

DRAFT
FOR DISCUSSION ONLY

REVISED UNIFORM LAW ON NOTARIAL ACTS

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For October 3-5, 2008 Drafting Committee Meeting

With Prefatory and Reporter's Notes

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ON UNIFORM STATE LAWS

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TABLE OF CONTENTS

Prefatory Note.....	1
SECTION 1. DEFINITIONS.....	2
SECTION 2. COMMISSION; QUALIFICATIONS; EDUCATION.	4
SECTION 3. NOTARIAL ACTS.....	6
SECTION 4. ADVERTISING DISCLAIMER REQUIRED; UNAUTHORIZED PRACTICE OF LAW	10
SECTION 5. NOTARIAL ACTS IN THIS STATE.	11
SECTION 6. NOTARIAL ACTS IN OTHER JURISDICTIONS OF THE UNITED STATES.....	13
SECTION 7. NOTARIAL ACTS UNDER FEDERAL AUTHORITY.....	14
SECTION 8. FOREIGN NOTARIAL ACTS.....	16
SECTION 9. CERTIFICATE OF NOTARIAL ACTS.	18
SECTION 10. SIGNATURE; STAMP[; SEAL].....	19
SECTION 11. JOURNAL.	20
SECTION 12. SHORT FORMS	22
SECTION 13. GROUNDS FOR REFUSAL, REVOCATION OR SUSPENSION OF NOTARIAL COMMISSION.....	25
SECTION 14. ELECTRONIC NOTARIAL ACTS	26
SECTION 15. NOTARIAL ACTS AFFECTED BY THIS ACT	29
SECTION 16. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	29
SECTION 17. SHORT TITLE	29
SECTION 18. REPEALS	29
SECTION 19. EFFECTIVE DATE.....	30

REVISED UNIFORM LAW ON NOTARIAL ACTS

Prefatory Note

This Uniform Law defines common notarial acts and provides for the recognition of notarial acts performed in this state, in other states and in foreign jurisdictions. It authorizes traditional manual notarial acts as well as electronic notarial acts. It provides the basic requirements for the implementation of effective notarial signatures. However, it also recognizes and expects that the commissioning officer or agency will adopt rules and regulations to implement fully the enabling provisions of this act.

1 **REVISED UNIFORM LAW ON NOTARIAL ACTS**

2
3 **SECTION 1. DEFINITIONS.** As used in this Act:

4 (1) “Notarial act” means any act that a notary public of this State is authorized to
5 perform, and includes taking an acknowledgment, administering an oath or affirmation, taking a
6 verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a
7 copy and noting a protest of a negotiable instrument.

8 (2) “Acknowledgment” means a declaration by a person that the person has executed an
9 instrument for the purposes stated therein and, if the instrument is executed in a representative
10 capacity, that the person signed the instrument with proper authority and executed it as the act of
11 the person or entity represented and identified therein.

12 (3) “Verification upon oath or affirmation” means a declaration that a statement is true
13 made by a person upon oath or affirmation.

14 (4) “Identification document” means a document or card issued by a federal, state or
15 tribal governmental agency for identification purposes and bearing the photographic image of the
16 individual’s face, the person’s signature and a physical description of the person.

17 (5) “In a representative capacity” means:

18 (i) for and on behalf of a corporation, partnership, trust or other entity, as an
19 authorized officer, agent, partner, trustee or other representative;

20 (ii) as a public officer, personal representative, guardian or other representative, in
21 the capacity recited in the instrument;

22 (iii) as an attorney in fact for a principal; or

23 (iv) in any other capacity as an authorized representative of another.

1 (6) “Notarial officer” means a notary public or other officer authorized to perform
2 notarial acts.

3 (7) In order to “sign” a [record] [document], a person must manually affix that person’s
4 name or mark in ink to a [record] [document] with the intent to sign the [record] [document].
5 The name or mark so affixed is the person’s “signature.” A person may not sign a [record]
6 [document] by using a facsimile stamp or other printing method.

7 (8) “Electronic signature” means an electronic symbol or process attached to or logically
8 associated with a [record] [document] and executed or adopted by a person with the intent to sign
9 the [record] [document].

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

12 [or]

13 [“Document” means information that is inscribed on a tangible medium or that is stored in an
14 electronic or other medium and is retrievable in perceivable form.]

15 **Reporter’s Notes**

16
17 This Act uses the term “notarial officer” in subsection (6) to describe collectively notaries
18 public and all other persons having the power to perform the “notarial acts” defined in subsection
19 (1). Most of the provisions of this act apply broadly to all notarial officers. However, some
20 provisions have more limited application and are applicable only to notaries public, such as those
21 regarding the qualifications for, and the denial, suspension and revocation of, a notary public
22 commission.

23
24 Subsections (2) and (3) define two of the notarial acts performed by notarial officers.
25 The procedural requirements for implementing these notarial acts, as well as other notarial acts,
26 are fully stated in section 4 of this Act.

27
28 Subsection (4) defines “identification document,” which is a term used in section 3(g) to
29 describe when a notarial officer has “satisfactory evidence” as to the identification of the person
30 appearing before the officer. This Section requires that the identification document contain a
31 photographic image of the person, that person’s signature and a physical description of the
32 person, such as the person’s height, weight and gender. Identification documents include

1 passports, state issued drivers' licenses and other governmentally issued identification
2 documents. The term "photographic image" includes a "holographic image" as is used on
3 passports and some drivers' licenses.
4

5 In recent years, the use of officially issued pictorial identification documents has
6 increased. When notarial acts were first implemented, identification documents were rare and
7 pictorial identification documents were unknown. Today most persons have a pictorial driver's
8 license and most of those who do not have a driver's license have another state, tribal or United
9 States issued identification document. In addition, many people have passports which use
10 pictures or holograms. Pictorial identification documents are used routinely in other situations to
11 assure the identity of an individual, such as in the check-in process at an airport. The
12 identification of the person appearing before the notarial officer through an officially issued
13 pictorial identification document will raise the integrity of the notarization process and remove
14 many of the doubts that could arise as to the proper execution of the [record] [document]. This
15 Section would allow the usage of an identification document meeting the requirements of the
16 federal Real ID Act, but would not require the use of a document meeting those requirements.
17 If the Committee desires, the "photographic image" requirement can be removed; the prior
18 version of this Act merely required that the identification be based on an "identification
19 document." However, without the use of a pictorial identification document, the identification
20 process would be less certain and would not provide as much security and integrity to the
21 notarial process.
22

23 Subsection (5) defines the term "in a representative capacity" as that term is used in
24 Sections 1(2) and 12(2) of this Act.
25

