

DRAFT
FOR DISCUSSION ONLY

REVISED UNIFORM LAW ON NOTARIAL ACTS

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For February 23, 2010 Conference Call

*With Prefatory Note and Comments;
Includes Style Committee Changes*

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ON UNIFORM STATE LAWS

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February 17, 2010

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REVISED UNIFORM LAW ON NOTARIAL ACTS

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

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

7 (6) “Notarial officer” means a notary public or other officer authorized to perform a
8 notarial act.

9 (7) “Notary public” means an individual commissioned to perform a notarial act by the
10 [commissioning officer or agency].

11 (8) “Official stamp” means a physical image affixed to or embossed on a tangible record
12 or an electronic image attached to or logically associated with an electronic record.

13 (9) “Person” means an individual, corporation, business trust, estate, trust, partnership,
14 limited liability company, association, joint venture, public corporation, government or
15 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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

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

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

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

22 (12) “Signature” means a tangible symbol or an electronic symbol, sound, or process that
23 evidences the signing of a record.

1 (13) “Stamping device” means:

2 (A) a physical device capable of affixing to or embossing on a tangible record an
3 official stamp or seal; or

4 (B) an electronic device or process capable of attaching or logically associating
5 with an electronic record an official stamp or seal.

6 (14) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
7 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
8 the United States.

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

11 **Comment**

12 (1) “**Acknowledgement.**” The word “acknowledgement” refers to a declaration made by
13 an individual stating or acknowledging that he or she has, in fact, executed the record with regard
14 to which the acknowledgement is made. The acknowledging individual need not necessarily
15 sign the record in the presence of the notarial officer as long as the individual acknowledges in
16 the officer’s presence that the signature on the record is that individual’s signature. If the record
17 is signed by an individual in a representative capacity, the individual also declares that the
18 individual has proper authority to execute the record on behalf of the principal.

19
20 (2) “**Electronic.**” The adjective “electronic” refers to the use of electrical, digital,
21 magnetic, wireless, optical, electromagnetic, and similar technologies. It is a descriptive word
22 and is intended to include all technologies involving electronic processes. For example,
23 biometric identification technologies are included if they permit communication and storage of
24 information by electronic means. Furthermore, as electronic technologies develop and implicate
25 other competencies, those competencies are also included in this definition. Consequently, the
26 listing of specific technologies is not static or limited to those in use at the time of the adoption
27 of this act.

28
29 The definition of the term “electronic” in this act has the same meaning as it has in
30 UETA §2(5), ESign § 106(2), and URPERA §2(2).

31
32 (3) “**Electronic signature.**” An “electronic signature” is any electronic symbol or
33 process that is attached to, or logically associated with, a record by an individual with the intent
34 to sign the record. The technology that is used for an electronic signature is intentionally not
35 specified and is meant to include electronic processes currently in use at the time of the adoption

1 of this act as well as those developed and implemented at a later time.

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

5
6 (4) **“Identification credential.”** The term “identification credential” describes the
7 record, document, or methodology by which a notarial officer acquires “satisfactory evidence” of
8 the identity of the individual appearing before the officer. The credential may be a United States
9 passport. It may be a driver’s license or another credential issued by a United States or state
10 governmental agency as long as the credential displays the image of the individual’s face and
11 contains the individual’s signature. Finally, the credential may be any other form of
12 identification authorized by law for purposes of identification. In the latter case, the form of
13 identification need not be a document or record such as a passport or driver’s license; it also
14 authorizes identification by means of fingerprints, retinal scans, or body chips, provided that
15 those forms of identification are otherwise authorized by law.

16
17 The term is more fully described and implemented in Section 4.

18
19 (5) **“In a representative capacity.”** The term “in a representative capacity” describes
20 the actions of an individual who performs an acknowledgement or other act requiring
21 notarization on behalf of a principal rather than on the individual’s own behalf. To be performed
22 by in a representative capacity, the individual must be the authorized representative or agent of
23 the principal. Whether that person is, in fact, authorized is determined under the agency law of
24 this state.

25
26 The term is used elsewhere in this Section and in the short form acknowledgement
27 provided in Section 14(2).

28
29 (6) **“Notarial act.”** The term “notarial act” includes all the notarial acts authorized to be
30 performed by a notarial officer under this act. This subsection lists those notarial acts
31 specifically authorized in this act. However, the definition is not limited to the listed notarial
32 acts and includes any other notarial act permitted by the law of enacting state. See also Section
33 3(a).

34
35 The listed notarial acts include taking an acknowledgement, administering an oath or
36 affirmation, taking a verification upon an oath or affirmation, witnessing or attesting a signature,
37 certifying or attesting a copy of a record, and noting a protest of a negotiable instrument.

38
39 The provisions of this act apply to the performance of notarial acts on a tangible medium
40 such as paper as well as those performed in an electronic format.

41
42 (7) **“Notarial officer.”** The term “notarial officer” is used to describe collectively
43 notaries public and all other individuals having the authority to perform the “notarial acts” as
44 recognized in Sections 3 through 9 of this act.

45
46 Many of the provisions of this act apply broadly to all notarial officers. However, some

1 provisions, such as those in Sections 11 and 12, and Sections 15 through 18, apply only to
2 notaries public. Those sections provide for the use and maintenance of a notary public’s stamp
3 and journal, as well as the qualifications for, and the grounds for denial, suspension or revocation
4 of, a commission as a notary public.

5
6 (8) **“Notary public.”** A “notary public” is an individual licensed by the commissioning
7 officer or agency to perform notarial acts under Sections 15 through 18 of this act. It does not
8 include those individuals, such as judges and clerks of court, who are authorized to perform
9 notarial acts as a part of the official duties of the office held.

10
11 (9) **“Official stamp.”** The term “official stamp” refers to an image located on or
12 associated with a record and must contain specified information about a notarial officer. On a
13 tangible record, the image will be a physical one appropriately located on the record. It may be
14 applied to the surface of the record, as with ink or printing, or it may be applied by compression,
15 as with an impression seal. On an electronic record, the image will be in an electronic format
16 and will be attached to, or logically associated with, the record. The contents and characteristics
17 of the “official stamp” are set forth in Section 11(a).

18
19 The “official stamp” is to be distinguished from the device by which the image is
20 imposed on or associated with the record; that device is identified as a “stamping device” and is
21 defined below.

22
23 (10) **“Person.”** The word “person” is broadly defined to include all persons, whether
24 human individuals, or corporate, associational, or governmental entities. When the definition of
25 a “person” is intended to be limited to a human entity, the word “individual” is used in this act
26 rather than the word “person.” The definition is the standard definition for that term as used in
27 other acts adopted by the National Conference of Commissioners on Uniform State Laws.

