

D R A F T
FOR DISCUSSION ONLY

REVISED UNIFORM LAW ON NOTARIAL ACTS

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For November 20-21, 2009 Committee Meeting

With Prefatory Note and Comments

Copyright © 2009
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners and the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

November 5, 2009

DRAFTING COMMITTEE ON REVISED UNIFORM LAW ON NOTARIAL ACTS

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in revising this Act consists of the following individuals:

PATRICIA BRUMFIELD FRY, 4102 Cedar Crest Ln., Columbia, MO 65203, *Chair*

DAVID D. BIKLEN, 153 N. Beacon St., Hartford, CT 06105

PETER J. HAMASAKI, P.O. Box 2800, Honolulu, HI 96803-2800

LAWRENCE R. KLEMIN, 400 E. Broadway, Suite 500, P.O. Box 955, Bismarck, ND 58502-0955

EDWARD F. LOWRY, JR., 4200 N. 82nd St., Suite 2001, Scottsdale, AZ 85251

RAYMOND P. PEPE, 17 North Second St., 18th Floor, Harrisburg, PA 17101-1507

ANITA RAMASASTRY, University of Washington School of Law, William H. Gates Hall, Box 353020, Seattle, WA 98195-3020

CANDACE ZIERDT, Stetson University College of Law, 1401 61st St. S., Gulfport, FL 33707

ARTHUR R. GAUDIO, Western New England College School of Law, 1215 Wilbraham Rd., Springfield, MA 01119, *Reporter*

EX OFFICIO

ROBERT A. STEIN, University of Minnesota Law School, 229 19th Avenue South, Minneapolis, MN 55455, *President*

BRIAN K. FLOWERS, 1350 Pennsylvania Ave., NW, Suite 4, Washington, DC 20004, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

JAMES C. WINE, 700 Walnut St., Suite 1600, Des Moines, IA 50309-3899, *ABA Advisor*

DAVID EWAN, 400 Lanidex Plaza, 2nd Floor, Parsippany, NJ 07054, *ABA Section Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.nccusl.org

REVISED UNIFORM LAW ON NOTARIAL ACTS

TABLE OF CONTENTS

Prefatory Note..... 1

SECTION 1. SHORT TITLE 3

SECTION 2. DEFINITIONS..... 3

SECTION 3. AUTHORITY TO PERFORM NOTARIAL ACTS..... 9

SECTION 4. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS..... 9

SECTION 5. IDENTIFICATION OF INDIVIDUAL..... 11

SECTION 6. SIGNATURE IN SPECIAL CIRCUMSTANCES..... 14

SECTION 7. NOTARIAL ACTS IN STATE..... 14

SECTION 8. NOTARIAL ACT IN OTHER JURISDICTIONS OF UNITED STATES..... 16

SECTION 9. NOTARIAL ACTS UNDER FEDERAL AUTHORITY..... 17

SECTION 10. FOREIGN NOTARIAL ACT..... 19

SECTION 10. FOREIGN NOTARIAL ACT..... 20

SECTION 11. CERTIFICATE OF NOTARIAL ACT..... 22

SECTION 12. OFFICIAL STAMP; STAMPING DEVICE..... 25

SECTION 13. JOURNAL..... 27

SECTION 14. REGISTRATION OF NOTARIAL OFFICER..... 30

SECTION 15. SHORT FORMS..... 31

SECTION 16. NOTARY PUBLIC COMMISSION; QUALIFICATIONS..... 34

[SECTION 17. EDUCATION OF NOTARIES PUBLIC..... 36

SECTION 18. GROUNDS FOR DENIAL, REFUSAL TO RENEW, OR REVOCATION,
OR SUSPENSION OF NOTARIAL COMMISSION..... 37

SECTION 19. NO LEGAL ADVICE; ADVERTISING..... 39

SECTION 20. [RULES][REGULATIONS]..... 41

SECTION 21. VENDOR SUBMISSION OF TECHNOLOGY; APPROVAL..... 42

SECTION 22. NOTARIAL ACTS AFFECTED BY THIS ACT 42

SECTION 23. NOTARY PUBLIC COMMISSION IN EFFECT ON DATE OF THIS
[ACT]..... 43

SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION..... 43

SECTION 25. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
NATIONAL COMMERCE ACT..... 43

SECTION 26. REPEALS 44

SECTION 27. EFFECTIVE DATE..... 44

REVISED UNIFORM LAW ON NOTARIAL ACTS

Prefatory Note

This version of the Uniform Law on Notarial Acts (“ULONA”) is a comprehensive revision of the Uniform Law on Notarial Acts as approved by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) in 1982. It recognizes the societal and technological changes that have occurred since the date of the earlier version of this act and adapts the notarial process to accommodate them. It also makes revisions to the prior version that make this act more responsive to current transactions and practices.

In 1999, NCCUSL approved the Uniform Electronic Transactions Act (“UETA”), thereby validating electronic transactions and putting them on a par with traditional transactions that were written on tangible media. The federal Electronic Signatures in Global and National Commerce Act (“ESign”) was adopted in 2000 and also recognized electronic transactions on a par with transactions on tangible media. In 2004, NCCUSL approved the Uniform Real Property Electronic Recording Act (“URPERA”), thereby permitting county recorders and registrars to accept and record electronic real estate documents. Each of those acts recognized the validity of electronic notarial acts (UETA § 11; ESign § 101(g); URPERA § 3(c)).

This revision of ULONA also recognizes the validity of electronic notarial acts by putting them on a par with notarial acts performed on tangible media (ULONA § 2(6)). It does this by unifying the requirements and treatment of notarial acts, whenever possible, regardless of whether the acts were performed on tangible or electronic media. Although continuing the same basic treatment of electronic notarial acts as provided in UETA, ESign and URPERA, it provides a structure and operating rules for those notarial acts that was not provided in the prior laws. It provides for the registration of notarial officers who perform notarial acts on electronic media. It also encourages vendors to develop software and hardware by which electronic notarizations may be performed and to obtain pre-approval of that software and hardware from the commissioning officer or agency.

As with the prior version of the act, this revision continues to recognize notarial acts performed by notarial officers in the adopting state, another state, under federal authority, or under the law of a foreign nation with which the United States has diplomatic relations. It recognizes an “apostille” complying with the Convention de La Haye, du 5 octobre 1961 and treats it as a valid notarial act performed in a foreign nation.

The act commands the notarial officer to identify an individual before performing a notarial act for that individual. Section 4 provides two methods of performing that identification. The identification may be based on personal knowledge of the individual by the notarial officer. If the individual is not personally known to the notarial officer, the individual may provide satisfactory evidence of the individual’s identity, which may be through the use of an identification credential or by means of an oath or affirmation of a credible witness. The notarial officer may require additional identification of the individual if the officer is not satisfied with the individual’s identity. Furthermore, if the officer is not satisfied with the individual’s identity,

or has concern that the individual's signature is not knowingly and voluntarily made, the officer may refuse to perform the notarial act.

The act strives to provide assurances that enhance the integrity of the notarial process. One means by which it provides that assurance is by requiring a notary public to maintain a journal of all notarial acts that the notary performs. The journal may be maintained on either a tangible or electronic medium, but not both at the same time. It further specifies the information that must be recorded in the journal by the notary. The journal is a confidential record and it is not available to anyone other than the notary except by subpoena of a court or order the commissioning officer or agency.

The prior version of this act did not contain a licensing procedure for notaries public. As a result, the various states adopted their own provisions. These provisions vary considerably. In order to promote unity, Sections 15 through 17 of the act establish minimum requirements and procedures for the commissioning officer or agency to grant commissions as notaries public as well as grounds to deny, suspend, or revoke those commissions. Section 16 of the act provides an educational requirement, the adoption of which is optional. That section states that the applicant must sit for a certain amount of education on the laws, [rules][regulations], standards, procedures, and ethics relevant to notarial acts. It also requires that the applicant must pass a test based on that education prior to being granted the applicant's first notarial commission.

Section 18 directs notaries public not to offer legal advice or to prepare legal documents. It further requires that any advertising by the notary clearly state that prohibition. It also prohibits notaries from engaging in false or deceptive advertising.

1 the individual's current appearance to permit the notarial officer to identify the individual; {and
2 (ii) the individual's signature } {; or
3 (C) another form of identification authorized by law }.

4 (5) "In a representative capacity" means acting as:

5 (A) an authorized officer, agent, partner, trustee, or other representative for a
6 person other than an individual;

7 (B) a public officer, personal representative, guardian, or other representative, in
8 the capacity recited in a record;

9 (C) an attorney in fact for a principal; or

10 (D) an authorized representative of another in any other capacity.

11 (6) "Notarial act" means an act, whether performed with regard to a tangible or electronic
12 record, that a notarial officer may perform under the law of this state. The term includes taking
13 an acknowledgment, administering an oath or affirmation, taking a verification on oath or
14 affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a
15 protest of a negotiable instrument.

16 (7) "Notarial officer" means a notary public or other officer authorized to perform a
17 notarial act.

18 (8) "Notary public" means an individual commissioned to perform a notarial act.

19 (9) "Official stamp" means a physical image affixed to or embossed on a tangible record
20 or an electronic image attached to, or logically associated with, an electronic record.

21 (10) "Person" means an individual, corporation, business trust, estate, trust, partnership,
22 limited liability company, association, joint venture, public corporation, government or
23 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

1 (11) “Record” means information that is inscribed on a tangible medium or that is stored
2 in an electronic or other medium and is retrievable in perceivable form.

3 (12) “Sign” means, with present intent to authenticate or adopt a record:

4 (A) to execute or adopt a tangible symbol; or

5 (B) to attach to or logically associate with the record an electronic symbol, sound,
6 or process.

7 (13) “Signature” means a tangible symbol or an electronic symbol, sound, or process that
8 evidences the signing of a record.

9 (14) “Stamping device” means:

10 (A) a physical tool capable of affixing or embossing an official stamp or seal to a
11 tangible record or

12 (B) an electronic tool or process capable of attaching or logically associating an
13 official stamp or seal with an electronic record.

14 (15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
15 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
16 the United States. {The term includes an Indian tribe, pueblo, or nation, or Alaskan Native
17 village that is recognized by federal law or formally acknowledged by a state.}

18 (16) “Verification on oath or affirmation” means a declaration, made by an individual on
19 oath or affirmation, that a statement in a record is true.

