

D R A F T

FOR DISCUSSION ONLY

REVISED UNIFORM LAW ON NOTARIAL ACTS

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ON UNIFORM STATE LAWS

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REVISED UNIFORM LAW ON NOTARIAL ACTS

WITH PREFATORY NOTE AND PRELIMINARY COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 1, 2009

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REVISED UNIFORM LAW ON NOTARIAL ACTS

Prefatory Note

This version of the Uniform Law on Notarial Acts (“ULONA”) is a comprehensive revision of the Uniform Law on Notarial Acts as approved by the National Conference of Commissioners on Uniform State Laws (“NCCUSL”) in 1982. It recognizes the societal and technological changes that have occurred since the date of the earlier version of this act and adapts the notarial process to accommodate them. It also makes revisions to the prior version that make this act more responsive to current transactions and practices.

In 1999, NCCUSL approved the Uniform Electronic Transactions Act (“UETA”), thereby validating electronic transactions and putting them on a par with traditional transactions that were written on tangible media. The federal Electronic Signatures in Global and National Commerce Act (“ESign”) was adopted in 2000 and also recognized electronic transactions on a par with transactions on tangible media. In 2004, NCCUSL approved the Uniform Real Property Electronic Recording Act (“URPERA”), thereby permitting county recorders and registrars to accept and record electronic real estate documents. Each of those acts recognized the validity of electronic notarial acts (UETA § 11; ESign § 101(g); URPERA § 3(c)).

This revision of ULONA also recognizes the validity of electronic notarial acts by putting them on a par with notarial acts performed on tangible media (ULONA § 2(6)). It does this by unifying the requirements and treatment of notarial acts, whenever possible, regardless of whether the acts were performed on tangible or electronic media. Although continuing the same basic treatment of electronic notarial acts as provided in UETA, ESign and URPERA, it provides a structure and operating rules for those notarial acts that was not provided in the prior laws. It provides for the registration of notarial officers who perform notarial acts on electronic media. It also encourages vendors to develop software and hardware by which electronic notarizations may be performed and to obtain pre-approval of that software and hardware from the commissioning officer or agency.

As with the prior version of the act, this revision continues to recognize notarial acts performed by notarial officers in the adopting state, another state, under federal authority, or under the law of a foreign nation with which the United States has diplomatic relations. It recognizes an “apostille” complying with the Convention de La Haye, du 5 octobre 1961 and treats it as a valid notarial act performed in a foreign nation.

The act commands the notarial officer to identify an individual before performing a notarial act for that individual. Section 4 provides two methods of performing that identification. The identification may be based on personal knowledge of the individual by the notarial officer. If the individual is not personally known to the notarial officer, the individual may provide satisfactory evidence of the individual’s identity, which may be through the use of an identification credential or by means of an oath or affirmation of a credible witness. The notarial officer may require additional identification of the individual if the officer is not satisfied with the individual’s identity. Furthermore, if the officer is not satisfied with the individual’s identity, or has concern that the individual’s signature is not knowingly and voluntarily made, the officer

may refuse to perform the notarial act.

The act strives to provide assurances that enhance the integrity of the notarial process. One means by which it provides that assurance is by requiring a notary public to maintain a journal of all notarial acts that the notary performs. The journal may be maintained on either a tangible or electronic medium, but not both at the same time. It further specifies the information that must be recorded in the journal by the notary. The journal is a confidential record and it is not available to anyone other than the notary except by subpoena of a court or order the commissioning officer or agency.

The prior version of this act did not contain a licensing procedure for notaries public. As a result, the various states adopted their own provisions. These provisions vary considerably. In order to promote unity, Sections 15 through 17 of the act establish minimum requirements and procedures for the commissioning officer or agency to grant commissions as notaries public as well as grounds to deny, suspend, or revoke those commissions. Section 16 of the act provides an educational requirement, the adoption of which is optional. That section states that the applicant must sit for a certain amount of education on the laws, [rules][regulations], standards, procedures, and ethics relevant to notarial acts. It also requires that the applicant must pass a test based on that education prior to being granted the applicant's first notarial commission.

Section 18 directs notaries public not to offer legal advice or to prepare legal documents. It further requires that any advertising by the notary clearly state that prohibition. It also prohibits notaries from engaging in false or deceptive advertising.

1 (ii) the individual's signature; or

2 (C) another form of identification authorized by law.

3 (5) "In a representative capacity" means acting as:

4 (A) an authorized officer, agent, partner, trustee, or other representative for a
5 person other than an individual;

6 (B) a public officer, personal representative, guardian, or other representative, in
7 the capacity recited in a record;

8 (C) an attorney in fact for a principal; or

9 (D) an authorized representative of another in any other capacity.

10 (6) "Notarial act" means an act, whether performed with regard to a tangible or electronic
11 record, that a notarial officer may perform under the law of this state. The term includes taking
12 an acknowledgment, administering an oath or affirmation, taking a verification on oath or
13 affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a
14 protest of a negotiable instrument.

15 (7) "Notarial officer" means a notary public or other officer authorized to perform a
16 notarial act.

17 (8) "Notary public" means an individual commissioned to perform a notarial act.

18 (9) "Official stamp" means a physical image affixed on a tangible record or an electronic
19 image attached to, or logically associated with, an electronic record.

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

23 (11) "Record" means information that is inscribed on a tangible medium or that is stored

1 in an electronic or other medium and is retrievable in perceivable form.

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

3 (A) to execute or adopt a tangible symbol; or

4 (B) to attach to or logically associate with the record an electronic symbol, sound,
5 or process.

6 (13) “Signature” means a tangible symbol or an electronic symbol, sound, or process that
7 evidences the signing of a record.

8 (14) “Stamping device” means a physical tool capable of affixing an official stamp to a
9 tangible record or an electronic tool or process that is capable of attaching or logically
10 associating an official stamp with an electronic record. A stamping device includes a device for
11 imprinting a seal.

12 (15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
13 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
14 the United States. The term includes an Indian tribe or nation, or Alaskan Native village that is
15 recognized by federal law or formally acknowledged by a state.

16 (16) “Verification on oath or affirmation” means a declaration, made by an individual on
17 oath or affirmation, that a statement in a record is true.

18 **Comments**

19 (1) “**Acknowledgement.**” The word “acknowledgement” refers to a declaration made by
20 an individual stating or acknowledging that he or she has, in fact, executed the record with regard
21 to which the acknowledgement is made. The acknowledging individual need not necessarily
22 sign the record in the presence of the notarial officer as long as the individual acknowledges in
23 the officer’s presence that the signature on the record is that individual’s signature. If the record
24 is signed by an individual in a representative capacity, the individual also declares that the
25 individual has proper authority to execute the record on behalf of the principal.

26
27 (2) “**Electronic.**” The adjective “electronic” refers to the use of electrical, digital,
28 magnetic, wireless, optical, electromagnetic, and similar technologies. It is a descriptive word

1 and is intended to include all technologies involving electronic processes. For example,
2 biometric identification technologies are included if they permit communication and storage of
3 information by electronic means. Furthermore, as electronic technologies develop and implicate
4 other competencies, those competencies are also included in this definition. Consequently, the
5 listing of specific technologies is not static or limited to those in use at the time of the adoption
6 of this act.

7
8 The definition of the term “electronic” in this act has the same meaning as it has in
9 UETA §2(5), ESign § 106(2), and URPERA §2(2).

10
11 (3) **“Electronic signature.”** An “electronic signature” is any electronic symbol or
12 process that is attached to, or logically associated with, a record by an individual with the intent
13 to sign the record. The technology that is used for an electronic signature is intentionally not
14 specified and is meant to include electronic processes currently in use at the time of the adoption
15 of this act as well as those developed and implemented at a later time.

16
17 The term is substantially similar to the definition of that term as used in UETA §2(8),
18 ESign § 106(5), and URPERA §2(4).