28
29 (11) **“Record.”** A “record” consists of information stored on a medium, whether the
30 medium be a tangible or electronic one, provided that the information is retrievable in a
31 perceivable form. The traditional tangible medium has been paper on which information is
32 inscribed by writing, typing, printing, or a similar means. It is perceivable by reading the
33 information directly from the paper on which it is inscribed. An electronic medium is one in
34 which information is stored electronically. The information is perceivable by means of a device
35 that interprets the electronic information in the record. For example, electronic information may
36 be stored in a magnetic record located on a hard disk and it may be retrieved and read in a
37 perceivable form on a computer monitor or a paper printout.

38
39 Traditionally, especially if the tangible medium is paper, a record has been referred to as
40 a “document.” In this act, the word “record” includes the word “document.” The definition of a
41 record in this act is derived from the definition of that word as used in UETA §2(13) and ESign
42 §-106(9). It also similar in meaning to the word “document” as used in URPERA §2(1).

43
44 (12) **“Sign” and “Signature.”** Subsection (12) and (13) define the related words “sign”
45 and “signature.” An individual may “sign” his or her name to a record either on a tangible
46 medium or in an electronic format as long as the individual has the present intent to authenticate

1 or adopt the record. The resulting tangible or electronic symbol on or associated with the record
2 is the person’s “signature.” The verb “sign” includes other forms of the verb, such as “signing.”
3 Except as provided in Section 5, an individual must personally perform the act of signing a
4 record. If, instead of using his or her given name, an individual has adopted an alternative
5 symbol as his or her name, the individual may affix that symbol as the individual’s signature.
6

7 (13) **“Stamping device.”** A stamping device is a means by which an “official stamp” is
8 imposed on, or associated with, the record. With a traditional paper medium, the stamping
9 device may, for example, be a rubber device that uses ink to impose a “stamp” on the paper. It
10 may also be a device that compresses the paper and applies an impression seal. With an
11 electronic medium, the stamping device may, for example, be an electronic process that requires
12 a means of identifying the notarial officer. The means of identifying the notarial officer may be
13 information located on a portable electronic device or may be a password that is supplied by the
14 notarial officer. In either case, the electronic process and the means of identifying the officer are
15 collectively the stamping device.
16

17 (14) **“State.”** The word “state” includes any state of the United States, the District of
18 Columbia, the United States Virgin Islands, any territory or insular possession subject to the
19 jurisdiction of the United States, or a recognized Indian tribe or nation.
20

21 (15) **“Verification upon oath or affirmation.”** A “verification upon oath or
22 affirmation” is a declaration by an individual in which the individual states on oath or
23 affirmation that the declaration is true. This declaration is sometimes referred to as an
24 “affidavit” or “jurat.”
25
26
27

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

29 (a) A notarial officer may perform notarial acts authorized by this [act] or by law of this
30 state other than this [act].

31 (b) A notarial officer may not perform a notarial act with respect to any record to which
32 the officer or the officer’s spouse [or civil partner] is a party, or in which either of them has a
33 direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

34 **Comment**

35 Subsection (a) authorizes a notarial officer to perform notarial acts. This subsection and
36 the definition of a notarial act in Section 2(5) specifically do not limit the types of notarial acts to
37 those listed in this Section. A notarial officer may perform other notarial acts if they are
38 authorized by other law, whether that law be of this state (Section 9), another state (Section 10),
39 the federal government (Section 11), or a foreign nation (Section 12).

1 Furthermore, when taken in conjunction with the definition of a notarial act in Section
2 2(5), this subsection also authorizes a notarial officer to perform notarial acts regardless of the
3 format of the record. Thus, a notarial officer may perform notarial acts on both tangible records
4 as well as electronic records. However, prior to commencing to perform notarial acts on
5 electronic records, the officer must notify the commissioning officer or agency under Section 16.
6
7
8

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 the individual.

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

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

26 **Comment**
27

28 Subsection (a) specifies what a notarial officer certifies by taking an acknowledgement.
29 There are two main elements in taking an acknowledgement: (1) the identity of the individual

1 who is making the acknowledgement (this subsection), and (2) the fact that the individual is
2 signing the record for a specific purpose and not for some other purpose (Section 2(1)). As part
3 of the identification process, the acknowledging individual must physically appear before the
4 notarial officer and the notarial officer must identify the individual either through personal
5 knowledge or from satisfactory evidence. An acknowledgement is a declaration that the
6 individual has executed the record by signing it; it is not essential that the individual sign the
7 record in the presence of the notarial officer. Thus, an individual may appear before the notarial
8 officer and acknowledge to the officer that the signature already on the record is that individual's
9 signature.

10
11 Subsection (b) specifies the requisites for taking a verification on oath or affirmation.
12 There are also two main elements of a verification: (1) the identification of the affiant (this
13 subsection) and (2) the fact that the affiant is verifying the statement as true under oath or
14 affirmation (Section 2(15)). The affiant must physically appear before the notarial officer and
15 the notarial officer must identify the affiant either through personal knowledge or from
16 satisfactory evidence. This record may be referred to as an affidavit or jurat in some
17 jurisdictions.

18
19 Subsection (c) states the requirements for witnessing or attesting a signature. Here the
20 notarial officer only certifies the fact of the signature; the officer does not certify the signatory's
21 intent to verify the record. Under this subsection, the notarial officer certifies the identification
22 of the individual whose signature the officer is witnessing or attesting. The individual must
23 physically appear before the notarial officer, the notarial officer must identify the individual
24 either through personal knowledge or from satisfactory evidence, and the individual must sign
25 the document before the officer.

26
27 Subsection (d) defines the standards for attestation or certification of a copy of a record
28 by a notarial officer. This is done if it is necessary to produce a copy of a record when the
29 original is in an archive or other collection of records and cannot be removed. In many cases, the
30 custodian of the official archive or collection also may be empowered to issue an officially
31 certified copy. When an officially certified copy is available, it is official evidence of the state of
32 the public archive or collection, and it may be better evidence of the original record than a copy
33 certified by a notarial officer.

34
35 Subsection (e) refers to a provision of the Uniform Commercial Code that confers
36 authority upon a notarial officer to note a protest of a negotiable instrument.

37
38
39
40 **SECTION 5. PERSONAL APPEARANCE BEFORE NOTARIAL OFFICER.** If a
41 notarial act relates to a statement made in or a signature executed on a record the individual
42 making the statement or executing the signature shall appear personally before the notarial
43 officer.

1 **SECTION 6. IDENTIFICATION OF INDIVIDUAL.**

2 (a) A notarial officer has personal knowledge of the identity of an individual appearing
3 before the officer if the individual is personally known to the officer through previous dealings
4 sufficient to provide reasonable certainty that the individual has the identity claimed.

5 (b) A notarial officer has satisfactory evidence of the identity of an individual appearing
6 before the officer if the officer can identify the individual by means of:

7 (1) a passport or driver’s license that is current or has expired not more than
8 [three years] before performance of the notarial act;

9 (2) a verification on oath or affirmation of a credible witness personally appearing
10 before the officer and known to the officer or whom the officer can identify on the basis of a
11 passport or driver’s license that is either currently valid or has expired no more than [three years]
12 before the performance of the notarial act; or

13 (3) another form of credential that provides identification of the individual and
14 that is satisfactory to the officer.

