

THE
MODEL NOTARY ACT

September 1, 2002

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

MODEL NOTARY ACT REVISION COMMITTEE

The Model Notary Act Revision Committee comprised public-spirited individuals who generously contributed their time and expertise. No part of the Model Notary Act necessarily has been approved by every individual, organization, or agency represented on the Committee. The Committee does not lobby for adoption of the Act.

Michael S. Baum
Vice President, VeriSign
Mountain View, California

Dean Heller
Secretary of State
State of Nevada

David J. Berardo
Attorney, Dimascio & Berardo
Los Angeles, California

Dan Kirby
General Counsel, Western Surety Co.
Sioux Falls, South Dakota

Ronald Blitenthal
Legislative Counsel
Chicago Title Insurance

Todd G. Kocourek
Special International Counsel
Florida Department of State

Kerey C. Carpenter
Deputy Development Officer
Florida Housing Finance Corp.

Angel Marrero
Attorney at Law / Notario Publico
San Juan, Puerto Rico

Michael L. Closen
Professor, John Marshall Law School
Chicago, Illinois

Richard W. McCarthy
Research Director, American Land Title
District of Columbia

Frankie Sue Del Papa
Attorney General
State of Nevada

Mark A. Monacelli
Recorder, St. Louis County
St. Louis, Minnesota

Carl R. Ernst
CEO, Ernst Publishing
Scottsdale, Arizona

Malcolm L. Morris **
Professor, College of Law
Northern Illinois University

Charles N. Faerber *
Vice President of Notary Affairs
National Notary Association

Maryanne Rickenbach
Recorder, Montgomery County
Norristown, Pennsylvania

Fran Fish
Notary Public Administrator
State of Utah

Maury D. Shenk
Attorney, Steptoe & Johnson
London, England

Daniel J. Greenwood, Esq.
Director, MIT E-Commerce
Architecture Program

Thomas J. Smedinghoff
Attorney, Baker & McKenzie
Chicago, Illinois

Marian E. (Mimi) Griffiths
Director, Public Services Dept.
Arizona Secretary of State Office

Alicia Stewart
Manager, Notary Public Section
California Secretary of State Office

Frank W. Sudia
Vice President, Bankers Trust Co.
New York, New York

Milton G. Valera
President
National Notary Association

Deborah M. Thaw
Executive Director
National Notary Association

R. David Whitaker
Attorney, Goodwin Procter
District of Columbia

Sara F. Ullmann
Register of Deeds, Johnson County
Olathe, Kansas

Everett Wohlers
Vice President, NIC Conquest
Boise, Idaho

Benjamin Wright
Attorney at Law
Dallas, Texas

* Drafting Coordinator

** Reporter

FOREWORD

Purpose

Notaries public play a vital role in assuring the integrity of documents essential to commercial and legal transactions. Recognizing the importance of this reality, the Model Notary Act sets protecting the public from fraud as its paramount objective. To effectuate this goal, the traditional passive role of the notary public has been shifted to a more proactive one. Under the Model Notary Act, notaries are directed to take affirmative steps to assure that they properly execute every aspect of a notarial act. Sanctions await those notaries who either negligently or intentionally fail to carry out their responsibilities. The Model Notary Act takes the position that notaries public are professionals who have ethical obligations to the principals who request notarizations, the persons who ultimately rely upon the notarized documents, the general public, and to one another.

This Model Notary Act of 2002 is a comprehensive statute designed to modernize the notary public office. It is a significant updating and expansion of two earlier model statutes promulgated by the National Notary Association: the Model Notary Act of 1984 and the original Uniform Notary Act of 1973, which was created in a special collaboration with Yale Law School. Over the course of three decades, legislators and notary-regulating officials have borrowed extensively from the 1973 and 1984 models in reforming state and territorial notary laws. In some instances, only a few sections were adopted into statute; in others, the model was enacted virtually in toto.

Drafting Process

The National Notary Association empaneled a drafting committee of distinguished individuals from the business, governmental, and legal communities. A wide range of industries that handle or generate notarized documents was represented.

A series of draft documents was disseminated for comments. The resulting observations and criticisms were then integrated into the final draft by an executive subcommittee. The subcommittee then reviewed the edited document and made appropriate changes to bring it into its final form. Coincident to this effort, detailed “Comment” sections were written to explain the positions taken by the drafters and related matters.

This latest version of the Model Notary Act is much more than a simple update. Drafters not only reviewed and analyzed current notary statutes, but also surveyed reported cases and administrative rulings concerning notaries and notarizations. The Model Notary Act of 2002 also reflects the impact of technical developments related to electronic

documents and signatures. The end result is an innovative modernization of the office of the traditional paper-oriented notary.

Format

The Model Notary Act comprises three articles. Articles I and II address traditional notary rules and practice. Article III provides rules and procedures for electronic notarizations. Articles are divided into chapters. Chapters are divided into sections, the number of which varies depending upon the subject matter covered.

