

DRAFT  
FOR DISCUSSION ONLY

# REVISED UNIFORM LAW ON NOTARIAL ACTS

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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For February 27 – March 1, 2009 Drafting Committee Meeting

*“Unified Version”  
With Prefatory and Reporter’s Notes*

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ON UNIFORM STATE LAWS

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# **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 as well as under the laws of other states and foreign jurisdictions. It authorizes traditional notarial acts that are evidenced on tangible media as well as notarial acts evidenced in electronic formats.

Sections 3 through 9 identify notarial acts and authorize them. They set out the requirements for the performance of these acts, such as the requirement that the individual must appear before the notarial officer and be able to be identified by the officer. It has provisions dealing with notarial acts performed in the adopting state, in other states, under federal authority and in foreign nations.

This version of the proposal may be referred to as a “unified version” because its provisions apply equally to notarial acts evidenced on tangible media and in electronic formats. Unless otherwise stated, its provisions apply universally. The heart of this unification is contained in Sections 10 through 14, which apply regardless of the format.

The act also establishes the requirements and procedures for granting commissions as notaries public and their revocation or suspension. It directs notaries public not to offer legal advice or to prepare legal documents. It also provides guidance as to the form of notary advertising in that regard. These provisions are contained in Sections 15 through 18.



1 individual; and

2 (ii) the individual's signature; or

3 (C) another form of identification authorized by statute or [rule][regulation] for  
4 use under this [act].

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 an instrument;

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 notary public of this state may perform and any act that a notarial officer may  
14 perform under this [act]. The term includes taking an acknowledgment, administering an oath or  
15 affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature,  
16 certifying or attesting a copy, and noting a 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 a person commissioned to perform a notarial act under this  
20 [act].

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

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

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

4 (A) to execute or adopt a tangible symbol other than by using a facsimile stamp or  
5 other printing method; or

6 (B) to attach to or logically associate with the record an electronic symbol, sound,  
7 or process in accordance with [rules][regulations] adopted by the [commissioning officer or  
8 agency].

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

11 (13) “Stamp” means an image affixed on a tangible record by a stamping device that

12 (A) contains a notarial officer’s name, jurisdiction, commission expiration date, if  
13 any, and other information, if any, that is required by the [commissioning officer or agency]; and

14 (B) is capable of being copied along with the tangible record.

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

18 (15) “Verification upon oath or affirmation” means a declaration that a statement is true  
19 and is made by an individual upon oath or affirmation.

20 **Reporter’s Notes**

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

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

2  
3 (2) **“Electronic.”** The term “electronic” refers to the use of electrical, digital, magnetic,  
4 wireless, optical, electromagnetic and similar technologies. It is a descriptive term meant to  
5 include all technologies involving electronic processes. The listing of specific technologies is  
6 not intended to be a limiting one. For example, biometric identification technologies are be  
7 included if they affect communication and storage of information by electronic means. As  
8 electronic technologies expand and include other competencies, those competencies should also  
9 be included under this definition.

10  
11 The definition of the term “electronic” in this act has the same meaning as it has in The  
12 Uniform Electronic Transactions Act (“UETA”) §2(5).

13  
14 (3) **“Electronic signature.”** An “electronic signature” is any electronic symbol or  
15 process that is attached to or logically associated with a record by an individual with an intent to  
16 sign the record. The technology is intentionally not specified and is meant to include electronic  
17 processes currently in use at the time of the adoption of this act or developed and implemented at  
18 a later time. The term is substantially similar to the definition of that term as used in UETA and  
19 The Uniform Real Property Electronic Recording Act (“URPERA”).

20  
21 (4) **“Identification credential.”** The term “identification credential” is meant to describe  
22 the record, document or methodology by which a notarial officer has “satisfactory evidence” of  
23 the identity of the individual appearing before the officer. As stated, it may be a United States  
24 passport. It may also be a credential issued by a United States, state or tribal governmental  
25 agency as long as the credential displays the image of the individual or gives his or her physical  
26 description. This alternative credential must also display the signature of the individual. Finally,  
27 the credential may be any other identification credential specifically authorized by statute or  
28 regulation for use under this act.

29  
30 The term is more fully described and implemented in Section 4.

31  
32 (5) **“In a representative capacity.”** The term “in a representative capacity” defines  
33 those situations in which an individual is performing an acknowledgement or other act requiring  
34 notarization on behalf of a principal rather than on the individual’s own behalf. To be performed  
35 by in a representative capacity, the individual must be the authorized representative or agent of  
36 the principal. Whether that person is, in fact, authorized must be determined under the agency  
37 law of this state.

38  
39 That term is used elsewhere in this Section and in Section 14(2).

40  
41 (6) **“Notarial act.”** The term “notarial act” includes all of the acts authorized to be  
42 performed by a notarial officer under this act. The definition lists, but does not limit, those acts.  
43 They include taking an acknowledgement, administering an oath or affirmation, taking a  
44 verification upon an oath or affirmation, witnessing or attesting a signature, certifying or  
45 attesting a copy, and noting a protest of a negotiable instrument. Beyond the listed notarial acts,  
46 the term includes any act that a notary public may perform under the law of this state.

1  
2 The provisions of this act apply, unless otherwise stated, to the performance of notarial  
3 acts on a tangible medium such as paper or in an electronic format.  
4

5 (7) **“Notarial officer.”** The term “notarial officer” is used to describe collectively  
6 notaries public and all other individuals having the power to perform the “notarial acts”  
7 authorized in Sections 3 through 9 of this act. Most of the provisions of this act apply broadly to  
8 all notarial officers. However, some provisions, such as those in Sections 15 through 18, have  
9 more limited application and are applicable only to notaries public. The provisions of those  
10 sections include the qualifications for, and the grounds for denial, suspension and revocation of,  
11 a commission as a notary public.  
12

13 (8) **“Notary public.”** A “notary public” is any individual authorized to perform notarial  
14 acts under Sections 15 through 18 of this act.  
15

16 (9) **“Person.”** The term “person” is broadly defined to include all persons, whether  
17 human individuals, or corporate, associational, or governmental entities. When the definition of  
18 a “person” is intended to be limited to a human entity, the word “individual” is used. The  
19 definition is the standard definition for that term as used in other acts adopted by the National  
20 Conference of Commissioners on Uniform State Laws.  
21

22 (10) **“Record.”** A “record” consists of information stored on a medium, whether the  
23 medium be tangible or electronic, provided that the information is retrievable in a perceivable  
24 form. The traditional tangible medium has been paper on which information is inscribed by  
25 writing, typing, printing or similar means. It is perceivable by reading it directly from the paper  
26 on which it is inscribed. An electronic medium may, for example, be one on which information  
27 is stored magnetically and from which it may be retrieved and read indirectly on a computer  
28 monitor or a paper printout.  
29