19
20 (4) **“Identification credential.”** The term “identification credential” describes the
21 record, document, or methodology by which a notarial officer acquires “satisfactory evidence” of
22 the identity of the individual appearing before the officer. The credential may be a United States
23 passport. It may be another credential issued by a United States, state or tribal governmental
24 agency as long as the credential displays the image of the individual’s face and contains the
25 individual’s signature. Finally, the credential may be any other form of identification authorized
26 by law for purposes of identification.

27
28 The term is more fully described and implemented in Section 4.

29
30 (5) **“In a representative capacity.”** The term “in a representative capacity” describes
31 the actions of an individual who performs an acknowledgement or other act requiring
32 notarization on behalf of a principal rather than on the individual’s own behalf. To be performed
33 by in a representative capacity, the individual must be the authorized representative or agent of
34 the principal. Whether that person is, in fact, authorized is determined under the agency law of
35 this state.

36
37 The term is used elsewhere in this Section and in the short form acknowledgement
38 provided in Section 14(2).

39
40 (6) **“Notarial act.”** The term “notarial act” includes all the notarial acts authorized to be
41 performed by a notarial officer under this act. This subsection lists those notarial acts
42 specifically authorized in this act. However, the definition is not limited to the listed notarial
43 acts and includes any other notarial act permitted by the law of enacting state. See also Section
44 3(a).

45
46 The listed notarial acts include taking an acknowledgement, administering an oath or

1 affirmation, taking a verification upon an oath or affirmation, witnessing or attesting a signature,
2 certifying or attesting a copy of a record, and noting a protest of a negotiable instrument.

3
4 The provisions of this act apply to the performance of notarial acts on a tangible medium
5 such as paper as well as those performed in an electronic format.

6
7 (7) **“Notarial officer.”** The term “notarial officer” is used to describe collectively
8 notaries public and all other individuals having the authority to perform the “notarial acts” as
9 recognized in Sections 3 through 9 of this act.

10
11 Many of the provisions of this act apply broadly to all notarial officers. However, some
12 provisions, such as those in Sections 11 and 12, and Sections 15 through 18, apply only to
13 notaries public. Those sections provide for the use and maintenance of a notary public’s stamp
14 and journal, as well as the qualifications for, and the grounds for denial, suspension or revocation
15 of, a commission as a notary public.

16
17 (8) **“Notary public.”** A “notary public” is an individual licensed by the commissioning
18 officer or agency to perform notarial acts under Sections 15 through 18 of this act. It does not
19 include those individuals, such as judges and clerks of court, who are authorized to perform
20 notarial acts as a part of the official duties of the office held.

21
22 (9) **“Official stamp.”** The term “official stamp” refers to an image located on or
23 associated with a record and must contain specified information about a notarial officer. On a
24 tangible record, the image will be a physical one appropriately located on the record. It may be
25 applied to the surface of the record, as with ink or printing, or it may be applied by compression,
26 as with an impression seal. On an electronic record, the image will be in an electronic format
27 and will be attached to, or logically associated with, the record. The contents and characteristics
28 of the “official stamp” are set forth in Section 11(a).

29
30 The “official stamp” is to be distinguished from the device by which the image is
31 imposed on or associated with the record; that device is identified as a “stamping device” and is
32 defined below.

33
34 (10) **“Person.”** The word “person” is broadly defined to include all persons, whether
35 human individuals, or corporate, associational, or governmental entities. When the definition of
36 a “person” is intended to be limited to a human entity, the word “individual” is used in this act
37 rather than the word “person.” The definition is the standard definition for that term as used in
38 other acts adopted by the National Conference of Commissioners on Uniform State Laws.

39
40 (11) **“Record.”** A “record” consists of information stored on a medium, whether the
41 medium be a tangible or electronic one, provided that the information is retrievable in a
42 perceivable form. The traditional tangible medium has been paper on which information is
43 inscribed by writing, typing, printing, or a similar means. It is perceivable by reading the
44 information directly from the paper on which it is inscribed. An electronic medium is one in
45 which information is stored electronically. The information is perceivable by means of a device
46 that interprets the electronic information in the record. For example, electronic information may

1 be stored in a magnetic record located on a hard disk and it may be retrieved and read in a
2 perceivable form on a computer monitor or a paper printout.
3

4 Traditionally, especially if the tangible medium is paper, a record has been referred to as
5 a “document.” In this act, the word “record” includes the word “document.” The definition of a
6 record in this act is derived from the definition of that word as used in UETA §2(13) and ESign
7 §-106(9). It also similar in meaning to the word “document” as used in URPERA §2(1).
8

9 (12) **“Sign” and “Signature.”** Subsection (12) and (13) define the related words “sign”
10 and “signature.” An individual may “sign” his or her name to a record either on a tangible
11 medium or in an electronic format as long as the individual has the present intent to authenticate
12 or adopt the record. The resulting tangible or electronic symbol on or associated with the record
13 is the person’s “signature.” The verb “sign” includes other forms of the verb, such as “signing.”
14 Except as provided in Section 5, an individual must personally perform the act of signing a
15 record. If, instead of using his or her given name, an individual has adopted an alternative
16 symbol as his or her name, the individual may affix that symbol as the individual’s signature.
17

18 (13) **“Stamping device.”** A stamping device is a means by which an “official stamp” is
19 imposed on, or associated with, the record. With a traditional paper medium, the stamping
20 device may, for example, be a rubber device that uses ink to impose a “stamp” on the paper. It
21 may also be a device that compresses the paper and applies an impression seal. With an
22 electronic medium, the stamping device may, for example, be an electronic process that requires
23 a means of identifying the notarial officer. The means of identifying the notarial officer may be
24 information located on a portable electronic device or may be a password that is supplied by the
25 notarial officer. In either case, the electronic process and the means of identifying the officer are
26 collectively the stamping device.
27

28 (14) **“State.”** The word “state” includes any state of the United States, the District of
29 Columbia, the United States Virgin Islands, any territory or insular possession subject to the
30 jurisdiction of the United States, or a recognized Indian tribe or nation.
31

32 (15) **“Verification upon oath or affirmation.”** A “verification upon oath or
33 affirmation” is a declaration by an individual in which the individual states on oath or
34 affirmation that the declaration is true. This declaration is sometimes referred to as an
35 “affidavit” or “jurat.”
36

37 **SECTION 3. AUTHORITY TO PERFORM NOTARIAL ACTS;**

38 **REQUIREMENTS FOR CERTAIN NOTARIAL ACTS.**

39 (a) A notarial officer may perform notarial acts authorized by this act or by law of this
40 state other than this act.

41 (b) A notarial officer who takes an acknowledgement of a record shall determine, from

1 personal knowledge or satisfactory evidence of the identity of the individual, that the individual
2 appearing before the officer and making the acknowledgment has the identity claimed and that
3 the signature on the record is the signature of the individual.

4 (c) A notarial officer who takes a verification of a statement on oath or affirmation shall
5 determine, from personal knowledge or satisfactory evidence of the identity of the individual,
6 that the individual appearing before the officer and making the verification has the identity
7 claimed and that the signature on the statement verified is the signature of that individual.

8 (d) A notarial officer who witnesses or attests to a signature must determine, from
9 personal knowledge or satisfactory evidence of the identity of the individual, that the individual
10 appearing before the officer and signing the record has the identity claimed.

11 (e) A notarial officer who certifies or attests a copy of a record or of an item that was
12 copied shall determine that the proffered copy is a full, true, and accurate transcription or
13 reproduction of the record or item.

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

16 **Comments**

17 Subsection (a) authorizes a notarial officer to perform notarial acts. This subsection and
18 the definition of a notarial act in Section 2(6) specifically do not limit the types of notarial acts to
19 those listed in this Section. A notarial officer may perform other notarial acts if they are
20 authorized by other law, whether that law be of this state (Section 6), another state (Section 7),
21 the federal government (Section 8), or a foreign nation (Section 9).

