

**THE
MODEL NOTARY ACT**

September 1, 1984

Published As A Public Service
By The
NATIONAL NOTARY ASSOCIATION
A Non-Profit Educational Organization

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PREFACE

Model Notary Act

Because the original justification for differing notarial laws has long since disappeared in our highly integrated and interdependent national society, there is a need to modernize and make uniform the various state codes for notaries.

Responding to this need is the Model Notary Act, a revision of the Uniform Notary Act, which was drafted in 1973 by a national committee of officials and attorneys, with the assistance of Yale Law School. The MNA, a prototype for modernizing and standardizing diverse notarial laws, is a resource for lawmakers seeking to draft effective statutes that are in step with modern commerce.

Following the UNA, the first model for revising antiquated notarial laws, the MNA further heightens protection for the public by reflecting the most modern techniques for detecting and deterring fraud, whether in screening applicants for a commission or in performing a notarial act.

The MNA, like its predecessor, is a comprehensive draft of legislation that encompasses all important facets of regulating notaries and executing notarial acts. Significantly, it addresses vital matters not often covered in existing notarial statutes, including revocation and suspension powers, recordkeeping, and disposition of records and seals.

Special care was devoted to the language of the MNA, which is modern, simple English. Whenever possible, legalistic terms and phrases were eliminated. Care was also taken to use pronouns applicable to both male and female genders.

Both in content and format, the MNA was designed to assist state legislators and other officials in drafting modern, understandable, and, above all, workable notarial laws.

IMPORTANT NOTES

- In the Model Notary Act, brackets [] indicate options for lawmakers, and parentheses () on cited documents and certificates indicate options or instructions for document signers or notaries.

- To assist lawmakers, the full text of the Uniform Law on Notarial Acts, adopted by the National Conference of Commissioners on Uniform State Laws in 1982, is included in the Appendix. The ULONA is a less comprehensive model whose basic requirements are in agreement with the MNA's.

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Article I — Implementation

§ 1-101 Short Title.

This [Act] may be cited as the Model Notary Act.

§ 1-102 Purposes.

This [Act] shall be construed and applied to advance its underlying purposes, which are:

(1) to promote, serve, and protect the public interest;

(2) to simplify, clarify, and modernize the law governing notaries; and

(3) to make uniform notarial laws among states enacting it.

[§ 1-103 Interpretation.

In this [Act], unless the context otherwise requires, words in the singular include the plural, and words in the plural include the singular.]

§ 1-104 Prospective Effect.

The existing bond, seal, length of commission term, and liability of current notaries commissioned before the [Act's] effective date may not be invalidated, modified, or terminated by this [Act], but those notaries shall comply with this [Act] in performing notarizations and in applying for new commissions.

§ 1-105 Definitions.

As used in this [Act]:

(1) "Acknowledgment" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the notary's presence, having signed a document voluntarily for its stated purpose.

(2) "Commission" means to empower to perform notarial acts and the written authority to perform those acts.

(3) "Copy certification" means a notarial act in which a notary certifies having made a photocopy of a document that is neither a public record nor publicly recordable.

(4) "Jurat" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the

1 basis of satisfactory evidence, has made, in the notary's presence, a
2 voluntary signature and taken an oath or affirmation vouching for the
3 truthfulness of the signed document.

4 (5) "Notarial act" and "notarization" mean any act that a notary is em-
5 powered to perform under Section 3-101.

6 (6) "Notarial certificate" and "certificate" mean the part of or attachment
7 to a notarized document for completion by the notary and bearing
8 the notary's signature and seal.

9 (7) "Notary public" and "notary" mean any person commissioned to
10 perform notarial acts under this [Act].

11 (8) "Oath" and "affirmation" mean a notarial act or part thereof in which
12 a notary certifies that a person made a vow in the presence of the
13 notary on penalty of perjury, with reference made to a Supreme Being
14 for an oath.

15 (9) "Official misconduct" means: (i) a notary's performance of or failure to
16 perform any act prohibited or mandated respectively by this [Act] or
17 by any other law in connection with a notarization; or (ii) a notary's
18 performance of a notarial act in a manner found by the [commission-
19 ing official] to be negligent or against the public interest.

20 (10) "Personal knowledge of identity" means familiarity with an individual
21 resulting from interactions with that individual over a period of time
22 sufficient to eliminate every reasonable doubt that the individual has
23 the identity claimed.

24 (11) "Satisfactory evidence of identity" means identification of an individ-
25 ual based on: (i) at least 2 current documents, one issued by a federal
26 or state government with the individual's photograph, signature, and
27 physical description, and the other by an institution, business entity, or
28 federal or state government with at least the individual's signature; or
29 (ii) the oath or affirmation of a credible person who is personally
30 known to the notary and who personally knows the individual.

31 § 1-106 Severability Clause.

32 If any provision of this [Act] or its application to any person or circumstance
33 is held invalid, the invalidity does not affect other provisions or applications

1 of this [Act] that can be given effect without the invalid provision or applica-
2 tion, and to this end the provisions of this [Act] are severable.

3 [§ 1-107 Repeals.

4 The following acts and parts of acts are hereby repealed:

5 [_____].]

6 § 1-108 Time of Taking Effect.

7 This [Act] shall take effect [_____].

8

9

Commentary — Article I

10

11 *Article I contains standard provisions for applying, interpreting, and imple-*
12 *menting a legislative act.*

13 *Section 1-103 is bracketed, since some states may require this interpreta-*
14 *tion provision elsewhere.*

15 *Section 1-104 indicates that the Model Notary Act will not be retroactive.*
16 *It will apply to future performance of notarial acts by notaries who obtained*
17 *commissions prior to the Act's effective date; but it will not change their*
18 *term of office nor require them to submit new commission applications or*
19 *obtain new seals and bonds until they apply for new commissions.*

20 *Section 1-105 defines key terms. To deter tampering and copying mis-*
21 *takes, a "certified copy" must be a photocopy made under the notary's*
22 *supervision. "Satisfactory evidence of identity" is based either on two ID*
23 *cards or the oath/affirmation of a credible witness; one of the ID cards must*
24 *contain the bearer's photograph, physical description, and signature to al-*
25 *low comparison by the notary with the bearer's actual appearance and with*
26 *the signature in the notary journal.*

27 *Section 1-106 prevents unintentional invalidation of the whole Act by*
28 *intentional invalidation of any part.*

29 *Section 1-107 is bracketed, since some states may require this repeal*
30 *provision elsewhere.*

31

32

33

Article II — Commissioning

Part I

§ 2-101 Commissioning.

(a) Except as provided in subsection (c), the [commissioning official] shall commission as a notary any qualified person who submits an application in accordance with this [Act].

(b) A person qualified for a notarial commission must:

(1) be at least 18 years of age;

(2) lawfully reside or work in this State;

(3) read and write English;

(4) pass a written examination under Section 2-203; and

(5) submit an application containing no significant misstatement or omission of fact.

(c) The [commissioning official] may deny an application based on:

(1) the applicant's conviction for a crime involving dishonesty or moral turpitude;

(2) revocation, suspension, or restriction of a notarial commission or professional license issued to the applicant by this or any other state; or

(3) the applicant's official misconduct as defined in Section 1-105, whether or not disciplinary action resulted.

§ 2-102 Jurisdiction and Term.

A person commissioned as a notary by the [commissioning official] may perform notarial acts in any part of this State for a term of [4] years, unless the commission is revoked under Section 6-201 or resigned under Section 7-104.

§ 2-103 Bond.