20 **Comments**

21 (1) “**Acknowledgement.**” The word “acknowledgement” refers to a declaration made by
22 an individual stating or acknowledging that he or she has, in fact, executed the record with regard
23 to which the acknowledgement is made. The acknowledging individual need not necessarily
24 sign the record in the presence of the notarial officer as long as the individual acknowledges in
25 the officer’s presence that the signature on the record is that individual’s signature. If the record
26 is signed by an individual in a representative capacity, the individual also declares that the

1 individual has proper authority to execute the record on behalf of the principal.

2
3 (2) “**Electronic.**” The adjective “electronic” refers to the use of electrical, digital,
4 magnetic, wireless, optical, electromagnetic, and similar technologies. It is a descriptive word
5 and is intended to include all technologies involving electronic processes. For example,
6 biometric identification technologies are included if they permit communication and storage of
7 information by electronic means. Furthermore, as electronic technologies develop and implicate
8 other competencies, those competencies are also included in this definition. Consequently, the
9 listing of specific technologies is not static or limited to those in use at the time of the adoption
10 of this act.

11
12 The definition of the term “electronic” in this act has the same meaning as it has in
13 UETA §2(5), ESign § 106(2), and URPERA §2(2).

14
15 (3) “**Electronic signature.**” An “electronic signature” is any electronic symbol or
16 process that is attached to, or logically associated with, a record by an individual with the intent
17 to sign the record. The technology that is used for an electronic signature is intentionally not
18 specified and is meant to include electronic processes currently in use at the time of the adoption
19 of this act as well as those developed and implemented at a later time.

20
21 The term is substantially similar to the definition of that term as used in UETA §2(8),
22 ESign § 106(5), and URPERA §2(4).

23
24 (4) “**Identification credential.**” The term “identification credential” describes the
25 record, document, or methodology by which a notarial officer acquires “satisfactory evidence” of
26 the identity of the individual appearing before the officer. The credential may be a United States
27 passport. It may be a driver’s license or another credential issued by a United States or state
28 governmental agency as long as the credential displays the image of the individual’s face and
29 contains the individual’s signature. Finally, the credential may be any other form of
30 identification authorized by law for purposes of identification. In the latter case, the form of
31 identification need not be a document or record such as a passport or driver’s license; it also
32 authorizes identification by means of fingerprints, retinal scans, or body chips, provided that
33 those forms of identification are otherwise authorized by law.

34
35 The term is more fully described and implemented in Section 4.

36
37 (5) “**In a representative capacity.**” The term “in a representative capacity” describes
38 the actions of an individual who performs an acknowledgement or other act requiring
39 notarization on behalf of a principal rather than on the individual’s own behalf. To be performed
40 by in a representative capacity, the individual must be the authorized representative or agent of
41 the principal. Whether that person is, in fact, authorized is determined under the agency law of
42 this state.

43
44 The term is used elsewhere in this Section and in the short form acknowledgement
45 provided in Section 14(2).

1 (6) **“Notarial act.”** The term “notarial act” includes all the notarial acts authorized to be
2 performed by a notarial officer under this act. This subsection lists those notarial acts
3 specifically authorized in this act. However, the definition is not limited to the listed notarial
4 acts and includes any other notarial act permitted by the law of enacting state. See also Section
5 3(a).
6

7 The listed notarial acts include taking an acknowledgement, administering an oath or
8 affirmation, taking a verification upon an oath or affirmation, witnessing or attesting a signature,
9 certifying or attesting a copy of a record, and noting a protest of a negotiable instrument.
10

11 The provisions of this act apply to the performance of notarial acts on a tangible medium
12 such as paper as well as those performed in an electronic format.
13

14 (7) **“Notarial officer.”** The term “notarial officer” is used to describe collectively
15 notaries public and all other individuals having the authority to perform the “notarial acts” as
16 recognized in Sections 3 through 9 of this act.
17

18 Many of the provisions of this act apply broadly to all notarial officers. However, some
19 provisions, such as those in Sections 11 and 12, and Sections 15 through 18, apply only to
20 notaries public. Those sections provide for the use and maintenance of a notary public’s stamp
21 and journal, as well as the qualifications for, and the grounds for denial, suspension or revocation
22 of, a commission as a notary public.
23

24 (8) **“Notary public.”** A “notary public” is an individual licensed by the commissioning
25 officer or agency to perform notarial acts under Sections 15 through 18 of this act. It does not
26 include those individuals, such as judges and clerks of court, who are authorized to perform
27 notarial acts as a part of the official duties of the office held.
28

29 (9) **“Official stamp.”** The term “official stamp” refers to an image located on or
30 associated with a record and must contain specified information about a notarial officer. On a
31 tangible record, the image will be a physical one appropriately located on the record. It may be
32 applied to the surface of the record, as with ink or printing, or it may be applied by compression,
33 as with an impression seal. On an electronic record, the image will be in an electronic format
34 and will be attached to, or logically associated with, the record. The contents and characteristics
35 of the “official stamp” are set forth in Section 11(a).
36

37 The “official stamp” is to be distinguished from the device by which the image is
38 imposed on or associated with the record; that device is identified as a “stamping device” and is
39 defined below.
40

41 (10) **“Person.”** The word “person” is broadly defined to include all persons, whether
42 human individuals, or corporate, associational, or governmental entities. When the definition of
43 a “person” is intended to be limited to a human entity, the word “individual” is used in this act
44 rather than the word “person.” The definition is the standard definition for that term as used in
45 other acts adopted by the National Conference of Commissioners on Uniform State Laws.
46

1 (11) **“Record.”** A “record” consists of information stored on a medium, whether the
2 medium be a tangible or electronic one, provided that the information is retrievable in a
3 perceivable form. The traditional tangible medium has been paper on which information is
4 inscribed by writing, typing, printing, or a similar means. It is perceivable by reading the
5 information directly from the paper on which it is inscribed. An electronic medium is one in
6 which information is stored electronically. The information is perceivable by means of a device
7 that interprets the electronic information in the record. For example, electronic information may
8 be stored in a magnetic record located on a hard disk and it may be retrieved and read in a
9 perceivable form on a computer monitor or a paper printout.

10
11 Traditionally, especially if the tangible medium is paper, a record has been referred to as
12 a “document.” In this act, the word “record” includes the word “document.” The definition of a
13 record in this act is derived from the definition of that word as used in UETA §2(13) and ESign
14 §-106(9). It also similar in meaning to the word “document” as used in URPERA §2(1).

15
16 (12) **“Sign” and “Signature.”** Subsection (12) and (13) define the related words “sign”
17 and “signature.” An individual may “sign” his or her name to a record either on a tangible
18 medium or in an electronic format as long as the individual has the present intent to authenticate
19 or adopt the record. The resulting tangible or electronic symbol on or associated with the record
20 is the person’s “signature.” The verb “sign” includes other forms of the verb, such as “signing.”
21 Except as provided in Section 5, an individual must personally perform the act of signing a
22 record. If, instead of using his or her given name, an individual has adopted an alternative
23 symbol as his or her name, the individual may affix that symbol as the individual’s signature.

24
25 (13) **“Stamping device.”** A stamping device is a means by which an “official stamp” is
26 imposed on, or associated with, the record. With a traditional paper medium, the stamping
27 device may, for example, be a rubber device that uses ink to impose a “stamp” on the paper. It
28 may also be a device that compresses the paper and applies an impression seal. With an
29 electronic medium, the stamping device may, for example, be an electronic process that requires
30 a means of identifying the notarial officer. The means of identifying the notarial officer may be
31 information located on a portable electronic device or may be a password that is supplied by the
32 notarial officer. In either case, the electronic process and the means of identifying the officer are
33 collectively the stamping device.

34
35 (14) **“State.”** The word “state” includes any state of the United States, the District of
36 Columbia, the United States Virgin Islands, any territory or insular possession subject to the
37 jurisdiction of the United States, or a recognized Indian tribe or nation.

38
39 (15) **“Verification upon oath or affirmation.”** A “verification upon oath or
40 affirmation” is a declaration by an individual in which the individual states on oath or
41 affirmation that the declaration is true. This declaration is sometimes referred to as an
42 “affidavit” or “jurat.”

1 **SECTION 3. AUTHORITY TO PERFORM NOTARIAL ACTS.**

2 (a) A notarial officer may perform notarial acts authorized by this act or by law of this
3 state other than this act.

4 (b) A notarial officer may not perform a notarial act with respect to any record to which
5 the officer or the officer’s spouse or civil partner is a party, or in which either of them has a
6 direct beneficial interest. A notarial act performed in violation of this subsection is not void, but
7 shall be voidable by a court on motion of an individual injured by the act performed in violation
8 of this subsection.

9 **SECTION 4. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS.**

10 (a) A notarial officer who takes an acknowledgement of a record shall determine, from
11 personal knowledge or satisfactory evidence of the identity of the individual, that the individual
12 appearing before the officer and making the acknowledgment has the identity claimed and that
13 the signature on the record is the signature of the individual.

14 (b) A notarial officer who takes a verification of a statement on oath or affirmation shall
15 determine, from personal knowledge or satisfactory evidence of the identity of the individual,
16 that the individual appearing before the officer and making the verification has the identity
17 claimed and that the signature on the statement verified is the signature of that individual.

18 (c) A notarial officer who witnesses or attests to a signature must determine, from
19 personal knowledge or satisfactory evidence of the identity of the individual, that the individual
20 appearing before the officer and signing the record has the identity claimed.

21 (d) A notarial officer who certifies or attests a copy of a record or of an item that was
22 copied shall determine that the proffered copy is a full, true, and accurate transcription or
23 reproduction of the record or item.

1 (e) A notarial officer who makes or notes a protest of a negotiable instrument shall
2 determine the matters set forth in [Section 3-509 of the Uniform Commercial Code].

3 **Comments**

4 Subsection (a) authorizes a notarial officer to perform notarial acts. This subsection and
5 the definition of a notarial act in Section 2(6) specifically do not limit the types of notarial acts to
6 those listed in this Section. A notarial officer may perform other notarial acts if they are
7 authorized by other law, whether that law be of this state (Section 6), another state (Section 7),
8 the federal government (Section 8), or a foreign nation (Section 9).

