

D R A F T

FOR APPROVAL

# REVISED UNIFORM LAW ON NOTARIAL ACTS

---

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

---

MEETING IN ITS ONE-HUNDRED-AND-NINETEENTH YEAR  
CHICAGO, ILLINOIS  
JULY 9 - JULY 16, 2010

# REVISED UNIFORM LAW ON NOTARIAL ACTS

*WITH PREFATORY NOTE AND COMMENTS*

Copyright ©2010

By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

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

## **DRAFTING COMMITTEE TO REVISE THE UNIFORM LAW ON NOTARIAL ACTS**

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

PATRICIA BRUMFIELD FRY, P.O. Box 3880, Edgewood, NM 87015, *Chair*

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

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

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

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

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

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

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

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

### **EX OFFICIO**

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

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

### **AMERICAN BAR ASSOCIATION ADVISOR**

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

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

### **EXECUTIVE DIRECTOR**

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

Copies of this Act may be obtained from:

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

# REVISED UNIFORM LAW ON NOTARIAL ACTS

## TABLE OF CONTENTS

Prefatory Note.....	1
SECTION 1. SHORT TITLE .....	4
SECTION 2. DEFINITIONS.....	4
SECTION 3. APPLICABILITY.....	10
SECTION 4. AUTHORITY TO PERFORM NOTARIAL ACTS.....	10
SECTION 5. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS.....	12
SECTION 6. PERSONAL APPEARANCE REQUIRED. ....	14
SECTION 7. IDENTIFICATION OF INDIVIDUAL.....	15
SECTION 8. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT.....	18
SECTION 9. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN.....	18
SECTION 10. NOTARIAL ACT IN THIS STATE.....	19
SECTION 11. NOTARIAL ACT IN ANOTHER STATE. ....	21
SECTION 12. NOTARIAL ACT UNDER FEDERAL AUTHORITY. ....	22
SECTION 13. FOREIGN NOTARIAL ACT.....	24
SECTION 14. CERTIFICATE OF NOTARIAL ACT.....	27
SECTION 15. OFFICIAL STAMP. ....	30
SECTION 16. STAMPING DEVICE.....	31
[SECTION 17. JOURNAL.....	32
SECTION 18. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL ACTS ON ELECTRONIC RECORD; SELECTION OF TECHNOLOGY. ....	36
SECTION 19. SHORT FORM .....	37
SECTION 20. NOTARY PUBLIC COMMISSION; QUALIFICATIONS.....	40
[SECTION 21. EXAMINATION OF NOTARY PUBLIC.....	43
SECTION 22. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE, OR SUSPEND COMMISSION OF NOTARY PUBLIC.....	44
SECTION 23. DATABASE OF NOTARIES PUBLIC. ....	47
SECTION 24. PROHIBITED ACTS.....	47
SECTION 25. VALIDITY OF NOTARIAL ACTS.....	50
SECTION 26. RULES .....	51
SECTION 27. NOTARY PUBLIC COMMISSION IN EFFECT.....	53
SECTION 28. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	54
SECTION 29. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	54
SECTION 30. REPEALS .....	55
SECTION 31. EFFECTIVE DATE.....	55

# 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. Since that date, countless societal and technological changes have occurred requiring notarial officers and the notarial acts which they perform to adapt. This version of ULONA adapts the notarial process to accommodate those changes and makes the Act more responsive to current transactions and practices.

Perhaps the most pervasive change since the adoption of the original version of ULONA has been the development and growing implementation of electronic records in commercial, governmental, and personal transactions. In 1999, NCCUSL approved the Uniform Electronic Transactions Act (“UETA”), thereby validating electronic records and putting them on a par with traditional records written on tangible media. The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Ch. 96 (2010) (“ESign”) was adopted in 2000, and it also recognized and put electronic records on a par with traditional records 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 records. Each of those acts also recognized the validity of electronic notarial acts (UETA §11; ESign §101(g); URPERA §3(c)).

This revision of ULONA further recognizes electronic notarial acts and puts them on a par with notarial acts performed on tangible media (Section 2(5)). It does this by unifying the requirements for and treatment of notarial acts, whenever possible, regardless of whether the acts are performed on tangible or electronic media. While continuing the basic treatment of electronic notarial acts provided in UETA, ESign and URPERA, this Act implements structural and operational rules for those notarial acts that were absent in the prior laws (see, e.g., Section 14 regarding certificates of notarial acts on tangible and electronic records). Before notaries public may perform notarial acts with regard to electronic records, they must first notify the commissioning officer or agency (Section 18).

The Act seeks to provide integrity in the process of performing notarial acts. Regardless of whether the notarial act is completed on a tangible or an electronic record, it requires an individual to appear personally before a notarial officer whenever a notarial officer performs a notarial act regarding a record signed or statement made by the individual (Section 6), including an acknowledgement, verification, or witnessing of a signature (Section 5(a), (b), and (c)). A notarial officer who certifies a copy of a record must determine that the copy is a full, true, and accurate transcription or reproduction (Section 5(d)).

It commands a notarial officer to identify an individual before performing a notarial act for that individual. The Act provides two methods of performing that identification. An identification may be based on personal knowledge of the individual by the notarial officer

(Section 7(a)). If an individual is not personally known to the notarial officer, the individual must 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 (Section 7(b)). A notarial officer may require additional identification of an individual if the officer is not satisfied with the individual's identity (Section 7(c)). Furthermore, if an officer is not satisfied that an individual's signature is knowingly and voluntarily made or has concern as to the competency or capacity of the individual, the officer may refuse to perform the notarial act (Section 8(a)).

The Act strives to provide other assurances that also enhance the integrity of the notarial process. In addition to the familiar assurances when tangible records are used, the Act requires the use of tamper-evident technologies on electronic records (Section 18). It authorizes a commissioning officer or agency to adopt rules to implement this Act (Section 26(a)), including rules to insure that any change or tampering with a record bearing a certificate of notarial act will be self-evident (Section 26(a)(2)). In order to encourage uniformity and interoperability, it provides that a commissioning officer or agency will consider national standards, the standards and customs of other enacting jurisdictions, and the views of interested persons (Section 26(b)).

Another means of assuring the integrity of the notarial process, strongly urged by commissioning officers and notarial associations, is to require that all notaries public maintain journals chronicling all notarial acts. This position is not without controversy, however, and other voices strongly argue that such requirements are unnecessarily burdensome. This Act includes bracketed provisions requiring a notary public to maintain a journal of all notarial acts that the notary public performs (Section 17), leaving the ultimate decision to the several states. A 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 entered in the journal.

This Act replaces past references to a notarial seal with an official stamp. It defines an official stamp as a physical or electronic image and includes the traditional seal (Section 2(8)). Section 15 states the required contents of the official stamp and requires that it be capable of being copied along with the record with which it is associated. Section 16 deals separately with the stamping device, which is defined as the means of affixing the official stamp to a tangible record or associating the official stamp with an electronic record (Section 2(13)). Section 16 also defines the responsibility of the notary public for controlling the stamping device and assuring that it cannot be used by others, whether during the term of the notary public's commission or thereafter.

As with the prior version of the Act, this revision continues to recognize notarial acts performed by notarial officers in the adopting state (Section 10), another state of the United States (Section 11), or under federal authority (Section 12). The increasing frequency of international transactions requires the recognition of notarial acts performed in foreign states (Section 13). The Act continues to recognize an "apostille" complying with the Convention de La Haye du 5 octobre 1961 ("Hague Convention") as a means of providing conclusive authentication of notarial acts that are performed by a notarial officer of a foreign state (Section 13(e)). It also recognizes a consular authentication as an alternative means of providing that conclusive authentication of a foreign notarial act (Section 13(f)).

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. Those provisions vary considerably. In order to promote unity, the Act establishes minimum requirements for the commissioning of notaries public (Section 20) as well as grounds to deny, suspend, or revoke those commissions (Section 22). The Act contains an optional section regarding educational and testing requirements for notaries public (Section 21).

The Act seeks to assure that a notarial officer does not act in a deceptive or fraudulent manner. It prohibits a notarial officer from performing a notarial act with regard to a record to which the officer or the officer's spouse is a party or in which either of them has a direct beneficial interest (Section 4(b)). The Act also prohibits a notary public from drafting legal records, giving legal advice, or otherwise practicing law; it also prohibits a notary public from acting as a consultant or expert on immigration matters or representing persons in judicial or administrative proceedings in that regard (Section 24(a)). It further prohibits a notary public from engaging in false or deceptive advertising. In that regard, it expressly prohibits a notary public from representing or advertising that the notary may draft legal documents, give legal advice, or otherwise practice law; any representation or advertisement by a notary must contain a disclaimer to that effect in each language used in the advertisement (Section (24(b), (c), and (d)).



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

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

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

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

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

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

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

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

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

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

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

23 (12) “Signature” means a tangible symbol or an electronic signature that evidences the



1 signing of a record.

2 (13) “Stamping device” means:

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

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

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

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

12 **Comment**

13 (1) “**Acknowledgement.**” An acknowledgement is a common form of notarial act in  
14 which an individual declares to a notarial officer that the individual has executed or signed the  
15 record for the purpose or purposes stated in the record. The declaration is made in the presence  
16 of the notarial officer. See *Coast to Coast Demolition and Crushing, Inc. v. Real Equity Pursuit,*  
17 *LLC*, 226 P.3d 605, 608 (Nev. 2010).

18  
19 It is a common practice for the acknowledging individual to sign the record in the  
20 presence of the notarial officer. However, actually signing the record in the presence of the  
21 notarial office is not necessary as long as the individual declares, while in the presence of the  
22 officer at the that time the acknowledgement is made, that the signature already on the record is,  
23 in fact, the signature of the individual.

24  
25 If the record is signed by an individual in a representative capacity, the individual also  
26 declares to the notarial officer that the individual has proper authority to execute the record on  
27 behalf of the principal (see Section 2(4)).

28  
29 (2) “**Electronic.**” The adjective electronic is used to refer to electrical, digital, magnetic,  
30 wireless, optical, electromagnetic, and similar technologies. Electronic technologies are capable  
31 of generating, transmitting, or storing information in an intangible format that may subsequently  
32 be retrieved and viewed in a perceivable format.

33  
34 As with the Uniform Electronic Transactions Act, the term “electronic” is descriptive and

1 its reach is not intended to be limited to technologies that are technically or purely electronic in  
2 nature (see UETA §2, Comment 4). Rather, it is intended to be a collective term and applies to  
3 all “similar” technologies that involve the generation, transmittal, or storage of information in an  
4 intangible format.

5  
6 Electromagnetic technologies that generate, transmit, and store information in intangible  
7 formats are electronic in nature. Thus, for example, the typical computer hard drive is a device  
8 that stores information electronically. Optical technologies that generate, transmit, or store  
9 information in intangible formats are also included within the meaning of the term. Although  
10 some aspects of optical technologies may not be truly electronic in nature, they are considered to  
11 be electronic because they create or manipulate information in an intangible format. Thus, for  
12 example, fiber optic cable is a means of transmitting information electronically.

13  
14 The listing of specific technologies in this Section is not intended to be static or limited to  
15 those created or in use at the time of the adoption of this Act. As electronic technologies  
16 continue to develop, even if they involve competencies other than those listed, they are also  
17 included in this definition if they perform the function of generating, transmitting, or storing  
18 information in an intangible format from which the information may subsequently be retrieved  
19 and viewed in a perceivable format.

20  
21 The term “electronic” in this Act has the same meaning as it has in UETA §2(5), ESign  
22 §106(2), and URPERA §2(2).

23  
24 (3) “**Electronic signature.**” An electronic signature is any electronic symbol, sound, or  
25 process that is attached to, or logically associated with, an electronic record by an individual with  
26 the intent to sign the record. An electronic signature on an electronic record is one that  
27 accomplishes the same purpose as a traditional “wet” or pen and ink signature on a tangible  
28 record; it associates an individual with an electronic record for the purpose of signing or  
29 executing the record. The technology that may be used for an electronic signature includes all  
30 the technologies that are encompassed within the definition of the term “electronic.” Whether an  
31 individual in fact attaches an electronic signature to an electronic record with the intent to sign it  
32 is a question of fact to be determined in each case.

33  
34 The term is similar to the definition of that term as used in UETA §2(8), ESign §106(5),  
35 and URPERA §2(4).

36  
37 (4) “**In a representative capacity.**” The term “in a representative capacity” refers to the  
38 role in which an individual signs a record or makes a statement with respect to which a notarial  
39 act is performed. Specifically, it indicates that the individual who signs a record or makes the  
40 statement is doing so as a representative of another person, a principal, and not on the  
41 individual’s own behalf. A representative with proper authority binds the principal as if the  
42 principal signed the record. The authority to perform an act in a representative capacity may be  
43 derived from the position the individual holds (e.g. corporate officer) or from a specific grant of  
44 authority to the individual (e.g. attorney in fact). Whether a person is authorized to act in a  
45 representative capacity is a fact to be determined under the agency law of the state.

