REVISED UNIFORM LAW ON NOTARIAL ACTS (2021)*

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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REVISED UNIFORM LAW ON NOTARIAL ACTS (2021)

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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. Since that date, countless societal and technological as well as market and economic changes have occurred requiring notarial officers and the notarial acts that they perform to adapt. In addition, there has been a growing non-uniformity among the states in their laws regarding notarial acts. This version of ULONA adapts the notarial process to accommodate those changes, makes the Act more responsive to current transactions and practices, and seeks to promote uniformity among state laws regarding notarial acts.

Perhaps the most pervasive change since the adoption of the original version of ULONA has been the development and growing implementation of electronic records in commercial, governmental, and personal transactions. In 1999, NCCUSL approved the Uniform Electronic Transactions Act ("UETA"), thereby validating electronic records and putting them on a par with traditional records written on tangible media. The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Ch. 96 (2010) ("ESign") was adopted in 2000, and it also recognized and put electronic records on a par with traditional records on tangible media. In 2004, NCCUSL approved the Uniform Real Property Electronic Recording Act ("URPERA"), thereby permitting county recorders and registrars to accept and register electronic real estate records. Each of those acts also recognized the validity of electronic notarial acts (UETA §11; ESign §101(g); URPERA §3(c)).

This revision of ULONA further recognizes electronic notarial acts and puts them on a par with notarial acts performed on tangible media (Section 2(5)). It does this by unifying the requirements for and treatment of notarial acts, whenever possible, regardless of whether the acts are performed with respect to tangible or electronic media. While continuing the basic treatment of electronic notarial acts provided in UETA, ESign and URPERA, this Act implements structural and operational rules for those notarial acts that were absent in the prior laws. For example, Section 15 sets forth the requirements for certificates of notarial acts whether performed with respect to tangible and electronic records). In addition, Section 20 provides that before notaries public may perform notarial acts with respect to electronic records, they must first notify the commissioning officer or agency.

The Act seeks to provide integrity in the process of performing notarial acts. Regardless of whether the notarial act is completed on a tangible or an electronic record, it requires an individual to appear personally before a notarial officer whenever the officer performs a notarial act regarding a record signed or a statement made by the individual (Section 6), including an acknowledgment, verification, or witnessing of a signature (Section 5(a), (b), and (c)). A notarial officer who certifies a copy of a record must determine that the copy is a full, true, and accurate transcription or reproduction (Section 5(d)).

The Act commands a notarial officer to identify an individual before performing a notarial act for that individual. The Act provides two methods of performing that identification. Identification may be based on personal knowledge of the individual by the notarial officer (Section 7(a)). If an individual is not personally known to the notarial officer, the individual must 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 (Section 7(b)). A notarial officer may require additional identification of an individual if the officer is not satisfied with the individual's identity (Section 7(c)). Furthermore, if an officer is not satisfied that an individual's signature is knowingly and voluntarily made or has concern as to the competency or capacity of the individual, the officer may refuse to perform the notarial act (Section 8(a)).

The Act strives to provide other assurances that also enhance the integrity of the notarial process. In addition to the familiar assurances when tangible records are used, the Act requires the use of tamper-evident technologies on electronic records (Section 20). It authorizes a commissioning officer or agency to adopt rules to implement this Act (Section 27(a)), including rules to insure that any change or tampering with a record bearing a certificate of the notarial act will be self-evident (Section 27(a)(2)). In order to encourage uniformity and interoperability, it provides that a commissioning officer or agency will consider national standards, the standards and customs of other enacting jurisdictions, and the views of interested persons (Section 27(b)).

Another means of assuring the integrity of the notarial process, strongly urged by commissioning officers and notarial associations, is to require that all notaries public maintain journals chronicling all notarial acts. This position is not without controversy, however, and other voices strongly argue that such requirements are unnecessarily burdensome. This Act includes optional provisions requiring a notary public to maintain a journal of all notarial acts that the notary public performs (Section 19), leaving the ultimate decision to the several states. A 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 entered in the journal.

This Act replaces past references to a notarial seal with an official stamp. It defines an official stamp as a physical or electronic image and includes the traditional seal (Section 2(8)). Section 17 states the mandatory contents of the official stamp and requires that it be capable of being copied along with the record with which it is associated. Section 18 deals separately with the stamping device, which is defined as the means of affixing the official stamp to a tangible record or associating the official stamp with an electronic record (Section 2(13)). Section 18 also defines the responsibility of the notary public for controlling the stamping device and assuring that it not be used by others.

As with the prior version of the Act, this revision continues to recognize notarial acts performed by notarial officers in the adopting state (Section 10), another state of the United States (Section 11), or under federal authority (Section 13). It also recognizes notarial acts performed under the authority of a federally recognized Indian tribe (Section 12). The increasing frequency of international transactions requires the recognition of notarial acts performed in foreign states (Section 14). The Act continues to recognize an "apostille" complying with the Convention de La Haye du 5 octobre 1961 ("Hague Convention") as a means of providing

conclusive authentication of notarial acts that are performed by a notarial officer of a foreign state (Section 14(e)). It also recognizes a consular authentication as an alternative means of providing that conclusive authentication of a foreign notarial act (Section 14(f)).

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. Those provisions vary considerably. In order to promote unity, the Act establishes minimum requirements for the commissioning of notaries public (Section 21) as well as grounds to deny, suspend, or revoke those commissions (Section 23). The Act contains an optional section regarding educational and testing requirements for notaries public (Section 22).

The Act seeks to assure that a notarial officer does not act in a deceptive or fraudulent manner. It prohibits a notarial officer from performing a notarial act with regard to a record to which the officer or the officer's spouse is a party or in which either of them has a direct beneficial interest (Section 4(b)). The Act prohibits a notary public from drafting legal records, giving legal advice, or otherwise practicing law. It also prohibits a notary public from acting as a consultant or expert on immigration matters or representing persons in judicial or administrative proceedings in that regard (Section 25(a)). It further prohibits a notary public from engaging in false or deceptive advertising. In that regard, it expressly prohibits a notary public from representing or advertising that the notary may draft legal documents, give legal advice, or otherwise practice law; any representation or advertisement by a notary must contain a disclaimer to that effect in each language used in the advertisement (Section (25(b), (c), and (d)).

During the process of drafting this revision of ULONA, the Drafting Committee received invaluable assistance regarding current and developing notarial practices, regulatory matters, and available technology from numerous observers. The Drafting Committee wishes to express its appreciation to the National Notary Association, the United States Notary Association, the National Association of Secretaries of State, the Property Records Industry Association, the various vendors who demonstrated available technology, and all the other observers who assisted the Committee.

Prefatory Note to 2018 Amendments

Section 14A

Traditionally, as provided in Section 6, an individual has been required to make a personal appearance before a notary public in order for a notary public to perform a notarial act on behalf of that individual. The objectives of that appearance have been to enable the notary public to verify the identity of the individual and enable the notary public to assess the competency of the individual and whether the individual's acts are knowingly and voluntarily made.

In recent years, technology and commercially available identification services have made it possible to accomplish those objectives by means of synchronous communication technology that includes sight and sound, allowing the performance of notarial acts for persons who are not in the physical presence of the notary public. This amendment authorizes notaries public to

perform notarial acts for remotely located individuals. The requirements set out in the amendment enable the notary public to verify the identity of the remote individual. Through synchronous audio and visual communication, the notary also will be able to assess the competency of the individual and whether the individual's acts are knowingly and voluntarily made.

Sections 4(c) and 20(c)

Since the promulgation of the Uniform Electronic Transactions Act, the Uniform Real Property Electronic Recording Act, and the Revised Uniform Law on Notarial Acts, the use of electronic records has increased substantially. Many of these records involve transactions that must or should be recorded in the local land records office. However, in many cases, local recorders are not equipped to accept electronic records. These two subsections in combination allow a notarial officer to certify that a tangible or paper copy of an electronic record is an accurate copy and authorize the recorder to accept that certified or "papered-out" copy for recording.

REVISED UNIFORM LAW ON NOTARIAL ACTS (2021)

SECTION 1. SHORT TITLE. This [act] may be cited as the Revised Uniform Law on Notarial Acts (2021).

Comment

This Act is a revision of the Uniform Law on Notarial Acts as approved by the National Conference of Commissioners on Uniform State Laws in 1982.

It provides for the recognition of notarial acts performed in this state, in other states, under the authority of a federally recognized Indian tribe, under federal authority, and in foreign jurisdictions. It applies to notarial acts whether performed with respect to tangible or electronic records.

SECTION 2. DEFINITIONS. In this [act]:

(1) "Acknowledgment" means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic signature" means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

(4) "In a representative capacity" means acting as:

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

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

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

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

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

(6) "Notarial officer" means a notary public or other individual authorized to perform a notarial act.

(7) "Notary public" means an individual commissioned to perform a notarial act by the [commissioning officer or agency].

(8) "Official stamp" means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

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

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

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

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

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

(12) "Signature" means a tangible symbol or an electronic signature that evidences the

signing of a record.

(13) "Stamping device" means:

(A) a physical device capable of affixing to or embossing on a tangible record an official stamp; or

(B) an electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.

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

(15) "Verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

Comment

"Acknowledgment." An acknowledgment is a common form of notarial act in which an individual declares before a notarial officer that the individual has executed or signed the record for the purpose or purposes stated in the record. The declaration is made in the presence of the notarial officer. See *Coast to Coast Demolition and Crushing, Inc. v. Real Equity Pursuit, LLC,* 226 P.3d 605, 608 (Nev. 2010).

It is a common practice for the acknowledging individual to sign the record in the presence of the notarial officer. However, actually signing the record in the presence of the notarial officer is not necessary as long as the individual declares, while in the presence of the officer at that time the acknowledgment is made, that the signature already on the record is, in fact, the signature of the individual.

If the record is signed by an individual in a representative capacity, the individual also declares to the notarial officer that the individual has proper authority to execute the record on behalf of the principal (see Section 2(4)).

"Electronic." The adjective "electronic" is used to refer to electrical, digital, magnetic, wireless, optical, electromagnetic, and similar technologies. Electronic technologies are capable of generating, transmitting, or storing information in an intangible format that may subsequently be retrieved and viewed in a perceivable format.

As with the Uniform Electronic Transactions Act, the term "electronic" is descriptive and its reach is not intended to be limited to technologies that are technically or purely electronic in nature (see UETA §2, Comment 4). Rather, it is intended to be a collective term and applies to all "similar" technologies that involve the generation, transmittal, or storage of information in an intangible format.

Electromagnetic technologies that generate, transmit, and store information in intangible formats are electronic in nature. Thus, for example, the typical computer hard drive is a device that stores information electronically. Optical technologies that generate, transmit, or store information in intangible formats are also included within the meaning of the term. Although some aspects of optical technologies may not be truly electronic in nature, they are considered to be electronic because they create or manipulate information in an intangible format. Thus, for example, fiber optic cable is a means of transmitting information electronically.

The listing of specific technologies in this section is not intended to be static or limited to those created or in use at the time of the adoption of this Act. As electronic technologies continue to develop and evolve, even if they involve competencies other than those listed, they are also included in this definition if they perform the function of generating, transmitting, or storing information in an intangible format from which the information may subsequently be retrieved and viewed in a perceivable format.

The term "electronic" in this Act has the same meaning as it has in UETA §2(5), ESign §106(2), and URPERA §2(2).

"Electronic signature." An electronic signature is any electronic symbol, sound, or process that is attached to, or logically associated with, an electronic record by an individual with the intent to sign the record. An electronic signature on an electronic record is one that accomplishes the same purpose as a traditional "wet" or pen and ink signature on a tangible record; it associates an individual with an electronic record for the purpose of signing or executing the record. The technology that may be used for an electronic signature includes all the technologies that are encompassed within the definition of the term "electronic." Whether an individual in fact attaches an electronic signature to an electronic record with the intent to sign it is a question of fact to be determined in each case.

The term is similar to the definition used in UETA §2(8), ESign §106(5), and URPERA §2(4).

"In a representative capacity." The term "in a representative capacity" refers to the role in which an individual signs a record or makes a statement with respect to which a notarial act is performed. Specifically, it indicates that the individual who signs a record or makes the statement is doing so as a representative of another person, a principal, and not on the individual's own behalf. A representative with proper authority binds the principal as if the principal signed the record. The authority to perform an act in a representative capacity may be derived from the position the individual holds (e.g. corporate officer) or from a specific grant of authority to the individual (e.g. attorney in fact). Whether a person is authorized to act in a representative capacity is a fact to be determined under the agency law of the state.

In this Act, the term is used Section 2(1) and in the short form acknowledgment provided in Section 16(2).

"Notarial act." The term "notarial act" encompasses a notarial act whether authorized in this Act or by other law of this state (see also Section 4(a)). This subsection lists those notarial acts specifically authorized by this Act. The listed notarial acts include taking an acknowledgment, administering an oath or affirmation, taking a verification upon an oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy of a record, and noting a protest of a negotiable instrument.

This Act applies to a notarial act regardless of whether it is performed with respect to a tangible record, such as paper, or with respect to an electronic record. Other Uniform Laws, including UETA, ESign, and URPERA, specifically authorize the creation, transfer, storage, and recording of electronic records just as other law has traditionally authorized records on tangible media. This Act specifically authorizes notarial acts to be performed with respect to electronic records.

"Notarial officer." The term "notarial officer" includes a notary public as well as other individual having the authority to perform notarial acts under other state, tribal, or federal law or the law of a foreign state. Thus, for example, judges, clerks, and deputy clerks are notarial officers (see Sections 10(a)(2), 11(a)(2), 12(a)(2) and 13(a)(1)). Similarly, in some states, attorneys at law, by the fact that they are attorneys at law, are also notarial officers (see Section 10(a)(3)). Also, an individual designated as a notarizing officer by the United States Department of State for performing notarial acts overseas is also a notarial officer for that purpose (see Section 13(a)(3)). Other persons, whether by state law, federal law, tribal law, or the law of a foreign state, may also be notarial officers (see generally Sections 10 through 14.)

Many of the provisions of this Act apply broadly to all notarial officers regardless of the source of their authority. However, some provisions, such as those in Sections 17 through 25, apply only to notaries public.

"Notary public." A "notary public" is an individual who is issued a commission as a notary public by the commissioning officer or agency of a state pursuant to Sections 21 through 23. A notary public does not include those individuals, such as judges and clerks of court, who are authorized to perform notarial acts under other law or as a part of the official duties of an office or position they hold.

"Official stamp." The term "official stamp" refers to an image containing specified information that a notarial officer attaches to or associates with a certificate of notarial act, which is itself on, attached to, or associated with a record. The contents and characteristics of the "official stamp" are set forth in Section 17(a).

On a tangible record, the image is a physical one appropriately located on, or attached to, the certificate of notarial act. It may be applied to the surface of the certificate, as with a rubber stamp and ink, or it may be applied by compression or embossment, as with a seal. On an electronic record, the image is in an electronic format and attached to, or logically associated

with, the electronic certificate of notarial act. Being an electronic image, the image must be viewed through a device such as a computer monitor or printed out in order to be humanly perceivable.

An "official stamp" is to be distinguished from the device by which the image is affixed on, attached to, or associated with a certificate of notarial act; that device is identified as a "stamping device" and is defined in Section 2(13).

"Person." The word "person" is broadly defined to include all persons, whether human individuals or corporate, associational, or governmental entities. When the definition of a "person" is intended to be limited to a human entity, the word "individual" is used in this Act rather than the word "person." The definition of "person" is the standard definition for that term as used in other acts promulgated by the National Conference of Commissioners on Uniform State Laws.