22
23 Furthermore, when taken in conjunction with the definition of a notarial act in Section
24 2(6), this subsection also authorizes a notarial officer to perform notarial acts regardless of the
25 format of the record. Thus, a notarial officer may perform notarial acts on both tangible records
26 as well as electronic records. However, prior to performing a notarial act on an electronic
27 record, the officer must register with the commissioning officer or agency under Section 13.

28
29 Subsection (b) specifies what a notarial officer certifies by taking an acknowledgement.
30 There are two main elements in taking an acknowledgement: (1) the identity of the individual

1 who is making the acknowledgement (this subsection), and (2) the fact that the individual is
2 signing the record for a specific purpose and not for some other purpose (Section 2(1)). As part
3 of the identification process, the acknowledging individual must physically appear before the
4 notarial officer and the notarial officer must identify the individual either through personal
5 knowledge or from satisfactory evidence. An acknowledgement is a declaration that the
6 individual has executed the record by signing it; it is not essential that the individual sign the
7 record in the presence of the notarial officer. Thus, an individual may appear before the notarial
8 officer and acknowledge to the officer that the signature already on the record is that individual's
9 signature.

10
11 Subsection (c) specifies the requisites for taking a verification on oath or affirmation.
12 There are also two main elements of a verification: (1) the identification of the affiant (this
13 subsection) and (2) the fact that the affiant is verifying the statement as true under oath or
14 affirmation (Section 2(15)). The affiant must physically appear before the notarial officer and
15 the notarial officer must identify the affiant either through personal knowledge or from
16 satisfactory evidence. This record may be referred to as an affidavit or jurat in some
17 jurisdictions.

18
19 Subsection (d) states the requirements for witnessing or attesting a signature. Here the
20 notarial officer only certifies the fact of the signature; the officer does not certify the signatory's
21 intent to verify the record. Under this subsection, the notarial officer certifies the identification
22 of the individual whose signature the officer is witnessing or attesting. The individual must
23 physically appear before the notarial officer, the notarial officer must identify the individual
24 either through personal knowledge or from satisfactory evidence, and the individual must sign
25 the document before the officer.

26
27 Subsection (e) defines the standards for attestation or certification of a copy of a record
28 by a notarial officer. This is done if it is necessary to produce a copy of a record when the
29 original is in an archive or other collection of records and cannot be removed. In many cases, the
30 custodian of the official archive or collection also may be empowered to issue an officially
31 certified copy. When an officially certified copy is available, it is official evidence of the state of
32 the public archive or collection, and it may be better evidence of the original record than a copy
33 certified by a notarial officer.

34
35 Subsection (f) refers to a provision of the Uniform Commercial Code that confers
36 authority upon a notarial officer to note a protest of a negotiable instrument.

37 **SECTION 4. IDENTIFICATION OF INDIVIDUAL.**

38
39 (a) A notarial officer has personal knowledge of the identity of an individual appearing
40 before the officer if the individual is personally known to the officer through prior dealings
41 sufficient to provide reasonable certainty that the individual has the identity claimed.

42 (b) A notarial officer has satisfactory evidence of the identity of an individual appearing

1 before the officer if:

2 (1) the officer can identify the individual on the basis of an identification
3 credential, the expiration date of which is not more than [one year] before the date of the notarial
4 act; or

5 (2) the individual is identified to the officer through a verification on oath or
6 affirmation of a credible witness personally known to the officer or whom the officer can
7 identify on the basis of an identification credential, the expiration date of which is not more than
8 [one year] before the date of the notarial act.

9 (c) A notarial officer may require an individual to provide additional information or
10 identification credentials necessary to assure the officer of the identity of the individual.

11 (d) If the notarial officer is not satisfied that the individual appearing before the officer is
12 the identified individual, or has concern that the individual's signature is not knowingly and
13 voluntarily made, the officer may refuse to perform the notarial act.

14 (e) If the notarial officer asked to perform a notarial act involving a record knows or has
15 reason to believe that the record is fraudulent, the officer may refuse to perform the notarial act.

16 However, the officer does not have an obligation to investigate the record to determine whether it
17 is fraudulent.

18 **Comments**

19
20 This Section defines the two methods for identifying an individual as required in Sections
21 3(b) through (d). The two means for identifying an individual are through (1) personal
22 knowledge or (2) satisfactory evidence.
23

24 Subsection (a) states that the notarial officer has personal knowledge of the identity of an
25 individual only if the officer personally knows the individual through prior dealings with that
26 individual. The prior dealings may be business dealings or personal dealings. The dealings
27 might simply be the performance of prior notarial acts for that individual. Nonetheless, the prior
28 dealings must be of a sufficient nature to provide the notarial officer with information adequate
29 to identify the individual without the need to view any identification credentials or require any

1 other means of identification.
2

3 Subsection (b) describes two situations by which a notarial officer may obtain
4 satisfactory evidence of the identity of the individual even though the officer has no prior
5 dealings with that individual. One method is identification based on an identification credential
6 presented by the individual. Although one might usually expect the identification credential to
7 be currently in force, this provision recognizes that even though an expired credential would not
8 be effective for its primary purpose (e.g. as a license permitting the individual to drive an
9 automobile), it may be used for up to [one year] after its expiration as an identification credential.
10 As long as it provides the necessary information for identifying the individual during that [one
11 year] period, its identification function is satisfied. This subsection does, however, put a specific
12 outside limit of [one year] beyond the expiration of the credential for its use for identification
13 purposes.
14

15 Based on the definition of an identification credential contained in Section 2(4), the
16 credential may be (1) a passport issued by United States or a foreign country with which the
17 United States has diplomatic relations, (2) a credential issued by the United States, a state or a
18 tribal governmental agency that contains (a) an image of the individual's face, and (b) the
19 individual's signature, or (3) any other identification credential authorized by state law. (See
20 Section 2(4).)
21

22 A second means by which a notarial officer may obtain satisfactory evidence of an
23 individual's identity is through the oath or affirmation of a credible witness who identifies that
24 individual to the officer. The credible witness must either be (1) personally known to the officer,
25 or (2) identified to the officer by means of an identification credential, as long as that credential
26 is not more than [one year] past its expiration date. This provision recognizes that an individual
27 may require the performance of a notarial act even though that individual is not known to the
28 notarial officer and does not have an identification credential or does not have one currently
29 available. If the identity of that person is, however, sworn to by an individual personally known
30 to the notarial officer or who can be identified to the officer by means of an identification
31 credential, the identity of the first individual will be established by satisfactory evidence.
32

33 This subsection does not allow the identity of an individual to be based on an oath or
34 affirmation of a person who is him or herself identified to the notarial officer by means of an
35 oath or affirmation of yet another witness. Such a process would lead to a spiraling and useless
36 addition of "witnesses to the witnesses."
37

38 Subsection (c) recognizes that, even if a specified identification credential is presented, a
39 notarial officer may, in some cases, be uncertain as to the identity of the individual. For
40 example, the identification credential may be defaced or have defects that make legibility
41 difficult, or there may be changes in the physical appearance of the individual that may not be
42 reflected in the image on the identification credential. In that case, the notarial officer may
43 require the individual to provide other information or identification in order to assure the officer
44 of the identity of the individual.
45

46 Subsection (d) allows the notarial officer to refuse to perform the requested notarial act in

1 either of two circumstances. First, if the notarial officer is still not satisfied as to the individual's
2 identity after the presentation of identification credentials or the performance of an oath or
3 affirmation by a witness, the officer may refuse to perform the notarial act. Second, if the
4 notarial officer has concern about whether the individual's signature was knowingly and
5 voluntarily made, the officer may refuse to perform the notarial act. Lack of satisfaction with the
6 identity of the individual or concern with whether the signature is knowingly and voluntarily
7 made are matters within the proper discretion of the notarial officer.
8