1 In this Act, the term is used Section 2(1) and in the short form acknowledgement  
2 provided in Section 19(2).  
3

4 (5) **“Notarial act.”** The term “notarial act” encompasses any notarial act whether  
5 authorized in this Act or by other law of this state (see also Section 4(a)). This subsection lists  
6 those notarial acts specifically authorized in this Act. The listed notarial acts include taking an  
7 acknowledgement, administering an oath or affirmation, taking a verification upon an oath or  
8 affirmation, witnessing or attesting a signature, certifying or attesting a copy of a record, and  
9 noting a protest of a negotiable instrument.  
10

11 This Act applies to notarial acts regardless of whether they are performed with respect to  
12 a tangible record, such as paper, or with respect to an electronic record. Other Uniform Laws,  
13 including UETA, ESign, and URPERA, specifically authorize the creation, transfer, storage, and  
14 recording of electronic records just as other law has traditionally allowed for records on tangible  
15 media. This Act specifically authorizes notarial acts to be performed with respect to electronic  
16 records.  
17

18 (6) **“Notarial officer.”** The term “notarial officer” includes notaries public as well as  
19 other individuals having the authority to perform notarial acts under other state or federal law or  
20 the law of a foreign state. Thus, for example, judges, clerks, and deputy clerks are notarial  
21 officers (see Sections 10(a)(2), 11(a)(2), and 12(a)(1)). Similarly, in some states, attorneys at  
22 law, by the fact that they are attorneys at law, are also notarial officers (see Section 10(a)(3)).  
23 Also, an individual designated a notarizing officer by the United States Department of State for  
24 performing notarial acts overseas is also a notarial officer for that purpose (see Section 12(a)(3)).  
25 Other persons, whether by state law, federal law, or the law of a foreign state, may also be  
26 notarial officers (see generally Sections 10 through 13.)  
27

28 Many of the provisions of this Act apply broadly to all notarial officers regardless of the  
29 source of their authority. However, some provisions, such as those in Sections 15 through 18,  
30 and Sections 20 through 24, apply only to notaries public.  
31

32 (7) **“Notary public.”** A “notary public” is an individual who is issued a commission as a  
33 notary public by the commissioning officer or agency pursuant Sections 20 through 22. A notary  
34 public does not include those individuals, such as judges and clerks of court, who are authorized  
35 to perform notarial acts under other law or as a part of the official duties of an office or position  
36 they hold.  
37

38 (8) **“Official stamp.”** The term “official stamp” refers to an image containing specified  
39 information that a notarial officer attaches to or associates with a certificate of notarial act, which  
40 is itself on, attached to, or associated with a record. The contents and characteristics of the  
41 “official stamp” are set forth in Section 15(a).  
42

43 On a tangible record, the image is a physical one appropriately located on, or attached to,  
44 the certificate of notarial act. It may be applied to the surface of the certificate, as with a rubber  
45 stamp and ink, or it may be applied by compression or embossment, as with a seal. On an  
46 electronic record, the image is in an electronic format and attached to, or logically associated

1 with, the electronic certificate of notarial act. Being an electronic image, the image must be  
2 viewed through a device such as a computer monitor or printed out in order to be humanly  
3 perceivable.  
4

5 An “official stamp” is to be distinguished from the device by which the image is affixed  
6 on, attached to, or associated with a certificate of notarial act; that device is identified as a  
7 “stamping device” and is defined Section 2(13).  
8

9 (9) **“Person.”** The word “person” is broadly defined to include all persons, whether  
10 human individuals or corporate, associational, or governmental entities. When the definition of a  
11 “person” is intended to be limited to a human entity, the word “individual” is used in this Act  
12 rather than the word “person.” The definition of “person” is the standard definition for that term  
13 as used in other acts adopted by the National Conference of Commissioners on Uniform State  
14 Laws.  
15

16 (10) **“Record.”** A “record” consists of information stored on a medium, whether the  
17 medium be a tangible one or an electronic one. The traditional tangible medium has been paper  
18 on which information is inscribed by writing, typing, printing, or other similar means. The  
19 information is humanly perceivable by reading it directly from the paper on which it is inscribed.  
20

21 An electronic medium is one on which information is stored electronically. The  
22 information is humanly perceivable only by means of a device that interprets the electronic  
23 information in the record and makes it readable. For example, electronic information may be  
24 stored on a hard disk and it may be retrieved and read in a humanly perceivable form on a  
25 computer monitor or a paper printout.  
26

27 Traditionally, especially if the tangible medium is paper, a record has been referred to as  
28 a “document.” In this Act, the word “record” replaces the word “document” and includes  
29 information regardless of whether the medium is tangible or electronic. The definition of the  
30 word “record” in this Act is the same as the definition of that word in UETA §2(13) and ESign  
31 §106(9). It also is the same as the definition of the word “document” as used in URPERA §2(1).  
32

33 (11) **“Sign” and “Signature.”** Subsections (11) and (12) of this Act define the related  
34 words “sign” and “signature.” An individual may “sign” his or her name to a record either on a  
35 tangible medium or an electronic medium as long as the individual has the present intent to  
36 authenticate or adopt the record so signed. The verb “sign” includes other forms of the verb,  
37 such as “signing.” Except as provided in Section 9, an individual must personally perform the  
38 act of signing a record.  
39

40 A symbol located on, or associated with, a tangible or electronic record that is the result  
41 of the signing process is an individual’s “signature.” The usual symbol an individual selects to  
42 use as the individual’s signature is the individual’s given name. If, instead of using the  
43 individual’s given name, however, an individual uses an alternative symbol as the individual’s  
44 signature, such as an “X,” the individual may affix that symbol to the record as the individual’s  
45 signature.  
46

1 (12) **“Stamping device.”** A “stamping device” is the means by which an official stamp  
2 is affixed to, embossed on, or associated with, the certificate of notarial act in a record. With a  
3 traditional paper medium, for example, the stamping device may be a rubber device that uses ink  
4 to impose a stamp on the paper. It may also be a device that compresses or embosses the paper  
5 and applies an impression seal.  
6

7 In an electronic format, the stamping device is an electronic process or technology that  
8 associates unique information identifying the notarial officer with the certificate of notarial act  
9 that is affixed to, or associated with, an electronic record. The means of identifying the notarial  
10 officer may, for example, be a security card, a password, encryption device, or other system that  
11 allows access to an electronic process that associates the officer’s unique information with the  
12 certificate of notarial act on an electronic record. The electronic process may be located on, for  
13 example, a desktop or laptop computer, a portable electronic device such as a Blackberry or  
14 iPhone, or a secure website on the Internet. The means of identifying the notarial officer and the  
15 electronic process are collectively the stamping device. The result, although attached to, or  
16 associated with, an electronic certificate of notarial act, will be perceivable only by means of a  
17 device such as a computer monitor that is capable of presenting it in a perceivable format.  
18

19 (13) **“State.”** The word “state” includes any state of the United States, the District of  
20 Columbia, the United States Virgin Islands, and any territory or insular possession subject to the  
21 jurisdiction of the United States. This definition is the standard definition for that word as used  
22 in other acts adopted by the National Conference of Commissioners on Uniform State Laws.  
23

24 (14) **“Verification upon oath or affirmation.”** A “verification upon oath or  
25 affirmation” is a common form of notarial act. It is a declaration by an individual in which the  
26 individual states on oath or affirmation that the declaration is true. This declaration is sometimes  
27 referred to as an “affidavit” or “jurat.” See *Coast to Coast Demolition and Crushing, Inc. v. Real*  
28 *Equity Pursuit, LLC*, 226 P.3d 605, 608 (Nev. 2010).  
29

30 **SECTION 3. APPLICABILITY.** This [act] applies to notarial acts performed on or  
31 after [the effective date of this [act]].

32 **Comment**

33 This Act is not intended to be retroactive in effect. It applies to notarial acts performed  
34 on or after its effective date. The validity and effect of a notarial act performed prior to the  
35 effective date of this Act is determined by the law in effect at the time of its performance. (See  
36 also Section 27 regarding application of the Act to a notary public commission in effect on the  
37 effective date of the Act.)  
38

39 **SECTION 4. AUTHORITY TO PERFORM NOTARIAL ACTS.**

40 (a) A notarial officer may perform notarial acts authorized by this [act] or by law of this

1 state other than this [act].

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

5 **Comment**

6 Subsection (a) is the enabling provision of this Act and grants a notarial officer the  
7 authority to perform notarial acts. It authorizes a notarial officer to perform notarial acts that are  
8 authorized by this Act as well as those authorized by other law of this State.

9  
10 When taken in conjunction with the definition of a notarial act in Section 2(5),  
11 subsection (a) also authorizes a notarial officer to perform notarial acts regardless of the format  
12 of the record. Thus, a notarial officer may perform notarial acts on tangible records as well as  
13 electronic records. However, before a notary public may begin to perform notarial acts on  
14 electronic records, the notary must notify the commissioning officer or agency that the notary  
15 will be performing notarial acts with respect to electronic records (see Section 18(b)).

16  
17 Subsection (b) prohibits a notarial officer from performing a notarial act in a  
18 circumstance in which performance of that act might create a conflict of interest. It provides that  
19 a notarial officer may not perform a notarial act with respect to any record in which the officer or  
20 the officer's spouse (or civil partner) is a party. The prohibition is absolute and clear; there is no  
21 need to demonstrate a direct beneficial interest even though the interest may be obvious. For  
22 example, a notarial officer may not take an acknowledgement of a deed in which the officer or  
23 the officer's spouse is a grantor or grantee.

24  
25 In addition, subsection (b) provides that a notarial officer may not perform a notarial act  
26 with respect to any record in which the officer or the officer's spouse (or civil partner) has a  
27 direct beneficial interest. This prohibition depends on whether there is a direct beneficial interest  
28 (see, e.g. *Galloway v. Cinello*, 188 W. Va. 266, 423 S.E.2d 875 (1992)). For example, a deed by  
29 a third party (perhaps a grandparent) creating a trust in which a child of the notarial officer is a  
30 beneficiary might involve a direct beneficial interest to the notarial officer, especially if that trust  
31 relieves support obligations of the officer. In that case the officer would be prohibited from  
32 taking the acknowledgement of the deed of trust. While further findings on the facts of the  
33 situation would be necessary to determine whether there is a direct beneficial interest, a notarial  
34 officer should avoid performing a notarial act when doing so would raise the appearance of an  
35 impropriety.

36  
37 This prohibition does not, however, extend to situations in which the beneficial interest is  
38 indirect and not derived from the operation of the record or transaction itself. For example, if the  
39 interest received is merely the payment of a notarial fee, the benefit is indirect and not derived  
40 from the operation of transaction itself (see, e.g. *Hass v. Neth*, 265 Neb. 321, 657 N.W.2d 11  
41 (2003)). Similarly, a notary public who is hired to be available to perform notarial acts on

1 multiple transactions does not derive a beneficial interest from the operation of the records or  
2 transactions themselves. For example, a notary public may be an employee and the expenses of  
3 obtaining and maintaining the commission may be paid by the notary's employer. The obvious  
4 purpose of such an arrangement, at least in part, is that the notary public will perform notarial  
5 acts in appropriate situations as needed and requested by the employer. The fact that the notary  
6 public's salary is paid by the employer does not prevent the notary public from performing  
7 notarial acts when requested by the employer. Even though the notary receives a salary and the  
8 notary's salary may even depend on the fact that the notary performs notarial acts for the  
9 employer generally, the notary does not have a direct beneficial interest in the transactions or one  
10 that is derived from the operation of the records or transactions.

11  
12 If a notarial officer should perform a notarial act in violation of subsection (b), the  
13 notarial act is not void per se. It may, however, be voidable in an action brought by a party who  
14 is adversely affected by the officer's misdeed. See *Galloway v. Cinello*, 188 W. Va. 266, 423  
15 S.E.2d 875 (1992), where the court stated that the document was not void per se but was  
16 voidable; in making a determination the court should consider whether an improper benefit was  
17 obtained by the notary or any party to the instrument, as well as whether any harm flowed from  
18 the transaction. But see *Estate of McKusick*, 629 A.2d 41 (Me. 1993) in which the court  
19 questioned the validity of a will because the affidavit of a witness was made before a notary  
20 public who was the spouse of the witness.

## 22 SECTION 5. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS.

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

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

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

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

4 (e) A notarial officer who makes or notes a protest of a negotiable instrument shall  
5 determine the matters set forth in [Section 3-505(b) of the Uniform Commercial Code].