No notarial commission becomes effective until, within 30 days after its issuance, an oath of office and [ten-thousand] dollar bond has been filed with the [county clerk]. The bond must be executed by a licensed surety, for a term of [4] years commencing on the commission's effective date and

terminating on its expiration date, with payment of bond funds to any person conditioned upon the notary's misconduct as defined in Section 1-105.

§ 2-104 Recommissioning.

An applicant for recommissioning as a notary shall submit a new application and comply anew with the provisions of Article II.

Part II

§ 2-201 Application.

Every application for a notarial commission must be made on forms provided by the [commissioning official] and include, at least:

- (1) a statement of the applicant's personal qualifications;
- (2) an examination written by the applicant;
- (3) a notarized declaration by the applicant; and
- (4) an application fee.

§ 2-202 Statement of Personal Qualifications.

The application must state, at least:

- (1) the applicant's age;
- (2) the applicant's residence address or, if not a resident, business address in this State, and, if not a citizen of the United States, the applicant's alien residence status;
- (3) that the applicant can read and write English;
- (4) all criminal convictions of the applicant, including any pleas of admission and nolo contendere; and
- (5) all issuances, denials, revocations, suspensions, restrictions, and resignations of a notarial commission or other professional license involving the applicant in this or any other state.

§ 2-203 Examination.

Every applicant for a notarial commission shall pass a written examination that tests the applicant's knowledge of notarial laws and procedures and is based on materials distributed by the [commissioning official] with the application forms.

§ 2-204 Notarized Declaration.

Every applicant for a notarial commission shall sign the following declaration in the presence of a notary of this State:

Declaration of Applicant

I, _____ (name of applicant), solemnly swear or affirm under penalty of perjury that the personal information in this application is true, complete, and correct; that I carefully have read the materials describing the duties of a notary in this State; and that I will perform, to the best of my ability, all notarial acts in accordance with the law.

_____ (signature of applicant)

(notarial certificate as specified in Section 5-103)

§ 2-205 Fee.

Every applicant for a notarial commission shall pay to this State a nonrefundable fee of [dollars].

§ 2-206 Confidentiality.

Disciplinary information in an applicant's or notary's Statement of Personal Qualifications under paragraphs (4) and (5) of Section 2-202 must be used by the [commissioning official] and designated state employees for the sole purpose of performing official duties under this [Act] and may not be disclosed to any person other than:

- (1) the applicant;
- (2) the applicant's authorized representative or surety;
- (3) a representative of federal, state, county, or city government acting in an official capacity; or
- (4) a person specified by court order.

Part III

§ 2-301 Governmental Employees.

- (a) The [commissioning official] may commission any number of governmental employees to act as notaries, but notaries so empowered may perform notarial acts only in the service of their respective governmental agencies.

- (b) Notaries empowered under this section may perform notarial acts in any part of this State for a term of [4] years, and shall seek re-commissioning by the [commissioning official] for each subsequent term.
- (c) An applicant for a notarial commission under this section must meet the requirements in Article II, Part II, except the application shall include a written declaration signed by the applicant's governmental employer stating that the commissioning is in the public interest; and the fee in Section 2-205 is waived for employees of this State.
- (d) The premium on the bond and costs of all notarial supplies for a notary empowered under this section must be paid from funds of the notary's governmental agency.
- (e) No fees may be charged for notarial services performed by a notary empowered under this section.
- (f) Upon leaving the employment of their governmental agencies, notaries empowered under this section shall resign their commissions immediately under Section 7-104 and dispose of their journals and seals under Section 7-105.
- (g) A notary empowered under this section shall comply with all provisions of this [Act], unless otherwise specified in this section.

Commentary — Article II

Part I details the qualifications, disqualifications, term, jurisdiction, and bonding for a notarial commission.

The term "commissioning official" usually is the governor or secretary of state. "Commissioning" includes both the function of designating the applicants who qualify for a notarial commission and that of empowering the resulting designees to perform notarial acts. In some states, these two functions are performed by different officials. For efficiency and to lessen confusion, this Act proposes consolidation of the designating and empowering functions in one state official.

Under Section 2-101, no applicant who qualifies can be denied a notarial commission. Since many persons in our mobile society do not reside in the

1 same state where they work, non-residents working in a state may qualify
2 for a commission in that state. Though an applicant must be a lawful resi-
3 dent, U.S. citizenship is not required, in accord with the U.S. Supreme Court
4 decision of May 30, 1984 (*Efrem Bernal v. John W. Fainter, Jr. et al.*, 83-630)
5 that stated Texas could not require notarial commission applicants to be
6 U.S. citizens.

7 Subsection 2-101(c)(3) gives the commissioning official the discretionary
8 power to deny commissions to applicants who have been negligent in
9 performing notarial acts but who have avoided criminal or other penalties.

10 Section 2-102 gives notaries statewide jurisdiction and proposes a four-
11 year term. Terms much shorter than four years tend to overburden the
12 commissioning official in screening qualified commission applicants already
13 screened shortly before; yet, terms much longer than four years tend to
14 promote laxness by notaries through lack of contact with the commission-
15 ing official. To heighten control by the commissioning official, the notary's
16 term of office should be set by this official after approval of the application,
17 rather than by a bonding company before the application is made, a current
18 practice in some states.

19 To protect the public, Section 2-103 requires the newly commissioned
20 notary to file a bond (along with an oath of office) before the commission is
21 effective. A bond penalty of \$10,000 is recommended. Lawmakers should
22 set the bond penalty high enough to offer substantive protection to the
23 public, but not so high that bond premiums would prevent a large number
24 of persons with need from applying for commissions.

25 Part II specifies the contents of an application for a commission. The
26 likelihood that applicants will have at least minimal understanding of notarial
27 laws and procedures is increased by requiring a written examination (Sec-
28 tion 2-203). As a refresher on old laws and an update on new ones, the test
29 must be taken for each commission reapplication.

30 To impress applicants forcefully with the need for honesty, they must
31 each appear before a notary and swear or affirm to a signed declaration
32 (Section 2-204) that the application is truthful and the study materials have
33 been read. The notary must positively identify the applicant to deter impos-

1 *tors from securing commissions for criminal purposes.*

2 *To encourage truthfulness by applicants about a past criminal conviction*
3 *or license revocation, Section 2-206 restricts access to certain information in*
4 *the application.*

5 *Part III authorizes commissioning of notaries employed by the state or*
6 *other governments to perform notarial acts within the state only for their*
7 *governmental agencies. Since they are being commissioned at public ex-*
8 *pense, these notaries may not charge fees for their notarial services.*

Article III — Powers and Limitations

Part I

§ 3-101 Powers.

A notary is empowered to perform the following notarial acts:

- (1) acknowledgments;
- (2) oaths and affirmations;
- (3) jurats; and
- (4) copy certifications.

§ 3-102 Disqualifications.

A notary is disqualified from performing a notarial act if the notary:

- (1) is a signer of or named in the document that is to be notarized;
- (2) will receive directly from a transaction connected with the notarial act any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in Section 3-201; or
- (3) is related to the person whose signature is to be notarized as a spouse, sibling, or lineal ascendant or descendant.

§ 3-103 Impartiality.

- (a) A notary may not influence a person to enter into or not to enter into a lawful transaction involving a notarial act by the notary.
- (b) A notary shall perform notarial acts in lawful transactions for any requesting person who tenders the appropriate fee specified in Section 3-201.

§ 3-104 False Certificate.

A notary may not execute a certificate containing a statement known by the notary to be false or perform any official action with intent to deceive or defraud.

§ 3-105 Testimonials.