26 Subsection (7) defines the terms "sign," and "signature" when implemented manually on
27 a physical medium. The verb "sign" should also be read to include other forms of the verb such
28 as "signing." If a person has adopted a symbol as a name, the person may affix the symbol as the
29 person's name.
30

31 Subsection (8) defines the term "electronic signature." The definition provided is
32 substantially similar to the definition of that term as used in The Uniform Electronic
33 Transactions Act (UETA) and The Uniform Real Property Electronic Recording Act (URPERA).
34

35 Subsection (9) defines the term "record" or "document" in the alternative. The reason for
36 including both of these terms is that each is used in other related uniform acts. UETA uses the
37 term "record;" URPERA uses the term "document." During the Committee's deliberations, it
38 will need to select one of these terms for use in the final version. At that time all references to
39 the alternative will be removed.
40

41 **SECTION 2. COMMISSION; QUALIFICATIONS; EDUCATION.**

42 (a) A person qualified under subsection (b) may apply to the [commissioning officer or
43 agency] for a commission as a notary public. The applicant must comply with, and provide the

1 information required by, the regulations established by the [commissioning officer or agency]
2 and submit the required application fee.

3 (b) To be qualified for a commission as a notary public, an applicant must be:

4 (1) at least eighteen years of age;

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

6 (3) a resident of this State;

7 (4) read and write in English;

8 (5) not subject to being refused a commission under Section 13 of this Act; and

9 (6) pass an examination administered by the [commissioning officer or agency]

10 based on a course of instruction as described in subsection (c).

11 (c) The [commissioning officer or agency] or an entity licensed by the [commissioning
12 officer or agency] shall regularly offer a course of instruction for notary public applicants that is
13 at least [__] hours in length covering the laws, regulations, standards, procedures and ethics
14 relevant to notarial acts.

15 (d) Prior to the effective date of the commission, an applicant must submit to the
16 [commissioning officer or agency] a bond in the amount of \$[_____] in the form prescribed by
17 the [commissioning officer or agency]. The bond shall be issued by a surety licensed in this
18 State and shall be effective for the term of the applicant's notary public commission. The
19 applicant must also execute and submit an oath of office to the [commissioning officer or
20 agency].

21 (e) Upon compliance with the provisions of this Section, the [commissioning officer or
22 agency] shall issue a notary public commission to the successful applicant for a term of [__]
23 years.

1 **Reporter's Notes**

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

10
11 Subsection (b) sets out qualifications for the issuance of a notary public commission.
12 The qualifications set out in the current legislation of the various states are quite varied. The
13 requirements listed here are common although not uniform among the states (compare Ariz. Rev.
14 Stat. § 41-312(E); Model Notary Act § 3-1).

15
16 An increasingly common requirement for the issuance of a notary public commission is
17 that the applicant must meet certain educational requirements. Subsection (c) sets out that
18 requirement, but leaves the length of the course to the determination of the state legislature.
19 Subsection (c)(6) requires that the applicant must pass a test based upon that course of
20 instruction.

21
22 Subsection (d) requires that the applicant must submit a bond to the [commissioning
23 officer or agency] in order to receive the commission. The amount of the bond is not specified
24 and is left to individual state legislatures to insert. The term of the bond must be at least as long
25 as the term of the notary public commission. The bond must be in the form prescribed by the
26 [commissioning officer or agency] in order to assure that it adequately protects those persons
27 who might be injured by a misfeasance or malfeasance by the notary public. The subsection also
28 requires that the applicant submit an oath of office to the [commissioning officer or agency].

29
30 Subsection (e) provides that upon compliance with the requirements of this section, the
31 [commissioning officer or agency] will issue a notarial commission for a specified term. The
32 length of that term is to be determined by the state legislature.
33

34 **SECTION 3. NOTARIAL ACTS.**

35 (a) In taking an acknowledgment, the acknowledging party must personally appear before
36 the notarial officer who must determine, either from personal knowledge or from satisfactory
37 evidence, that the person is the person whose signature is on the instrument.

38 (b) In taking a verification upon oath or affirmation, the verifying party must personally
39 appear before the notarial officer who must determine, either from personal knowledge or from

1 satisfactory evidence, that the person is the person whose signature is on the statement verified.

2 (c) In witnessing or attesting a signature, the witnessing or attesting party must personally
3 appear before the notarial officer who must determine, either from personal knowledge or from
4 satisfactory evidence, that the signature is that of the person named therein.

5 (d) In certifying or attesting a copy of a document or other item, the notarial officer must
6 determine that the proffered copy is a full, true and accurate transcription or reproduction of the
7 copied document.

8 (e) In making or noting a protest of a negotiable instrument, the notarial officer must
9 determine the matters set forth in [Section 3-509, Uniform Commercial Code].

10 (f) A notarial officer has personal knowledge of a person whose signature is on a [record]
11 [document] if that person is personally known to the notarial officer through a prior course of
12 dealings.

13 (g) A notarial officer has satisfactory evidence of a person whose signature is on a
14 [record] [document] if the notarial officer can identify that person on the basis of a currently
15 valid identification document.

16 (h) If a person is physically unable to sign a [record] [document], that person may direct
17 the notarial officer to sign the person's name on the [record] [document] in the presence of the
18 person and two disinterested witnesses. The witnesses shall sign below the signature as
19 witnesses and the notarial officer shall insert below the signature: "Signature affixed by (name of
20 notarial officer) at the direction of (name of person) in the presence of (names and addresses of
21 person and witnesses)."

22 (i) A person may sign a [record] [document] by mark if the mark is made in the presence
23 of the notarial officer and two disinterested witnesses. The witnesses shall sign below the mark

1 as witnesses and the notarial officer shall insert below the mark: “Mark affixed by (name of
2 person) in the presence of (name of notarial officer) and (names and addresses of witnesses).”

