

DRAFT
FOR DISCUSSION ONLY

REVISED UNIFORM LAW ON NOTARIAL ACTS

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

For February 27 – March 1, 2009 Drafting Committee Meeting

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

Copyright © 2009
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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

DRAFTING COMMITTEE ON REVISED UNIFORM LAW ON NOTARIAL ACTS

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

PATRICIA BRUMFIELD FRY, University of Missouri-Columbia School of Law, Missouri Ave. & Conley Ave., Columbia, MO 65211, *Chair*

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

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

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

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

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

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

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

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

EX OFFICIO

MARTHA LEE WALTERS, Oregon Supreme Court, 1163 State St., Salem, OR 97301-2563, *President*

JAMES A. WYNN, JR., NC Court of Appeals, One W. Morgan St., P.O. Box 888, Raleigh, NC 27602, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISOR

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

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

EXECUTIVE DIRECTOR

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

Copies of this Act may be obtained from:

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

REVISED UNIFORM LAW ON NOTARIAL ACTS

TABLE OF CONTENTS

Prefatory Note..... 1

SECTION 1. SHORT TITLE 1

SECTION 2. DEFINITIONS..... 1

SECTION 3. AUTHORITY TO PERFORM NOTARIAL ACTS; REQUIREMENTS..... 6

SECTION 4. IDENTIFICATION OF INDIVIDUAL..... 8

SECTION 5. SIGNATURE IN SPECIAL CIRCUMSTANCES..... 9

SECTION 6. NOTARIAL ACT IN STATE..... 10

SECTION 7. NOTARIAL ACT IN OTHER JURISDICTIONS OF UNITED STATES..... 11

SECTION 8. NOTARIAL ACT UNDER FEDERAL AUTHORITY..... 13

SECTION 9. FOREIGN NOTARIAL ACT..... 15

SECTION 10. CERTIFICATE OF NOTARIAL ACT ON TANGIBLE RECORD..... 18

SECTION 11. MAINTENANCE OF STAMPING DEVICE..... 20

SECTION 12. JOURNAL..... 21

SECTION 13. REGISTRATION OF NOTARIAL OFFICER PERFORMING NOTARIAL
ACT REGARDING ELECTRONIC RECORD..... 23

SECTION 14. CERTIFICATE OF NOTARIAL ACT ON ELECTRONIC RECORD..... 24

SECTION 15. SHORT FORMS..... 25

SECTION 16. NOTARY PUBLIC COMMISSION; QUALIFICATIONS..... 27

[SECTION 17. EDUCATION OF NOTARIES PUBLIC.]..... 30

SECTION 18. GROUNDS FOR DENIAL, REFUSAL TO RENEW, OR REVOCATION,
OR SUSPENSION OF NOTARIAL COMMISSION..... 30

SECTION 19. NO LEGAL ADVICE; ADVERTISING..... 32

SECTION 20. [RULES][REGULATIONS]..... 33

SECTION 21. VENDOR SUBMISSION OF TECHNOLOGY; APPROVAL..... 34

SECTION 22. NOTARIAL ACTS AFFECTED BY THIS ACT..... 34

SECTION 23. NOTARY PUBLIC COMMISSION IN EFFECT ON DATE OF THIS
[ACT]..... 35

SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION..... 35

SECTION 25. REPEALS..... 35

SECTION 26. EFFECTIVE DATE..... 35

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 on electronic records.

Sections 3 through 9 identify notarial acts and authorize them. It sets out the requirements for the performance of notarial 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 “bifurcated version” because it separately deals with notarial acts performed on tangible records and those performed on electronic records. The provisions relating to notarial acts evidenced on a tangible record are in Sections 10 through 12. The provisions relating to notarial acts evidenced on an electronic record are in Sections 13 and 14; those sections also make reference to various provisions dealing with notarial acts on tangible records.

The act also establishes the requirements and procedures for granting commissions as notaries public. These provisions are contained in Sections 16 through 19.

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

3
4 (7) **“Notarial officer.”** The term “notarial officer” is used to describe collectively
5 notaries public and all other individuals having the power to perform the “notarial acts”
6 authorized in this act. Most of the provisions of this act apply broadly to all notarial officers.
7 However, some provisions, such as those in Sections 16 through 19, have more limited
8 application and are applicable only to notaries public. The provisions of those sections include
9 the qualifications for, and the grounds for denial, suspension and revocation of, a commission as
10 a notary public.

11
12 (8) **“Notary public.** A “notary public” is any individual authorized to perform notarial
13 acts under Section 16 of this act.