A notary may not endorse or promote any product, service, contest, or other offering if the notary's title or seal is used in the endorsement or promotional statement.

1 § 3-106 Unauthorized Practice of Law.

- 2 (a) A non-attorney notary may complete but may not select notarial
3 certificates, and may not assist another person in drafting, completing,
4 selecting, or understanding a document or transaction requiring a no-
5 tarial act.
- 6 (b) This section does not preclude a notary who is duly qualified in a
7 particular profession from giving advice relating to matters in that
8 professional field.
- 9 (c) A notary may not make representations to have powers, qualifica-
10 tions, rights, or privileges that the office of notary does not have,
11 including the power to counsel on immigration matters.
- 12 (d) A non-attorney notary who advertises notarial services in a language
13 other than English shall include in the advertisement, notice, or sign
14 the following in the same language:
- 15 (1) the statement, prominently displayed: "I am not an attorney and
16 have no authority to give advice on immigration or other legal
17 matters"; and
- 18 (2) the fees for notarial acts specified in Section 3-201(a).
- 19 (e) A notary may not use the term "notario publico" or any equivalent
20 non-English term in any business card, advertisement, notice, or sign.

21
22 **Part II**
23

24 § 3-201 Fees.

- 25 (a) The maximum fees that may be charged by a notary for notarial acts
26 are:
- 27 (1) for acknowledgments, [dollars] per signature;
28 (2) for oaths or affirmations without a signature, [dollars] per person;
29 (3) for jurats, [dollars] per signature; and
30 (4) for certified copies, [dollars] per page certified.
- 31 (b) A notary may charge a travel fee when traveling to perform a notarial
32 act if:
- 33 (1) the notary explains to the person requesting the notarial act that

1 the travel fee is separate from the notarial fee in subsection (a) and
2 is neither specified nor mandated by law; and

3 (2) the notary and the person requesting the notarial act agree upon
4 the travel fee in advance.

5 § 3-202 Notice of Fees.

6 Notaries shall display an English-language schedule of fees for notarial acts,
7 as specified in Section 3-201(a). No part of any displayed notarial fee sched-
8 ule may be printed in smaller than 10-point type.

9
10 **Commentary — Article III**

11
12 *This Article empowers notaries to perform four different notarial acts. A*
13 *protest is not included as an authorized notarial act. Protests are rarely*
14 *performed today, since modern methods of communication, particularly*
15 *computer linkage, offer faster methods for proving nonpayment that are*
16 *equally reliable. Further, protests generally require a degree of legal and*
17 *financial expertise that most notaries do not have.*

18 *Under Section 3-102, a sales agent's commission is regarded as a disquali-*
19 *fying interest, as is an attorney's fee. A salaried employee or uninvolved co-*
20 *worker of the sales agent or attorney, however, would not be disqualified*
21 *from notarizing. In addition, the Act prohibits notaries from notarizing the*
22 *signatures of immediate family members, because of the high potential for a*
23 *financial or emotional interest that would compromise impartiality.*

24 *As an official commissioned to serve all of the public, a notary may not*
25 *refuse any lawful requests for a notarial act under Section 3-103. In particu-*
26 *lar, the notary may not turn away persons who are not business clients or*
27 *customers.*

28 *Since there is a widely held misconception that a notarial seal indicates*
29 *"official" verification of the facts in a document, Section 3-105 prohibits*
30 *notarized endorsements as a deceptive practice.*

31 *Section 3-106 prohibits notaries who are not attorneys or duly qualified*
32 *professionals from giving legal advice to others. Selecting a notarial certi-*
33 *ficate is considered giving legal advice, since a document bearing an im-*

1 proper certificate may be invalidated. Advertising guidelines are detailed to
2 deter abuse of non-English speakers by unscrupulous notaries passing them-
3 selves off as authorized legal experts.

4 The fees for notarial acts are detailed in Part II, along with a requirement
5 that all notaries display a readable schedule of fees as a deterrent to over-
6 charging. Notaries may charge any amount less than the maximum fee.

7 Part II also permits notaries to negotiate a travel fee beforehand, but only
8 if the person requesting the notarial act understands that the travel fee is
9 separate from the fee for the notarial act and not dictated by law.

10 Considering the notary's liability, time, and expense in acquiring a com-
11 mission and properly operating as a notary, a fee of \$5 per notarized signa-
12 ture is fair and reasonable. (California was the first state to enact a \$5 per
13 signature fee level, effective January 1, 1984.) In view of the steady rise in
14 the cost of living and in notarial commissioning fees, a higher per-signature
15 fee might even be justified. Unfairly and unreasonably low statutory fees
16 work against the public interest in discouraging professionalism on the part
17 of notaries.

1 **Article IV — Journal and Seal**

2
3 **Part I**

4
5 § 4-101 Journal.

6 A notary shall keep, maintain, protect as a public record, and provide for
7 lawful inspection a chronological, permanently bound official journal of no-
8 tarial acts, containing numbered pages.

9 § 4-102 Entries in Journal.

10 (a) For every notarial act, the notary shall record in the journal at the time
11 of notarization at least the following:

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

13 (2) the type of notarial act;

14 (3) a description of the document or proceeding;

15 (4) the signature and printed name and address of each person for
16 whom a notarial act is performed;

17 (5) the evidence of identity of each person for whom a notarial act is
18 performed, in the form of either: (i) a statement that the person is
19 “personally known” to the notary, (ii) a description of the identifi-
20 cation document, its issuing agency, its serial or identification num-
21 ber, and its date of issuance or expiration, or (iii) the signature and
22 printed name and address of a credible witness swearing or af-
23 firming to the person’s identity;

24 (6) the fee, if any, charged for the notarial act; and

25 (7) the address where the notarization was performed if not the no-
26 tary’s business address.

27 (b) A notary shall retain as an official record a duplicate photocopy of
28 each certified copy.

29 (c) A notary shall record in the journal the circumstances in refusing to
30 perform or complete a notarial act.

31 § 4-103 Signatures in Journal.

32 At the time of notarization, the notary’s journal must be signed, as appli-
33 cable, by:

- (1) the person for whom a notarial act is performed;
- (2) the credible witness swearing or affirming to the identity of the person for whom the notarial act is performed;
- (3) the subscribing witness swearing or affirming that another person signed the document that is notarized; and
- (4) the 2 witnesses to a signature by mark of the document that is notarized.

§ 4-104 Inspection, Copying, and Disposal of Journal.

- (a) A journal of notarial acts is an official public record that may be inspected in the notary's presence by any individual whose identity is personally known to the notary or proven on the basis of satisfactory evidence, who specifies the notarial act sought, and who signs the notary's journal.
- (b) Upon request in compliance with subsection (a), the notary shall provide a photocopy of an entry in the journal at a cost of not more than [cents or dollars] per photocopy. If a certified copy is requested, the cost is as specified in Section 3-201.
- (c) A notary shall safeguard the journal and all other notarial records as valuable public documents and never destroy them, except at the direction of the [office designated by the commissioning official].
- (d) The journal must be kept in the exclusive custody of the notary, and may not be used by any other notary or surrendered to an employer upon termination of employment.
- (e) Upon resignation, revocation, or expiration of a notarial commission, or death of the notary, the notarial journal and records must be delivered by certified mail or other means providing a receipt to the [office designated by the commissioning official] in accordance with Article VII.

Part II

§ 4-201 Official Signature.

In completing a notarial act, a notary shall sign on the notarial certificate

1 exactly and only the name indicated on the notary's commission.

2 § 4-202 Official Seal.