15 (c) A notarial officer may require an individual to provide additional information or
16 identification credentials necessary to assure the officer of the identity of the individual.

17 **SECTION 7. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT.**

18 (a) A notarial officer may refuse to perform a notarial act if the officer:

19 (1) is not satisfied that the individual executing the record is competent or has the
20 capacity to execute the record; or

21 (2) is concerned that the individual’s signature is not knowingly and voluntarily
22 made.

23 (b) Except as otherwise provided by law other than this [act], a notarial officer may

1 refuse to perform a notarial act.

2 **Comment**

3
4 This Section defines the two methods for identifying an individual as required in Sections
5 3(b) through (d). The two means for identifying an individual are through (1) personal
6 knowledge or (2) satisfactory evidence.

7
8 Subsection (a) states that the notarial officer has personal knowledge of the identity of an
9 individual only if the officer personally knows the individual through prior dealings with that
10 individual. The prior dealings may be business dealings or personal dealings. The dealings
11 might simply be the performance of prior notarial acts for that individual. Nonetheless, the prior
12 dealings must be of a sufficient nature to provide the notarial officer with information adequate
13 to identify the individual without the need to view any identification credentials or require any
14 other means of identification.

15
16 Subsection (b) describes two situations by which a notarial officer may obtain
17 satisfactory evidence of the identity of the individual even though the officer has no prior
18 dealings with that individual. One method is identification based on an identification credential
19 presented by the individual. Although one might usually expect the identification credential to
20 be currently in force, this provision recognizes that even though an expired credential would not
21 be effective for its primary purpose (e.g. as a license permitting the individual to drive an
22 automobile), it may be used for up to [one year] after its expiration as an identification credential.
23 As long as it provides the necessary information for identifying the individual during that [one
24 year] period, its identification function is satisfied. This subsection does, however, put a specific
25 outside limit of [one year] beyond the expiration of the credential for its use for identification
26 purposes.

27
28 Based on the definition of an identification credential contained in Section 2(4), the
29 credential may be (1) a passport issued by United States or a foreign country with which the
30 United States has diplomatic relations, (2) a credential issued by the United States, a state or a
31 tribal governmental agency that contains (a) an image of the individual's face, and (b) the
32 individual's signature, or (3) any other identification credential authorized by state law. (See
33 Section 2(4).)

34
35 A second means by which a notarial officer may obtain satisfactory evidence of an
36 individual's identity is through the oath or affirmation of a credible witness who identifies that
37 individual to the officer. The credible witness must either be (1) personally known to the officer,
38 or (2) identified to the officer by means of an identification credential, as long as that credential
39 is not more than [one year] past its expiration date. This provision recognizes that an individual
40 may require the performance of a notarial act even though that individual is not known to the
41 notarial officer and does not have an identification credential or does not have one currently
42 available. If the identity of that person is, however, sworn to by an individual personally known
43 to the notarial officer or who can be identified to the officer by means of an identification
44 credential, the identity of the first individual will be established by satisfactory evidence.

1 This subsection does not allow the identity of an individual to be based on an oath or
2 affirmation of a person who is him or herself identified to the notarial officer by means of an
3 oath or affirmation of yet another witness. Such a process would lead to a spiraling and useless
4 addition of “witnesses to the witnesses.”
5

6 Subsection (c) recognizes that, even if a specified identification credential is presented, a
7 notarial officer may, in some cases, be uncertain as to the identity of the individual. For
8 example, the identification credential may be defaced or have defects that make legibility
9 difficult, or there may be changes in the physical appearance of the individual that may not be
10 reflected in the image on the identification credential. In that case, the notarial officer may
11 require the individual to provide other information or identification in order to assure the officer
12 of the identity of the individual.
13

14 Subsection (d) allows the notarial officer to refuse to perform the requested notarial act in
15 either of two circumstances. First, if the notarial officer is still not satisfied as to the individual’s
16 identity after the presentation of identification credentials or the performance of an oath or
17 affirmation by a witness, the officer may refuse to perform the notarial act. Second, if the
18 notarial officer has concern about whether the individual’s signature was knowingly and
19 voluntarily made, the officer may refuse to perform the notarial act. Lack of satisfaction with the
20 identity of the individual or concern with whether the signature is knowingly and voluntarily
21 made are matters within the proper discretion of the notarial officer.
22

23 Subsection (e) also allows the notarial officer to refuse to perform the notarial act if the
24 officer has reason to believe that the record is fraudulent. This subsection recognizes that a
25 notarial officer may, in the process of identifying an individual or preparing to perform the
26 notarial act, gather information by which the officer knows or has reason to believe that the
27 record is fraudulent. For example, the officer may determine or have reason to believe that the
28 record is part of a greater fraudulent scheme. In that case, the officer is authorized to refuse to
29 perform the notarial act. Nevertheless, the subsection provides that the notarial officer has no
30 duty to inspect the contents of the record and the officer’s failure to do so is not a violation of the
31 officer’s duties under this act.
32

33
34 **SECTION 8. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN.** If an individual
35 is physically unable to sign a record, the individual may direct an individual other than the
36 notarial officer to sign the individual’s name on the record. The notarial officer shall insert
37 “Signature affixed by (insert name of other individual) at the direction of (insert name of
38 individual)” or words of similar import.
39
40

1 **Comment**

2
3 This Section recognizes that some individuals may be unable to sign a record personally
4 because of a disability. In that case, this subsection allows for an alternate process. That process
5 requires the executing individual to direct the notarial officer to sign that individual’s name to
6 the record. It then requires the officer to insert the quoted language in the record or words of
7 similar import. (For similar provisions, see Model Notary Act § 5-1(d); see also proposed
8 amendments to Kentucky legislation, 07 Reg. Sess. Gen. Assembly Bill 1450, § 18(2).)
9

10
11
12 **SECTION 9. NOTARIAL ACTS IN STATE.**

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

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

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

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

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

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

21 (c) The signature and title of a notarial officer described in subsection [a(1) or (2)] [a(1),
22 (2), or (3)] conclusively establishes the authority of the officer to perform a notarial act.

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

28 **Comment**

29
30 Subsection (a) lists the individuals who are entitled to serve as notarial officers and
31 perform notarial acts in this state. A notary public as well as a judge, clerk, or deputy clerk of
32 any court of this state may perform notarial acts. The language follows the prior version of the
33 Uniform Law on Notarial Acts.
34

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

7
8 Subsections (b) and (c) deal with authentication of a notarial act. Proof of a notarial
9 officer usually involves three steps:

10
11 1. Proof that the notarial officer's signature is that of the individual named in the
12 certificate as a notarial officer;

13
14 2. Proof that the individual named in the certificate holds the designated office as a
15 notarial officer; and

16
17 3. Proof that persons holding the designated office may perform notarial acts.

18
19 Subsection (b) sets forth a prima facie presumption that the signature of the individual
20 named in the certificate, whether on a tangible medium or in an electronic format, is that of the
21 named notarial officer. It also sets forth a prima facie presumption that the individual named in
22 the certificate holds the designated notarial office. These are the first two elements of
23 authentication listed above.