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

20
21 (10) **“Record.”** A “record” consists of information stored on a medium, whether the
22 medium be tangible or electronic, provided that the information is retrievable in a perceivable
23 form. The traditional tangible medium has been paper on which information is inscribed by
24 writing, typing, printing or similar means. It is perceivable by reading it directly from the paper
25 on which it is inscribed. An electronic medium may, for example, be one on which information
26 is stored magnetically and from which it may be retrieved and read indirectly on a computer
27 monitor or a paper printout.

28
29 Traditionally, especially if the tangible medium is paper, a record has been referred to as
30 a “document.” The word “record” is inclusive of the word “document.” The definition of a
31 record in this act is derived from the definition of that word as used in §2(13).

32
33 (11) **“Sign” and “Signature.”** Subsection (11) and (12) define the words “sign” and
34 “signature.” An individual may sign his or her name to a record either on a tangible medium or
35 in an electronic format as long as the individual has the present intent to authenticate or adopt the
36 record. Except as provided in Section 5, an individual must personally perform the act of signing
37 a record; an individual may not sign a record by means of a facsimile stamp or printing process.
38 If an individual has adopted a symbol as a name, the individual may affix the symbol as the
39 individual’s name. The verb “sign” should also be read to include other forms of the verb such
40 as “signing.”

41
42 (12) **“Stamp.”** The word “stamp” refers to an image on a tangible record. It is to be
43 distinguished from the device by which that image is imposed on the record; that device is
44 identified as the “stamping device.”

45
46 The image must contain the notarial officer’s name, the jurisdiction in which the officer

1 is authorized to act, the expiration date, if any, of the notarial officer’s commission, and any
2 other information that may be required by the [commissioning officer or agency] of the
3 authorizing jurisdiction. The word “stamp” includes an image that is imposed by a “seal.”
4 Because it is important to be able to reproduce the image of a stamp that is contained on a
5 tangible record, the stamp must be capable of being copied along with the tangible record. Thus,
6 a stamp that is in the form of an impression seal will normally not be a sufficient stamp.
7

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

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

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

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

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

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

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

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

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

3 **Reporter's Notes**

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

11
12 Subsection (b) specifies what a notarial officer certifies by taking an acknowledgement.
13 There are two main elements of an acknowledgement: (1) the identity of the individual who
14 made the acknowledgement, and (2) the fact that the individual signed the record as a specific
15 instrument (for example, a deed) and not as some other record. As part of the identification
16 process, the acknowledging individual must physically appear before the notarial officer and the
17 notarial officer must identify the individual either through personal knowledge or from
18 satisfactory evidence. An acknowledgement, as defined in Section 2(1), is a statement that the
19 individual has executed an instrument by signing it; it is not necessarily the act of signing itself.
20 Thus, an individual may appear before the notarial officer and acknowledge to the officer that the
21 signature already on the document is that individual's signature.

22
23 Subsection (c) specifies the requisites of taking a verification on oath or affirmation.
24 There are also two main elements of a verification: (1) the identification of the affiant and
25 (2) the fact that the affiant is verifying the statement under oath or affirmation. The affiant must
26 physically appear before the notarial officer and the notarial officer must identify the affiant
27 either through personal knowledge or from satisfactory evidence. This document is sometimes
28 referred to as an affidavit or jurat in some jurisdictions.

29
30 Subsection (d) states the requirements for witnessing or attesting a signature. Here the
31 notarial officer only certifies the fact of the signature; the officer does not certify the signatory's
32 intent to verify the instrument. The notarial officer certifies: (1) the identification of the
33 individual doing the witnessing or attesting, and (2) that the signature of the individual doing the
34 witnessing or attesting is that of the person appearing before the officer. The witnessing or
35 attesting individual must physically appear before the notarial officer and the notarial officer
36 must identify the individual either through personal knowledge or from satisfactory evidence.

37
38 Subsection (e) defines the standards for attestation or certification of a copy of a record
39 by a notarial officer. This is done if it is necessary to produce a copy of a record when the
40 original is in an archive or other collection of records and cannot be removed. In many cases,
41 however, the custodian of the official archive or collection may also be empowered to issue an
42 officially certified copy. When an officially certified copy is available, it is official evidence of
43 the state of the public archive or collection, and it may be better evidence of the original record

1 than a notarially certified copy.
2

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

6 **SECTION 4. IDENTIFICATION OF INDIVIDUAL.**

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

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

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

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

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

20 **Reporter's Notes**
21

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

29 Subsection (b) describes when a notarial officer has satisfactory evidence of the identity
30 of the individual. One method by which the notarial officer can have satisfactory evidence of the
31 identity of an individual is by means of an[unexpired] identification credential[that is presented

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

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

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

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

30 **Reporter’s Notes**

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

1 **SECTION 6. NOTARIAL ACT IN STATE.**

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

- 3 (1) a notary public of this state; [or]
- 4 (2) a judge, clerk, or deputy clerk of any court of this state[; or]
- 5 [(3) an individual licensed to practice law in this state][; or]
- 6 [(4) an individual authorized by the law of this state to administer oaths][; or]
- 7 [(5) any other individual authorized to perform the specific act by the law of this
- 8 state].