3 (a) A notary shall keep an official notarial seal that is the exclusive prop-
4 erty of the notary and that may not be used by any other person or
5 surrendered to an employer upon termination of employment.

6 (b) Upon resignation, revocation, or expiration of a notarial commission,
7 or death of the notary, the seal must be destroyed in accordance with
8 Article VII. A new seal must be obtained for any new commission
9 under Section 4-204.

10 § 4-203 Seal Impression.

11 (a) Near the notary's official signature on a notarial certificate, the notary
12 shall affix in black ink a sharp, legible, and photographically reproduc-
13 ible impression of the notarial seal that must include the following
14 elements:

15 (1) the notary's name exactly as indicated on the commission;

16 (2) the words "Notary Public," "State of [name of state]" and "My
17 commission expires (commission expiration date)";

18 (3) the address of the notary's business or residence; and

19 (4) a border in a [rectangular/circular] shape no larger than [dimen-
20 sions], surrounding the required words.

21 (b) Illegible information within a seal impression may be typed or printed
22 legibly by the notary adjacent to but not within the impression.

23 (c) An embossed seal impression that is not photographically reproducible
24 may be used in addition to but not in lieu of the seal described in
25 subsection (a).

26 § 4-204 Obtaining a Seal.

27 (a) A vendor may not provide a notarial seal, either inking or embossing,
28 to a person claiming to be a notary, unless the person presents the
29 following documents, which the vendor must retain for [period of
30 time]: a photocopy of the person's notarial commission, attached to a
31 notarized declaration substantially as follows:

32 Application for Notary Seal

33 I, _____ (name of person requesting seal), declare that I

1 am a notary public duly commissioned by the State of _____,
2 with a commission starting date of _____, a commission expiration
3 date of _____ and a commission number of _____. As
4 evidence, I attach to this paper a photocopy of my commission.

5 _____ (signature of person requesting seal)
6 (notarial certificate specified in Section 5-101)

7 (b) A notary applying for a seal as a result of a name change shall present
8 a copy of the Confirmation of Notary's Name Change from the
9 [commissioning official] in place of the Application for a Notary Seal.

10 (c) A vendor who fails to keep a document specified in this section is
11 guilty of a [class of offense], punishable upon conviction by a fine not
12 exceeding [dollars].

13 14 **Commentary — Article IV**

15
16 *Part I details procedures for keeping an official journal of notarial acts. It is*
17 *especially important for the journal to contain the signature of each person*
18 *who has requested a notarial act, since a signature offers strong evidence of*
19 *a person's physical presence — discouraging signers with "second*
20 *thoughts" from claiming they never appeared before the notary. A journal*
21 *signature also helps the notary detect impostors by providing a standard to*
22 *compare against signatures on the document and on ID cards. All witnesses*
23 *to signatures that are notarized additionally are required to sign the notary's*
24 *journal.*

25 *This Act regards the notary's journal as a public record to be made avail-*
26 *able for inspection by any person. Yet it does impose certain restrictions.*
27 *First, under Section 4-104, inspection of the journal must be performed in*
28 *the notary's presence, to prevent tampering or intentional damage. Then,*
29 *as a business-like practice and to deter frivolous or unscrupulous "fishing*
30 *expeditions" through the journal, the notary is required to identify and*
31 *secure the signatures of persons requesting perusal or copies of the journal,*
32 *and to ask them to be specific about what they are seeking.*

33 *This Article stipulates that the notary's official seal and journal are not to*

1 *be surrendered to an employer upon termination of employment. The fact*
2 *that the employer paid for the seal or journal or for the notary's bond,*
3 *supplies, and commissioning fees must have no bearing. This is aimed at*
4 *employers who presume that they "own" the notary's commission after*
5 *paying for application fees and notarial supplies.*

6 *Section 4-203 mandates use of a photographically reproducible notary*
7 *seal impression rather than the traditional embossment, which cannot be*
8 *microfilmed by a public recorder without the inconvenient procedure of*
9 *"smudging." An inked rubber stamp is the handiest device for affixing a*
10 *photographically reproducible impression. The notarial act is simplified*
11 *when such data as the notary's commission expiration date is included in*
12 *such an impression and does not have to be written in.*

13 *This Act does not prohibit the notary from using an embossing notarial*
14 *seal as a fraud deterrent, but only in addition to an inking device that leaves*
15 *a photographically reproducible impression.*

16 *Section 4-204 establishes procedures working against the issuance of no-*
17 *tary seals to impostors and uncommissioned persons. A vendor can provide*
18 *seals only to persons who present, for the vendor's keeping, copies of their*
19 *notarial commission and a notarized application. Notarial acknowledgment*
20 *of the "Application for Notary Seal" would deter a person attempting to*
21 *obtain more than one seal under different names. While these procedures*
22 *may not always prevent sophisticated persons with criminal intent from*
23 *manufacturing a seal or deceiving a manufacturer to do so, they would*
24 *present an obstacle.*

Article V — Certificates

§ 5-101 General Acknowledgment.

A notary shall use a certificate in substantially the following form in notarizing the signature or mark of persons acknowledging for themselves or as partners, corporate officers, attorneys in fact, or in other representative capacities:

State of _____

County of _____

On this _____ day of _____, 19 _____, before me, the undersigned notary, personally appeared _____,

(personally known to me)

(proved to me through government-issued documentary evidence in the form of _____)

(proved to me on the oath or affirmation of _____,

who is personally known to me,)

to be the person(s) whose name(s) (is)(are) signed on the preceding or attached document, and acknowledged to me that (he)(she)(they) signed it voluntarily for its stated purpose.)

(as partner for _____, a partnership.)

(as _____ for _____, a corporation.)

(as attorney in fact for _____, the principal.)

(as _____ for _____, (a)(the) _____.)

(by mark before _____ and _____, subscribing witnesses.)

(official signature and seal of notary)

§ 5-102 Subscribing Witness for Absent Signer.

A notary shall use a certificate in substantially the following form in notarizing, through a subscribing witness, the signature of a person who does not appear before the notary:

State of _____

County of _____

1 On this _____ day of _____, 19 _____, before me,
2 the undersigned notary, personally appeared _____,
3 (personally known to me)
4 (proved to me on the oath or affirmation of _____,
5 who is personally known to me.)
6 to be the person whose name is signed on the preceding or attached
7 document as subscribing witness and who declared to me under oath or
8 affirmation that (he)(she) personally knows _____ (name of
9 signer not appearing before notary) and witnessed that individual voluntarily
10 sign or acknowledge having signed the document for its stated
11 purpose, and who also declared having signed the same as witness.

12 _____
13 (official signature and seal of notary)

14 § 5-103 Jurat.

15 A notary shall use a jurat certificate in substantially the following form in
16 notarizing a signature on an affidavit, deposition, or other sworn or affirmed
17 written declaration:

18 State of _____

19 County of _____

20 On this _____ day of _____, 19 _____, before me,

21 the undersigned notary, personally appeared _____,

22 (personally known to me)

23 (proved to me through government-issued documentary
24 evidence in the form of _____)

25 (proved to me on the oath or affirmation of _____,

26 who is personally known to me.)

27 to be the person(s) who signed the preceding or attached document in
28 my presence and who swore or affirmed to me that the signature(s)
29 (is)(are) voluntary and the document truthful.

30 _____
31 (official signature and seal of notary)

32 § 5-104 Certified Copy.