3 **Reporter’s Notes**

4
5 This section authorizes common notarial acts. It does not limit other acts that notarial
6 officers may perform, if otherwise authorized by state law. It also specifies the identification
7 procedures that a notarial officer must follow in order to assure the proper execution of a notarial
8 act.
9

10 Subsection (a) specifies what a notarial officer certifies by taking an acknowledgement.
11 The notarial officer certifies two facts: (1) the identity of the person who made the
12 acknowledgement, and (2) the fact that the person signed the [record] [document] as a specific
13 instrument (for example, a deed) and not as some other [record] [document]. As part of the
14 identification process, the acknowledging party must physically appear before the notarial
15 officer. An acknowledgement, as defined in section 1(2), is a statement that the person has
16 executed an instrument by signing it; it is not necessarily the act of signing itself. Thus, a person
17 may appear before the notarial officer and acknowledge to the officer that the signature already
18 on the document is that person’s signature.
19

20 Subsection (b) specifies the requisites of taking a verification on oath or affirmation.
21 There are also two main elements of a verification: (1) the identification of the affiant and
22 (2) the fact that the affiant is verifying the statement under oath or affirmation. Here again, the
23 physical presence of the affiant is required.
24

25 Subsection (c) states the requirements for witnessing or attesting a signature. Here the
26 notarial officer only certifies the fact of the signature; the officer does not certify the signatory’s
27 intent to verify the instrument.
28

29 Subsection (d) defines the standards for attestation or certification of a copy of a [record]
30 [document] by a notarial officer. This is commonly done only if it is necessary to produce a
31 copy of a [record] [document] when the original is in an archive or other collection of [records]
32 [documents] and cannot be removed. In many cases, the custodian of the official archive or
33 collection may also be empowered to issue an official certified copy. When an official certified
34 copy is available, it is official evidence of the state of the public archive or collection, and it may
35 be better evidence of the original [record] [document] than a notarially certified copy.
36

37 Subsection (e) refers to a provision of the Uniform Commercial Code that confers
38 authority to note a protest of a negotiable instrument before a notary and certain other officers.
39 Each of subsections (a) through (c) requires that the notarial officer identify the person whose
40 signature is on the [record] [document] either through personal knowledge or from satisfactory
41 evidence. Subsection (f) states that the notarial officer has personal knowledge of the identity of
42 that person only if the officer personally knows the person through a prior course of dealings.
43 That course of business may be business dealings, including the performance of prior notarial
44 acts for that person, or personal dealings. That course of dealings must provide the notarial

1 officer with sufficient information so that the officer can identify the person as the person
2 executing the [record] [document] without the need for further identification.
3

4 Subsection (g) describes when a notarial officer has satisfactory evidence of the identity
5 of the person whose signature is on a [record] [document]. This Act provides that satisfactory
6 evidence requires that the identification be based on a currently valid identification document.
7 Based on the definition in Section 1(4) of identification document, the identification document
8 would be a pictorial identification document. (See Comments to that subsection.)
9

10 Unlike the prior version of this Uniform Law, this proposal does not permit identification
11 based on the oath or affirmation of a credible witness personally known to the notarial officer as
12 satisfactory evidence of the person's identity. That method of identification raises the question
13 of what form of identification of the signatory to the witness would be sufficient? The
14 identification of the signatory to the witness should not be by the further use of another credible
15 witness; such would lead to a spiraling and useless addition of "witnesses to the witnesses." If
16 identification of the signatory to the witness were by means of an identification document, the
17 use of a witness would not be necessary; the signatory could be identified directly to the notarial
18 officer by the same identification document. This leaves personal knowledge as only the only
19 remaining means of identification of the signatory to the witnesses.
20

21 Identification by oath or affirmation of a witness is a remnant of an earlier time when
22 identification documents were not in general use and societal interrelations were closer and
23 supplied identification needs; individuals who personally knew the signatory and the notarial
24 officer were more common. In fact, the coincidence of personal knowledge of multiple parties
25 (signatory to the witnesses and witnesses to the notarial officer) would even seem to limit the
26 usability of this form of identification as a practical matter. Today this form of identification is
27 unnecessary for the operation of the notarial process. In fact, confidence in the notarial system
28 may be better not using it. Consequently, identification of the signatory by personal knowledge
29 of the notarial officer and identification of the signatory to the notarial officer by means of an
30 identification document should be sufficient, safer and more appropriate; they are the only
31 methods provided in this Act.
32

33 Subsection (h) recognizes that some individuals may be unable to sign a [record]
34 [document] personally because of a disability. In that case, this subsection allows for an
35 alternate process. That process requires the executing party to direct the notarial officer to sign
36 that party's name to the [record] [document] in the presence of the party and also in the presence
37 two disinterested witnesses. It then requires the witnesses to sign the [record] [document] and
38 provides language for insertion after the signature for the purpose of identifying the special
39 nature of this signature. (For similar provisions, see Model Notary Act § 5-1(d); see also
40 proposed amendments to Kentucky legislation, 07 Reg. Sess. Gen. Assembly Bill 1450, § 18(2).)
41

42 Subsection (i) similarly recognizes that an individual may not know how to sign his or
43 her name to a [record] [document] but may be able to insert a mark intended to be a signature.
44 This subsection allows the use of that mark if done in the presence of the notarial officer and in
45 the presence of two witnesses. It requires the witnesses to sign below the mark and provides
46 language for insertion after the mark. (For similar provisions, see Model Notary Act § 5-1(c),

1 see also proposed amendments to Kentucky legislation, 07 Reg. Sess. Gen. Assembly Bill 1450,
2 § 18(1).)

3

4 **SECTION 4. ADVERTISING DISCLAIMER REQUIRED; UNAUTHORIZED**
5 **PRACTICE OF LAW.**

6 (a) A notarial officer, other than an attorney at law, shall not (i) assist persons in drafting
7 legal documents, (ii) render legal advice or (iii) otherwise engage in the practice of law.

8 (b) Subsection (a) does not preclude a notarial officer who is duly qualified, trained or
9 experienced in a particular industry or professional field from drafting, completing, selecting or
10 advising on a [record] [document] related to a matter within that industry or field or permitted by
11 the laws or regulations governing the industry or field. Nor shall it preclude a notarial officer
12 from drafting, completing, selecting or advising on a [record] [document] as otherwise
13 authorized by law.

14 (c) A notarial officer, other than an attorney at law, shall not represent that the officer
15 may offer legal advice or draft legal [documents] [records]. If that notarial officer, in any
16 manner, advertises notarial services [in any language] [in a language other than English], shall
17 include the following statement in the advertisement, prominently and in the same language: “I
18 am not an attorney. I cannot give advice on legal matters, including immigration. I cannot draft
19 legal documents.”

20 **Reporter’s Notes**

21

22 Subsection (a) prohibits a notary public from rendering legal services. However, the
23 prohibition in this subsection applies to rendering legal services to all persons. It specifically
24 prohibits giving legal advice, whether it is in the form of preparing, drafting or assisting in the
25 understanding of documents or the rendering of legal advice.

26

27 An additional provision might be added specifically prohibiting a notarial officer from
28 engaging in the practice of law by representing a party at a real estate closing. However, since
29 the language of this subsection is general enough to include real estate closings, it was not

1 thought necessary to add that provision; however, if so desired, it can be added.