9 (b) The signature and title of an individual performing a notarial act are prima facie

10 evidence that the signature is genuine and that the individual holds the designated title.

11 (c) The signature and title of a notarial officer listed in subsection (a)(1) or (2)

12 conclusively establish the authority of the officer to perform a notarial act.

13 **Reporter’s Notes**

14 Subsection (a) lists the individuals who are entitled to serve as notarial officers in this

15 state. In addition to notaries public, all judges, clerks and deputy clerks of the courts of this state

16 may perform notarial acts. The language follows the prior version of the Uniform Law on

17 Notarial Acts.

18

19 Several optional notarial officers are also listed. A state may authorize all duly licensed

20 attorneys at law to serve as notarial officers by virtue of their attorney’s licenses. It may also

21 authorize other individuals who have authority to administer oaths to do so. If other particular

22 officers, such as recorders or registrars of deeds or commissioners of titles, may perform notarial

23 acts in the state, it would be advisable to list them here because the list might be a ready

24 reference point for those who seek to determine the validity of the notarial acts of these

25 individuals when they are used in another state.

26

27 Proof of authority of a notarial officer usually involves three steps:

28

- 29 1. Proof that the notarial officer’s signature is that of the individual named as a notarial
- 30 officer;
- 31
- 32 2. Proof that the individual holds the designated office as a notarial officer; and
- 33

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(d) 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 ACT 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 of a
24 notarial act authorized in this section.

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

28
29 See also 10 U.S.C. §936, which provides:

30
31 (a) The following persons on active duty or performing inactive-duty training may
32 administer oaths for the purposes of military administration, including military justice:

33 (1) All judge advocates.

34 (2) All summary courts-martial.

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

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

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

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

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

44 (1) The president, military judge, trial counsel, and assistant trial counsel
45 for all general and special courts-martial.

46 (2) The president and the counsel for the court of any court of inquiry.

- 1 (3) All officers designated to take a deposition.
- 2 (4) All persons detailed to conduct an investigation.
- 3 (5) All recruiting officers.
- 4 (6) All other persons designated by regulations of the armed forces or by

5 statute.

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

8
9 The precise application of 10 U.S.C. §936 is not clear. The Section is limited to
10 administration of oaths and seems to be limited to oaths administered in the performance of the
11 officer’s duties. Those duties seem to include matters of military justice and oath of induction by
12 recruiting officers. Nevertheless, it may be appropriate to include this U.S.C. Section in
13 subsection (a)(2).

14
15 Subsection (a)(3) recognizes the authority of foreign service officers to perform notarial
16 acts.

17
18 Subsection (b) confers prima facie validity upon the signature and assertion of rank or
19 title by the United States notarial officer. It thus provides the first two elements of proof
20 described in the Reporter’s Notes to Section 6.

21
22 Subsection (c) provides the third element of proof of the notarial officer’s authority. It
23 conclusively recognizes the authority of a judge, clerk or deputy clerk or a military officer or a
24 foreign service or consular officer to perform notarial acts without the necessity of further
25 reference to the federal statutes or regulations to prove that the officer has notarial authority.
26 There is no need for further authentication of those individuals’ authority to perform notarial
27 acts.

28
29 A variety of other federal officers may be authorized to perform notarial acts, such as
30 wardens of federal prisons, but their authority must be demonstrated by other means. The
31 authority of such an officer to perform the notarial act can most readily be demonstrated by
32 reference to the federal law or published regulations granting the authority. Any other form of
33 authentication, such as a “clerk’s certificate,” could also be used.

34
35 **SECTION 9. FOREIGN NOTARIAL ACT.**

36 (a) A notarial act has the same effect under the law of this State as if performed by a
37 notarial officer of this state if performed within the jurisdiction and under authority of a foreign
38 nation or its constituent units [or under the authority of a multinational or international
39 governmental organization] by any of the following individuals:

- 40 (1) a notary public or notarial officer;

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

2 (3) any other individual authorized by the law of that jurisdiction [or the charter of
3 the multinational or international governmental organization] to perform a notarial act.