9 Subsection (e) also allows the notarial officer to refuse to perform the notarial act if the
10 officer has reason to believe that the record is fraudulent. This subsection recognizes that a
11 notarial officer may, in the process of identifying an individual or preparing to perform the
12 notarial act, gather information by which the officer knows or has reason to believe that the
13 record is fraudulent. For example, the officer may determine or have reason to believe that the
14 record is part of a greater fraudulent scheme. In that case, the officer is authorized to refuse to
15 perform the notarial act. Nevertheless, the subsection provides that the notarial officer has no
16 duty to inspect the contents of the record and the officer's failure to do so is not a violation of the
17 officer's duties under this act.
18

19 **SECTION 5. SIGNATURE IN SPECIAL CIRCUMSTANCES.** If an individual is
20 physically unable to sign a record, the individual may direct a notarial officer to sign the
21 individual's name on the record. The notarial officer shall insert "Signature affixed by (name of
22 notarial officer) at the direction of (name of individual)" or words of similar import.
23

23 **Comments**

24 This Section recognizes that some individuals may be unable to sign a record personally
25 because of a disability. In that case, this subsection allows for an alternate process. That process
26 requires the executing individual to direct the notarial officer to sign that individual's name to
27 the record. It then requires the officer to insert the quoted language in the record or words of
28 similar import. (For similar provisions, see Model Notary Act § 5-1(d); see also proposed
29 amendments to Kentucky legislation, 07 Reg. Sess. Gen. Assembly Bill 1450, § 18(2).)
30

31 **SECTION 6. NOTARIAL ACTS IN STATE.**

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

33 (1) a notary public of this state; [or]

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

35 [(3) an individual licensed to practice law in this state][; or]

36 [(4) any other individual authorized to perform the specific act by the law of this

1 state].

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

4 (c) The signature and title of a notarial officer listed in subsection (a)(1), [or] (a)(2) [or
5 (a)(3)] conclusively establish the authority of the officer to perform a notarial act.

6 **Legislative Note:** *Subsection (a)(4) recognizes the authority of other persons holding notarial*
7 *powers in general terms. However, it would be preferable if a legislature were to list those*
8 *offices in this subsection. Such a listing might provide a ready reference point for those who*
9 *seek to determine the validity of a notarial act performed by an individual in this category,*
10 *especially if the notarial act is to be recognized in another state.*

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Comments

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Subsection (a) lists the individuals who are entitled to serve as notarial officers and perform notarial acts in this state. A notary public as well as a judge, clerk, or deputy clerk of any court of this state may perform notarial acts. The language follows the prior version of the Uniform Law on Notarial Acts.

Two optional provisions are also stated. Under subsection (a)(3), a state may authorize a duly licensed attorney at law to serve as a notarial officer by virtue of that individual's status as an attorney. Under subsection (a)(4), a state may recognize the authority of any other individual to perform notarial acts if the performance of notarial acts by that individual is authorized by other state law. For example, recorders or registrars of deeds, or commissioners of titles, may be authorized to perform notarial acts under separate legislation. See Legislative Note, above.

Subsections (b) and (c) deal with authentication of a notarial act. Proof of a notarial officer usually involves three steps:

1. Proof that the notarial officer's signature is that of the individual named in the certificate as a notarial officer;

2. Proof that the individual named in the certificate holds the designated office as a notarial officer; and

3. Proof that persons holding the designated office may perform notarial acts.

Subsection (b) sets forth a prima facie presumption that the signature of the individual named in the certificate, whether on a tangible medium or in an electronic format, is that of the named notarial officer. It also sets forth a prima facie presumption that the individual named in the certificate holds the designated notarial office. These are the first two elements of authentication listed above.

1 a notary public, or of a judge, clerk, or deputy clerk of court of another state to perform notarial
2 acts without the necessity of further proof that such an officer has notarial authority. This
3 abolishes the need for a “clerk’s certificate” or similar instrument to authenticate the notarial act
4 of a notary public, judge, clerk or deputy clerk. However, this per se recognition of authority
5 does not extend beyond a notary public, judge, clerk or deputy clerk of another state. Authority
6 of other persons to perform notarial acts may be proven by reference to the laws of the other
7 state. In addition, other forms of proof of authority to perform notarial acts, such as a “clerk’s
8 certificate,” are acceptable in this state.
9

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

11 (a) A notarial act performed anywhere under a grant of authority under federal law has
12 the same effect under the law of this state if performed by:

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

14 (2) any individual in a military service or performing duties under the authority of
15 a military service who is authorized to perform notarial acts under federal law;

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

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

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

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

22 **Comments**

23 Some notarial acts are performed by individuals acting under federal authority or holding
24 office under federal authority. This section provides for recognition under the law of this state of
25 notarial acts performed by those officers wherever the acts of those persons are performed. To
26 that end, subsection (a)(1) recognizes the notarial acts performed by judges, clerks, and deputy
27 clerks under federal law.
28

29 Subsection (a)(2) recognizes the authority of persons to perform notarial acts under the
30 provisions that are currently codified in 10 U.S.C §1044a (2009). Currently, 10 U.S.C. §1044a
31 provides as follows:
32

33 (a) The persons named in subsection (b) have the general powers of a notary

1 public and of a consul of the United States in the performance of all notarial acts to be
2 executed by any of the following:

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

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

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

9 (4) Other persons subject to the Uniform Code of Military Justice (chapter
10 47 of this title) outside the United States.

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

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

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

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

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

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

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

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

30
31 Subsection (a)(3) recognizes the authority of foreign service and consular officers to
32 perform notarial acts. This has been a traditional function performed by foreign service and
33 consular officers who, in many parts of the world, may be the only or best available person to
34 perform notarial acts that must be recognized in the United States.

35
36 Subsection (a)(4) provides general recognition of the notarial acts performed by other
37 individuals under federal law and not listed in the prior subsections. A variety of other federal
38 officers may be authorized to perform notarial acts, such as wardens of federal prisons.

39
40 Subsection (b) confers prima facie validity to the asserted signature of a United States
41 notarial officer and that the individual holds the asserted office. It thus provides the first two
42 elements of authentication described in the Comments to Section 6.

43
44 Subsection (c) provides the third element of proof of the notarial officer's authority. It
45 conclusively recognizes the authority of a judge, clerk or deputy clerk, a military officer, or a
46 foreign service or consular officer to perform notarial acts without the necessity of further

1 reference to the federal statutes or regulations to prove that the officer has notarial authority.
2 There is no need for further authentication of those individuals' authority to perform notarial
3 acts.

4
5 The authority of person to perform notarial acts under subsection (a)(4) must be
6 demonstrated by other means. That authority can most readily be demonstrated by reference to
7 the federal law or published regulations granting the authority. Any other form of authentication,
8 such as a "clerk's certificate," may also be used.

9
10 **SECTION 9. FOREIGN NOTARIAL ACT.**

11 (a) A notarial act, performed within the jurisdiction and under authority of a foreign
12 nation with which the United States has diplomatic relations or the constituent units of the
13 foreign nation or performed under the authority of a multinational or international governmental
14 organization, has the same effect under the law of this state as if performed by a notarial officer
15 of this state if the act is performed by:

16 (1) a notary public or notarial officer;

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

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

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

23 (c) A certificate by a foreign service or consular officer of the United States stationed in
24 the nation in which the notarial act was performed, a certificate by a foreign service or consular
25 officer of the nation stationed in the United States, or a certificate by an officer of a multinational
26 or international governmental organization, conclusively establishes any matter relating to the
27 authenticity or validity of the notarial act set forth in the certificate.

28 (d) An official stamp of an individual performing a notarial act is prima facie evidence

1 that the signature is genuine and that the individual holds the indicated title.

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

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

7 (g) The official stamp of a notarial officer or a substitute for it that complies with the law
8 of the foreign nation where the notarial act is performed meets the requirements of Section 11 of
9 this act.

10 **Comments**

11
12 This section provides recognition of notarial acts performed by certain notarial officers
13 who act under the law of a foreign country or the authority of a multinational or international
14 governmental organization.

15
16 Subsection (a)(1) through (3) provide that the notarial act of a notary public, judge, clerk
17 of court, or deputy clerk of court of a foreign nation with which the United States has diplomatic
18 relations, or of its constituent units, is recognized in this state. They also recognize the notarial
19 acts of similar officers acting under the authority of a multinational or international
20 governmental organization. An example of multinational or international governmental
21 organization would be the United Nations.

