

DRAFT
FOR DISCUSSION ONLY

REVISED UNIFORM LAW ON NOTARIAL ACTS

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

With Prefatory and Comments

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ON UNIFORM STATE LAWS

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April 6, 2009

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REVISED UNIFORM LAW ON NOTARIAL ACTS

Prefatory Note

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

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

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

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

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

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

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

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

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

1 (i) an image of the individual’s face that bears a sufficient resemblance to
2 the individual’s current appearance to permit the notarial officer to identify the individual; and

3 (ii) the individual’s signature }}; or

4 (C) another form of identification authorized by law }.

5 (5) “In a representative capacity” means acting as:

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

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

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

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

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

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

19 (8) “Notary public” means an individual commissioned to perform a notarial act.

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

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

4 (11) "Record" means information that is inscribed on a tangible medium or that is stored
5 in an electronic or other medium and is retrievable in perceivable form.

6 (12) "Sign" means, with present intent to authenticate or adopt a record:

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

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

10 (13) "Signature" means a tangible symbol or an electronic symbol, sound, or process that
11 evidences the signing of a record.

12 (14) "Stamping device" means:

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

15 (B) an electronic tool or process ~~that is~~ capable of attaching or logically
16 associating an official stamp or seal with an electronic record.

17 ~~A stamping device includes a device for imprinting a seal.~~

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

22 (16) "Verification on oath or affirmation" means a declaration, made by an individual on
23 oath or affirmation, that a statement in a record is true.

1 **Comments**

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

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

18
19 The definition of the term “electronic” in this act has the same meaning as it has in
20 UETA §2(5), ESign § 106(2), and URPERA §2(2).

21
22 (3) **“Electronic signature.”** An “electronic signature” is any electronic symbol or
23 process that is attached to, or logically associated with, a record by an individual with the intent
24 to sign the record. The technology that is used for an electronic signature is intentionally not
25 specified and is meant to include electronic processes currently in use at the time of the adoption
26 of this act as well as those developed and implemented at a later time.

27
28 The term is substantially similar to the definition of that term as used in UETA §2(8),
29 ESign § 106(5), and URPERA §2(4).

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

41
42 The term is more fully described and implemented in Section 4.

43
44 (5) **“In a representative capacity.”** The term “in a representative capacity” describes
45 the actions of an individual who performs an acknowledgement or other act requiring

1 notarization on behalf of a principal rather than on the individual’s own behalf. To be performed
2 by in a representative capacity, the individual must be the authorized representative or agent of
3 the principal. Whether that person is, in fact, authorized is determined under the agency law of
4 this state.

5
6 The term is used elsewhere in this Section and in the short form acknowledgement
7 provided in Section 14(2).

8
9 (6) **“Notarial act.”** The term “notarial act” includes all the notarial acts authorized to be
10 performed by a notarial officer under this act. This subsection lists those notarial acts
11 specifically authorized in this act. However, the definition is not limited to the listed notarial
12 acts and includes any other notarial act permitted by the law of enacting state. See also Section
13 3(a).

14
15 The listed notarial acts include taking an acknowledgement, administering an oath or
16 affirmation, taking a verification upon an oath or affirmation, witnessing or attesting a signature,
17 certifying or attesting a copy of a record, and noting a protest of a negotiable instrument.

18
19 The provisions of this act apply to the performance of notarial acts on a tangible medium
20 such as paper as well as those performed in an electronic format.

21
22 (7) **“Notarial officer.”** The term “notarial officer” is used to describe collectively
23 notaries public and all other individuals having the authority to perform the “notarial acts” as
24 recognized in Sections 3 through 9 of this act.

25
26 Many of the provisions of this act apply broadly to all notarial officers. However, some
27 provisions, such as those in Sections 11 and 12, and Sections 15 through 18, apply only to
28 notaries public. Those sections provide for the use and maintenance of a notary public’s stamp
29 and journal, as well as the qualifications for, and the grounds for denial, suspension or revocation
30 of, a commission as a notary public.

31
32 (8) **“Notary public.”** A “notary public” is an individual licensed by the commissioning
33 officer or agency to perform notarial acts under Sections 15 through 18 of this act. It does not
34 include those individuals, such as judges and clerks of court, who are authorized to perform
35 notarial acts as a part of the official duties of the office held.

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

44
45 The “official stamp” is to be distinguished from the device by which the image is
46 imposed on or associated with the record; that device is identified as a “stamping device” and is

1 defined below.
2

3 (10) **“Person.”** The word “person” is broadly defined to include all persons, whether
4 human individuals, or corporate, associational, or governmental entities. When the definition of
5 a “person” is intended to be limited to a human entity, the word “individual” is used in this act
6 rather than the word “person.” The definition is the standard definition for that term as used in
7 other acts adopted by the National Conference of Commissioners on Uniform State Laws.
8

9 (11) **“Record.”** A “record” consists of information stored on a medium, whether the
10 medium be a tangible or electronic one, provided that the information is retrievable in a
11 perceivable form. The traditional tangible medium has been paper on which information is
12 inscribed by writing, typing, printing, or a similar means. It is perceivable by reading the
13 information directly from the paper on which it is inscribed. An electronic medium is one in
14 which information is stored electronically. The information is perceivable by means of a device
15 that interprets the electronic information in the record. For example, electronic information may
16 be stored in a magnetic record located on a hard disk and it may be retrieved and read in a
17 perceivable form on a computer monitor or a paper printout.
18

19 Traditionally, especially if the tangible medium is paper, a record has been referred to as
20 a “document.” In this act, the word “record” includes the word “document.” The definition of a
21 record in this act is derived from the definition of that word as used in UETA §2(13) and ESign
22 §-106(9). It also similar in meaning to the word “document” as used in URPERA §2(1).
23