33 A notary shall use a certificate in substantially the following form in notariz-

ing a certified copy:

State of _____

County of _____

On this _____ day of _____, 19 _____, I certify that the preceding or attached document, and the duplicate retained by me as a notarial record, are true, exact, complete, and unaltered photocopies made by me of _____ (description of document), (presented to me by the document's custodian, _____,)

(held in my custody as a notarial record,)

and that, to the best of my knowledge, the photocopied document is neither a public record nor a publicly recordable document, certified copies of which are available from an official source other than a notary.

(official signature and seal of notary)

Commentary — Article V

Section 5-101 provides a general acknowledgment certificate that is adaptable to persons signing for themselves or on behalf of a partnership, corporation, principal, trust, estate, or any other legal entity. The certificate wording does not require the notary to know that a signer is a partner, corporate officer, attorney in fact, or other representative, since it is often difficult for a notary to obtain or recognize definitive proof of a signer's status as representative. The certificate is also adaptable to signings by mark, in which case two witnesses beside the notary would view the marking; the form not only allows persons signing for themselves to sign by mark, but also partners, corporate officers, and other representatives.

Acknowledgment certificates printed for public use need not contain every option indicated in parentheses. By eliminating inapplicable wording, the general acknowledgment certificate may be reduced to a partnership acknowledgment, a corporate acknowledgment, or any other acknowledgment for a sole and specific purpose.

1 For signers who cannot appear before a notary, a subscribing-witness
2 acknowledgment certificate (also known as a "witness jurat") is provided in
3 Section 5-102. To heighten the integrity of this third-party form of notariza-
4 tion, the notary may not rely on documentary evidence in identifying the
5 subscribing witness. The commissioning official should encourage the use of
6 such certificates only in the event of a signer's death, inaccessibility, or
7 unknown whereabouts and not as a matter of convenience, since this type
8 of notarization is more vulnerable to fraudulent use than other types with-
9 out a third party.

10 Section 5-103 provides a jurat certificate that joins the Uniform Law on
11 Notarial Acts in breaking with tradition by requiring positive identification of
12 an affiant.

13 Section 5-104 provides a certified-copy certificate. To deter fraud and
14 hand-copying mistakes, a certified copy must be a photocopy made by the
15 notary; additionally, a duplicate of the certified copy must be retained as a
16 notarial record to point out any later fraudulent alteration of the certified
17 copy.

18 The certificate requires the notary not to certify a copy if the copy can be
19 made by another public official, such as a custodian of birth records. A
20 notary seal on a certified copy of a counterfeit or altered birth certificate or
21 other public record might lead to the acceptance of this fraudulent docu-
22 ment as genuine. Thus, only the custodian of a public record should certify
23 a copy, since this is the only person who may be able to detect a counter-
24 feit or alteration.

Article VI — Liability and Remedies

Part I

§ 6-101 Liability of Notary, Surety, and Employer.

(a) A notary is liable to any person for all damages proximately caused that person by the notary's official misconduct in performing a notarization.

(b) A surety for a notary's bond is liable to any person for damages proximately caused that person by the notary's official misconduct in performing a notarization, but this liability may not exceed the penalty of the bond or of any remaining bond funds that have not been expended to other claimants. Regardless of the number of claimants, a surety's total liability may not exceed the penalty of the bond.

(c) An employer of a notary is liable to any person for all damages proximately caused that person by the notary's official misconduct in performing a notarization related to the employer's business, if the employer directed, encouraged, consented to, or approved the notary's misconduct, either in the particular transaction or, impliedly, by previous actions in at least one similar transaction.

(d) An employer of a notary is liable to the notary for all damages recovered from the notary as a result of official misconduct that was coerced by threat of the employer, if the threat, such as of demotion or dismissal, was made in reference to the particular notarization or, impliedly, by the employer's previous action in at least one similar transaction. In addition, the employer is liable to the notary for damages caused the notary by demotion, dismissal, or other action resulting from the notary's refusal to commit official misconduct.

§ 6-102 Proximate Cause.

Recovery of damages against a notary, surety, or employer does not require that the notary's official misconduct be the sole proximate cause of the damages.

1 **Part II**

2
3 § 6-201 Revocation.

4 (a) The [commissioning official] may revoke a notarial commission on any
5 ground for which an application for a notarial commission may be
6 denied under Section 2-101.

7 (b) Resignation or expiration of a notarial commission does not terminate
8 or preclude an investigation into a notary's conduct by the [commis-
9 sioning official], who may pursue the investigation to a conclusion,
10 whereupon it must be made a matter of public record whether or not
11 the finding would have been grounds for revocation.

12 § 6-202 Other Remedies.

13 (a) The [commissioning official] may deliver a written Official Warning To
14 Cease Misconduct to any notary whose actions are judged to be
15 official misconduct under Section 1-105.

16 (b) The [commissioning official] may seek a court injunction to prevent a
17 person from violating any provision of this [Act].

18 § 6-203 Criminal Prosecution.

19 A notary who knowingly and repeatedly performs or fails to perform any
20 act prohibited or mandated respectively by this [Act] is guilty of a [class of
21 offense], punishable upon conviction by a fine not exceeding [dollars] or
22 imprisonment for not more than [term], or both.

23 § 6-204 Additional Remedies Not Prevented.

24 The remedies of this [Act] supplement other remedies provided by law.
25

26 **Part III**

27
28 § 6-301 Impersonation.

29 Any person not a notary who knowingly acts as or otherwise impersonates
30 a notary is guilty of a [class of offense], punishable upon conviction by a fine
31 not exceeding [dollars] or imprisonment for not more than [term], or both.

32 § 6-302 Wrongful Possession.

33 Any person who knowingly obtains, conceals, defaces, or destroys the seal,

1 journal, or official records of a notary is guilty of a [class of offense], punish-
2 able upon conviction by a fine not exceeding [dollars] or imprisonment for
3 not more than [term], or both.

4 § 6-303 Improper Influence.

5 Any person who knowingly solicits, coerces, or in any way influences a
6 notary to commit official misconduct is guilty of a [class of offense], punish-
7 able upon conviction by a fine not exceeding [dollars] or imprisonment for
8 not more than [term], or both.

9
10 **Commentary — Article VI**

11
12 *Part I stipulates that a notary, the notary's surety and the notary's em-*
13 *ployer are liable not just to a document signer or person named in a nota-*
14 *rized document, but to all persons who rely on the genuineness of the*
15 *notarized signature. For example, a person prompted to lend money using a*
16 *notarized but forged deed as collateral may recover from the notary if the*
17 *notary is found to have been negligent in identifying the deed's signer.*

18 *A liable employer need not have knowledge of a specific damaging no-*
19 *tarial act performed by an employee if the employer had approved similar*
20 *acts in the past. Significantly, the Model Notary Act allows a notary to*
21 *recover damages from an employer if the notary had been pressured to*
22 *perform an improper notarial act or dismissed for refusal to perform such an*
23 *act.*

24 *Since there may be more than one proximate cause for an event, Section*
25 *6-102 states that the notary, surety, and employer are liable whether or not*
26 *the notary's misconduct was the only proximate cause of damages.*

27 *Part II details the remedies for misconduct by a notary.*

28 *For any reason that a commission may be denied, a notary's commission*
29 *also may be revoked by the commissioning official, under Section 6-201.*
30 *Any act of official misconduct is cause for revocation, as is failure to main-*
31 *tain commissioning qualifications, such as residency within the state or abil-*
32 *ity to read and write English. Subsection 6-201(b) prevents notaries from*
33 *terminating or preventing an investigation by the commissioning official by*

1 *resigning their commissions.*

2 *The Act does not provide for suspension of a notary's commission. If the*
3 *commissioning official has evidence of misconduct by a notary, the official*
4 *may issue a revocation or an Official Warning to Cease Misconduct, or to*
5 *seek a court injunction or criminal prosecution.*

6 *Other additional remedies not described in the Act, such as imposition of*
7 *a court injunction or restraining order at the request of a bar association, are*
8 *not prevented under Section 6-204.*

9 *Part III delineates violations by non-notaries, including use of any notary*
10 *seal (Section 6-301), possessing a notary's journal (6-302), and soliciting an*
11 *improper notarial act (6-303).*

Article VII — Changes of Status

§ 7-101 Change of Address.