22
23 The United States is a party to an international treaty regarding the authentication of
24 notarial and other similar public acts. This treaty is known as the “Convention de La Haye du 5
25 octobre 1961.” Under this treaty an “apostille” may be prepared in the foreign nation in
26 accordance with the treaty and stamped on, or attached to, the “notarized” record. The
27 “apostille” may be in the language of the issuing country, but the words “Apostille (Convention
28 de La Haye, du 5 octobre 1961)” are always in French. Under the terms of the treaty, the
29 apostille will be recognized if it is issued by a competent authority in another nation that has
30 ratified the Convention. The text of the Convention is reproduced in the annotations to the
31 Federal Rules of Civil Procedure Rule 44.

32
33 Subsection (b) carries out the provisions of that treaty and recognizes an “apostille”
34 complying with the treaty and further states that it conclusively establishes that the signature of
35 the notarial officer is genuine and that the officer holds the indicated office.

36
37 The “apostille” has the following form, which is set forth in the annotation to Federal

1 Rules of Civil Procedure Rule 44:
2

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

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:

10 Although federal law provides for mandatory recognition of an apostille only if issued by
11 another ratifying nation, the statute provides for recognition of all apostilles issued by any
12 foreign nation in that form. They are, in effect, a standard form of authentication. Use of the
13 form eases problems of translation.
14

15 Subsection (c) provides that a certificate of (1) a United States' consular officer stationed
16 in the foreign nation (see also Section 8(a)(3)), (2) a foreign nation consular officer stationed in
17 the United States, or (3) an officer of a multinational or international governmental organization,
18 conclusively establishes the authenticity or validity of the notarial act that is set forth in the
19 certificate.
20

21 Subsections (d), (e) and (f) apply to proof of notarial authority unless those issues are
22 satisfied under subsections (b) or (c). Subsections (d) states that the official stamp of the notarial
23 officer on the record provides prima facie evidence that the officer's signature is genuine and
24 that the officer holds the indicated office (the first two elements of proof of authority stated in
25 Comments to Section 6). Subsection (e) states that the official stamp of an officer listed in
26 subsections (a)(1) and (2) provides prima facie evidence that the officer has the authority to
27 perform the notarial act (the third element of proof of authority stated in Comments to Section
28 6). Subsection (f) states that if a title of office or indication of authority is listing in a digest of
29 foreign laws or recognized list, it conclusively establishes the authority of an officer with that
30 title to perform notarial acts (the third element of proof of authority stated in Comments to
31 Section 6).
32

33 Subsection (g) gives due recognition to the authority of a foreign nation to adopt an
34 official stamp in the form it deems proper. It provides that an official stamp complying with the
35 law of the nation where the foreign notarial act is performed is sufficient under this act regardless
36 of whether it complies with the requirements for an official stamp set forth in Section 11 of this

1 act.

2

3

SECTION 10. CERTIFICATE OF NOTARIAL ACT.

4

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

5

(1) be signed in the same manner as on file with the [commissioning officer or agency] and dated by the notarial officer who signed it;

6

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

7

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

8

(4) indicate the date of expiration, if any, of the notarial officer's commission, if

9

the officer is a notary public; and

10

(5) contain the notarial officer's rank or position if the notarial officer is

11

performing duties under the authority of a military service pursuant to federal law.

12

(b) If a notarial act is performed regarding a tangible record, the notarial officer's official

13

stamp must be affixed to the certificate of a notarial act. If the notarial act is performed

14

regarding an electronic record, an official stamp may, but need not, be attached to or logically

15

associated with the certificate.

16

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

17

(a) and (b) and it:

18

(1) is in a short form set forth in Section 14;

19

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

20

(3) is in a form prescribed by the law applicable in the jurisdiction in which the

21

notarial act was performed; or

22

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

23

meet the requirements of the notarial act as provided in Section 3 or law other than this act.

24

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

3 (e) A notarial officer may not affix the officer’s signature to, or logically associate it
4 with, a certificate of a notarial act until the notarial act has been performed.

5 (f) If a notarial act is performed regarding a tangible record, a certificate must be part of,
6 or securely attached to, the record. If a notarial act is performed regarding an electronic record,
7 the certificate must be affixed to, or logically associated with, the electronic record in accordance
8 with methods approved by the [commissioning officer or agency].

9 **Comments**

10 Subsection (a) provides that a certificate signed by a notarial officer is necessary to
11 evidence a notarial act. The signature may be either a manual or an electronic signature.
12 Whatever the format of the signature, however, it must be made in the same manner as on file
13 with the commissioning officer or agency.
14

15 As with the signature, the certificate may be either on a tangible medium or in an
16 electronic format. The certificate must set forth the date of the notarial act and jurisdiction in
17 which it is performed. It must also identify the office of the notarial officer. If the officer is a
18 notary public, the certificate must contain the expiration date of the notary’s commission. If the
19 officer’s authority is derived from 10 U.S.C. §1044a, the certificate must include the person’s
20 rank or position.
21

22 Subsection (b) concerns whether the certificate must contain an official stamp. If the
23 notarial act is evidenced on a tangible medium, the subsection provides that the notarial officer’s
24 official stamp must be affixed to the certificate. However, if the notarial act is evidenced on an
25 electronic record, it is not necessary that an official stamp be attached to, or associated with, the
26 electronic certificate. This is the same as provided in URPERA § 3(c) and conforms with UETA
27 § 11 and ESign § 101(g). Although subsection (b) does not require that the notarial officer attach
28 or logically associate an official stamp with the electronic certificate, it does not prohibit the
29 officer from doing so. Regardless of whether an official stamp is attached to, or logically
30 associated with an electronic certificate, the requirements of subsection (a) must be met and the
31 electronic certificate must contain the information stated in that subsection. This is the same as
32 provided in UETA § 11, ESign § 101(g), and URPERA § 3(c).
33

34 Subsection (c) provides that the certificate may be in an appropriate short form set forth
35 in Section 14 of this act, in any other form provided by the law of this state, in any other form
36 provided by the law of the place where the notarial act was performed, or in any form that sets
37 forth the requisite elements of the notarial act. Thus, acknowledgements and other notarial acts

1 executed in more prolix and elaborate forms may nevertheless continue to qualify under
2 subsection (c).

3
4 Subsection (d) emphasizes the obligation of the notarial officer to perform the
5 determinations required by Sections 3 and 4 and requires the officer to certify that the officer has
6 done so.

7
8 In order to be proper evidence of the full performance of a notarial act, subsection (e)
9 provides that the notarial officer may not sign the certificate until the notarial act has been fully
10 performed. See, e.g. N.C. Gen. Stat. §10B-35.

11
12 Subsection (f) seeks to assure the integrity of the record and the related notarial act. With
13 regard to a notarial act evidenced on a tangible record, this subsection requires that the certificate
14 must be a part of, or securely attached to, the record. If the certificate is not a part of the record
15 itself, the means of attaching the certificate are not specified. However, stapling is a logical
16 example.

17
18 Attachment of a certificate to an electronic format is more difficult to evidence and
19 describe. Accordingly the subsection provides that the certificate must be affixed to, or logically
20 associated with, the electronic record in accordance with methods approved by the
21 commissioning officer or agency. Those methods may vary and more than one may be
22 appropriate. They are left to the commissioning officer or agency to determine depending on the
23 available technology and the means of security provided. The means of attaching the certificate
24 will be one of the factors considered by the commissioning officer or agency in approving a
25 technology for use in notarizing electronic documents. See Section 20.

26
27 **SECTION 11. OFFICIAL STAMP; STAMPING DEVICE.**

28 (a) A notary public's official stamp must:

29 (1) contain the notary public's name, jurisdiction, commission expiration date, if
30 any, and other information, if any, that is required by the [commissioning officer or agency]; and

31 (2) be capable of being copied together with the record to which it is affixed,
32 attached, or with which it is logically associated.