30 Traditionally, especially if the tangible medium is paper, a record has been referred to as  
31 a “document.” The word “record” is inclusive of the word “document.” The definition of a  
32 record in this act is derived from the definition of that word as used in §2(13).  
33

34 (11) **“Sign” and “Signature.”** Subsection (11) and (12) define the words “sign” and  
35 “signature.” An individual may sign his or her name to a record either on a tangible medium or  
36 in an electronic format as long as the individual has the present intent to authenticate or adopt the  
37 record. Except as provided in Section 5, an individual must personally perform the act of signing  
38 a record; an individual may not sign a record by means of a facsimile stamp or printing process.  
39 If an individual has adopted a symbol as a name, the individual may affix the symbol as the  
40 individual’s name. The verb “sign” should also be read to include other forms of the verb such  
41 as “signing.”  
42

43 (12) **“Stamp.”** The word “stamp” refers to an image on a tangible record. It is to be  
44 distinguished from the device by which that image is imposed on the record; that device is  
45 identified as the “stamping device.”  
46

1 The image must contain the notarial officer’s name, the jurisdiction in which the officer  
2 is authorized to act, the expiration date, if any, of the notarial officer’s commission, and any  
3 other information that may be required by the [commissioning officer or agency] of the  
4 authorizing jurisdiction. 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  
6 tangible record, the stamp must be capable of being copied along with the tangible record. Thus,  
7 a stamp that is in the form of an impression seal will normally not be a sufficient stamp.  
8

9 (13) **“State.”** The word “state” includes any state of the United States, the District of  
10 Columbia, the United States Virgin Islands, or any territory or insular possession subject to the  
11 jurisdiction of the United States.  
12

13 (14) **“Verification upon oath or affirmation.”** A “verification upon oath or  
14 affirmation” is a declaration by an individual in which that individual states on oath or  
15 affirmation that the declaration is true. These acts are sometimes referred to as “affidavits” or  
16 “jurats.”  
17

18 **SECTION 3. AUTHORITY TO PERFORM NOTARIAL ACTS;**  
19 **REQUIREMENTS.**

20 (a) A notarial officer may perform notarial acts as defined in this [act].

21 (b) A notarial officer who takes an acknowledgement shall determine, from personal  
22 knowledge or satisfactory evidence, that the individual appearing before the officer and making  
23 the acknowledgment is the individual whose signature is on the record.

24 (c) A notarial officer who takes a verification on oath or affirmation shall determine,  
25 from personal knowledge or satisfactory evidence, that the individual appearing before the  
26 officer and making the verification is the individual whose signature is on the statement verified.

27 (d) A notarial officer who witnesses or attests to a signature must determine, from  
28 personal knowledge or satisfactory evidence, that the signature is that of the individual appearing  
29 before the officer and named in the record on which the signature appears.

30 (e) A notarial officer who certifies or attests a copy of a record shall determine that the  
31 proffered copy is a full, true, and accurate transcription or reproduction of the record or other

1 item that was copied.

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

4 **Reporter's Notes**

5 Subsection (a) authorizes a notarial officer to perform notarial acts and describes the  
6 common types of those acts. When taken in conjunction with the definition of a notarial act in  
7 Section 2(6), it does not limit the notarial acts that the officer may perform, if they are otherwise  
8 authorized by state law. Similarly, when taken in conjunction with the definition of a notarial act  
9 in Section 2(6), it also authorizes a notarial officer to perform notarial acts regardless of the  
10 format of the record. Thus, a notarial officer may perform notarial acts on both tangible records  
11 as well as electronic records.  
12

13 Subsection (b) specifies what a notarial officer certifies by taking an acknowledgement.  
14 There are two main elements of an acknowledgement: (1) the identity of the individual who  
15 made the acknowledgement, and (2) the fact that the individual signed the record as a specific  
16 instrument (for example, a deed) and not as some other record. As part of the identification  
17 process, the acknowledging individual must physically appear before the notarial officer and the  
18 notarial officer must identify the individual either through personal knowledge or from  
19 satisfactory evidence. An acknowledgement, as defined in Section 2(1), is a statement that the  
20 individual has executed an instrument by signing it; it is not necessarily the act of signing itself.  
21 Thus, an individual may appear before the notarial officer and acknowledge to the officer that the  
22 signature already on the document is that individual's signature.  
23

24 Subsection (c) specifies the requisites of taking a verification on oath or affirmation.  
25 There are also two main elements of a verification: (1) the identification of the affiant and  
26 (2) the fact that the affiant is verifying the statement under oath or affirmation. The affiant must  
27 physically appear before the notarial officer and the notarial officer must identify the affiant  
28 either through personal knowledge or from satisfactory evidence. This document is sometimes  
29 referred to as an affidavit or jurat in some jurisdictions.  
30

31 Subsection (d) states the requirements for witnessing or attesting a signature. Here the  
32 notarial officer only certifies the fact of the signature; the officer does not certify the signatory's  
33 intent to verify the instrument. The notarial officer certifies: (1) the identification of the  
34 individual doing the witnessing or attesting, and (2) that the signature of the individual doing the  
35 witnessing or attesting is that of the person appearing before the officer. The witnessing or  
36 attesting individual must physically appear before the notarial officer and the notarial officer  
37 must identify the individual either through personal knowledge or from satisfactory evidence.  
38

39 Subsection (e) defines the standards for attestation or certification of a copy of a record  
40 by a notarial officer. This is done if it is necessary to produce a copy of a record when the  
41 original is in an archive or other collection of records and cannot be removed. In many cases,  
42 however, the custodian of the official archive or collection may also be empowered to issue an

1 officially certified copy. When an officially certified copy is available, it is official evidence of  
2 the state of the public archive or collection, and it may be better evidence of the original record  
3 than a notarially certified copy.  
4

5 Subsection (f) refers to a provision of the Uniform Commercial Code that confers  
6 authority to note a protest of a negotiable instrument before a notary and certain other officers.  
7

#### 8 **SECTION 4. IDENTIFICATION OF INDIVIDUAL.**

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

12 (b) A notarial officer has satisfactory evidence of the identity of an individual appearing  
13 before the officer if:

14 (1) the officer can identify that individual on the basis of an[ unexpired]  
15 identification credential[ that is presented not more than three years after it has expired], or

16 (2) the individual is identified to the officer through a verification on oath or  
17 affirmation of a credible witness personally known to the officer or whom the officer can  
18 identify on the basis of an[ unexpired] identification credential[ that is presented not more than  
19 three years after it has expired].

20 (c) A notarial officer may require an individual to provide other reasonable information  
21 or identification credentials necessary to assure the officer of the identity of the individual.