24 (12) **“Sign” and “Signature.”** Subsection (12) and (13) define the related words “sign”
25 and “signature.” An individual may “sign” his or her name to a record either on a tangible
26 medium or in an electronic format as long as the individual has the present intent to authenticate
27 or adopt the record. The resulting tangible or electronic symbol on or associated with the record
28 is the person’s “signature.” The verb “sign” includes other forms of the verb, such as “signing.”
29 Except as provided in Section 5, an individual must personally perform the act of signing a
30 record. If, instead of using his or her given name, an individual has adopted an alternative
31 symbol as his or her name, the individual may affix that symbol as the individual’s signature.
32

33 (13) **“Stamping device.”** A stamping device is a means by which an “official stamp” is
34 imposed on, or associated with, the record. With a traditional paper medium, the stamping
35 device may, for example, be a rubber device that uses ink to impose a “stamp” on the paper. It
36 may also be a device that compresses the paper and applies an impression seal. With an
37 electronic medium, the stamping device may, for example, be an electronic process that requires
38 a means of identifying the notarial officer. The means of identifying the notarial officer may be
39 information located on a portable electronic device or may be a password that is supplied by the
40 notarial officer. In either case, the electronic process and the means of identifying the officer are
41 collectively the stamping device.
42

43 (14) **“State.”** The word “state” includes any state of the United States, the District of
44 Columbia, the United States Virgin Islands, any territory or insular possession subject to the
45 jurisdiction of the United States, or a recognized Indian tribe or nation.
46

1 (15) **“Verification upon oath or affirmation.”** A “verification upon oath or
2 affirmation” is a declaration by an individual in which the individual states on oath or
3 affirmation that the declaration is true. This declaration is sometimes referred to as an
4 “affidavit” or “jurat.”
5

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

7 ~~**REQUIREMENTS FOR CERTAIN NOTARIAL ACTS.**~~

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

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

15
16 **SECTION 4. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS.**

17 ~~(b)~~ (a) A notarial officer who takes an acknowledgement of a record shall determine, from
18 personal knowledge or satisfactory evidence of the identity of the individual, that the individual
19 appearing before the officer and making the acknowledgment has the identity claimed and that
20 the signature on the record is the signature of the individual.

21 ~~(b)~~ (e) A notarial officer who takes a verification of a statement on oath or affirmation shall
22 determine, from personal knowledge or satisfactory evidence of the identity of the individual,
23 that the individual appearing before the officer and making the verification has the identity
24 claimed and that the signature on the statement verified is the signature of that individual.

1 | ~~(cd)~~ A notarial officer who witnesses or attests to a signature must determine, from
2 | personal knowledge or satisfactory evidence of the identity of the individual, that the individual
3 | appearing before the officer and signing the record has the identity claimed.

4 | ~~(de)~~ A notarial officer who certifies or attests a copy of a record or of an item that was
5 | copied shall determine that the proffered copy is a full, true, and accurate transcription or
6 | reproduction of the record or item.

7 | ~~(fe)~~ A notarial officer who makes or notes a protest of a negotiable instrument shall
8 | determine the matters set forth in [Section 3-509 of the Uniform Commercial Code].

9 | **Comments**

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

15 |
16 | Furthermore, when taken in conjunction with the definition of a notarial act in Section
17 | 2(6), this subsection also authorizes a notarial officer to perform notarial acts regardless of the
18 | format of the record. Thus, a notarial officer may perform notarial acts on both tangible records
19 | as well as electronic records. However, prior to performing a notarial act on an electronic
20 | record, the officer must register with the commissioning officer or agency under Section 13.

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

33 |
34 | Subsection (c) specifies the requisites for taking a verification on oath or affirmation.
35 | There are also two main elements of a verification: (1) the identification of the affiant (this
36 | subsection) and (2) the fact that the affiant is verifying the statement as true under oath or
37 | affirmation (Section 2(15)). The affiant must physically appear before the notarial officer and

1 the notarial officer must identify the affiant either through personal knowledge or from
2 satisfactory evidence. This record may be referred to as an affidavit or jurat in some
3 jurisdictions.
4

5 Subsection (d) states the requirements for witnessing or attesting a signature. Here the
6 notarial officer only certifies the fact of the signature; the officer does not certify the signatory's
7 intent to verify the record. Under this subsection, the notarial officer certifies the identification
8 of the individual whose signature the officer is witnessing or attesting. The individual must
9 physically appear before the notarial officer, the notarial officer must identify the individual
10 either through personal knowledge or from satisfactory evidence, and the individual must sign
11 the document before the officer.
12

13 Subsection (e) defines the standards for attestation or certification of a copy of a record
14 by a notarial officer. This is done if it is necessary to produce a copy of a record when the
15 original is in an archive or other collection of records and cannot be removed. In many cases, the
16 custodian of the official archive or collection also may be empowered to issue an officially
17 certified copy. When an officially certified copy is available, it is official evidence of the state of
18 the public archive or collection, and it may be better evidence of the original record than a copy
19 certified by a notarial officer.
20

21 Subsection (f) refers to a provision of the Uniform Commercial Code that confers
22 authority upon a notarial officer to note a protest of a negotiable instrument.
23

24 **SECTION 45. IDENTIFICATION OF INDIVIDUAL.**

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

28 (ab) A notarial officer has personal knowledge of the identity of an individual appearing
29 before the officer if the individual is personally known to the officer through prior dealings
30 sufficient to provide reasonable certainty that the individual has the identity claimed.

31 (bc) A notarial officer has satisfactory evidence of the identity of an individual appearing
32 before the officer if:

33 (1) the officer can identify the individual on the basis of an identification
34 credential, ~~the expiration date of which is not more than [one year] before the date of the notarial~~

1 ~~act that is either currently valid or has expired no more than {[one year]} {[five years]} before~~
2 ~~the performance of the notarial act;~~ or

3 (2) the individual is identified to the officer through a verification on oath or
4 affirmation of a credible witness personally appearing before the officer and known to the officer
5 or whom the officer can identify on the basis of an identification credential that is either
6 currently valid or has expired no more than {[one year]} {[five years]} before the performance
7 of the notarial act,~~the expiration date of which is not more than [one year] before the date of the~~
8 ~~notarial act.~~

9 (de) A notarial officer may require an individual to provide additional information or
10 identification credentials necessary to assure the officer of the identity of the individual.

