Section 14A relies:

Section 2. Definitions. Various provisions

Section 6. Personal Appearance Required.

*Section 7. Identification of Individual.* Subsection (a) relating to an individual personally known to the notarial officer

*Section 8. Authority to Refuse to Perform Notarial Act.*

*Section 14. Foreign Notarial Act.* Subsection (a) relating to the definition of a “foreign state”

*Section 15. Certificate of Notarial Act.*

*Section 27. Rules.*

## Comment

This section authorizes a notary public to perform notarial acts in the state in which he or she is commissioned on behalf of an individual who is physically located outside the United States. It does not authorize the performance of notarial acts on behalf of an individual who, although located outside the state in which the notary public is commissioned, is not physically located outside the United States.

As required elsewhere in this act, this section requires that a notary public to perform the notarial act in the state in which he or she is commissioned, except to the extent that any state, by provision outside this uniform act, may authorize a notary public, usually as a matter of comity and convenience, to perform notarial acts in a neighboring state or part of a state.

This section has been added as an amendment to the Revised Uniform Law on Notarial Acts (RULONA). As such it is not a free-standing provision and depends on references to operative provisions that are located elsewhere in RULONA.

*Subsection (a): “Communication Technology.”* Subsection (c) authorizes an individual located outside the United State to appear before a notary public by means of communication technology. This subsection defines the method of electronic communication by which the notary public and the individual located outside the United States must communicate. The technology must provide for synchronous communication between the notary public and the remotely located individual; asynchronous communication is not permitted. The technology must consist of both visual and audio components, i.e. the notary and the remotely located individual must be able to see and hear each other synchronously.

Under this definition it is recognized that, over time, communication technology will change. Currently a number of communication systems, frequently proprietary, exist. However, it is recognized that these systems will be updated and that other providers will enter the communication technology community. Consequently, communication technology is not limited to a specific protocol or technology. The regulation and approval of communication technology, any changes to it, and their providers resides with the [commissioning officer or agency] pursuant to subsection (j)(2).

**“Identity Proofing.”** Subsection (d) authorizes the use of identity proofing to verify the identity of the individual located outside the United States. This subsection defines that term. The term is a novel one having developed recently as a label for the verification of an individual’s identity by means of a review of information available about that individual from public and private data sources.

Public data sources are information systems open to public search such as land records systems. Private data sources are proprietary information systems to which a third party provider has authorized access, whether through ownership or license.

Through identity proofing a third party provider must provide the notary public with a “reasonable means” to verify the identity of the individual located outside the United States. In this context, reasonableness is measured from an objective standard.

The precise methodologies for identity proofing also will change over time and this subsection recognizes that fact. Currently the frequently used methodology involves asking the individual a number of personal questions, the verification of which can be ascertained from the data sources. In the future, other methodologies may develop which involve other approaches such as biometric identification. The regulation and approval of the identity proofing, any changes to it, and their providers resides with the [commissioning officer or agency] pursuant to subsection (j)(3).

**“Outside the United States.”** Under subsection (b) the authority of a notary public to perform a notarial act on behalf of a remotely located individual is limited to individuals who are “located outside the United States.” This subsection defines the venues that are located outside the United States as those located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

The authority for a notary public to perform a notarial act under this section is thus available only for individuals who are located outside the United States. It is not available for individuals who, although located remotely from the notary public are, nevertheless, located within the United States. Thus, a notary public located in an adopting jurisdiction may not perform a notarial act under this section for a person located in another state or even remotely located in the same state as the notary public.

*Subsection (b):* The introductory clause of this subsection provides the authority for a notary public to perform a notarial act by means of communication technology on behalf of an individual remotely located outside the United States. This subsection then proceeds to provide four limitations on that authority:

(1) The notary public either must be able to establish the identity of the individual located outside the United States by personal knowledge as authorized by Section 7(a) of RULONA, or the notary public must have satisfactory evidence of the identity of the individual by means of identity proofing as authorized by subsection (d).