"Record." A "record" consists of information stored on a medium, whether the medium be a tangible one or an electronic one. The traditional tangible medium has been paper on which information is inscribed by writing, typing, printing, or other similar means. The information is humanly perceivable by reading it directly from the paper on which it is inscribed.

An electronic medium is one on which information is stored electronically. The information is humanly perceivable only by means of a device that interprets the electronic information in the record and makes it readable. For example, electronic information may be stored on a hard disk and it may be retrieved and read in a humanly perceivable form on a computer monitor or a paper printout.

Traditionally, especially if the tangible medium is paper, a record has been referred to as a "document." In this Act, the word "record" replaces the word "document" and includes information regardless of whether the medium is tangible or electronic. The definition of the word "record" in this Act is the same as the definition of that word in UETA §2(13) and ESign §106(9). It also is the same as the definition of the word "document" as used in URPERA §2(1).

"Sign" and "Signature." Subsections (11) and (12) of this Act define the related words "sign" and "signature." An individual may "sign" his or her name to a record either on a tangible medium or an electronic medium as long as the individual has the present intent to authenticate or adopt the record so signed. The verb "sign" includes other forms of the verb, such as "signing." Except as provided in Section 9, an individual must personally perform the act of signing a record.

A symbol located on, or associated with, a tangible or electronic record that is the result of the signing process is an individual's "signature." The usual symbol an individual uses as the individual's signature is the individual's given name. If, instead of using the individual's given name, however, an individual uses an alternative symbol as the individual's signature, such as an "X," the individual may affix that symbol to the record as the individual's signature.

Nothing in the definitions of the words "sign" or "signature" or of the word "record" (prior subsection) imposes a security process or standard in the definition of those words. When a means of security is imposed, it is done by a requirement in a separate section (see, for example, Section 20).

"Stamping device." A "stamping device" is the means by which an official stamp is affixed to, embossed on, or associated with, the certificate of notarial act in a record. With a traditional paper medium, for example, the stamping device may be a rubber device that uses ink to impose a stamp on the paper. It may also be a device that compresses or embosses the paper and applies an impression seal.

In an electronic format, the stamping device is an electronic process or technology that associates unique information identifying the notarial officer with the certificate of notarial act that is affixed to, or associated with, an electronic record. The means of identifying the notarial officer may, for example, be a security card, password, encryption device, or other system that allows access to an electronic process that associates the officer's unique information with the certificate of notarial act on an electronic record. The electronic process may be located on, for example, a desktop or laptop computer; a flash drive or other peripheral device used in connection with a computer: a portable electronic device such as a Blackberry or iPhone; or a secure website on the Internet. The means of identifying the notarial officer and the electronic process are collectively the stamping device. The result, although attached to, or associated with, an electronic certificate of notarial act, will be perceivable only by means of a device such as a computer monitor that is capable of presenting it in a perceivable format.

"State." The word "state" includes any state of the United States, the District of Columbia, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States. This definition is the standard definition for that word as used in other acts adopted by the National Conference of Commissioners on Uniform State Laws.

"Verification upon oath or affirmation." A "verification upon oath or affirmation" is a common form of notarial act. It is a declaration by an individual before a notarial officer in which the individual states on oath or affirmation that the declaration is true. This declaration is sometimes referred to as an "affidavit" or "jurat." See *Coast to Coast Demolition and Crushing, Inc. v. Real Equity Pursuit, LLC,* 226 P.3d 605, 608 (Nev. 2010).

SECTION 3. APPLICABILITY. This [act] applies to a notarial act performed on or after [the effective date of this [act]].

Comment

This Act is not intended to be retroactive in effect. It applies to notarial acts performed on or after its effective date. The validity and effect of a notarial act performed prior to the effective date of this Act is determined by the law in effect at the time of its performance. (See also Section 28 regarding application of the Act to a notary public commission in effect on the effective date of the Act.)

SECTION 4. AUTHORITY TO PERFORM NOTARIAL ACT.

(a) A notarial officer may perform a notarial act authorized by this [act] or by law of this state other than this [act].

(b) A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse [or civil partner] is a party or in which either of them has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

(c) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

Comment

Subsection (a) is the enabling provision of this Act and grants a notarial officer the authority to perform notarial acts. It authorizes a notarial officer to perform notarial acts that are authorized by this Act as well as those authorized by other law of this State.

When taken in conjunction with the definition of a notarial act in Section 2(5), subsection (a) also authorizes a notarial officer to perform notarial acts regardless of the format of the record. Thus, a notarial officer may perform notarial acts on tangible records as well as electronic records. However, before a notary public may begin to perform notarial acts on electronic records, the notary must notify the commissioning officer or agency that the notary will be performing notarial acts with respect to electronic records (see Section 20(b)).

Subsection (b) prohibits a notarial officer from performing a notarial act in a circumstance in which performance of that act might create a conflict of interest. It provides that a notarial officer may not perform a notarial act with respect to any record in which the officer or the officer's spouse (or civil partner, as defined by state law) is a party. The prohibition is absolute and clear; there is no need to demonstrate a direct beneficial interest even though the interest may be obvious. For example, a notarial officer may not take an acknowledgment of a deed in which the officer or the officer's spouse is a grantor or grantee.

In addition, subsection (b) provides that a notarial officer may not perform a notarial act with respect to any record in which the officer or the officer's spouse (or civil partner) has a direct beneficial interest. This prohibition depends on whether there is a direct beneficial interest derived from the record (see, e.g. *Galloway v. Cinello*, 188 W. Va. 266, 423 S.E.2d 875 (1992)). For example, a deed by a third party (perhaps a grandparent) creating a trust in which a child of the notarial officer is a beneficiary might involve a direct beneficial interest to the notarial officer that is derived from the trust document (record), especially if the trust relieves support obligations of the officer. If it does provide a direct beneficial interest derived from the record, the officer would be prohibited from taking the acknowledgment of the deed of trust. While

further information would be necessary to determine whether there is a direct beneficial interest derived from the record, a notarial officer should avoid performing a notarial act in any situation when doing so would raise the appearance of an impropriety.

This prohibition does not, however, extend to situations in which the beneficial interest is indirect and not the result of the operation of the record or transaction itself. For example, if the interest received is merely the payment of a notarial fee, the benefit is indirect and derived from the performance of notarial duties and not the result of the operation of the record or transaction itself (see, e.g. *Hass v. Neth*, 265 Neb. 321, 657 N.W.2d 11 (2003)). Similarly, a notary public who is hired by an employer to be available to perform notarial acts on multiple transactions does not derive a beneficial interest as a result of the operation of the records or transactions themselves. For example, a notary public may be an employee and the expenses of obtaining and maintaining the commission may be paid by the notary's employer. The obvious purpose of such an arrangement, at least in part, is that the notary public will perform notarial acts in appropriate situations as needed and requested by the employer. The fact that the notary public's salary and expenses are paid by the employer does not prevent the notary public from performing notarial acts when requested by the employer. Even though the notary receives a salary and the notary's salary may even depend on the fact that the notary performs notarial acts for the employer generally, the notary does not have a direct beneficial interest in the transactions or one that is derived from the operation of the records or transactions.

Likewise, if a notarial officer is an attorney, the attorney/notarial officer may perform notarial acts for a client as long as the attorney does not receive a direct beneficial interest as a result of operation of the record or transaction with regard to which the notarial act is performed. The fact that the attorney receives a fee for performing legal services, presently or in the future, is not a direct beneficial interest resulting from the operation of the record or transaction. Thus, receiving a fee for drafting a will or for subsequently representing the estate are fees for legal services and not a direct beneficial interest received as a result of the operation of the will (record) itself.

If a notarial officer should perform a notarial act in violation of subsection (b), the notarial act is not void per se. It may, however, be voidable in an action brought by a party who is adversely affected by the officer's misdeed. See *Galloway v. Cinello*, 188 W. Va. 266, 423 S.E.2d 875 (1992), where the court stated that the document was not void per se but was voidable; in making a determination the court should consider whether an improper benefit was obtained by the notary or any party to the instrument, as well as whether any harm flowed from the transaction. But see *Estate of McKusick*, 629 A.2d 41 (Me. 1993) in which the court questioned the validity of a will because the affidavit of a witness was made before a notary public who was the spouse of the witness.

Subsection (c) allows a notarial officer to certify that a tangible or paper copy of an electronic record is an accurate copy of the electronic record. The notarial officer providing the certification may be the same notarial officer who performed the notarial act regarding the electronic record or different notarial officer who has the ability to read the electronic record and compare it with the tangible or paper copy.

SECTION 5. REQUIREMENTS FOR CERTAIN NOTARIAL ACTS.

(a) A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

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

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

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

(e) A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in [Section 3-505(b) of the Uniform Commercial Code].

Comment

"Acknowledgment" – Subsection (a) provides that when taking an acknowledgment, a notarial officer certifies that: (1) the individual who is appearing before the officer and acknowledging the record has the identity claimed, and (2) the signature on the record is the signature of the individual appearing before the officer. The notarial officer must identify the individual either through personal knowledge of the individual or from satisfactory evidence of the identity of the individual (see Section 7). The acknowledging individual must also declare, as required in Section 2(1), that the individual in signing the record for the purpose stated in the record.

It is common practice for the individual to sign the record in the presence of the notarial officer. However, actually signing the record in the presence of the officer is not required as long as the individual acknowledges to the officer, when the individual appears before the officer, that the signature already on the record is that of the individual.

"**Verification on oath or affirmation**" – Subsection (b) provides that when taking a verification on oath or affirmation, a notarial officer certifies that: (1) the individual who is appearing before the officer and making the verification has the identity claimed, and (2) that the signature on the record is the signature of the individual appearing before the officer. The verifying individual must also declare, as required in Section 2(14), that the statements in the record are true. The notarial officer must identify the individual either through personal knowledge of the individual or from satisfactory evidence of the identity of the individual (see Section 7). A verification may be referred to as an affidavit or a jurat in some jurisdictions.

"**Witnessing or attesting a signature**" – Subsection (c) provides that when witnessing or attesting a signature, a notarial officer certifies that: (1) the individual who is appearing before the officer and signing the record has the identity claimed, and (2) that the signature on the record is the signature of the individual appearing before the officer. The notarial officer must identify the individual either through personal knowledge of the individual or from satisfactory evidence of the identity of the individual (see Section 7).

Witnessing or attesting a signature differs from taking an acknowledgment in that the record contains no declaration that it is signed for the purposes stated in the record and differs from a verification on oath or affirmation in that the individual is not verifying a statement in the record as being true. It is merely a witnessing of the signature of an identified individual.

"**Certifies or attests a copy**" – Subsection (d) provides that when certifying or attesting a copy of a record or item, a notarial officer certifies that: (1) the officer has compared the copy with the original record or item, and (2) has determined that the copy is a full, true, and accurate transcription or reproduction of the original record or item. This subsection directs the notarial officer to compare a record or item with a copy of the record or item. Therefore, the record or item must be presented to the notarial officer along with the copy so that the officer is able to make the comparison.

Certifying or attesting of a copy is usually done if it is necessary to produce a copy of a record when the original is in an archive or other collection of records and the archived record cannot be removed. In many cases, however, the custodian of the official archive or collection may also be empowered to issue an officially certified copy. When a copy officially certified by the custodian of the archive is available, it is official evidence of the state of the public archive or collection, and it may be better evidence of the original record than a copy certified by a notarial officer.

"**Make or note a protest of a negotiable instrument"** – Subsection (e) provides that a notarial officer may make or note a protest of a negotiable instrument under UCC §3-505(b). A protest is an official certificate of dishonor of a negotiable instrument. UCC §3-505(b) confers the authority to make or take a protest on "a United States consul or vice consul, or a notary

public or other person authorized to administer oaths by the law of the place where dishonor occurs." In the United States a protest of a negotiable instrument may not be needed as evidence of dishonor (see UCC §3-505(a); see also UCC §3-503). A protest may be necessary, however, on international drafts governed by law of a foreign state (see UCC §3- 505, Official Comment). This subsection is designed to insure that there is no doubt as to the authority or a notary public to make or note a protest of a negotiable instrument when appropriate under the Uniform Commercial Code.

SECTION 6. PERSONAL APPEARANCE REQUIRED. If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

Comment

This section expressly requires that when an individual is making a statement or executing a record with regard to which a notarial act will be performed by a notarial officer, the individual must appear before the officer to make the statement or execute the record. Thus, an individual who is acknowledging a record or verifying a statement on oath or affirmation before a notarial officer, or an individual whose signature is being witnessed or attested by a notarial officer, must appear before the officer to perform the specified function. See *Vancura v. Katris*, 907 N.E.2d 814, 391 Ill. App. 3d 350 (2009) which involved a notary public who performed notarial acts without the individual signing the instrument personally appearing before the notary.

To provide assurance to persons relying on the system of notarial acts authorized by this Act, notarial officers must take reasonable steps to assure the integrity of the system. It is by personal appearance before the notarial officer that the individual making a statement or executing a record may be properly identified by the notarial officer (see Section 7). It is also by personal appearance before the notarial officer that the officer may be satisfied that (1) the individual is competent and has the capacity to execute the record, and (2) the individual's signature is knowingly and voluntarily made (see Section 8(a)).

Personal appearance does not include an "appearance" by video technology, even if the video is "live" or synchronous. Nor does it include an "appearance" by audio technology, such as a telephone. At the time that this act is being drafted, those methods of "appearance" do not provide sufficient opportunity for the notarial officer to identify the individual fully and properly; nor do they allow the officer sufficient opportunity to evaluate whether the individual has the competency or capacity to execute the record or whether the record is knowingly and voluntarily made.

SECTION 7. IDENTIFICATION OF INDIVIDUAL.

(a) A notarial officer has personal knowledge of the identity of an individual appearing

before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

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

(1) by means of:

(A) a passport, driver's license, or government issued nondriver identification card, which is current or expired not more than [three years] before performance of the notarial act; or

(B) another form of government identification issued to an individual, which is current or expired not more than [three years] before performance of the notarial act, contains the signature or a photograph of the individual, and is satisfactory to the officer; or

(2) by a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license, or government issued nondriver identification card, which is current or expired not more than [three years] before performance of the notarial act.

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

Comment

Section 5, above, requires a notarial officer to determine, either from personal knowledge or satisfactory evidence, that the individual for whom the officer will perform a notarial act has the identity claimed. Section 7 specifies the means by which the notarial officer is to determine that identity. Subsection 7(a) describes when a notarial officer has personal knowledge of an individual's identity. Subsection 7(b) describes when a notarial officer has satisfactory evidence of an individual's identity.

Subsection (a) states that the notarial officer has personal knowledge of the identity of an individual only if the officer personally knows the individual through prior dealings. The prior dealings may be business dealings or personal dealings. Business dealings might simply be the

performance of prior notarial acts for the individual. They may also arise because the notarial officer engaged in prior business transactions with the individual. Personal dealings may exist because the notarial officer is a friend or colleague of the individual. The dealings may also be mixed in nature such as where the notarial officer and individual work in the same office, school, or building. Regardless of whether the prior dealings are business or personal, they must be sufficient to provide the notarial officer with information that is adequate to identify the individual without the need to view any identification credentials or require any other means of identification.

Subsection (b) describes two methods by which a notarial officer may obtain satisfactory evidence of the identity of the individual even though the officer has no prior dealings with that individual. One method of identification is based on an identification credential issued to the individual (subsection (b)(1)). The other method of identification is based on an oath or affirmation of a credible witness as to the identity of the individual (subsection (b)(2)).