9
10 Furthermore, when taken in conjunction with the definition of a notarial act in Section
11 2(6), this subsection also authorizes a notarial officer to perform notarial acts regardless of the
12 format of the record. Thus, a notarial officer may perform notarial acts on both tangible records
13 as well as electronic records. However, prior to performing a notarial act on an electronic
14 record, the officer must register with the commissioning officer or agency under Section 13.

15
16 Subsection (b) specifies what a notarial officer certifies by taking an acknowledgement.
17 There are two main elements in taking an acknowledgement: (1) the identity of the individual
18 who is making the acknowledgement (this subsection), and (2) the fact that the individual is
19 signing the record for a specific purpose and not for some other purpose (Section 2(1)). As part
20 of the identification process, the acknowledging individual must physically appear before the
21 notarial officer and the notarial officer must identify the individual either through personal
22 knowledge or from satisfactory evidence. An acknowledgement is a declaration that the
23 individual has executed the record by signing it; it is not essential that the individual sign the
24 record in the presence of the notarial officer. Thus, an individual may appear before the notarial
25 officer and acknowledge to the officer that the signature already on the record is that individual's
26 signature.

27
28 Subsection (c) specifies the requisites for taking a verification on oath or affirmation.
29 There are also two main elements of a verification: (1) the identification of the affiant (this
30 subsection) and (2) the fact that the affiant is verifying the statement as true under oath or
31 affirmation (Section 2(15)). The affiant must physically appear before the notarial officer and
32 the notarial officer must identify the affiant either through personal knowledge or from
33 satisfactory evidence. This record may be referred to as an affidavit or jurat in some
34 jurisdictions.

35
36 Subsection (d) states the requirements for witnessing or attesting a signature. Here the
37 notarial officer only certifies the fact of the signature; the officer does not certify the signatory's
38 intent to verify the record. Under this subsection, the notarial officer certifies the identification
39 of the individual whose signature the officer is witnessing or attesting. The individual must
40 physically appear before the notarial officer, the notarial officer must identify the individual
41 either through personal knowledge or from satisfactory evidence, and the individual must sign
42 the document before the officer.

1 Subsection (e) defines the standards for attestation or certification of a copy of a record
2 by a notarial officer. This is done if it is necessary to produce a copy of a record when the
3 original is in an archive or other collection of records and cannot be removed. In many cases, the
4 custodian of the official archive or collection also may be empowered to issue an officially
5 certified copy. When an officially certified copy is available, it is official evidence of the state of
6 the public archive or collection, and it may be better evidence of the original record than a copy
7 certified by a notarial officer.

8
9 Subsection (f) refers to a provision of the Uniform Commercial Code that confers
10 authority upon a notarial officer to note a protest of a negotiable instrument.
11

12
13 **SECTION 5. IDENTIFICATION OF INDIVIDUAL.**

14 (a) If a notarial act relates to an acknowledgement, verification, attestation, or other
15 statement made by an individual, the individual making the statement must personally appear
16 before the notarial officer.

17 (b) A notarial officer has personal knowledge of the identity of an individual appearing
18 before the officer if the individual is personally known to the officer through prior dealings
19 sufficient to provide reasonable certainty that the individual has the identity claimed.

20 (c) A notarial officer has satisfactory evidence of the identity of an individual appearing
21 before the officer if:

22 (1) the officer can identify the individual on the basis of an identification
23 credential that is either currently valid or has expired no more than {[one year]} {[five years]}
24 before the performance of the notarial act; or

25 (2) the individual is identified to the officer through a verification on oath or
26 affirmation of a credible witness personally appearing before the officer and known to the officer
27 or whom the officer can identify on the basis of an identification credential that is either
28 currently valid or has expired no more than {[one year]} {[five years]} before the performance
29 of the notarial act.

1 (d) A notarial officer may require an individual to provide additional information or
2 identification credentials necessary to assure the officer of the identity of the individual.

3 (e) If a notarial officer is not satisfied that the individual appearing before the officer is
4 the identified individual {or that the individual executing the record is competent or has the
5 capacity to execute the record}, or has concern that the individual's signature is not knowingly
6 and voluntarily made, the officer may refuse to perform the notarial act.

7 {(f) If a notarial officer asked to perform a notarial act involving a record knows or
8 believes that the record is fraudulent, the officer must refuse to perform the notarial act. The
9 officer does not have an obligation to investigate the record to determine whether it is
10 fraudulent. }

11 {(f) A notarial officer asked to perform a notarial act may refuse to perform the notarial
12 act for any reason or for no reason, provided that the refusal does not violate the law of this state
13 or of the United States. }

14 **Comments**

15
16 This Section defines the two methods for identifying an individual as required in Sections
17 3(b) through (d). The two means for identifying an individual are through (1) personal
18 knowledge or (2) satisfactory evidence.

19
20 Subsection (a) states that the notarial officer has personal knowledge of the identity of an
21 individual only if the officer personally knows the individual through prior dealings with that
22 individual. The prior dealings may be business dealings or personal dealings. The dealings
23 might simply be the performance of prior notarial acts for that individual. Nonetheless, the prior
24 dealings must be of a sufficient nature to provide the notarial officer with information adequate
25 to identify the individual without the need to view any identification credentials or require any
26 other means of identification.

27
28 Subsection (b) describes two situations by which a notarial officer may obtain
29 satisfactory evidence of the identity of the individual even though the officer has no prior
30 dealings with that individual. One method is identification based on an identification credential
31 presented by the individual. Although one might usually expect the identification credential to
32 be currently in force, this provision recognizes that even though an expired credential would not
33 be effective for its primary purpose (e.g. as a license permitting the individual to drive an

1 automobile), it may used for up to [one year] after its expiration as an identification credential.
2 As long as it provides the necessary information for identifying the individual during that [one
3 year] period, its identification function is satisfied. This subsection does, however, put a specific
4 outside limit of [one year] beyond the expiration of the credential for its use for identification
5 purposes.
6

7 Based on the definition of an identification credential contained in Section 2(4), the
8 credential may be (1) a passport issued by United States or a foreign country with which the
9 United States has diplomatic relations, (2) a credential issued by the United States, a state or a
10 tribal governmental agency that contains (a) an image of the individual's face, and (b) the
11 individual's signature, or (3) any other identification credential authorized by state law. (See
12 Section 2(4).)
13

14 A second means by which a notarial officer may obtain satisfactory evidence of an
15 individual's identity is through the oath or affirmation of a credible witness who identifies that
16 individual to the officer. The credible witness must either be (1) personally known to the officer,
17 or (2) identified to the officer by means of an identification credential, as long as that credential
18 is not more than [one year] past its expiration date. This provision recognizes that an individual
19 may require the performance of a notarial act even though that individual is not known to the
20 notarial officer and does not have an identification credential or does not have one currently
21 available. If the identity of that person is, however, sworn to by an individual personally known
22 to the notarial officer or who can be identified to the officer by means of an identification
23 credential, the identity of the first individual will be established by satisfactory evidence.
24

25 This subsection does not allow the identity of an individual to be based on an oath or
26 affirmation of a person who is him or herself identified to the notarial officer by means of an
27 oath or affirmation of yet another witness. Such a process would lead to a spiraling and useless
28 addition of "witnesses to the witnesses."
29

30 Subsection (c) recognizes that, even if a specified identification credential is presented, a
31 notarial officer may, in some cases, be uncertain as to the identity of the individual. For
32 example, the identification credential may be defaced or have defects that make legibility
33 difficult, or there may be changes in the physical appearance of the individual that may not be
34 reflected in the image on the identification credential. In that case, the notarial officer may
35 require the individual to provide other information or identification in order to assure the officer
36 of the identity of the individual.
37

38 Subsection (d) allows the notarial officer to refuse to perform the requested notarial act in
39 either of two circumstances. First, if the notarial officer is still not satisfied as to the individual's
40 identity after the presentation of identification credentials or the performance of an oath or
41 affirmation by a witness, the officer may refuse to perform the notarial act. Second, if the
42 notarial officer has concern about whether the individual's signature was knowingly and
43 voluntarily made, the officer may refuse to perform the notarial act. Lack of satisfaction with the
44 identity of the individual or concern with whether the signature is knowingly and voluntarily
45 made are matters within the proper discretion of the notarial officer.
46

1 Subsection (e) also allows the notarial officer to refuse to perform the notarial act if the
2 officer has reason to believe that the record is fraudulent. This subsection recognizes that a
3 notarial officer may, in the process of identifying an individual or preparing to perform the
4 notarial act, gather information by which the officer knows or has reason to believe that the
5 record is fraudulent. For example, the officer may determine or have reason to believe that the
6 record is part of a greater fraudulent scheme. In that case, the officer is authorized to refuse to
7 perform the notarial act. Nevertheless, the subsection provides that the notarial officer has no
8 duty to inspect the contents of the record and the officer’s failure to do so is not a violation of the
9 officer’s duties under this act.
10

11
12 **SECTION 6. SIGNATURE IN SPECIAL CIRCUMSTANCES.** If an individual is
13 physically unable to sign a record, the individual may direct a substitute individual other than the
14 notarial officer to sign the individual’s name on the record. The notarial officer shall insert
15 “Signature affixed by (name of substitute individual) at the direction of (name of individual)” or
16 words of similar import.

17 **Comments**

18 This Section recognizes that some individuals may be unable to sign a record personally
19 because of a disability. In that case, this subsection allows for an alternate process. That process
20 requires the executing individual to direct the notarial officer to sign that individual’s name to
21 the record. It then requires the officer to insert the quoted language in the record or words of
22 similar import. (For similar provisions, see Model Notary Act § 5-1(d); see also proposed
23 amendments to Kentucky legislation, 07 Reg. Sess. Gen. Assembly Bill 1450, § 18(2).)
24

25
26 **SECTION 7. NOTARIAL ACTS IN STATE.**

27 (a) A notarial act may be performed in this state by the following individuals:

28 (1) a notary public of this state; [or]

29 (2) a judge, clerk, or [deputy clerk] of any court of this state[; or]

30 [(3) an individual licensed to practice law in this state][; or]

31 [(4) any other individual authorized to perform the specific act by the law of this
32 state].