2
3 Subsection (b) provides an exception from the prohibitions in subsection (a). Members
4 of a number of professions have specialized training or experience in areas that overlap and
5 perhaps include legal matters. For example, accountants have training and experience in income
6 and estate taxation and certified life underwriters have training and experience in insurance and
7 estate planning. This subsection provides that a person in a profession such as those and who
8 gives advice in the preparation, drafting or assisting in the understanding of documents or
9 rendering of advice within that professional's own field is not engaging in the unauthorized
10 practice of law.

11
12 Subsection (c) is derived from provisions in legislation currently in effect in Arizona
13 (Ariz. Rev. Stat. § 41-329(A) and under consideration in Massachusetts (2007 Mass. H.B. 1642,
14 § 1, 8(G)). The language is directed toward a specific problem. Under the laws of many non-
15 common law countries, including but not limited to civil law countries, a notary public is
16 authorized not only to verify and acknowledge [documents] [records] and signatures. In those
17 countries, a notary may draft and interpret legal [documents] [records] for parties and give legal
18 advice on those matters. In effect, those notaries public have at least limited authority to engage
19 in transactional and other legal matters. When people emigrate to the United States from those
20 countries, they are faced not only with their prior experiences under that custom but also the
21 difficulties of understanding the English language. Unfortunately, some notaries public have
22 taken advantage of that situation, whether at their suggestion or at the request of the immigrant,
23 and have provided legal advice and document drafting. In many cases, the legal advice has dealt
24 with immigration matters.

25
26 This subsection seeks to remedy that situation by requiring a notary public to provide
27 information to the prospective client. That information must be given in the same language that
28 the notary public uses for the advertising and must state that notary public may not provide legal
29 advice, particularly about immigration matters. The advertising includes ads in the written or
30 visual media as well as point of service ads and oral advertising. It seeks to inform the
31 prospective client that the notary public is not authorized or experienced to give legal advice. It
32 itself does not prohibit the rendering of legal services. (The alternative language provides that
33 this section applies only when the advertising is in a language other than English or, in the
34 alternative, when the advertising is in any language including English.)
35

36 **SECTION 5. NOTARIAL ACTS IN THIS STATE.**

37 (a) A notarial act may be performed within this State by the following persons:

38 (1) a notary public of this State; or

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

40 [(3) a person licensed to practice law in this State][; or]

1 [(4) a person authorized by the law of this State to administer oaths][; or]

2 [(5) any other person authorized to perform the specific act by the law of this

3 State].

4 (b) Notarial acts performed within this State under federal authority as provided in
5 Section 7 have the same effect as if performed by a notarial officer of this State.

6 (c) The signature and title of a person performing a notarial act are prima facie evidence
7 that the signature is genuine and that the person holds the designated title.

8 [(d) The signature and title of a notarial officer listed in subsection (a)(1) or (a)(2)
9 conclusively establish the authority of the officer to perform a notarial act.]

10 **Reporter's Notes**

11
12 Subsection (a) lists the persons who are entitled to serve as notarial officers in this State.
13 In addition to notaries public, all judges, clerks and deputy clerks of the courts of this State may
14 automatically perform notarial acts. The language follows the prior version of this Uniform Act.

15
16 Several optional notarial officers are also listed. A state may authorize all duly licensed
17 attorneys at law to serve as notaries public by virtue of their attorney's licenses. It may also
18 authorize other individuals who have authority to administer oaths to do so. If other particular
19 officers, such as recorders or registrars of deeds or commissioners of titles, may perform notarial
20 acts in the State it would be advisable to list them here because the list will be a ready reference
21 point for those who seek to determine the validity of their acts when they are used in another
22 state.

23
24 Proof of authority of a notarial officer usually involves three steps:

- 25
26 1. Proof that the notarial officer's signature is that of the named person,
27 2. Proof that the person holds the designated office, and
28 3. Proof that those holding that office may perform notarial acts.

29
30 Subsection (c) sets forth the presumption that the signature of the notarial officer is
31 genuine as well as the presumption that the person holds the designated title of a notarial officer
32 – the first two elements of authentication.

33
34 Subsection (d) was not in the prior version of this act, but it is submitted for
35 consideration. It is a parallel of the provisions in Sections 6(d) and 7(c). The prior version of
36 this act may be interpreted to say that although it was necessary to presume conclusively that
37 certain notarial officers in a foreign jurisdiction or acting under United States had the authority to

1 perform notarial acts, it was not necessary to presume conclusively that similar notarial officers
2 of this State had such authority. The absence of such a provision might suggest that it was
3 necessary to prove that a notary public listed in subsection (a) was not conclusively presumed to
4 have the authority of a notary public. It might also suggest that one would have to prove that a
5 notary public or a judge, clerk or deputy clerk had that authority. On the other hand, such
6 authority might be inferred from the very existence of this Act and in particular subsection (a)
7 and (b) of this Section. I raise this as a question for your consideration. Perhaps it would be best
8 to state the obvious and expressly provide that those officers have that authority. See the
9 Comments under Sections 6 and 7 for further explanation.
10

11 **SECTION 6. NOTARIAL ACTS IN OTHER JURISDICTIONS OF THE UNITED**
12 **STATES.**

13 (a) A notarial act has the same effect under the law of this State as if performed by a
14 notarial officer of this State, if performed in another state, commonwealth, territory, district or
15 possession of the United States by any of the following persons:

16 (1) a notary public of that jurisdiction; or

17 (2) a judge, clerk or deputy clerk of a court of that jurisdiction; or

18 (3) any other person authorized by the law of that jurisdiction to perform notarial
19 acts.

20 (b) Notarial acts performed in other jurisdictions of the United States under federal
21 authority as provided in Section 7 have the same effect as if performed by a notarial officer of
22 this State.

23 (c) The signature and title of a person performing a notarial act are prima facie evidence
24 that the signature is genuine and that the person holds the designated title.

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

27 **Reporter's Notes**

28 Sections 6, 7 and 8 of this act are derived from similar provisions in the earlier version of
29

1 this Uniform Act. This act distinguishes between three kinds of authority from outside the state
2 and provides authentication for each type separately.

3
4 Subsection (a) lists the notarial officers authorized by the law of other states whose
5 notarial acts in those states will be recognized in this State. Subsection (b) provides that notarial
6 acts performed under United States authority in another state will be recognized in this State.

7
8 Subsection (c) gives prima facie validity to the signature and assertion of title of the
9 person who acts as notarial officer (the first two elements of proof of authority of a notarial
10 officer listed in the prior Comment).