24
25 Subsection (c) conclusively presumes that notaries public, judges, clerks and deputy
26 clerks of this state (and attorneys licensed in this state, if subsection (a)(3) is adopted) have the
27 authority to execute notarial acts. This is the third element of authentication listed above.

28
29
30
31 **SECTION 10. NOTARIAL ACT IN ANOTHER STATE.**

32 (a) A notarial act performed in another state has the same effect under the law of this
33 state as if performed by a notarial officer of this state, if the act performed in that state is
34 performed by:

35 (1) a notary public of that state;

36 (2) a judge, clerk, or [deputy clerk] of a court of that state; or

37 (3) any other individual authorized by the law of that state to perform notarial

38 acts.

1 **[Alternative A to Committee]**

2 (b) A notarial act that is performed in another state by a notarial officer of this state with
3 regard to a record that is part of a transaction [subject to] [governed by] the laws of this state has
4 the same effect as if performed by the notarial officer in this state.

5 **[Alternative B to Committee]**

6 (b) A notarial act that is performed in another state that has adopted the Revised Uniform
7 Law of Notarial Acts by a notarial officer of this state with regard to a record that is part of a
8 transaction [subject to] [governed by] the laws of this state has the same effect as if performed by
9 the notarial officer in this state.

10 **[End of Alternatives to Committee]**

11 (c) The signature and title of an individual performing a notarial act is prima facie
12 evidence that the signature is genuine and that the individual holds the designated title.

13 (d) The signature and title of a notarial officer described in subsection (a)(1) or (2) or (b)
14 conclusively establishes the authority of the officer to perform a notarial act.

15 **Comment**

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

21
22 Subsection (b) sets forth a prima facie presumption that the signature of the individual
23 named in the certificate, whether on a tangible medium or in an electronic format, is that of the
24 named notarial officer. It also sets forth a prima facie presumption that the individual named in
25 the certificate holds the designated notarial office. These are the first two elements of
26 authentication of a notarial act listed in the prior Comment.

27
28 Subsection (c) provides the third element of authentication. It recognizes the authority of
29 a notary public, or of a judge, clerk, or deputy clerk of court of another state to perform notarial
30 acts without the necessity of further proof that such an officer has notarial authority. This
31 abolishes the need for a “clerk’s certificate” or similar instrument to authenticate the notarial act

1 of a notary public, judge, clerk or deputy clerk. However, this per se recognition of authority
2 does not extend beyond a notary public, judge, clerk or deputy clerk of another state. Authority
3 of other persons to perform notarial acts may be proven by reference to the laws of the other
4 state. In addition, other forms of proof of authority to perform notarial acts, such as a “clerk’s
5 certificate,” are acceptable in this state.
6
7
8

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

10 (a) A notarial act performed under federal law has the same effect under the law of this
11 state if the act performed under federal law is performed by:

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

13 (2) an individual in military service or performing duties under the authority of
14 military service authorized to perform notarial acts under federal law;

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

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

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

20 (c) The signature and title of an officer described in subsection (a)(1), (2), or (3)
21 conclusively establishes the authority of the officer to perform a notarial act.

22 **Comment**

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

29 Subsection (a)(2) recognizes the authority of persons to perform notarial acts under the
30 provisions that are currently codified in 10 U.S.C §1044a (2009). Currently, 10 U.S.C. §1044a
31 provides as follows:
32

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

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

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

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

10 (4) Other persons subject to the Uniform Code of Military Justice (chapter
11 47 of this title) outside the United States.

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

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

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

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

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

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

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

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

30
31 Subsection (a)(3) recognizes the authority of foreign service and consular officers to
32 perform notarial acts. This has been a traditional function performed by foreign service and
33 consular officers who, in many parts of the world, may be the only or best available person to
34 perform notarial acts that must be recognized in the United States.

35
36 Subsection (a)(4) provides general recognition of the notarial acts performed by other
37 individuals under federal law and not listed in the prior subsections. A variety of other federal
38 officers may be authorized to perform notarial acts, such as wardens of federal prisons.

39
40 Subsection (b) confers prima facie validity to the asserted signature of a United States
41 notarial officer and that the individual holds the asserted office. It thus provides the first two
42 elements of authentication described in the Comments to Section 6.

43
44 Subsection (c) provides the third element of proof of the notarial officer's authority. It
45 conclusively recognizes the authority of a judge, clerk or deputy clerk, a military officer, or a
46 foreign service or consular officer to perform notarial acts without the necessity of further

1 reference to the federal statutes or regulations to prove that the officer has notarial authority.
2 There is no need for further authentication of those individuals' authority to perform notarial
3 acts.

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

9
10
11
12 **SECTION 12. FOREIGN NOTARIAL ACT.**

13 (a) In this section, "foreign state" means a government other than the United States or a
14 state.

15 (b) If a notarial act is performed under authority and in the jurisdiction of a foreign state
16 or constituent unit of the foreign state or is performed under the authority of a multinational or
17 international governmental organization, the act has the same effect under the law of this state as
18 if performed by a notarial officer of this state.

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

23 (d) An official stamp of an individual holding an office described in subsection (c) is
24 prima facie evidence that the individual with the indicated title has authority to perform notarial
25 acts.

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

29 (f) A consular 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
5 **Comment**

6
7 This section provides recognition of notarial acts performed by certain notarial officers
8 who act under the law of a foreign country or the authority of a multinational or international
9 governmental organization.

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

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

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

31
32 The “apostille” has the following form, which is set forth in the annotation to Federal
33 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:

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

12
13 Subsection (c) provides that a certificate of (1) a United States' consular officer stationed
14 in the foreign nation (see also Section 8(a)(3)), (2) a foreign nation consular officer stationed in
15 the United States, or (3) an officer of a multinational or international governmental organization,
16 conclusively establishes the authenticity or validity of the notarial act that is set forth in the
17 certificate.

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

30
31 Subsection (g) gives due recognition to the authority of a foreign nation to adopt an
32 official stamp in the form it deems proper. It provides that an official stamp complying with the
33 law of the nation where the foreign notarial act is performed is sufficient under this act regardless
34 of whether it complies with the requirements for an official stamp set forth in Section 11 of this
35 act.

36

1 **SECTION 13. CERTIFICATE OF NOTARIAL ACT.**

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

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

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

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

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

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

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

15 (c) A certificate of a notarial act is sufficient if it meets the requirements of subsections

16 (a) and (b) and:

17 (1) is in a short form set forth in Section 17;

18 (2) is in a form otherwise permitted by the law of this state;

19 (3) is in a form permitted by the law applicable in the jurisdiction in which the
20 notarial act was performed; or

21 (4) sets forth the actions of the notarial officer and the actions are sufficient to
22 meet the requirements of the notarial act as provided in Sections 4, 5, and 6 or law other than this
23 [act].