## 6 **Comment**

7 **“Acknowledgement”** – Subsection (a) provides that when taking an acknowledgement, a  
8 notarial officer certifies that: (1) the individual who is appearing before the officer and  
9 acknowledging the record has the identity claimed, and (2) the signature on the record is the  
10 signature of the individual appearing before the officer. The notarial officer must identify the  
11 individual either through personal knowledge of the individual or from satisfactory evidence of  
12 the identity of the individual (see Section 7).

13  
14 It is common practice for the individual to sign the record in the presence of the notarial  
15 officer. However, actually signing the record in the presence of the officer is not required as  
16 long as the individual acknowledges to the officer, when the individual appears before the  
17 officer, that the signature already on the record is that of the individual.

18  
19 **“Verification on oath or affirmation”** – Subsection (b) provides that when taking a  
20 verification on oath or affirmation, a notarial officer certifies that: (1) the individual who is  
21 appearing before the officer and making the verification has the identity claimed, and (2) that the  
22 signature on the record is the signature of the individual appearing before the officer. The  
23 notarial officer must identify the individual either through personal knowledge of the individual  
24 or from satisfactory evidence of the identity of the individual (see Section 7). A verification may  
25 be referred to as an affidavit or a jurat in some jurisdictions.

26  
27 **“Witnessing or attesting a signature”** – Subsection (c) provides that when witnessing or  
28 attesting a signature, a notarial officer certifies that: (1) the individual who is appearing before  
29 the officer and signing the record has the identity claimed, and (2) that the signature on the  
30 record is the signature of the individual appearing before the officer. The notarial officer must  
31 identify the individual either through personal knowledge of the individual or from satisfactory  
32 evidence of the identity of the individual (see Section 7).

33  
34 Witnessing or attesting a signature differs from taking an acknowledgement in that there  
35 is no declaration that the record is signed for the purposes stated in the record and differs from a  
36 verification on oath or affirmation in that the individual is not verifying a statement in the record  
37 as being true. It is merely a witnessing of the signature of an identified individual.

38  
39 **“Certifies or attests a copy”** – Subsection (d) provides that when certifying or attesting a  
40 copy of a record or item, a notarial officer certifies that: (1) the officer has compared the copy



1 with the original record or item, and (2) has determined that the copy is a full, true, and accurate  
2 transcription or reproduction of the original record or item.

3  
4 Certifying or attesting of a copy is usually done if it is necessary to produce a copy of a  
5 record when the original is in an archive or other collection of records and the archived record  
6 cannot be removed. In many cases, however, the custodian of the official archive or collection  
7 may also be empowered to issue an officially certified copy. When an officially certified copy  
8 by the custodian of the archive is available, it is official evidence of the state of the public  
9 archive or collection, and it may be better evidence of the original record than a copy certified by  
10 a notarial officer.

11  
12 **“Make or note a protest of a negotiable instrument”** – Subsection (e) provides that a  
13 notarial officer may make or note a protest of a negotiable instrument under UCC §3-505(b). A  
14 protest is an official certificate of dishonor of a negotiable instrument. UCC §3-505(b) confers  
15 the authority to make or take a protest on “a United States consul or vice consul, or a notary  
16 public or other person authorized to administer oaths by the law of the place where dishonor  
17 occurs.” In the United States a protest of a negotiable instrument may not be needed as evidence  
18 of dishonor (see UCC §3-505(a); see also UCC §3-503). A protest may be necessary, however,  
19 on international drafts governed by law of a foreign state (see UCC §3- 505, Official Comment).  
20 This subsection is designed to insure that there is no doubt as to the authority of a notary public  
21 of this state or under federal authority to make or note a protest of a negotiable instrument when  
22 appropriate under the Uniform Commercial Code.  
23

24 **SECTION 6. PERSONAL APPEARANCE REQUIRED.** If a notarial act relates to a  
25 statement made in or a signature executed on a record, the individual making the statement or  
26 executing the signature shall appear personally before the notarial officer.

### 27 **Comment**

28 This Section expressly requires that when an individual is making a statement or  
29 executing a record with regard to which a notarial act will be performed by a notarial officer, the  
30 individual must appear before the officer to make the statement or execute the record. Thus, an  
31 individual who is acknowledging a record or verifying a statement on oath or affirmation before  
32 a notarial officer, or an individual whose signature is being witnessed or attested by a notarial  
33 officer, must appear before the officer to perform the specified function. See *Vancura v. Katris*,  
34 907 N.E.2d 814, 391 Ill. App. 3d 350 (2009) in which an employer was found liable when an  
35 employee who was a notary public performed notarial acts without the individual signing the  
36 instrument personally appearing before the officer.

37  
38 To provide assurance to persons relying on the system of notarial acts authorized by this  
39 Act, notarial officers must take reasonable steps to assure the integrity of the system. It is by  
40 personal appearance before the notarial officer that the individual making a statement or  
41 executing a record may be properly identified by the notarial officer (see Section 7). It is also

1 by personal appearance before the notarial officer that the officer may be satisfied that (1) the  
2 individual is competent and has the capacity to execute the record, and (2) the individual’s  
3 signature is knowingly and voluntarily made (see Section 8(a)).  
4

5 Personal appearance does not include an “appearance” by video technology, even if the  
6 video is “live” or synchronous. Nor does it include an “appearance” by audio technology, such  
7 as a telephone. Those methods do not provide sufficient opportunity for the notarial officer to  
8 identify the individual fully and properly; nor do they allow the officer sufficient opportunity to  
9 evaluate whether the individual has the competency or capacity to execute the record or whether  
10 the record is knowingly and voluntarily made.  
11

12 **SECTION 7. IDENTIFICATION OF INDIVIDUAL.**

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

16 (b) A notarial officer has satisfactory evidence of the identity of an individual appearing  
17 before the officer if the officer can identify the individual:

18 (1) by means of:

19 (A) a passport, driver’s license, or government issued non-driver  
20 identification card that is currently valid or expired not more than [three years] before  
21 performance of the notarial act; or

22 (B) another form of government identification issued to an individual that  
23 is currently valid or expired not more than [three years] before performance of the notarial act,  
24 contains a photograph of the individual or the individual’s signature, and is satisfactory to the  
25 officer; or

26 (2) by a verification on oath or affirmation of a credible witness personally  
27 appearing before the officer and known to the officer or whom the officer can identify on the  
28 basis of a passport, driver’s license, or government issued non-driver identification card that is

1 currently valid or expired not more than [three years] before performance of the notarial act.

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

#### 4 **Comment**

5 Section 5, above, requires a notarial officer to determine, either from personal knowledge  
6 or satisfactory evidence, that the individual for whom the officer will perform a notarial act has  
7 the identity claimed. Section 7 specifies the means by which the notarial officer is to determine  
8 that identity. Subsection 7(a) defines when a notarial officer has personal knowledge of an  
9 individual's identity. Subsection 7(b) defines when a notarial officer has satisfactory evidence of  
10 an individual's identity.

11  
12 Subsection (a) states that the notarial officer has personal knowledge of the identity of an  
13 individual only if the officer personally knows the individual through prior dealings. The prior  
14 dealings may be business dealings or personal dealings. Business dealings might simply be the  
15 performance of prior notarial acts for the individual. They may also arise because the notarial  
16 officer engaged in prior business transactions with the individual. Personal dealings might exist  
17 because the notarial officer is a friend or colleague of the individual. They might exist if an  
18 individual works in the same office, school, or building; even if the dealings with the individual  
19 are not business in nature, they may be personal. Regardless of whether the prior dealings are  
20 business or personal, they must be sufficient to provide the notarial officer with information that  
21 is adequate to identify the individual without the need to view any identification credentials or  
22 require any other means of identification.

23  
24 Subsection (b) describes two methods by which a notarial officer may obtain satisfactory  
25 evidence of the identity of the individual even though the officer has no prior dealings with that  
26 individual. One method of identification is based on an identification credential issued to the  
27 individual (subsection (b)(1)). The other method of identification is based on an oath or  
28 affirmation of a credible witness as to the identity of the individual (subsection (b)(2)).

29  
30 Subsection (b)(1)(A) allows a notarial officer to identify an individual by means of a  
31 passport, driver's license, or government issued non-driver identification card. The passport may  
32 be issued by the United States or by a foreign state. A United States passport includes both a  
33 traditional passport book and the more recent passport card as well as any other form of passport  
34 the United States may issue. A driver's license may be issued by a state government, the federal  
35 government, or by a tribal, pueblo, or similar authority. A government issued non-driver  
36 identification card is a card issued by many states to a person as a substitute means of  
37 identification for a driver's license. It may be issued to an individual who is not qualified to  
38 obtain a driver's license or it may be issued in lieu of a driver's license to an individual who is  
39 qualified to obtain a driver's license.

40  
41 Although the notarial officer might usually expect the identification credential to be  
42 currently in force, this provision recognizes that even though an expired credential would not be

1 effective for its primary purpose (e.g. as a license permitting the individual to drive an  
2 automobile), it may used for a period of up to [three years] after its expiration as a means for  
3 identifying an individual. As long as it provides the necessary information for identifying the  
4 individual, its identification function is satisfied. This subsection does, however, put a specific  
5 outside limit of [three years] beyond the expiration of the credential for its use for identification  
6 purposes.

7  
8 Subsection (b)(1)(B) recognizes that some individuals may not have a passport, driver’s  
9 license, or even a government issued non-driver identification card that is either currently valid  
10 or not expired by more than [three years]. This subsection allows the notarial officer to base the  
11 officer’s identification of the individual on another form of government issued identification as  
12 long as that form of identification contains a photograph of the individual or the individual’s  
13 signature as a means by which the individual can be associated with the credential. This form of  
14 credential may include, for example, a military identification. However, this subsection also  
15 makes it clear that this alternative form of identification must be satisfactory to the notarial  
16 officer. If the officer is not satisfied with the identification that the credential provides, the  
17 officer may refuse to accept it as sufficient identification.

18  
19 Subsection (b)(2) recognizes that an individual may require the performance of a notarial  
20 act even though that individual is not known to a notarial officer and does not have one of the  
21 identification credentials listed in subsection (b)(1), or at least the individual does not have the  
22 identification credential currently available. This provision allows a notarial officer to identify  
23 an individual through an oath or affirmation of a credible witness personally appearing before the  
24 officer. The credible witness must either be (1) personally known to the officer, or (2) identified  
25 to the officer by means of the witness’ passport, driver’s license, or government issued non-  
26 driver identification as long as the credential has not expired more than [three years] before the  
27 performance of the notarial act. If the identity of an individual is verified by a properly  
28 identified credible witness, it is established by satisfactory evidence.

29  
30 The meaning of the term “personally known” in subsection (b)(2) is the same as in  
31 subsection (a); the meanings of the terms “passport,” “driver’s license,” and “government issued  
32 non-driver identification” in subsection (b)(2) are the same as in subsection (b)(1)(A).  
33 Subsection (b)(2) does not allow for the identification of the credible witness by means of an  
34 alternative form of identification as is provided in subsection (b)(1)(B) for the identification of  
35 the individual for whom the notarial act is performed. Subsection (b)(2) also does not allow the  
36 identity of a witness to be based on an oath or affirmation of yet another witness; such a process  
37 would lead to a spiraling “witness to the witness.”

38  
39 Subsection (c) recognizes that, even if a specified identification credential is presented, a  
40 notarial officer may, in some cases, be uncertain as to the identity of the individual. For  
41 example, the identification credential may be defaced or have defects that make legibility  
42 difficult, or there may be changes in the physical appearance of the individual that may not be  
43 reflected in the image on the identification credential. If the notarial officer is uncertain as to the  
44 identity of the individual (whether the individual for whom the notarial act is performed or  
45 credible witness for that individual), the officer may require the individual to provide additional  
46 information or identification in order to assure the officer as to the identity of the individual.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

**SECTION 8. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT.**

(a) A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

- (1) the individual executing the record is competent or has the capacity to execute the record; or
- (2) the individual’s signature is knowingly and voluntarily made.

(b) Except as prohibited by law other than this [act], a notarial officer may refuse to perform a notarial act.

**Comment**

Subsection (a) allows the notarial officer to refuse to perform a requested notarial act in either of two circumstances. First, if the notarial officer is not satisfied as to the competency or capacity of the individual executing the record, the officer may refuse to perform the notarial act. Second, if the notarial officer has concern about whether the individual’s signature was knowingly and voluntarily made, the officer may refuse to perform the notarial act. Satisfaction as to the competency or capacity of the individual making the record or with the fact that the signature is knowingly and voluntarily made are matters within the proper judgment of the notarial officer.