33 (b) If a notarial officer, who is not a notary public, is not required to use an official
34 stamp, a statement that contains the name and office of the notarial officer and is capable of
35 being copied together with the record to which it is affixed, attached, or with which it is logically
36 associated, shall be considered an official stamp.

1 (c) A notary public shall retain a stamping device in a secure place. The notary public
2 shall not allow another person to use or possess the device. On resignation from, or the
3 revocation or expiration of, the notary public's commission, the notary public shall destroy the
4 device by defacing, damaging or erasing it in a manner that renders it unusable. On the death of
5 a notary public, the notary public's personal representative or family member shall destroy the
6 device by defacing, damaging or erasing it in a manner that renders it unusable.

7 (d) If a notary public's stamping device is lost or stolen, the notary public shall notify the
8 [commissioning officer or agency] and the appropriate law enforcement authority not later
9 than 10 days after discovering that the device is lost or stolen.

10 **Comments**

11 Subsection (a) states that the notary public's official stamp must contain the notary's
12 name, the jurisdiction in which the notary is authorized to act, the expiration date, if any, of the
13 notary's commission, and any other information that may be required by the commissioning
14 officer or agency.

15
16 As used in this act, the word "stamp" includes an image that is imposed by a "seal."
17 Because it is important to be able to reproduce the image of a stamp that is contained on a record,
18 the stamp must be capable of being copied along with the tangible record. Thus, an impression
19 seal used on a paper medium will normally not be a sufficient stamp under this section.

20
21 Subsection (b) recognizes that many notarial officers are not notaries public and are not
22 supervised directly by the commissioning officer or agency. Thus, notarial officers who are not
23 notary publics are not required to use an official stamp. However, such a notarial officer may
24 obtain and use an official stamp if it is otherwise permitted by the law that empowers the officer.
25 If such a notarial officer does not use an official stamp, this subsection requires that the officer
26 attach a statement that contains the officer's name and the office of the notarial officer. The
27 statement must be capable of being copied along with the record. A statement meeting these
28 requirements will be considered as being an official stamp.

29
30 Subsection (c) requires the notary public to maintain the notary's official stamp in a
31 secure place. In order to protect and maintain the integrity of notarial acts, it is important that the
32 notary's stamp be kept secure and out of the hands of any individual who might use it
33 fraudulently or erroneously. Accordingly, the notary may not allow another individual to use or
34 possess the stamp.

35
36 Furthermore, in order to assure the integrity of the notarial system, the notary public may

1 not continue to possess the official stamp if the notary is no longer serving as a notary public.
2 Thus, upon the resignation of the notary public's commission, or the revocation or expiration of
3 the notary's commission, the notary must destroy the stamp in a way that renders it unusable.
4 Similarly, upon the death of a notary public, the notary's personal representative is directed to
5 destroy the stamp. See, e.g., N.C. Gen. Stat. § 10B-36(a).

6
7 Subsection (d) recognizes that if the official stamp is lost or stolen, the prospect of
8 fraudulent activity or misuse is also raised. Thus, a notary public is required to notify the
9 appropriate law enforcement authority within 10 days after the notary discovers that the stamp is
10 lost or stolen. In addition, the notary is required to notify the commissioning officer or agency,
11 who or which may be able to take other steps to provide notification that will further protect the
12 public. See, e.g., Ariz. Rev. Stat. § 41-323; N.C. Gen. Stat. § 10B-36(c).

13 14 **SECTION 12. JOURNAL.**

15 (a) A notary public shall maintain a journal in which the notary chronicles all notarial
16 acts that the notary public performs. The notary public shall maintain the journal for at least 10
17 years after the expiration of the notary's commission under which the notarial act was
18 performed.

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

26 (c) Entries in a journal must be made chronologically at the time the notarial act is
27 performed and must consist of the following:

- 28 (1) the date and time of the notarial act;
- 29 (2) a description of the record and type of notarial act;
- 30 (3) the full name and address of each individual for whom a notarial act is

1 performed;

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

4 (5) if identity of the individual is based on satisfactory evidence, a description of
5 the identification credential, and its date of issuance and expiration; and

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

7 (d) If a notary public's journal is lost or stolen, the notary public shall notify the
8 [commissioning officer or agency] and the appropriate law enforcement authority not later than
9 10 days after discovering that the journal is lost or stolen.

10 (e) On resignation from, or the revocation or suspension of, the notary public's
11 commission, the notary public shall retain the notary public's journals in accordance with
12 subsection (a) and inform the [commissioning officer or agency] where the journals are located.
13 Instead of retaining the journals, the notary may transmit the journals to the [commissioning
14 officer or agency]. If required by the [commissioning officer or agency], the notary public shall
15 transmit the journals to the [commissioning officer or agency]. On the death of a notary public,
16 the notary public's personal representative or any person in possession of the journals shall
17 transmit the journals to the [commissioning officer or agency].

18 (f) Journals prepared by a notary public are confidential and may not be inspected or
19 reviewed by a person other than the notary public. Journals are not discoverable except by
20 subpoena or order of a court of proper jurisdiction or of the [commissioning officer or agency].

21 **Comments**

22 A journal of the notarial acts performed by a notary public helps to provide a number of
23 assurances protecting the integrity of the notarial system. Among others it helps to assure, or at
24 least determine whether, a notarial act performed in the name of a particular notary was indeed
25 performed by that notary. As an ordinary business record it may provide evidence that the act

1 was performed by the notary or, by the absence of an entry in the journal for the asserted notarial
2 act, it may provide evidence that the act was not performed by the notary. In that regard, it
3 provides protection to both the notary and to the public whom the notary serves.
4

5 Accordingly, subsection (a) requires the notary public to maintain a journal of all the
6 notarial acts that the notary performs. The notary must maintain the journal for at least ten (10)
7 years after the expiration of the notary's commission during which the notarial act was
8 performed. For example, if the notary's commission is for the five year period from July 1, 2010
9 to June 30, 2015 and the notarial act is performed on May 1, 2012, the journal must be
10 maintained until June 30, 2025 (ten years after the expiration of the notary's commission) and
11 not merely until April 30, 2022 (ten years after the performance of the notarial act).
12

13 Subsection (b) allows the notary public to decide whether to use a traditional journal on a
14 tangible medium (e.g., paper) or an electronic journal. However, the notary may maintain only
15 one active journal at a time. If the notary maintains the journal on a tangible medium (e.g.,
16 paper), the journal must be maintained in a permanent, bound register with numbered pages. It
17 may not be in a loose-leaf or similar volume with pages that can be removed or torn out without
18 evidence of their removal. If the notary decides to use an electronic journal, the electronic
19 journal must be maintained in a permanent, tamper-evident electronic format as prescribed by the
20 regulations of the commissioning officer or agency.
21

22 Subsection (c) provides that the officer must make the entries chronologically at the time
23 of the performance of the notarial act. This subsection lists certain information that must be
24 included in the journal entry for each notarial act performed: (1) date and time of the notarial
25 act; (2) a brief description of the record and the type of notarial act performed (e.g., deed with
26 acknowledgement); (3) the full name and address of each individual for whom the notarial act
27 was performed; (4) if identity was based on personal knowledge, as statement to that effect; (5) if
28 identity was based on satisfactory evidence, a brief description of the passport or other
29 identification document, its date of issuance and date of expiration; and (6) the fee, if any,
30 charged by the notarial officer.
31

32 Because of the importance of the journals and their continued maintenance by the notary
33 public, subsection (d) requires the notary to notify the commissioning officer or agency and the
34 appropriate law enforcement authority within 10 days after the discovery of their loss or theft.
35 The reporting not only protects the members of the public whom the notary has served but also
36 the notary him or herself.
37

38 Similarly, the retention and maintenance of the journals is important after the termination
39 of the notary's commission. Thus, subsection (e) provides that upon the resignation of the notary
40 from his or her commission, or the revocation or suspension of the notary's commission, the
41 notary must continue to maintain the journals and provide the commissioning officer or agency
42 with information about where they are located. Alternatively, the notary may elect, or be
43 required by the commissioning officer or agency, to transmit them to the commissioning officer
44 or agency. Upon the death of the notary prior to the expiration of the 10 year period during
45 which the notary must maintain the journals (see subsection (a)), the notary's personal
46 representative or family members are directed to transmit the journals to the commissioning

1 officer or agency.