1 (d) By executing a certificate of a notarial act, a notarial officer certifies that the officer
2 has complied with the requirements and made the determinations specified in Sections 4, 5, and
3 6.

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

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

10 **Comment**

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

15
16 As with the signature, the certificate may be either on a tangible medium or in an
17 electronic format. The certificate must set forth the date of the notarial act and jurisdiction in
18 which it is performed. It must also identify the office of the notarial officer. If the officer is a
19 notary public, the certificate must contain the expiration date of the notary's commission. If the
20 officer's authority is derived from 10 U.S.C. §1044a, the certificate must include the person's
21 rank or position.

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

34
35 Subsection (c) provides that the certificate may be in an appropriate short form set forth
36 in Section 14 of this act, in any other form provided by the law of this state, in any other form
37 provided by the law of the place where the notarial act was performed, or in any form that sets

1 forth the requisite elements of the notarial act. Thus, acknowledgements and other notarial acts
2 executed in more prolix and elaborate forms may nevertheless continue to qualify under
3 subsection (c).

4
5 Subsection (d) emphasizes the obligation of the notarial officer to perform the
6 determinations required by Sections 3 and 4 and requires the officer to certify that the officer has
7 done so.

8
9 In order to be proper evidence of the full performance of a notarial act, subsection (e)
10 provides that the notarial officer may not sign the certificate until the notarial act has been fully
11 performed. See, e.g. N.C. Gen. Stat. §10B-35.

12
13 Subsection (f) seeks to assure the integrity of the record and the related notarial act. With
14 regard to a notarial act evidenced on a tangible record, this subsection requires that the certificate
15 must be a part of, or securely attached to, the record. If the certificate is not a part of the record
16 itself, the means of attaching the certificate are not specified. However, stapling is a logical
17 example.

18
19 Attachment of a certificate to an electronic format is more difficult to evidence and
20 describe. Accordingly the subsection provides that the certificate must be affixed to, or logically
21 associated with, the electronic record in accordance with methods approved by the
22 commissioning officer or agency. Those methods may vary and more than one may be
23 appropriate. They are left to the commissioning officer or agency to determine depending on the
24 available technology and the means of security provided. The means of attaching the certificate
25 will be one of the factors considered by the commissioning officer or agency in approving a
26 technology for use in notarizing electronic documents. See Section 20.

27
28
29 **SECTION 14. OFFICIAL STAMP; STAMPING DEVICE.**

30 (a) A notary public must have an official stamp. An official stamp must:

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

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

35 (b) A notary public is responsible for the security of the notary public's stamping device
36 and may not allow another individual to use the device. On resignation from, or the revocation
37 or expiration of, the notary public's commission, or on the expiration of the date set forth in the

1 stamping device, if any, the notary public shall disable the stamping device by destroying,
2 defacing, damaging, or erasing it in a manner that renders it unusable. On the death or
3 incompetency of a notary public, the notary public’s personal representative, guardian, or any
4 person in possession of the stamping device shall render it unusable by destroying, defacing,
5 damaging, or erasing it.

6 (c) If a notary public’s stamping device is lost or stolen, the notary public shall notify
7 promptly the [commissioning officer or agency] on discovering that the device is lost or stolen.

8 (d) A notarial officer, other than a notary public, is not required to use a stamping device.
9 A statement that contains the name and office of the notarial officer and can be copied together
10 with the record to which it is affixed or attached or with which it is logically associated is
11 deemed an official stamp.

12 **Comment**

13 Subsection (a) states that the notary public’s official stamp must contain the notary’s
14 name, the jurisdiction in which the notary is authorized to act, the expiration date, if any, of the
15 notary’s commission, and any other information that may be required by the commissioning
16 officer or agency.

17
18 As used in this act, the word “stamp” includes an image that is imposed by a “seal.”
19 Because it is important to be able to reproduce the image of a stamp that is contained on a record,
20 the stamp must be capable of being copied along with the tangible record. Thus, an impression
21 seal used on a paper medium will normally not be a sufficient stamp under this section.
22

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

31
32 Subsection (c) requires the notary public to maintain the notary’s official stamp in a
33 secure place. In order to protect and maintain the integrity of notarial acts, it is important that the
34 notary’s stamp be kept secure and out of the hands of any individual who might use it

1 fraudulently or erroneously. Accordingly, the notary may not allow another individual to use the
2 stamp.

3
4 Furthermore, in order to assure the integrity of the notarial system, the notary public may
5 not continue to possess the official stamp if the notary is no longer serving as a notary public.
6 Thus, upon the resignation of the notary public's commission, or the revocation or expiration of
7 the notary's commission, the notary must destroy the stamp in a way that renders it unusable.
8 Similarly, upon the death of a notary public, the notary's personal representative is directed to
9 destroy the stamp. See, e.g., N.C. Gen. Stat. § 10B-36(a).

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

17
18
19
20 **[SECTION 15. JOURNAL.]**

21
22 (a) A notary public, other than an individual licensed to practice law in this state, shall
23 maintain a journal in which the notary public chronicles all notarial acts that the notary public
24 performs. The notary public shall retain the journal for 10 years after the performance of the last
25 notarial act chronicled in the journal.

26 (b) A journal may be created on a tangible medium or in an electronic format. A notary
27 public shall maintain only one journal at a time to chronicle all notarial acts, whether those
28 notarial acts are performed regarding tangible or electronic records. If the journal is maintained
29 on a tangible medium, it must be a permanent, bound register with numbered pages. If the
30 journal is maintained in an electronic format, it must be in a permanent, tamper-evident
31 electronic format complying with the rules of the [commissioning officer or agency].

32 (c) Entries in a journal must be made at the time the notarial act is performed and must
33 contain the following information:

- 34 (1) the date and time of the notarial act;

- 1 (2) a description of the record, if any, and type of notarial act;
- 2 (3) the full name and address of each individual for whom a notarial act is
- 3 performed;
- 4 (4) if identity of the individual is based on personal knowledge, a statement to that
- 5 effect;
- 6 (5) if identity of the individual is based on satisfactory evidence, a brief
- 7 description of the method of identification and the identification credential presented, if any,
- 8 including its date of issuance and expiration; and
- 9 (6) the fee, if any, charged by the notarial officer.

10 (d) If a notary public's journal is lost or stolen, the notary public promptly shall notify the

11 [commissioning officer or agency] on discovering that the journal is lost or stolen.

12 (e) On resignation from, or the revocation or suspension of, the notary public's

13 commission, the notary public shall retain the notary public's journal in accordance with

14 subsection (a) and inform the [commissioning officer or agency] where the journal is located.

15 (f) Instead of personally retaining a journal as provided in subsections (a) and (e), a

16 current or former notary public may transmit the journal to the [commissioning officer or

17 agency] or a repository approved by the [commissioning officer or agency].

18 (g) On the death or incompetency of a current or former notary public, the notary public's

19 personal representative, guardian, or any person in possession of the journal shall transmit it to

20 the [commissioning officer or agency] [the official archivist of this state] or a repository

21 approved by the [commissioning officer or agency].