11 (ed) If ~~the a~~ notarial officer is not satisfied that the individual appearing before the
12 officer is the identified individual {or that the individual executing the record is competent or has
13 the capacity to execute the record}, or has concern that the individual's signature is not
14 knowingly and voluntarily made, the officer may refuse to perform the notarial act.

15 ~~{(fe) If the a~~ notarial officer asked to perform a notarial act involving a record knows or
16 ~~believes~~~~has reason to believe~~ that the record is fraudulent, the officer ~~may~~must refuse to perform
17 the notarial act. ~~However, t~~The officer does not have an obligation to investigate the record to
18 determine whether it is fraudulent. }

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

22 **Comments**

23
24 This Section defines the two methods for identifying an individual as required in Sections
25 3(b) through (d). The two means for identifying an individual are through (1) personal

1 knowledge or (2) satisfactory evidence.
2

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

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

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

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

41 This subsection does not allow the identity of an individual to be based on an oath or
42 affirmation of a person who is him or herself identified to the notarial officer by means of an
43 oath or affirmation of yet another witness. Such a process would lead to a spiraling and useless
44 addition of "witnesses to the witnesses."
45

46 Subsection (c) recognizes that, even if a specified identification credential is presented, a

1 notarial officer may, in some cases, be uncertain as to the identity of the individual. For
2 example, the identification credential may be defaced or have defects that make legibility
3 difficult, or there may be changes in the physical appearance of the individual that may not be
4 reflected in the image on the identification credential. In that case, the notarial officer may
5 require the individual to provide other information or identification in order to assure the officer
6 of the identity of the individual.

7
8 Subsection (d) allows the notarial officer to refuse to perform the requested notarial act in
9 either of two circumstances. First, if the notarial officer is still not satisfied as to the individual's
10 identity after the presentation of identification credentials or the performance of an oath or
11 affirmation by a witness, the officer may refuse to perform the notarial act. Second, if the
12 notarial officer has concern about whether the individual's signature was knowingly and
13 voluntarily made, the officer may refuse to perform the notarial act. Lack of satisfaction with the
14 identity of the individual or concern with whether the signature is knowingly and voluntarily
15 made are matters within the proper discretion of the notarial officer.

16
17 Subsection (e) also allows the notarial officer to refuse to perform the notarial act if the
18 officer has reason to believe that the record is fraudulent. This subsection recognizes that a
19 notarial officer may, in the process of identifying an individual or preparing to perform the
20 notarial act, gather information by which the officer knows or has reason to believe that the
21 record is fraudulent. For example, the officer may determine or have reason to believe that the
22 record is part of a greater fraudulent scheme. In that case, the officer is authorized to refuse to
23 perform the notarial act. Nevertheless, the subsection provides that the notarial officer has no
24 duty to inspect the contents of the record and the officer's failure to do so is not a violation of the
25 officer's duties under this act.

26
27 **SECTION 56. SIGNATURE IN SPECIAL CIRCUMSTANCES.** If an individual is
28 physically unable to sign a record, the individual may direct a ~~notarial officer to sign the~~
29 ~~individual's name on the record. The notarial officer shall insert "Signature affixed by (name of~~
30 ~~notarial officer) at the direction of (name of individual)" or words of similar import. substitute~~
31 individual other than the notarial officer to sign the individual's name on the record. The
32 notarial officer shall insert "Signature affixed by (name of substitute individual) at the direction
33 of (name of individual)" or words of similar import.

34 **Comments**

35 This Section recognizes that some individuals may be unable to sign a record personally
36 because of a disability. In that case, this subsection allows for an alternate process. That process
37 requires the executing individual to direct the notarial officer to sign that individual's name to

1 an attorney. Under subsection (a)(4), a state may recognize the authority of any other individual
2 to perform notarial acts if the performance of notarial acts by that individual is authorized by
3 other state law. For example, recorders or registrars of deeds, or commissioners of titles, may be
4 authorized to perform notarial acts under separate legislation. See Legislative Note, above.

5
6 Subsections (b) and (c) deal with authentication of a notarial act. Proof of a notarial
7 officer usually involves three steps:

8
9 1. Proof that the notarial officer's signature is that of the individual named in the
10 certificate as a notarial officer;

11
12 2. Proof that the individual named in the certificate holds the designated office as a
13 notarial officer; and

14
15 3. Proof that persons holding the designated office may perform notarial acts.

16
17 Subsection (b) sets forth a prima facie presumption that the signature of the individual
18 named in the certificate, whether on a tangible medium or in an electronic format, is that of the
19 named notarial officer. It also sets forth a prima facie presumption that the individual named in
20 the certificate holds the designated notarial office. These are the first two elements of
21 authentication listed above.

22
23 Subsection (c) conclusively presumes that notaries public, judges, clerks and deputy
24 clerks of this state (and attorneys licensed in this state, if subsection (a)(3) is adopted) have the
25 authority to execute notarial acts. This is the third element of authentication listed above.

26
27 | **SECTION 78. NOTARIAL ACT IN OTHER JURISDICTIONS OF UNITED**
28 | **STATES.**

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

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

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

34 (3) any other individual authorized by the law of the other state to perform

35 notarial acts.

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

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

5 **Comments**

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

11
12 Subsection (b) sets forth a prima facie presumption that the signature of the individual
13 named in the certificate, whether on a tangible medium or in an electronic format, is that of the
14 named notarial officer. It also sets forth a prima facie presumption that the individual named in
15 the certificate holds the designated notarial office. These are the first two elements of
16 authentication of a notarial act listed in the prior Comment.