This subsection specifically does not authorize the identification of an individual located outside the United States by the other two methods listed in Section 7(b) of RULONA. Consequently, a notary public may not identify the individual by means of (i) a government issued identification, such as a passport, driver’s license, or nondriver identification; or (ii) a verification or affirmation of another credible witness.

Thus, there are two methods by which the notary public may identify an individual located outside the United States. First, the notary public may personally know and be able to identify the remotely located individual by means of sight and sound using communication technology. Second, the notary may be able to identify the individual by means of third party provided identity proofing.

(2) The record upon which the notarial act is to be performed must satisfy either of two requirements:

(A) The record may be part of or pertain to a matter that is to be filed with or is before a court, governmental entity, or other entity located within the territorial jurisdiction of the United States. This may involve a judicial proceeding (e.g. a lawsuit in which the record will be submitted), a matter before an administrative agency (e.g. a matter before a federal or state regulatory board), or a matter that is before another governmental or non-governmental entity (e.g. a record that will be submitted to a corporate entity). In any case, however, that court, agency, or other entity must be located in the territorial jurisdiction of the United States, although the location of the court, agency, or other entity need not be in the same state in which the notary public is performing the notarial act.

(B) The record may involve property located within the territorial jurisdiction of the United States, or it may involve a transaction that is substantially connected with the United States.

The property described in the first clause may be either real or personal property. It need not be located in the same state in which the notary public is performing the notarial act. Thus, for example, the matter may involve an acknowledgement on a deed that is transferring real property located in the United States, or it may involve an affidavit filed with regard to the transfer of a decedent's personal property located in the United States.

Under the second clause, the record may be involved in a transaction that is substantially connected with the United States. That transaction may or may not involve property located in the United States. As long as the transaction is substantially connected with the United States, the notary public may perform a notarial act with regard to a record involved in that transaction. As in conflict of laws matters, one should look to the totality of the connections with the United States to determine whether the transaction is substantially connected with the United States. Thus, for example, in a transaction involving 100 individuals, 99 of whom are United States citizens, the transaction would be substantially connected with the United States. On the other hand, if 99 of the individuals were not United States citizens, the transaction would not be substantially connected with the United States. If property is involved in the transaction, its location may also affect the determination of whether the transaction is substantially connected with the United States.

(3) The notary public must be reasonably able to identify the record before him or her at the time of performing the notarial act as being the same record as the one on which the individual located outside the United States made the statement or executed the signature. The notary public's identification of the record may come as the result of the use of tamper-evident technology, or it may result from a personal acknowledgement by the individual located outside the United States.

As an example of the use of tamper-evident technology, the record may be an electronic record containing the electronic signature of the individual located outside the United States, which the notary public is able to read and verify at the time of performing the notarial act.

As an example of personal acknowledgement by the individual located outside the United States, the record may involve an original paper record that the individual scanned and submitted electronically to the notary public. Alternatively, the individual may simply submit the original

paper record to the notary public by mail. In either case the notary public might visually display the record to the individual (perhaps reading some or all of the record to the individual) and ask the individual whether the statement or signature is that of the individual.

(4) As previously noted, under this Section the notarial act is considered to be performed in the state in which the notary public is commissioned and is located at the time of the performance of the notarial act. However, this subsection recognizes that authorities in a foreign country may not agree with that position and may, instead, be of the opinion that the notarial act is performed where the individual located outside the United States is situated. That foreign country may also impose a penalty on either the remotely located individual, the notary public, or both for performing such a notarial act. Thus, this subsection states that, in order to authorized and valid under this Section, the act of making the statement or signing the record must not be prohibited in the foreign country in which the remotely located individual is situated.

It is hoped that the United States Department of State will be able to provide a listing of foreign countries which do not agree with the locale where the notarial act is performed as stated in this Section. If provided, that listing should be consulted by the notary public and the individual located outside the United States before attempting to perform the notarial act.