22 (h) Failure of the notary public to perform the duties specified in this section shall not

23 affect the validity of notarial acts performed by the notary public.]

1 **Comment**

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

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

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

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

37 Because of the importance of the journals and their continued maintenance by the notary
38 public, subsection (d) requires the notary to notify the commissioning officer or agency and the
39 appropriate law enforcement authority within 10 days after the discovery of their loss or theft.
40 The reporting not only protects the members of the public whom the notary has served but also
41 the notary him or herself.
42

43 Similarly, the retention and maintenance of the journals is important after the termination
44 of the notary’s commission. Thus, subsection (e) provides that upon the resignation of the notary
45 from his or her commission, or the revocation or suspension of the notary’s commission, the

1 notary must continue to maintain the journals and provide the commissioning officer or agency
2 with information about where they are located. Alternatively, the notary may elect, or be
3 required by the commissioning officer or agency, to transmit them to the commissioning officer
4 or agency. Upon the death of the notary prior to the expiration of the 10 year period during
5 which the notary must maintain the journals (see subsection (a)), the notary's personal
6 representative or family members are directed to transmit the journals to the commissioning
7 officer or agency.
8

9 Journals contain a considerable amount of confidential information – information about
10 the individual for whom the notarial act was performed and about the transaction involved.
11 Accordingly, subsection (f) recognizes their confidential nature and provides that the notary's
12 journals may not be inspected or reviewed by anyone other than the notary. They are not
13 discoverable by another person except by order or subpoena of a court or of the commissioning
14 officer or agency.
15
16
17

18 **SECTION 16. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL**
19 **ACTS ON ELECTRONIC RECORDS; SELECTION OF TECHNOLOGIES.**

20 (a) Before a notary public begins to perform notarial acts with regard to electronic
21 records, the notary public shall notify the [commissioning officer or agency] that the notary
22 public will be performing notarial acts with regard to electronic records and inform the
23 [commissioning officer or agency] of the technology or technologies that the notary public will
24 use in performing the notarial acts.

25 (b) A notary public may select one or more tamper evident technologies to perform
26 notarial acts on electronic records and may limit the technologies that the notary public will use.

27 (c) If an electronic record with regard to which the notary public performs a notarial act
28 will be filed with or submitted to a governmental agency or state officer or is a record that will
29 be submitted to a governmental agency or state officer for the issuance of an apostille, the
30 governmental agency or state officer may specify:

31 (1) the manner and format in which the electronic record must be created,
32 generated, communicated, received, and stored and the systems established for those purposes;

1 (2) the type of electronic signature required, the manner and format in which the
2 electronic signature must be affixed to the electronic record, and the identity of, or criteria that
3 must be met by, any third party used by a person filing a document to facilitate the process;

4 (3) control processes and procedures as appropriate to ensure adequate
5 preservation, disposition, integrity, security, confidentiality, and auditability of the electronic
6 record; and

7 (4) any other required attributes for the electronic record that are specified for
8 corresponding tangible records or reasonably necessary under the circumstances.

9 **Comment**

10 The performance of notarial acts on electronic records requires additional competencies
11 than those required of a notarial officer performing notarial acts on a tangible record. It also
12 requires special software and hardware to perform those acts. The software and hardware must
13 assure that the record is readable and secure, and the notarial officer must be able to use the
14 software and hardware properly. Accordingly, subsection (a) requires that a notarial officer,
15 whether a notary public or other notarial officer, must register with the commissioning officer or
16 agency prior to performing a notarial act with regard to an electronic record.

17
18 Subsection (b) provides that the commissioning officer or agency will, at the time of
19 registration of the notarial officer, review the officer's technology to determine whether it has
20 received prior approval as a satisfactory means of performing notarial acts pursuant to Section 20
21 of this act. If the technology that the officer proposes to use has not received prior approval, the
22 commissioning officer or agency will review the technology to determine whether it provides a
23 satisfactory means of performing notarial acts.
24

25
26 **SECTION 17. SHORT FORM.** The following short form certificates of notarial acts
27 are sufficient for the purposes indicated, if completed with the information required by Section
28 13(a) and (b). [Information about the venue of the notarial act (State and (County)) refers to the
29 location where the notarial act is performed.]

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

31 State of _____

1 (County) of _____

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

4 _____
5 Signature of notarial officer

6 Stamp
7 [_____]
8 Title (and rank)

9 [My commission expires: _____]

10

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

12 State of _____

13 (County) of _____

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

16 as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom

17 instrument was executed.)

18 _____
19 Signature of notarial officer

20 Stamp
21 [_____]
22 Title (and rank)

23 [My commission expires: _____]

24

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

26 State of _____

1 (County) of _____

2 Signed and sworn to (or affirmed) before me on _____ by _____

3 Date Name(s) of individual(s)

4 making statement).

5 _____
6 Signature of notarial officer

7 Stamp

8 [_____]
9 Title (and rank)

10 [My commission expires: _____]

11

12 (4) For witnessing or attesting a signature:

13 State of _____

14 (County) of _____

15 Signed [or attested] before me on _____ by _____

16 Date Name(s) of individual(s).

17 _____
18 Signature of notarial officer

19 Stamp

20 [_____]
21 Title (and rank)

22 [My commission expires: _____]

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

24 State of _____

25 (County) of _____

26 I certify that this is a true and correct copy of a document in the possession

27 of _____.

1 Dated _____

2 _____
3 Signature of notarial officer

4 Stamp

5 [_____]
6 Title (and rank)

7 [My commission expires: _____]

8 **Comment**

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

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

21

22

23 **SECTION 18. NOTARY PUBLIC COMMISSION; QUALIFICATIONS.**

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

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

29 (1) be at least 18 years of age;

30 (2) be a citizen or permanent legal resident of the United States;

31 (3) be a resident of or have a place of employment or practice in this state;

- 1 (4) be able to read and write English; [and]
- 2 (5) not be denied a commission under Section 20[; and
- 3 (6) have passed the examination required under Section 19].

4 (c) Before the issuance of a notary public’s commission, the individual shall execute an
5 oath of office and submit it to the [commissioning officer or agency].

6 (d) [Not more than [30] days after] [Before] issuance of a notary public’s commission,
7 the notary public shall submit to the [commissioning officer or agency] an assurance in the form
8 of a surety bond or its functional equivalent in the amount of \$[_____]. The assurance must be
9 issued by a surety or other entity licensed or authorized to do business in this state. The
10 assurance must cover acts performed during the term of the notary public’s commission and must
11 be in the form prescribed by the [commissioning officer or agency]. A notary public who
12 violates this [act] or law other than this act affecting notaries public in this state is liable under
13 the assurance. The surety or issuing entity shall give [30] days’ notice to the [commissioning
14 officer or agency] before cancelling the assurance. The surety or issuing entity shall notify the
15 [commissioning officer or agency] not later than [30] days after making a payment to a claimant
16 under the assurance. A notary public may perform notarial acts in this state only during the
17 period that a valid assurance is on file with the [commissioning officer or agency].