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

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

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

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

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

19 **Reporter's Notes**

20
21 This section concerns the recognition of notarial acts performed by notarial officers who
22 act under foreign law. Subsection (a) provides that the notarial act of a notary public, judge,
23 clerk of court or deputy clerk of court of a foreign nation or its constituent unit is recognized in
24 this state. The notarial acts of other individuals will be recognized if they are authorized by the
25 law of the place in which they are performed. The provisions of this section are the same as
26 those stated in the prior version of the Uniform Law on Notarial Acts.
27

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 ON TANGIBLE RECORD.**

18 (a) A notarial act must be evidenced by a certificate. The certificate [may contain the
19 notarial officer's official stamp and] must:

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

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

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

23 [(4) contain the notarial officer's official stamp;]

24 [(5)] indicate the date of expiration, if any, of the notarial officer's commission, if
25 the officer is a notary public;

26 [(6)] contain the notarial officer's rank or position, if the notarial officer is
27 performing duties pursuant to 10 U.S.C Section1044a.

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

30 (1) is in a short form set forth in Section 15;

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

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

3 (4) sets forth the actions of the notarial officer and those are sufficient to meet the
4 requirements of the designated notarial act.

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

7 (d) A notarial officer may not affix the officer's signature to the certificate until a notarial
8 act has been performed.

9 (e) A notarial officer must affix the officer's signature to a certificate in a manner that
10 reasonably permits the determination of whether the individual performing the notarial act is an
11 officer. The certificate must be attached to the record in a manner that reasonably assures that
12 the record is the one certified by the officer and that the certificate is genuine and has not been
13 changed or subjected to tampering.

14 [(f) The requirements of subsection (e) are satisfied if an officer's stamp is affixed to the
15 certificate and the certificate is part of, or securely attached to, the record.]

16 **Reporter's Notes**

17 Subsection (a) requires a written certification by the notarial officer of the notarial act. It
18 must identify the notarial act, set forth its date and its place of performance and contain the office
19 and signature of the notarial officer. Depending on whether the bracketed material is adopted, it
20 must [may] also contain the official stamp of the notarial officer. If the officer is a notary public,
21 the certificate must also contain the expiration date of the notary's commission. If the officer is
22 derived from 10 U.S.C. §1044a [and §936], then it must include the person's rank or position.

23
24 Subsection (b) provides that the certificate may be in any one of the short forms set forth
25 in this Section 15 of this Act, in any other form provided by local law, in any other form
26 provided by the law of the place where it was performed or in any form that sets forth the
27 requisite elements of the appropriate notarial act. Thus, acknowledgements and other notarial
28 acts executed in more prolix and elaborate forms may nevertheless continue to qualify under
29 subsection (b).
30

1 Subsection (c) emphasizes the obligation of the notarial officer to make the
2 determinations required by Sections 3 and 4 and to certify that the officer has done so.
3

4 In order to be proper evidence of the full performance of a notarial act, subsection (d)
5 provides that the notarial officer may not sign the notarial certificate until the notarial act has
6 been fully performed. See N.C. Gen. Stat. §10B-35; Model Notary Act, §8-1.
7

8 Sections 6(b), 7(b), and 8(b) provide that the signature and title of an individual
9 performing a notarial act are prima facie evidence that the person holds the designated office.
10 Sections 6(c), 7(c) and 8(c) provide that the signature and title of an individual conclusively
11 establish the authority of certain officers to perform the notarial act.
12

13 Subsection (e) seeks to provide further assurance of those validations. First, the notarial
14 officer's signature must be attached to the certificate in a way that reasonably permits the
15 determination of whether the individual is a notarial officer. Second, the certificate must be
16 attached to the record in a manner that assures that the record is the one that the officer certified
17 and that the certificate has not been altered.
18

19 Subsection (f) then provides that the presence of the notarial officer's official stamp on
20 the certificate and the secure attachment of the certificate to the record provide both of the above
21 assurances. Although there is always the potential that a determined individual might
22 fraudulently obtain an "official" stamp, the misuse does not appear to be large and can be further
23 minimized. The [commissioning officer or agency] might reduce that threat by various means.
24 For example, the [commissioning officer or agency] will provide an online list of authorized
25 notaries public with their names and places of business (see Section 16(c)). The [commissioning
26 officer or agency] may also police or regulate the entities that issue "official" stamps, perhaps by
27 adopting regulations that provide that a stamp may only be issued based on a certificate from the
28 commissioning officer or agency. Of course, for the latter method to be effective, the
29 commissioning officers of all states would have to adopt such provisions. See also Section 11
30 regarding the maintenance of the stamping device.
31

32 **SECTION 11. MAINTENANCE OF STAMPING DEVICE.**

33 (a) A notarial officer shall keep the officer's official stamping device [, if any,] in a
34 secure place. The officer shall not allow another person to use or possess the device. On
35 resignation from, or the revocation or expiration of, the notarial officer's commission, the officer
36 shall destroy the device by defacing it in a manner that renders it unusable. The officer's
37 personal representative shall destroy the device on the death of the officer by defacing it in a
38 manner that renders it unusable.

