

DRAFT AMENDMENT TO
REVISED UNIFORM LAW ON NOTARIAL ACTS

2015 Annual Meeting
Williamsburg, Virginia

Purposes and Issues

The Draft: The proposed amendment to the Revised Uniform Law on Notarial Acts [RULONA] permits notaries public to perform notarial acts for individuals physically located in a foreign state, i.e. physically remote from the notary public and in a foreign country, with the use of electronic technologies for communication.

Background: RULONA received final approval by the Uniform Law Commission at its Annual Meeting in July 2010. During the drafting process, representatives of the American Bar Association Section on International Law [ABASIL] requested that the Drafting Committee include provisions designed to address problems encountered by U.S. citizens in obtaining notarizations to be used for domestic U.S. purposes while they are physically located abroad. After several conference calls and some investigations, and after receiving strong objections to the proposal from representatives of the U.S. Department of State, the Drafting Committee declined the ABASIL request.

In 2014, ABASIL sought a resolution from the House of Delegates of the American Bar Association justified, in part, by the problems with obtaining cross-border notarizations. In 2014 the House of Delegates adopted a resolution as follows:

RESOLVED, That the American Bar Association supports modernization and simplification of the requirements and procedures related to verification of signatures in

cross-border contexts by amending uniform and modern laws to take advantage of cloud-based and other technological progress and by increasing reciprocal recognition among jurisdictions.

At the request of the Executive Committee, a working group comprised of Commissioners Patricia Fry and Raymond Pepe, and Reporter Arthur Gaudio, reviewed the problems encountered by U.S. residents while working, traveling or residing abroad. We collected information from a variety of sources to determine the extent and pervasiveness of the problem and took steps to identify possible means of addressing those problems. We were informed of a number of experiences illustrating the problem, such as a U.S. citizen who interrupted a stay in Europe to fly back to the U.S. in order to obtain a notarization, and a commissioner who encountered a six-week delay and the expense of making a 600-mile air trip to Beijing in order to obtain a notarization at the U.S. embassy.

A review of the law and experiences of U.S. citizens disclosed that the needs of some citizens could be satisfied under the current system, while the needs of many others could not. For example, military personnel may obtain notarizations for U.S. domestic use from military officers who are often conveniently available. However, while similar notarizations may be obtained by non-military personnel at U.S. embassies and consulates, those facilities are not always conveniently located nor are they always available within the timeframe needed. Furthermore, although notarizations performed by notarial officers authorized under the law of various foreign nations may be available, the character of the duties imposed on those notarial officers by international law or the law of their own foreign states is so very different from those required of American notaries that notarizations may be unavailable or are prohibitively expensive.

We concluded from our investigations that, despite available resources, U.S. citizens residing or traveling abroad may encounter intractable problems when seeking notarizations to satisfy U.S. federal or state law purposes. We further concluded that U.S. citizens abroad encounter significant problems, expenses and/or delays when they needed to have signatures notarized for domestic purposes. We also concluded those difficulties were widespread and persistent.

When exploring possible solutions, it became clear that, with the number of federal and state statutes requiring notarizations, the problems would not be resolved by any solution that did not involve amendment to state laws governing notarizations. We conferred with representatives of the U.S. Department of State in order to understand their concerns about various possible solutions. We believe it is fair to characterize their concerns as arising out of laws and regulations limiting notarial powers to those individuals authorized by their home nations. Those limitations are similar to the prohibitions American states impose on notarizations by unauthorized individuals within their geographic bounds. Were U.S. citizens holding notarial commissions from the various states to perform notarial acts while physically located in foreign nations, they would be in violation of the laws of those various nations and potentially at risk for arrest, imprisonment, or fines.

With the approval of the Executive Committee, a stakeholders' meeting was convened in Chicago in March 2015. That meeting included, either in person or by telephone, representatives of the three national notary associations, of the National Association of Secretaries of State, Notary Public Administrators, U.S. Department of State, ABASIL, the American Bar Association Section on Science and Technology, Property Records Industry Association, and various vendors of electronic notarization technology, among others. After the meeting

concluded, a draft revision was circulated to all participants and numerous comments received. The draft on the agenda includes provisions designed to address many of the points raised at the stakeholders' meeting and in the ensuing comments and suggestions.

Existing Law: The Revised Uniform Law on Notarial Acts, like non-uniform laws in most states, requires a personal appearance by a signer before a notary public. The innovation to be found in RULONA authorizes notaries to electronically sign electronic records and to affix their certificates to the electronic records. In addition to the states that have enacted RULONA, Alaska, Arkansas, Arizona, Colorado, Delaware, Florida, Kansas, Minnesota, Nevada, New Mexico North Carolina, Pennsylvania, Texas, Utah, Virginia and Wisconsin have provisions allowing the use of electronic signatures.

Some states have enacted provisions permitting the signer and the notary public to communicate from a distance using electronic technologies. One label that has been used for such provisions is 'remote notarizations.' Virginia, in non-uniform provisions, authorizes a signer to appear before a notary public via electronic technologies. Montana's recent enactment of RULONA includes non-uniform provisions authorizing a signer and notary public to use electronic technologies for their communications.

PROVISIONS OF THE DRAFT: The draft being presented to the Committee of the Whole builds on the laws of Montana, Hawaii and Virginia by permitting notarial acts in cases where the signer is physically located abroad and the signer and notary public are able to communicate electronically. It is drafted in a format permitting the enactment of a single section as an amendment to RULONA.

The draft requires the use of audio- and video-technologies for real-time communication and requires the notary to record the interaction. It authorizes the commissioning officer to regulate the technologies to be used. The individual making the statement or signing the record must establish his or her identity, must be under or consent to the jurisdiction of a court of the United States, or the record must involve property located in or a transaction substantially connected to a state or subject to the jurisdiction of a court of the United States. The notary public must be reasonably able, by use of tamper evident technology or acknowledgement of the individual, to identify the record as the one signed by the individual or which contained the statement. The act of the individual in making the statement or signing the record must not be prohibited in the foreign state in which the individual is physically located. The certificate affixed by the notary to the record must indicate that the notarial act took place while the individual was located in a foreign state. Before first performing such notarial acts, the notary public must notify the commissioning officer and identify the technology to be used. A notary public may refuse to perform such notarial acts and the commissioning officer may establish standards for the technology to be used and any identity-proofing technology to be used.