1 (b) The signature and title of an individual performing a notarial act are prima facie
2 evidence that the signature is genuine and that the individual holds the designated title.

3 (c) The signature and title of a notarial officer listed in subsection (a)(1), [or] (a)(2) [or
4 (a)(3)] conclusively establish the authority of the officer to perform a notarial act.

5 **Legislative Note:** *Subsection (a)(4) recognizes the authority of other persons holding notarial*
6 *powers in general terms. However, it would be preferable if a legislature were to list those*
7 *offices in this subsection. Such a listing might provide a ready reference point for those who*
8 *seek to determine the validity of a notarial act performed by an individual in this category,*
9 *especially if the notarial act is to be recognized in another state.*

10 11 **Comments**

12 Subsection (a) lists the individuals who are entitled to serve as notarial officers and
13 perform notarial acts in this state. A notary public as well as a judge, clerk, or deputy clerk of
14 any court of this state may perform notarial acts. The language follows the prior version of the
15 Uniform Law on Notarial Acts.

16
17 Two optional provisions are also stated. Under subsection (a)(3), a state may authorize a
18 duly licensed attorney at law to serve as a notarial officer by virtue of that individual's status as
19 an attorney. Under subsection (a)(4), a state may recognize the authority of any other individual
20 to perform notarial acts if the performance of notarial acts by that individual is authorized by
21 other state law. For example, recorders or registrars of deeds, or commissioners of titles, may be
22 authorized to perform notarial acts under separate legislation. See Legislative Note, above.

23
24 Subsections (b) and (c) deal with authentication of a notarial act. Proof of a notarial
25 officer usually involves three steps:

26
27 1. Proof that the notarial officer's signature is that of the individual named in the
28 certificate as a notarial officer;

29
30 2. Proof that the individual named in the certificate holds the designated office as a
31 notarial officer; and

32
33 3. Proof that persons holding the designated office may perform notarial acts.

34
35 Subsection (b) sets forth a prima facie presumption that the signature of the individual
36 named in the certificate, whether on a tangible medium or in an electronic format, is that of the
37 named notarial officer. It also sets forth a prima facie presumption that the individual named in
38 the certificate holds the designated notarial office. These are the first two elements of
39 authentication listed above.

40
41 Subsection (c) conclusively presumes that notaries public, judges, clerks and deputy

1 clerks of this state (and attorneys licensed in this state, if subsection (a)(3) is adopted) have the
2 authority to execute notarial acts. This is the third element of authentication listed above.
3

4
5 **SECTION 8. NOTARIAL ACT IN OTHER JURISDICTIONS OF UNITED**
6 **STATES.**

7 (a) A notarial act performed in another state has the same effect under the law of this
8 state as if performed by a notarial officer of this state, if the act performed in the other state is
9 performed by:

10 (1) a notary public of the other state;

11 (2) a judge, clerk, or [deputy clerk] of a court of the other state; or

12 (3) any other individual authorized by the law of the other state to perform
13 notarial acts.

14 (b) The signature and title of an individual performing a notarial act are prima facie
15 evidence that the signature is genuine and that the individual holds the designated title.

16 (c) The signature and title of a notarial officer listed in subsection (a)(1) or (2)
17 conclusively establish the authority of the officer to perform a notarial act.

18 **Comments**

19 Subsection (a) lists the notarial officers of other states whose notarial acts performed in
20 those states will be recognized in this state. The officers listed in subsections (a)(1) and (2) is
21 identical to the officers listed in Subsections 6(a)(1) and (2) (officers authorized to perform
22 notarial acts in this state), above. It provides parity of recognition for notarial acts performed by
23 those officers in other states.
24

25 Subsection (b) sets forth a prima facie presumption that the signature of the individual
26 named in the certificate, whether on a tangible medium or in an electronic format, is that of the
27 named notarial officer. It also sets forth a prima facie presumption that the individual named in
28 the certificate holds the designated notarial office. These are the first two elements of
29 authentication of a notarial act listed in the prior Comment.
30

31 Subsection (c) provides the third element of authentication. It recognizes the authority of

1 a notary public, or of a judge, clerk, or deputy clerk of court of another state to perform notarial
2 acts without the necessity of further proof that such an officer has notarial authority. This
3 abolishes the need for a “clerk’s certificate” or similar instrument to authenticate the notarial act
4 of a notary public, judge, clerk or deputy clerk. However, this per se recognition of authority
5 does not extend beyond a notary public, judge, clerk or deputy clerk of another state. Authority
6 of other persons to perform notarial acts may be proven by reference to the laws of the other
7 state. In addition, other forms of proof of authority to perform notarial acts, such as a “clerk’s
8 certificate,” are acceptable in this state.
9

10
11 **SECTION 9. NOTARIAL ACTS UNDER FEDERAL AUTHORITY.**

12 (a) A notarial act performed anywhere under a grant of authority under federal law has
13 the same effect under the law of this state if performed by:

14 (1) a judge, clerk, or [deputy clerk] of a court;

15 (2) any individual in a military service or performing duties under the authority of
16 a military service who is authorized to perform notarial acts under federal law;

17 (3) an individual designated a notarizing officer by the United States Department
18 of State for performing notarial acts overseas; or

19 (4) any other individual authorized by federal law to perform notarial acts.

20 (b) The signature and title of an individual performing a notarial act are prima facie
21 evidence that the signature is genuine and that the individual holds the designated title.

22 (c) The signature and title of an officer listed in subsection (a)(1), (a)(2), or (a)(3)
23 conclusively establish the authority of the officer to perform a notarial act.

24 **Comments**

25 Some notarial acts are performed by individuals acting under federal authority or holding
26 office under federal authority. This section provides for recognition under the law of this state of
27 notarial acts performed by those officers wherever the acts of those persons are performed. To
28 that end, subsection (a)(1) recognizes the notarial acts performed by judges, clerks, and deputy
29 clerks under federal law.

30
31 Subsection (a)(2) recognizes the authority of persons to perform notarial acts under the

1 provisions that are currently codified in 10 U.S.C §1044a (2009). Currently, 10 U.S.C. §1044a
2 provides as follows:
3

4 (a) The persons named in subsection (b) have the general powers of a notary
5 public and of a consul of the United States in the performance of all notarial acts to be
6 executed by any of the following:

7 (1) Members of any of the armed forces.

8 (2) Other persons eligible for legal assistance under the provisions of
9 section 1044 of this title or regulations of the Department of Defense.

10 (3) Persons serving with, employed by, or accompanying the armed forces
11 outside the United States and outside the Commonwealth of Puerto Rico, Guam, and the
12 Virgin Islands.

13 (4) Other persons subject to the Uniform Code of Military Justice (chapter
14 47 of this title) outside the United States.

15 (b) Persons with the powers described in subsection (a) are the following:

16 (1) All judge advocates, including reserve judge advocates when not in a
17 duty status.

18 (2) All civilian attorneys serving as legal assistance attorneys.

19 (3) All adjutants, assistant adjutants, and personnel adjutants, including
20 reserve members when not in a duty status.

21 (4) All other members of the armed forces, including reserve members
22 when not in a duty status, who are designated by regulations of the armed forces or by
23 statute to have those powers.

24 (5) For the performance of notarial acts at locations outside the United
25 States, all employees of a military department or the Coast Guard who are designated by
26 regulations of the Secretary concerned or by statute to have those powers for exercise
27 outside the United States.

28 (c) No fee may be paid to or received by any person for the performance of a
29 notarial act authorized in this section.

30 (d) The signature of any such person acting as notary, together with the title of
31 that person's offices, is prima facie evidence that the signature is genuine, that the person
32 holds the designated title, and that the person is authorized to perform a notarial act.
33

34 Subsection (a)(3) recognizes the authority of foreign service and consular officers to
35 perform notarial acts. This has been a traditional function performed by foreign service and
36 consular officers who, in many parts of the world, may be the only or best available person to
37 perform notarial acts that must be recognized in the United States.
38

39 Subsection (a)(4) provides general recognition of the notarial acts performed by other
40 individuals under federal law and not listed in the prior subsections. A variety of other federal
41 officers may be authorized to perform notarial acts, such as wardens of federal prisons.
42

43 Subsection (b) confers prima facie validity to the asserted signature of a United States
44 notarial officer and that the individual holds the asserted office. It thus provides the first two
45 elements of authentication described in the Comments to Section 6.
46

1 Subsection (c) provides the third element of proof of the notarial officer’s authority. It
2 conclusively recognizes the authority of a judge, clerk or deputy clerk, a military officer, or a
3 foreign service or consular officer to perform notarial acts without the necessity of further
4 reference to the federal statutes or regulations to prove that the officer has notarial authority.
5 There is no need for further authentication of those individuals’ authority to perform notarial
6 acts.

7
8 The authority of person to perform notarial acts under subsection (a)(4) must be
9 demonstrated by other means. That authority can most readily be demonstrated by reference to
10 the federal law or published regulations granting the authority. Any other form of authentication,
11 such as a “clerk’s certificate,” may also be used.

12
13
14
15 **{Alternative 1 to Committee}**

16
17 **SECTION 10. FOREIGN NOTARIAL ACT.**

18 (a) If a notarial act is performed under authority and in the jurisdiction of a foreign state
19 or the constituent units of the foreign state or is performed under the authority of a multinational
20 or international governmental organization, the act has the same effect under the law of this state
21 as if performed by a notarial officer of this state.

22 (b) If the title of office and indication of authority to perform notarial acts appears in a
23 digest of foreign law or in a list customarily used as a source for that information or if the title of
24 office is a notary public, the authority of an officer with that title to perform notarial acts is
25 conclusively established.

26 (c) An official stamp of an individual holding an office listed in subsection (b) is prima
27 facie evidence that the individual with the indicated title has authority to perform notarial acts.

28 (d) An apostille in the form prescribed by the Hague Convention of October 5, 1961 and
29 issued by a {foreign} state party to the Convention conclusively establishes that the signature of
30 the notarial officer is genuine and that the officer holds the indicated office.

31 (e) A counselor authentication issued by an individual designated a notarizing officer by

1 the United States Department of State for performing notarial acts overseas and attached to the
2 record on which the notarial act is performed conclusively establishes that the signature of the
3 notarial officer is genuine and that the officer holds the indicated office.