17
18 Subsection (c) provides the third element of authentication. It recognizes the authority of
19 a notary public, or of a judge, clerk, or deputy clerk of court of another state to perform notarial
20 acts without the necessity of further proof that such an officer has notarial authority. This
21 abolishes the need for a “clerk’s certificate” or similar instrument to authenticate the notarial act
22 of a notary public, judge, clerk or deputy clerk. However, this per se recognition of authority
23 does not extend beyond a notary public, judge, clerk or deputy clerk of another state. Authority
24 of other persons to perform notarial acts may be proven by reference to the laws of the other
25 state. In addition, other forms of proof of authority to perform notarial acts, such as a “clerk’s
26 certificate,” are acceptable in this state.

27 28 **SECTION 89. NOTARIAL ACTS UNDER FEDERAL AUTHORITY.**

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

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

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

34 (3) an ~~officer of the foreign service or consular officer of the United~~

1 States individual designated a notarizing officer by the United States Department of State for
2 performing notarial acts overseas; or

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

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

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

8 **Comments**

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

14
15 Subsection (a)(2) recognizes the authority of persons to perform notarial acts under the
16 provisions that are currently codified in 10 U.S.C §1044a (2009). Currently, 10 U.S.C. §1044a
17 provides as follows:

18
19 (a) The persons named in subsection (b) have the general powers of a notary
20 public and of a consul of the United States in the performance of all notarial acts to be
21 executed by any of the following:

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

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

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

28 (4) Other persons subject to the Uniform Code of Military Justice (chapter
29 47 of this title) outside the United States.

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

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

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

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

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

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

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

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

11
12 Subsection (a)(3) recognizes the authority of foreign service and consular officers to
13 perform notarial acts. This has been a traditional function performed by foreign service and
14 consular officers who, in many parts of the world, may be the only or best available person to
15 perform notarial acts that must be recognized in the United States.

16
17 Subsection (a)(4) provides general recognition of the notarial acts performed by other
18 individuals under federal law and not listed in the prior subsections. A variety of other federal
19 officers may be authorized to perform notarial acts, such as wardens of federal prisons.

20
21 Subsection (b) confers prima facie validity to the asserted signature of a United States
22 notarial officer and that the individual holds the asserted office. It thus provides the first two
23 elements of authentication described in the Comments to Section 6.

24
25 Subsection (c) provides the third element of proof of the notarial officer's authority. It
26 conclusively recognizes the authority of a judge, clerk or deputy clerk, a military officer, or a
27 foreign service or consular officer to perform notarial acts without the necessity of further
28 reference to the federal statutes or regulations to prove that the officer has notarial authority.
29 There is no need for further authentication of those individuals' authority to perform notarial
30 acts.

31
32 The authority of person to perform notarial acts under subsection (a)(4) must be
33 demonstrated by other means. That authority can most readily be demonstrated by reference to
34 the federal law or published regulations granting the authority. Any other form of authentication,
35 such as a "clerk's certificate," may also be used.

36
37 **{Alternative 1 to Committee}**

38 **SECTION 10. FOREIGN NOTARIAL ACT.**

39 **(a) If a notarial act is performed under authority and in the jurisdiction of a foreign state**
40 **or the constituent units of the foreign state or is performed under the authority of a multinational**
41 **or international governmental organization, the act has the same effect under the law of this state**

1 as if performed by a notarial officer of this state.

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

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

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

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

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

17 **{Alternative 2 to Committee}**

18 **SECTION 10. FOREIGN NOTARIAL ACT.**

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

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

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

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

10 ~~**SECTION 9. FOREIGN NOTARIAL ACT.**~~

11 ~~(a) A notarial act, performed within the jurisdiction and under authority of a foreign~~
12 ~~nation with which the United States has diplomatic relations or the constituent units of the~~
13 ~~foreign nation or performed under the authority of a multinational or international governmental~~
14 ~~organization, has the same effect under the law of this state as if performed by a notarial officer~~
15 ~~of this state if the act is performed by:~~

16 ~~(1) a notary public or notarial officer;~~

17 ~~(2) a judge, or clerk or deputy clerk of a court of record; or~~

18 ~~(3) any other individual authorized by the law of the jurisdiction or the charter of~~
19 ~~the multinational or international governmental organization to perform a notarial act.~~

20 ~~(b) An apostille in the form prescribed by the Hague Convention of October 5, 1961,~~
21 ~~conclusively establishes that the signature of the notarial officer is genuine and that the officer~~
22 ~~holds the indicated office.~~

23 ~~(c) A certificate by a foreign service or consular officer of the United States stationed in~~

1 ~~the nation in which the notarial act was performed, a certificate by a foreign service or consular~~
2 ~~officer of the nation stationed in the United States, or a certificate by an officer of a multinational~~
3 ~~or international governmental organization, conclusively establishes any matter relating to the~~
4 ~~authenticity or validity of the notarial act set forth in the certificate.~~

5 ~~—— (d) An official stamp of an individual performing a notarial act is prima facie evidence~~
6 ~~that the signature is genuine and that the individual holds the indicated title.~~

7 ~~—— (e) An official stamp of an officer listed in subsection (a)(1) or (2) is prima facie evidence~~
8 ~~that an individual with the indicated title has authority to perform notarial acts.~~

9 ~~—— (f) If the title of office and indication of authority to perform notarial acts appears in a~~
10 ~~digest of foreign law or in a list customarily used as a source for that information, the authority~~
11 ~~of an officer with that title to perform notarial acts is conclusively established.~~

12 ~~—— (g) The official stamp of a notarial officer or a substitute for it that complies with the law~~
13 ~~of the foreign nation where the notarial act is performed meets the requirements of Section 11 of~~
14 ~~this act.~~