11
12 Subsection (d) provides the third element of that proof of authority. It recognizes the
13 authority of a notary public or of a judge or clerk of deputy clerk of court of the foreign state to
14 perform notarial acts, without the necessity of further proof that such an officer has notarial
15 authority. These two subsections abolish the need for a “clerk’s certificate” to authenticate the
16 notarial act of a notary public, judge, clerk or deputy clerk. However, the authority of a person
17 other than a notary public, judge, clerk or deputy clerk to perform notarial acts can most readily
18 be proven by reference to other laws of the foreign state. Any other form of proof of authority to
19 perform notarial acts acceptable in this State, such as a “clerk’s certificate” would also suffice.
20

21 **SECTION 7. NOTARIAL ACTS UNDER FEDERAL AUTHORITY.**

22 (a) A notarial act has the same effect under the law of this State as if performed by a
23 notarial officer of this State if performed anywhere by any of the following persons under
24 authority granted by the law of the United States:

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

26 (2) a commissioned officer on active duty in the military service of the United
27 States [or performing inactive-duty training]; or

28 (3) an officer of the foreign service or consular officer of the United States; or

29 (4) any other person authorized by federal law to perform notarial acts.

30 (b) The signature and title of a person performing a notarial act are prima facie evidence
31 that the signature is genuine and that the person holds the designated title.

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

1
2
3 **Reporter’s Notes**

4 Some acknowledgements are performed by persons acting under federal authority or
5 holding office under federal authority. This section provides for the automatic recognition of
6 those notarial acts under the laws of this State wherever the acts are performed. Like the prior
7 version of this Uniform Act, this proposal does not limit recognition of notarial acts performed
8 by military officers to acts performed for persons in the military service or any other persons
9 serving with or accompanying the armed forces of the United States. Such a limitation in
10 recognition merely places another cloud on the validity of the notarial act. The Act does not
11 purport to extend the authority of military officers to perform these acts, but merely immunizes
12 the private party relying on them from any consequences of the officer’s excess of authority.
13 Both in the case of commissioned military officers and foreign service officers, the language
14 reflects the modern descriptions of the offices in question.

15 Subsection (b) confers prima facie validity upon the signature and assertion of rank or
16 title by the United States notarial officer. It thus provides the first two elements of proof
17 described in the Comments to Section 5.

18 Subsection (c) provides the third element of proof of the notarial officer’s authority. It
19 immediately recognizes the authority of a judge, clerk or deputy clerk or a military officer or
20 foreign service or consular officer to perform notarial acts without the necessity of further
21 reference to the federal statutes or regulations to prove that the officer has notarial authority.
22 There is no need for further authentication of those persons’ authority to perform notarial acts.
23 A variety of other federal officers may be authorized to perform notarial acts, such as wardens of
24 federal prisons, but their authority must be demonstrated by other means. The authority of such
25 an officer to perform the notarial act can most readily be demonstrated by reference to the federal
26 law or published regulations granting the authority. Any other form of authentication, such as a
27 “clerk’s certificate,” could also be used.
28

29 A military officer who performs notarial services should insert the appropriate title (e.g.
30 commanding officer) in the place designated for “title (and rank)” to conform to 10 U.S.C. § 936.
31 The officer’s rank and branch of service should also be inserted there. (Note that prior 10 U.S.C.
32 § 936(d) has been repealed and expanded by §§ 936(a) & (b).¹
33

¹ 10 U.S.C.A. § 936

(a) The following persons on active duty or performing inactive-duty training may administer oaths for the purposes of military administration, including military justice:

- (1) All judge advocates.
- (2) All summary courts-martial.
- (3) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants.
- (4) All commanding officers of the Navy, Marine Corps, and Coast Guard.
- (5) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers.
- (6) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty or performing inactive-duty training may administer oaths necessary in the performance of their duties:

- (1) The president, military judge, trial counsel, and assistant trial counsel for all general and special courts-martial.
- (2) The president and the counsel for the court of any court of inquiry.
- (3) All officers designated to take a deposition.
- (4) All persons detailed to conduct an investigation.
- (5) All recruiting officers.
- (6) All other persons designated by regulations of the armed forces or by statute.

(c) The judges of the United States Court of Appeals for the Armed Forces may administer the oaths authorized by subsections (a) and (b).

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SECTION 8. FOREIGN NOTARIAL ACTS.

(a) A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State if performed within the jurisdiction of and under authority of a foreign nation or its constituent units [or a multi-national or international organization] by any of the following persons:

- (1) a notary public or notary;
- (2) a judge, clerk or deputy clerk of a court of record; or
- (3) any other person authorized by the law of that jurisdiction to perform notarial

acts.

(b) An “Apostille” in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(c) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(d) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

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

(f) If the title of office and indication of authority to perform notarial acts appears either

1 in a digest of foreign law or in a list customarily used as a source for that information, the
2 authority of an officer with that title to perform notarial acts is conclusively established.

3 **Reporter's Notes**
4

5 This section deals with the authority of notarial officers empowered to act under foreign
6 law. Note that the notarial act of any notary is recognized as well as that of any judge, clerk of
7 court or deputy clerk of court. The notarial acts of other persons will be recognized if they are
8 authorized by the law of the place in which they are performed. The provisions of this section
9 are the same as under the prior version of this Uniform Law.

10
11 The bracketed provision appears to be intended to apply to multi-national entities such as
12 NATO, the UN and similar organizations. However, as used it might be interpreted to include
13 large multi-national corporations. Perhaps language such as the following might be more
14 appropriate: "or a multi-national or international governmental organization."
15

16 Validity of a foreign notarial act is a more difficult problem than recognition of such acts
17 from other states or performed under the authority of the United States because the relative
18 authority of public and quasi-public officers may vary.
19

20 The United States is now a party to an international convention regarding the
21 authentication of notarial and other similar public acts. The first method of recognition of
22 foreign notarial acts is that set forth in the treaty. The Apostile may be stamped on the document
23 or an attached page by a specified officer in the foreign country. It has the following form,
24 which is set forth in the annotation to Federal Rules of Civil Procedure Rule 44:
25

26 The certificate will be in the form of a square with sides at least 9 centimetres long:
27

APOSTILLE
(Convention de La Haye du 5 octobre 1961)

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

1 It may be in the language of the issuing country, but the words “Apostille (Convention de
2 La Haye, du 5 octobre 1961)” are always in French. Under the terms of the treaty, to which the
3 United States is a party, the Apostille must be recognized if issued by a competent authority in
4 another nation that has already ratified it. The text of the Convention is also reproduced in the
5 annotations to the Federal Rules of Civil Procedure Rule 44.
6

7 Although federal law provides for mandatory recognition of an Apostille only if issued
8 by another ratifying nation, the statute provides for recognition of all apostilles issued by any
9 foreign nation in that form. They are, in effect, no more than a standard form of authentication.
10 Use of the form eases problems of translation.
11

12 Recognition may also be accorded in a number of other ways, which are set forth in the
13 act.
14

15 **SECTION 9. CERTIFICATE OF NOTARIAL ACTS.**

16 (a) A notarial act must be evidenced by a certificate signed and dated by a notarial
17 officer. The certificate must include identification of the jurisdiction in which the notarial act is
18 performed and the title of the office of the notarial officer and may include the official stamp [or
19 seal] of office. If the officer is a notary public, the certificate must also indicate the date of
20 expiration, if any, of the commission of office, but omission of that information may
21 subsequently be corrected. If the officer is a commissioned officer on active duty in the military
22 service of the United States [or performing inactive-duty training], it must also include the
23 officer's rank.