4 (f) For purposes of this section “foreign state” means a government other than the United
5 States or a state as defined in Section 2(15).

6 **{Alternative 2 to Committee}**

7
8

SECTION 10. FOREIGN NOTARIAL ACT.

9 (a) If a notarial act, authenticated in accordance with subsections (b) or (c) and is
10 performed under authority and in the jurisdiction of a foreign state or the constituent units of the
11 foreign state or performed under the authority of a multinational or international governmental
12 organization, it has the same effect under the law of this state as if performed by a notarial
13 officer of this state.

14 (b) An apostille in the form prescribed by the Hague Convention of October 5, 1961 and
15 issued by a {foreign} state party to the Convention conclusively establishes that the signature of
16 the notarial officer is genuine and that the officer holds the indicated office.

17 (c) A counselor authentication issued by an individual designated a notarizing officer by
18 the United States Department of State for performing notarial acts overseas and attached to the
19 record on which the notarial act is performed conclusively establishes that the signature of the
20 notarial officer is genuine and that the officer holds the indicated office.

21 (d) For purposes of this section “foreign state” means a government other than the United
22 States or a state as defined in Section 2(15).

23 **{End of Alternatives to Committee}**

1 **Comments**

2
3 This section provides recognition of notarial acts performed by certain notarial officers
4 who act under the law of a foreign country or the authority of a multinational or international
5 governmental organization.
6

7 Subsection (a)(1) through (3) provide that the notarial act of a notary public, judge, clerk
8 of court, or deputy clerk of court of a foreign nation with which the United States has diplomatic
9 relations, or of its constituent units, is recognized in this state. They also recognize the notarial
10 acts of similar officers acting under the authority of a multinational or international
11 governmental organization. An example of multinational or international governmental
12 organization would be the United Nations.
13

14 The United States is a party to an international treaty regarding the authentication of
15 notarial and other similar public acts. This treaty is known as the “Convention de La Haye du 5
16 octobre 1961.” Under this treaty an “apostille” may be prepared in the foreign nation in
17 accordance with the treaty and stamped on, or attached to, the “notarized” record. The
18 “apostille” may be in the language of the issuing country, but the words “Apostille (Convention
19 de La Haye, du 5 octobre 1961)” are always in French. Under the terms of the treaty, the
20 apostille will be recognized if it is issued by a competent authority in another nation that has
21 ratified the Convention. The text of the Convention is reproduced in the annotations to the
22 Federal Rules of Civil Procedure Rule 44.
23

24 Subsection (b) carries out the provisions of that treaty and recognizes an “apostille”
25 complying with the treaty and further states that it conclusively establishes that the signature of
26 the notarial officer is genuine and that the officer holds the indicated office.
27

28 The “apostille” has the following form, which is set forth in the annotation to Federal
29 Rules of Civil Procedure Rule 44:

The certificate will be in the form of a square with sides at least 9 centimetres long:

APOSTILLE

(Convention de La Haye du 5 octobre 1961)

1. Country:
This public document
 2. has been signed by
 3. acting in the capacity of
 4. bears the seal/stamp of
.....
- Certified
5. at 6. the
 7. by
 8. No
 9. Seal/stamp: 10. Signature:
.....

1 Although federal law provides for mandatory recognition of an apostille only if issued by
2 another acceding nation, the statute provides for recognition of all apostilles issued by any
3 foreign nation in that form. They are, in effect, a standard form of authentication. Use of the
4 form eases problems of translation.

5
6 Subsection (c) provides that a certificate of (1) a United States' consular officer stationed
7 in the foreign nation (see also Section 8(a)(3)), (2) a foreign nation consular officer stationed in
8 the United States, or (3) an officer of a multinational or international governmental organization,
9 conclusively establishes the authenticity or validity of the notarial act that is set forth in the
10 certificate.

11
12 Subsections (d), (e) and (f) apply to proof of notarial authority unless those issues are
13 satisfied under subsections (b) or (c). Subsections (d) states that the official stamp of the notarial
14 officer on the record provides prima facie evidence that the officer's signature is genuine and
15 that the officer holds the indicated office (the first two elements of proof of authority stated in
16 Comments to Section 6). Subsection (e) states that the official stamp of an officer listed in
17 subsections (a)(1) and (2) provides prima facie evidence that the officer has the authority to
18 perform the notarial act (the third element of proof of authority stated in Comments to Section
19 6). Subsection (f) states that if a title of office or indication of authority is listing in a digest of
20 foreign laws or recognized list, it conclusively establishes the authority of an officer with that
21 title to perform notarial acts (the third element of proof of authority stated in Comments to
22 Section 6).

23
24 Subsection (g) gives due recognition to the authority of a foreign nation to adopt an
25 official stamp in the form it deems proper. It provides that an official stamp complying with the
26 law of the nation where the foreign notarial act is performed is sufficient under this act regardless
27 of whether it complies with the requirements for an official stamp set forth in Section 11 of this
28 act.

29
30
31
32 **SECTION 11. CERTIFICATE OF NOTARIAL ACT.**

33 (a) A notarial act must be evidenced by a certificate. The certificate must:

34 (1) be signed in the same manner as on file with the [commissioning officer or
35 agency] and dated by the notarial officer who signed it;

36 (2) identify the jurisdiction in which the notarial act is performed;

37 (3) contain the title of office of the notarial officer;

38 (4) indicate the date of expiration, if any, of the notarial officer's commission, if
39 the officer is a notary public; and

1 (5) contain the notarial officer's rank or position if the notarial officer is
2 performing duties under the authority of a military service pursuant to federal law.

3 (b) If a notarial act is performed regarding a tangible record, the notarial officer's official
4 stamp must be affixed to or embossed on the certificate of a notarial act. If the notarial act is
5 performed regarding an electronic record, an official stamp may, but need not, be attached to or
6 logically associated with the certificate.

7 (c) A certificate of a notarial act is sufficient if it meets the requirements of subsections
8 (a) and (b) and it:

9 (1) is in a short form set forth in Section 15;

10 (2) is in a form otherwise prescribed by the law of this state;

11 (3) is in a form prescribed by the law applicable in the jurisdiction in which the
12 notarial act was performed; or

13 (4) sets forth the actions of the notarial officer and the actions are sufficient to
14 meet the requirements of the notarial act as provided in Section 4 or law other than this act.

15 (d) By executing a certificate of a notarial act, a notarial officer certifies that the officer
16 has made the determinations required by Sections 4 and 5.

17 (e) A notarial officer may not affix the officer's signature to, or logically associate it
18 with, a certificate of a notarial act until the notarial act has been performed.

19 (f) If a notarial act is performed regarding a tangible record, a certificate must be part of,
20 or securely attached to, the record. If a notarial act is performed regarding an electronic record,
21 the certificate must be affixed to, or logically associated with, the electronic record in accordance
22 with methods approved by the [commissioning officer or agency].

23
24

1 **Comments**

2 Subsection (a) provides that a certificate signed by a notarial officer is necessary to
3 evidence a notarial act. The signature may be either a manual or an electronic signature.
4 Whatever the format of the signature, however, it must be made in the same manner as on file
5 with the commissioning officer or agency.

6 As with the signature, the certificate may be either on a tangible medium or in an
7 electronic format. The certificate must set forth the date of the notarial act and jurisdiction in
8 which it is performed. It must also identify the office of the notarial officer. If the officer is a
9 notary public, the certificate must contain the expiration date of the notary’s commission. If the
10 officer’s authority is derived from 10 U.S.C. §1044a, the certificate must include the person’s
11 rank or position.
12

13 Subsection (b) concerns whether the certificate must contain an official stamp. If the
14 notarial act is evidenced on a tangible medium, the subsection provides that the notarial officer’s
15 official stamp must be affixed to or embossed on the certificate. However, if the notarial act is
16 evidenced on an electronic record, it is not necessary that an official stamp be attached to, or
17 associated with, the electronic certificate. This is the same as provided in URPERA § 3(c) and
18 conforms with UETA § 11 and ESign § 101(g). Although subsection (b) does not require that
19 the notarial officer attach or logically associate an official stamp with the electronic certificate, it
20 does not prohibit the officer from doing so. Regardless of whether an official stamp is attached
21 to, or logically associated with an electronic certificate, the requirements of subsection (a) must
22 be met and the electronic certificate must contain the information stated in that subsection. This
23 is the same as provided in UETA § 11, ESign § 101(g), and URPERA § 3(c).
24
25

26 Subsection (c) provides that the certificate may be in an appropriate short form set forth
27 in Section 14 of this act, in any other form provided by the law of this state, in any other form
28 provided by the law of the place where the notarial act was performed, or in any form that sets
29 forth the requisite elements of the notarial act. Thus, acknowledgements and other notarial acts
30 executed in more prolix and elaborate forms may nevertheless continue to qualify under
31 subsection (c).
32

33 Subsection (d) emphasizes the obligation of the notarial officer to perform the
34 determinations required by Sections 3 and 4 and requires the officer to certify that the officer has
35 done so.
36

37 In order to be proper evidence of the full performance of a notarial act, subsection (e)
38 provides that the notarial officer may not sign the certificate until the notarial act has been fully
39 performed. See, e.g. N.C. Gen. Stat. §10B-35.
40

41 Subsection (f) seeks to assure the integrity of the record and the related notarial act. With
42 regard to a notarial act evidenced on a tangible record, this subsection requires that the certificate
43 must be a part of, or securely attached to, the record. If the certificate is not a part of the record
44 itself, the means of attaching the certificate are not specified. However, stapling is a logical
45 example.
46

1 Attachment of a certificate to an electronic format is more difficult to evidence and
2 describe. Accordingly the subsection provides that the certificate must be affixed to, or logically
3 associated with, the electronic record in accordance with methods approved by the
4 commissioning officer or agency. Those methods may vary and more than one may be
5 appropriate. They are left to the commissioning officer or agency to determine depending on the
6 available technology and the means of security provided. The means of attaching the certificate
7 will be one of the factors considered by the commissioning officer or agency in approving a
8 technology for use in notarizing electronic documents. See Section 20.
9

10
11 **SECTION 12. OFFICIAL STAMP; STAMPING DEVICE.**

12 (a) A notary public's official stamp must:

13 (1) contain the notary public's name, jurisdiction, commission expiration date, if
14 any, and other information, if any, that is required by the [commissioning officer or agency]; and

15 (2) be capable of being copied together with the record to which it is affixed,
16 attached, or with which it is logically associated.