15 **Comments**

16
17 This section provides recognition of notarial acts performed by certain notarial officers
18 who act under the law of a foreign country or the authority of a multinational or international
19 governmental organization.
20

21 Subsection (a)(1) through (3) provide that the notarial act of a notary public, judge, clerk
22 of court, or deputy clerk of court of a foreign nation with which the United States has diplomatic
23 relations, or of its constituent units, is recognized in this state. They also recognize the notarial
24 acts of similar officers acting under the authority of a multinational or international
25 governmental organization. An example of multinational or international governmental
26 organization would be the United Nations.
27

28 The United States is a party to an international treaty regarding the authentication of
29 notarial and other similar public acts. This treaty is known as the “Convention de La Haye du 5
30 octobre 1961.” Under this treaty an “apostille” may be prepared in the foreign nation in
31 accordance with the treaty and stamped on, or attached to, the “notarized” record. The
32 “apostille” may be in the language of the issuing country, but the words “Apostille (Convention

1 de La Haye, du 5 octobre 1961)” are always in French. Under the terms of the treaty, the
2 apostille will be recognized if it is issued by a competent authority in another nation that has
3 ratified the Convention. The text of the Convention is reproduced in the annotations to the
4 Federal Rules of Civil Procedure Rule 44.

5
6 Subsection (b) carries out the provisions of that treaty and recognizes an “apostille”
7 complying with the treaty and further states that it conclusively establishes that the signature of
8 the notarial officer is genuine and that the officer holds the indicated office.

9
10 The “apostille” has the following form, which is set forth in the annotation to Federal
11 Rules of Civil Procedure Rule 44:

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

APOSTILLE
(Convention de La Haye du 5 octobre 1961)

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

20 Although federal law provides for mandatory recognition of an apostille only if issued by
21 another ~~ratifying~~ ~~acceding~~ nation, the statute provides for recognition of all apostilles issued by
22 any foreign nation in that form. They are, in effect, a standard form of authentication. Use of
23 the form eases problems of translation.

24
25 Subsection (c) provides that a certificate of (1) a United States’ consular officer stationed
26 in the foreign nation (see also Section 8(a)(3)), (2) a foreign nation consular officer stationed in
27 the United States, or (3) an officer of a multinational or international governmental organization,
28 conclusively establishes the authenticity or validity of the notarial act that is set forth in the
29 certificate.

30
31 Subsections (d), (e) and (f) apply to proof of notarial authority unless those issues are
32 satisfied under subsections (b) or (c). Subsections (d) states that the official stamp of the notarial
33 officer on the record provides prima facie evidence that the officer’s signature is genuine and
34 that the officer holds the indicated office (the first two elements of proof of authority stated in
35 Comments to Section 6). Subsection (e) states that the official stamp of an officer listed in
36 subsections (a)(1) and (2) provides prima facie evidence that the officer has the authority to

1 perform the notarial act (the third element of proof of authority stated in Comments to Section
2 6). Subsection (f) states that if a title of office or indication of authority is listing in a digest of
3 foreign laws or recognized list, it conclusively establishes the authority of an officer with that
4 title to perform notarial acts (the third element of proof of authority stated in Comments to
5 Section 6).
6

7 Subsection (g) gives due recognition to the authority of a foreign nation to adopt an
8 official stamp in the form it deems proper. It provides that an official stamp complying with the
9 law of the nation where the foreign notarial act is performed is sufficient under this act regardless
10 of whether it complies with the requirements for an official stamp set forth in Section 11 of this
11 act.
12

13 | **SECTION ~~10~~11. CERTIFICATE OF NOTARIAL ACT.**

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

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

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

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

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

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

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

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

29 | (1) is in a short form set forth in Section ~~4~~15;

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

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

4 (4) sets forth the actions of the notarial officer and the actions are sufficient to
5 meet the requirements of the notarial act as provided in Section 3-4 or law other than this act.

6 (d) By executing a certificate of a notarial act, a notarial officer certifies that the officer
7 has made the determinations required by Sections 3-4 and 45.

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

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

14 **Comments**

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

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

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

1 does not prohibit the officer from doing so. Regardless of whether an official stamp is attached
2 to, or logically associated with an electronic certificate, the requirements of subsection (a) must
3 be met and the electronic certificate must contain the information stated in that subsection. This
4 is the same as provided in UETA § 11, ESign § 101(g), and URPERA § 3(c).

5
6 Subsection (c) provides that the certificate may be in an appropriate short form set forth
7 in Section 14 of this act, in any other form provided by the law of this state, in any other form
8 provided by the law of the place where the notarial act was performed, or in any form that sets
9 forth the requisite elements of the notarial act. Thus, acknowledgements and other notarial acts
10 executed in more prolix and elaborate forms may nevertheless continue to qualify under
11 subsection (c).

12
13 Subsection (d) emphasizes the obligation of the notarial officer to perform the
14 determinations required by Sections 3 and 4 and requires the officer to certify that the officer has
15 done so.

16
17 In order to be proper evidence of the full performance of a notarial act, subsection (e)
18 provides that the notarial officer may not sign the certificate until the notarial act has been fully
19 performed. See, e.g. N.C. Gen. Stat. §10B-35.

20
21 Subsection (f) seeks to assure the integrity of the record and the related notarial act. With
22 regard to a notarial act evidenced on a tangible record, this subsection requires that the certificate
23 must be a part of, or securely attached to, the record. If the certificate is not a part of the record
24 itself, the means of attaching the certificate are not specified. However, stapling is a logical
25 example.