24 (b) A certificate of a notarial act is sufficient if it meets the requirements of subsection (a)
25 and it:

26 (1) is in the short form set forth in Section 12;

27 (2) is in a form otherwise prescribed by the law of this State;

28 (3) is in a form prescribed by the laws or regulations applicable in the place in
29 which the notarial act was performed; or

30 (4) sets forth the actions of the notarial officer and those are sufficient to meet the

1 requirements of the designated notarial act.

2 (c) By executing a certificate of a notarial act, the notarial officer certifies that the officer
3 has made the determinations required by Section 3.

4 **Reporter's Notes**

5
6 Subsection (a) requires a written certification by the notarial officer of the notarial act. It
7 must identify the notarial act, set forth its date and its place of performance and contain the office
8 and signature of the notarial officer. It may also contain the official stamp [or seal] of the
9 notarial officer. If the officer is a notary public, the certificate must also contain the expiration
10 date of the notary's commission. If the officer is a commissioner officer in the military service,
11 then it must include the officer's rank.

12
13 Subsection (b) provides that the certificate may be in any one of the short forms set forth
14 in this Section 12 of this Act, in any other form provided by local law, in any other form
15 provided by the law of the place where it was performed or in any form that sets forth the
16 requisite elements of the appropriate notarial act. Thus, acknowledgements and other notarial
17 acts executed in more prolix and elaborate forms may nevertheless continue to qualify under
18 subsection (b).

19
20 Subsection (c) emphasizes the obligation of the notarial officer to make the
21 determinations required by Section 3 and to certify that the officer has done so.
22

23 **SECTION 10. SIGNATURE; STAMP[; SEAL].**

24 (a) A notarial officer shall affix the notarial officer's signature to a [record] [document],
25 by signing the notarial certificate on, or attached to, the [record] [document]. The notarial officer
26 may not sign the notarial certificate until the notarial act has been performed.

27 (b) A notarial officer shall keep the official stamp [and seal] that will be used in
28 performing the notarial officer's duties in a secure place. The notarial officer shall not allow
29 another person to use or possess the stamp [and seal] and must surrender it [them] to the
30 [commissioning officer or agency] upon resignation, revocation or expiration of the notarial
31 officer's commission. The notarial officer's personal representative shall surrender the stamp
32 [and seal] to the [commissioning officer or agency] upon the death of the notarial officer.

1 (c) In the event of the loss or theft of the notarial officer’s official stamp [and seal], the
2 notarial officer shall notify the [commissioning officer or agency] and the appropriate law
3 enforcement authority within 10 days of the discovery of the loss or theft.

4 **Reporter’s Notes**
5

6 Subsection (a) provides that the notarial officer evidences the performance of the notarial
7 act by affixing the officer’s signature to the notarial certificate (see section 12 for forms) located
8 on, or attached to, the [document] [record]. Because the terms “sign,” “signing,” and “signature”
9 are defined (see section 1(7)), the signature must be manually inserted by the notarial officer in
10 ink and may not be printed or inserted by means of a facsimile stamp. In order to be proper
11 evidence of the full performance of a notarial act, the notarial officer may not sign the notarial
12 certificate until the notarial act has been fully performed. See N.C. Gen. Stat. § 10B-35; Model
13 Notary Act, § 8-1.
14

15 Subsection (b) requires the notarial officer to maintain the officer’s official stamp [and
16 seal if required] in a secure place. In order to protect and maintain the integrity of notarial acts,
17 it is most important that the officer’s stamp [and seal] be kept secure and out of the hands of any
18 person who might use it fraudulently. Accordingly, the officer may not allow another person to
19 use or possess the stamp.
20

21 Furthermore, to assure the integrity of the notarial system, the notarial officer may not
22 possess the official stamp [and seal] after the officer is no longer serving as a notarial officer.
23 Thus, upon the resignation, revocation or expiration of the notarial officer’s commission, the
24 officer must surrender the stamp [and seal] to the [commissioning officer or agency]. Similarly,
25 upon the death of the notarial officer, the officer’s personal representative must surrender the
26 stamp [and seal] to the commissioning officer or agency. See N.C. Gen. Stat. § 10B-36(a);
27 Model Notary Act § 7-4(f).
28

29 In the event that the official stamp [or seal] is lost or stolen, the prospect of fraudulent
30 misuse is raised. Therefore, the notarial officer is required by subsection (c) to notify the
31 appropriate law enforcement authority. In addition, notarial officer is also required to notify the
32 [commissioning officer or agency] , who may be able to take steps or provide notification that
33 will further protect the public. See Ariz. Rev. Stat. § 41-323; N.C. Gen. Stat. § 10B-36(c);
34 Model Notary Act § 7-4(g).
35

36 **SECTION 11. JOURNAL.**

37 (a) A notarial officer shall maintain a journal that records all notarial acts that the officer
38 performs for a period of five years after the performance of the notarial act. The journal shall be
39 a permanent, bound record with numbered pages. The entries shall be made chronologically at

1 the time of the performance of the notarial act(s) and shall consist of the following:

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

3 (2) a description of the [document(s)] [record(s)] or type of notarial act(s);

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

5 (4) if identity is by personal knowledge of the party by the notarial officer, a
6 description of that personal knowledge;

7 (5) if identity is other than by personal knowledge, a description of the passport or
8 identification document, the person's identifying number thereon and its date of issuance and
9 expiration; and

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

11 (b) In the case of electronic notarial acts under Section 14 of this act, the notarial officer
12 shall designate at the time of registering with the [commissioning officer or agency] whether the
13 notarial officer will maintain a journal of electronic notarial acts as part of the journal described
14 in subsection (a) or as a separate electronic journal. In the event that the notarial officer decides
15 to use a separate electronic journal, the notarial officer shall record the same information
16 described in subsection (a) in a permanent, unalterable electronic format in accordance with
17 regulations and standards prescribed by the [commissioning officer or agency].