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

21 (f) A commission to act as a notary public authorizes the notary public to perform notarial
22 acts. The commission does not provide a notary public any immunities or benefits conferred by
23 law of this state on public officials or employees.

1 **Comment**

2 Subsection (a) states that an individual qualified under subsection (b) may apply for and
3 obtain a commission as a notary public from the commissioning officer or agency. It leaves the
4 form of application, the process for applying, and the timing of the process to be determined by
5 the commissioning officer or agency. Although the statutes of some states specify the provisions
6 in more detail (compare Ariz. Rev. Stat. § 41-312; Del. Code Ann. tit. 43, § 4301), this act leaves
7 the determination and implementation of those provisions to regulations adopted by the
8 commissioning officer or agency.
9

10 Subsection (b) sets out qualifications for issuance of a commission as a notary public.
11 The qualifications set out in the current legislation of the various states are quite varied. The
12 requirements listed here are common although not uniform among the states (compare Ariz. Rev.
13 Stat. § 41-312(E)). They are the important provisions and should be considered to be the
14 minimal requirements for a person to be issued a commission as a notary public. Adopting states
15 are free to add other provisions if the legislature so chooses.
16

17 Subsection (c) requires a person receiving a commission as a notary to submit a bond to
18 the commissioning officer or agency within 30 days of receiving the notary public commission.
19 The amount of the bond is not specified and is left to state legislatures to insert. It is recognized
20 that bonds to cover the full amount of many transactions may be prohibitively expensive.
21 Nevertheless, limited but reasonable bond amounts should cover some ordinary transactions and
22 will provide some recovery in others. The bond must be in effect for the entire term of the
23 notary public's commission and the surety must give 30 days' notice prior to cancelling the
24 bond. The notary public may perform notarial acts only while the bond is on file with the
25 commissioning officer or agency.
26

27 Subsection (d) requires that the applicant submit an oath of office to the commissioning
28 officer or agency.
29

30 Subsection (e) provides that upon compliance with the requirements of this section, the
31 commissioning officer or agency will issue a notarial commission for a specified term. The
32 length of that term is to be determined by the state legislature.
33

34 Subsection (f) recognizes that the notary public is a person licensed by the
35 commissioning officer or agency. Accordingly, it provides that the notary does not have any
36 immunities or benefits conferred on state officials by law or the state constitution.
37
38

39 **[SECTION 19. EDUCATION OF NOTARIES PUBLIC.]**

40 (a) An applicant who does not hold a current commission as a notary public in this state
41 shall pass an examination administered by the [commissioning officer or agency] or an entity

1 approved by the [commissioning officer or agency]. The examination must be based on the
2 course of study described in subsection (b).

3 (b) The [commissioning officer or agency] or an entity approved by the [commissioning
4 officer or agency] shall regularly offer a course of study to applicants who do not hold current
5 commissions as notaries public in this state which covers the laws, rules, procedures, and ethics
6 relevant to notarial acts.]

7 **Comment**

8 An increasingly common requirement for the issuance of a notary public commission is
9 that the applicant must meet certain educational requirements. Professional education enhances
10 the effectiveness and integrity of the notarial system. The education envisioned in this section is
11 designed to educate the prospective notary public in the laws, [rules][regulations], standards,
12 procedures, and ethics relevant to notarial acts. However, because the educational requirement is
13 not uniformly accepted by [commissioning officers or agencies] or the legislatures of some
14 states, it is inserted here as an optional provision.

15
16 Subsection (a) provides that an applicant for a first commission as a notary public must
17 pass an examination administered by the commissioning officer or agency or an entity licensed
18 by the commissioning officer or agency to administer the exam. The examination is to be based
19 on the course of instruction provided in subsection (b).

20
21 Subsection (b) provides that the commissioning officer or agency or an entity licensed by
22 the commissioning officer or agency shall provide the course of education. However, it leaves
23 the length of the course to the determination of the state legislature. To achieve the purpose of
24 enhancing the effectiveness and integrity of the notarial system, the education is designed to
25 educate the prospective notary public in the laws, [rules][regulations], standards, procedures, and
26 ethics relevant to notarial acts.

27
28
29

30 **SECTION 20. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE, OR**
31 **SUSPEND COMMISSION OF NOTARY PUBLIC.**

32 (a) The [commissioning officer or agency] may deny or refuse to renew a notary public
33 commission or may revoke or suspend a notary public commission for:

34 (1) failure to comply with the provisions of this [act];
35

1 (2) fraudulent, dishonest, or deceitful misstatement or omission in the notary
2 public's application submitted to the [commissioning officer or agency] for the notary public's
3 commission;
4

5 (3) an applicant's or notary public's conviction, guilty plea, or plea of no contest
6 to any felony or to a crime involving fraud, dishonesty, or deceit;
7

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

11 (5) failure by the notary public to discharge any duty or responsibility required of
12 a notarial officer, whether by this [act], rules of the [commissioning officer or agency], or any
13 federal or state law;

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

16 (7) violation by the notary public of any of the rules of the [commissioning officer
17 or agency] regarding a notary public; [or]

18 (8) failure of the notary public to maintain an assurance as provided in Section
19 18(d)[;or] [.]

20 [(9) insert other state specific provisions or reference to other state statutes.]

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

24 (c) The [commissioning officer or agency] shall maintain an electronic database of
25 notaries public:

1 (1) through which an individual may verify the authority of a notary public to
2 perform notarial acts; and

3 (2) which indicates whether a notary public is registered to perform electronic
4 notarial acts.

5 (d) The authority of the [commissioning officer or agency] to deny, suspend, refuse to
6 renew; or revoke a notary public’s commission does not prevent the [commissioning officer or
7 agency] or an aggrieved person from seeking and obtaining other remedies provided by law.

8 **Comment**

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

14
15 Subsections (a)(1)-(5) set forth specific statutory grounds upon which a commission may
16 be denied, suspended or revoked. Subsection (a)(6) gives the commissioning officer or agency
17 the authority to promulgate rules or regulations further setting forth grounds upon which a
18 commission may be denied, suspended, or revoked. Subsection (a)(7) allows the suspension or
19 revocation of a commission if the notary public fails to maintain a bond as provided in Section
20 15(c).

21
22 Subsection (b) expressly states that an applicant who has been denied a commission or a
23 notary public whose commission has been suspended or revoked is entitled to a timely notice and
24 a hearing. Such a notice or hearing is likely to be required by the state’s administrative
25 procedure act, but is restated here for clarity and assurance.

26
27 Subsection (c) provides that the commissioning officer or agency will maintain an
28 electronic database of notaries public through which an individual may verify whether the
29 asserted notary public has a commission to perform notarial acts. In addition, that database will
30 also indicate whether the notary public is authorized to perform notarial acts with regard to
31 electronic records.

32
33
34

35 **SECTION 21. NO AUTHORITY TO PRACTICE LAW; ADVERTISING.**

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

1 (1) assist individuals in drafting legal documents, give legal advice, or otherwise
2 practice law;

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

4 (3) represent an individual in any judicial or administrative proceeding relating to
5 immigration to the United States, United States citizenship, or related matters; or

6 (4) receive compensation for performing any of the activities listed in this
7 subsection.