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

35
36 | **SECTION ~~11~~12. OFFICIAL STAMP; STAMPING DEVICE.**

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

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

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

3 ~~(b) If a notarial officer, who is not a notary public, is not required to use an official~~
4 ~~stamp, a statement that contains the name and office of the notarial officer and is capable of~~
5 ~~being copied together with the record to which it is affixed, attached, or with which it is logically~~
6 ~~associated, shall be considered an official stamp.~~

7 (eb) A notary public shall retain a stamping device in a secure place. The notary public
8 shall not allow another person to use ~~or possess~~ the device. On resignation from, or the
9 revocation or expiration of, the notary public's commission, or on the expiration of the date set
10 forth in the stamping device, if any, the notary public shall ~~destroy-disable~~ the stamping device
11 by defacing, damaging or erasing it in a manner that renders it unusable. On the death of a
12 notary public, the notary public's personal representative ~~or family member~~ shall ~~destroy-disable~~
13 the stamping device by defacing, damaging or erasing it in a manner that renders it unusable.

14 (ec) If a notary public's stamping device is lost or stolen, the notary public shall notify
15 the [commissioning officer or agency] and the appropriate law enforcement authority not later
16 than 10-five days after discovering that the device is lost or stolen.

17 ~~(d) If a notarial officer, who is not a notary public, is not required to use an official~~
18 ~~stamp, a statement that contains the name and office of the notarial officer and is capable of~~
19 ~~being copied together with the record to which it is affixed, attached, or with which it is logically~~
20 ~~associated, shall be considered an official stamp.~~

22 Comments

23 Subsection (a) states that the notary public's official stamp must contain the notary's
24 name, the jurisdiction in which the notary is authorized to act, the expiration date, if any, of the

1 notary's commission, and any other information that may be required by the commissioning
2 officer or agency.

3
4 As used in this act, the word "stamp" includes an image that is imposed by a "seal."
5 Because it is important to be able to reproduce the image of a stamp that is contained on a record,
6 the stamp must be capable of being copied along with the tangible record. Thus, an impression
7 seal used on a paper medium will normally not be a sufficient stamp under this section.
8

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

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

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

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

38 **SECTION ~~12~~13. JOURNAL.**

39 (a) A notary public, other than an individual licensed to practice law in this state, shall
40 maintain a journal in which the notary chronicles all notarial acts that the notary public performs.
41 The notary public shall maintain the journal for at least 10 years after the expiration of the

1 notary's commission under which the notarial act was performed {the performance of the
2 notarial act}.

3 {Alternative 1 to Committee}

4 (b) An individual licensed to practice law in this state may, but need not, maintain a
5 journal as required in subsection (a) with regard to notarial acts performed in practice of law.

6 {Alternative 2 to Committee}

7 (b) An individual licensed to practice law in this state may, but need not, maintain a
8 journal as required in subsection (a) if the individual or the individual's firm or employer
9 maintains copies of the documents upon which the notarial acts have been performed for the
10 period prescribed in subsection (a).

11 (bc) A journal may be created on a tangible medium or in an electronic format. A notary
12 public shall maintain only one journal at a time to chronicle all notarial acts, whether those
13 notarial acts are performed regarding tangible or electronic records. If the journal is maintained
14 on a tangible medium, it must be a permanent, bound register with numbered pages. If the
15 journal is maintained in an electronic format, it must be in a permanent, tamper-evident
16 electronic format complying with the regulations prescribed by the [commissioning officer or
17 agency].

18 (ed) Entries in a journal must be made chronologically at the time the notarial act is
19 performed and must consist of the following:

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

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

22 (3) the full name and address of each individual for whom a notarial act is

23 performed;

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

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

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

6 ~~(de)~~ If a notary public's journal is lost or stolen, the notary public shall notify the
7 [commissioning officer or agency] and the appropriate law enforcement authority not later than
8 ~~10-5~~ days after discovering that the journal is lost or stolen.

9 ~~(ef)~~ On resignation from, or the revocation or suspension of, the notary public's
10 commission, the notary public shall retain the notary public's journals in accordance with
11 subsection (a) and inform the [commissioning officer or agency] where the journals are located.
12 Instead of retaining the journals, the notary may transmit the journals to the [commissioning
13 officer or agency]. If required by the [commissioning officer or agency], the notary public shall
14 transmit the journals to the [commissioning officer or agency] [the official archivist of this state].
15 On the death or incompetency of a notary public, the notary public's personal representative,
16 guardian, or any person in possession of the journals shall transmit the journals to the
17 [commissioning officer or agency] [the official archivist of this state].

18 ~~(fg)~~ Journals prepared by a notary public are confidential and may not be inspected or
19 reviewed by a person other than the notary public. Journals are not discoverable except by
20 subpoena or order of a court of proper jurisdiction or of the [commissioning officer or agency].

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

Comments

1
2 A journal of the notarial acts performed by a notary public helps to provide a number of
3 assurances protecting the integrity of the notarial system. Among others it helps to assure, or at
4 least determine whether, a notarial act performed in the name of a particular notary was indeed
5 performed by that notary. As an ordinary business record it may provide evidence that the act
6 was performed by the notary or, by the absence of an entry in the journal for the asserted notarial
7 act, it may provide evidence that the act was not performed by the notary. In that regard, it
8 provides protection to both the notary and to the public whom the notary serves.
9

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

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

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

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

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

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

8
9 Journals contain a considerable amount of confidential information – information about
10 the individual for whom the notarial act was performed and about the transaction involved.
11 Accordingly, subsection (f) recognizes their confidential nature and provides that the notary’s
12 journals may not be inspected or reviewed by anyone other than the notary. They are not
13 discoverable by another person except by order or subpoena of a court or of the commissioning
14 officer or agency.

15
16 **SECTION ~~13~~14. REGISTRATION OF NOTARIAL OFFICER.**

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

19 (b) The [commissioning officer or agency] shall, at the time a notarial officer registers to
20 perform notarial acts under this section, review the technology the notarial officer proposes to
21 use to perform notarial acts on electronic records to determine that the technology has been
22 approved by the [commissioning officer or agency] under Section ~~20~~21. If approval of the
23 technology has not been considered by the [commissioning officer or agency], the
24 [commissioning officer or agency] shall, upon the payment of the fee prescribed under Section
25 20, review the technology to determine that it provides the assurances stated in Section 20.