Subsection (b)(1)(A) allows a notarial officer to identify an individual by means of a passport, driver's license, or government issued nondriver identification card. The passport may the issued by the United States or by a foreign state. A United States passport includes the traditional passport book and the more recent passport card as well as any other form of passport the United States may issue. A driver's license may be issued by a state government, the federal government, a government of a foreign state as defined in Section 14(a), or a tribal, pueblo, or similar authority. A government issued nondriver identification card is a card issued by many states to an individual, which may be used as a means of identification instead of a driver's license. It may be issued to an individual who is not qualified to obtain a driver's license or it may be issued in lieu of a driver's license to an individual who is qualified to obtain a driver's license.

Although the notarial officer might usually expect the identification credential to be currently in force, this provision recognizes that even though an expired credential would not be effective for its primary purpose (e.g. as a license permitting the individual to drive an automobile), it may used for a period of up to [three years] after its expiration as a means for identifying an individual. As long as it provides the necessary information for identifying the individual, its identification function is satisfied. This subsection does, however, put a specific outside limit of [three years] beyond the expiration of the credential for its use for identification purposes.

Subsection (b)(1)(B) recognizes that some individuals may not have a passport, driver's license, or even a government issued nondriver identification card that is currently valid or not expired by more than [three years]. This subsection allows the notarial officer to base the officer's identification of the individual on another form of government issued identification as long as that form of identification contains the individual's signature or a photograph of the individual as a means by which the individual can be associated with the credential. This form of credential may include, for example, a military identification. However, this subsection also makes it clear that this alternative form of identification must be satisfactory to the notarial officer. If the officer is not satisfied with the identification that the credential provides, the officer may refuse to accept it as sufficient identification.

Subsection (b)(2) recognizes that an individual may require the performance of a notarial act even though that individual is not known to a notarial officer and does not have one of the identification credentials listed in subsection (b)(1), or at least the individual does not have the identification credential currently available. This provision allows a notarial officer to identify an individual through an oath or affirmation of a credible witness personally appearing before the officer. The credible witness must either be (1) personally known to the officer, or (2) identified to the officer by means of the witness' passport, driver's license, or government issued nondriver identification as long as the credential has not expired more than [three years] before the performance of the notarial act. If the identity of an individual is verified by a properly identified credible witness, it is established by satisfactory evidence.

The meaning of the term "personally known" in subsection (b)(2) is the same as in subsection (a); the meanings of the terms "passport," "driver's license," and "government issued nondriver identification" in subsection (b)(2) are the same as in subsection (b)(1)(A). Subsection (b)(2) does not allow for the identification of the credible witness by means of an alternative form of identification as is provided in subsection (b)(1)(B) for the identification of the individual for whom the notarial act is performed. Subsection (b)(2) also does not allow the identity of a witness to be based on an oath or affirmation of yet another witness; such a process could lead to a spiraling "witness to the witness."

Subsection (c) recognizes that, even if a specified identification credential is presented, a notarial officer may, in some cases, be uncertain as to the identity of the individual. For example, the identification credential may be defaced or have defects that make legibility difficult, or there may be changes in the physical appearance of the individual that may not be reflected in the image on the identification credential. If the notarial officer is uncertain as to the identity of the individual (whether the individual for whom the notarial act is performed or a credible witness for that individual), the officer may require the individual to provide additional information or identification in order to assure the officer as to the identity of the individual.

Identification of an individual based on an identification credential requires some flexibility. For example, it is not uncommon that an individual's name as used in a record may be a full name, including a full middle name; however, the name of the individual as provided on the identification credential may only use a middle initial or none at all. The inconsistency may be vice versa instead. The notarial officer should recognize these common inconsistencies when performing the identification of an individual. However, if a notarial officer is ultimately uncertain about the identity of the individual, the notarial officer should refuse to perform the notarial act (see Section 8.)

SECTION 8. AUTHORITY TO REFUSE TO PERFORM NOTARIAL ACT.

(a) A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

(1) the individual executing the record is competent or has the capacity to execute

the record; or

(2) the individual's signature is knowingly and voluntarily made.

(b) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by law other than this [act].

Comment

Subsection (a) allows the notarial officer to refuse to perform a requested notarial act in either of two circumstances. First, if the notarial officer is not satisfied as to the competency or capacity of the individual executing the record, the officer may refuse to perform the notarial act. Thus, for example, if the notarial officer is not satisfied that the individual has the mental status needed to execute the record, the officer may refuse to perform the notarial act. Second, if the notarial officer has concern about whether the individual's signature was knowingly and voluntarily made, the officer may refuse to perform the notarial act. Thus, for example, if the notarial officer is concerned that the individual's signature is coerced, the officer may refuse to perform the notarial act.

Satisfaction as to the competency or capacity of the individual making the record or with the fact that the signature is knowingly and voluntarily made are matters within the proper judgment of the notarial officer. No expertise on the part of the notarial officer as to those matters is required to refuse to perform the notarial act.

This subsection does not impose a duty upon the notarial officer to make a determination as to the competency or capacity of the individual nor as to whether the signature of the individual is knowingly and voluntarily made. It does not require the officer to perform a formal evaluation of the individual on those matters. It merely permits the notarial officer to refuse to perform the notarial act if the officer should not be satisfied as to those matters.

Subsection (b) gives the notarial officer the general authority to refuse to perform a notarial act for any other reason as long as the reason for the refusal is itself not a violation of other law of this state or the United States. Thus, for example, a notary public may be an employee whose employer has paid the expenses of obtaining and maintaining the notary public commission. Their understanding may be that the notary public will be available to perform notarial acts as needed by the employer but will not be available to perform them for general members of the public. A notary public under that arrangement may refuse to perform notarial acts for members of the public. In another context, a notary public may refuse to perform a notarial act with respect to an electronic record if the client demands that the notary use a technology for performing the notarial act that the notary has not selected (see Section 20(a)).

The subsection does prohibit, however, the officer from refusing to perform the notarial if the refusal is a violation of other law. For example, the notarial officer may not refuse to perform the notarial act due to discrimination that is prohibited by state or federal law. Indeed, such a refusal to perform the notarial act may also be punishable under the state or federal law.

SECTION 9. SIGNATURE IF INDIVIDUAL UNABLE TO SIGN. If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

Comment

This section recognizes that some individuals may not be personally able to sign a record because of a physical disability. If an individual is physically unable to sign the record, this section allows an alternate process.

This section allows a disabled individual, who is executing a record, to direct an individual other than the notarial officer to sign the executing individual's name to the record. It then requires the notarial officer to insert the quoted language in the record or to insert words of similar import. In effect, the executing individual is appointing another individual to act as the executing individual's agent for the purpose of signing the record.

SECTION 10. NOTARIAL ACT IN THIS STATE.

(a) A notarial act may be performed in this state by:

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

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

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

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

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

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

Legislative Note: *Subsection (a)(4) recognizes, collectively and in general terms, the authority of other individuals holding notarial powers authorized under other law of this state. However,*

instead of the nonspecific collective recognition stated in this subsection, it would be preferable to list in this subsection other specific officers or individuals holding notarial powers and, if their powers are limited, the notarial powers granted to them. Such a listing would provide a practical reference for a person seeking to determine whether an individual or holder of an office is authorized to perform notarial acts in this state. This reference would be especially valuable if a notarial act performed in this state is to be recognized in another state under Section 11. Therefore, subsection (a)(4) is bracketed to show that a state may optionally insert a specific list of those officers authorized to perform notarial acts.

Comment

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 are specifically authorized to perform notarial acts.

This Act provides two optional groups of authorized individuals. 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 a licensed attorney. The attorney's authority to perform notarial acts does not depend on the issuance of a notary public commission by the commissioning officer or agency. This subsection would not be relevant, however, if an attorney must obtain a commission as a notary public from the commissioning officer or agency in order to perform notarial acts.

Subsection (a)(4) recognizes the authority of other individuals to perform notarial acts if the performance of notarial acts by that individual is otherwise authorized by state law. Usually, the individuals recognized in this subsection are incumbents in a particular office. 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 proof of the authority of a notarial officer to perform a notarial act. Establishing that proof usually involves three steps:

1. Proof that the signature in the certificate of notarial act is that of the individual identified as a notarial officer;

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

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

Subsection (b) creates a prima facie presumption that a signature purported to be that of a notarial officer on the certificate of notarial act is, in fact, that of the named notarial officer. It also creates a prima facie presumption that the individual purporting to be a notarial officer in the certificate of notarial act does, in fact, hold the designated notarial office. These are the first two steps in the proof of a notarial act as listed above. However, being only prima facie evidence, these two elements may be disproved in a legal proceeding upon adequate proof.

Subsection (c) creates a conclusive presumption that notaries public, judges, clerks and [deputy clerks] of this state (and attorneys licensed to practice law in this state, if subsection (a)(3) is adopted) have the authority to perform notarial acts. Since this Act specifically authorizes individuals holding those offices to perform notarial acts, it is not possible to disprove that an individual holding one of those offices has the authority to perform notarial acts. This is the third step in the proof of a notarial act as listed above. However, this per se recognition does not extend beyond a notary public, judge, clerk or [deputy clerk] (or attorneys licensed to practice law in this state, if subsection (a)(3) is adopted) of this state. Authority of other individuals to perform notarial acts must be proven by reference to other law of this state.

SECTION 11. NOTARIAL ACT IN ANOTHER STATE.

(a) A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by:

(1) a notary public of that state;

(2) a judge, clerk, or deputy clerk of a court of that state; or

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

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

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

Comment

Subsection (a) lists the notarial officers of other states whose notarial acts, when performed in those states, will be recognized in this state. The officers listed in subsections (a)(1) and (2) are identical to the officers listed in Subsections 10(a)(1) and (2), above. It provides parity of recognition for notarial acts performed by those officers. Subsection (a)(3) recognizes notarial acts performed by other notarial officers of other states, when performed in those states, if they are authorized by law of the other state. It is parallel to the recognition of other notarial officers of this state as provided in subsection 10(a)(4) (and subsection 10(a)(3) if attorneys at law are authorized to perform notarial acts in the other state by reason of their

offices and not be reason of being issued commissions as notaries public). It clearly establishes that acknowledgements, verifications, affidavits, and other forms of notarial acts performed in another state by the listed notarial officers of that state meet the requirements of this section and are to be recognized in this state without the further need of a certification or authentication of the notarial officer by an official of the foreign state (see *Aspey v. Memorial Hospital,* 477 Mich. 120, 730 N.W.2d 695 (2007)).

Subsection (b) creates a prima facie presumption that a signature purported to be that of a notarial officer of the other state on the certificate of notarial act is, in fact, the signature of the named notarial officer. It also creates a prima facie presumption that the individual purporting to be a notarial officer of the other state in the certificate of notarial act does, in fact, hold the designated notarial office. These are the first two steps in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10. However, being only prima facie evidence, these two elements may be disproved in a legal proceeding upon adequate proof.

Subsection (c) creates a conclusive presumption that notaries public, judges, clerks and deputy clerks of the other state have the authority to perform notarial acts. Since this Act specifically recognizes the notarial acts of individuals holding those offices, it is not possible to disprove that an individual holding one of those offices has the authority to perform notarial acts. This abolishes the need for a "clerk's certificate," certification, or similar instrument to prove the authority of a notary public, judge, clerk or deputy clerk to perform a notarial act (see *Aspey v. Memorial Hospital,* 477 Mich. 120, 730 N.W.2d 695 (2007). This is the third step in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10. However, this per se recognition does not extend beyond a notary public, judge, clerk or deputy clerk of the other state. Authority of other individuals to perform notarial acts may be proven by reference to law of the other state. In addition, other forms of proof of authority to perform notarial acts, such as a "clerk's certificate" or certification are acceptable.

SECTION 12. NOTARIAL ACT UNDER AUTHORITY OF FEDERALLY RECOGNIZED INDIAN TRIBE.

(a) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this state, if the act performed in the jurisdiction of the tribe is performed by:

(1) a notary public of the tribe;

(2) a judge, clerk, or deputy clerk of a court of the tribe; or

(3) any other individual authorized by the law of the tribe to perform the notarial act.

(b) The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

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

Comments

Subsection (a) lists the notarial officers acting under the authority and in the jurisdiction of a federally recognized Indian tribe (see 25 C.F.R. §83.1 et. seq.; see also 25 U.S.C. §9 (2010)) whose notarial acts will be recognized in this state. The officers listed in subsections (a)(1) and (2) are identical to the officers listed in Subsections 10(a)(1) and (2), above. It provides parity of recognition for notarial acts performed by those officers. Subsection (a)(3) recognizes notarial acts performed by other notarial officers acting under the authority and in the jurisdiction of a federally recognized Indian tribe, if they are authorized by the law of the Indian tribe. It is parallel to the recognition of other notarial officers of this state as provided in subsection 10(a)(4) (and subsection 10(a)(3) if attorneys at law are authorized to perform notarial acts under the authority of a federally recognized Indian tribe by reason of their offices and not be reason of being issued commissions as notaries public).

Subsection (b) creates a prima facie presumption that a signature purported to be that of a notarial officer acting under the authority of an Indian tribe on the certificate of notarial act is, in fact, that of the named notarial officer. It also creates a prima facie presumption that the individual purporting to be a notarial officer acting under the authority of a federally recognized Indian tribe in the certificate of notarial act does, in fact, hold the designated notarial office. These are the first two steps in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10. However, being only prima facie evidence, these two elements may be disproved in a legal proceeding upon adequate proof.

Subsection (c) creates a conclusive presumption that notaries public, judges, clerks and deputy clerks acting under the authority of a federally recognized Indian tribe have the authority to perform notarial acts. Since this Act specifically recognizes the notarial acts of individuals holding those offices, it is not possible to disprove that an individual holding one of those offices has the authority to perform notarial acts. This abolishes the need for a "clerk's certificate," certification, or similar instrument to prove the authority of a notary public, judge, clerk or deputy clerk to perform a notarial act. This is the third step in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10. However, this per se recognition does not extend beyond a notary public, judge, clerk or deputy clerk acting under the authority of a federally recognized Indian tribe. Authority of other individuals to perform notarial acts may be proven by reference to law of the federally recognized Indian tribe. In addition, other forms of proof of authority to perform notarial acts, such as a "clerk's certificate" or certification are acceptable.

SECTION 13. NOTARIAL ACT UNDER FEDERAL AUTHORITY.

(a) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by:

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

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

(3) an individual designated a notarizing officer by the United States Department of State for performing notarial acts overseas; or

(4) any other individual authorized by federal law to perform the notarial act.

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

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

Comment

Some notarial acts are performed by notarial officers acting under federal authority or holding office under federal authority. This section recognizes the notarial acts performed by those officers when performed in accordance with federal law. Subsection (a)(1) recognizes the notarial acts performed by judges, clerks, and deputy clerks under federal law. It is the federal law parallel to the notarial officers recognized in subsections 10(a)(2) and 11(a)(2).

Subsection (a)(2) recognizes the authority of certain individuals to perform notarial acts while in the military service or under the authority of a military service. These provisions are currently codified in 10 U.S.C §1044a (2010). At the time of the drafting of this Act, subsection (b) of the federal codification provides the following individuals with the authority to perform notarial acts for the purposes stated in subsection (a) of the enactment:

> (b) Persons with the powers described in subsection (a) are the following:
> (1) All judge advocates, including reserve judge advocates when not in a

duty status.

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

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

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

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

Subsection (a)(3) recognizes the authority of an individual who is designated as a notarizing officer by the United States Department of State for performing notarial acts overseas. This has been a traditional function performed by a notarizing officer of the Department of State. In many parts of the world a notarial act performed by a notarizing officer of the Department of State may be the best means to perform a notarial act for records that must be recognized in the United States. See subsection 14(f) as to the effect of a consular authentication performed by an individual who is designated as a notarizing officer by the United States Department of State for performing notarial acts overseas .