#### 22 **Reporter's Notes**

23  
24 Subsection (a) states that the notarial officer has personal knowledge of the identity of an  
25 individual only if the officer personally knows the individual through a prior course of dealings.  
26 That course of dealings may be business dealings or personal dealings, including the  
27 performance of prior notarial acts for that individual. That course of dealings must provide the  
28 notarial officer with sufficient information so that the officer can identify the individual as the  
29 individual executing the record without the need for any further identification.  
30

31 Subsection (b) describes when a notarial officer has satisfactory evidence of the identity

1 of the individual. One method by which the notarial officer can have satisfactory evidence of the  
2 identity of an individual is by means of an[ unexpired] identification credential[ that is presented  
3 not more than three years after it has expired]. Based on the definition of an identification  
4 credential in Section 2(4), the credential may be (1) a United States passport, (2) a credential  
5 issued for identification purposes by a United States, state or tribal governmental agency that  
6 contains (a) either an image of the individual’s face or a physical description of the individual,  
7 and (b) the individual’s signature, or (3) any other identification credential authorized by statute  
8 or regulation for use under this act. (See Reporter’s Notes to Section 2(4).)  
9

10 In addition, a notarial officer can have satisfactory evidence of an individual’s identity if  
11 that individual is identified to the officer by means of an oath or affirmation of a credible witness  
12 who is either (1) personally known to the officer or who, him or herself, or (2) is identified to the  
13 officer by means of an[ unexpired] identification credential[ that is presented not more than three  
14 years after it has expired]. The identification credential is as described in Section 2(4).  
15 Subsection (b) does not allow the identity of an individual to be based on an oath or affirmation  
16 of a person who is, him or herself, identified to the notarial officer by means of an oath or  
17 affirmation by yet another witness. Such a process would lead to a spiraling and useless addition  
18 of “witnesses to the witnesses.”  
19

20 Subsection (c) recognizes that a notarial officer may, in some circumstances, have  
21 reasonable doubt as to the identity of an individual even if that individual should provide the  
22 identification described in this Section. For example, the identification credential may be  
23 defaced or have defects that make legibility difficult, or the physical description may not  
24 adequately match the current physical aspects of the person appearing before the notarial officer.  
25 In that circumstance, the notarial officer may require the individual to provide other reasonable  
26 information or identification in order to assure the officer of the identity of the individual.  
27

28 **SECTION 5. SIGNATURE IN SPECIAL CIRCUMSTANCES.** If an individual is  
29 physically unable to sign a record, that individual may direct a notarial officer to sign the  
30 individual’s name on the record. The notarial officer shall insert “Signature affixed by (name of  
31 notarial officer) at the direction of (name of individual)” or words of similar import.  
32

### Reporter’s Notes

33 This section recognizes that some individuals may be unable to sign a record personally  
34 because of a disability. In that case, this subsection allows for an alternate process. That process  
35 requires the executing individual to direct the notarial officer to sign that individual’s name to  
36 the record in the presence of the individual. It then requires the officer to insert the quoted  
37 language in the record. (For similar provisions, see Model Notary Act § 5-1(d); see also  
38 proposed amendments to Kentucky legislation, 07 Reg. Sess. Gen. Assembly Bill 1450, § 18(2).)  
39



1 3. Proof that those holding that office may perform notarial acts.  
2

3 Subsection (b) sets forth a prima facie presumption that the signature of the notarial  
4 officer, whether on a tangible medium or in an electronic format, is that of the named notarial  
5 officer as well as a prima facie presumption that the individual holds the designated notarial  
6 office – the first two elements of authentication.  
7

8 Subsection (c) was not in the prior version of this act, but it is submitted for  
9 consideration. It conclusively presumes that notaries public, judges, clerks and deputy clerks of  
10 this state have the authority to execute notarial acts. It is a parallel of the provisions in Sections  
11 7(c) and 8(c), which were contained in the prior version of this act. The parallel provision is  
12 added here because, in its absence, the prior version of this act could be interpreted to mean that  
13 although one must conclusively presume that certain notarial officers in other states or acting  
14 under United States law had the authority to perform notarial acts, one should not conclusively  
15 presume that similar notarial officers of this state had such authority. It absence under the prior  
16 act might also suggest that, under the prior act, one would have to prove that a notary public or a  
17 judge, clerk or deputy clerk had the authority to perform notarial acts. In response, one might  
18 argue that such authority is inferred from the very existence of this act and in particular  
19 subsection (a) and (b) of this Section. I raise this as a question for your consideration. Perhaps it  
20 would be best to state the obvious and expressly provide that those officers conclusively have  
21 that authority. See the Comments under Sections 7(d) and 8(c) for further information.  
22

23 Note: Subsection (b) of the prior version of this act stated:  
24

25 (b) Notarial acts performed within this State under federal authority as provided  
26 in Section [8] have the same effect as if performed by a notarial officer of this State.  
27

28 However, Section 8(a) of this proposed act states, as did the similar section in the prior  
29 version of this act:  
30

31 (a) A notarial act has the same effect under the law of this State if performed by a  
32 notarial officer of this State if performed anywhere by any of the following individuals  
33 under authority granted by the law of the United States.  
34

35 Since Section 8(a) contains a broad recognition of notarial acts performed anywhere  
36 (including in this state) if performed under authority granted by the law of the United States, it  
37 seems redundant and unnecessary to repeat the same authority in this Section. Therefore, the  
38 subsection has been omitted.  
39

40 **SECTION 7. NOTARIAL ACT IN OTHER JURISDICTIONS OF UNITED**  
41 **STATES.**

42 (a) A notarial act has the same effect under the law of this state as if performed by a

1 notarial officer of this state, if performed in another state by any of the following individuals:

2 (1) a notary public of the state;

3 (2) a judge or clerk or deputy clerk of a court of the state; or

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

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

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

9 **Reporter's Notes**

10 Subsection (a) lists the notarial officers of other states whose notarial acts in those states  
11 will be recognized in this state.

12  
13 Subsection (b) gives prima facie validity to the signature of the notarial officer, whether  
14 on a tangible medium or in an electronic format, and also to the assertion of title of the individual  
15 who acts as notarial officer (the first two elements of proof of authority of a notarial officer listed  
16 in the prior Comment).

17  
18 Subsection (c) provides the third element of that proof of authority. It recognizes the  
19 authority of a notary public or of a judge or clerk or deputy clerk of court of the foreign state to  
20 perform notarial acts, without the necessity of further proof that such an officer has notarial  
21 authority. This abolishes the need for a "clerk's certificate" to authenticate the notarial act of a  
22 notary public, judge, clerk or deputy clerk. However, the authority of an individual other than a  
23 notary public, judge, clerk or deputy clerk to perform notarial acts can be proven by reference to  
24 other laws of the foreign state. Any other form of proof of authority to perform notarial acts  
25 acceptable in this State, such as a "clerk's certificate" would also suffice.

26  
27 Note: Subsection (b) of the prior version of this act stated:

28  
29 (b) Notarial acts performed in other jurisdictions of the United States under  
30 federal authority as provided in Section [8] have the same effect as if performed by a  
31 notarial officer of this state.

32  
33 For the reasons stated in the Note at the end of the Reporter's Notes to Section 6, that  
34 subsection has been omitted.