18 **Reporter's Notes**

19
20 Subsection (a) requires the notarial officer maintain a journal of all notarial acts that the
21 officer performs. The officer must make the entries at the time of the performance of the notarial
22 act. The information in the journal is available as evidence of the proper performance of the
23 notarial act and is supportive of the proper execution of the act. In order to assure the
24 completeness and integrity of the information in the journal, this subsection requires that the
25 journal be a permanently bound volume with consecutively numbered pages. The officer must
26 maintain the journal for at least five years after the performance of the notarial act. The list of
27 required information is similar to that required in many jurisdictions, including Arizona and
28 Delaware. See Ariz. Rev. Stat. § 41-317 & 319(A); Del. Code Ann. tit. 29, § 4314(b).

29

1 Subsection (b) allows the notarial officer to decide whether to use a traditional journal
2 described in subsection (a) or an electronic journal when executing electronic notarizations. That
3 decision is to be made at the time that the notarial officer registers with the [commissioning
4 officer or agency] to execute electronic notarial acts (see Section 14(a)). If the officer decides to
5 use the journal described in subsection (a), the entries for both traditional notarial acts and
6 electronic notarial acts must be entered in the same book sequentially. The officer may maintain
7 only one active journal at a time. If the officer decides to use an electronic journal, the officer
8 must record the same information in the journal as listed in subsection (a). The electronic
9 journal must also be maintained in a permanent, unalterable electronic format as prescribed by
10 the standards and regulations of the [commissioning officer or agency].
11

12 **SECTION 12. SHORT FORMS.** The following short form certificates of notarial acts
13 are sufficient for the purposes indicated, if completed with the information required by Section
14 7(a):

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

16 State of _____

17 (County) of _____

18 This instrument was acknowledged before me on (date) by (name(s) of person(s))

19 _____

20 (Signature of notarial officer)

21 (Seal, if any)

22 _____

23 Title (and Rank)

24 [My commission expires: _____]

25

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

27 State of _____

28 (County) of _____

1 This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of
2 authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was
3 executed.)

4 _____

5 (Signature of notarial officer)

6 (Seal, if any)

7 _____

8 Title (and Rank)

9 [My commission expires: _____]

10

11 (3) For a verification upon oath or affirmation:

12 State of _____

13 (County) of _____

14 Signed and sworn to (or affirmed) before me on (date) by (name(s) of
15 person(s) making statement).

16 _____

17 (Signature of notarial officer)

18 (Seal, if any)

19 _____

20 Title (and Rank)

21 [My commission expires: _____]

22

23 (4) For witnessing or attesting a signature:

1 State of _____

2 (County) of _____

3 Signed or attested before me on (date) by (name(s) of person(s)).

4 _____

(Signature of notarial officer)

6 (Seal, if any)

7 _____

Title (and Rank)

9 [My commission expires: _____]

10

11 (5) For attestation of a copy of a document:

12 State of _____

13 (County) of _____

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

15 _____.

16 Dated _____

17 _____

(Signature of notarial officer)

19 (Seal, if any)

20 _____

Title (and Rank)

22 [My commission expires: _____]

23

Reporter's Notes

24

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

4
5 A notarial seal is optional under this act. See Section 9(1). A military officer who is
6 acting as a notarial officer will normally enter both title (e.g. commanding officer, Company A,
7 etc.) and rank (Captain, U.S. Army) as identification.
8

9 **SECTION 13. GROUNDS FOR REFUSAL, REVOCATION OR SUSPENSION**
10 **OF NOTARIAL COMMISSION.**

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

14 (1) a substantial or material misstatement or omission in the notary public's
15 application submitted to the [commissioning officer or agency] for a notary public's commission;

16 (2) the applicant's or notary public's conviction, guilty plea or plea of no contest
17 to any felony or to a crime involving moral turpitude or dishonesty, fraud or deceit;

18 (3) a finding against, or admission of liability by, the applicant or notary public in
19 any legal proceedings or disciplinary action based on the applicant's or notary public's
20 dishonesty, fraud or deceit;

21 (4) the notary public's failure to discharge fully and faithfully any duties or
22 responsibilities required of a notarial officer, whether by this act, the regulations of the
23 [commissioning officer or agency] or any federal, state or tribal law;

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

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

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

4 **Reporter's Notes**

5
6 Subsection (a) lists the grounds upon which the [commissioning officer or agency] may
7 refuse to grant an applicant a notary public's commission or upon which it may revoke or
8 suspend that commission. The list of grounds is similar to those provided in many states. See
9 Ariz. Rev. Stat. § 41-330(A); N.C. Gen. Stat. § 10B-5(d).

10
11 Subsections (a)(1)-(5) set forth specific statutory grounds upon which a commission may
12 be denied, suspended or revoked. Subsection (a)(6) gives the [commissioning officer or agency]
13 the authority to promulgate rules or regulations further setting forth grounds upon which a
14 commission may be denied, suspended or revoked.

15
16 Subsection (b) states expressly that an applicant who has been denied a commission or a
17 notary public whose commission has been suspended or revoked is entitled to a timely notice and
18 a hearing. Such a notice or hearing is likely to be required by the state's administrative
19 procedure act, but is restated here for clarity and assurance.
20

21 **SECTION 14. ELECTRONIC NOTARIAL ACTS.**

22 (a) A notarial officer who complies with the regulations and standards adopted by the
23 [commissioning officer or agency] is authorized to perform electronic notarial acts within this
24 State. Prior to performing any electronic notarial acts, the notarial officer shall register with the
25 [commissioning officer or agency] as an electronic notarial officer.

26 (b) An electronic notarial act is valid if an electronic version of the certificate containing
27 the information specified in Section 9 of this Act and the notarial officer's electronic signature
28 are attached to, or logically associated with, an electronic [record] [document] in accordance
29 with standards adopted by the [commissioning officer or agency].

30 (c) An electronic image of the stamp or seal of the notarial officer need not be attached to,
31 or logically associated with, the electronic [record] [document].

1 (d) The [commissioning officer or agency] shall adopt standards designed to assure that
2 the electronic certificate [and stamp or seal] that are attached to, or logically associated with, an
3 electronic [record] [document] [is] [are] genuine and [has] [have] not been changed or subjected
4 to tampering.