Subsection (a)(4) provides recognition of the notarial acts performed by other notarial officers authorized under federal law who are not listed in the prior subsections. A variety of other federal officers may be authorized to perform notarial acts, such as wardens of federal prisons (see 18 U.S.C. §4004 (2010)).

Subsection (b) creates a prima facie presumption that the signature purported to be that of a notarial officer under federal law on the certificate of notarial act is, in fact, that of the named notarial officer. It also creates a prima facie presumption that the individual purporting to be a notarial officer in the certificate of notarial act does, in fact, hold the designated notarial office under federal law. These are the first two steps in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10. However, being only prima facie evidence, these two elements may be disproved in a legal proceeding upon adequate proof.

Subsection (c) creates a conclusive presumption that a federal judge, clerk or deputy clerk, an individual in the military service or acting under the authority of a military service, and an individual designated as a notarizing officer by the Department of State has the authority to perform notarial acts. Since this Act specifically recognizes the notarial acts of individuals holding those offices, it is not possible to disprove that an individual holding one of those offices has the authority to perform notarial acts. This is the third step in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10. However, this per se recognition does not extend beyond a federal judge, clerk or deputy clerk, an individual in the military service or acting under the authority of a military service, or an individual designated as a notarizing officer by the Department of State. Authority of other individuals to perform notarial acts under federal law may be proven by reference to federal law granting the authority.

SECTION 14. FOREIGN NOTARIAL ACT.

(a) In this section, "foreign state" means a government other than the United States, a state, or a federally recognized Indian tribe.

(b) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.

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

(d) The signature and official stamp of an individual holding an office described in subsection (c) are prima facie evidence that the signature is genuine and the individual holds the designated title.

(e) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(f) A consular authentication issued by an individual designated by the United States Department of State as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

Comment

Subsection (a) clarifies that, for purposes of this section, a "foreign state" means a foreign country and not the United States, a state in the United States federal system, or a federally

recognized Indian tribe.

Subsection (b) provides for the recognition of notarial acts performed by notarial officers acting under the authority and in the jurisdiction of a foreign state or its constituent units. It also recognizes the notarial acts performed by notarial officers acting under the authority of a multinational or international governmental organization. An example of a multinational or international governmental organization is the United Nations.

Subsection (c) states that if the title of a notarial office and the authority of a person in that office to perform notarial acts appear in a digest of foreign laws or in a list customarily used as a source for that information, the authority of a notarial officer holding that office to perform the indicated notarial acts is conclusively established. This is the third step in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10.

Subsections (d) states that the signature and official stamp of a notarial officer identified in subsection (c) provides prima facie evidence that (1) the officer's signature is genuine, and (2) the officer holds an office with the designated title. These are the first two steps in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10.

Being only a prima facie evidence that the notarial officer's signature is valid and that the officer holds an office with the designated title, those elements may be disproved in a legal proceeding upon adequate proof. If the validity of a foreign notarial officer's signature or the fact that the officer holds an office with the designated title is challenged, ultimate proof in a judicial proceeding may be expensive and time consuming. Furthermore, the potential of post hoc challenges may be detrimental to the promotion of international commerce. Therefore, the Act recognizes two means by which the validity of the notarial officer's signature and the certainty that the individual holds a notarial office with the designated title can be conclusively established: (1) "apostille," and (2) consular authentication.

Subsection (e) recognizes an "apostille" as one means of conclusively establishing those facts. The United States is a party to an international treaty regarding the authentication of notarial acts performed on public documents. The treaty is known as the Hague Convention ("Convention de La Haye du 5 octobre 1961"). Under this treaty, an "apostille" may be prepared by a competent authority in a foreign state in accordance with the treaty and stamped on or attached to the record. A competent authority is one designated by the foreign state from which the public document emanates. The "apostille" may be in the language of the foreign state in which it is issued, but the words "APOSTILLE (Convention de La Haye, du 5 octobre 1961)" are always in French. The "apostille" should conform as closely as possible to the Model annexed to the Convention.

Subsection (e) carries out the provisions of Hague Convention and gives effect to an "apostille" complying with the treaty. It states that the "apostille" conclusively establishes that: (1) the signature of the notarial officer on the certificate is genuine, and (2) the officer holds an office with the indicated title. When combined with the conclusive presumption established under subsection (c) as to the authority of a notarial officer with a designated title to perform a

notarial act, all three steps in the proof of the authority of a notarial officer to perform a notarial act, as listed in the Comment to Section 10, are met.

The "apostille" has the following form, which is set forth in the annotation to Federal Rules of Civil Procedure Rule 44:

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:
   .....

Subsection (f) provides an alternative means by which (1) the fact that the signature of the notarial officer on the certificate is genuine, and (2) the fact that the officer held an office with the designated title may be assured. Under it, an individual designated by the United States Department of State as a notarizing officer for performing notarial acts overseas may provide that assurance by means of a consular authentication. A consular authentication conclusively establishes that (1) the signature of the foreign notarial officer is valid, and (2) the officer holds the indicated office. The consular authentication must be attached to the record with respect to which the notarial act is performed. When combined with the conclusive presumption established under subsection (c) as to the authority of a notarial officer with a designated title to perform a notarial act, all three steps in the proof of the authority of a notarial officer to perform a notarial act, as listed in the Comment to Section 10, are met.

SECTION 14A. NOTARIAL ACT PERFORMED FOR REMOTELY LOCATED INDIVIDUAL.

(a) In this section:

(1) "Communication technology" means an electronic device or process that:

(A) allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(B) when necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(2) "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

(3) "Identity proofing" means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(4) "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

(5) "Remotely located individual" means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection (c).

(b) A remotely located individual may comply with Section 6 by using communication technology to appear before a notary public.

(c) A notary public located in this state may use communication technology to perform a notarial act for a remotely located individual if:

(1) the notary public:

(A) has personal knowledge under Section 7(a) of the identity of the remotely located individual;

(B) has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under Section 7(b) or this section; or

(C) has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(2) the notary public is able reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

(3) the notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act; and

(4) for a remotely located individual located outside the United States:

(A) the record:

(i) is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or

(ii) involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and

(B) the act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

[(d) A notary public located in this state may use communication technology under subsection (c) to take an acknowledgment of a signature on a tangible record physically present before the notary public if the record is displayed to and identified by the remotely located individual during the audio-visual recording under subsection (c)(3).]

[(e) The requirement under subsection (c)(2) for the performance of a notarial act with respect to a tangible record not physically present before the notary public is satisfied if:

(1) the remotely located individual:

(A) during the audio-visual recording under subsection (c)(3), signs:

(i) the record; and

(ii) a declaration, in substantially the following form, that is part of or securely attached to the record:

I declare under penalty of perjury that the record of which this declaration is a part or to which it is attached is the same record on which (name of notary public), a notary public, performed a notarial act and before whom I appeared by means of communication technology on (date).

_____
Signature of remotely located individual

_____
Printed name of remotely located individual; and

(B) sends the record and declaration to the notary public not later than [three] days after the notarial act was performed; and

(2) the notary public:

(A) in the audio-visual recording under subsection (c)(3), records the individual signing the record and declaration; and

(B) after receipt of the record and declaration from the individual, executes a certificate of notarial act under Section 15, which must include a statement in substantially the following form:

I (name of notary public) witnessed, by means of communication technology, (name of remotely located individual) sign the attached record and declaration on (date).

(f) A notarial act performed in compliance with subsection (e) complies with Section 15(a)(1) and is effective on the date the remotely located individual signed the declaration under subsection (e)(1)(A)(ii).

(g) Subsection (e) does not preclude use of another procedure to satisfy subsection (c)(2) for a notarial act performed with respect to a tangible record.]

[(h) A notary public located in this state may use communication technology under subsection (c) to administer an oath or affirmation to a remotely located individual if, except as otherwise provided by other law of this state, the notary public:

(1) identifies the individual under subsection (c)(1);

(2) creates or causes the creation under subsection (c)(3) of an audio-visual recording of the individual taking the oath or affirmation; and

(3) retains or causes the retention under subsection (k) of the recording.]

(i) If a notarial act is performed under this section, the certificate of notarial act under Section 15 and the short-form certificate under Section 16 must indicate that the notarial act was performed using communication technology.

(j) A short-form certificate under Section 16 for a notarial act subject to this section is sufficient if it:

(1) complies with rules adopted under subsection (m)(1); or

(2) is in the form under Section 16 and contains a statement in substantially the following form:

This notarial act involved the use of communication technology.

(k) A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audio-visual recording created under subsection (c)(3) or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subsection (m)(4), the recording must be retained for at least [10] years.

(l) Before a notary public performs the notary public's initial notarial act under this section, the notary public must notify the [commissioning officer or agency] that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the [commissioning officer or agency] has established standards under subsection (m) and Section 27 for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

(m) In addition to adopting rules under Section 27, the [commissioning officer or agency] may adopt rules regarding performance of a notarial act under this section. The rules may:

(1) prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(2) establish standards for communication technology and identity proofing;

(3) establish requirements or procedures to approve providers of communication technology and the process of identity proofing; [and]

(4) establish standards and a period for the retention of an audio-visual recording under subsection (c)(3)[; and

(5) prescribe methods for a notary public to confirm under subsections (d) and (e) the identity of a tangible record].

(n) Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the [commissioning officer or agency] must consider:

(1) the most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations

and the recommendations of the National Association of Secretaries of State;

(2) standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

(3) the views of governmental officials and entities and other interested persons.

[(o) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audio-visual recording under subsection (c)(3), the provider of the communication technology, identity proofing, or storage appoints the [commissioning officer or agency] as the provider's agent for service of process in any civil action in this state related to the notarial act.]

Legislative Note: *The optional provisions of subsections (d) through (h) are intended for a state that seeks greater specificity in application of the section. Subsections (e), (f), (g), and (m)(5) should be enacted only together and not individually.*

Subsection (o) is an optional subsection. This optional subsection may be adopted by a state if it wishes to provide greater assurance that should a person located in the adopting state be injured by the actions of a remote service provider that person will be able to obtain jurisdiction over the provider in the adopting state.

Comment

This section authorizes a notary public to perform notarial acts in the state in which he or she is commissioned on behalf of an individual who is not physically present before the notary public. That remote individual may be located elsewhere in the state in which the notary is located, elsewhere in the United States, or outside the United States.

This section requires that a notary public perform the notarial act in the state in which the notary is commissioned or in another state in which the notary is authorized to act.

Subsection (a):

"Communication technology." Subsection (b) authorizes a remotely located individual to appear before a notary public by means of communication technology. Subsection (a)(1) defines the method of electronic communication by which the notary public and the remote individual must communicate. Subsection (a)(1)(A) provides that the technology must afford synchronous communication between the notary public and the remotely located individual; asynchronous communication is not permitted.

The technology must consist of both audio and video components. The notary public and the remotely located individual must be able to see and hear each other interactively in real time. This will provide a notary public an opportunity to assess the competency of the remotely located individual and evaluate whether the individual's acts are knowingly and voluntarily made.

Over time communication technology will change. Currently a number of communication systems exist. However, it is recognized that these systems will be updated and that other processes will make their appearance and that other providers will enter the communication technology community. Consequently, communication technology is not limited to a specific protocol or technology. The regulation and approval of communication technology, any changes to it, and their providers resides with the commissioning officer or agency pursuant to subsection (m)(2).

Subsection (a)(1)(B) recognizes that some individuals may have a vision, hearing or speech impairment and may not be able to communicate by sight or sound in the same way as a person who does not have such an impairment. Consequently, this subsection allows for an accommodation that will facilitate communication by and with the person with the impairment. For example, the accommodation might allow for a visual transcription of the other party's spoken words.

This subsection does not itself state when such an accommodation is required or how it will be implemented. That determination is based on other applicable law at either the federal or state level. Further, the commissioning officer or agency may adopt rules regarding the provision of accommodations to persons with a vision, hearing or speech impairment pursuant to subsections (m)(1) and (m)(2).

"Foreign state." Subsection (a)(2) defines a foreign state as a foreign country and not the United States, a state in the United States federal system, a federally recognized Indian tribe, or any other location subject to the jurisdiction of the United States.

"Identity proofing." Subsection (c)(1)(C) authorizes the use of identity proofing to verify the identity of the remotely located individual. This subsection defines that term.

Identity proofing is a service or process that is provided by a third person. The verification is performed by comparing and reviewing data from public or private data sources with information from or provided by the remotely located individual.

The precise methodologies for identity proofing will change over time and this subsection recognizes that fact. Currently, some frequently used technologies involve asking the remotely located individual a number of personal questions, the verification of which can be ascertained from public or private data sources (which is generally referred to as "knowledge-based authentication"), or the remote analysis of the characteristics and security features of identity cards (which is generally referred to as "credential analysis"). Correct answers to identity proofing questions or the analysis of identity cards provide a reasonable degree of certainty regarding the identity of a remotely located individual that is comparable to or better than what

occurs in face-to-face notarization. However, the methodologies are not limited to that process. Other methodologies currently exist or may develop. They include, for example, secure password identification, biometric identification, or possession or use of a digital identification certificate.

The regulation and approval of identity-proofing, any changes to it, and its providers resides with the [commissioning officer or agency] pursuant to subsections (m)(2) and (m)(3). Some states may prefer a simple mandate to use reasonably reliable methods of identity proofing subject to compliance actions for failure to do so; others may prefer to adopt standards for communication technologies. Still other states may elect to require the pre-approval of all technologies that are used in identity proofing.

"Outside the United States." In accordance with subsection (c)(4) a notary public may perform a notarial act on behalf of a remotely located individual who is "located outside the United States." This subsection defines the venues that are located outside the United States as those located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

"Remotely located individual." The provisions of this Section apply only to a notarial act performed by a notary public for a remotely located individual. This subsection defines a remotely located individual as a person who is not in the physical presence of the notary public performing the notarial act. The performance of a notarial act on behalf of an individual who is in the physical presence of the notary public must comply with provisions specified elsewhere in this act.

The remotely located individual may be located in the state in which the notary public is commissioned or elsewhere in the United States. The remotely located individual also may be located outside the United States although, in that case, the requirements specified in subsection (c)(4) apply.

Subsection (b): Section 6 states that an individual for whom a notary public performs a notarial act must appear personally before the notary public. This subsection states that an individual appearing before a notary public by means of communication technology complies with the requirements of that section. In effect, this provision provides a new definition for the personal appearance requirement for a remotely located individual appearing before a notary public by means of communication technology in accordance with this section.

Subsection (c): This subsection sets out specific requirements for the performance of a notarial act on behalf of a remotely located individual.

Subsection (c)(1) states three methods by which a notary public may identify a remotely located individual. Subsection (c)(1)(A) allows the notary public to identify the remotely located individual by personal knowledge as provided in Section 7(a). Thus, a notary public may identify the remotely located individual if the notary public has had prior dealings with the remotely located individual and is able to identify that individual with a reasonable certainty.

Subsection (c)(1)(B) allows a notary public to identify the remotely located individual by means of an oath or affirmation from a credible witness. That witness may be located in the physical presence of the notary public and able to be identified by the notary public in accordance with Section 7(b)(2). Alternatively, the witness may be remotely located and appear before the notary public by means of communication technology, in which case the witness must be able to be identified by the notary public by identity proofing in accordance with the provisions of this Section.

Subsection (c)(1)(C) provides that reasonable identification of a remotely located individual requires the application of at least two different types of identity-proofing processes or services. Thus, for example, an individual may be identified by two of the following technologies: (1) knowledge-based authentication; (2) credential analysis; and (3) biometric identification technology. This subsection does not evaluate or specify which processes or services are to be used. It also permits other identity proofing technologies to be used as they become available and reliable. This act does not mandate that one of the methods of identify proofing utilized must be credential analysis because such an approach would freeze into law technology specific requirements. Subsections (m)(2) and (m)(3) authorize the commissioning officer or agency to establish standards for identity proofing and to establish requirements and procedures to approve providers of identity proofing.