17 (b) A notary public shall retain a stamping device in a secure place. The notary public
18 shall not allow another person to use the device. On resignation from, or the revocation or
19 expiration of, the notary public's commission, or on the expiration of the date set forth in the
20 stamping device, if any, the notary public shall disable the stamping device by defacing,
21 damaging or erasing it in a manner that renders it unusable. On the death of a notary public, the
22 notary public's personal representative shall disable the stamping device by defacing, damaging
23 or erasing it in a manner that renders it unusable.

24 (c) If a notary public's stamping device is lost or stolen, the notary public shall notify the
25 [commissioning officer or agency] and the appropriate law enforcement authority not later than
26 five days after discovering that the device is lost or stolen.

27 (d) If a notarial officer, who is not a notary public, is not required to use an official
28 stamp, a statement that contains the name and office of the notarial officer and is capable of

1 being copied together with the record to which it is affixed, attached, or with which it is logically
2 associated, shall be considered an official stamp.

3 **Comments**

4 Subsection (a) states that the notary public's official stamp must contain the notary's
5 name, the jurisdiction in which the notary is authorized to act, the expiration date, if any, of the
6 notary's commission, and any other information that may be required by the commissioning
7 officer or agency.
8

9 As used in this act, the word "stamp" includes an image that is imposed by a "seal."
10 Because it is important to be able to reproduce the image of a stamp that is contained on a record,
11 the stamp must be capable of being copied along with the tangible record. Thus, an impression
12 seal used on a paper medium will normally not be a sufficient stamp under this section.
13

14 Subsection (b) recognizes that many notarial officers are not notaries public and are not
15 supervised directly by the commissioning officer or agency. Thus, notarial officers who are not
16 notary publics are not required to use an official stamp. However, such a notarial officer may
17 obtain and use an official stamp if it is otherwise permitted by the law that empowers the officer.
18 If such a notarial officer does not use an official stamp, this subsection requires that the officer
19 attach a statement that contains the officer's name and the office of the notarial officer. The
20 statement must be capable of being copied along with the record. A statement meeting these
21 requirements will be considered as being an official stamp.

22 Subsection (c) requires the notary public to maintain the notary's official stamp in a
23 secure place. In order to protect and maintain the integrity of notarial acts, it is important that the
24 notary's stamp be kept secure and out of the hands of any individual who might use it
25 fraudulently or erroneously. Accordingly, the notary may not allow another individual to use the
26 stamp.
27

28 Furthermore, in order to assure the integrity of the notarial system, the notary public may
29 not continue to possess the official stamp if the notary is no longer serving as a notary public.
30 Thus, upon the resignation of the notary public's commission, or the revocation or expiration of
31 the notary's commission, the notary must destroy the stamp in a way that renders it unusable.
32 Similarly, upon the death of a notary public, the notary's personal representative is directed to
33 destroy the stamp. See, e.g., N.C. Gen. Stat. § 10B-36(a).
34

35 Subsection (d) recognizes that if the official stamp is lost or stolen, the prospect of
36 fraudulent activity or misuse is also raised. Thus, a notary public is required to notify the
37 appropriate law enforcement authority within 10 days after the notary discovers that the stamp is
38 lost or stolen. In addition, the notary is required to notify the commissioning officer or agency,
39 who or which may be able to take other steps to provide notification that will further protect the
40 public. See, e.g., Ariz. Rev. Stat. § 41-323; N.C. Gen. Stat. § 10B-36(c).
41
42
43

1 performed and must consist of the following:

2 (1) the date and time of the notarial act;

3 (2) a description of the record and type of notarial act;

4 (3) the full name and address of each individual for whom a notarial act is
5 performed;

6 (4) if identity of the individual is based on personal knowledge, a statement that
7 identity is by personal knowledge;

8 (5) if identity of the individual is based on satisfactory evidence, a description of
9 the identification credential, and its date of issuance and expiration; and

10 (6) the fee, if any, charged by the notarial officer.

11 (e) If a notary public's journal is lost or stolen, the notary public shall notify the
12 [commissioning officer or agency] and the appropriate law enforcement authority not later than 5
13 days after discovering that the journal is lost or stolen.

14 (f) On resignation from, or the revocation or suspension of, the notary public's
15 commission, the notary public shall retain the notary public's journals in accordance with
16 subsection (a) and inform the [commissioning officer or agency] where the journals are located.
17 Instead of retaining the journals, the notary may transmit the journals to the [commissioning
18 officer or agency]. If required by the [commissioning officer or agency], the notary public shall
19 transmit the journals to the [commissioning officer or agency] [the official archivist of this state].

20 On the death or incompetency of a notary public, the notary public's personal representative,
21 guardian, or any person in possession of the journals shall transmit the journals to the
22 [commissioning officer or agency] [the official archivist of this state].

1 (g) Journals prepared by a notary public are confidential and may not be inspected or
2 reviewed by a person other than the notary public. Journals are not discoverable except by
3 subpoena or order of a court of proper jurisdiction or of the [commissioning officer or agency].

4 (h) Failure of the notary public to perform the duties specified in this section shall not
5 affect the validity of notarial acts performed by the notary public.

6 **Comments**

7 A journal of the notarial acts performed by a notary public helps to provide a number of
8 assurances protecting the integrity of the notarial system. Among others it helps to assure, or at
9 least determine whether, a notarial act performed in the name of a particular notary was indeed
10 performed by that notary. As an ordinary business record it may provide evidence that the act
11 was performed by the notary or, by the absence of an entry in the journal for the asserted notarial
12 act, it may provide evidence that the act was not performed by the notary. In that regard, it
13 provides protection to both the notary and to the public whom the notary serves.

14
15 Accordingly, subsection (a) requires the notary public to maintain a journal of all the
16 notarial acts that the notary performs. The notary must maintain the journal for at least ten (10)
17 years after the expiration of the notary's commission during which the notarial act was
18 performed. For example, if the notary's commission is for the five year period from July 1, 2010
19 to June 30, 2015 and the notarial act is performed on May 1, 2012, the journal must be
20 maintained until June 30, 2025 (ten years after the expiration of the notary's commission) and
21 not merely until April 30, 2022 (ten years after the performance of the notarial act).

22
23 Subsection (b) allows the notary public to decide whether to use a traditional journal on a
24 tangible medium (e.g., paper) or an electronic journal. However, the notary may maintain only
25 one active journal at a time. If the notary maintains the journal on a tangible medium (e.g.,
26 paper), the journal must be maintained in a permanent, bound register with numbered pages. It
27 may not be in a loose-leaf or similar volume with pages that can be removed or torn out without
28 evidence of their removal. If the notary decides to use an electronic journal, the electronic
29 journal must be maintained in a permanent, tamper-evident electronic format as prescribed by the
30 regulations of the commissioning officer or agency.

31
32 Subsection (c) provides that the officer must make the entries chronologically at the time
33 of the performance of the notarial act. This subsection lists certain information that must be
34 included in the journal entry for each notarial act performed: (1) date and time of the notarial
35 act; (2) a brief description of the record and the type of notarial act performed (e.g., deed with
36 acknowledgement); (3) the full name and address of each individual for whom the notarial act
37 was performed; (4) if identity was based on personal knowledge, as statement to that effect; (5) if
38 identity was based on satisfactory evidence, a brief description of the passport or other
39 identification document, its date of issuance and date of expiration; and (6) the fee, if any,
40 charged by the notarial officer.

1
2 Because of the importance of the journals and their continued maintenance by the notary
3 public, subsection (d) requires the notary to notify the commissioning officer or agency and the
4 appropriate law enforcement authority within 10 days after the discovery of their loss or theft.
5 The reporting not only protects the members of the public whom the notary has served but also
6 the notary him or herself.

7 Similarly, the retention and maintenance of the journals is important after the termination
8 of the notary's commission. Thus, subsection (e) provides that upon the resignation of the notary
9 from his or her commission, or the revocation or suspension of the notary's commission, the
10 notary must continue to maintain the journals and provide the commissioning officer or agency
11 with information about where they are located. Alternatively, the notary may elect, or be
12 required by the commissioning officer or agency, to transmit them to the commissioning officer
13 or agency. Upon the death of the notary prior to the expiration of the 10 year period during
14 which the notary must maintain the journals (see subsection (a)), the notary's personal
15 representative or family members are directed to transmit the journals to the commissioning
16 officer or agency.

17
18 Journals contain a considerable amount of confidential information – information about
19 the individual for whom the notarial act was performed and about the transaction involved.
20 Accordingly, subsection (f) recognizes their confidential nature and provides that the notary's
21 journals may not be inspected or reviewed by anyone other than the notary. They are not
22 discoverable by another person except by order or subpoena of a court or of the commissioning
23 officer or agency.
24

25
26 **SECTION 14. REGISTRATION OF NOTARIAL OFFICER.**

27 (a) Before performing a notarial act regarding an electronic record, a notarial officer must
28 register with the [commissioning officer or agency] as a notarial officer of electronic records.

29 (b) The [commissioning officer or agency] shall, at the time a notarial officer registers to
30 perform notarial acts under this section, review the technology the notarial officer proposes to
31 use to perform notarial acts on electronic records to determine that the technology has been
32 approved by the [commissioning officer or agency] under Section 21. If approval of the
33 technology has not been considered by the [commissioning officer or agency], the
34 [commissioning officer or agency] shall, on the payment of the fee prescribed under Section 20,
35 review the technology to determine that it provides the assurances stated in Section 20.