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

4 **Reporter's Notes**

5 Subsection (a) requires the notarial officer to maintain the officer's official stamp [if
6 required under the act] in a secure place. In order to protect and maintain the integrity of notarial
7 acts, it is important that the officer's stamp be kept secure and out of the hands of any individual
8 who might use it fraudulently. Accordingly, the officer may not allow another individual to use
9 or possess the stamp.

10
11 Furthermore, to assure the integrity of the notarial system, the notarial officer may not
12 possess the official stamp if the officer is no longer serving as a notarial officer. Thus, upon the
13 resignation of the notarial officer, or the revocation or expiration of the officer's commission, the
14 officer must destroy the stamp in a way that renders it unusable. Similarly, upon the death of a
15 notarial officer, the officer's personal representative must destroy the stamp. See N.C. Gen. Stat.
16 § 10B-36(a); Model Notary Act § 7-4(f).

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

24 25 **SECTION 12. JOURNAL.**

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

29 (b) A journal may be created on a tangible medium or in an electronic format. A notarial
30 officer shall maintain only one journal at a time chronicling all notarial acts, whether those
31 notarial acts are performed with regard to tangible or electronic records. If the journal is
32 maintained on a tangible medium, it must be a permanent, bound register with numbered pages.
33 If the journal is maintained in an electronic format, it must be in a permanent, tamper-evident

1 electronic format complying with the regulations prescribed by the [commissioning officer or
2 agency].

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

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

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

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

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

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

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

15 **Reporter's Notes**

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

28
29 Subsection (b) allows the notarial officer to decide whether to use a traditional journal on
30 a tangible medium (paper) or an electronic journal. However, the officer may maintain only one
31 active journal at a time. If the officer maintains the journal on a tangible medium (paper), the

1 journal must be in a permanent, bound register with numbered pages. It may not be in a loose-
2 leaf or similar volume with pages that can be removed or torn out without evidence of the
3 removal. If the officer decides to use an electronic journal, the electronic journal must be
4 maintained in a permanent, tamper-evident electronic format as prescribed by the regulations of
5 the [commissioning officer or agency].
6

7 Subsection (c) provides that the officer must make the entries chronologically at the time
8 of the performance of the notarial act. This subsection lists certain information that must be
9 included in each journal entry: (1) date and time of the notarial act; (2) a brief description of the
10 record and the type of notarial act performed (e.g., deed; acknowledgement); (3) the name and
11 address of each individual for whom the notarial act was performed; (4) if identity was based on
12 personal knowledge, as statement to that effect; (5) if identity was based on satisfactory
13 evidence, a brief description of the passport or other identification document, its date of issue
14 and date of expirations [and identifying number (this requirement might be controversial)]; and
15 (6) the fee, if any, charged by the notarial officer.
16

17 **SECTION 13. REGISTRATION OF NOTARIAL OFFICER PERFORMING**
18 **NOTARIAL ACT REGARDING ELECTRONIC RECORD.**

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

22 (b) The [commissioning officer or agency] shall, at the time a notarial officer registers to
23 perform notarial acts under this Section, review the technology the notarial officer proposes to
24 use to perform notarial acts on electronic records to ensure compliance with the Section 10(e)
25 and 14(c).

26 **Reporter's Notes**

27 Subsection (a) requires that a notarial officer, whether a notary public or other notarial
28 officer, must register with the commissioning officer of agency prior to performing notarial acts
29 with regard to electronic records.
30

31 A major reason for this registration requirement is stated in subsection (b). The
32 performance of notarial acts with regard to electronic documents requires software and hardware
33 that assures that the signature attached to or associated with the certificate is that of the notarial
34 officer and that the certificate attached to or associated with the electronic record is the one
35 executed by the notarial officer as stated in Sections 10(e) and (f) and 14(b). The methods for

1 accomplishing these requirements may vary but to assure their satisfaction, the [commissioning
2 officer of agency] must review and approve the technology.
3

4 **SECTION 14. CERTIFICATE OF NOTARIAL ACT ON ELECTRONIC**

5 **RECORD.**

6 (a) A certificate of a notarial act performed regarding an electronic record must contain
7 the information specified in Section 10 of this [act].

