

MEMORANDUM

TO: Commissioners and Life Members
FROM: Patricia Fry, Drafting Committee Chair
SUBJECT: Revised Uniform Law on Notarial Acts

The Drafting Committee to Revise the Uniform Law on Notarial Acts (ULONA), including its chair, Reporter Art Gaudio, and our ABA Advisers, is pleased to present its draft for final reading and approval by the States. We have been assisted in our work by numerous advisers, including the National Association of Secretaries of State, representatives of individual secretaries of state, notary associations, the State Department, the American Bankers Association, the Property Records Industry Association, the Consumers Union, and others. Our advisers and observers have been invaluable, participating actively in both conference calls and drafting committee meetings.

Revised ULONA (RULONA) is a comprehensive revision of the 1982 Act. This version adapts the prior law to accommodate the societal and technological changes that have occurred in the past 30 years and is designed to make the Act more responsive to current transactions and continuing technological change.

Consistent with the Uniform Electronic Transactions Act (UETA), federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Ch. 96 (ESIGN), and Uniform Real Property Electronic Recording Act (URPERA), all of which recognize notarial acts on electronic records, RULONA recognizes electronic notarial acts and puts them on a par with notarial acts performed on tangible records. It does this by unifying, whenever possible, the requirements for and treatment of notarial acts, whether performed on tangible or electronic records. Further, this Act implements structural and operational rules for notarial acts on electronic records. See Sec. 14 regarding certificates of notarial acts, Sec. 18 regarding notifying the commissioning officer or agency before performing electronic notarial acts, and Sec. 26 regarding the authority of the commissioning officer or agency to craft rules for electronic notarial acts.

This revision continues the approach of the 1982 Act by defining the standard notarial acts: the acknowledgement, verification or witnessing of a signature, and the certification of a copy of a record, and specifying how each act is to be performed. Sec. 5. It states explicitly that a person seeking an acknowledgement, verification or witnessing must appear personally before the notarial officer, and requires the notarial officer to identify the individual. Sec. 6. It provides two methods of performing the identification. The identification may be based on personal knowledge of the notarial officer or, if the person is not known to the

notarial officer, upon satisfactory evidence of identity. This may take the form of an identification credential or an oath or affirmation of a credible witness. The officer may require additional identification if not satisfied. Sec. 7. If an officer is not satisfied that the signature is knowingly or voluntarily made or has concern as to the competency or capacity of the individual, the notarial officer may refuse to perform the notarial act. Sec. 8.

The Act provides other assurances to enhance the integrity of the notarial process. It requires the use of tamper-evident technologies on electronic records. It prohibits a notarial officer from performing a notarial act with regard to a record to which the officer or the officer's spouse is a party or in which either of them has a direct beneficial interest. Sec. 4. It prohibits a notary public from drafting legal records, giving legal advice, or otherwise practicing law. It also prohibits a notary public from acting as a consultant or expert on immigration matters or representing persons in judicial or administrative proceedings related to immigration. Finally, it expressly prohibits a notary public from engaging in false or deceptive advertising. Any advertisement must contain a disclaimer to that effect in each language used in the advertising. Sec. 24.

As with the 1982 Act, the revision recognizes notarial acts performed by notarial officers in the adopting state (Sec. 10), another state of the United States (Sec. 11), or under federal authority (Sec. 12). The Act recognizes notarial acts performed in foreign states and an "apostille" complying with the Convention de La Haye du 5 octobre 1961 as a means of providing conclusive authentication of acts performed in a foreign state. It also recognizes a consular authentication as an alternative authentication.

The 1982 Act did not contain provisions dealing with commissioning notaries. In order to promote unity, this Act establishes minimum requirements for commissioning (Sec. 20) as well as grounds to deny, suspend or revoke those commissions. Sec. 22. The Act contains an optional section regarding education and testing requirements.

Another means of assuring the integrity of the notarial process, strongly urged by commissioning officers and notarial associations, is to require that all notaries public maintain journals chronicling all notarial acts. This position is not without controversy and other voices strongly argue that journals are unnecessarily burdensome. This Act contains bracketed provisions requiring a notary to maintain a journal. It may be kept on either a tangible or electronic medium, but not both at the same time. The Act specifies the information that must be entered in the journal. Sec. 17.

This Act departs from past references to a notarial seal. It defines an official stamp, and the definition includes the traditional seal. Sec. 2(8). Section 15 states the required contents of the official stamp and requires that it be capable of being copied along with the record with which it is associated. Section 16 deals separately with the stamping device, which is defined as the means of affixing the official stamp

to a tangible record or associating the official stamp with an electronic record. Sec. 2(13). Section 16 defines the responsibility of the notary public for controlling the stamping device and assuring it cannot be used by others, whether during the term of the notary public's commission or thereafter.