26 **Comments**

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

1 Subsection (b) provides that the commissioning officer or agency will, at the time of
2 registration of the notarial officer, review the officer's technology to determine whether it has
3 received prior approval as a satisfactory means of performing notarial acts pursuant to Section 20
4 of this act. If the technology that the officer proposes to use has not received prior approval, the
5 commissioning officer or agency will review the technology to determine whether it provides a
6 satisfactory means of performing notarial acts.
7

8 **SECTION 1415. SHORT FORMS.** The following short form certificates of notarial
9 acts are sufficient for the purposes indicated, if completed with the information required by

10 Section ~~1011~~ (a) and (b):

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

12 State of _____

13 (County) of _____

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

16 _____
17 Signature of notarial officer

18 Stamp

19 [_____]
20 Title (and rank)

21 [My commission expires: _____]

22
23 (2) For an acknowledgment in a representative capacity:

24 State of _____

25 (County) of _____

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

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

1 instrument was executed.)

2 _____
3 Signature of notarial officer

4 Stamp

5 [_____
6 Title (and rank)

7 [My commission expires: _____]

8

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

10 State of _____

11 (County) of _____

12 Signed and sworn to (or affirmed) before me on _____ by _____
13 Date Name(s) of individual(s)
14 making statement).

15 _____
16 Signature of notarial officer

17 Stamp

18 [_____
19 Title (and rank)

20 [My commission expires: _____]

21

22 (4) For witnessing or attesting a signature:

23 State of _____

24 (County) of _____

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

27 _____
28 Signature of notarial officer

1 Stamp
2 [_____]
3 Title (and rank)

4 [My commission expires: _____]

5

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

7 State of _____

8 (County) of _____

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

10 of _____.

11 Dated _____

12 _____

13 Signature of notarial officer

14 Stamp

15 [_____]

16 Title (and rank)

17 [My commission expires: _____]

18

Comments

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

22

23 These certificates are available to be used for notarial acts performed on a tangible
24 medium as well as notarial acts performed in an electronic format. They apply to notarial acts
25 performed by notaries public as well as notarial officers who are not notaries public. Under
26 subsection 10(b), a notarial stamp is required if the notarial act is performed by a notary public
27 on a tangible record. Under subsection 10(b), if the notarial act is performed on an electronic
28 record, an official stamp is optional. Finally, under subsection 11(b), if the notarial act is
29 performed on a tangible record by a notarial officer who is not a notary public, an official stamp
30 is not required, but other information is required.

31

1 | **SECTION ~~15~~16. NOTARY PUBLIC COMMISSION; QUALIFICATIONS.**

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

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

7 | (1) be at least 18 years of age;

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

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

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

11 | (5) not be subject to refusal of a commission under Section ~~17~~18[; and

12 | (6) have passed the examination required under Section ~~16~~17].

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

15 | (d){ Not more than [30] days after} {Before} the issuance of a notary public's
16 | commission, the notary shall submit a surety bond in the amount of \$[] to the
17 | [commissioning officer or agency]. The bond must be issued by a surety licensed in this state
18 | and cover acts performed during the term of the notary's commission and shall be in the form
19 | prescribed by the [commissioning officer or agency]. The bond shall be conditioned on
20 | compliance with this [act] and law other than this act affecting notaries public in this state. The
21 | surety shall give [30] days' notice to the [commissioning officer or agency] before cancelling the
22 | bond. A notary public may perform notarial acts in this state only during the period that a surety
23 | bond conforming with this subsection is on file with the [commissioning officer or agency].

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

3 ~~(e) Not more than [30] days after the issuance of a notary public's commission, the notary
4 shall submit a surety bond in the amount of \$[] to the [commissioning officer or agency].
5 The bond must be issued by a surety licensed in this state and cover acts performed during the
6 term of the notary's commission and shall be in the form prescribed by the [commissioning
7 officer or agency]. The bond shall be conditioned on compliance with this [act] and law other
8 than this act affecting notaries public in this state. The surety shall give [30] days' notice to the
9 [commissioning officer or agency] before cancelling the bond. A notary public may perform
10 notarial acts in this state only during the period that a surety bond conforming with this
11 subsection is on file with the [commissioning officer or agency].~~

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

15 **Comments**

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

23
24 Subsection (b) sets out qualifications for issuance of a commission as a notary public.
25 The qualifications set out in the current legislation of the various states are quite varied. The
26 requirements listed here are common although not uniform among the states (compare Ariz. Rev.
27 Stat. § 41-312(E)). They are the important provisions and should be considered to be the
28 minimal requirements for a person to be issued a commission as a notary public. Adopting states
29 are free to add other provisions if the legislature so chooses.
30

1 Subsection (c) requires a person receiving a commission as a notary to submit a bond to
2 the commissioning officer or agency within 30 days of receiving the notary public commission.
3 The amount of the bond is not specified and is left to state legislatures to insert. It is recognized
4 that bonds to cover the full amount of many transactions may be prohibitively expensive.
5 Nevertheless, limited but reasonable bond amounts should cover some ordinary transactions and
6 will provided some recovery in others. The bond must be in effect for the entire term of the
7 notary public's commission and the surety must give 30 days' notice prior to cancelling the
8 bond. The notary public may perform notarial acts only while the bond is on file with the
9 commissioning officer or agency.

10
11 Subsection (d) requires that the applicant submit an oath of office to the commissioning
12 officer or agency.