35

1           **SECTION 8. NOTARIAL ACTS UNDER FEDERAL AUTHORITY.**

2           (a) A notarial act has the same effect under the law of this state as if performed by a  
3 notarial officer of this state if performed anywhere by any of the following individuals under  
4 authority granted by the law of the United States:

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

6                   (2) any individual authorized to perform notarial acts under 10 U.S.C Section  
7 1044a;

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

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

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

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

14                                   **Reporter’s Notes**

15           Some notarial acts are performed by individuals acting under federal authority or holding  
16 office under federal authority. This section provides for the automatic recognition of those  
17 notarial acts under the laws of this state wherever the acts are performed. Subsection (a)(1)  
18 recognizes the notarial acts of judges, clerks, and deputy clerks.

19  
20           Subsection (a)(2) recognizes the authority of persons to perform notarial acts under 10  
21 U.S.C §1044a . Like the prior version of the Uniform Law on Notarial Acts, this proposal does  
22 not limit recognition of notarial acts performed by military officers under this section to acts  
23 performed for individuals in the military service or any other individuals serving with or  
24 accompanying the armed forces of the United States. Such a limitation in recognition merely  
25 places another cloud on the validity of the notarial act. The act does not purport to extend the  
26 authority of military officers to perform these acts, but merely immunizes the private party  
27 relying on them from any consequences of the officer’s excess of authority.

28  
29           10 U.S.C. §1044a provides as follows:

30  
31                   (a) The persons named in subsection (b) have the general powers of a notary  
32 public and of a consul of the United States in the performance of all notarial acts to be

1 executed by any of the following:

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

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

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

8 (4) Other persons subject to the Uniform Code of Military Justice (chapter  
9 47 of this title) outside the United States.

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

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

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

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

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

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

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

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

29  
30 See also 10 U.S.C. §936, which provides:

31  
32 (a) The following persons on active duty or performing inactive-duty training may  
33 administer oaths for the purposes of military administration, including military justice:

34 (1) All judge advocates.

35 (2) All summary courts-martial.

36 (3) All adjutants, assistant adjutants, acting adjutants, and personnel  
37 adjutants.

38 (4) All commanding officers of the Navy, Marine Corps, and Coast Guard.

39 (5) All staff judge advocates and legal officers, and acting or assistant staff  
40 judge advocates and legal officers.

41 (6) All other persons designated by regulations of the armed forces or by  
42 statute.

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

45 (1) The president, military judge, trial counsel, and assistant trial counsel  
46 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).

The precise application of 10 U.S.C. §936 is not clear. The Section is limited to administration of oaths and seems to be limited to oaths administered in the performance of the officer’s duties. Those duties seem to include matters of military justice and oath of induction by recruiting officers. Nevertheless, it may be appropriate to include this U.S.C. Section in subsection (a)(2).

Subsection (a)(3) recognizes the authority of foreign service officers to perform notarial acts.

Subsection (b) confers prima facie validity upon the signature and assertion of rank or title by the United States notarial officer. It thus provides the first two elements of proof described in the Reporter’s Notes to Section 6.

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

A variety of other federal officers may be authorized to perform notarial acts, such as wardens of federal prisons, but their authority must be demonstrated by other means. The authority of such an officer to perform the notarial act can most readily be demonstrated by reference to the federal law or published regulations granting the authority. Any other form of authentication, such as a “clerk’s certificate,” could also be used.

## **SECTION 9. FOREIGN NOTARIAL ACT.**

(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 and under authority of a foreign nation or its constituent units [or under the authority of a multinational or international governmental organization] by any of the following individuals:

1 (1) a notary public or notarial officer;  
2 (2) a judge, or clerk or deputy clerk of a court of record; or  
3 (3) any other individual authorized by the law of that jurisdiction [or the charter of  
4 the multinational or international governmental organization] to perform a notarial act.

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

8 (c) A certificate by a foreign service or consular officer of the United States stationed in  
9 the nation in which the notarial act was performed, [or] a certificate by a foreign service or  
10 consular officer of the nation stationed in the United States, [or a certificate by an officer of a  
11 multinational or international governmental organization], conclusively establishes any matter  
12 relating to the authenticity or validity of the notarial act set forth in the certificate.

13 (d) An official stamp of the individual performing the notarial act is prima facie evidence  
14 that the signature is genuine and that the individual holds the indicated title.

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

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

20 **Reporter's Notes**

21  
22 This section concerns the recognition of notarial acts performed by notarial officers who  
23 act under foreign law. Subsection (a) provides that the notarial act of a notary public, judge,  
24 clerk of court or deputy clerk of court of a foreign nation or its constituent unit is recognized in  
25 this state. The notarial acts of other individuals will be recognized if they are authorized by the  
26 law of the place in which they are performed. The provisions of this section are the same as in  
27 the prior version of the Uniform Law on Notarial Acts.

1 The bracketed provision, as stated in the original version of ULONA was “or a  
2 multinational or international organization,” appears to be intended to apply to multinational  
3 entities such as the North Atlantic Treaty Organization (NATO) and the United Nations (UN).  
4 However, as used, it might be misinterpreted to include large multinational corporations.  
5 Perhaps the bracketed language may be more appropriate: “or a multinational or international  
6 governmental organization.”  
7

8 Recognition of a foreign notarial act is a more difficult issue than the recognition of a  
9 notarial act from another state or performed under the authority of the United States because the  
10 relative authority of public and quasi-public officers may vary.  
11

12 The United States is a party to an international convention regarding the authentication of  
13 notarial and other similar public acts. The primary method of recognition of foreign notarial acts  
14 is that set forth in the treaty and is specifically recognized in subsection (b) as conclusively  
15 establishing the signature of the notarial officer and that he or she holds the designated office.  
16 The apostille may be stamped on the document or an attached page by a specified officer in the  
17 foreign country. It has the following form, which is set forth in the annotation to Federal Rules  
18 of Civil Procedure Rule 44:  
19

20 The certificate will be in the form of a square with sides at least 9 centimetres long:  
21

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: .....
- .....

29  
30 It may be in the language of the issuing country, but the words “Apostille (Convention de  
31 La Haye, du 5 octobre 1961)” are always in French. Under the terms of the treaty, to which the  
32 United States is a party, the apostille must be recognized if issued by a competent authority in  
33 another nation that has already ratified it. The text of the Convention is also reproduced in the  
34 annotations to the Federal Rules of Civil Procedure Rule 44.  
35

36 Although federal law provides for mandatory recognition of an apostille only if issued by  
37 another ratifying nation, the statute provides for recognition of all apostilles issued by any  
38 foreign nation in that form. They are, in effect, no more than a standard form of authentication.  
39 Use of the form eases problems of translation.