8 (b) The requirements of Section 10(e) are satisfied if a notarial act is performed with
9 regard to an electronic record and if an officer's signature is affixed to, or logically associated
10 with, the certificate and the certificate is affixed to, or logically associated with, the electronic
11 record in accordance with methods approved by the [commissioning officer or agency].

12 (c) An electronic image of the notarial officer's stamp need not be attached to, or
13 logically associated with, an electronic record.

14 **Reporter's Notes**

15 Subsection (a) specifies that an electronic version of the certificate specified in Section
16 10 of the act must be attached to, or logically associated with, the electronic document or
17 signature that is being notarized.
18

19 Because the means of attaching or logically associating the notarial officer's electronic
20 signature to a certificate and an electronic notarial certificate to a record are not tangible, the use
21 of a stamp is not an adequate means of providing the assurance required by Section 10(f). The
22 electronic means by which the signature and certificate are attached or associated with the record
23 will vary among authorized notaries and will certainly vary as new technologies become
24 available.
25

26 Subsection (b) recognizes those realities and provides that the two assurances required by
27 Section 10(e) will be satisfied if the notarial officer follows the methods approved by the
28 [commissioning officer or agency]. In this regard, Section 13(b) also provides that the
29 [commissioning officer or agency] will review the notarial officer's proposed technology to
30 assure compliance with this subsection. In addition, Section 21 provides that the
31 [commissioning officer or agency] will review technology submitted by software vendors and,
32 where appropriate, grant prior approval of the technology as meeting the requirements of this
33 Section.
34

1 Subsection (c) clearly states that an electronic image of the notarial officer's stamp need
2 not be attached to, or logically associated with, an electronic record.
3

4 **SECTION 15. SHORT FORMS.** The following short form certificates of notarial acts
5 are sufficient for the purposes indicated, if completed with the information required by Section
6 10(a):

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

8 State of _____

9 (County) of _____

10 This instrument was acknowledged before me on _____ by _____
11 Date Name(s) of Individual(s)

12 _____
13 (Signature of notarial officer)

14 (Stamp, if any)

15 [_____]
16 [Title (and Rank)]

17 [My commission expires: _____]
18

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

20 State of _____

21 (County) of _____

22 This instrument was acknowledged before me on _____ by _____
23 Date Name(s) of Individual(s)

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

26 _____
27 (Signature of notarial officer)

1 (Stamp, if any)

2 [_____]

3 [Title (and Rank)]

4 [My commission expires: _____]

5

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

7 State of _____

8 (County) of _____

9 Signed and sworn to (or affirmed) before me

10 on _____ by _____

11 Date Name(s) of Individual(s) making statement).

12 _____

13 (Signature of notarial officer)

14 (Stamp, if any)

15 [_____]

16 [Title (and Rank)]

17 [My commission expires: _____]

18

19 (4) For witnessing or attesting a signature:

20 State of _____

21 (County) of _____

22 Signed [or attested] before me on _____ by _____

23 Date Name(s) of Individual(s).

24 _____

25 (Signature of notarial officer)

26 (Stamp, if any)

1 [_____]
2 [Title (and Rank)]

3 [My commission expires: _____]
4

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

6 State of _____

7 (County) of _____

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

10 Dated _____

11 _____
12 (Signature of notarial officer)

13 (Stamp, if any)

14 [_____]
15 [Title (and Rank)]

16 [My commission expires: _____]

17 **Reporter's Notes**

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

21
22 These certificates apply to notarial acts performed on a tangible medium as well as
23 notarial acts performed in an electronic format. A notarial stamp is optional in these certificates.
24 This recognizes that a stamp is not a requirement for evidencing a notarial act with regard to an
25 electronic record. However, its inclusion acknowledges the use of a stamp on a tangible record.
26 A military officer who is acting as a notarial officer will normally enter both title (e.g.
27 commanding officer, Company A, etc.) and rank (Captain, U.S. Army) as identification.
28

29 **SECTION 16. NOTARY PUBLIC COMMISSION; QUALIFICATIONS.**

30 (a) An individual qualified under subsection (b) may apply to the [commissioning officer

1 or agency] for [an initial or renewal] commission as a notary public. The applicant must comply
2 with, and provide the information required by, the regulations established by the [commissioning
3 officer or agency] and submit the required application fee.

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

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

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

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

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

9 (5) not be subject to refusal of a commission under Section 18 of this [act][.]; and

10 (6) pass an examination administered by the [commissioning officer or agency] or
11 an entity licensed by the [commissioning officer or agency], which is based on the course of
12 instruction described in Section 17 of this [act].]