2

3 Journals contain a considerable amount of confidential information – information about
4 the individual for whom the notarial act was performed and about the transaction involved.

5 Accordingly, subsection (f) recognizes their confidential nature and provides that the notary’s
6 journals may not be inspected or reviewed by anyone other than the notary. They are not
7 discoverable by another person except by order or subpoena of a court or of the commissioning
8 officer or agency.

9

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

11 (a) Before performing a notarial act regarding an electronic record, a notarial officer must
12 register with the [commissioning officer or agency] as a notarial officer of electronic records.

13 (b) The [commissioning officer or agency] shall, at the time a notarial officer registers to
14 perform notarial acts under this section, review the technology the notarial officer proposes to
15 use to perform notarial acts on electronic records to determine that the technology has been
16 approved by the [commissioning officer or agency] under Section 20. If approval of the
17 technology has not been considered by the [commissioning officer or agency], the
18 [commissioning officer or agency] shall, upon the payment of the fee prescribed under Section
19 20, review the technology to determine that it provides the assurances stated in Section 20.

20 **Comments**

21 The performance of notarial acts on electronic records requires additional competencies
22 than those required of a notarial officer performing notarial acts on a tangible record. It also
23 requires special software and hardware to perform those acts. The software and hardware must
24 assure that the record is readable and secure, and the notarial officer must be able to use the
25 software and hardware properly. Accordingly, subsection (a) requires that a notarial officer,
26 whether a notary public or other notarial officer, must register with the commissioning officer or
27 agency prior to performing a notarial act with regard to an electronic record.

28

29 Subsection (b) provides that the commissioning officer or agency will, at the time of
30 registration of the notarial officer, review the officer’s technology to determine whether it has
31 received prior approval as a satisfactory means of performing notarial acts pursuant to Section 20
32 of this act. If the technology that the officer proposes to use has not received prior approval, the
33 commissioning officer or agency will review the technology to determine whether it provides a
34 satisfactory means of performing notarial acts.

35

1 [_____]
2 Title (and rank)

3 [My commission expires: _____]
4

5 (3) For a verification on oath or affirmation:

6 State of _____

7 (County) of _____

8 Signed and sworn to (or affirmed) before me on _____ by _____
9 Date Name(s) of individual(s)
10 making statement).
11

12 _____

Signature of notarial officer

13 Stamp

14 [_____]
15 Title (and rank)

16 [My commission expires: _____]
17

18 (4) For witnessing or attesting a signature:

19 State of _____

20 (County) of _____

21 Signed [or attested] before me on _____ by _____
22 Date Name(s) of individual(s).

23 _____

Signature of notarial officer

25 Stamp

26 [_____]
27 Title (and rank)

28 [My commission expires: _____]

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(5) For certifying a copy of a document:

State of _____

(County) of _____

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

Dated _____

Signature of notarial officer

Stamp

[_____]

Title (and rank)

[My commission expires: _____]

Comments

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

These certificates are available to be used for notarial acts performed on a tangible medium as well as notarial acts performed in an electronic format. They apply to notarial acts performed by notaries public as well as notarial officers who are not notaries public. Under subsection 10(b), a notarial stamp is required if the notarial act is performed by a notary public on a tangible record. Under subsection 10(b), if the notarial act is performed on an electronic record, an official stamp is optional. Finally, under subsection 11(b), if the notarial act is performed on a tangible record by a notarial officer who is not a notary public, an official stamp is not required, but other information is required.

SECTION 15. NOTARY PUBLIC COMMISSION; QUALIFICATIONS.

(a) An individual qualified under subsection (b) may apply to the [commissioning officer or agency] for a commission as a notary public. The applicant must comply with, and provide the information required by, regulations established by the [commissioning officer or agency]

1 and submit the required application fee.

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

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

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

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

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

7 (5) not be subject to refusal of a commission under Section 17[; and

8 (6) have passed the examination required under Section 16].

9 (c) An applicant must execute an oath of office and submit it to the [commissioning
10 officer or agency].

11 (d) On compliance with subsections (a), (b) and (c), the [commissioning officer or
12 agency] shall issue a notary public commission to an applicant for a term of [] years.

13 (e) Not more than [30] days after the issuance of a notary public's commission, the notary
14 shall submit a surety bond in the amount of \$[_____] to the [commissioning officer or agency].

15 The bond must be issued by a surety licensed in this state and cover acts performed during the
16 term of the notary's commission and shall be in the form prescribed by the [commissioning
17 officer or agency]. The bond shall be conditioned on compliance with this [act] and law other
18 than this act affecting notaries public in this state. The surety shall give [30] days' notice to the
19 [commissioning officer or agency] before cancelling the bond. A notary public may perform
20 notarial acts in this state only during the period that a surety bond conforming with this
21 subsection is on file with the [commissioning officer or agency].

22 (f) A commission to act as a notary public authorizes a notary to perform notarial acts, but
23 does not provide a notary public with any immunities or benefits conferred by law or the

1 constitution of this state on public officials or employees.

2 **Comments**

3 Subsection (a) states that an individual qualified under subsection (b) may apply for and
4 obtain a commission as a notary public from the commissioning officer or agency. It leaves the
5 form of application, the process for applying, and the timing of the process to be determined by
6 the commissioning officer or agency. Although the statutes of some states specify the provisions
7 in more detail (compare Ariz. Rev. Stat. § 41-312; Del. Code Ann. tit. 43, § 4301), this act leaves
8 the determination and implementation of those provisions to regulations adopted by the
9 commissioning officer or agency.

10
11 Subsection (b) sets out qualifications for issuance of a commission as a notary public.
12 The qualifications set out in the current legislation of the various states are quite varied. The
13 requirements listed here are common although not uniform among the states (compare Ariz. Rev.
14 Stat. § 41-312(E)). They are the important provisions and should be considered to be the
15 minimal requirements for a person to be issued a commission as a notary public. Adopting states
16 are free to add other provisions if the legislature so chooses.

17
18 Subsection (c) requires a person receiving a commission as a notary to submit a bond to
19 the commissioning officer or agency within 30 days of receiving the notary public commission.
20 The amount of the bond is not specified and is left to state legislatures to insert. It is recognized
21 that bonds to cover the full amount of many transactions may be prohibitively expensive.
22 Nevertheless, limited but reasonable bond amounts should cover some ordinary transactions and
23 will provided some recovery in others. The bond must be in effect for the entire term of the
24 notary public’s commission and the surety must give 30 days’ notice prior to cancelling the
25 bond. The notary public may perform notarial acts only while the bond is on file with the
26 commissioning officer or agency.

27
28 Subsection (d) requires that the applicant submit an oath of office to the commissioning
29 officer or agency.

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

34
35 Subsection (f) recognizes that the notary public is a person licensed by the
36 commissioning officer or agency. Accordingly, it provides that the notary does not have any
37 immunities or benefits conferred on state officials by law or the state constitution.

38
39 **[SECTION 16. EDUCATION OF NOTARIES PUBLIC.]**

40 (a) An applicant for a first commission as a notary public must pass an examination
41 administered by the [commissioning officer or agency] or an entity licensed by the

1 [commissioning officer or agency]. The examination must be based on the course of instruction
2 described in subsection (b).

3 (b) The [commissioning officer or agency] or an entity licensed by the [commissioning
4 officer or agency] shall regularly offer a course of instruction to applicants for a first commission
5 as a notary public that is at least [] hours in length and covers the laws, [rules][regulations],
6 standards, procedures, and ethics relevant to notarial acts.]