Subsection (b) gives the notarial officer the general authority to refuse to perform a notarial act for any other reason as long as the reason for the refusal is itself not a violation of other law of this state or the United States. Thus, for example, a notary public may be an employee whose employer has paid the expenses of obtaining and maintaining the notary public commission. Their understanding may be that the notary public will be available to perform notarial acts as needed by the employer but will not be available to perform them for members of the public. A notary public under that arrangement may refuse to perform notarial acts for members of the public.

The subsection does prohibit, however, the officer from refusing to perform the notarial if the refusal is a violation of other law. For example, the notarial officer may not refuse to perform the notarial act due to discrimination that is prohibited by state or federal law. Indeed, a refusal to perform the notarial act may also be punishable under the state or federal law.

**SECTION 9. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN.** If an individual

1 is physically unable to sign a record, the individual may direct an individual other than the  
2 notarial officer to sign the individual’s name on the record. The notarial officer shall insert  
3 “Signature affixed by (insert name of other individual) at the direction of (insert name of  
4 individual)” or words of similar import.

5 **Comment**

6 This Section recognizes that some individuals may not be personally able to sign a record  
7 because of a physical disability. If an individual is physically unable to sign the record, this  
8 Section allows an alternate process.

9  
10 This Section allows a disabled individual, who is executing a record, to direct an  
11 individual other than the notarial officer to sign the executing individual’s name to the record. It  
12 then requires the notarial officer to insert the quoted language in the record or to insert words of  
13 similar import. In effect, the executing individual is appointing another individual to act as the  
14 executing individual’s agent for the purpose of signing the record.  
15

16 **SECTION 10. NOTARIAL ACT IN THIS STATE.**

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

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

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

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

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

23 (b) The signature and title of an individual performing a notarial act in this state are prima  
24 facie evidence that the signature is genuine and that the individual holds the designated title.

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

27 **Legislative Note:** Subsection (a)(4) recognizes, collectively and in general terms, the authority of  
28 other individuals holding notarial powers authorized under other law of this state. However,  
29 instead of the nonspecific collective recognition stated in this subsection, it would be preferable

1 *to list in this subsection those individuals or offices and, if limited, the notarial powers granted*  
2 *to them. Such a listing would provide a practical reference for persons seeking to determine*  
3 *whether an individual or holder of an office is authorized to perform notarial acts in this state.*  
4 *This reference would be especially valuable if a notarial act performed in this state is to be*  
5 *recognized in another state under Section 11.*

6 **Comment**

7 Subsection (a) lists the individuals who are entitled to serve as notarial officers and  
8 perform notarial acts in this state. A notary public as well as a judge, clerk, or [deputy clerk] of  
9 any court of this state are specifically authorized to perform notarial acts.

10  
11 Two optional groups of authorized individuals are also stated. Under subsection (a)(3), a  
12 state may authorize a duly licensed attorney at law to serve as a notarial officer by virtue of that  
13 individual's status as a licensed attorney. The attorney's authority to perform notarial acts does  
14 not depend on the issuance of a notary public commission by the commissioning officer or  
15 agency. This subsection does not apply, however, if an attorney must obtain a commission as a  
16 notary public from the commissioning officer or agency in order to perform notarial acts.

17  
18 Subsection (a)(4) recognizes the authority of other individuals to perform notarial acts if  
19 the performance of notarial acts by that individual is otherwise authorized by state law. Usually,  
20 the individuals recognized in this subsection are incumbents in a particular office. For example,  
21 recorders or registrars of deeds, or commissioners of titles, may be authorized to perform notarial  
22 acts under separate legislation. See Legislative Note, above.

23  
24 Subsections (b) and (c) deal with the proof required to substantiate a notarial act. Proof  
25 of a notarial officer usually involves three steps:

26  
27 1. Proof that the signature in the certificate of notarial act is that of the individual  
28 identified as a notarial officer;

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

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

34  
35 Subsection (b) creates a prima facie presumption that a signature purported to be that of a  
36 notarial officer on the certificate of notarial act is, in fact, that of the named notarial officer. It  
37 also creates a prima facie presumption that the individual purporting to be a notarial officer in the  
38 certificate of notarial act does, in fact, hold the designated notarial office. These are the first two  
39 steps in the proof of a notarial act as listed above. However, being only prima facie evidence  
40 that the notarial officer's signature is valid and that the officer holds the designated office, they  
41 may be disproved in a legal proceeding upon adequate proof.

42  
43 Subsection (c) creates a conclusive presumption that notaries public, judges, clerks and  
44 [deputy clerks] of this state (and attorneys licensed to practice law in this state, if subsection  
45 (a)(3) is adopted) have the authority to perform notarial acts. Since this Act specifically

1 authorizes individuals holding those offices to perform notarial acts, it is not possible to disprove  
2 that an individual holding one of those offices may perform notarial acts. This is the third step in  
3 the proof of a notarial act as listed above. However, this per se recognition does not extend  
4 beyond a notary public, judge, clerk or [deputy clerk] (or attorneys licensed to practice law in  
5 this state, if subsection (a)(3) is adopted) of this state. Authority of other individuals to perform  
6 notarial acts must be proven by reference to other law of this state.  
7

## 8 **SECTION 11. NOTARIAL ACT IN ANOTHER STATE.**

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

12 (1) a notary public of that state;

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

14 (3) any other individual authorized by the law of that state to perform notarial  
15 acts.

16 (b) The signature and title of an individual performing a notarial act in another state are  
17 prima facie evidence that the signature is genuine and that the individual holds the designated  
18 title.

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

### 21 **Comment**

22 Subsection (a) lists the notarial officers of other states whose notarial acts, when  
23 performed in those states, will be recognized in this state. The officers listed in subsections  
24 (a)(1) and (2) are identical to the officers listed in Subsections 10(a)(1) and (2), above. It  
25 provides parity of recognition for notarial acts performed by those officers. Subsection (a)(3)  
26 recognizes notarial acts performed by other notarial officers of other states, when performed in  
27 those states, if they are authorized by law of the other state. It is parallel to the recognition of  
28 other notarial officers of this state as provided in subsection 10(a)(4) (and subsection 10(a)(3) if  
29 attorneys at law are authorized to perform notarial acts in the other state by reason of their  
30 offices and not be reason of being issued commissions as notaries public).  
31



1 Subsection (b) creates a prima facie presumption that a signature purported to be that of a  
2 notarial officer of the other state on the certificate of notarial act is, in fact, that of the named  
3 notarial officer. It also creates a prima facie presumption that the individual purporting to be a  
4 notarial officer of the other state in the certificate of notarial act does, in fact, hold the designated  
5 notarial office. These are the first two steps in the proof of a notarial act as listed in the  
6 Comment to Section 10. However, being only prima facie evidence that the notarial officer's  
7 signature is valid and that the officer holds the designated office, they may be disproved in a  
8 legal proceeding upon adequate proof.

9  
10 Subsection (c) creates a conclusive presumption that notaries public, judges, clerks and  
11 [deputy clerks] of the other state have the authority to perform notarial acts. Since this Act  
12 specifically recognizes the notarial acts of individuals holding those offices, it is not possible to  
13 disprove that an individual holding one of those offices may do so. This abolishes the need for a  
14 "clerk's certificate" or similar instrument to prove the authority of a notary public, judge, clerk  
15 or [deputy clerk] to perform a notarial act. This is the third step in the proof of a notarial act as  
16 listed in the Comment to Section 10. However, this per se recognition does not extend beyond a  
17 notary public, judge, clerk or [deputy clerk] of the other state. Authority of other individuals to  
18 perform notarial acts may be proven by reference to law of the other state. In addition, other  
19 forms of proof of authority to perform notarial acts, such as a "clerk's certificate," are  
20 acceptable.

## 21 22 **SECTION 12. NOTARIAL ACT UNDER FEDERAL AUTHORITY.**

23 (a) A notarial act performed under federal law has the same effect under the law of this  
24 state as if performed by a notarial officer of this state, if the act performed under federal law is  
25 performed by:

26 (1) a judge, clerk, or deputy clerk of a court;

27 (2) an individual in military service or performing duties under the authority of  
28 military service who is authorized to perform notarial acts under federal law;

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

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

32 (b) The signature and title of an individual acting under federal authority and performing  
33 a notarial act is prima facie evidence that the signature is genuine and that the individual holds

1 the designated title.

2 (c) The signature and title of an officer described in subsection (a)(1), (2), or (3)

3 conclusively establishes the authority of the officer to perform the notarial act.

4 **Comment**

5 Some notarial acts are performed by notarial officers acting under federal authority or  
6 holding office under federal authority. Section 12 recognizes the notarial acts performed by  
7 those officers when performed in accordance with federal law. Subsection (a)(1) recognizes the  
8 notarial acts performed by judges, clerks, and deputy clerks under federal law. It is the federal  
9 law parallel to the notarial officers recognized in subsections 10(a)(2) and 11(a)(2).

10

11 Subsection (a)(2) recognizes the authority of certain individuals to perform notarial acts  
12 while in the military service or under the authority of a military service. These provisions are  
13 currently codified in 10 U.S.C §1044a (2010). Subsection (b) of the federal codification  
14 provides the following individuals with the authority to perform notarial acts for the purposes  
15 stated in subsection (a) of the enactment:

16

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

18

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

21

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

23

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

26

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

30

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

35

36 Subsection (a)(3) recognizes the authority of an individual who is designated as a  
37 notarizing officer by the United States Department of State for performing notarial acts overseas.  
38 This has been a traditional function performed by a notarizing officer of the Department of State.  
39 In many parts of the world a notarial act performed by a notarizing officer of the Department of  
40 State may be the best means to perform a notarial act for records that must be recognized in the  
41 United States. See subsection 13(f) as to the effect of a consular authentication performed by an  
42 individual who is designated as a notarizing officer by the United States Department of State for  
performing notarial acts overseas .

43

44 Subsection (a)(4) provides recognition of the notarial acts performed by other notarial  
45 officers authorized under federal law who are not listed in the prior subsections. A variety of  
46 other federal officers may be authorized to perform notarial acts, such as wardens of federal

1 prisons (18 U.S.C. §4004 (2010)).

2  
3 Subsection (b) creates a prima facie presumption that the signature purported to be that of  
4 a notarial officer under federal law on the certificate of notarial act is, in fact, that of the named  
5 notarial officer. It also creates a prima facie presumption that the individual purporting to be a  
6 notarial officer in the certificate of notarial act does, in fact, hold the designated notarial office  
7 under federal law. These are the first two steps in the proof of a notarial act as listed in the  
8 Comment to Section 10. However, being only prima facie evidence that the notarial officer's  
9 signature is valid and that the officer holds the designated office, they may be disproved in a  
10 legal proceeding upon adequate proof.

11  
12 Subsection (c) creates a conclusive presumption that a federal judge, clerk or deputy  
13 clerk, an individual in the military service or acting under the authority of a military service, and  
14 an individual designated as a notarizing officer by the Department of State has the authority to  
15 perform notarial acts. Since this Act specifically recognizes the notarial acts of individuals  
16 holding those offices, it is not possible to disprove that an individual holding one of those offices  
17 may do so. This is the third step in the proof of a notarial act as listed in the Comment to Section  
18 10. However, this per se recognition does not extend beyond a federal judge, clerk or deputy  
19 clerk, an individual in the military service or acting under the authority of a military service, or  
20 an individual designated as a notarizing officer by the Department of State. Authority of other  
21 individuals to perform notarial acts under federal law may be proven by reference to federal law  
22 granting the authority.

23  
24 **SECTION 13. FOREIGN NOTARIAL ACT.**

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

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

31 (c) If the title of office and indication of authority to perform notarial acts in a foreign  
32 state appears in a digest of foreign law or in a list customarily used as a source for that  
33 information, the authority of an officer with that title to perform notarial acts is conclusively  
34 established.

1 (d) The signature and official stamp of an individual holding an office described in  
2 subsection (c) is prima facie evidence that the signature is genuine and the individual holds the  
3 designated title.

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

7 (f) A consular authentication issued by an individual designated by the United States  
8 Department of State as a notarizing officer for performing notarial acts overseas and attached to  
9 the record with respect to which the notarial act is performed conclusively establishes that the  
10 signature of the notarial officer is genuine and that the officer holds the indicated office.

#### 11 **Comment**

12 Subsection (a) clarifies that, for purposes of this Section, a “foreign state” means a  
13 foreign country and not a state in the United States federal system.

14  
15 Subsection (b) provides for the recognition of notarial acts performed by notarial officers  
16 acting under the authority and in the jurisdiction of a foreign state or its constituent units. It also  
17 recognizes the notarial acts performed by notarial officers acting under the authority of a  
18 multinational or international governmental organization. An example of a multinational or  
19 international governmental organization is the United Nations.

20  
21 Subsection (c) states that if the title of a notarial office and the authority of a person in  
22 that office to perform notarial acts appear in a digest of foreign laws or in a list customarily used  
23 as a source for that information, the authority of a notarial officer holding that office to perform  
24 the indicated notarial acts is conclusively established. This is the third step in the proof of a  
25 notarial act as listed in the Comment to Section 10.