Subsection (c)(2) requires that the notary public be reasonably able to identify the record before the notary public as the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

Thus, for example, a notary public might verify the record by means of a secure electronic signature tied to the tamper-evident electronic record which the notary public is notarizing.

Subsection (c)(3) requires that an audio-visual recording of the performance of the notarial act be created. Being able to witness the sight and sound of the conversation between a notary public and a remotely located individual provides substantial evidence as to the validity of the performance of a notarial act as well as evidence as to compliance with the requirements of this Section. The recording may be created either by the notary public or by a person acting on behalf of the notary public. The period for retention of the recording is specified in subsection (k).

Subsection (c)(4) specifies the requirements for the performance of a notarial act for an individual who is located outside the United States.

Subsection (c)(4)(A) provides that the record with regard to which a notarial act is to be performed on behalf of an individual who is located outside the United States must satisfy either of two requirements:

(i) The record may be part of or pertain to a matter that is to be filed with or relates to a matter before a court, governmental entity, or other entity subject to the jurisdiction of the United States. This may be a judicial proceeding (e.g. a lawsuit in which the record will be

submitted), a matter before an administrative agency (e.g. a matter before a federal or state regulatory board), or a matter that is before another governmental or non-governmental entity (e.g. a record that will be submitted to a corporate entity). In any case, the court, agency, or other entity must be located in the territorial jurisdiction of the United States, although the location of the court, agency, or other entity need not be in the same state in which the notary public is performing the notarial act.

(ii) The record may involve property located in the territorial jurisdiction of the United States, or it may involve a transaction that is substantially connected with the United States. The property described in the first clause may be either real or personal property. It need not be located in the same state in which the notary public is performing the notarial act. Thus, for example, the matter may involve an acknowledgement on a deed that is transferring real property located anywhere in the United States, or it may involve an affidavit filed with regard to a transfer of a decedent's personal property located anywhere in the United States.

Subsection (c)(4)(B) provides that the act of making the statement or signing the record must not prohibited by the foreign country in which the remotely located individual is located. Under this Section the notarial act is performed in the state in which the notary public is located at the time of the performance of the notarial act. If the act is performed on behalf of an individual located in a foreign country, that nation nevertheless might seek to impose a penalty on the remotely located individual, the notary public, or both for performing the notarial act. Thus, this subsection states that, in order for the notarial act to be permitted under this Section, the act of making the statement or signing the record must not be prohibited in the foreign country in which the remotely located individual is situated.

It is hoped that the United States Department of State will be able to provide a listing of foreign countries that would seek to impose a penalty in the case of a remote notarization. If provided, that listing should be consulted by the notary public and the individual located outside the United States before attempting to perform the notarial act.

This subsection is not intended to impose a requirement upon a notary public to translate, understand, or interpret the laws of foreign countries. Instead, it is intended to respect the sovereignty of other nations and to alert international users of remote notarial services that they may be exposed to sanctions under the laws of other countries.

Preamble to Subsections (d), (e), (f), and (g): With the advent of the Covid-19 pandemic in 2020, would-be users of notarial services were often unable to visit a notary public. Lockdowns and social distancing requirements prevented or made difficult traditional in-person meetings between notaries and their clients. However, the 2018 amendments to Section 14A permitting remote notarization provided notaries with the ability to provide notarial services by means of communication technology.

Nevertheless, some issues, not anticipated at the time of the 2018 amendments, presented themselves and needed resolution. One issue was whether and by what process a notary is able to take an acknowledgement by means of communication technology from a remotely located individual regarding a tangible record that is in the possession to the notary. Another issue was

whether and by what process a notary is able to perform a notarial act by means of communications technology for a remotely located individual regarding a tangible record that, at the time of the performance of the notarial act, is still in the possession of the individual. Finally, the 2018 amendments did not specifically provide that a notary was able to administer an oath or affirmation remotely via communication technology.

Although the pandemic may have brought these issues into focus, their occurrence is not limited to pandemic scenarios. Subsections (d), (e), (f), (g), and (h) were adopted to resolve these issues and to clarify the processes by which these remote notarial acts may be performed.

Subsection (d): A remotely located individual may request a notary public to take an acknowledgement of the individual's signature on a tangible record that the individual has sent to the notary. During the recent pandemic this scenario might have arisen if an individual was unable to appear physically before a notary due to a lockdown or social distancing requirements and sent the record to a notary in anticipation of acknowledging it via communication technology.

Although taking an acknowledgement on a tangible record in a notary's presence by communication technology is reasonably implied in subsection (c)(2), the authority and process by which it is to be performed needed clarification. Accordingly, subsection (d) affirms the authority of the notary to use communication technology to take the acknowledgement from the remotely located individual. It further specifies that during the audio-visual session required by subsection (c)(3), the tangible record physically present before the notary must be displayed to the remotely located individual and the remotely located individual must identify the record. That display and identification must be captured in the audio-visual recording required by subsection (c)(3).

Subsection (e): The situation that the next three subsections address is, in some ways, the converse of that addressed in subsection (d). Subsection (d) concerns a tangible record that *is physically present* before a notary public at the time a remotely located individual acknowledges the individual's signature on it. Subsection (e) concerns a tangible record that is still in the possession of a remotely located individual and *is not physically present* before a notary at the time the notary performs a notarial act with regard to it.

In the recent pandemic, this situation might have arisen if a hospitalized individual needed a notary to witness the signing of an affidavit or certain estate planning documents; the individual would have been unable to leave the hospital to meet with a notary and a notary would have been unable to visit the hospital. Or it might have arisen simply because an individual signing a tangible record was unable to be physically present before a notary due to a lockdown or remote distancing requirements. Even after the pandemic, remotely located individuals will likely continue to desire to have their signatures on tangible records witnessed and notarized remotely.

If a notary witnesses a remotely located individual signing a tangible record by means of communication technology, it is clearly not possible that the tangible record would be physically present before the notary. Subsection (c)(2) requires that the notary be able reasonably to

confirm that the record to which the notary subsequently attaches a notarial certificate is the same record that the notary witnessed the remotely located individual sign. Thus, some procedure is necessary to allow the notary to confirm, after receipt of the record from the individual, that the record and signature are the same as those witnessed remotely by the notary.

If the requirements of subsection (e) are met, it permits a notarial act to be performed with regard to a tangible record that is not physically present before the notary at the time it is signed. However, in order to assure with a high degree of certainty that the tangible record signed by the remotely located individual is the same record to which the notary attaches a notarial certificate after the tangible record is received by the notary, the subsection sets out a number of requirements. Subsection (e) provides that a notary is able to confirm that the requirements of subsection (c)(2) are met.

Subsection (e)(1) imposes two requirements on the remotely located individual:

Subsection (e)(1)(A) provides that, during the audio-visual recording required by subsection (c)(3), the remotely located individual must sign the tangible record as well as a declaration stating that the record is the same record on which the notary performed the notarial act by communication technology. The witnessing by the notary of the remotely located individual signing the record and declaration provide a reasonable confirmation to the notary that a record was executed by the remotely located individual.

If a remotely located individual is physically unable to sign the record or the declaration, Section 9 authorizes another individual at the direction of the remotely located individual to sign the name of the remotely located individual.

Subsection (e)(1)(B) provides that the remotely located individual must send the executed tangible record and declaration to the notary within three days after the performance of the notarial act. A reasonably short time limit on submitting the record and declaration to the notary is necessary in order to help maintain its validity as well as prevent the lapse of too long a period of time between the performance of the notarial act and the attachment of the notarial certificate. Selection of any specific time period is, in a way, arbitrary, but it is believed that a three-day period is a realistic compromise allowing a reasonable time for the individual to send the record and declaration to the notary.

It should be noted that the requirement is that the record and declaration be sent to the notary within three days; it need not necessarily be received by the notary within the three-day period. The individual may use any normal means to send the record and declaration to the notary, including the U.S. Postal Service, a package or document delivery service, or personal delivery.

Subsection (e)(2) imposes two additional requirements on the notary:

Subsection (e)(2)(A) provides that the notary must record the remotely located individual signing the record and declaration as part of the audio-visual recording required under subsection (c)(3). This recording, which must be retained for a period of at least ten years under subsection

(k), provides a reviewable record of the administration of the notarial act. It also provides added assurance that the record signed by the individual and the record to which the notarial certificate will be attached are one and the same.

Subsection (e)(2)(B) provides that, after receipt of the record and declaration from the remotely located individual, the notary must execute and attach the certificate of notarial act required by Section 15. That certificate must include a statement clearly indicating that the notary witnessed the signing of the record and declaration by means of communication technology and performed the notarial act by means of communication technology. This statement provides notice to a reader of the certificate as to the method of the performance of the notarial act.

Subsection (f): This subsection provides that a notarial act performed in compliance with subsection (e) will be considered to be effective on the date that the remotely located individual signed the declaration required by subsection (e)(1)(A)(ii). This provision makes clear that the notarial act was performed at the time that the remotely located individual signed the declaration and not at the later date when the certificate of notarial act is attached to the record. Inter alia, this assures that should the remotely located individual die or become incapacitated prior to the notary's receipt of the record and declaration and the notary's attachment of the notarial certificate, the notarial act was nevertheless performed and valid.

The subsection further provides that a notarial act performed in compliance with subsection (e) will be considered to meet the requirements of Section 15(a)(1), which normally requires that the certificate of notarial act be executed contemporaneously with the performance of the notarial act.

Subsection (g): As noted above, the procedures specified in subsection (e) provide an avenue by which a notary public may establish that the notary was reasonably able to confirm, as required by subsection (c)(2), that the record before the notary is the same record that the remotely located individual executed. Subsection (g) recognizes that subsection (e) does not set forth the only procedure by which that confirmation may be obtained. Other procedures may exist or be devised that also comply with subsection (c)(2). However, compliance with subsection (e) provides the notary with a safe harbor to satisfy this requirement.

Subsection (h): Although Section 1(5) recognizes that administering an oath or affirmation is a notarial act, the 2018 amendments to Section 14A did not specifically recognize the ability of a notary public to administer an oath or affirmation to a remotely located individual by means of communication technology. Subsection (h) specifically authorizes a notary public to administer an oath or affirmation by means of communication technology and sets out certain requirements for its performance.

To administer the oath or affirmation remotely, subsection (h)(1) provides that the notary must identify the remotely located individual as required in subsection (c)(1). Subsection (h)(2) provides that the notary must create an audio-visual recording of the remotely located individual while the oath or affirmation is administered in accordance with subsection (c)(3). Finally, subsection (h)(3) provides that the notary must retain or cause the retention of that recording in

accordance with subsection (k).

Subsection (h) also recognizes that other state law or regulation may already establish other requirements for the remote administration of an oath or administration. If this subsection is in conflict, the other state law or regulation continues to regulate the remote administration of an oath or affirmation.

Subsection (i): This subsection provides that the certificate of notarial act must, in addition to the requirements imposed by Section 15, indicate that the notarial act was performed by communication technology. This notation on the certificate is, in effect, a notice to interested parties that the notarial act was performed for a remotely located individual by means of communication technology.

Subsection (j): This subsection states that a short-form certificate set out in Section 16 is sufficient to comply with subsection (i) in either of the following:

(i) The certificate complies with any requirements adopted under subsection (m)(1) by the commissioning officer or agency, or

(ii) The certificate is in the form of a certificate set out in Section 16 and contains a additional statement providing substantially as follows: "This notarial act involved the use of communication technology."

Subsection (k): This subsection requires that a notary public; a guardian, conservator, or agent of the notary public; or a personal representative of a deceased notary public must retain the audio-visual recording created under subsection (c)(3). Alternatively, the recording may be retained by a repository on behalf of a person required to retain the recording. The suggested period for retention of the recording is ten years, although this may be varied by the legislature at the time of enactment. Furthermore, the commissioning officer or agency may require a different period by rule pursuant to its powers under subsection (m)(4) and may vary retention period for different types of documents.

Subsection (l): Prior to performing his or her first notarial act under this Section, a notary public must notify the commissioning officer or agency that the notary public will be performing notarial acts for remotely located individuals by means of communication technology. The notary public must identify all of the technologies that she or he will be using to provide the notarial service. In this regard, the term "technologies" is broader than merely communication technology. It includes not only communication technology but also, for example, any technology used to perform identity proofing.

The commissioning officer or agency may have established standards for the approval of communication technology under subsection (m)(2) and Section 27. If so, the communication technology must conform to those standards. If the communication technology does so conform, the commissioning officer or agency will then approve the technology. If the commissioning officer or agency has not established standards, the notification provided to the commissioning officer or agency containing the required information suffices to comply with this subsection.

Subsection (m): This subsection authorizes the commissioning officer or agency to adopt rules regarding the performance of a notarial act by communication technology for a remotely located individual. Adopting such rules will be of particular importance since the provisions of this Section are a significant revision of prior notarial practice.

Specifically listed in the subsection is the authority to adopt rules regarding: (1) the means of performing a notarial act involving a remotely located individual using communication technology; (2) standards for communication technology and identity proofing; (3) requirements or procedures to approve providers of communication technology and the process of identity proofing; (4) standards and the period for the retention of an audio-visual recording created under subsection (c)(3); and (5) methods for a notary public to confirm the identity of a tangible record under subsections (d) and (e).

Further authority for the adoption of rules regarding the performance of a notarial act for a remotely located individual are provided in Section 27.

Subsection (n): This subsection directs that the commissioning officer or agency must consider certain factors before adopting, amending, or repealing a rule governing the performance of a notarial act with respect to a remotely located individual. Specifically listed are: (1) the most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organization and particularly by the National Association of Secretaries of State; (2) standards, practices, and customs of other jurisdictions that have laws substantially similar to this Section; and (3) the views of governmental officials and entities and other interested persons.

Subsection (o): This subsection provides that a supplier of communication or identity proofing technology or a provider of storage for the audio-visual recording appoints the commissioning officer or agency as the supplier's or provider's agent for service of process in a civil action relating to the notarial act. Since the subsection only applies to civil actions "in this state related to the notarial act," only claims arising out of notarial acts performed in the state are subject to its provisions.

SECTION 15. CERTIFICATE OF NOTARIAL ACT.

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

(1) be executed contemporaneously with the performance of the notarial act;

(2) be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the [commissioning officer or agency];

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

(4) contain the title of office of the notarial officer; and

(5) if the notarial officer is a notary public, indicate the date of expiration, if any, of the officer's commission.

(b) If a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to or embossed on the certificate. If a notarial act is performed regarding a tangible record by a notarial officer other than a notary public and the certificate contains the information specified in subsection (a)(2), (3), and (4), an official stamp may be affixed to or embossed on the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in subsection (a)(2), (3), and (4), an official stamp may be attached to or logically associated with the certificate.

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

(1) is in a short form set forth in Section 16;

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

(3) is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or

(4) sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in Sections 5, 6, and 7 or law of this state other than this [act].

(d) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in Sections 4, 5, and 6.

(e) A notarial officer may not affix the officer's signature to, or logically associate it

with, a certificate until the notarial act has been performed.

(f) If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the [commissioning officer or agency] has established standards pursuant to Section 27 for attaching, affixing, or logically associating the certificate, the process must conform to the standards.

Comment

Subsection (a) provides that a notarial act must be evidenced by a certificate of notarial act. It sets out the requirements of that certificate:

Subsection (a)(1) – The certificate must be executed contemporaneously with the performance of a notarial act. The performance of a notarial act may take some period of time to accomplish, especially in large transactions with long closings. The fact that the certificate is not executed by the notarial officer immediately after the individual signs and acknowledges a deed would not necessarily demonstrate a lack of contemporaneous execution. However, a certificate that is not executed until some days after an individual signs and acknowledges a deed and the transaction is closed would not be a contemporaneous execution.