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

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

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

5 **Reporter's Notes**

6 Subsection (a) states that an individual qualified under subsection (b) may apply for and
7 obtain a commission as a notary public from the [commissioning officer or agency]. It leaves the
8 form of application, the process of application and the timing of the process to be determined by
9 the [commissioning officer or agency]. Although some statutes specify some of these provisions
10 in more detail (compare Ariz. Rev. Stat. § 41-312; Del. Code Ann. tit. 43, § 4301; Model Notary
11 Act ch. 3), this act leaves the determination and implementation of those provisions to
12 regulations adopted by the [commissioning officer or agency]. The bracketed material allows
13 this application process and requirements to apply to both initial and renewal applications for
14 notary public commissions.

15
16 Subsection (b) sets out qualifications for issuance of a notary public commission. The
17 qualifications set out in the current legislation of the various states are quite varied. The
18 requirements listed here are common although not uniform among the states (compare Ariz. Rev.
19 Stat. § 41-312(E); Model Notary Act § 3-1). The material providing for a course of instruction
20 has been moved to Section 17, but a bracketed provision regarding passage of an exam based on
21 the educational material is contained in optional subsection (b)(6).

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

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

38
39 Subsection (d) requires that the applicant submit an oath of office to the [commissioning
40 officer or agency].

1 Subsection (e) provides that upon compliance with the requirements of this section, the
2 [commissioning officer or agency] will issue a notarial commission for a specified term. The
3 length of that term is to be determined by the state legislature.
4

5 **[SECTION 17. EDUCATION OF NOTARIES PUBLIC.** The [commissioning officer
6 or agency] or an entity licensed by the [commissioning officer or agency] shall regularly offer a
7 course of instruction to applicants for a notary public commission that is at least [] hours long
8 covering the laws, [rules][regulations], standards, procedures and ethics relevant to notarial acts.]

9 **Reporter's Notes**

10 An increasingly common requirement for the issuance of a notary public commission is
11 that the applicant must meet certain educational requirements. This Section provides that the
12 [commissioning officer or agency] or an entity licensed by the [commissioning officer or
13 agency] shall provide that course of education. However, it leaves the length of the course to the
14 determination of the state legislature. This is a bracketed and option provision. Section 16(b)(6)
15 collaterally requires that the applicant must pass a test based upon the course of instruction in
16 order to obtain a commission.
17

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

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

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

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

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

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

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

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

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

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

18 **Reporter's Notes**

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

23
24 Subsections (a)(1)-(5) set forth specific statutory grounds upon which a commission may
25 be denied, suspended or revoked. Subsection (a)(6) gives the [commissioning officer or agency]
26 the authority to promulgate rules or regulations further setting forth grounds upon which a
27 commission may be denied, suspended or revoked.
28

1 Subsection (b) states expressly that an applicant who has been denied a commission or a
2 notary public whose commission has been suspended or revoked is entitled to a timely notice and
3 a hearing. Such a notice or hearing is likely to be required by the state’s administrative
4 procedure act, but is restated here for clarity and assurance.
5

6 Subsection (c) provides that the [commissioning officer or agency] will maintain an
7 electronic database of notaries public through which an individual may verify whether the
8 asserted notary public has a commission to perform notarial acts. In addition, that database will
9 also indicate whether the notary public is authorized to perform notarial acts with regard to
10 electronic records.
11

12 **SECTION 19. NO LEGAL ADVICE; ADVERTISING.**

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

14 (1) assist individuals in drafting legal documents,

15 (2) render legal advice, or

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

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

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

25 **Reporter’s Notes**

26 Subsection (a) provides that a commission as a notary public does not authorize a notary
27 public to render legal services, whether the services are in the form of drafting legal documents,
28 providing legal advice or any other form. Implied in this provision is the fact that an individual
29 who is otherwise authorized to render legal services, such as an attorney at law, and who also has
30 a notary public commission, is authorized to render legal services.
31

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

3
4 Subsection (c) is directed toward a specific advertising problem. Under the laws of many
5 non-common law countries, including but not limited to civil law countries, a notary public is
6 authorized not only to verify and acknowledge records and signatures. In those countries, a
7 notary may also draft and interpret legal records for parties and give legal advice on those
8 matters. In effect, those notaries public have at least limited authority to engage in transactional
9 and other legal matters. When people emigrate to the United States from those countries, they
10 are faced not only with their prior experiences under that custom but also the difficulties of
11 understanding the English language. Unfortunately, some notaries public have taken advantage
12 of that situation, whether at their suggestion or at the request of the immigrant, and have
13 provided legal advice and document drafting. In many cases, the legal advice has dealt with
14 immigration matters.