Articles I and II were written as companions and were intended to be adopted together. They may stand alone without Article III, which expands the duties of the traditional paper-based notary into the realm of electronic documents.

Although it is suggested that each article be adopted as presented, the drafters recognize that some sections might prove either unnecessary or too controversial for a particular jurisdiction. Adoption of edited versions is welcomed. Also, jurisdictions not inclined to completely revise their notary laws are encouraged to integrate selected sections into existing statutes.

User Guide

The statute is written to be adopted as a comprehensive unit. Consequently, there are intersectional references throughout the work. These can be easily edited without doing injury to the balance of the document. Before a reference is deleted, care should be taken to ensure that compensating wording is not needed and all references to the deleted material elsewhere in the document are given similar treatment.

Certain material has been put in brackets (“[]”). This serves one of three purposes. In some instances, the brackets indicate that a generic term (e.g., “[commissioning official]”) has been used. The adopting jurisdiction should here insert appropriate specific terminology that is consistent with its statutory scheme (e.g., “secretary of state”). At times, the brackets will indicate that insertion of a numerical or dollar amount is necessary. If a particular amount is strongly preferred by the drafters, this amount will be placed within brackets (e.g., “[\$25,000]”). Other times, the brackets suggest that a particular matter, while not central to the legislation, was a topic of considerable debate among the drafters. The adopting jurisdiction is then invited to decide whether the bracketed material meets its needs, and determine whether or not to include it.

In addition, parentheses (“()”) on cited documents and certificates indicate options or instructions for documents signers or notaries.

Commentary

A detailed commentary is provided to explain the Act's provisions, some of the thought processes behind them, and their ramifications. These "Comment" sections are not an official part of the proposed legislation text. Principally, the commentary represents the views of the Reporter who drafted it, in conjunction with comments submitted by drafting commission members and discussions with the other members of the executive committee that produced the final draft.

There are numerous citations throughout the commentary. All references to the Model Notary Act are made merely by citing to the section (e.g., Section 2-4). Standard citation form is used to refer to reported cases and state statutes, except that publishers and dates of publication for the latter have been eliminated. The commentary also cites to THE NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY, whose 10 "Guiding Principles" are reprinted in Appendix 1. The CODE was promulgated by the National Notary Association in an effort to introduce systematic ethical standards into the profession. Some sections in the Model Notary Act are outgrowths of the dictates of the CODE.

Malcolm L. Morris, Reporter
Professor of Law
Northern Illinois University College of Law

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Article I Implementation and Definitions

Chapter 1 – Implementation

Comment

General: This chapter states the purposes and sets out the applicability of the Model Notary Act (hereinafter “the Act”). Section 1-2 is particularly notable because its goals undergird most of the provisions found throughout the Act, and help justify a number of the positions taken. The balance of the chapter addresses standard legislative matters.

§ 1-1 Short Title.

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

§ 1-2 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;
- (3) to foster ethical conduct among notaries;
- (4) to enhance cross-border recognition of notarial acts;
- (5) to integrate procedures for traditional and electronic notarial acts; and
- (6) to unify state notarial laws.

Comment

Section 1-2 enunciates the overarching purposes of the Act. Although not necessarily listed in order of importance, the first two subparagraphs clearly constitute the driving spirit of the entire Act.

Subparagraph (1) places the public’s interest above all else. The Act adopts the position that notaries are first and foremost public servants. Their powers are to be exercised only in the public’s interest and not for personal gain. Other provisions elsewhere in the Act support and execute this operating precept. (*See, e.g.*, Subparagraph 5-2(a)(1) (no notarization of one’s own signature); Subparagraph 5-2(a)(3) (disqualification when signers are relatives); Section 5-8 (no testimonials); and Subsection 6-2(a) (no surcharges on fees).)

Subparagraph (2) stakes out equally important territory: bringing notarial laws

into the 21st century. Many state notary laws are carry-overs from antiquated statutes (*see, e.g.*, DEL. CODE ANN. tit. 29 §§ 4301 to 4313; HAW. REV. STAT. ANN. §§ 456-1 to 456-18; and S.D. CODIFIED LAWS §§ 18-1-1 to 18-1-14), some are quite minimalist (*see, e.g.*, ALA. CODE §§ 36-20-1 to 36-20-32; VT. STAT. ANN. tit. 24 §§ 441 to 446; and MASS. GEN. LAWS ANN. ch. 183, §§ 29 to 42 & ch. 222, §§ 1 to 11), and others a patchwork product of numerous unrelated legislative amendments (*see, e.g.*, CAL. GOV’T. CODE §§ 8200 to 8230 & CAL. CIV. CODE, §§ 1181 to 1197; LA. REV. STAT. ANN. §§ 35:1 to 35:17; and IND. CODE ANN. §§ 33-16-2-1 to 33-16-2-9). The Act offers a comprehensive statute that addresses all contemporary notarial issues, and introduces rules that recognize developments not only for paper-based documents but also for