Subsection (a)(2) – The certificate must be signed and dated by the notarial officer. If the notarial officer is a notary public, the signature must be signed in the same manner as the signature that is on file with the commissioning officer or agency. For example, if a signature on file with the commissioning officer or agency contains the notary public's middle initial, the signature on the certificate must also contain the initial.

Subsection (a)(3) – The certificate must identify the jurisdiction in which the notarial act is performed. This is normally done by identifying the state and county in which the notarial act is performed (see Section 16, Short Forms). (Some states allow, on a reciprocity basis, notaries public of this state to perform notarial acts in a neighboring state or in counties in a neighboring state. Nothing in this Act changes or limits that reciprocity).

Subsection (a)(4) – The certificate must identify the title of office of the notarial officer. For example, the office may be notary public or clerk of court. The notarial officer may also be an individual in a military service or performing duties under the authority of a military service, in which case the individual's rank or position should be identified.

Subsection (a)(5) – If the officer is a notary public, the certificate must contain the expiration date of the notary public's commission, if any. In some states, the expiration date will be part of a notary public's official stamp (see Section 17(1)) and the use of the official stamp will satisfy the requirements of this subsection. However, if a notary public's official stamp does

not contain the expiration date because it is not required under Section 17(1) or if a notary publicis not required use an official stamp under subsection (b), the expiration date of the notary public's commission must be separately inserted.

Subsection (b) identifies those circumstances in which the certificate of notarial act must contain the official stamp of the notarial officer.

If the notarial act is performed with respect to a tangible medium and is performed by a notary public, subsection (b) requires that the notary public's official stamp be affixed to or embossed on the certificate of notarial act.

If the notarial act is performed with respect to a tangible medium and is performed by a notarial officer other than a notary public, subsection (b) states that an official stamp may be attached to or embossed on the certificate of notarial act. However, although permitted, it is not required by this act. Whether a notarial officer other than a notary public is required to use an official stamp and what the contents of that stamp may be will depend on other law of this state. That law may not require the use of a stamp or it may require the use of a stamp but may specify other contents. Regardless of whether an official stamp is attached to or embossed on the certificate, the certificate nevertheless must, at a minimum, contain the information specified in subsections (a)(2), (3) and (4).

If the notarial act is performed with respect to an electronic record by a notarial officer, whether a notary public or otherwise, subsection (b) states that the officer's official stamp may be attached to, or associated with, the electronic certificate of notarial act. However, although permitted, this subsection does not require that a notarial officer's official stamp be attached to or logically associated with an electronic certificate. Regardless of whether an official stamp is attached to or logically associated with an electronic certificate, the electronic certificate nevertheless must, at a minimum, contain the information specified in subsections (a)(2), (3) and (4). These are the same provisions found in URPERA §3(c), UETA §11, and ESign §101(g) regarding the performance of notarial acts with respect to electronic records.

Subsection (c) provides that if the certificate of notarial act meets the requirements of subsections (a) and (b), it may be in (1) the appropriate short form set out in Section 16, (2) any other form permitted by the law of this state, (3) any other form permitted by the law of the place where the notarial act is performed if other than this state, or (4) any form that sets forth the actions of the notarial officer if those actions meet the requirements of Sections 5, 6, and 7 or law other than this act, whether state or federal. Thus, acknowledgments and other notarial acts may be in the short forms provided in Section 16 or may be in more prolix and elaborate traditional forms provided they contain the required information.

Subsection (d) emphasizes the obligation of the notarial officer to comply with the requirements of, and to make the determinations required by, Sections 5, 6, and 7. By executing the certificate, the notarial officer certifies that the officer has done so.

Subsection (e) provides that the notarial officer may not sign the certificate until the notarial act has been fully performed (compare N.C. Gen. Stat. §10B-35 (2009)).

Subsection (f) seeks to assure the unified integrity of the record and the related certificate of notarial act. With respect to a notarial act evidenced on a tangible record, this subsection requires that the certificate must be a part of, or securely attached to, the record. If the certificate is not a part of the record itself, the means of attaching the certificate to the record are not specified. However, stapling is a common means.

Affixing an electronic certificate to, or associating it with, an electronic record requires sophisticated technology. There are multiple technologies by which the affixing or associating may be accomplished and those technologies will undoubtedly change over time as technologies improve and change. Accordingly, subsection (f) does not adopt any particular technology or limit the affixing or associating to technologies that are currently available. Rather, it provides that the certificate must be affixed to, or logically associated with, the electronic record in accordance with standards as may be approved by the commissioning officer or agency. The standards are left to the determination of the commissioning officer or agency under Section 27 and will depend on the available technology and the degree of security provided by available technology. In the absence of standards adopted by the commissioning officer or agency, the notary public may proceed with performing notarial acts with respect to electronic records as long as the notary public employs tamper evident technologies as required by Section 20.

SECTION 16. SHORT FORM CERTIFICATES. The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by Section 15(a) and (b):

(1) For an acknowledgment in an individual capacity:

State of _____

[County] of _____

This record was acknowledged before me on _____ by _____
Date Name(s) of individual(s)

_____
Signature of notarial officer

Stamp

[_____]
Title of office

[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of _____

[County] of _____

This record was acknowledged before me on _____ by _____
Date Name(s) of individual(s)

as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

_____
Signature of notarial officer

Stamp

[_____]
Title of office

[My commission expires: _____]

(3) For a verification on oath or affirmation:

State of _____

[County] of _____

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

_____
Signature of notarial officer

Stamp

[_____]
Title of office

[My commission expires: _____]

(4) For witnessing or attesting a signature:

State of _____

[County] of _____

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

_____
Signature of notarial officer

Stamp

[_____]
Title of office

[My commission expires: _____]

(5) For certifying a copy of a record:

State of _____

[County] of _____

I certify that this is a true and correct copy of a record in the possession

of _____.

Dated _____

_____
Signature of notarial officer

Stamp

[_____]
Title of office

[My commission expires: _____]

Comment

This section provides statutory short form certificates of various notarial acts. These forms are sufficient to document a notarial act in this state. See Section 15(c)(1). Other forms may also qualify as stated in Section 15(c)(2), (3), and (4).

These certificates may be used for notarial acts performed on tangible records as well as those performed with respect to electronic records. They are available for notarial acts performed by notaries public as well as notarial officers who are not notaries public. Under Section 15(b), an official stamp is required on the certificate if the notarial act is performed on a

tangible record by a notary public. Under Section 15(b), if the notarial act is performed on a tangible record by a notarial officer other that a notary public or is performed by any notarial officer on an electronic record, an official stamp is optional, but the information or acts specified in Section 15(a)(2), (3) and (4) must be supplied. The short forms provided in this section call for the insertion of that information or the performance of those acts.

The calls in each of the forms for state and county information refer to the state and county where the notarial act is performed.

SECTION 17. OFFICIAL STAMP. The official stamp of a notary public must:

(1) include the notary public's name, jurisdiction, [commission expiration date,] and other information required by the [commissioning officer or agency]; and

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

Legislative Note: *Among the elements of a notary public's official stamp, paragraph (1) includes the expiration date of the notary public's commission. Under the current law of some states, notary public commissions do not have an expiration date. A legislature may wish to continue the practice of issuing notary public commissions without expiration dates (see Section 21(e)). In addition, the current practice in some states is not to require that the expiration date be included as one of the elements of the official stamp, but rather to allow it to be inserted by means of another stamp or by hand. A legislature may wish to continue that practice. Therefore, the provision in paragraph (1) requiring the official stamp to include the expiration date of the commission is optional.*

Comment

This section sets forth two requirements for a notary public's official stamp, whether the stamp is a physical image attached to, or embossed on, a tangible certificate of notarial act or an electronic image attached to, or logically associated with, an electronic certificate of notarial act.

Subsection (1) provides that the official stamp must state the notary public's name. Since Subsection 15(a)(2) requires that a notary public sign the notary's name as it appears on file with the commissioning officer or agency, the name of the notary on the official stamp should also conform with the name on file with the commissioning officer of agency. The official stamp must state the jurisdiction in which the notary public is commissioned. An optional provision states that the official stamp must set forth the date on which the notary public's commission expires. Finally, the official stamp must include any other information that is required by the commissioning officer or agency.

Subsection (2) requires that the official stamp be capable of being copied together with the record to or with which it is attached or logically associated. Thus, for example, an official

stamp that is affixed with a rubber stamping device and ink must provide a clear image in an ink that is capable of being copied. An official stamp that is affixed by embossing must do so in such a way that the information in the embossment is capable of being copied. An official stamp that is attached to, or logically associated with, an electronic record must be capable of being copied by the same technology by which the electronic record is copied.

SECTION 18. STAMPING DEVICE.

(a) A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. [On resignation from, or the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device, if any, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable.]

(b) If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the commissioning officer or agency on discovering that the device is lost or stolen.

Legislative Note: *The second sentence of subsection (a) require a notary public to render the notary's stamping device unusable upon the resignation, revocation, or resignation of the notary's commission. Similarly, the third sentence requires that upon the death or adjudication of incompetency of a notary public, the notary's personal representative or guardian, if knowingly in possession of the stamping device, must render it unusable.*

These two sentences are provided for states that consider that it is important to render a former notary public's stamping device unusable. However, the enactment of these two sentences is not essential for the uniformity of the act. They are bracketed to show that they are optional.

Comment

In order to protect and maintain the integrity of notarial acts, it is important that a notary

public's stamping device be kept secure and out of the hands of other individuals who might use it fraudulently or erroneously. Accordingly, subsection (a) provides that a notary public is responsible for maintaining the security of notary's stamping device. Similarly, it provides that a notary public may not allow another individual to use the device.

In order to assure the integrity of the notarial system, the optional (bracketed) sentences of subsection (a) provide that the notary public may not continue to possess the official stamp once the notary is no longer serving as a notary public. The first optional sentence provides that upon the resignation of the notary public's commission, the revocation or expiration of the notary's commission, or the expiration of the date set forth in the stamping device, the notary must disable the device by destroying, defacing, damaging, erasing or securing it in a manner that renders it unusable. Similarly, the second optional sentence provides that upon the death or incompetency of a notary public, if the notary public's personal representative is knowingly in possession of the stamping device, the representative must render the stamping device unusable by destroying, defacing, damaging, erasing or securing it. (Compare N.C. Gen. Stat. §10B-36(a) (2009).)

Subsection (b) recognizes that if the official stamp is lost or stolen, the possibility of fraudulent activity or misuse is also raised. Thus, a notary public is required to notify the commissioning officer or agency as soon as the notary discovers that the stamp is lost or stolen. The commissioning officer or agency may be able to take other steps to provide notification that will further protect the public (compare Ariz. Rev. Stat. §41-323 (2010); N.C. Gen. Stat. §10B-36(c) (2009).)

[SECTION 19. JOURNAL.

(a) A notary public [other than an individual licensed to practice law in this state] shall maintain a journal in which the notary public chronicles all notarial acts that the notary public performs. The notary public shall retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.

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

(c) An entry in a journal must be made contemporaneously with performance of the notarial act and contain the following information:

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

(2) a description of the record, if any, and type of notarial act;

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

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

(5) if identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of any identification credential; and

(6) the fee, if any, charged by the notary public.

(d) If a notary public's journal is lost or stolen, the notary public promptly shall notify the [commissioning officer or agency] on discovering that the journal is lost or stolen.

(e) On resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with subsection (a) and inform the [commissioning officer or agency] where the journal is located.

(f) Instead of retaining a journal as provided in subsections (a) and (e), a current or former notary public may transmit the journal to the [commissioning officer or agency] [the official archivist of this state] or a repository approved by the [commissioning officer or agency].

(g) On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal shall transmit it to the [commissioning officer or agency] [the official archivist of

this state] or a repository approved by the [commissioning officer or agency].]

Legislative Note: *This section is provided for states that consider it to be good policy for notaries public to maintain journals of the notarial acts that they perform. However, the enactment of this section is not essential for the uniformity of the act. It is bracketed to show that it is optional.*

Subsection (a) contains further optional provision. The optional provision requires attorneys who obtain commissions as notaries public to maintain journals. However, by custom and professional practice, attorneys often retain copies of documents upon which they perform notarial acts for their clients. The retention of those copies generally provides the same assurances for the integrity of the notarial system that this provision is designed to accomplish. This subsection is provided for states that consider it to be good policy for notaries to maintain journals. However, the enactment of this provision is not essential for the uniformity of the act. It is bracketed to show that it is optional.

There are two additional considerations that were not adopted as part of this uniform act but which a state legislature might wish to consider with regard to the journal requirement. Subsection (b) requires that a notary public maintain only one journal at a time. Subsection (c) requires that a notary public make the entries into the journal at the time that a notarial act is performed. This may create a difficulty for a notary public who performs notarial acts with respect to electronic records and also performs notarial acts on tangible records. If a notary maintains an electronic journal (especially if the technology the notary uses automatically performs electronic journaling), the notary will have difficulty journaling a notarial act performed on a tangible record if the notary is away from the computer containing the electronic journal. For example, if a notary's electronic journal were installed on a desktop computer maintained in the notary's office and the notary were asked to perform a notarial act on a tangible record at an individual's bedside in a hospital, the notary might not be able to enter the notarial act into the electronic journal at the time the notary performs the notarial act. Under this section, as written, a notary would either have to maintain a journal on a tangible record or would have to install the journaling software on a portable computer. As another alternative, an adopting legislature may wish to allow a notary public to maintain a portable journal on a tangible record in addition to the regular electronic journal (see Or. Rev. Stat. §194.152(1) (2010)).

Another alternative that a legislature might wish to consider is adding a provision to subsection (c) requiring an individual for whom a notary public performs a notarial act to sign the journal. This would assure that the entry in the journal is made at the time of the performance of a notarial act and that the individual has reviewed the entry made by the notary public (see Cal. Govt. Code §8206(a)(2)(C) (2010)).

Comment

Creating and maintaining a journal of the notarial acts that a notary public performs provides a number of assurances that will protect the integrity of the notarial system. Among other benefits, it helps to assure, or at least determine whether, a notarial act that is performed in

the name of a particular notary public was indeed performed by that notary. As an ordinary business record the journal may provide evidence that the act was performed by the notary or, by the absence of an entry in the journal, it may provide evidence that the act was not performed by the notary. In that regard, it provides protection to both the notary and to the public whom the notary serves (cf. *Vancura v. Kartis,* 907 N.E.2d 814, 391 Ill. App. 3d 350 (2008)).

Subsection (a) requires a notary public to maintain a journal of all the notarial acts that the notary performs. A notary must maintain the journal for at least ten years after the performance of the last notarial act chronicled in that journal. For example, if a particular journal volume chronicles a notary public's notarial acts for the period from January 1, 2005 to December 31, 2009, the entire journal volume must be maintained until December 31, 2019 despite the fact that some entries may be nearly fifteen years old by that date.

The optional exception provided in this subsection for attorneys licensed to practice law in this state applies regardless of whether the attorney is authorized to perform notarial acts by the fact that the attorney is licensed to practice law (see Subsection 10(a)(3)) or the attorney must obtain a commission as a notary public from the commissioning officer or agency.

Subsection (b) allows a notary public to decide whether to use a traditional journal on a tangible medium or an electronic journal. However, the notary may maintain only one active journal at a time. If the notary maintains the journal on a tangible medium (e.g., paper), the journal must be maintained in a permanent, bound register with numbered pages. It may not be in a loose-leaf or similar volume with pages that can be removed or torn out without evidence of their removal. If the notary decides to use an electronic journal, the electronic journal must be maintained in a permanent, tamper evident electronic format as prescribed by the rules of the commissioning officer or agency (see Section 27).