15
16 Subsection (c) is derived from provisions in legislation currently in effect in Arizona
17 (Ariz. Rev. Stat. § 41-329(A) and under consideration in Massachusetts (2007 Mass. H.B. 1642,
18 § 1, 8(G)). It provides that a notary, other than a notary who is also an attorney at law, may not
19 offer legal advice or draft legal records. If the notary advertises notarial services, the notary
20 must provide information in the same language that the notary may not provide legal advice or
21 draft legal documents, particularly about immigration matters. The advertising includes ads in
22 the written or visual media as well as point of service ads and oral advertising. It seeks to inform
23 the prospective client that the notary public is not authorized or experienced to give legal advice.
24

25 **SECTION 20. [RULES][REGULATIONS].**

26 (a) The [commissioning officer or agency] shall adopt [rules][regulations] implementing
27 this [act] affecting the performance of notarial acts with regard to tangible media and electronic
28 records. The [commissioning officer or agency] shall also adopt regulations implementing the
29 provisions of this [act] affecting the granting and revocation of notary public commissions. The
30 [commissioning officer or agency] must adopt [rules][regulations] to clarify the provisions of
31 this [act] to prevent fraud or error in the performance of notarial acts and to ensure that
32 trustworthy individuals hold commissions as notaries public.

33 (b) In adopting [rules][regulations] to implement the performance of notarial acts on
34 electronic records, the [commissioning officer or agency] shall consult with the [name of state
35 agency] authorized to adopt [rules][regulations] for the recording of electronic documents. The

1 [commissioning officer or agency], so far as is consistent with the purposes and policies of this
2 [act], shall also consider the [rules][regulations], standards, and customs of other jurisdictions
3 and the standards promulgated by national standard-setting bodies.

4 **Reporter's Notes**

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

9
10 Subsection (c) directs the [commissioning officer or agency] to consult with various
11 organizations or entities when adopting regulations. The purposes of this provision are to bring
12 to the [commissioning officer or agency] the best information available on the issues and also to
13 encourage uniformity among the various states.
14

15 **SECTION 21. VENDOR SUBMISSION OF TECHNOLOGY; APPROVAL.** On
16 application, the [commissioning officer or agency] shall review a technology submitted by a
17 software or hardware vendor and grant, if appropriate, prior approval of the technology as
18 constituting a satisfactory means of performing notarial acts on electronic documents under this
19 [act].

20 **Reporter's Notes**

21
22 This Section directs the [commissioning officer or agency] to review technology
23 submitted by software vendors and grant, where appropriate, prior approval as satisfying the
24 requirements of Sections 10(f) and (g) and 14(b).
25

26 **SECTION 22. NOTARIAL ACTS AFFECTED BY THIS ACT.** This [act] applies to
27 notarial acts performed on or after the effective date of this [act].

28 **Reporter's Notes**

29 The adoption of this act is not intended to be retroactive in effect. Thus, it applies to
30 notarial acts performed on or after its effective date.
31

1 **SECTION 23. NOTARY PUBLIC COMMISSION IN EFFECT ON DATE OF**

2 **THIS [ACT].** A commission as a notary public in effect on the date of this [act] may continue
3 until its date of expiration. However, the notary must comply with this [act] and is subject to a
4 refusal to renew the commission or a revocation or suspension of the commission under this
5 [act].

6 **Reporter’s Notes**

7
8 This Section states that an individual who has a commission as a notary public at the date
9 of the enactment of this uniform law may retain the notary commission until the scheduled date
10 of expiration. However, the notary is subject to the provisions of this act with regard to a refusal
11 to renew the commission or a revocation or suspension of the commission. Other than as may
12 apply to the length of the commission, the provisions of the law previously in effect do not carry
13 over after the enactment of this act.
14

15 **SECTION 24. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This

16 [act] shall be applied and construed to effectuate its general purpose to make uniform the law
17 with respect to the subject of this [act] among states enacting it.

18 **Reporter’s Notes**

19 This provision seeks to encourage construction that will maintain uniformity among the
20 various states adopting the act.
21

22 **SECTION 25. REPEALS.** The following acts and parts of acts are repealed:

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

26 **Reporter’s Notes**

27 This Section lists prior uniform laws that this proposed act supervenes.
28

29 **SECTION 26. EFFECTIVE DATE.** This [act] takes effect _____.

Reporter's Notes

1

2

This is the standard effective date provision for uniform laws.