Within 30 days after the change of a notary's business or residence address, the notary shall deliver to the [commissioning official], by certified mail or other means providing a receipt, a signed notice of the change, giving both old and new addresses.

§ 7-102 Change of Name.

(a) A notary with a change of name shall deliver to the [commissioning official] a signed notice of the change, giving both old and new names and the effective date of the new name.

(b) Starting on the effective date, a notary with a new name officially shall sign that name on all notarial certificates, but only after the following steps have been completed:

- (1) the notice described in subsection (a) has been delivered;
- (2) a Confirmation of Notary's Name Change has been received from the [commissioning official];
- (3) a new seal bearing the new name exactly as in the confirmation has been obtained; and
- (4) the surety for the notary's bond has been informed in writing.

§ 7-103 Lost Journal or Seal.

Within 10 days after the loss or theft of an official journal or seal, the notary shall deliver to the [commissioning official], by certified mail or other means providing a receipt, a signed notice of the loss or theft, and inform the appropriate law enforcement agency in the case of theft.

§ 7-104 Resignation.

(a) A notary who resigns a notarial commission shall deliver to the [commissioning official], by certified mail or other means providing a receipt, a notice indicating the effective date of resignation.

(b) Notaries who cease to reside or work in this State or who become unable to read or write shall resign their commissions.

§ 7-105 Disposition of Seal and Journal.

(a) Except as provided in subsection (b), when a notarial commission is

- 1 resigned, revoked, or expires, the notary shall:
- 2 (1) as soon as reasonably practicable, destroy the official seal; and
- 3 (2) within 30 days after the effective date of resignation, revocation,
- 4 or expiration, deliver to the [office designated by the commission-
- 5 ing official], by certified mail or other means providing a receipt,
- 6 the notarial journal and records.
- 7 (b) A former notary who intends to apply for a new commission and
- 8 whose previous commission or application was not revoked or de-
- 9 nied by this State, need not deliver the journal and records within 30
- 10 days after commission expiration, but must do so within 3 months
- 11 after expiration unless recommissioned within that period.

12 § 7-106 Death.

13 If a notary dies during the term of commission, the notary's heirs or personal

14 representative, as soon as reasonably practicable after death, shall:

- 15 (1) destroy the official seal; and
- 16 (2) deliver by certified mail or other means providing a receipt (i) a signed
- 17 notice of the date of death to the [commissioning official], and (ii) the
- 18 notarial journal and records to the [office designated by the commis-
- 19 sioning official].

20

21 **Commentary — Article VII**

22

23 *Article VII details procedures for certain changes in a notary's status.*

24 *It is important for notaries to obtain and keep written receipts when*

25 *delivering official notices and records. Such a policy documents the notary's*

26 *adherence to lawful procedure and helps track down missing public*

27 *records. Thus, delivery by certified mail or other means providing a receipt*

28 *is specified throughout this Article.*

29 *To facilitate communication between the state and its commissioned no-*

30 *taries, a notary must inform the commissioning official of changes of ad-*

31 *dress and name. To avoid confusion, a notary with a new legal name must*

32 *use only that name in signing and sealing notarial certificates.*

33 *Section 7-103 requires reporting the loss or theft of a seal or journal to*

1 *deter later untruthful claims by notaries attempting to cover up errors or*
2 *abuses, as well as to alert authorities to possible future notarial abuses by*
3 *the thief.*

4 *The remainder of Article VII dictates the disposition of a notary's journal*
5 *and seal upon commission resignation, revocation, expiration, or the nota-*
6 *ry's death. In these cases, the journal of notarial acts, duplicates of certified*
7 *copies, and all other notarial papers must be sent by certified mail or deliv-*
8 *ered to an office designated by the commissioning official. Usually, this*
9 *office will be the county clerk's. An ex-notary has 30 days from the date of*
10 *commission resignation, revocation, or expiration to turn in all official*
11 *records to the county clerk or other office, with an extension up to three*
12 *months for persons intending to apply for a new commission.*

13 *Additionally, in all cases involving the termination of a notary's commis-*
14 *sion, the official seal must be destroyed to prevent its misuse.*

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Article VIII — Authentication

§ 8-101 Evidence of Authenticity of Notarial Act.

(a) The authenticity of the official notarial seal and signature of a notary of this State may be evidenced by:

(1) a certificate of authority from the [commissioning official] or the [designated local official], authenticated as necessary; or

(2) an apostille from the [commissioning official] or the [designated local official] in the form prescribed by the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of October 5, 1961.

(b) An apostille as specified by the Hague Convention must be attached to any document requiring authentication that is sent to a nation that has signed and ratified this Convention.

§ 8-102 Certificate of Authority.

A certificate of authority evidencing the authenticity of the official notarial seal and signature of a notary of this State must be substantially in the following form:

Certificate of Authority for a Notarial Act

I, _____, (name, title, jurisdiction of authenticating official) certify that [name of notary,] the person named in the seal and signature on the attached document[,] is a notary public for the State of _____ and was authorized to act as such at the time of the document's notarization.

To verify this Certificate of Authority for a Notarial Act, I have affixed below my signature and seal of office this _____ day of _____, 19 ____.

§ 8-103 Apostille.

An apostille prescribed by the Hague Convention, as cited in 28 U.S.C.A. in the annotations to Rule 44 of the Federal Rules of Civil Procedure, must be in the form of a square with sides at least 9 centimeters long and contain exactly the following wording:

1 APOSTILLE
2 (Convention de La Haye du 5 octobre 1961)
3 1. Country: _____
4 This public document
5 2. has been
6 signed by _____
7 3. acting in
8 the capacity of _____
9 4. bears the seal/stamp of _____

10 CERTIFIED
11 5. at _____ 6. the _____
12 7. by _____
13 8. No. _____
14 9. Seal/Stamp 10. Signature:
15 _____
16

17 **Commentary — Article VIII**
18

19 *This Article provides two certificate forms for verifying the genuineness of*
20 *a notary's official signature and seal. Either of these forms would be at-*
21 *tached to a notarized document bound for another state or country when*
22 *authentication of the notarial act is required. Typically, the secretary of state*
23 *and county clerk would be the officials empowered to issue and attach the*
24 *forms.*

25 *By allowing just a single authenticator, the Hague Convention of October*
26 *5, 1961, provides an alternative to the traditional and time-consuming*
27 *"chain certification" process of authentication that often requires attach-*
28 *ment of five or six separate certificates of authority. About 30 nations,*
29 *including the United States, have ratified and now abide by the treaty, with*
30 *most of the world's nations still requiring some form of chain certification.*

31 *To promote worldwide standardization and unity, officials are encour-*
32 *aged to use the apostille format, whenever it will be acceptable, for every*
33 *authentication of a notarized document that is bound for a foreign nation.*

APPENDIX

UNIFORM LAW ON NOTARIAL ACTS

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

ANNUAL CONFERENCE
MEETING IN ITS NINETY-FIRST YEAR
IN MONTEREY, CALIFORNIA
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WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
New Orleans, Louisiana, February 9, 1983

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UNIFORM LAW ON NOTARIAL ACTS

Commissioner's Prefatory Note

This Uniform Act is designed to define the content and form of common notarial acts and to provide for the recognition of such acts performed in other jurisdictions. It thus replaces two Uniform Laws, the Uniform Acknowledgment Act (As Amended), and the later Uniform Recognition of Acknowledgments Act. The original Acknowledgment Act served to define the content and form of acknowledgments. The Recognition Act later provided for more specific rules for recognition of acknowledgments and "other notarial acts" from outside of the state, although its title was more narrowly stated.