Subsection (c) provides that a notary public must make the entries in the journal contemporaneously with the performance of the notarial act. The performance of a notarial act may take some period of time to accomplish, especially if is part of a large transaction with numerous notarial acts. Thus, the fact that the entry in the journal not made immediately after an individual signs and acknowledges a document such as a deed does not necessarily demonstrate a lack of contemporaneous entry. Nevertheless, the entry must be made reasonably promptly and by the end of the transaction.

Subsection (c) also lists certain information that must be included in the journal entry for each notarial act performed. These include: (1) the date and time of the notarial act; (2) a brief description of the record, if any, and the type of notarial act performed (e.g., deed with acknowledgment); (3) the full name and address of each individual for whom the notarial act is performed; (4) if identity of the individual was based on personal knowledge (see Section 7(a)), a statement to that effect; (5) if identity of the individual was based on satisfactory evidence (see Section 7(b)), a brief description of the method of identification (i.e. identification credential or credible witness), and, if an identification credential was used, the date the credential was issued and its expiration date; and (6) the fee, if any, charged by the notarial officer (compare Cal. Govt. Code §8206 (2010)).

Because of the importance of journals and their continued maintenance by notaries public, subsection (d) requires a notary public to notify the commissioning officer or agency, upon discovery, if the journal is lost or stolen. Similarly, if pages in a notary's permanent, bound register, as required in subsection (b), are lost or stolen, the notary public must notify the commissioning officer or agency upon discovery. The reporting of this information to the commissioning officer or agency not only protects the members of the public whom the notary has served but also the notary him or herself.

The retention and maintenance of a notary's journals continue to be important after the termination of the notary's commission. Thus, subsection (e) provides that upon the resignation of a notary public from the notary's commission, or the revocation or suspension of the notary's commission, the notary must continue to retain the notary's journals for the ten year period provided in subsection (a) and provide the commissioning officer or agency with information about where the journals are located.

Subsection (f) allows a current or former notary public, instead of retaining journals for the ten year period provided in subsection (a), to elect to transmit them to the [commissioning officer or agency] or [official state archivist] or a repository approved by the commissioning officer or agency.

Subsection (g) directs that upon the death of a notary public, the notary's personal representative, guardian, or any person knowingly in possession of the journals must transmit the journals to the [commissioning officer or agency] or [official state archivist] or a repository approved by the commissioning officer or agency.

SECTION 20. NOTIFICATION REGARDING PERFORMANCE OF NOTARIAL ACT ON ELECTRONIC RECORD; SELECTION OF TECHNOLOGY; ACCEPTANCE OF TANGIBLE COPY OF ELECTRONIC RECORD.

(a) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(b) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the [commissioning officer or agency] that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the [commissioning officer or agency] has

established standards for approval of technology pursuant to Section 27, the technology must conform to the standards. If the technology conforms to the standards, the [commissioning officer or agency] shall approve the use of the technology.

(c) A [recorder] may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

Comment

Subsection (a) provides that a notary public may elect to perform notarial acts with respect to electronic records and, for the purpose of performing those notarial acts, may select one or more technologies. This allows a notary to use more than one technology in order to accommodate clients using different technologies to perform their electronic transactions. However, a notary public may determine whether to use a technology requested by a client and may refuse to do so.

Any technology that the notary selects must be a tamper evident technology. A tamper evident technology is one that is designed to allow a person inspecting an electronic record to determine whether there has been any tampering with the integrity of a certificate of notarial act logically associated with a record or with the attachment or association of the notarial act with that electronic record.

Subsection (b) requires that, before performing the notary public's initial notarial act with respect to an electronic record, a notary public must notify the commissioning officer or agency that the notary will be performing notarial acts with respect to electronic records. When a notary provides a notification to the commissioning officer or agency, the notary must also identify the technology or technologies that the notary intends to use to perform the notarial acts.

If, at the time that a notary public provides the notification to the commissioning officer or agency, the commissioning officer or agency has established standards for the approval of technology to be used to perform notarial acts with respect to electronic records, any technology selected by the notary must conform to those standards. If the technology conforms to those standards, the commissioning officer or agency must approve it for use by the notary. In the absence of standards adopted by the commissioning officer or agency, the notary public may proceed with performing notarial acts with respect to electronic records as long as the notary public employs tamper evident technologies as required by this section.

Subsection (c) authorizes a recorder to accept a tangible or paper copy of an electronic record that is certified by a notarial officer under subsection 4(c). This "papered-out" copy

satisfies any requirement that a record must be an original in order to be accepted for recording.

SECTION 21. COMMISSION AS NOTARY PUBLIC; QUALIFICATIONS; NO IMMUNITY OR BENEFIT.

(a) An individual qualified under subsection (b) may apply to the [commissioning officer or agency] for a commission as a notary public. The applicant shall comply with and provide the information required by rules established by the [commissioning officer or agency] and pay any application fee.

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

(1) be at least 18 years of age;

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

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

(4) be able to read and write [English]; [and]

(5) not be disqualified to receive a commission under Section 23[; and

(6) have passed the examination required under Section 22(a)].

(c) Before issuance of a commission as a notary public, an applicant for the commission shall execute an oath of office and submit it to the [commissioning officer or agency].

(d)[[Not more than [30] days after] [Before] issuance of a commission as a notary public, the [notary public][applicant for a commission] shall submit to the [commissioning officer or agency] an assurance in the form of a surety bond or its functional equivalent in the amount of $[_____]. The assurance must be issued by a surety or other entity licensed or authorized to do business in this state. The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the [commissioning officer or agency]. If a notary public violates law with respect to notaries public in this state, the

surety or issuing entity is liable under the assurance. The surety or issuing entity shall give [30]-days notice to the [commissioning officer or agency] before canceling the assurance. The surety or issuing entity shall notify the [commissioning officer or agency] not later than [30] days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the [commissioning officer or agency].]

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

[(f)] A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees.

Legislative Note: *Subsection (d) requires that a notary public provide a surety bond or its functional equivalent. It is provided for states that consider it to be good policy for a notary public to post an assurance in the form of surety bond or its functional equivalent. However, the enactment of this subsection is not essential for the uniformity of the act. It is bracketed to show that it is optional.*

The qualifications that an individual must meet for the issuance of a commission as a notary public under various state statutes are quite varied. The requirements listed in subsection (b) are common although not uniform among the states. They should be considered to be the minimal requirements for an individual to be entitled to the issuance of a commission as a notary public. Adopting states may add other provisions.

Comment

Subsection (a) provides that an individual qualified under subsection (b) may apply to the commissioning officer or agency to obtain a commission as a notary public. The subsection applies to an individual seeking an initial or renewal commission. It leaves the form of application, the process for applying, and the timing of the process, as well as other administrative matters to be determined by the commissioning officer or agency pursuant to authority provided in Section 27. It also allows the commissioning officer or agency to establish the fee to be charged for issuance of the commission, if otherwise permitted by law of the state. Although the statutes of some states specify the process and timing for issuance of a commission in varying detail (compare Ariz. Rev. Stat. §41-312 (2010); Cal. Govt. Code §8206 (2010); Del. Code Ann. tit. 29, 4301 (2010)), this Act leaves the determination and implementation of those

provisions to rules adopted by the commissioning officer or agency.

Subsection (b) sets out qualifications that an applicant must meet in order to be entitled to the issuance of a commission as a notary public. The qualifications under various existing state statutes are quite varied. The requirements listed in this subsection are common although not uniform among the states (compare Ariz. Rev. Stat. §41-312(E) (2010)). They are the minimal requirements for an individual to be entitled to the issuance of a commission as a notary public.

The requirement in subsection (b)(1) which provides that an applicant must be at least 18 years of age is a minimum age requirement. A state may wish to increase the age if another age better comports with other law of the state. The word "English" in subsection (b)(4) is bracketed because, in some jurisdictions such as Puerto Rico, the legislature may wish to use another language either as a substitute or as an alternative.

Subsection (c) provides that before an applicant will be issued a commission as a notary public the applicant must execute and submit an oath of office to the commissioning officer or agency (compare 5 Me. Rev. Stat. Ann. §82(3-A) (2010)).

Subsection (d)is an optional provision. Depending on the version selected by the legislature, it provides that a notary public must either submit an assurance in the form of a surety bond or its functional equivalent to the commissioning officer or agency not more than 30 days after the notary has been issued a commission, or that an applicant must submit the assurance to the commissioning officer or agency before the issuance of the commission (compare Fla. Stat §117.01(7)(a) (2010); Tex. Govt. Code §406.010(a) (2010)). If the legislature enacts the alternative requiring a notary public to submit the assurance within thirty days after the notary has been issued a commission, the last sentence of this subsection prohibits the notary from performing a notarial act until the assurance is on file with the commissioning officer or agency. An example of an assurance that is the functional equivalent of a surety bond would be an irrevocable letter of credit issued by a bank as long as that letter of credit meets the requirements established by the commissioning officer or agency under Section 27(a)(6).

The monetary amount of the assurance is not specified and is left to the state legislature to determine. It is recognized that an assurance that would cover the full amount of many transactions for which notaries perform notarial acts would be very large and might be prohibitively expensive. Nevertheless, limited but reasonable assurance amounts would cover the amount of some ordinary transactions and would provide some, although limited, recovery in other transactions. Requiring a surety bond or its functional equivalent should also emphasize to a notary that the notary's function is a significant one and that it is not a meager or trivial one.

An assurance must be issued by a surety or other entity that is authorized to do business in this state. It must be in the form prescribed by the commissioning officer or agency under Section 27(a)(6). It must cover acts performed by a notary during the term of the notary's commission. A surety or issuing entity will be liable under an assurance if the notary violates the law of this state with regard to the performance of notarial acts during the term of the assurance. A surety or issuing entity must give the commissioning officer or agency 30 days notice prior to cancelling a bond or other form of assurance and must notify the commissioning officer or

agency within 30 days after making a payment to a claimant under a bond or other form of assurance. A notary public may perform notarial acts only while an assurance is on file with the commissioning officer or agency.

Subsection (e) provides that upon compliance with the requirements of subsection (a) through (c), or (a) through (d) if subsection (d) is adopted, the commissioning officer or agency will issue the applicant a commission as a notary public. The term of the commission is to be determined by the state legislature; the legislature may also determine that the commission is to be without term.

Subsection (f) recognizes that a notary public is an individual licensed by the commissioning officer or agency and not a public official or employee of the state. Accordingly, it provides that a notary does not have any of the immunities or benefits conferred by the law of this state on public officials or employees.

[SECTION 22. EXAMINATION OF NOTARY PUBLIC.

(a) An applicant for a commission as a notary public who does not hold a commission in this state must pass an examination administered by the [commissioning officer or agency] or an entity approved by the [commissioning officer or agency]. The examination must be based on the course of study described in subsection (b).

(b) The [commissioning officer or agency] or an entity approved by the [commissioning officer or agency] shall offer regularly a course of study to applicants who do not hold commissions as notaries public in this state. The course must cover the laws, rules, procedures, and ethics relevant to notarial acts.]

Legislative Note: *This section requires an applicant for a commission as a notary public to pass an examination based on a course of study regarding the laws, rules, procedures, and ethics relevant to notarial acts. It is provided for states that consider it a good policy that an applicant for a commission as notary public be required to pass an examination based on such a course of study. However, the enactment of this provision is not essential for the uniformity of the act. It is bracketed to show that it is optional.*

Comment

An increasingly common requirement for the issuance of a commission as notary public is the applicant's passage of an examination based on a course of study relevant to the law of notarial acts (compare Neb. Rev. Stat. §64-1-1 (2010)). Professional education enhances the effectiveness and integrity of the notarial system. The course of study envisioned in this section

is designed to educate a prospective notary public about the laws, rules, procedures, and ethics relevant to notarial acts.

Subsection (a) provides that an applicant for a commission as a notary public who does not currently hold a commission as a notary public must pass an examination administered by the commissioning officer or agency or an entity approved by the commissioning officer or agency. An applicant who does not currently hold a commission as a notary public includes an applicant who never held a commission as a notary public as well as an applicant who previously held a commission as a notary public but whose commission has since expired. The examination is to be based on the course of instruction provided in subsection (b). The subsection leaves administration of the examination to the commissioning officer or agency through rules adopted pursuant to Section 27(a)(7)(A).

Subsection (b) provides that the commissioning officer or agency or an entity approved by the commissioning officer or agency must regularly offer a course of study to applicants (compare Cal. Govt. Code §8201(a)(3) (2010)). To achieve the objective of enhancing the effectiveness and integrity of the notarial system, the course of study is designed to educate a prospective notary public in the laws, rules, procedures, and ethics relevant to notarial acts. The subsection leaves administration of the course to the commissioning officer or agency through rules adopted pursuant to Section 27(a)(7)(B).

SECTION 23. GROUNDS TO DENY, REFUSE TO RENEW, REVOKE, SUSPEND, OR CONDITION COMMISSION OF NOTARY PUBLIC.

(a) The [commissioning officer or agency] may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:

(1) failure to comply with this [act];

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

(3) a conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty, or deceit;

(4) a finding against, or admission of liability by, the applicant or notary public in

any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty, or deceit;

(5) failure by the notary public to discharge any duty required of a notary public, whether by this [act], rules of the [commissioning officer or agency], or any federal or state law;

(6) use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right, or privilege that the notary does not have;

(7) violation by the notary public of a rule of the [commissioning officer or agency] regarding a notary public; [or]

(8) denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state[; or]

[(9) failure of the notary public to maintain an assurance as provided in Section 21(d)[; or]

[(10) insert other state specific provisions or reference to other state statutes].

(b) If the [commissioning officer or agency] denies, refuses to renew, revokes, suspends, or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with [this state's administrative procedure act].

(c) The authority of the [commissioning officer or agency] to deny, refuse to renew, suspend, revoke, or impose conditions on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

Legislative Note: *Subsection (a)(10) is an optional provision and allows the state either to insert other specific grounds for the denial, refusal to renew, revocation, suspension, or imposition of a condition on a commission as a notary public or to insert references to specific statutes elsewhere in the law of this state providing those grounds. It is bracketed to show that it is optional.*

Comment

Subsection (a) lists the grounds upon which the commissioning officer or agency may deny, refuse to renew, revoke, suspend, or impose a condition a commission. The general grounds listed include a lack of honesty, integrity, competency, or reliability on the part of the applicant or current notary public. The grounds are similar to those provided in many states (compare Ariz. Rev. Stat. §41-330(A) (2010); N.C. Gen. Stat. §10B-5(d) (2010)).

Subsections (a)(1) to (6) and (8) enumerate specific grounds upon which the commissioning officer or agency may deny, refuse to renew, suspend, revoke or impose a condition a commission. Subsection (a)(7) allows the commissioning officer or agency to refuse to renew, suspend, revoke, or impose a condition a commission because the notary public has violated rules adopted by the commissioning officer or agency regarding notaries public.

Although the grounds for disciplinary action stated in this subsection provide the commissioning officer or agency with substantial authority to invoke discipline on the applicant or notary public in order to protect the public, paragraph 10 allows legislatures to add other specific grounds.