1  
2 Subsection (c) provides that a certificate of a United States' consular officer stationed in  
3 the foreign nation or that of a foreign nation consular officer stationed in the United States  
4 conclusively establishes the authenticity of the notarial act evidenced in the certificate.  
5

6 Subsections (d) and (e) state that the official stamp of the notarial officer is prima facie  
7 evidence that the signature is genuine and that the individual holds the designated office.  
8 Subsection (f) states that if a title of office or indication of authority is listing in a digest of  
9 foreign laws or recognized list, it conclusively establishes the authority of an officer with that  
10 title to perform notarial acts.  
11

12 It should be noted that the National Conference of Commissioners on Uniform State  
13 Laws promulgated the Uniform Unsworn Foreign Declarations Act (UUFDA) in 2008. Because  
14 of the frequent difficulty of obtaining an apostile or appearing at a United States Consulate,  
15 UUFDA recognizes unsworn declarations in many, but not all, proceedings.  
16

## 17 **SECTION 10. CERTIFICATE OF NOTARIAL ACT.**

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

19 (1) be signed and dated by a notarial officer;

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

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

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

24 (5) contain the notarial officer's rank or position, if the notarial officer is  
25 performing duties pursuant to 10 U.S.C. Section 1044a.

26 (b) If the notarial act is performed with regard to a tangible record, the certificate [must]  
27 [may] contain the notarial officer's official stamp. If the notarial act is performed with regard to  
28 an electronic record, an electronic image of the stamp need not be attached to, or logically  
29 associated with, the certificate or electronic record.

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

31 (a) and (b) and it:

1 (1) is in a short form set forth in Section 14;  
2 (2) is in a form otherwise prescribed by the law of this state;  
3 (3) is in a form prescribed by the laws applicable in the jurisdiction in which the  
4 notarial act was performed; or  
5 (4) sets forth the actions of the notarial officer and those are sufficient to meet the  
6 requirements of the designated notarial act.

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

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

11 (f) A notarial officer must affix the officer's signature to, or logically associate it with, a  
12 certificate in a manner that reasonably permits the determination of whether the individual  
13 performing the notarial act is an officer. The certificate must be attached to, or logically  
14 associated with, a record in a manner that reasonably assures that the record is the one certified  
15 by the officer and that the certificate is genuine and has not been changed or subjected to  
16 tampering.

17 (g) The requirements of subsection (f) are satisfied if a notarial act performed with  
18 regard to a tangible record and if an officer's stamp is affixed to the certificate and the certificate  
19 is part of, or securely attached to, the record. The requirements of this subsection are satisfied if  
20 a notarial act is performed with regard to an electronic record and if an officer's signature is  
21 affixed to, or logically associated with, the certificate and the certificate is affixed to, or logically  
22 associated with, the electronic record in accordance with methods approved by the  
23 [commissioning officer or agency].

1 **Reporter's Notes**

2 Subsection (a) requires a signed certificate by the notarial officer with regard to the  
3 notarial act. The signature may be either a manual or electronic signature; similarly, the  
4 certificate may be either on a tangible medium or in an electronic format. The certificate must  
5 set forth the date of the notarial act and where it was performed. It must also identify the office  
6 of the notarial officer. If the officer is a notary public, the certificate must contain the expiration  
7 date of the notary's commission. If the officer is derived from 10 U.S.C. §1044a and [§936],  
8 then it must include the person's rank or position.  
9

10 Subsection (b) concerns whether the certificate must contain a stamp. If the notarial act  
11 is evidenced on a tangible medium, the subsection provides that the certificate must [may]  
12 contain the notarial officer's official stamp. With regard to a notarial act evidenced on an  
13 electronic record, an electronic image of the stamp need not be attached. However, the  
14 requirements of subsection (a) must be met and the electronic record must contain the  
15 information stated in that subsection.  
16

17 Subsection (c) provides that the certificate may be in any one of the short forms set forth  
18 in Section 14 of this act, in any other form provided by the law of this state, in any other form  
19 provided by the law of the place where it was performed, or in any form that sets forth the  
20 requisite elements of the appropriate notarial act. Thus, acknowledgements and other notarial  
21 acts executed in more prolix and elaborate forms may nevertheless continue to qualify under  
22 subsection (c).  
23

24 Subsection (d) emphasizes the obligation of the notarial officer to make the  
25 determinations required by Sections 3 and 4 and to certify that the officer has done so.  
26

27 In order to be proper evidence of the full performance of a notarial act, subsection (e)  
28 provides that the notarial officer may not sign the notarial certificate until the notarial act has  
29 been fully performed. See N.C. Gen. Stat. §10B-35; Model Notary Act, §8-1.  
30

31 Sections 6(b), 7(b), and 8(b) provide that the signature and title of an individual  
32 performing a notarial act are prima facie evidence that the person holds the designated office.  
33 Sections 6(c), 7(c) and 8(c) provide that the signature and title of an individual conclusively  
34 establish the authority of certain officers to perform the notarial act.  
35

36 Subsection (f) seeks to provide further assurance of those validations. First, the notarial  
37 officer's signature must be attached or associated with the certificate in a way that reasonably  
38 permits the determination of whether the individual is a notarial officer. Second, the certificate  
39 must be attached to or associated with the record in a manner that assures that the record is the  
40 one that the officer certified and that the certificate has not been altered.  
41

42 Subsection (g) then provides that with regard to a notarial act evidenced on a tangible  
43 record, the presence of the notarial officer's official stamp provides both of the above assurances.  
44 Although there is always the potential that a determined individual might fraudulently obtain an  
45 "official" stamp, the misuse does not appear to be large and can be further minimized. The  
46 [commissioning officer or agency] might reduce that threat by various means. For example, the

1 [commissioning officer or agency] will provide an online list of authorized notaries public with  
2 their names and places of business (see Section 17(c)). The [commissioning officer or agency]  
3 may also police or regulate the entities that issue “official” stamps, perhaps by adopting  
4 regulations that provide that a stamp may only be issued based on a certificate from the  
5 commissioning officer or agency. Of course, for the latter method to be effective, the  
6 commissioning officers of all states would have to adopt such provisions. See also Section 11  
7 regarding the maintenance of the stamping device.  
8

9 Because the means of attaching or logically associating the notarial officer’s electronic  
10 signature to a certificate and an electronic notarial certificate to a record are not tangible, the  
11 mere use of a stamp is not an adequate means of providing the assurance. The electronic means  
12 by which the signature and certificate are attached or associated with the record will vary among  
13 authorized notaries and will certainly vary as new technologies become available. This Section  
14 recognizes those realities and provides that the above two assurances will be obtained from the  
15 methods approved by the [commissioning officer or agency]. In this regard, Section 13(b)  
16 provides that the [commissioning officer or agency] will review the notarial officer’s proposed  
17 technology to assure compliance with this subsection. In addition, Section 19(b) provides that  
18 the [commissioning officer or agency] will review technology submitted by software vendors  
19 and, where appropriate, grant prior approval of the technology as meeting the requirements of  
20 this Section.  
21

## 22 SECTION 11. MAINTENANCE OF STAMPING DEVICE.

23 (a) A notarial officer shall keep the officer’s official stamping device [, if any,] in a  
24 secure place. The officer shall not allow another person to use or possess the device. On  
25 resignation from, or the revocation or expiration of, the notarial officer’s commission, the officer  
26 shall destroy the device by defacing it in a manner that renders it unusable. The officer’s  
27 personal representative shall destroy the device on the death of the officer by defacing it in a  
28 manner that renders it unusable.