This statute is thus a consolidation, extension, and modernization of the two previous acts. It consolidates the provisions of the two acts relating to acknowledgments of instruments. It extends the coverage of the earlier act to include other notarial acts, such as taking of verifications and attestation of documents.

In addition, the act seeks to simplify and clarify proof of the authority of notarial officers.

UNIFORM LAW ON NOTARIAL ACTS

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§ 1. Definitions

As used in this [Act]:

(1) "Notarial act" means any act that a notary public of this State is authorized to perform, and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(2) "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein.

(3) "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

(4) "In a representative capacity" means:

(i) for and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;

(ii) as a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;

(iii) as an attorney in fact for a principal; or

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

(5) "Notarial officer" means a notary public or other officer authorized to perform notarial acts.

Commissioners' Comment

This Uniform Law defines common notarial acts and provides for the recognition of notarial acts performed in other states and in foreign jurisdictions. It does not prescribe the qualifications of notaries public or other officers empowered to perform notarial functions, nor does it establish the procedure for their selection or term of office.

The Act uses the term "notarial officer" to describe notaries public and other persons having the power to perform "notarial acts." These notarial acts are described in Section 2. Section 3 then describes who, in addition to notaries public, is a notarial officer in this state; Sections 4, 5, and 6 provide for the recognition of acts of notarial officers appointed by other jurisdictions.

§ 2. Notarial Acts

(a) In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(b) In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

(c) In witnessing or attesting a signature the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named therein.

(d) In certifying or attesting a copy of a document or other item, the notarial officer must determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

(e) In making or noting a protest of a negotiable instrument the notarial officer must determine the matters set forth in [Section 3-509, Uniform Commercial Code].

(f) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person (i) is personally known to the notarial officer, (ii) is identified upon the oath or affirmation of a credible witness personally known to the notarial officer or (iii) is identified on the basis of identification documents.

Commissioners' Comment

This section authorizes common notarial acts. It does not limit other acts which notaries may perform, if authorized by other laws.

Subsection (a) specifies what a notarial officer certifies by taking an acknowledgment. The notarial officer certifies to two facts: (1) the identity of the person who made the acknowledgment and (2) the fact that this person signed the document as a deed (or other specific instrument), and not as some other form of writing. The personal physical appearance of the acknowledging party before the notarial officer is required. An acknowledgment, as defined in Section 1(2) is a statement that the person has signed and executed an instrument; it is not

the act of signature itself. Hence a person may appear before the notarial officer to acknowledge an instrument which that person had previously signed.

Similarly subsection (b) specifies the requisites of taking of a verification on oath or affirmation. There are again two elements: (1) the identity of the affiant and (2) the fact that the statement was made under oath or affirmation. Here again, the personal physical presence of the affiant is required.

Subsection (c) defines the requirements for witnessing (or attesting) a signature. Here only the fact of the signature, not the intent to execute the instrument, is certified by the notarial officer.

Subsection (d) defines the standards for attestation or certification of a copy of a document by a notarial officer. This is commonly done if it is necessary to produce a true copy of a document, when the original cannot be removed from archives or other records. In many cases, the custodian of official records may also be empowered to issue official certified copies. Where such official certified copies are available, they constitute official evidence of the state of public records, and may be better evidence thereof than a notorially certified copy.

Subsection (e) refers to a provision of the Uniform Commercial Code which confers authority to note a pro-

test of a negotiable instrument on notaries and certain other officers.

Subsection (f) describes the duty of care which the notarial officer must exercise in identifying the person who makes the acknowledgment, verification or other underlying act. California law, for example, provides an exclusive list of identification documents on which the notarial officer may rely. These are documents containing pictorial identification and signature, such as local drivers' licenses, and U.S. passports and military identification papers, issued by authorities known to exercise care in identification of persons requesting such documentation.

§ 3. Notarial Acts in This State

(a) A notarial act may be performed within this state by the following persons:

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

(b) Notarial acts performed within this State under federal authority as provided in section 5 have the same effect as if performed by a notarial officer of this State.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

Commissioners' Comment

Subsection (a) lists the persons who are entitled to serve as notarial officers in the state. In addition to notaries public, all judges, clerks and deputy clerks of courts of the state may automatically perform notarial acts. The language follows the more modern form of the Uniform Recognition of Acknowledgments Act. It is more abbreviated than the Uniform Acknowledgments Act, in that it consolidates the several judicial offices into one listing.

Several optional additional notarial officers are listed. A state may authorize all duly licensed attorneys at law to serve as notaries public by virtue of their attorneys' licenses. It may also authorize other individuals who have authority to administer oaths to do so. If other particular officers, such as recorders or registrars of deeds or commissioners of titles, may perform notarial acts in the state it

would be advisable to list them here, because this list will be a ready reference point for those who seek to determine the validity of their acts, when they are used in another state.

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

1. Proof that the notarial signature is that of the named person,
2. Proof that that person holds the designated office, and
3. Proof that holders of that office may perform notarial acts.

Subsection (c) sets forth the presumption of genuineness of signature and the presumption of truth of assertion of authority by the notarial officer, the first two elements of authentication. Since the officers listed in subsection (a) are authorized to act by this statute, no further proof of the third element, the authority of such an officer, is required.

§ 4. Notarial Acts in Other Jurisdictions of the United States

(a) A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State, if performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

- (1) a notary public of that jurisdiction ;
- (2) a judge, clerk, or deputy clerk of a court of that jurisdiction ; or
- (3) any other person authorized by the law of that jurisdiction to perform notarial acts.

(b) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in section 5 have the same effect as if performed by a notarial officer of this State.

(c) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(d) The signature and indicated title of an officer listed in subsection (a)(1) or (a)(2) conclusively establish the authority of a holder of that title to perform a notarial act.

Commissioners' Comment

Sections 4, 5, and 6 of this act are adapted from Sections 1 and 2 of the Uniform Recognition of Acknowledgments Act. That Act set forth the individuals outside of the state who could take acknowledgments or perform other notarial acts, and separately set forth the authentication of those acts which was necessary. Different standards applied in the cases of persons acting under the authority of another state, of the federal government, or of a foreign country. This statute distinguishes between the three kinds of authority from outside the state, and provides the authentication separately for each type.

Subsection (a) is adapted from Section 1 of the Uniform Recognition of Acknowledgments Act. Subsection (b) gives prima facie validity to the signature and assertion of title of the person who acts as notarial officer. It follows Section 2(d) of the Uniform Recognition of Acknowledgments Act. It thus provides the first two elements

of proof set forth in the comments to Section 3.

Subsection (c) provides the third element of that proof of authority. It recognizes conclusively the authority of a notary public or of a judge or clerk or deputy clerk of court to perform notarial acts, without the necessity of further proof that such an officer has notarial authority. It is copied from Section 2(a) of the Uniform Recognition of Acknowledgments Act. These two subsections abolish the need for a "clerk's certificate" to authenticate the act of the notary, judge, or clerk. The authority of a person other than a notary, judge, or clerk to perform notarial acts can most readily be proven by reference to the law of that state. Any other form of proof of such authority acceptable in the receiving jurisdiction, such as a clerk's certificate, as is currently provided by Section 2(c) of the Uniform Recognition of Acknowledgments Act, would also suffice.