1 **Comments**

2 The performance of notarial acts on electronic records requires additional competencies
3 than those required of a notarial officer performing notarial acts on a tangible record. It also
4 requires special software and hardware to perform those acts. The software and hardware must
5 assure that the record is readable and secure, and the notarial officer must be able to use the
6 software and hardware properly. Accordingly, subsection (a) requires that a notarial officer,
7 whether a notary public or other notarial officer, must register with the commissioning officer or
8 agency prior to performing a notarial act with regard to an electronic record.
9

10 Subsection (b) provides that the commissioning officer or agency will, at the time of
11 registration of the notarial officer, review the officer’s technology to determine whether it has
12 received prior approval as a satisfactory means of performing notarial acts pursuant to Section 20
13 of this act. If the technology that the officer proposes to use has not received prior approval, the
14 commissioning officer or agency will review the technology to determine whether it provides a
15 satisfactory means of performing notarial acts.
16

17 **SECTION 15. SHORT FORMS.** The following short form certificates of notarial acts
18 are sufficient for the purposes indicated, if completed with the information required by Section
19 11(a) and (b):
20

21 (1) For an acknowledgment in an individual capacity:

22 State of _____

23 (County) of _____

24 This instrument was acknowledged before me on _____ by _____
25 Date Name(s) of individual(s)

26 _____
27 Signature of notarial officer

28 Stamp

29 [_____]
30 Title (and rank)

31 [My commission expires: _____]
32

1 (2) For an acknowledgment in a representative capacity:

2 State of _____

3 (County) of _____

4 This instrument was acknowledged before me on _____ by _____
5 Date Name(s) of individual(s)

6 as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom
7 instrument was executed.)

8 _____
9 Signature of notarial officer

10 Stamp

11 [_____]
12 Title (and rank)

13 [My commission expires: _____]

14

15 (3) For a verification on oath or affirmation:

16 State of _____

17 (County) of _____

18 Signed and sworn to (or affirmed) before me on _____ by _____
19 Date Name(s) of individual(s)
20 making statement).

21 _____
22 Signature of notarial officer

23 Stamp

24 [_____]
25 Title (and rank)

26 [My commission expires: _____]

27

1 (4) For witnessing or attesting a signature:

2 State of _____

3 (County) of _____

4 Signed [or attested] before me on _____ by _____
5 Date Name(s) of individual(s).

6 _____
7 Signature of notarial officer

8 Stamp

9 [_____]
10 Title (and rank)

11 [My commission expires: _____]

12

13 (5) For certifying a copy of a document:

14 State of _____

15 (County) of _____

16 I certify that this is a true and correct copy of a document in the possession
17 of _____.

18 Dated _____

19 _____
20 Signature of notarial officer

21 Stamp

22 [_____]
23 Title (and rank)

24 [My commission expires: _____]

1 **Comments**

2 This section provides statutory short form certificates for notarial acts. These forms are
3 sufficient to certify a notarial act. See Section 10(c)(1). Other forms may also qualify as stated
4 in Section 10(c)(2)-(4).
5

6 These certificates are available to be used for notarial acts performed on a tangible
7 medium as well as notarial acts performed in an electronic format. They apply to notarial acts
8 performed by notaries public as well as notarial officers who are not notaries public. Under
9 subsection 10(b), a notarial stamp is required if the notarial act is performed by a notary public
10 on a tangible record. Under subsection 10(b), if the notarial act is performed on an electronic
11 record, an official stamp is optional. Finally, under subsection 11(b), if the notarial act is
12 performed on a tangible record by a notarial officer who is not a notary public, an official stamp
13 is not required, but other information is required.
14

15 **SECTION 16. NOTARY PUBLIC COMMISSION; QUALIFICATIONS.**
16

17 (a) An individual qualified under subsection (b) may apply to the [commissioning officer
18 or agency] for a commission as a notary public. The applicant must comply with, and provide
19 the information required by, regulations established by the [commissioning officer or agency]
20 and submit the required application fee.

21 (b) An applicant for a commission as a notary public must:

- 22 (1) be at least 18 years of age;
- 23 (2) be a citizen or permanent legal resident of the United States;
- 24 (3) be a resident of or have a place of employment or practice in this state;
- 25 (4) be able to read and write English; [and]
- 26 (5) not be subject to refusal of a commission under Section 18[; and
- 27 (6) have passed the examination required under Section 17].

28 (c) An applicant must execute an oath of office and submit it to the [commissioning
29 officer or agency].

30 (d){ Not more than [30] days after } {Before} the issuance of a notary public's

1 commission, the notary shall submit a surety bond in the amount of \$[_____] to the
2 [commissioning officer or agency]. The bond must be issued by a surety licensed in this state
3 and cover acts performed during the term of the notary’s commission and shall be in the form
4 prescribed by the [commissioning officer or agency]. The bond shall be conditioned on
5 compliance with this [act] and law other than this act affecting notaries public in this state. The
6 surety shall give [30] days’ notice to the [commissioning officer or agency] before cancelling the
7 bond. A notary public may perform notarial acts in this state only during the period that a surety
8 bond conforming with this subsection is on file with the [commissioning officer or agency].

9 (e) On compliance with subsections (a), (b)[, and] (c) [and (d)], the [commissioning
10 officer or agency] shall issue a notary public commission to an applicant [for a term of [] years].

11 (f) A commission to act as a notary public authorizes a notary to perform notarial acts, but
12 does not provide a notary public with any immunities or benefits conferred by law or the
13 constitution of this state on public officials or employees.

14 **Comments**

15 Subsection (a) states that an individual qualified under subsection (b) may apply for and
16 obtain a commission as a notary public from the commissioning officer or agency. It leaves the
17 form of application, the process for applying, and the timing of the process to be determined by
18 the commissioning officer or agency. Although the statutes of some states specify the provisions
19 in more detail (compare Ariz. Rev. Stat. § 41-312; Del. Code Ann. tit. 43, § 4301), this act leaves
20 the determination and implementation of those provisions to regulations adopted by the
21 commissioning officer or agency.

22
23 Subsection (b) sets out qualifications for issuance of a commission as a notary public.
24 The qualifications set out in the current legislation of the various states are quite varied. The
25 requirements listed here are common although not uniform among the states (compare Ariz. Rev.
26 Stat. § 41-312(E)). They are the important provisions and should be considered to be the
27 minimal requirements for a person to be issued a commission as a notary public. Adopting states
28 are free to add other provisions if the legislature so chooses.

29
30 Subsection (c) requires a person receiving a commission as a notary to submit a bond to
31 the commissioning officer or agency within 30 days of receiving the notary public commission.
32 The amount of the bond is not specified and is left to state legislatures to insert. It is recognized

1 that bonds to cover the full amount of many transactions may be prohibitively expensive.
2 Nevertheless, limited but reasonable bond amounts should cover some ordinary transactions and
3 will provided some recovery in others. The bond must be in effect for the entire term of the
4 notary public's commission and the surety must give 30 days' notice prior to cancelling the
5 bond. The notary public may perform notarial acts only while the bond is on file with the
6 commissioning officer or agency.

7
8 Subsection (d) requires that the applicant submit an oath of office to the commissioning
9 officer or agency.

10
11 Subsection (e) provides that upon compliance with the requirements of this section, the
12 commissioning officer or agency will issue a notarial commission for a specified term. The
13 length of that term is to be determined by the state legislature.

14
15 Subsection (f) recognizes that the notary public is a person licensed by the
16 commissioning officer or agency. Accordingly, it provides that the notary does not have any
17 immunities or benefits conferred on state officials by law or the state constitution.

18
19
20 **[SECTION 17. EDUCATION OF NOTARIES PUBLIC.]**

21 (a) An applicant for a first commission as a notary public must pass an examination
22 administered by the [commissioning officer or agency] or an entity approved by the
23 [commissioning officer or agency]. The examination must be based on the course of instruction
24 described in subsection (b).

25 (b) The [commissioning officer or agency] or an entity approved by the [commissioning
26 officer or agency] shall regularly offer a course of instruction to applicants for a first commission
27 as a notary public that {is at least [] hours in length and} covers the laws, [rules][regulations],
28 procedures, and ethics relevant to notarial acts.]

29 **Comments**

30 An increasingly common requirement for the issuance of a notary public commission is
31 that the applicant must meet certain educational requirements. Professional education enhances
32 the effectiveness and integrity of the notarial system. The education envisioned in this section is
33 designed to educate the prospective notary public in the laws, [rules][regulations], standards,
34 procedures, and ethics relevant to notarial acts. However, because the educational requirement is

1 not uniformly accepted by [commissioning officers or agencies] or the legislatures of some
2 states, it is inserted here as an optional provision.

3
4 Subsection (a) provides that an applicant for a first commission as a notary public must
5 pass an examination administered by the commissioning officer or agency or an entity licensed
6 by the commissioning officer or agency to administer the exam. The examination is to be based
7 on the course of instruction provided in subsection (b).

8
9 Subsection (b) provides that the commissioning officer or agency or an entity licensed by
10 the commissioning officer or agency shall provide the course of education. However, it leaves
11 the length of the course to the determination of the state legislature. To achieve the purpose of
12 enhancing the effectiveness and integrity of the notarial system, the education is designed to
13 educate the prospective notary public in the laws, [rules][regulations], standards, procedures, and
14 ethics relevant to notarial acts.

15
16
17
18 **SECTION 18. GROUNDS FOR DENIAL, REFUSAL TO RENEW, OR**
19 **REVOCAION, OR SUSPENSION OF NOTARIAL COMMISSION.**

20 (a) The [commissioning officer or agency] may refuse to issue a notary public
21 commission or may revoke or suspend a notary public commission for one or more of the
22 following reasons:

23 (1) failure to comply with the provisions of this act;

24 (2) fraudulent, dishonest, or deceitful misstatement or omission in the notary
25 public's application submitted to the [commissioning officer or agency] for the notary public's
26 commission;

27 (3) an applicant's or notary public's conviction, guilty plea, or plea of no contest
28 to any felony or to a crime involving dishonesty, fraud, or deceit;

29 (4) a finding against, or admission of liability by, the applicant or notary public in
30 any legal proceeding or disciplinary action based on the applicant's or notary public's
31 dishonesty, fraud, or deceit;

1 (5) failure by the notary public to discharge fully and faithfully any duty or
2 responsibility required of a notarial officer, whether by this act, regulations of the
3 [commissioning officer or agency], or any federal, state, or tribal law;

4 (6) use of false or misleading advertising by the notary public representing that
5 the notary public has duties, rights, or privileges that a notary public does not have; [or]

6 (7) violation by the notary public of any of the [rules][regulations] of the
7 [commissioning officer or agency] regarding notarial officers; [or]

8 [(8) failure of the notary public to maintain a bond as provided in subsection
9 16(d)].