29 (b) If a notarial officer’s official stamping device is lost or stolen, the officer shall notify  
30 the [commissioning officer or agency] and the appropriate law enforcement authority not later  
31 than 10 days after discovering that the device is lost or stolen.

### 32 Reporter’s Notes

33 Subsection (a) requires the notarial officer to maintain the officer’s official stamp [if  
34 required under the act] in a secure place. In order to protect and maintain the integrity of notarial

1 acts, it is important that the officer’s stamp be kept secure and out of the hands of any individual  
2 who might use it fraudulently. Accordingly, the officer may not allow another individual to use  
3 or possess the stamp.  
4

5 Furthermore, to assure the integrity of the notarial system, the notarial officer may not  
6 possess the official stamp if the officer is no longer serving as a notarial officer. Thus, upon the  
7 resignation of the notarial officer, or the revocation or expiration of the officer’s commission, the  
8 officer must destroy the stamp in a way that renders it unusable. Similarly, upon the death of a  
9 notarial officer, the officer’s personal representative must destroy the stamp. See N.C. Gen. Stat.  
10 § 10B-36(a); Model Notary Act § 7-4(f).  
11

12 In the event that the official stamp is lost or stolen, the prospect of fraudulent misuse is  
13 also raised. Therefore, the notarial officer is required by subsection (b) to notify the appropriate  
14 law enforcement authority. In addition, notarial officer is also required to notify the  
15 [commissioning officer or agency] , who may be able to take steps or provide notification that  
16 will further protect the public. See Ariz. Rev. Stat. § 41-323; N.C. Gen. Stat. § 10B-36(c);  
17 Model Notary Act § 7-4(g).  
18

## 19 **SECTION 12. JOURNAL.**

20 (a) A notarial officer shall maintain a journal in which the officer chronicles all notarial  
21 acts that the officer performs. The officer shall maintain the journal for at least 10 years after  
22 performance of a notarial act.

23 (b) A journal may be created on a tangible medium or in an electronic format. A notarial  
24 officer shall maintain only one journal at a time chronicling all notarial acts, whether those  
25 notarial acts are performed with regard to tangible or electronic records. If the journal is  
26 maintained on a tangible medium, it must be a permanent, bound register with numbered pages.  
27 If the journal is maintained in an electronic format, it must be in a permanent, tamper-evident  
28 electronic format complying with the regulations prescribed by the [commissioning officer or  
29 agency].

30 (c) An entry under subsection (b) must be made chronologically at the time the notarial  
31 act is performed and must consist of the following:

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

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

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

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

6 (5) if identity of the individual is based on satisfactory evidence, a description of  
7 the passport or identification credential, [the individual's identifying number on the passport or  
8 credential] and its date of issuance and expiration; and

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

### 10 **Reporter's Notes**

11 Subsection (a) requires the notarial officer maintain a journal of all the notarial acts that  
12 the officer performs. The officer must maintain the journal for a period of at least ten (10) years  
13 after the performance of the notarial act. It is difficult to know the exact period of time over  
14 which the journal must be maintained. Many notarial officers will not continue to be notarial  
15 officers for a period of ten years; unless the journals are collected by the [commissioning officer  
16 or agency] or filed in a secure location, such as the county recorder's office, their maintenance is  
17 in question. The journals are also subject to accidental (fire, flood, etc.) loss or destruction;  
18 unless maintenance of duplicate journals is imposed, their maintenance is in question. On the  
19 other hand, not all legal proceedings questioning the validity of the notarial act will be brought in  
20 a short period of time. However, most statutes of limitation are periods of ten years or less,  
21 although the periods in many fraud actions do not begin until the fraud is discovered and may  
22 extend beyond ten years. Thus, as a compromise, a period of ten years is suggested.

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

32  
33 Subsection (c) provides that the officer must make the entries chronologically at the time  
34 of the performance of the notarial act. This subsection lists certain information that must be  
35 included in each journal entry: (1) date and time of the notarial act; (2) a brief description of the  
36 record and the type of notarial act performed (e.g., deed; acknowledgement); (3) the name and

1 address of each individual for whom the notarial act was performed; (4) if identity was based on  
2 personal knowledge, as statement to that effect; (5) if identity was based on satisfactory  
3 evidence, a brief description of the passport or other identification document, its date of issue  
4 and date of expirations [and identifying number (this requirement might be controversial)]; and  
5 (6) the fee, if any, charged by the notarial officer.  
6

7 **SECTION 13. REGISTRATION OF NOTARIAL OFFICER.**

8 (a) Before performing any notarial acts regarding an electronic record, a notarial officer  
9 shall register with the [commissioning officer or agency] as a notarial officer of electronic  
10 records.

11 (b) The [commissioning officer or agency] shall, at the time a notarial officer registers to  
12 perform notarial acts under this Section, review the technology the notarial officer proposes to  
13 use to perform notarial acts on electronic records to ensure compliance with the Section 10(f)  
14 and (g).

15 **Reporter's Notes**

16 Subsection (a) requires that a notarial officer, whether a notary public or other notarial  
17 officer, must register with the commissioning officer of agency prior to performing notarial acts  
18 with regard to electronic records.  
19

20 A major reason for this registration requirement is stated in subsection (b). The  
21 performance of notarial acts with regard to electronic documents requires software and hardware  
22 that assures that the signature attached to or associated with the certificate is that of the notarial  
23 officer and that the certificate attached to or associated with the electronic record is the one  
24 executed by the notarial officer. The methods for accomplishing these requirements may vary  
25 but to assure their satisfaction, the [commissioning officer of agency] must review and approve  
26 the technology.  
27

28 **SECTION 14. SHORT FORMS.** The following short form certificates of notarial acts  
29 are sufficient for the purposes indicated, if completed with the information required by Section  
30 10(a) and (b):

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

1 State of \_\_\_\_\_

2 (County) of \_\_\_\_\_

3 This instrument was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_  
4 Date Name(s) of Individual(s)

5 \_\_\_\_\_  
6 (Signature of notarial officer)

7 (Stamp, if any)

8 [ \_\_\_\_\_ ]  
9 [Title (and Rank)]

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

11

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

13 State of \_\_\_\_\_

14 (County) of \_\_\_\_\_

15 This instrument was acknowledged before me on \_\_\_\_\_ by \_\_\_\_\_  
16 Date Name(s) of Individual(s)

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

19 \_\_\_\_\_  
20 (Signature of notarial officer)

21 (Stamp, if any)

22 [ \_\_\_\_\_ ]  
23 [Title (and Rank)]

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

25

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

1 State of \_\_\_\_\_

2 (County) of \_\_\_\_\_

3 Signed and sworn to (or affirmed) before me on \_\_\_\_\_ by \_\_\_\_\_  
4 Date Name(s) of Individual(s)  
5 making statement).