Because notaries public deal with financial, personal, and confidential matters for their clients, trustworthiness and honesty are essential qualities of a person holding a commission. Many of the disciplinary grounds provided in this subsection deal with breaches of those qualities (compare Cal. Govt. Code §8201.1(a) (2010)). Subsections (a)(2), (3) and (4) specify several situations in which lack of those qualities, i.e. fraud, dishonesty and deceitfulness, may arise and upon which the commissioning officer or agency may deny, refuse to renew, revoke, suspend, or impose a condition on a commission. Subsection (a)(6) allows disciplinary action if dishonesty or deceitfulness is displayed by the use of false or misleading advertising. If optional Section 21(d) is adopted, subsection (a)(8) allows disciplinary action if a notary public refuses to obtain, has been unable to obtain, or has been denied, an assurance in the form of a surety bond or its functional equivalent.

In determining whether to deny, refuse to renew, suspend, revoke, or impose a condition on a notary public's commission based on an applicant's or commission holder's prior felony under subsection (c), the commissioning officer or agency should take into consideration the relevance of the felony to the performance of the notary public's duties as well as the length of time that has transpired since the performance of the felonious act. The commissioning officer or agency has discretion when making the determination and should weigh all the facts and circumstances before making a decision.

Subsection (b) states that an applicant or notary public whose commission has been denied, revoked, or suspended, or upon whose commission a condition has been imposed, or who has been refused a renewal of a commission is entitled to a timely notice and a hearing. Such a notice and hearing are likely required by the state's administrative procedure act but are restated here for clarity.

Subsection (c) provides that the fact that a commissioning officer or agency has the

authority to deny, refuse to renew, suspend, revoke or impose a condition on a commission does not prevent additional relief provided by law. Either the commissioning officer or agency or a person aggrieved by the action of a notary public may seek appropriate relief, whether the relief is civil or criminal.

SECTION 24. DATABASE OF NOTARIES PUBLIC. The [commissioning officer or agency] shall maintain an electronic database of notaries public:

(1) through which a person may verify the authority of a notary public to perform notarial acts; and

(2) which indicates whether a notary public has notified the [commissioning officer or agency] that the notary public will be performing notarial acts on electronic records.

Comment

This section requires the commissioning officer or agency to maintain an electronic database of notaries public. The objectives sought by this provision are twofold. First, it is a disclosure of information and a means by which a member of the public may verify whether an individual who claims to be a notary public in fact has a commission as a notary public. Second, by also requiring that the database indicate whether a notary public has informed the commissioning officer or agency that the notary will be performing notarial acts with respect to electronic records, it provides information to members of the public who are seeking to find a notary public capable of performing notarial acts with respect to electronic records.

SECTION 25. PROHIBITED ACTS.

(a) A commission as a notary public does not authorize an individual to:

(1) assist persons in drafting legal records, give legal advice, or otherwise practice law;

(2) act as an immigration consultant or an expert on immigration matters;

(3) represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters; or

(4) receive compensation for performing any of the activities listed in this subsection.

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

(c) A notary public, other than an attorney licensed to practice law in this state, may not use the term "notario" or "notario publico".

(d) A notary public, other than an attorney licensed to practice law in this state, may not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law. If a notary public who is not an attorney licensed to practice law in this state in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media, and the Internet, the notary public shall include the following statement, or an alternate statement authorized or required by the [commissioning officer or agency], in the advertisement or representation, prominently and in each language used in the advertisement or representation: "I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities". If the form of advertisement or representation is not broadcast media, print media, or the Internet and does not permit inclusion of the statement required by this subsection because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(e) Except as otherwise allowed by law, a notary public may not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.

Comment

In general, subsection (a) provides that a notary public does not have the authority to render legal services merely by the fact that the individual has a commission as a notary public. It does recognize, however, that a notary public who is also an attorney at law licensed to practice law in this state may, by the fact that he or she is a licensed attorney, provide those legal

services.

Subsection (a) lists four specific activities prohibited to notaries public:

(1) A notary public may not assist persons by drafting legal records or giving legal advice; more generally a notary public may not practice law (compare Colo. Rev. Stat §12-55-110.3(3)(b)(I) (2010)).

(2) A notary public may not act as an immigration consultant or an expert on immigration matters (compare Colo. Rev. Stat §12-55-110.3(3)(a) (2010)).

(3) A notary public may not represent a person in any legal or administrative proceedings relating to immigration, United States citizenship or related matters (compare Colo. Rev. Stat §12-55-110.3(3)(b)(III) (2010)).

(4) Since a notary public may not perform the above listed activities, a notary public may not receive or collect compensation for performing or attempting to perform those activities (compare Colo. Rev. Stat §12-55-110.3(3)(b)(II)-(III)) (2010)).

Subsections (a)(2) and (3) specifically reference immigration matters because many immigrants, especially those from civil law countries, are familiar with the civil law office of "notario publico" or "notario." A holder of that civil law office may have the authority to provide immigration advice or assistance in the foreign country. Because of the similarity in the names of the offices, an immigrant from a civil law country may believe that a notary public is authorized to provide the same assistance in this country. Confusion on the part of the client, however, should not be a reason for a notary public to attempt to provide that assistance. Those subsections clearly prohibit a notary public from providing the assistance. See also subsection (c) for further requirements in this regard.

Subsections (b), (c), and (d) attempt to reduce or eliminate misleading or deceptive advertising by notaries public.

Subsection (b) directly and simply prohibits a notary public from engaging in false or misleading advertising. This prohibition includes the false or misleading advertising specifically described in this section as well as other forms of false or misleading advertising prohibited by other law.

Subsection (c) prohibits a notary public, other than one who is also an attorney licensed to practice law in this state, from using the term "notario publico" or "notario" in the notary's advertising, title, or informational material. As described above, many immigrants from civil law countries are familiar with the civil law office of "notario publico" or "notario," a holder of which may have the authority to draft legal records or provide legal advice, including advice on immigration. To prevent notaries public from taking advantage of the similarity of title by using the term "notario publico" or "notario," this subsection prohibits any advertising using either of those titles (compare Colo. Rev. Stat §12-55-110.3(3)(b)(V) (2010)). Since licensed attorneys have, by reason of their attorneys' licenses the authority to draft documents and provide legal

advice, this subsection does not apply to licensed attorneys.

Subsection (d) prohibits a notary public, who is not also an attorney licensed to practice law in this state, from advertising that the notary may draft legal records, provide legal advice, or otherwise practice law. In addition to that prohibition, it makes two specific requirements in any advertising or representation that the notary uses:

(1) Any advertising or representation by the notary must include a specific disclaimer as to the notary's authority to practice law, to provide legal services, or to collect a fee for those activities. The disclaimer must be provided regardless of whether the advertising is written or oral, or a combination of the two. Included among the situations in which that disclaimer must be provided are advertising or representations made on broadcast media (e.g. television and radio), print media (e.g. newspapers, newsletters, and magazines), and the Internet (e.g. web pages and banner ads). If the advertising or representation is not made on broadcast media, print media, or the Internet, and if the inclusion of the disclaimer is not possible due to the small size of the advertisement or representation (e.g. business card), the disclaimer must be displayed prominently or provided at the place of performance of the notarial act, including any off-premises locale at which the notary performs a notarial act.

(2) The disclaimer must be provided in each language used in the advertisement or representation. To make sure that any advertising aimed at individuals who are not fluent in English or for whom English is a second language, this subsection requires that the disclaimer must be in each language used in the advertisement or representation.

Subsection (e) prohibits a notary public from retaining an original record presented by a person to a notary. A notary's duties as a notary public are to perform the notarial act and, when completed, return the record to the presenting party or as directed by the presenting party. However, a notary public who is also an attorney licensed to practice law in the state may retain a record for purposes consistent with the performance of legal services. In such a case the attorney is not retaining the record in a notarial capacity.

SECTION 26. VALIDITY OF NOTARIAL ACTS. Except as otherwise provided in subsection 4(b), the failure of a notarial officer to perform a duty or meet a requirement specified in this [act] does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this [act] does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this state other than this [act] or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

Comment

This section makes it clear that, except as otherwise provided in subsection 4(b), the failure of a notarial officer to perform the duties or to meet the requirements of this act does not invalidate the notarial act performed by the notarial officer. For example, a notarial act performed by a notary public whose assurance or surety bond may have expired or been cancelled is not invalidated. However, this provision only applies to a person who is a notarial officer. The section does not legitimate a notarial act attempted to be performed by a person who does not have the authority to perform the act. For example, an individual who does not have a valid commission as a notary public cannot perform notarial acts and any attempted notarial act would be invalid.

Despite the fact that a notarial act may be valid, the underlying record or transaction may be invalid and may be set aside in appropriate legal proceedings. For example, the underlying record may be the product of fraud, whether performed by the notarial officer or by a third person. In accordance with other law of this state, an action may be brought to invalidate or set aside the record and obtain restitution and other relief.

SECTION 27. RULES.

(a) The [commissioning officer or agency] may adopt rules to implement this [act]. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may:

(1) prescribe the manner of performing notarial acts regarding tangible and electronic records;

(2) include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;

(3) include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;

(4) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public; [and]

(5) include provisions to prevent fraud or mistake in the performance of notarial

acts; [and]

[(6) establish the process for approving and accepting surety bonds and other forms of assurance under Section 21(d)][; and]

[(7) provide for the administration of the examination under Section 22(a) and the course of study under Section 22(b)].

(b) In adopting, amending, or repealing rules about notarial acts with respect to electronic records, the [commissioning officer or agency] shall consider, so far as is consistent with this [act]:

(1) the most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State;

(2) standards, practices, and customs of other jurisdictions that substantially enact this [act]; and

(3) the views of governmental officials and entities and other interested persons.

Comment

Subsection (a) is comprehensive authority for the commissioning officer or agency to adopt rules to implement this Act. Any rules adopted with respect to the performance of notarial acts on electronic records must be technology neutral; they may not require or favor one technology or technical specification over another. This is the same requirement provided in ESign, 15 U.S.C. Ch. 96, §102(a)(2)(ii) (2010).

Subsection (a)(1) authorizes rules that prescribe the manner of performing notarial acts, whether with respect to tangible or electronic records. The provisions of this Act itself were not intended to specify all the possible requirements or procedures that now or in the future may be appropriate for performing notarial acts. Thus, it allows the commissioning officer or agency to adopt rules to further implement the Act

Subsection (a)(2) authorizes rules that will ensure that any change to, or tampering with, a record bearing a notarial act will be self-evident, i.e. tamper evident. Such a procedure will allow an individual inspecting the record to determine whether there has been any tampering with the integrity of a notarial act performed on, or with respect to, a record or with the attachment or association of a certificate of notarial act with the record. This provision applies both to notarial acts performed on tangible records and notarial acts performed with respect to

electronic records. Regarding tangible records, this would allow a rule, for example, that requires a certain method of attaching the certificate to the record so that the removal or addition of a page would be readily discernable. With regard to electronic records, this would allow a rule, for example, that requires the technology or process used provide a means of testing to determine whether there has been any change to the electronic certificate or record. Note, however, that such a requirement must be technology neutral and may not require or favor one particular technology or technical specification. See subsection (a).

Subsection (a)(3) authorizes rules that will ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures. This would allow a rule, for example, that requires that a certain level or degree of security be achieved in attaching an electronic certificate of notarial act to, or associating it with, an electronic record, and in its transmission or storage. Once again, the requirement must be technology neutral. See subsection (a).

Subsection (a)(4) authorizes rules for granting and revoking commissions and assuring the trustworthiness of individuals holding a commission. As stated in the Comment to Section 21, that section leaves the form of application, the process for applying, the timing of the process, and other administrative matters to be determined by the commissioning officer or agency. This section authorizes the commissioning officer or agency to adopt a rule, for example, that implements a method by which the prior history of an applicant for a commission could be reviewed with regard to the applicant's trustworthiness.

Subsection (a)(5) authorizes the adoption of rules that will prevent fraud or mistake in the performance of notarial acts. It would authorize the adoption of a rule, for example, that specifies what additional information should be provided in order to guide notaries public under Section 7(c) regarding additional information to identify an individual for whom a notarial act will be performed.

Subsection (a)(6) allows the commissioning officer or agency to adopt rules regarding the approval and acceptance of surety bonds and other forms of assurance if Section 21(d) is adopted by the legislature.

Subsection (a)(7) authorizes the commissioning officer or agency to adopt rules to implement and administer the examination of applicants for notary public commissions if Section 22 is adopted by the legislature. The rules may also administer the provision of a course of study for applicants for a commission as well as the process of selecting and approving of an entity to offer the course.

Subsection (b) directs the commissioning officer or agency, when adopting, amending, or repealing rules regarding notarial acts performed with respect to electronic records, to consider, so far as is consistent with this Act, the most recent standards promulgated by national bodies such as the National Association of Secretaries of State and also to consider the standards, practices, and customs of other jurisdictions that substantially adopt this Act. The purposes of this provision are to bring to the commissioning officer or agency the best practices and information concerning notarial acts performed with respect to electronic records and to

encourage uniformity of those provisions among the various states.

SECTION 28. NOTARY PUBLIC COMMISSION IN EFFECT. A commission as a notary public in effect on [the effective date of this [act]] continues until its date of expiration. A notary public who applies to renew a commission as a notary public on or after [the effective date of this [act]] is subject to and shall comply with this [act]. A notary public, in performing notarial acts after [the effective date of this [act]], shall comply with this [act].

Comment

This section states that an individual who has a commission as a notary public that is in effect on the date of the adoption of this Act may retain that notary commission until the scheduled date of expiration, if any. Other than as may apply to the length of an existing commission, however, the provisions of the law previously in effect do not carry over after the adoption of this Act. Thus, after the effective date of this Act, a notary is subject to the provisions of this Act with respect to a refusal to renew the commission or a revocation or suspension of the commission. This Act is also applicable to all notarial acts performed after its effective date regardless of whether the commission predated or postdated the effective date of this Act.

SECTION 29. SAVINGS CLAUSE. This [act] does not affect the validity or effect of a notarial act performed before [the effective date of this [act]].

Comment

This section expressly provides that the enactment of this Act does not affect either the validity or effect of any notarial act performed prior to the effective date of the Act under a law that was repealed by this Act. The validity and effect of that notarial act will continue to be determined under the repealed law.

SECTION 30. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Comment

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

SECTION 31. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Comment

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

SECTION 32. REPEALS. The following are repealed:

(1) [The Uniform Acknowledgment Act (As Amended)].

(2) [The Uniform Recognition of Acknowledgments Act].

(3) [The Uniform Law on Notarial Acts].

Legislative Note: *The Revised Uniform Law on Notarial Acts was approved by the National Conference of Commissioners on Uniform State Laws in 2010. In 2016, the Conference approved an amendment to the Act, which added Section 14A. It allowed a notary public in an adopting state to perform a notarial act on behalf of an individual located outside the United States. That Section was an optional Section.*

In 2018, the Conference approved an amendment to the Act, which withdrew the then-existing Section 14A and substituted a new Section 14A. It allows a notary public in an adopting state to perform a notarial act on behalf of a remotely located individual regardless of where that individual is located. The 2018 amendment also included additional subsections 4(c) and 20(c); they authorize a notarial officer to certify that a tangible copy of an electronic record is an accurate copy and the recorder to accept that copy for recording.

In 2021, the Conference approved an amendment to the Act, which revised and added optional subsections (d) through (h) and (m)(5) to Section 14A regarding the performance of certain notarial acts for a remotely located individual).

The Act with its 2018 and 2021 amendments is now referenced as the Revised Uniform Law on Notarial Acts (2021).

In order to maintain uniformity with the current version of the Revised Uniform Law on Notarial Acts (2021), if a state has adopted the 2010 act, it should amend its current law by adopting the 2018 amendments. If it also has adopted the 2016 amendment, it should repeal that provision from its current law and adopt the 2018 amendments. It also may adopt the optional subsections to Section 14A approved in 2021.

SECTION 33. EFFECTIVE DATE. This [act] takes effect ….

Comment

This is the standard effective date provision for uniform laws.