26  
27 Subsections (d) states that the signature and official stamp of a notarial officer identified  
28 in subsection (c) provides prima facie evidence that (1) the officer’s signature is genuine, and  
29 (2) the officer holds an office with the designated title. These are the first two steps in the proof  
30 of a notarial act as listed in the Comment to Section 10.

31  
32 Being only a prima facie evidence that the notarial officer’s signature is valid and that the  
33 officer holds an office with the designated title, they may be disproved in a legal proceeding  
34 upon adequate proof. If the validity of a foreign notarial officer’s signature or the fact that the  
35 officer holds an office with the designated title is challenged, ultimate proof in a judicial



1 Subsection (f) provides an alternative means by which (1) the fact that the signature of  
2 the notarial officer on the certificate is genuine, and (2) the fact that the officer held an office  
3 with the designated title may be assured. Under it, an individual designated by the United States  
4 Department of State as a notarizing officer for performing notarial acts overseas may provide  
5 that assurance by means of a consular authentication. A consular authentication assures that  
6 (1) the signature of the foreign notarial officer is valid, and (2) the officer holds the indicated  
7 office. The consular authentication must be attached to the record with respect to which the  
8 notarial act is performed. When combined with the conclusive presumption established under  
9 subsection (c) as to the authority of a notarial officer with a designated title to perform a notarial  
10 act, all three steps in the proof of a notarial act, as listed in the Comment to Section 10, are met.  
11

12 **SECTION 14. CERTIFICATE OF NOTARIAL ACT.**

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

14 (1) be executed contemporaneously with the performance of the notarial act;

15 (2) be signed and dated by the notarial officer and, if the notarial officer is a  
16 notary public, be signed in the same manner as on file with the [commissioning officer or  
17 agency];

18 (3) identify the jurisdiction in which the notarial act is performed;

19 (4) contain the title of office of the notarial officer; and

20 (5) indicate the date of expiration, if any, of the notarial officer’s commission, if  
21 the officer is a notary public.

22 (b) If a notarial act is performed by a notary public regarding a tangible record, the notary  
23 public’s official stamp must be affixed to or embossed on the certificate. If a notarial act is  
24 performed by a notarial officer, other than a notary public, regarding a tangible record and the  
25 certificate contains the information specified in subsection (a)(2), (3), and (4), an official stamp  
26 may be affixed to or embossed on the certificate. If the notarial act is performed by a notarial  
27 officer regarding an electronic record and the certificate contains the information specified in  
28 subsection (a)(2), (3), and (4), an official stamp may be attached to or logically associated with

1 the certificate.

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

3 (a) and (b) and:

4 (1) is in a short form set forth in Section 19;

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

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

8 (4) sets forth the actions of the notarial officer and the actions are sufficient to  
9 meet the requirements of the notarial act as provided in Sections 5, 6, and 7 or law other than this  
10 [act].

11 (d) By executing a certificate of a notarial act, a notarial officer certifies that the officer  
12 has complied with the requirements and made the determinations specified in Sections 4, 5, and  
13 6.

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

16 (f) If a notarial act is performed regarding a tangible record, a certificate must be part of,  
17 or securely attached to, the record. If a notarial act is performed regarding an electronic record,  
18 the certificate must be affixed to, or logically associated with, the electronic record. If the  
19 [commissioning officer or agency] has established standards pursuant to Section 26 for attaching,  
20 affixing, or logically associating the certificate, the process must conform to the standards.

21 **Comment**

22 Subsection (a) provides that a notarial act must be evidenced by a certificate of notarial  
23 act. It sets out the requirements of that certificate:

24 Subsection (a)(1) – The certificate must be executed contemporaneously with the  
25

1 performance of a notarial act. The performance of a notarial act may take some period of time to  
2 accomplish, especially in large transactions with long closings and, for example, the fact that the  
3 certificate is not executed by the notarial officer immediately after the individual signs and  
4 acknowledges a deed should not necessarily demonstrate a lack of contemporaneous execution.  
5 However, a certificate that is not executed until some days after an individual signs and  
6 acknowledges a deed and the transaction is closed would not be a contemporaneous execution.  
7

8 Subsection (a)(2) – The certificate must be signed and dated by the notarial officer. If the  
9 notarial officer is a notary public, the signature must be signed in the same manner as the  
10 signature that is on file with the commissioning officer or agency. For example, if a signature on  
11 file with the commissioning officer or agency contains the notary public’s middle initial, the  
12 signature on the certificate must also contain the initial.  
13

14 Subsection (a)(3) – The certificate must identify the jurisdiction in which the notarial act  
15 is performed. This is normally done by identifying the state and county in which the notarial act  
16 is performed (see Section 19, Short Forms). However, the identification of other jurisdictions  
17 may be appropriate, such as when the notarial act is performed in a foreign state.  
18

19 Subsection (a)(4) – The certificate must identify the title of office of the notarial officer.  
20 For example, the office may be notary public or clerk of court. The notarial officer may also be  
21 an individual in a military service or performing duties under the authority of a military service,  
22 in which case the individual’s rank or position should be identified.  
23

24 Subsection (a)(5) – If the officer is a notary public, the certificate must contain the  
25 expiration date of the notary public’s commission, if any. That expiration date will be part of a  
26 notary public’s official stamp (see Section 15(1)) and the use of the official stamp will satisfy the  
27 requirements of this subsection. However, if a notarial officer is not required to and does not use  
28 an official stamp under subsection (b), the expiration date must be separately inserted.  
29

30 Subsection (b) states whether the certificate of notarial act must contain an official stamp  
31 of the notarial officer.  
32

33 If the notarial act is performed on a tangible medium and is performed by a notary public,  
34 subsection (b) requires that the notary public’s official stamp be affixed to or embossed on the  
35 certificate of notarial act.  
36

37 If the notarial act is performed with regard to a tangible medium and is performed by a  
38 notarial officer other than a notary public, subsection (b) states that an official stamp may be  
39 attached to or embossed on the certificate of notarial act. However, although permitted, this  
40 subsection does not require that the notarial officer attach or emboss the officer’s official stamp  
41 on the certificate. Whether a notarial officer other than a notary public is required to use an  
42 official stamp and what the contents of that stamp may be will depend on other law of this state  
43 and that law may not require the use of a stamp or it may specify other contents. Regardless of  
44 whether an official stamp is attached to or embossed on the certificate, the certificate must, at a  
45 minimum, contain the information specified in subsections (a)(2), (3) and (4).  
46

47 If the notarial act is performed with respect to an electronic record by a notarial officer,



1 whether a notary public or otherwise, subsection (b) states that the notarial officer’s official  
2 stamp may be attached to, or associated with, the electronic certificate of notarial act. However,  
3 although permitted, this subsection does not require that a notarial officer’s official stamp be  
4 attached to or logically associated with an electronic certificate. Regardless of whether an  
5 official stamp is attached to or logically associated with an electronic certificate, the electronic  
6 certificate must, at a minimum, contain the information specified in subsections (a)(2), (3) and  
7 (4). These are the same provisions found in URPERA §3(c), UETA §11, and ESign §101(g).  
8

9 Subsection (c) provides that if the certificate of notarial act meets the requirements of  
10 subsections (a) and (b), it may be in (1) the appropriate short form set out in Section 19, (2) any  
11 other form permitted by the law of this state, (3) any other form permitted by the law of the place  
12 where the notarial act is performed if other than this state, or (4) any form that sets forth the  
13 actions of the notarial officer if those actions meet the requirements of Sections 5, 6, and 7 or law  
14 other than this act, whether state or federal. Thus, acknowledgements and other notarial acts  
15 may be in the short forms provided in Section 19 or may in the more prolix and elaborate  
16 traditional forms, if otherwise permitted by law.  
17

18 Subsection (d) emphasizes the obligation of the notarial officer to comply with the  
19 requirements of, and to make the determinations required by, Sections 5, 6, and 7. By executing  
20 the certificate, the notarial officer certifies that the officer has done so.  
21

22 Subsection (e) provides that the notarial officer may not sign the certificate until the  
23 notarial act has been fully performed (compare N.C. Gen. Stat. §10B-35 (2009)).  
24

25 Subsection (f) seeks to assure the unified integrity of the record and the related certificate  
26 of notarial act. With respect to a notarial act evidenced on a tangible record, this subsection  
27 requires that the certificate must be a part of, or securely attached to, the record. If the certificate  
28 is not a part of the record itself, the means of attaching the certificate to the record are not  
29 specified. However, stapling is a common means.  
30

31 Affixing an electronic certificate to an electronic record or associating it with an  
32 electronic record requires sophisticated technology. There are multiple technologies by which  
33 the affixing or associating may be accomplished and those technologies will undoubtedly change  
34 over time as technologies improve and change. Accordingly, subsection (f) does not adopt any  
35 particular technology or limit the affixing or associating to technologies that are currently  
36 available. Rather, it provides that the certificate must be affixed to, or logically associated with,  
37 the electronic record in accordance with standards approved by the commissioning officer or  
38 agency. The standards are left to the determination of the commissioning officer or agency  
39 under Section 26 and will depend on the available technology and the degree of security  
40 provided by available technology.  
41

42 **SECTION 15. OFFICIAL STAMP.** The official stamp of a notary public must:

43 (1) include the notary public’s name, jurisdiction, commission expiration date, if any, and

1 other information required by the [commissioning officer or agency]; and

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

4 **Comment**

5 This Section sets forth two requirements for a notary public's official stamp, whether the  
6 stamp is a physical image attached to, or embossed on, a tangible certificate of notarial act or an  
7 electronic image attached to, or logically associated with, an electronic certificate of notarial act.  
8

9 Subsection (1) provides that the official stamp must state the notary public's name. Since  
10 Subsection 14(a)(2) requires that a notary public sign the notary's name as it appears on file with  
11 the commissioning officer or agency, the name of the notary on the official stamp should also  
12 conform with the name on file with the commissioning officer of agency. The official stamp  
13 must state the jurisdiction in which the notary public is commissioned. The official stamp must  
14 set forth the date on which the notary public's commission expires, if any. Finally, the official  
15 stamp must include any other information that is required by the commissioning officer or  
16 agency.  
17

18 Subsection (2) requires that the official stamp be capable of being copied together with  
19 the record to or with which it is attached or logically associated. Thus, for example, an official  
20 stamp that is affixed with a rubber stamping device and ink must provide a clear image in an ink  
21 that is capable of being copied. An official stamp that is affixed by embossing must do so in  
22 such a way that the information in the embossment is capable of being copied. An official stamp  
23 that is attached to, or logically associated with, an electronic record must be capable of being  
24 copied by the same technology by which the electronic record is copied.  
25

26 **SECTION 16. STAMPING DEVICE.**

27 (a) A notary public is responsible for the security of the notary public's stamping device  
28 and may not allow another individual to use the device. On resignation from, or the revocation  
29 or expiration of, the notary public's commission, or on the expiration of the date set forth in the  
30 stamping device, if any, the notary public shall disable the stamping device by destroying,  
31 defacing, damaging, or erasing it in a manner that renders it unusable. On the death or  
32 incompetency of a notary public, the notary public's personal representative or guardian or any  
33 person in possession of the stamping device shall render it unusable by destroying, defacing,



1 notarial acts are performed regarding tangible or electronic records. If the journal is maintained  
2 on a tangible medium, it must be a permanent, bound register with numbered pages. If the  
3 journal is maintained in an electronic format, it must be in a permanent, tamper-evident  
4 electronic format complying with the rules of the [commissioning officer or agency].

5 (c) Entries in a journal must be made contemporaneously with the performance of the  
6 notarial act and contain the following information:

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

8 (2) a description of the record, if any, and type of notarial act;

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

11 (4) if identity of the individual is based on personal knowledge, a statement to that  
12 effect;

13 (5) if identity of the individual is based on satisfactory evidence, a brief  
14 description of the method of identification and the identification credential presented, if any,  
15 including the date of issuance and expiration of any identification credential; and

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

17 (d) If a notary public's journal is lost or stolen, the notary public promptly shall notify the  
18 [commissioning officer or agency] on discovering that the journal is lost or stolen.

19 (e) On resignation from, or the revocation or suspension of, a notary public's  
20 commission, the notary public shall retain the notary public's journal in accordance with  
21 subsection (a) and inform the [commissioning officer or agency] where the journal is located.

22 (f) Instead of personally retaining a journal as provided in subsections (a) and (e), a  
23 current or former notary public may transmit the journal to the [commissioning officer or

1 agency] [the official archivist of this state] or a repository approved by the [commissioning  
2 officer or agency].