6 \_\_\_\_\_  
7 (Signature of notarial officer)

8 (Stamp, if any)

9 [\_\_\_\_\_]   
10 [Title (and Rank)]

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

12

13 (4) For witnessing or attesting a signature:

14 State of \_\_\_\_\_

15 (County) of \_\_\_\_\_

16 Signed [or attested] before me on \_\_\_\_\_ by \_\_\_\_\_  
17 Date Name(s) of Individual(s).

18 \_\_\_\_\_  
19 (Signature of notarial officer)

20 (Stamp, if any)

21 [\_\_\_\_\_]   
22 [Title (and Rank)]

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

24

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

26 State of \_\_\_\_\_

27 (County) of \_\_\_\_\_

1 I certify that this is a true and correct copy of a document in the possession  
2 of \_\_\_\_\_.

3 Dated \_\_\_\_\_

4 \_\_\_\_\_  
5 (Signature of notarial officer)

6 (Stamp, if any)

7 [\_\_\_\_\_] ]  
8 [Title (and Rank)]

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

10 **Reporter's Notes**

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

14  
15 These certificates apply to notarial acts performed on a tangible medium as well as  
16 notarial acts performed in an electronic format. A notarial stamp is optional in these certificates.  
17 This recognizes that a stamp is not a requirement for evidencing a notarial act with regard to an  
18 electronic record. However, its inclusion acknowledges the use of a stamp on a tangible record.  
19 A military officer who is acting as a notarial officer will normally enter both title (e.g.  
20 commanding officer, Company A, etc.) and rank (Captain, U.S. Army) as identification.

21  
22 **SECTION 15. NOTARY PUBLIC COMMISSION; QUALIFICATIONS.**

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

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

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

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

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

2 (4) read and write English;[ and]

3 (5) not be subject to refusal of a commission under Section 17 of this [act][.]; and

4 (6) pass an examination administered by the [commissioning officer or agency] or  
5 an entity licensed by the [commissioning officer or agency], which is based on the course of  
6 instruction described in Section 16 of this [act].]

7 [(c) Not later than [30] days after the issuance of a notary public commission under this  
8 section, an applicant shall submit to the [commissioning officer or agency] a surety bond in the  
9 amount of \$[\_\_\_\_\_] in the form prescribed by the [commissioning officer or agency]. The bond  
10 shall be issued by a surety licensed in this State and must be effective for the term of the  
11 applicant's notary public commission. The surety shall give [30] days' notice to the  
12 [commissioning officer or agency] before cancellation of the bond. The bond must be  
13 conditioned on compliance with this [act] and other statutes or regulations affecting notaries  
14 public in this state. The bond must be payable to the benefit of any person injured by a failure of  
15 the notary public to comply with this [act] or any other law affecting notaries public. A notary  
16 public may perform notarial acts only during the period that a current surety bond conforming  
17 with this subsection is on file with the [commissioning officer or agency].]

18 [(d)] The applicant must execute an oath of office and submit it to the [commissioning  
19 officer or agency].

20 (e) On compliance with this section, the [commissioning officer or agency] shall issue a  
21 notary public commission to the successful applicant [for a term of [ ] years].

### 22 **Reporter's Notes**

23 Subsection (a) states that an individual qualified under subsection (b) may apply for and  
24 obtain a commission as a notary public from the [commissioning officer or agency]. It leaves the

1 form of application, the process of application and the timing of the process to be determined by  
2 the [commissioning officer or agency]. Although some statutes specify some of these provisions  
3 in more detail (compare Ariz. Rev. Stat. § 41-312; Del. Code Ann. tit. 43, § 4301; Model Notary  
4 Act ch. 3), this act leaves the determination and implementation of those provisions to  
5 regulations adopted by the [commissioning officer or agency]. The bracketed material allows  
6 this application process and requirements to apply to both initial and renewal applications for  
7 notary public commissions.  
8

9 Subsection (b) sets out qualifications for issuance of a notary public commission. The  
10 qualifications set out in the current legislation of the various states are quite varied. The  
11 requirements listed here are common although not uniform among the states (compare Ariz. Rev.  
12 Stat. § 41-312(E); Model Notary Act § 3-1). The material providing for a course of instruction  
13 has been moved to Section 16, but a bracketed provision regarding passage of an exam based on  
14 the educational material is contained in optional subsection (b)(6).  
15

16 Bracketed subsection (c) requires that the applicant must submit a bond to the  
17 [commissioning officer or agency] within 30 days of receiving his or her commission. The  
18 amount of the bond is not specified and is left to individual state legislatures to insert. It is  
19 recognized that bonds to cover the full amount of many transactions may be prohibitively  
20 expensive. On the other hand, reasonable bond amounts should cover many ordinary notarial  
21 acts and, when it does not, limited recovery under the bond may be better than no recovery.  
22 Nevertheless, even limited bonding requirements might curb access to a notarial commission.  
23 Thus, the bonding provision is bracketed and optional.  
24

25 If required, the bond must be effective for the term of the notary public commission and  
26 the surety must give 30 days' notice prior to cancelling the bond. The notary public may  
27 perform notarial acts only while the bond is on file with the [commissioning officer or agency].  
28 The purpose of the bond is to protect potentially injured parties. Thus the bond must be payable  
29 to any person injured by the notary public's failure to comply with this act or the regulations  
30 under it.  
31

32 Subsection (d) requires that the applicant submit an oath of office to the [commissioning  
33 officer or agency].  
34

35 Subsection (e) provides that upon compliance with the requirements of this section, the  
36 [commissioning officer or agency] will issue a notarial commission for a specified term. The  
37 length of that term is to be determined by the state legislature.  
38

39 **[SECTION 16. EDUCATION OF NOTARIES PUBLIC.** The [commissioning officer  
40 or agency] or an entity licensed by the [commissioning officer or agency] shall regularly offer a  
41 course of instruction to applicants for a notary public commission that is at least [ ] hours long  
42 covering the laws, [rules][regulations], standards, procedures and ethics relevant to notarial acts.]