7 **Comments**

8 An increasingly common requirement for the issuance of a notary public commission is
9 that the applicant must meet certain educational requirements. Professional education enhances
10 the effectiveness and integrity of the notarial system. The education envisioned in this section is
11 designed to educate the prospective notary public in the laws, [rules][regulations], standards,
12 procedures, and ethics relevant to notarial acts. However, because the educational requirement is
13 not uniformly accepted by [commissioning officers or agencies] or the legislatures of some
14 states, it is inserted here as an optional provision.
15

16 Subsection (a) provides that an applicant for a first commission as a notary public must
17 pass an examination administered by the commissioning officer or agency or an entity licensed
18 by the commissioning officer or agency to administer the exam. The examination is to be based
19 on the course of instruction provided in subsection (b).
20

21 Subsection (b) provides that the commissioning officer or agency or an entity licensed by
22 the commissioning officer or agency shall provide the course of education. However, it leaves
23 the length of the course to the determination of the state legislature. To achieve the purpose of
24 enhancing the effectiveness and integrity of the notarial system, the education is designed to
25 educate the prospective notary public in the laws, [rules][regulations], standards, procedures, and
26 ethics relevant to notarial acts.
27

28 **SECTION 17. GROUNDS FOR DENIAL, REFUSAL TO RENEW, OR** 29 **REVOCAATION, OR SUSPENSION OF NOTARIAL COMMISSION.**

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

33 (1) failure to comply with the provisions of Section 15(a), (b), or (c);

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

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

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

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

12 (6) the use of false or misleading advertising by a notary public representing that
13 the notary public has duties, rights, or privileges that a notary public does not have; [or]

14 (7) the violation by the notary public of any of the [rules][regulations] of the
15 [commissioning officer or agency] regarding notarial officers; [or]

16 [(8) the failure of the notary public to maintain a bond as provided in subsection
17 15(c)].

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

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

1 perform electronic notarial acts.

2 **Comments**

3 Subsection (a) lists the grounds upon which the commissioning officer or agency may
4 refuse to grant a notary public commission to an applicant or upon which the commissioning
5 officer or agency may revoke or suspend that commission. The grounds listed for denial or
6 revocation is similar to those provided in many states. See Ariz. Rev. Stat. § 41-330(A); N.C.
7 Gen. Stat. § 10B-5(d).

8
9 Subsections (a)(1)-(5) set forth specific statutory grounds upon which a commission may
10 be denied, suspended or revoked. Subsection (a)(6) gives the commissioning officer or agency
11 the authority to promulgate rules or regulations further setting forth grounds upon which a
12 commission may be denied, suspended, or revoked. Subsection (a)(7) allows the suspension or
13 revocation of a commission if the notary public fails to maintain a bond as provided in Section
14 15(c).

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

20
21 Subsection (c) provides that the commissioning officer or agency will maintain an
22 electronic database of notaries public through which an individual may verify whether the
23 asserted notary public has a commission to perform notarial acts. In addition, that database will
24 also indicate whether the notary public is authorized to perform notarial acts with regard to
25 electronic records.

26
27 **SECTION 18. NO LEGAL ADVICE; ADVERTISING.**

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

- 29 (1) assist individuals in drafting legal documents;
- 30 (2) render legal advice; or
- 31 (3) otherwise engage in the practice of law.

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

33 (c) A notary public, other than an attorney licensed to practice law in this state, may not
34 represent that the notary may offer legal advice or draft legal records. If a notary public, other
35 than an attorney licensed to practice law in this state, in any manner advertises notarial services

1 [in a language other than English], the notary public shall include the following statement, or an
2 alternate statement authorized or required by the [commissioning officer or agency], in the
3 advertisement, prominently and in each language used in the advertisement: “I am not an
4 attorney licensed to practice law in this state. I cannot give advice on legal matters, including
5 immigration. I cannot draft legal documents.”

6 **Comments**

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

12
13 Subsection (b) directly and simply provides that a notary public may not engage in false
14 or misleading advertising.

15
16 Subsection (c) is directed toward a specific advertising problem. Under the laws of many
17 non-common law countries, including but not limited to civil law countries, a notary public is
18 authorized not only to verify and acknowledge records and signatures. In those countries, a
19 notary may also draft and interpret legal records for parties and give legal advice on those
20 matters. In effect, those notaries public have at least limited authority to engage in transactional
21 and other legal matters. When people immigrate to the United States from those countries, they
22 are faced not only with their prior experiences under that custom but also the difficulties of
23 understanding the English language. Unfortunately, some notaries public have taken advantage
24 of that situation, whether by their own suggestion or at the request of the immigrant, and have
25 provided legal advice and document drafting. In many cases, the legal advice has dealt with
26 immigration matters.

27
28 Subsection (c) is derived from provisions in legislation currently in effect in Arizona
29 (Ariz. Rev. Stat. § 41-329(A) and other states. It provides that a notary, other than a notary who
30 is also an attorney at law, may not offer legal advice or draft legal records. If the notary
31 advertises notarial services, the notary must provide information in the same language as the
32 advertisement that the notary may not provide legal advice or draft legal documents, particularly
33 about immigration matters. It seeks to inform the prospective client that the notary public is not
34 authorized or experienced to give legal advice. The bracketed provision “[in a language other
35 than English]” allows the legislature to apply the advertising requirement only to ads that are not
36 in English, which may be seen by some as more likely to be deceptive to immigrants. The
37 commissioning officer or agency is given the authority to adopt alternative language for the
38 warning statement.

39

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

3
4 **SECTION 20. VENDOR SUBMISSION OF TECHNOLOGY; APPROVAL.** On

5 application and payment of a prescribed fee, the [commissioning officer or agency] shall review
6 a technology submitted by a software or hardware vendor and, if appropriate, grant approval of
7 the technology if it provides a satisfactory means of performing notarial acts on electronic
8 documents under this [act], including the assurance that any change or tampering with a record
9 and its associated certificate is self-evident.

10 **Comments**

11
12 This Section directs the commissioning officer or agency to review technology submitted
13 by software vendors and grant, where appropriate, prior approval to that technology. The
14 purpose of this provision is to encourage technology vendors to seek prior approval of
15 technology so that it is readily available to prospective notarial officers seeking to register as
16 notarial officers of electronic records.

17
18 **SECTION 21. NOTARIAL ACTS AFFECTED BY THIS ACT.** This [act] applies to

19 notarial acts performed on or after the effective date of this [act].

20 **Comments**

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

23
24 **SECTION 22. NOTARY PUBLIC COMMISSION IN EFFECT ON DATE OF**

25 **THIS [ACT].** A commission as a notary public in effect on the effective date of this [act] may
26 continue until its date of expiration. However, the notary public, in performing notarial acts after
27 the effective date of this [act] must comply with this [act] and is subject to a refusal to renew the
28 commission or a revocation or suspension of the commission under this [act].

29 **Comments**

30
31 This Section states that an individual who has a commission as a notary public at the date
32 of the enactment of this uniform law may retain the notary commission until the scheduled date

1 of expiration. However, the notary is subject to the provisions of this act with regard to a refusal
2 to renew the commission or a revocation or suspension of the commission. Other than as may
3 apply to the length of the commission, the provisions of the law previously in effect do not carry
4 over after the enactment of this act.

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

9 **Comments**

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

12
13 **SECTION 24. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
14 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
15 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001, et seq.)
16 but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or
17 authorize electronic delivery of any of the notices described in Section 103(b) of that act (15
18 U.S.C. Section 7003(b)).

19 **Comments**

20 This section responds to the specific language of the Electronic Signatures in Global and
21 National Commerce Act and is designed to avoid preemption of state law under that federal
22 legislation.

23
24 **SECTION 25. REPEALS.** The following acts are repealed:

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

28 **Comments**

29 This Section lists laws that this proposed act supervenes.

30
31 **SECTION 26. EFFECTIVE DATE.** This [act] takes effect

Comments

1
2
3

This is the standard effective date provision for uniform laws.