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

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

21
22 **[SECTION 1617. EDUCATION OF NOTARIES PUBLIC.]**

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

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

31 **Comments**

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

1 procedures, and ethics relevant to notarial acts. However, because the educational requirement is
2 not uniformly accepted by [commissioning officers or agencies] or the legislatures of some
3 states, it is inserted here as an optional provision.
4

5 Subsection (a) provides that an applicant for a first commission as a notary public must
6 pass an examination administered by the commissioning officer or agency or an entity licensed
7 by the commissioning officer or agency to administer the exam. The examination is to be based
8 on the course of instruction provided in subsection (b).
9

10 Subsection (b) provides that the commissioning officer or agency or an entity licensed by
11 the commissioning officer or agency shall provide the course of education. However, it leaves
12 the length of the course to the determination of the state legislature. To achieve the purpose of
13 enhancing the effectiveness and integrity of the notarial system, the education is designed to
14 educate the prospective notary public in the laws, [rules][regulations], standards, procedures, and
15 ethics relevant to notarial acts.
16

17 | **SECTION ~~17~~18. GROUNDS FOR DENIAL, REFUSAL TO RENEW, OR**
18 **REVOCAION, OR SUSPENSION OF NOTARIAL COMMISSION.**

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

22 | (1) failure to comply with the provisions of ~~Section 15(a), (b), or (e)~~this act;

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

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

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

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

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

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

8 | [(8) ~~the~~ failure of the notary public to maintain a bond as provided in subsection
9 | ~~1516~~(de)].

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

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

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

21 | **Comments**

22 | Subsection (a) lists the grounds upon which the commissioning officer or agency may
23 | refuse to grant a notary public commission to an applicant or upon which the commissioning
24 | officer or agency may revoke or suspend that commission. The grounds listed for denial or

1 revocation is similar to those provided in many states. See Ariz. Rev. Stat. § 41-330(A); N.C.
2 Gen. Stat. § 10B-5(d).

3
4 Subsections (a)(1)-(5) set forth specific statutory grounds upon which a commission may
5 be denied, suspended or revoked. Subsection (a)(6) gives the commissioning officer or agency
6 the authority to promulgate rules or regulations further setting forth grounds upon which a
7 commission may be denied, suspended, or revoked. Subsection (a)(7) allows the suspension or
8 revocation of a commission if the notary public fails to maintain a bond as provided in Section
9 15(c).

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

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

21
22
23 **SECTION 1819. NO LEGAL ADVICE; ADVERTISING.**

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

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

27 (2) ~~render legal advice~~ act as an immigration consultant or an expert on
28 immigration matters; or

29 (3) ~~otherwise engage in the practice of law~~ represent an individual in any judicial
30 or administrative proceedings relating to immigration to the United States, United States
31 citizenship, or related matters; or

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

34 (b) A notary public may not engage in false or deceptive advertising, including the use of

1 the term “notario” or “notario public.”

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

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

17 **Comments**

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

23
24 Subsection (b) directly and simply provides that a notary public may not engage in false
25 or misleading advertising.

26
27 Subsection (c) is directed toward a specific advertising problem. Under the laws of many
28 non-common law countries, including but not limited to civil law countries, a notary public is
29 authorized not only to verify and acknowledge records and signatures. In those countries, a

1 notary may also draft and interpret legal records for parties and give legal advice on those
2 matters. In effect, those notaries public have at least limited authority to engage in transactional
3 and other legal matters. When people immigrate to the United States from those countries, they
4 are faced not only with their prior experiences under that custom but also the difficulties of
5 understanding the English language. Unfortunately, some notaries public have taken advantage
6 of that situation, whether by their own suggestion or at the request of the immigrant, and have
7 provided legal advice and document drafting. In many cases, the legal advice has dealt with
8 immigration matters.
9

10 Subsection (c) is derived from provisions in legislation currently in effect in Arizona
11 (Ariz. Rev. Stat. § 41-329(A) and other states. It provides that a notary, other than a notary who
12 is also an attorney at law, may not offer legal advice or draft legal records. If the notary
13 advertises notarial services, the notary must provide information in the same language as the
14 advertisement that the notary may not provide legal advice or draft legal documents, particularly
15 about immigration matters. It seeks to inform the prospective client that the notary public is not
16 authorized or experienced to give legal advice. The bracketed provision “[in a language other
17 than English]” allows the legislature to apply the advertising requirement only to ads that are not
18 in English, which may be seen by some as more likely to be deceptive to immigrants. The
19 commissioning officer or agency is given the authority to adopt alternative language for the
20 warning statement.
21

22 | **SECTION 1920. [RULES][REGULATIONS].**

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

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

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

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

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

1 (b) In adopting [rules][regulations] that prescribe the manner of performing notarial acts
2 on electronic records, the [commissioning officer or agency] shall consult with the [name of state
3 agency] authorized to adopt [rules][regulations] for the recording of electronic documents. The
4 [commissioning officer or agency], so far as is consistent with this [act], shall also consider the
5 [rules][regulations], standards, and customs of other jurisdictions and the standards promulgated
6 by national standard-setting bodies.

7 **Comments**

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

13
14 Subsection (b) directs the commissioning officer or agency to consult with the state board
15 or commission authorized to regulate the recording of electronic records and also to consider the
16 [rules][regulations], standards, and customs of other jurisdictions as well as the standards
17 promulgated by national standard-setting bodies. The purposes of this provision are to bring to
18 the commissioning officer or agency the best information available on the issues and also to
19 encourage uniformity among the various states.
20

21 **SECTION 2021. VENDOR SUBMISSION OF TECHNOLOGY; APPROVAL.** On
22 application and payment of a prescribed fee, the [commissioning officer or agency] shall review
23 a technology submitted by a ~~software or hardware~~-vendor of the technology and, if appropriate,
24 grant approval of the technology if it provides a satisfactory means of performing notarial acts on
25 electronic documents under this [act], including the assurance that any change or tampering with
26 a record and its associated certificate is self-evident.

27 **Comments**

28
29 This Section directs the commissioning officer or agency to review technology submitted
30 by software vendors and grant, where appropriate, prior approval to that technology. The
31 purpose of this provision is to encourage technology vendors to seek prior approval of