1 **Reporter's Notes**

2 An increasingly common requirement for the issuance of a notary public commission is  
3 that the applicant must meet certain educational requirements. This Section provides that the  
4 [commissioning officer or agency] or an entity licensed by the [commissioning officer or  
5 agency] shall provide that course of education. However, it leaves the length of the course to the  
6 determination of the state legislature. This is a bracketed and option provision. Section  
7 401(b)(6) collaterally requires that the applicant must pass a test based upon the course of  
8 instruction in order to obtain a commission.  
9

10 **SECTION 17. GROUNDS FOR DENIAL, REFUSAL TO RENEW, OR**  
11 **REVOCAION, OR SUSPENSION OF NOTARIAL COMMISSION.**

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

15 (1) a fraudulent, dishonest, or deceitful misstatement or omission in the notary  
16 public's application submitted to the [commissioning officer or agency] for the notary public's  
17 commission;

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

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

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

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

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

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

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

### 10 **Reporter's Notes**

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

15  
16 Subsections (a)(1)-(5) set forth specific statutory grounds upon which a commission may  
17 be denied, suspended or revoked. Subsection (a)(6) gives the [commissioning officer or agency]  
18 the authority to promulgate rules or regulations further setting forth grounds upon which a  
19 commission may be denied, suspended or revoked.

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

25  
26 Subsection (c) provides that the [commissioning officer or agency] will maintain an  
27 electronic database of notaries public through which an individual may verify whether the  
28 asserted notary public has a commission to perform notarial acts. In addition, that database will  
29 also indicate whether the notary public is authorized to perform notarial acts with regard to  
30 electronic records.

### 31 32 **SECTION 18. NO LEGAL ADVICE; ADVERTISING.**

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

1 (1) assist individuals in drafting legal documents,

2 (2) render legal advice, or

3 (3) otherwise engage in the practice of law.

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

5 (c) A notary public, other than an attorney licensed to practice law in this state, may not  
6 represent that the notary may offer legal advice or draft legal records. If a notary, other than an  
7 attorney licensed to practice law in this state, in any manner advertises notarial services, the  
8 notary public shall include the following statement, or an alternate statement authorized or  
9 required by [the commissioning officer or agency], in the advertisement, prominently and in each  
10 language used in the advertisement: “I am not an attorney licensed to practice law in this state. I  
11 cannot give advice on legal matters, including immigration. I cannot draft legal documents.”

### 12 **Reporter’s Notes**

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

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

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

33  
34 Subsection (c) is derived from provisions in legislation currently in effect in Arizona

1 (Ariz. Rev. Stat. § 41-329(A) and under consideration in Massachusetts (2007 Mass. H.B. 1642,  
2 § 1, 8(G)). It provides that a notary, other than a notary who is also an attorney at law, may not  
3 offer legal advice or draft legal records. If the notary advertises notarial services, the notary  
4 must provide information in the same language that the notary may not provide legal advice or  
5 draft legal documents, particularly about immigration matters. The advertising includes ads in  
6 the written or visual media as well as point of service ads and oral advertising. It seeks to inform  
7 the prospective client that the notary public is not authorized or experienced to give legal advice.  
8

9 **SECTION 19. [RULES][REGULATIONS].**

10 (a) The [commissioning officer or agency] shall adopt [rules][regulations] implementing  
11 this [act] affecting the performance of notarial acts with regard to tangible media and electronic  
12 records. The [commissioning officer or agency] shall also adopt regulations implementing the  
13 provisions of this [act] affecting the granting and revocation of notary public commissions. The  
14 [commissioning officer or agency] must adopt [rules][regulations] to clarify the provisions of  
15 this [act] to prevent fraud or error in the performance of notarial acts and to ensure that  
16 trustworthy individuals hold commissions as notaries public.

17 (b) In adopting [rules][regulations] to implement the performance of notarial acts on  
18 electronic records, the [commissioning officer or agency] shall consult with the [name of state  
19 agency] authorized to adopt [rules][regulations] for the recording of electronic documents. The  
20 [commissioning officer or agency], so far as is consistent with the purposes and policies of this  
21 [act], shall also consider the [rules][regulations], standards, and customs of other jurisdictions  
22 and the standards promulgated by national standard-setting bodies.

23 **Reporter's Notes**

24 Subsection (a) is an all-inclusive authority for the [commissioning officer or agency] to  
25 adopt regulations to implement this act. It authorizes regulations concerning performance of  
26 notarial acts with regard to tangible media and electronic records, the granting or revocation of  
27 notary public commissions, and the prevention of fraud or error.  
28

29 Subsection (c) directs the [commissioning officer or agency] to consult with various  
30 organizations or entities when adopting regulations. The purposes of this provision are to bring

1 to the [commissioning officer or agency] the best information available on the issues and also to  
2 encourage uniformity among the various states.  
3

4 **SECTION 20. VENDOR SUBMISSION OF TECHNOLOGY; APPROVAL.** On  
5 application, the [commissioning officer or agency] shall review a technology submitted by a  
6 software or hardware vendor and grant, if appropriate, prior approval of the technology as  
7 constituting a satisfactory means of performing notarial acts on electronic documents under this  
8 [act].

9 **Reporter's Notes**

10  
11 This Section directs the [commissioning officer or agency] to review technology  
12 submitted by software vendors and grant, where appropriate, prior approval as satisfying the  
13 requirements of Section 10(f) and (g).  
14

15 **SECTION 21. NOTARIAL ACTS AFFECTED BY THIS ACT.** This [act] applies to  
16 notarial acts performed on or after the effective date of this [act].

17 **Reporter's Notes**

18 The adoption of this act is not intended to be retroactive in effect. Thus, it applies to  
19 notarial acts performed on or after its effective date.  
20

21 **SECTION 22. NOTARY PUBLIC COMMISSION IN EFFECT ON DATE OF**  
22 **THIS [ACT].** A commission as a notary public in effect on the date of this [act] may continue  
23 until its date of expiration. However, the notary must comply with this [act] and is subject to a  
24 refusal to renew the commission or a revocation or suspension of the commission under this  
25 [act].

26 **Reporter's Notes**

27  
28 This Section states that an individual who has a commission as a notary public at the date  
29 of the enactment of this uniform law may retain the notary commission until the scheduled date  
30 of expiration. However, the notary is subject to the provisions of this act with regard to a refusal  
31 to renew the commission or a revocation or suspension of the commission. Other than as may

1 apply to the length of the commission, the provisions of the law previously in effect do not carry  
2 over after the enactment of this act.  
3

4 **SECTION 23. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This  
5 [act] shall be applied and construed to effectuate its general purpose to make uniform the law  
6 with respect to the subject of this [act] among states enacting it.

7 **Reporter's Notes**

8 This provision seeks to encourage construction that will maintain uniformity among the  
9 various states adopting the act.  
10

11 **SECTION 24. REPEALS.** The following acts and parts of acts are repealed:

- 12 (1) [The Uniform Acknowledgment Act (As Amended)]  
13 (2) [The Uniform Recognition of Acknowledgments Act]  
14 (3) [Prior version of The Uniform Law on Notarial Acts].

15 **Reporter's Notes**

16 This Section lists prior uniform laws that this proposed act supervenes.  
17

18 **SECTION 25. EFFECTIVE DATE.** This [act] takes effect \_\_\_\_\_.

19 **Reporter's Notes**

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