3 (g) On the death or incompetency of a current or former notary public, the notary public's  
4 personal representative or guardian or any person in possession of the journal shall transmit it to  
5 the [commissioning officer or agency] [the official archivist of this state] or a repository  
6 approved by the [commissioning officer or agency].]

7 **Legislative Note:** *Although the National Conference of Commissioners on Uniform State Laws*  
8 *believes that it is important for notaries public to maintain journals of the notarial acts that they*  
9 *perform and has incorporated this Section as part of this uniform law, the adoption of this*  
10 *Section is optional. It is bracketed to show that it is optional.*

11  
12 *There are two additional considerations that were not adopted as part of this uniform act*  
13 *that a state legislature might wish to consider with regard to the journal requirement.*  
14 *Subsection (b) requires that a notary public maintain only one journal at a time. Subsection (c)*  
15 *requires that a notary public make the entries into the journal at the time that a notarial act is*  
16 *performed. This may create a difficulty for a notary public who performs notarial acts with*  
17 *regard to electronic records and also performs notarial acts on tangible records. If a notary*  
18 *maintains an electronic journal (especially if the technology the notary uses automatically*  
19 *performs electronic journaling), the notary may have difficulty journaling a notarial act*  
20 *performed on a tangible record that is away from the computer containing the electronic*  
21 *journal. For example, if a notary's electronic journal were installed on a computer maintained*  
22 *in the notary's office and the notary were asked to perform a notarial act on a tangible record*  
23 *bedside in a hospital, the notary might not be able to enter the notarial act into the electronic*  
24 *journal at the time the notary performs the notarial act. Under this Section, as written, a notary*  
25 *would either have to maintain a journal on a tangible record or would have to install the*  
26 *journaling software on a portable computer. As another alternative, an adopting legislature*  
27 *may wish to allow a notary public to maintain a portable journal on a tangible record in*  
28 *addition to the regular electronic journal (see Or. Rev. Stat. §194.152(1) (2010)).*

29  
30 *Another alternative that a legislature might wish to consider is adding a provision to*  
31 *subsection (c) requiring an individual for whom a notary public performs a notarial act to sign*  
32 *the journal. This would assure that the entry in the journal is made at the time of the*  
33 *performance of a notarial act and that the individual has reviewed the entry made by the notary*  
34 *public (see Cal. Govt. Code §8206(a)(2)(C) (2010)).*

35 **Comment**

36 Creating and maintaining a journal of the notarial acts that a notary public performs  
37 provides a number of assurances that will protect the integrity of the notarial system. Among  
38 other benefits it helps to assure, or at least determine whether, a notarial act that is performed in  
39 the name of a particular notary public was indeed performed by that notary. As an ordinary

1 business record the journal may provide evidence that the act was performed by the notary or, by  
2 the absence of an entry in the journal, it may provide evidence that the act was not performed by  
3 the notary. In that regard, it provides protection to both the notary and to the public whom the  
4 notary serves. (Cf. *Vancura v. Kartis*, 907 N.E.2d 814, 391 Ill. App. 3d 350 (2008).)  
5

6 Subsection (a) requires a notary public, other than a notary public licensed to practice law  
7 in this state, to maintain a journal of all the notarial acts that the notary performs. A notary must  
8 maintain the journal for at least ten years after the performance of the last notarial act chronicled  
9 in that journal. For example, if a particular journal volume chronicles a notary public's notarial  
10 acts for the period from January 1, 2005 to December 31, 2009, the entire journal volume must  
11 be maintained until December 31, 2019 despite the fact that some entries may be nearly fifteen  
12 years old by that date.  
13

14 The exception provided in this subsection for attorneys licensed to practice law in this  
15 state applies regardless of whether the attorney is authorized to perform notarial acts by the fact  
16 that the attorney is licensed to practice law (see Subsection 10(a)(3)) or the attorney must obtain  
17 a commission as a notary public from the commissioning officer or agency.  
18

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

28 Subsection (c) provides that a notary public must make the entries in the journal  
29 contemporaneously with the performance of the notarial act. Because the performance of a  
30 notarial act may take some period of time to accomplish, especially if part of a large transaction  
31 with numerous notarial acts, the fact that the entry in the journal not made immediately after an  
32 individual signs and acknowledges a deed, for example, does not necessarily demonstrate a lack  
33 of contemporaneous entry. Nevertheless, the entry must be made reasonably promptly and by  
34 the end of the transaction.  
35

36 Subsection (c) also lists certain information that must be included in the journal entry for  
37 each notarial act performed. These include: (1) the date and time of the notarial act; (2) a brief  
38 description of the record, if any, and the type of notarial act performed (e.g., deed with  
39 acknowledgement); (3) the full name and address of each individual for whom the notarial act is  
40 performed; (4) if identity of the individual was based on personal knowledge (see Section 7(a)), a  
41 statement to that effect; (5) if identity of the individual was based on satisfactory evidence (see  
42 Section 7(b), a brief description of the method of identification (i.e. identification credential or  
43 credible witness), and, if an identification credential was used, the date the credential was issued  
44 and its expiration date; and (6) the fee, if any, charged by the notarial officer (see Cal. Govt.  
45 Code §8206 (2010)).  
46

1           Because of the importance of journals and their continued maintenance by notaries  
2 public, subsection (d) requires a notary public to notify the commissioning officer or agency,  
3 upon discovery, if the journal is lost or stolen. The reporting of this information to the  
4 commissioning officer or agency not only protects the members of the public whom the notary  
5 has served but also the notary him or herself.  
6

7           Similarly, the retention and maintenance of a notary's journals is important after the  
8 termination of the notary's commission. Thus, subsection (e) provides that upon the resignation  
9 of a notary public from the notary's commission, or the revocation or suspension of the notary's  
10 commission, the notary must continue to retain the notary's journals for the ten year period  
11 provided in subsection (a) and provide the commissioning officer or agency with information  
12 about where the journals are located.  
13

14           Subsection (f) provides that a current or former notary public may, instead of retaining  
15 journals for the ten year period provided in subsection (a), elect to transmit them to the  
16 [commissioning officer or agency] or [official state archivist] or a repository approved by the  
17 commissioning officer or agency.  
18

19           Subsection (g) directs that upon the death of a notary public, the notary's personal  
20 representative, guardian, or any person in possession of the journals must transmit the journals to  
21 the [commissioning officer or agency] or [official state archivist] or a repository approved by the  
22 commissioning officer or agency.  
23

24           **SECTION 18. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL**  
25 **ACTS ON ELECTRONIC RECORD; SELECTION OF TECHNOLOGY.**

26           (a) A notary public may select one or more tamper evident technologies to perform  
27 notarial acts with respect to electronic records. A person may not require a notary public to  
28 perform a notarial act with respect to an electronic record with a technology that the notary  
29 public has not selected.

30           (b) Before performing a notarial act with respect to an electronic record, a notary public  
31 shall notify the [commissioning officer or agency] that the notary public will be performing  
32 notarial acts with respect to electronic records and identify the technology the notary public  
33 intends to use. If the [commissioning officer or agency] has established standards for approval  
34 of technology pursuant to Section 26, the technology must conform to the standards. If the

1 technology conforms to the standards, the [commissioning officer or agency] shall approve the  
2 use of the technology.

3 **Comment**

4 Subsection (a) provides that a notary public may elect to perform notarial acts with  
5 respect to electronic records and, for the purpose of performing those notarial acts, may select  
6 one or more technologies. This allows a notary to use more than one technology in order to  
7 accommodate clients using different technologies to perform their electronic transactions.  
8 However, a client of a notary public may not insist that a notary perform a notarial act with  
9 respect to an electronic record with a technology that the notary does not wish to use.

10  
11 Any technology that the notary selects must be a tamper evident technology. A tamper  
12 evident technology is one that is designed to allow a person inspecting an electronic record to  
13 determine whether there has been any tampering with the integrity of a notarial act performed on,  
14 or with regard to, the record or with the attachment or association of the notarial act with that  
15 electronic record.

16  
17 Subsection (b) requires that, before first performing notarial acts with respect to  
18 electronic records, a notary public must notify the commissioning officer or agency that the  
19 notary will be performing notarial acts with respect to electronic records. When a notary  
20 provides a notification to the commissioning officer or agency, the notary must also identify the  
21 technology or technologies that the notary intends to use to perform the notarial acts.

22  
23 If, at the time that a notary public provides the notification to the commissioning officer  
24 or agency, the commissioning officer or agency has established standards for the approval of  
25 technology to be used to perform notarial acts with respect to electronic records, any technology  
26 selected by the notary must conform to those standards. If the technology conforms to those  
27 standards, the commissioning officer or agency must approve it for use by the notary.  
28

29 **SECTION 19. SHORT FORM.** The following short form certificates of notarial acts  
30 are sufficient for the purposes indicated, if completed with the information required by Section  
31 14(a) and (b):

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

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

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

35 This record was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_  
36 Date Name(s) of individual(s)



1 \_\_\_\_\_  
2 Signature of notarial officer

3 Stamp

4 [\_\_\_\_\_]   
5 Title of office

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

7

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

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

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

11 This record was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_  
12 Date Name(s) of individual(s)

13 as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was  
14 executed.)

15 \_\_\_\_\_  
16 Signature of notarial officer

17 Stamp

18 [\_\_\_\_\_]   
19 Title of office

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

21

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

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

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

25 Signed and sworn to (or affirmed) before me on \_\_\_\_\_ by \_\_\_\_\_  
26 Date Name(s) of individual(s)  
27 making statement

1 \_\_\_\_\_  
2 Signature of notarial officer

3 Stamp

4 [\_\_\_\_\_]   
5 Title of office

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

7

8 (4) For witnessing or attesting a signature:

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

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

11 Signed [or attested] before me on \_\_\_\_\_ by \_\_\_\_\_  
12 Date Name(s) of individual(s)

13 \_\_\_\_\_  
14 Signature of notarial officer

15 Stamp

16 [\_\_\_\_\_]   
17 Title of office

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

19

20 (5) For certifying a copy of a record:

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

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

23 I certify that this is a true and correct copy of a record in the possession  
24 of \_\_\_\_\_.

25 Dated \_\_\_\_\_

1 \_\_\_\_\_  
2 Signature of notarial officer

3 Stamp

4 [ \_\_\_\_\_ ]  
5 Title of office

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

7 **Comment**

8 This Section provides statutory short form certificates of various notarial acts. These  
9 forms are sufficient to certify a notarial act in this state. See Section 14(c)(1). Other forms may  
10 also qualify as stated in Section 14(c)(2), (3), and (4).

11  
12 These certificates may be used for notarial acts performed on tangible records as well as  
13 those performed with regard to electronic records. They are available for notarial acts performed  
14 by notaries public as well as notarial officers who are not notaries public. Under Section 14(b),  
15 an official stamp is required on the certificate if the notarial act is performed on a tangible record  
16 by a notary public. Under Section 14(b), if the notarial act is performed on a tangible record by a  
17 notarial officer other than a notary public or is performed by any notarial officer on an electronic  
18 record, an official stamp is optional, but the information or acts specified in Section 14(a)(2), (3)  
19 and (4) must be supplied. The short forms provided in this Section call for the insertion of that  
20 information or the performance of those acts.

21  
22 The calls in each of the forms for state and county information refer to the state and  
23 county where the notarial act is performed.

24

25 **SECTION 20. NOTARY PUBLIC COMMISSION; QUALIFICATIONS.**

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

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

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

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

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

2 (4) be able to read and write English; [and]

3 (5) not be disqualified to receive a commission under Section 22[; and

4 (6) have passed the examination required under Section 21(a)].

5 (c) Before issuance of a commission as a notary public, an applicant for the commission  
6 shall execute an oath of office and submit it to the [commissioning officer or agency].

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

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

23 (f) A commission to act as a notary public authorizes the notary public to perform notarial

1 acts. The commission does not provide a notary public any immunities or benefits conferred by  
2 law of this state on public officials or employees.

3 **Legislative Note:** *Although the National Conference of Commissioners on Uniform State Laws*  
4 *believes that it is important for a notary public to post an assurance in the form of surety bond or*  
5 *its functional equivalent and has incorporated Section 20(d) as part of this uniform law, the*  
6 *adoption of that subsection is optional. It is bracketed to show that it is optional.*

7  
8 *The qualifications that an individual must meet for the issuance of a commission as a*  
9 *notary public under various state statutes are quite varied. The requirements listed in subsection*  
10 *(b) are common although not uniform among the states. They should be considered to be the*  
11 *minimal requirements for an individual to be entitled to the issuance of a commission as a notary*  
12 *public. Adopting states are free to add other provisions, if the legislature so chooses.*

### 13 **Comment**

14 Subsection (a) provides that an individual qualified under subsection (b) may apply to the  
15 commissioning officer or agency to obtain a commission as a notary public. The subsection  
16 applies to an individual seeking an initial or renewal commission. It leaves the form of  
17 application, the process for applying, and the timing of the process, as well as other  
18 administrative matters to be determined by the commissioning officer or agency pursuant to  
19 authority provided in Section 26. Although the statutes of some states specify the process and  
20 timing for issuance of a commission in varying detail (compare Ariz. Rev. Stat. §41-312 (2010);  
21 Cal. Govt. Code §8206 (2010); Del. Code Ann. tit. 29, 4301 (2010)), this Act leaves the  
22 determination and implementation of those provisions to rules adopted by the commissioning  
23 officer or agency.