§ 5. Notarial Acts Under Federal Authority

(a) A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State if performed anywhere by any of the following persons under authority granted by the law of the United States:

- (1) a judge, clerk, or deputy clerk of a court ;
- (2) a commissioned officer on active duty in the military service of the United States ;
- (3) an officer of the foreign service or consular officer of the United States ; or

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

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

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

Commissioners' Comment

Some acknowledgments are performed by persons acting under federal authority, or holding office under federal authority. This section provides for the automatic recognition of those notarial acts within the enacting state. The list of persons whose acts are immediately recognized by this section is drawn from Section 1 of the Uniform Recognition of Acknowledgments Act, but has been simplified. This law no longer limits recognition of the notarial acts performed by military officers to acts performed for persons in the military service "or any other persons serving with or accompanying the armed forces of the United States." Such a limitation in recognition merely places another cloud on the validity of the notarial act. The act does not purport to extend the authority of military officers to perform these acts, but merely immunizes the private party relying on them from any consequences of the officer's excess of authority. Both in the case of commissioned military officers and foreign service officers, the language has been modified to reflect modern descriptions of the offices in question. In both instances, the further reference to "any other person authorized by regulation" has also been omitted as duplicative of paragraph 4 of this subsection.

Subsection (b), like its counterpart in Section 4, is drawn from Section 2(d) of the Uniform Recognition of Acknowledgments Act. It confers pri-

ma facie validity upon the signature and assertion of rank or title by the notarial officer, thus providing the first two elements of proof described in the comments to Section 3.

Subsection (c) is drawn from Section 2(a) of the same law. It provides the third element of proof of the notarial officer's authority. It immediately recognizes the authority of a judge or clerk, or military officer or foreign service or consular officer to perform notarial acts, without the necessity of further reference to the federal statutes or regulations to prove that the officer has notarial authority. There is no need for further authentication of these persons' authority to perform notarial acts. A variety of other federal officers may be authorized to perform notarial acts, such as wardens of federal prisons, but their authority must be demonstrated by other means. The authority of such an officer to perform the notarial act can most readily be demonstrated by reference to the federal law or published regulation granting such authority. Any other form of authentication, such as a clerk's certificate, could also be used.

A military officer who performs notarial services should insert the appropriate title (e.g., commanding officer) in the place designated for "title (and rank)" to conform to 10 U.S.C. § 936(d). The officer's rank and branch of service should also be inserted there.

§ 6. Foreign Notarial Acts

(a) A notarial act has the same effect under the law of this State as if performed by a notarial officer of this State if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multi-national or international organization by any of the following persons:

- (1) a notary public or notary;
- (2) a judge, clerk, or deputy clerk of a court of record; or
- (3) any other person authorized by the law of that jurisdiction to perform notarial acts.

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

(c) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(d) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

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

(f) If the title of office and indication of authority to perform notarial acts appears either 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.

Commissioners' Comment

This section deals with the authority of notarial officers empowered to act under foreign law. Note that the act of any notary is recognized, as well as that of judges or clerk of courts of record. The notarial acts of other persons will be recognized if they are authorized by the law of the place in which they are performed.

Proof of validity of foreign notarial acts is a more difficult problem than recognition of such acts from other states of the United States, because the relative authority of public and

quasi-public officers may vary. See the special rules previously provided under the Uniform Recognition of Acknowledgments Act, Section 2(b).

The United States is now a party to an international convention regarding the authentication of notarial and other public acts. The first method of recognition of foreign notarial acts is that set forth in the treaty. The Apostille may be stamped on the document or an attached page by a specified officer in the foreign country. It has the following form.

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:

It may be in the language of the issuing country, but the words "Apostille (Convention de La Haye, du 5 octobre 1961)" are always in French. Under the terms of the treaty, to which the United States is a party, the Apostille must be recognized if issued by a competent authority in another nation which has also ratified it. The

text of the convention is reproduced in the volume of 28 U.S.C.A. containing the annotations to Rule 44 of the Federal Rules of Civil Procedure, and in Martindale-Hubbell.
Although federal law provides for mandatory recognition of an Apostille only if issued by another ratifying nation, this statute provides for recogni-

tion of all apostilles issued by any foreign nation in that form. They, are in effect, no more than a standard form for authentication. Use of the form eases problems of translation.

Recognition may also be accorded in a number of other ways, which are taken from Section 2(b) of the Uniform Recognition of Acknowledgments Act.

§ 7. Certificate of Notarial Acts

(a) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

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

- (1) is in the short form set forth in Section 8;
- (2) is in a form otherwise prescribed by the law of this State;
- (3) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or
- (4) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(c) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by Section 2.

Commissioners' Comment

This section requires a written certification by the notarial officer of the notarial act. That certification may be simple. It need only record the notarial act and its place and date, together with the signature and office of the notarial officer. Subsection (b) provides that the certificate may be in any one of the short forms set forth in this act, or in any other form provided by local law, or in any other form provided by the law of the place where it is performed, or in any form that sets

forth the requisite elements of the appropriate notarial act. Thus acknowledgments or other notarial acts executed in the more elaborate forms of the former Uniform Acknowledgments Act or the Uniform Recognition of Acknowledgments Act would continue to qualify under subsection (b)(4). Subsection (c) reemphasizes the obligation of the notarial officer to make the determinations required by Section 2 and to certify that the officer has done so.

§ 8. Short Forms

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by Section 7(a):

(1) For an acknowledgment in an individual capacity:

State of _____
(County) of _____

(date)

This instrument was acknowledged before me on _____ by
(name(s) of person(s))

(Seal, if any)

(Signature of notarial officer)

Title (and Rank)

[My commission expires: ____]

(2) For an acknowledgment in a representative capacity:

State of _____
(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed.)

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
[My commission expires: ____]

(3) For a verification upon oath or affirmation:

State of _____
(County) of _____

Signed and sworn to (or affirmed) before me on _____ (date) by
(name(s) of person(s) making statement).

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
[My commission expires: ____]

(4) For witnessing or attesting a signature:

State of _____
(County) of _____

Signed or attested before me on _____ (date) by _____ (name(s) of person(s)).

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
[My commission expires: ____]

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

State of _____
(County) of _____

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

Dated _____

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)
[My commission expires: ____]

Commissioners' Comment

This section provides statutory short forms for notarial acts. These forms are sufficient to certify a notarial act. See Section 7(b)(1). Other forms may also qualify, as provided in Section 7.

A notarial seal is optional under this Act. See Section 7(a). A military officer who is acting as a notarial officer will normally enter both title (e.g., commanding officer, Company A, etc.) and rank (Captain, U.S. Army) as identification.

§ 9. Notarial Acts Affected by This Act

This [Act] applies to notarial acts performed on or after its effective date.

§ 10. Uniformity of Application and Construction

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

§ 11. Short Title

This [Act] may be cited as the Uniform Law on Notarial Acts.

§ 12. Repeals

The following acts and parts of acts are repealed:

- (1) [The Uniform Acknowledgment Act (As Amended)]
- (2) [The Uniform Recognition of Acknowledgments Act]
- (3) _____.

Commissioners' Comment

This statute is intended to replace the Uniform Acknowledgment Act and the Uniform Recognition of Acknowledgments Act, and may also replace other state legislation on this topic.

§ 13. Time of Taking Effect

This [Act] takes effect _____.



Since 1957

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