5 (e) The [commissioning officer or agency] shall maintain an electronic database of
6 electronic notarial officers through which a person may verify the electronic notarial officer's
7 authority to perform electronic notarial acts.

8 (f) In adopting the regulations and standards required by this section, the [commissioning
9 officer or agency] shall consult with the [Electronic Recording Commission] [name of state
10 agency] authorized to issue rules or regulations for the recording of electronic documents. The
11 [commissioning officer or agency], so far as is consistent with the purposes, policies and
12 provisions of this act, shall also consider the regulations, standards and customs of other
13 jurisdictions and the standards promulgated by national standard-setting bodies.

14 *Legislative Note: Depending on choices made in drafting this Section, it may contain provisions*
15 *that are different from those set forth in Section 3(c) of the Uniform Real Property Electronic*
16 *Recording Act, and that Section may have to be repealed or amended to conform to this Section.*
17

18 **Reporter's Notes**

19
20 This section authorizes the notarization of electronic documents by electronic means.
21 Because the processes available to implement electronic notarizations are multiple and are
22 subject to variation and rapid change, this Section does not specify the many and varied specific
23 requirements necessary for the full implementation of electronic notarizations. Rather, the duty
24 to implement standards specifying those processes, to maintain their timeliness and to enforce
25 them is given to the [commissioning officer or agency].
26

27 Subsection (a) states that electronic notarization may be performed by all notarial officers
28 who comply with the requirements and standards adopted by the [commissioning officer or
29 agency]. It also requires that, prior to performing any electronic notarial acts, the notarial officer
30 must register with the [commissioning officer or agency].
31

32 As stated above, the adoption and revision of requirements for electronic notarization are
33 best left to [commissioning officer or agency] through the administrative rule making process

1 rather than through legislative enactment and amendment. Not only will adoption and revision
2 be faster and easier, but fact finding for such adoption and revision will be performed by persons
3 best able to evaluate the options.
4

5 Although this subsection provides that the requirements and standards are to be adopted
6 by the Secretary of State or other state officer or agency, some or all of those requirements could
7 be specified in this act itself. Article III of the Model Notary Act provides detailed requirements
8 for electronic notarization although it is currently in the process of revision. Specific legislation
9 has also been adopted by the State of Arizona. Less prescriptive legislation is under discussion
10 in the Commonwealth of Virginia.
11

12 Subsection (b) is the essential provision that validates electronic notarization. It specifies
13 that an electronic version of the certificate specified in Section 9 of the act must be attached to,
14 or logically associated with, the electronic document or signature that is being notarized. The
15 specific process by which the notarial officer's certificate is to be attached to, or associated with,
16 an electronic document is to be specified by the [commissioning officer or agency].
17

18 Subsection (c), as written, provides that no image of the stamp or seal of the notarial
19 officer need be attached to the electronic document in order for the electronic notarization to be
20 valid. This approach is based on the last sentence of Section 3(c) of the Uniform Real Property
21 Electronic Recording Act and is in conformance with UETA as well as the federal E-Sign Act 15
22 U.S.C. § 701. The principle behind this approach is that attaching or associating the information
23 contained in the certificate specified in Section 9 of the Act provides the information necessary
24 to identify the notarial officer. A stamp, impression or seal adds no further information or
25 security.
26

27 A second alternative may be as follows:
28

29 "An electronic image of the notarial officer's stamp or seal shall be attached to, or
30 logically associated with, the electronic [document] [record]."
31

32 It provides that an electronic image of a stamp or seal must be attached to the electronic
33 document or signature. It makes no requirement as to processes or methods of attachment or
34 assurance of its validity.
35

36 A third alternative may be as follows:
37

38 "An electronic image of the notarial officer's stamp or seal complying with the
39 standards adopted by the [commissioning officer or agency] shall be attached to,
40 or logically associated with, the electronic [document] [record]."
41

42 It similarly requires that an electronic image of a stamp or seal be attached to the electronic
43 document or signature. However, it additionally requires that the electronic image and the
44 process of attachment or association must comply with the standards adopted by the
45 [commissioning officer or agency].
46

1 It should be noted that while the current Uniform Law on Notarial Acts permits the
2 attachment of physical stamps and seals, it does not require that a seal be attached. It is in
3 conformance with the philosophy of the language in the submitted proposal.
4

5 Subsection (d) imposes a duty on the [commissioning officer or agency] to adopt rules
6 and regulations setting standards to implement the provisions of this Section. Although not
7 specifically stated, it is implied that such standards must be adopted prior to the implementation
8 of electronic notarization processes. For example, unless those standards are adopted, no
9 processes will be specified by which the notarial officer's electronic certificate shall be attached
10 to the document or signature. These standards must also be in conformance with federal E-Sign
11 15 U.S.C. § 704, which limits the authority of a regulator to impose greater standards on
12 electronic technology than is authorized in that Act.
13

14 Subsection (e) provides that the [commissioning officer or agency] will create and
15 maintain a database containing a list of electronic notarial officers. This database would allow a
16 person to verify that the person purporting to be a notarial officer authorized to execute
17 electronic notarial acts is, in fact, registered.
18

19 Subsection (f) requires that, in adopting regulations and standards, the Secretary of State
20 or other state officer or agency will consult with the state officer or agency authorized to adopt
21 standards under the Uniform Real Property Electronic Recording Act. Those officers or agencies
22 will have already engaged in a similar process of adopting standards for electronic documents
23 and electronic signatures. So far as consistent with the purposes, policies and provisions of this
24 act, the [commissioning officer or agency] is also directed to consider the requirements,
25 standards and customs in other states and those supported by national standard-setting bodies.
26 These standards must also be in conformance with federal E-Sign 15 U.S.C. § 704, which limits
27 the authority of a regulator to impose greater standards on electronic technology than is
28 authorized in that Act.
29

30 **SECTION 15. NOTARIAL ACTS AFFECTED BY THIS ACT.** This [act] applies to
31 notarial acts performed on or after its effective date.

32 **SECTION 16. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This
33 [act] shall be applied and construed to effectuate its general purpose to make uniform the law
34 with respect to the subject of this [act] among states enacting it.

35 **SECTION 17. SHORT TITLE.** This [act] may be cited as the Uniform Law on
36 Notarial Acts.

37 **SECTION 18. REPEALS.** The following acts and parts of acts are repealed:

- 1 (1) [The Uniform Acknowledgment Act (As Amended)]
- 2 (2) [The Uniform Recognition of Acknowledgments Act]
- 3 (3) [Prior version of The Uniform Law on Notarial Acts].
- 4 **SECTION 19. EFFECTIVE DATE.** This [act] takes effect _____.