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

10 (c) A notary public, other than an attorney licensed to practice law in this state, may not
11 advertise or represent that the notary public may assist individuals in drafting legal documents,
12 give legal advice or otherwise practice law. If a notary public, other than an attorney licensed to
13 practice law in this state, in any manner advertises or represents that the notary public offers
14 notarial services, whether orally or in writing, including broadcast media, print media, and the
15 Internet, the notary public shall include the following statement, or an alternate statement
16 authorized or required by the [commissioning officer or agency], in the advertisement or
17 representation, prominently and in each language used in the advertisement or representation: “I
18 am not an attorney licensed to practice law in this state. I cannot draft legal documents, give
19 advice on legal matters, including immigration, nor charge a fee in regard to those activities”. If
20 the form of advertisement or representation is not broadcast media, print media, or the Internet,
21 and does not permit the inclusion of the above statement due to size, it must be prominently
22 displayed or provided at the place of performance of the notarial act before the notarial act is
23 performed.

1 (d) Except as otherwise allowed by law, a notary public may not withhold access to or
2 possession of any original record provided by an individual who sought performance of a
3 notarial act by the notary public.

4 **Comment**

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

10
11 Subsection (b) directly and simply provides that a notary public may not engage in false
12 or misleading advertising.

13
14 Subsection (c) is directed toward a specific advertising problem. Under the laws of many
15 non-common law countries, including but not limited to civil law countries, a notary public is
16 authorized not only to verify and acknowledge records and signatures. In those countries, a
17 notary may also draft and interpret legal records for parties and give legal advice on those
18 matters. In effect, those notaries public have at least limited authority to engage in transactional
19 and other legal matters. When people immigrate to the United States from those countries, they
20 are faced not only with their prior experiences under that custom but also the difficulties of
21 understanding the English language. Unfortunately, some notaries public have taken advantage
22 of that situation, whether by their own suggestion or at the request of the immigrant, and have
23 provided legal advice and document drafting. In many cases, the legal advice has dealt with
24 immigration matters.

25
26 Subsection (c) is derived from provisions in legislation currently in effect in Arizona
27 (Ariz. Rev. Stat. § 41-329(A) and other states. It provides that a notary, other than a notary who
28 is also an attorney at law, may not offer legal advice or draft legal records. If the notary
29 advertises notarial services, the notary must provide information in the same language as the
30 advertisement that the notary may not provide legal advice or draft legal documents, particularly
31 about immigration matters. It seeks to inform the prospective client that the notary public is not
32 authorized or experienced to give legal advice. The bracketed provision “[in a language other
33 than English]” allows the legislature to apply the advertising requirement only to ads that are not
34 in English, which may be seen by some as more likely to be deceptive to immigrants. The
35 commissioning officer or agency is given the authority to adopt alternative language for the
36 warning statement.

37
38
39
40 **SECTION 22. RULES.**

41 (a) The [commissioning officer or agency] shall adopt [rules][regulations] to implement

1 this [act]. The rules shall:

2
3 (1) prescribe the manner of performing notarial acts regarding tangible and
4
5 electronic records;

6
7 (2) prescribe the process of granting or revoking a notary public commission and
8 assure the trustworthiness of an individual holding a commission as notary public;

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

11 (4) clarify and interpret the provisions of this [act] to ensure that any change or
12 tampering with a record bearing a certificate of a notarial act is self-evident;[and]

13 (5) establish the process for approving and accepting surety bonds and other
14 forms of assurance under Section 18(d)[; and]

15 [(6) establish the requirements for:

16 (A) the examination of individuals applying for or renewing a commission
17 as a notary public under Section 19(a); and

18 (B) a course of study to be offered to new applicants for a commission as a
19 notary public under Section 19(b)].

20 (b) The [commissioning officer or agency] may not prescribe the technologies to be used
21 for the creation, transmittal, storage, or authentication of electronic records or signatures or that a
22 notary public may use for the performance of notarial acts.

23 (c) In adopting rules that prescribe the manner of performing notarial acts on electronic
24 records, the [commissioning officer or agency] shall consult with the [name of state agency]
25 authorized to adopt rules for the recording of electronic documents. The [commissioning officer
26
27 or agency], so far as is consistent with this [act], shall also consider the rules, standards, and
28
29
30

1 customs of other jurisdictions and the standards promulgated by national standard-setting bodies.

2
3 **Comment**
4

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

10
11 Subsection (b) directs the commissioning officer or agency to consult with the state board
12 or commission authorized to regulate the recording of electronic records and also to consider the
13 [rules][regulations], standards, and customs of other jurisdictions as well as the standards
14 promulgated by national standard-setting bodies. The purposes of this provision are to bring to
15 the commissioning officer or agency the best information available on the issues and also to
16 encourage uniformity among the various states.
17

18 **SECTION 23. NOTARIAL ACTS AFFECTED BY THIS [ACT].** This [act] applies
19 to notarial acts performed on or after the effective date of this [act].

20 **Comment**

21 The adoption of this act is not intended to be retroactive in effect. Thus, it applies to
22 notarial acts performed on or after its effective date.
23

24
25 **SECTION 24. NOTARY PUBLIC COMMISSION IN EFFECT ON DATE OF**

26 **[ACT].** A commission as a notary public in effect on the effective date of this [act] may
27 continue until its date of expiration. An application to renew a notary public commission after
28 the date of this [act] must comply with this [act]. A notary public, in performing notarial acts
29 after the effective date of this [act] shall comply with this [act] and is subject to a refusal to
30 renew the commission or a revocation or suspension of the commission under this [act].

31 **Comment**
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33 This Section states that an individual who has a commission as a notary public at the date
34 of the enactment of this uniform law may retain the notary commission until the scheduled date
35 of expiration. However, the notary is subject to the provisions of this act with regard to a refusal

1 to renew the commission or a revocation or suspension of the commission. Other than as may
2 apply to the length of the commission, the provisions of the law previously in effect do not carry
3 over after the enactment of this act.
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6 **SECTION 25. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

7 applying and construing this uniform act, consideration must be given to the need to promote
8 uniformity of the law with respect to its subject matter among states that enact it.

9 **Comment**

10 This provision seeks to encourage construction that will maintain uniformity among the
11 various states adopting the act.
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15 **SECTION 26. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
16 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
17 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,
18 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
19 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
20 U.S.C. Section 7003(b).
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26 **Comment**

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29 This section responds to the specific language of the Electronic Signatures in Global and
30 National Commerce Act and is designed to avoid preemption of state law under that federal
31 legislation.
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35 **SECTION 27. REPEALS.** The following acts are repealed:

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

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

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

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Comment

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This Section lists laws that this proposed act supervenes.

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SECTION 28. EFFECTIVE DATE. This [act] takes effect

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Comment

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This is the standard effective date provision for uniform laws.