*Subsection (c):* Section 6 of RULONA states that the individual making the statement or executing a signature with regard to which a notarial officer will perform a notarial act must physically appear before the notary public. This subsection states that if the individual is remotely located outside the United States, an appearance before the notary public by means of communication technology will be sufficient to comply with the requirement of Section 6.

*Subsection (d):* Section 7(a) of RULONA provides that a notarial officer may identify an individual appearing before the officer from personal knowledge if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed. Under this subsection, a notary public may also identify an individual who located outside the United States from personal knowledge by means of communication technology using sight and sound. If the notary public is able to identify the individual from personal knowledge, it is not necessary that the individual be identified through identity proofing.

In addition to identifying the individual outside the United States from personal knowledge, the notary public may obtain satisfactory evidence of the identity of the individual by means of identify proofing as defined in subsection (a).

*Subsection (e):* Section 8 of RULONA provides that a notarial officer may refuse to perform a notarial act if the officer is not satisfied that the individual is competent or has the capacity to execute the record, or if the officer is not satisfied that that the individual's signature is knowingly and willingly made. In addition, since the premise of this Section is based on the fact that the individual is located outside the United States, this subsection authorizes a notary public to refuse to perform a notarial act if the notary public is not satisfied that the individual is, in fact, located outside the United States.

*Subsection (f):* For the purpose of establishing a record that the individual is located outside the United States, this subsection further requires that the certificate of notarial act, as required by Section 15, must indicate that the individual making the statement or signing the record declared to the notary public that the individual was located outside the United States at

the time that the notarial act was performed. A format for this statement by an individual located outside the United States is set forth in the short-form certificates presented in subsection (h).

*Subsection (g):* Being able to witness the sight and sound of the conversation between the notary public and the individual located outside the United States provides substantial evidence as to the validity of the performance of the notarial act as well as providing evidence as to compliance with the requirements of this Section. Therefore, this subsection requires that a notary public must retain a video and audio copy of the performance of the notarial act. The period and method of that retention and the medium upon which it is preserved are not specified, but they are within the authority of the [commissioning officer or agency] to specify under subsection (j)(4).

*Subsection (h):* This subsection sets forth statutory short form certificates that may be used with various types of notarial acts performed for individuals located outside the United States. They are sufficient to document the notarial act in this state, although other forms may be used as long as they set for the requirements of RULONA.

Of particular note are the following variations from, or additions to, the certificate of notarial act as provided in Section 15 of RULONA. Each form states that the notarial act was performed by the use of communication technology. Each form provides a space in which the location of the individual located outside the United States is to be inserted. Finally, each form recites that the record is part of or pertains to a matter that is to be filed with or is before a court, governmental entity, or other entity located the United States or involves property located in, or a transaction substantially connected with, the United States.

*Subsection (i):* Prior to performing the notary public's first notarial act under this section, the notary public must notify the [commissioning officer or agency] that the notary public will be performing notarial acts for remotely located individuals. The notary public must identify the communication technology that the notary public will use, as well as identify any third person upon whom the notary public will rely for identity proofing.

The [commissioning officer or agency] may have established standards for the approval of the communications technology under subsection (j) and Section 27 of RULONA. If so, the communication technology must conform to those standards. If the communication technology does so conform, the [commissioning officer or agency] will then approve the technology. If the [commissioning officer or agency] has not established standards, the notification provided to the [commissioning officer or agency] containing the required information suffices to comply with this subsection.

*Subsection (j):* This subsection authorizes the [commissioning officer or agency] to adopt rules regarding the performance of a notarial act for an individual located outside the United States. Adopting such rules will be of particular importance since the provisions of this Section are a significant modernization of prior notarial practice.

Specifically listed in the subsection is the authority to adopt rules regarding (1) the means of performing a notarial act involving communication technology for an individual located outside the United States; (2) standards for the approval of communication technology; (3) approval of providers of third-party identity verification and the process of identity proofing; and (4) standards for the retention of a video and audio copy of the performance of notarial acts.

In addition, further authority for the adoption of rules that might apply to the performance of a notarial act for an individual located outside the United States is provided in Section 27 of RULONA.