24  
25 Subsection (b) sets out qualifications that an applicant must meet in order to be entitled to  
26 the issuance of a commission as a notary public. As stated in the Legislative Note above, the  
27 qualifications under various state statutes are quite varied. The requirements listed in this  
28 subsection are common although not uniform among the states (compare Ariz. Rev. Stat.  
29 §41-312(E) (2010)). They are the important provisions and should be considered to be the  
30 minimal requirements for an individual to be entitled to the issuance of a commission as a notary  
31 public.

32  
33 Subsection (c) provides that before an applicant will be issued a commission as a notary  
34 public the applicant must execute and submit an oath of office to the commissioning officer or  
35 agency (compare 5 Me. Rev. Stat. Ann. §82(3-A) (2010)).

36  
37 Subsection (d), an optional provision (see Legislative Note, above), provides,  
38 alternatively, that a notary public must submit an assurance in the form of a surety bond or its  
39 functional equivalent to the commissioning officer or agency not more than 30 days after the  
40 notary has been issued a commission, or an applicant must submit the assurance to the  
41 commissioning officer or agency before the issuance of the commission (compare Fla. Stat  
42 §117.01(7)(a) (2010); Tex. Govt. Code §406.010(a) (2010)). An example of an assurance that is  
43 the functional equivalent of a surety bond would be an irrevocable letter of credit issued by a

1 bank if that letter of credit meets the requirements established by the commissioning officer or  
2 agency under Section 26(a)(6).

3  
4 The amount of the assurance is not specified and is left to the state legislature to  
5 determine. It is recognized that an assurance that will cover the full amount of many transactions  
6 for which notaries perform notarial acts is very large and may be prohibitively expensive.  
7 Nevertheless, limited but reasonable assurance amounts will cover the amount of some ordinary  
8 transactions and will provide some, although limited, recovery in others. Requiring a surety  
9 bond or its functional equivalent will also provide a ceremonial recognition to a notary that the  
10 notary's function is not meager or trivial.

11  
12 An assurance must be issued by a surety or other entity that is licensed in this state. It  
13 must be in the form prescribed by the commissioning officer or agency under Section 26(a)(6).  
14 It must cover acts performed by a notary during the term of the notary's commission. A surety  
15 or issuing entity will be liable under an assurance if the notary violates the law of this state with  
16 regard to notaries public during the term of the assurance. A surety or issuing entity must give  
17 the commissioning officer or agency 30 days notice prior to cancelling a bond or other form of  
18 assurance and must notify the commissioning officer or agency within 30 days after making a  
19 payment to a claimant under a bond or other form of assurance. A notary public may perform  
20 notarial acts only while an assurance is on file with the commissioning officer or agency.

21  
22 Subsection (e) provides that upon compliance with the requirements of subsection (a)  
23 through (c), or (a) through (d) if subsection (d) is adopted, the commissioning officer or agency  
24 will issue a commission as a notary public. The term of the commission is to be determined by  
25 the state legislature; the legislature may also determine that the commission is to be without  
26 term.

27  
28 Subsection (f) recognizes that a notary public is an individual licensed by the  
29 commissioning officer or agency and not a public official or employee of the state. Accordingly,  
30 it provides that a notary does not have any of the immunities or benefits conferred by the law of  
31 this state on public officials or employees.

32  
33 **[SECTION 21. EXAMINATION OF NOTARY PUBLIC.]**

34 (a) An applicant for a commission who does not hold a commission as a notary public in  
35 this state must pass an examination administered by the [commissioning officer or agency] or an  
36 entity approved by the [commissioning officer or agency]. The examination must be based on  
37 the course of study described in subsection (b).

38 (b) The [commissioning officer or agency] or an entity approved by the [commissioning  
39 officer or agency] shall regularly offer a course of study to applicants who do not hold

1 commissions as notaries public in this state. The course must cover the laws, rules, procedures,  
2 and ethics relevant to notarial acts.]

3 *Legislative Note: Although the National Conference of Commissioners on Uniform State Laws*  
4 *believes that requiring an applicant for a commission as notary public to pass an examination*  
5 *based on a course of study regarding the law, rules, procedures, and ethics relevant to notarial*  
6 *acts is important and has incorporated this Section as part of this uniform law, the adoption of*  
7 *this Section is optional. It is bracketed to show that it is optional.*

8 **Comment**

9 An increasingly common requirement for the issuance of a commission as notary public  
10 is the applicant’s passage of an examination based on a course of study relevant to notaries  
11 public (compare Neb. Rev. Stat. §64-1-1 (2010)). Professional education enhances the  
12 effectiveness and integrity of the notarial system. The course of study envisioned in this Section  
13 is designed to educate a prospective notary public about the laws, rules, procedures, and ethics  
14 relevant to notarial acts.  
15

16 Subsection (a) provides that an applicant for a commission as a notary public who does  
17 not currently hold a commission as a notary public must pass an examination administered by the  
18 commissioning officer or agency or an entity approved by the commissioning officer or agency.  
19 An applicant who does not currently hold a commission as notary public includes an applicant  
20 who never held a commission as a notary public as well as an applicant who previously held a  
21 commission as a notary public but whose commission has since expired. The examination is to  
22 be based on the course of instruction provided in subsection (b). The subsection leaves  
23 administration of the examination to the commissioning officer or agency through rules adopted  
24 pursuant to Section 26(a)(7)(A).  
25

26 Subsection (b) provides that the commissioning officer or agency or an entity approved  
27 by the commissioning officer or agency must regularly offer a course of study to applicants  
28 (compare Cal. Govt. Code §8201(a)(3) (2010)). To achieve the objective of enhancing the  
29 effectiveness and integrity of the notarial system, the education is designed to educate a  
30 prospective notary public in the laws, rules, procedures, and ethics relevant to notarial acts. The  
31 subsection leaves administration of the course to the commissioning officer or agency through  
32 rules adopted pursuant to Section Section 26(a)(7)(B).  
33

34 **SECTION 22. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE, OR**  
35 **SUSPEND COMMISSION OF NOTARY PUBLIC.**

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

38 (1) failure to comply with this [act];

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

4                   (3) a conviction, guilty plea, or plea of no contest of the notary public or applicant  
5 to any felony or to a crime involving fraud, dishonesty, or deceit;

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

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

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

14                   (7) violation by the notary public of a rule of the [commissioning officer or  
15 agency] regarding a notary public[; or] [.]

16                   [(8) failure of the notary public to maintain an assurance as provided in Section  
17 19(d)[; or] [.]

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

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

22                   (c) The authority of the [commissioning officer or agency] to deny, suspend, refuse to  
23 renew, or revoke a notary public's commission does not prevent the [commissioning officer or



1 agency] or an aggrieved person from seeking and obtaining other remedies provided by law,  
2 whether criminal or civil.

3 **Legislative Note:** *Subsection (a)(9) is an optional provision and allows the legislature either to*  
4 *insert other specific grounds for the denial, revocation, or suspension of a commission as a*  
5 *notary public or to insert references to specific statutes elsewhere in the law of this state*  
6 *providing those grounds.*

7 **Comment**

8 Subsection (a) lists the grounds upon which the commissioning officer or agency may  
9 deny, or refuse to grant or renew, a notary public commission to an applicant or upon which the  
10 commissioning officer or agency may revoke or suspend a commission. The grounds listed for  
11 denial or revocation are similar to those provided in many states (compare Ariz. Rev. Stat.  
12 §41-330(A) (2010); N.C. Gen. Stat. §10B-5(d) (2010)).  
13

14 Subsections (a)(1) to (6) and (8) enumerate specific grounds upon which the  
15 commissioning officer or agency may deny, refuse to grant or renew, or suspend or revoke a  
16 commission. Subsection (a)(7) allows the commissioning officer or agency to refuse to renew,  
17 or to suspend or revoke, a commission because the notary public has violated rules adopted by  
18 the commissioning officer or agency regarding notaries public.  
19

20 Although the grounds for disciplinary action stated in this subsection provide the  
21 commissioning officer or agency with substantial authority to invoke discipline to protect the  
22 public, subsection (9) allows legislatures to add other specific grounds. See Legislative Note,  
23 above.  
24

25 Because notaries public deal with financial, personal, and confidential matters for their  
26 clients, trustworthiness and honesty are essential qualities of a commission holder. Many of the  
27 disciplinary grounds provided in this subsection deal with breaches of those qualities (compare  
28 Cal. Govt. Code §8201.1(a) (2010)). Subsections (a)(2), (3) and (4) specify several situations in  
29 which lack of those qualities, i.e. fraud, dishonesty and deceitfulness, may arise and upon which  
30 a commission may be denied, revoked or suspended. Subsection (a)(6) allows disciplinary  
31 action if dishonesty or deceitfulness is displayed by the use of false or misleading advertising. If  
32 optional Section 20(d) is adopted, subsection (a)(8) allows disciplinary action if a notary public  
33 refuses to obtain, has been unable to obtain, or has been denied, an assurance in the form of a  
34 surety bond or its functional equivalent as required by Section 20(d).  
35

36 Subsection (b) states that an applicant who has been denied a commission as a notary  
37 public or a notary public whose commission has been suspended or revoked is entitled to a  
38 timely notice and a hearing. Such a notice and hearing are likely required by the state's  
39 administrative procedure act but are restated here for clarity and assurance.  
40

41 Subsection (c) provides that just because a commissioning officer or agency has the  
42 authority to deny, refuse to renew, or suspend or revoke a commission does not prevent  
43 additional relief provided by law. Either the commissioning officer or agency or a person

1 aggrieved by the action of a notary public may seek appropriate relief, whether the relief is civil  
2 or criminal.  
3

4 **SECTION 23. DATABASE OF NOTARIES PUBLIC.** The [commissioning officer  
5 or agency] shall maintain an electronic database of notaries public:

6 (1) through which a person may verify the authority of a notary public to perform notarial  
7 acts; and

8 (2) which indicates whether a notary public has notified the [commissioning officer or  
9 agency] that the notary public will be performing notarial acts on electronic records.

10 **Comment**

11  
12 This Section requires the commissioning officer or agency to maintain an electronic  
13 database of notaries public. The objectives sought by this provision are twofold. First, it is a  
14 disclosure of information and a means by which a member of the public may verify whether an  
15 individual who claims to be a notary public in fact has a commission as a notary public. By also  
16 requiring that the database indicate whether a notary public has informed the commissioning  
17 officer or agency that the notary will be performing notarial acts with regard to electronic  
18 records, it provides information to members of the public who are seeking to find a notary public  
19 capable of performing notarial acts with regard to electronic records.  
20

21 **SECTION 24. PROHIBITED ACTS.**

22 (a) A commission as a notary public does not authorize an individual to:

23 (1) assist persons in drafting legal records, give legal advice, or otherwise practice  
24 law;

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

26 (3) represent a person in a judicial or administrative proceeding relating to  
27 immigration to the United States, United States citizenship, or related matters; or

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

1 (b) A notary public may not engage in false or deceptive advertising.

2 (c) A notary public may not use of the term “notario” or “notario publico”.

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

17 (e) Except as otherwise allowed by law, a notary public may not withhold access to or  
18 possession of any original record provided by a person that seeks performance of a notarial act  
19 by the notary public.

20 **Comment**

21  
22 In general, subsection (a) provides that a notary public does not have the authority to  
23 render legal services merely by the fact that the individual has a commission as a notary public.  
24 It does recognize, however, that a notary public who is also an attorney at law licensed to  
25 practice law in this state may, by the fact that he or she is a licensed attorney, provide those legal  
26 services.  
27

1 Subsection (a) lists four specific activities prohibited to notaries public:

2  
3 (1) A notary public may not assist persons by drafting legal records or giving legal  
4 advice; more generally a notary public may not practice law (compare Colo. Rev. Stat  
5 §12-55-110.3(3)(b)(I) (2010)).

6  
7 (2) A notary public may not act as an immigration consultant or an expert on immigration  
8 matters (compare Colo. Rev. Stat §12-55-110.3(3)(a) (2010)).