10 (b) If an applicant is denied a notary public commission or a notary public's commission
11 is revoked or suspended, the applicant or notary public is entitled to timely notice and hearing in
12 accordance with [this state's administrative procedure act].

13 (c) The [commissioning officer or agency] shall maintain an electronic database of
14 notaries public through which an individual may verify the authority of a notary public to
15 perform notarial acts. The database must also indicate whether the notary public registered to
16 perform electronic notarial acts.

17 (d) The authority of the [commissioning officer or agency] to deny, suspend or revoke a
18 notary public's commission shall not prevent the [commissioning officer or agency] or an
19 aggrieved person from seeking and obtaining other remedies provided by law.

20 **Comments**

21 Subsection (a) lists the grounds upon which the commissioning officer or agency may
22 refuse to grant a notary public commission to an applicant or upon which the commissioning
23 officer or agency may revoke or suspend that commission. The grounds listed for denial or
24 revocation is similar to those provided in many states. See Ariz. Rev. Stat. § 41-330(A); N.C.
25 Gen. Stat. § 10B-5(d).
26

1 Subsections (a)(1)-(5) set forth specific statutory grounds upon which a commission may
2 be denied, suspended or revoked. Subsection (a)(6) gives the commissioning officer or agency
3 the authority to promulgate rules or regulations further setting forth grounds upon which a
4 commission may be denied, suspended, or revoked. Subsection (a)(7) allows the suspension or
5 revocation of a commission if the notary public fails to maintain a bond as provided in Section
6 15(c).

7
8 Subsection (b) expressly states that an applicant who has been denied a commission or a
9 notary public whose commission has been suspended or revoked is entitled to a timely notice and
10 a hearing. Such a notice or hearing is likely to be required by the state’s administrative
11 procedure act, but is restated here for clarity and assurance.

12
13 Subsection (c) provides that the commissioning officer or agency will maintain an
14 electronic database of notaries public through which an individual may verify whether the
15 asserted notary public has a commission to perform notarial acts. In addition, that database will
16 also indicate whether the notary public is authorized to perform notarial acts with regard to
17 electronic records.

18
19
20 **SECTION 19. NO LEGAL ADVICE; ADVERTISING.**

21 (a) A commission as a notary public does not authorize the notary public to:

22 (1) assist individuals in drafting legal documents, render legal advice, or
23 otherwise engage in the practice of law;

24 (2) act as an immigration consultant or an expert on immigration matters;

25 (3) represent an individual in any judicial or administrative proceedings relating
26 to immigration to the United States, United States citizenship, or related matters; or

27 (4) or receive compensation for the performance of any of the activities listed in
28 the subsection.

29 (b) A notary public may not engage in false or deceptive advertising, including the use of
30 the term “notario” or “notario public.”

31 (c) A notary public, other than an attorney licensed to practice law in this state, may not
32 represent that the notary public may offer legal advice or draft legal records. If a notary public,

1 other than an attorney licensed to practice law in this state, in any manner advertises notarial
2 services, whether orally or in writing, including broadcast media, print media, and the Internet,
3 the notary public shall include the following statement, or an alternate statement authorized or
4 required by the [commissioning officer or agency], in the advertisement, prominently and in each
5 language used in the advertisement: “I am not an attorney licensed to practice law in this state. I
6 cannot draft legal documents, give advice on legal matters, including immigration, nor charge a
7 fee in regard to those activities. ”

8 (d) A notary public may not retain an original record provided by an individual who has
9 sought the performance of a notarial act by the notary public. The subsection does not prevent
10 an attorney licensed to practice law or another licensed professional in this state from retaining
11 records in connection with the performance of professional services.

12 **Comments**

13 Subsection (a) provides that a commission as a notary public does not authorize a notary
14 public to render legal services, whether the services are in the form of drafting legal documents,
15 providing legal advice, or any other form. Implied in this provision is the fact that an individual
16 who is otherwise authorized to render legal services, such as an attorney at law, and who also has
17 a notary public commission, is authorized to render legal services.

18
19 Subsection (b) directly and simply provides that a notary public may not engage in false
20 or misleading advertising.

21
22 Subsection (c) is directed toward a specific advertising problem. Under the laws of many
23 non-common law countries, including but not limited to civil law countries, a notary public is
24 authorized not only to verify and acknowledge records and signatures. In those countries, a
25 notary may also draft and interpret legal records for parties and give legal advice on those
26 matters. In effect, those notaries public have at least limited authority to engage in transactional
27 and other legal matters. When people immigrate to the United States from those countries, they
28 are faced not only with their prior experiences under that custom but also the difficulties of
29 understanding the English language. Unfortunately, some notaries public have taken advantage
30 of that situation, whether by their own suggestion or at the request of the immigrant, and have
31 provided legal advice and document drafting. In many cases, the legal advice has dealt with
32 immigration matters.

33

1 Subsection (c) is derived from provisions in legislation currently in effect in Arizona
2 (Ariz. Rev. Stat. § 41-329(A) and other states. It provides that a notary, other than a notary who
3 is also an attorney at law, may not offer legal advice or draft legal records. If the notary
4 advertises notarial services, the notary must provide information in the same language as the
5 advertisement that the notary may not provide legal advice or draft legal documents, particularly
6 about immigration matters. It seeks to inform the prospective client that the notary public is not
7 authorized or experienced to give legal advice. The bracketed provision “[in a language other
8 than English]” allows the legislature to apply the advertising requirement only to ads that are not
9 in English, which may be seen by some as more likely to be deceptive to immigrants. The
10 commissioning officer or agency is given the authority to adopt alternative language for the
11 warning statement.
12

13
14 **SECTION 20. [RULES][REGULATIONS].**

15 (a) The [commissioning officer or agency] shall adopt [rules][regulations] to implement
16 this [act]. The [rules][regulations] shall:

17 (1) prescribe the manner of performing of notarial acts regarding tangible media
18 and electronic records;

19 (2) prescribe the process of granting or revoking a notary public commissions and
20 assure the trustworthiness of individuals holding commissions as notaries public;

21 (3) clarify and interpret the provisions of this [act] to prevent fraud or error in the
22 performance of notarial acts; and

23 (4) clarify and interpret the provisions of this [act] to assure that any change or
24 tampering with a record bearing a certificate of a notarial act is self-evident.

25 (b) In adopting [rules][regulations] that prescribe the manner of performing notarial acts
26 on electronic records, the [commissioning officer or agency] shall consult with the [name of state
27 agency] authorized to adopt [rules][regulations] for the recording of electronic documents. The
28 [commissioning officer or agency], so far as is consistent with this [act], shall also consider the

1 [rules][regulations], standards, and customs of other jurisdictions and the standards promulgated
2 by national standard-setting bodies.

3 **Comments**

4 Subsection (a) is comprehensive authority for the commissioning officer or agency to
5 adopt regulations to implement this act. It authorizes regulations concerning performance of
6 notarial acts with regard to tangible media and electronic records, the grant or revocation of
7 notary public commissions, the prevention of fraud or error, and assurance that changes or
8 tampering are self-evident.

9
10 Subsection (b) directs the commissioning officer or agency to consult with the state board
11 or commission authorized to regulate the recording of electronic records and also to consider the
12 [rules][regulations], standards, and customs of other jurisdictions as well as the standards
13 promulgated by national standard-setting bodies. The purposes of this provision are to bring to
14 the commissioning officer or agency the best information available on the issues and also to
15 encourage uniformity among the various states.
16

17
18 **SECTION 21. VENDOR SUBMISSION OF TECHNOLOGY; APPROVAL.** On

19 application and payment of a prescribed fee, the [commissioning officer or agency] shall review
20 a technology submitted by a vendor of the technology and, if appropriate, grant approval of the
21 technology if it provides a satisfactory means of performing notarial acts on electronic
22 documents under this [act], including the assurance that any change or tampering with a record
23 and its associated certificate is self-evident.

24 **Comments**

25
26 This Section directs the commissioning officer or agency to review technology submitted
27 by software vendors and grant, where appropriate, prior approval to that technology. The
28 purpose of this provision is to encourage technology vendors to seek prior approval of
29 technology so that it is readily available to prospective notarial officers seeking to register as
30 notarial officers of electronic records.
31

32
33 **SECTION 22. NOTARIAL ACTS AFFECTED BY THIS ACT.** This [act] applies to

34 notarial acts performed on or after the effective date of this [act].

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

Comments

The adoption of this act is not intended to be retroactive in effect. Thus, it applies to notarial acts performed on or after its effective date.

SECTION 23. NOTARY PUBLIC COMMISSION IN EFFECT ON DATE OF

THIS [ACT]. A commission as a notary public in effect on the effective date of this [act] may continue until its date of expiration. However, the notary public, in performing notarial acts after the effective date of this [act] must comply with this [act] and is subject to a refusal to renew the commission or a revocation or suspension of the commission under this [act].

Comments

This Section states that an individual who has a commission as a notary public at the date of the enactment of this uniform law may retain the notary commission until the scheduled date of expiration. However, the notary is subject to the provisions of this act with regard to a refusal to renew the commission or a revocation or suspension of the commission. Other than as may apply to the length of the commission, the provisions of the law previously in effect do not carry over after the enactment of this act.

SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION. This

[act] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this [act] among states enacting it.

Comments

This provision seeks to encourage construction that will maintain uniformity among the various states adopting the act.

SECTION 25. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND

NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.)

1 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or
2 authorize electronic delivery of any of the notices described in Section 103(b) of that act (15
3 U.S.C. Section 7003(b)).

4 **Comments**

5 This section responds to the specific language of the Electronic Signatures in Global and
6 National Commerce Act and is designed to avoid preemption of state law under that federal
7 legislation.

8
9

10

11 **SECTION 26. REPEALS.** The following acts are repealed:

12 (1) [The Uniform Acknowledgement Act (As Amended).]

13 (2) [The Uniform Recognition of Acknowledgments Act].

14 (3) [Prior version of The Uniform Law on Notarial Acts].

15 **Comments**

16 This Section lists laws that this proposed act supervenes.

17

18

19 **SECTION 27. EFFECTIVE DATE.** This [act] takes effect

20 **Comments**

21 This is the standard effective date provision for uniform laws.