9  
10 (3) A notary public may not represent a person in any legal or administrative proceedings  
11 relating to immigration, United States citizenship or related matters (compare Colo. Rev. Stat  
12 §12-55-110.3(3)(b)(III) (2010)). Subsections (a)(2) and (3) specifically reference immigration  
13 matters because many immigrants, especially those from civil law countries, are familiar with the  
14 civil law office of “notario publico” or “notario.” A holder of that civil law office may have the  
15 authority to provide immigration advice or assistance in the foreign country. Because of the  
16 similarity in the names of the offices, an immigrant from a civil law country may believe that a  
17 notary public is authorized to provide the same assistance in this country. Confusion on the part  
18 of the client, however, should not be a reason for a notary public to attempt to provide that  
19 assistance. This subsection clearly prohibits a notary public from providing the assistance. See  
20 also subsection (c) for further requirements in this regard.

21  
22 (4) Since a notary public may not perform the above listed activities, a notary public may  
23 not receive or collect compensation for performing or attempting to perform those activities  
24 (compare Colo. Rev. Stat §12-55-110.3(3)(b)(II)-(III) (2010)).

25  
26 Subsections (b), (c), and (d) attempt to reduce or eliminate misleading or deceptive  
27 advertising by notaries public.

28  
29 Subsection (b) directly and simply prohibits a notary public from engaging in false or  
30 misleading advertising. This prohibition includes the false or misleading advertising more  
31 specifically described in this Section as well as other forms of false or misleading advertising  
32 prohibited by other law.

33  
34 Subsection (c) prohibits a notary public from using the term “notario publico” or  
35 “notario” in the notary’s advertising, title, or informational material. As described above, many  
36 immigrants from civil law countries are familiar with the civil law office of “notario publico” or  
37 “notario,” a holder of which may have the authority to draft legal records or provide legal advice,  
38 including advice on immigration. To prevent notaries public from taking advantage of the  
39 similarity of title by using the term “notario publico” or “notario,” this subsection prohibits any  
40 advertising using either of those titles (compare Colo. Rev. Stat §12-55-110.3(3)(b)(V) (2010)).

41  
42 Subsection (d) prohibits a notary public, who is not also an attorney licensed to practice  
43 law in this state, from advertising that the notary may draft legal records, provide legal advice, or  
44 otherwise practice law. In addition to that prohibition, it makes two specific requirements in any  
45 advertising or representation that the notary uses:

1 (1) Any advertising or representation by the notary must include a specific disclaimer as  
2 to the notary’s authority to practice law, to provide legal services, or to collect a fee for those  
3 activities. The disclaimer must be provided regardless of whether the advertising is written or  
4 oral, or a combination of the two. Included among the situations when that disclaimer must be  
5 provided are advertising or representations made on broadcast media (e.g. television and radio),  
6 print media (e.g. newspapers, newsletters, and magazines), and the Internet (e.g. web pages and  
7 banner ads). If the advertising or representation is not made on broadcast media, print media, or  
8 the Internet, and if the inclusion of the disclaimer is not possible due to the small size of the  
9 advertisement or representation (e.g. business card), the disclaimer must be prominently  
10 displayed or provided at the place of performance of the notarial act, including any off-premises  
11 locale at which the notary performs a notarial act.

12  
13 (2) The disclaimer must be provided in each language used in the advertisement or  
14 representation. To make sure that any advertising aimed at individuals who are not fluent in  
15 English or for whom English is a second language, this subsection requires that the disclaimer  
16 must be in each language used in the advertisement or representation. For example, as noted  
17 above, immigrants from civil law countries may have experience with the office of “notario  
18 publico” or “notario” and may erroneously believe that a notary public has powers similar to  
19 those of a “notario publico” or “notario” (compare Ariz. Rev. Stat. §41-329(A) (2010) ).  
20

21 **SECTION 25. VALIDITY OF NOTARIAL ACTS.** Except as otherwise provided in  
22 this [act], the failure of a notarial officer to perform the duties or meet the requirements specified  
23 in this [act] does not invalidate a notarial act performed by the notarial officer. The validity of a  
24 notarial act under this [act] does not prevent an aggrieved party from seeking to invalidate the  
25 record or transaction that is the subject the notarial act based on other law of this state other than  
26 this act or the United States.

27 **Comment**

28 This Section makes clear that, except as otherwise provided in this Act, the failure of a  
29 notarial officer to perform the duties or to meet the requirements of this act does not invalidate  
30 the notarial act performed by the notarial officer. For example, a notarial act performed by a  
31 notary public whose assurance or surety bond may have expired or been cancelled is not  
32 invalidated. However, this provision only applies to a person who is a notarial officer. The  
33 Section does not legitimate a notarial act attempted to be performed by a person who does not  
34 have the authority to perform the act. For example, an individual who does not have a valid  
35 commission as a notary public cannot perform notarial acts and any attempted notarial act would  
36 be invalid.

37  
38 Despite the fact that a notarial act may be valid, the underlying record or transaction may

1 be invalid and may be set aside in appropriate legal proceedings. For example, the underlying  
2 record may be the product of fraud, whether performed by the notarial officer or by a third  
3 person. In accordance with other law of this state, an action may be brought to invalidate or set  
4 aside the record and obtain restitution and other relief.  
5

6 **SECTION 26. RULES.**

7 (a) The [commissioning officer or agency] may adopt rules to implement this [act].

8 Rules adopted regarding the performance of notarial acts with respect to electronic records must  
9 not require, or accord greater legal status or effect to, the implementation or application of a  
10 specific technology or technical specification. The rules may:

11 (1) prescribe the manner of performing notarial acts regarding tangible and  
12 electronic records;

13 (2) include provisions to ensure that any change to or tampering with a record  
14 bearing a certificate of a notarial act is self-evident;

15 (3) include provisions to ensure integrity in the creation, transmittal, storage, or  
16 authentication of electronic records or signatures;

17 (4) prescribe the process of granting or revoking a notary public commission and  
18 assuring the trustworthiness of an individual holding a commission as notary public; [and]

19 (5) include provisions to prevent fraud or mistake in the performance of notarial  
20 acts; [and]

21 [(6) establish the process for approving and accepting surety bonds and other  
22 forms of assurance under Section 20(d)][; and]

23 [(7) provide for the administration of:

24 (A) the examination of individuals applying for a commission as a notary  
25 public under Section 21(a); and

1 (B) the course of study to be offered to new applicants for a commission  
2 as a notary public under Section 21(b)].

3 (b) In adopting, amending, or repealing rules about notarial acts with respect to electronic  
4 records, the [commissioning officer or agency] shall consider, so far as is consistent with this  
5 [act]:

6 (1) the most recent standards promulgated by national bodies, such as the  
7 National Association of Secretaries of State;

8 (2) standards, practices, and customs of other jurisdictions that substantially enact  
9 this [act]; and

10 (3) the views of interested persons and governmental officials and entities.

### 11 **Comment**

12 Subsection (a) is comprehensive authority for the commissioning officer or agency to  
13 adopt rules to implement this Act. Any rules adopted with respect to the performance of notarial  
14 acts on electronic records must be technology neutral, that is they may not require or favor one  
15 technology or technical specification over another. This is the same requirement provided in  
16 ESign, 15 U.S.C. Ch. 96, §102(a)(2)(ii) (2010) and the language used in this regard is  
17 substantially the same as that used in ESign.

18  
19 Subsection (a)(1) authorizes rules that prescribe the manner of performing notarial acts,  
20 whether regarding tangible or electronic records. The provisions of this Act itself were not  
21 intended to specify all the possible requirements or procedures that now or in the future may be  
22 appropriate for performing notarial acts. Thus, it allows the commissioning officer or agency to  
23 adopt rules to further implement the Act

24  
25 Subsection (a)(2) authorizes rules that will ensure that any change to, or tampering with,  
26 a record bearing a notarial act will be self evident. Such a procedure will allow an individual  
27 inspecting the record to determine whether there has been any tampering with the integrity of a  
28 notarial act performed on, or with regard to, a record or with the attachment or association of a  
29 certificate of notarial act with the record. This provision applies both to notarial acts performed  
30 on tangible records and notarial acts performed with respect to electronic records. Regarding  
31 tangible records, this would allow a rule, for example, that requires a certain method of attaching  
32 the certificate to the record so that the removal or addition of a page would be readily  
33 discernable. With regard to electronic records, this would allow a rule, for example, that requires  
34 the technology or process used provide a means of testing to determine whether there has been  
35 any change to the electronic certificate or record. Note, however, that such a requirement must

1 be technology neutral and may not require or favor one particular technology or technical  
2 specification. See subsection (a), above.

3  
4 Subsection (a)(3) authorizes rules that will ensure integrity in the creation, transmittal,  
5 storage, or authentication of electronic records or signatures. This would allow a rule, for  
6 example, that requires that a certain level or degree of security be achieved in attaching an  
7 electronic certificate of notarial act to, or associating it with, an electronic record, and in its  
8 transmission or storage. Once again, the requirement must be technology neutral. See  
9 subsection (a), above.

10  
11 Subsection (a)(4) authorizes rules for granting and revoking commissions and assuring  
12 the trustworthiness of individuals holding a commission. As stated in the Comment to Section  
13 20, that Section leaves the form of application, the process for applying, the timing of the  
14 process, and other administrative matters to be determined by the commissioning officer or  
15 agency. This Section authorizes the commissioning officer or agency to adopt a rule, for  
16 example, that implements a method by which the prior history of an applicant for a commission  
17 could be reviewed with regard to the applicant's trustworthiness.

18  
19 Subsection (a)(5) authorizes the adoption of rules that will prevent fraud or mistake in the  
20 performance of notarial acts. It would authorize the adoption of a rule, for example, that  
21 specifies what additional information should be provided in order to guide notaries public under  
22 Section 7(c) regarding additional information to identify an individual for whom a notarial act  
23 will be performed.

24  
25 Subsection (a)(6) allows the commissioning officer or agency to adopt rules regarding the  
26 approval and acceptance of surety bonds and other forms of assurance if Section 20(d) is adopted  
27 by the legislature.

28  
29 Subsection (a)(7) authorizes the commissioning officer or agency to adopt rules to  
30 implement and administer the examination of applicants for notary public commissions if  
31 Section 21 is adopted by the legislature. The rules may also administer the provision of a course  
32 of study for applicants for a commission as well as the process of selecting and approving of an  
33 entity to offer the course.

34  
35 Subsection (b) directs the commissioning officer or agency, when adopting, amending, or  
36 repealing rules regarding notarial acts on electronic records, to consider, so far as is consistent  
37 with this Act, the most recent standards promulgated by national bodies such as the National  
38 Association of Secretaries of State and also to consider the standards, practices, and customs of  
39 other jurisdictions that substantially adopt this Act. The purposes of this provision are to bring to  
40 the commissioning officer or agency the best information available on the issues to be decided  
41 and to encourage uniformity of those provisions among the various states.

42  
43 **SECTION 27. NOTARY PUBLIC COMMISSION IN EFFECT.** A commission as a  
44 notary public in effect on the [effective date of this [act]] continues until its date of expiration. A



1 notary public who applies to renew a notary public commission after the effective date of this  
2 [act] shall comply with this [act]. A notary public, in performing notarial acts after the [effective  
3 date of this [act]], shall comply with this [act] and is subject to refusal to renew the notary  
4 public's commission or revocation or suspension of the notary public's commission under this  
5 [act].

6 **Comment**

7 This Section states that an individual who has a commission as a notary public that is in  
8 effect on the date of the adoption of this Act may retain that notary commission until the  
9 scheduled date of expiration, if any. Other than as may apply to the length of an existing  
10 commission, however, the provisions of the law previously in effect do not carry over after the  
11 adoption of this Act. Thus, after the effective date of this Act, a notary is subject to the  
12 provisions of this Act with respect to a refusal to renew the commission or a revocation or  
13 suspension of the commission. This Act is also applicable to all notarial acts performed after its  
14 effective date regardless of whether the commission predated or postdated the effective date of  
15 this Act.  
16

17 **SECTION 28. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
18 applying and construing this uniform act, consideration must be given to the need to promote  
19 uniformity of the law with respect to its subject matter among states that enact it.

20 **Comment**

21 This provision seeks to encourage construction that will maintain uniformity among the  
22 various states adopting the Act.  
23

24 **SECTION 29. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**  
25 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal  
26 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq.,  
27 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
28 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
29 U.S.C. Section 7003(b).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15

**Comment**

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

**SECTION 30. REPEALS.** The following are repealed:

- (1) [The Uniform Acknowledgement Act (As Amended)].
- (2) [The Uniform Recognition of Acknowledgments Act].
- (3) [The Uniform Law on Notarial Acts].

**Comment**

This Section lists laws that this act supervenes.

**SECTION 31. EFFECTIVE DATE.** This [act] takes effect ....

**Comment**

This is the standard effective date provision for uniform laws.