electronic transactions. It then integrates them into one workable piece of legislation. The Act makes the effort both to establish appropriate commissioning guidelines, and detail proper procedures for performing notarial acts. The focus is clearly on ensuring that notaries understand their roles. This works toward satisfying the public interest objective set out in Subparagraph (1). The drafters addressed issues principally involving the commissioning of notaries and the performing of notarizations within the boundaries of a local jurisdiction adopting the Act. Consequently, even if the Act is adopted, other legislation may still be needed to respond to other important matters, such as recognition of federal and foreign jurisdiction notarial acts. (This can be accomplished with adoption of the Uniform Law on Notarial Acts §§ 4-6.)

Subparagraph (3) introduces a new concept: notary ethics. Although the Act does not establish any ethical standards, it recognizes that a notary owes special duties to both principals and the public, and in this responsibility may be regarded as a professional. Professions impose ethical standards upon their members, and this should be the case as well for notaries. In 1998, the National Notary Association promulgated THE NOTARY PUBLIC CODE OF

PROFESSIONAL RESPONSIBILITY. (Reprinted at 32 J. MARSHALL L. REV. 1123-1193 (1999).) It is a comprehensive ethics guide worthy of adoption either by state legislatures as a statute or by commissioning officials as an administrative rule. Absent taking this step, the Act provides rules and procedures that, when properly followed, encourage professionalism and foster ethical conduct.

Subparagraph (4) recognizes the modern reality of cross-border commerce. Principals who migrate from one jurisdiction to another or enterprises that conduct multi-state businesses need to have documents that are recognized wherever presented. A major objective of the Act, as stated in Subparagraph (6), is to unify notarial laws throughout the country. Problems relating to recognition of out-of-state notarial acts can be eased or eliminated if the Act gains widespread acceptance.

Subparagraph (5) stresses the need to accept the increased use of electronic transactions. One goal of the Act is to ensure that workable notarial procedures are in place to accommodate the need. To this end, Article III of the Act is devoted to establishing rules for electronic notarizations.

[§ 1-3 Interpretation.

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

§ [1-4] 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.

Comment

Section 1-4 protects valid notary commissions existing when the Act is adopted. The status of notaries holding such commissions continues according to the terms and conditions at the time of commissioning. However, recommissioning for these notaries will have to be done

pursuant to the new rules of the Act. (*See* Section 3-5.)

Significantly, although the commissioning status may not change, the new operating rules of notarization (*see generally* Chapters 5, 6, 7, 8, and 9) and concomitant obligations (*see generally* Chapter 11) must be followed by all notaries

immediately, including those who were Act.
commissioned prior to the adoption of the

§ [1-5] Severability Clause.

If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

[§ 1-6 Repeals.

The following acts and parts of acts are hereby repealed:

[_____].]

Comment

Section 1-6 recognizes that not all jurisdictions have a single act containing all of the rules regulating notaries and notarizations. Thus, legislators will have to identify existing statutes or portions thereof that are superseded by the Act (*for example*, the UNIF. ACKNOWLEDGMENT ACT, 12

U.L.A.1 (1996)), and make the appropriate repeals. It is possible that some extant rules affecting notaries are not inconsistent with the Act, and ought not be repealed. (*For example, see* rules relating to federal and foreign recognition of notarial acts.)

§ [1-7] Effective Date.

This [Act] shall take effect [_____].

Chapter 2 – Definitions Used in This [Act]

Comment

General: A number of recurring terms are used throughout the Act. Some have a technical meaning specific to notarial use, while others merely require elaborate explanation. Following the example of other statutes, these terms are defined in a separate section to simplify the text in the balance of the Act.

§ 2-1 Acknowledgment.

“Acknowledgment” means a notarial act in which an individual at a single time and place:

- (1) appears in person before the notary and presents a document;
- (2) is personally known to the notary or identified by the notary through satisfactory evidence; and
- (3) indicates to the notary that the signature on the document was voluntarily affixed by the individual for the purposes stated within the document and, if applicable, that the individual had due authority to sign in a particular representative capacity.

Comment

Section 2-1, in defining “acknowledgment,” makes clear that all three elements of the notarial act must occur at the same time and place. Subparagraph (3) explicitly requires that the principal voluntarily sign the document “for the purposes stated” therein. Although current statutes seldom directly address “voluntariness” (*but see* FLA. REV. STAT. §117.107(5); and GA. CODE ANN. §45-17-8(b)(3)), it seems to be generally accepted by the courts as a requirement for an acknowledgment (*see Poole v. Hyatt*, 689 A.2d 82 (MD. 1997)). The Act eliminates any doubt about the need for “voluntariness” in a proper acknowledgment.

A second aspect of Subparagraph (3) raises other issues. The Act converts an acknowledgment from simply a formal statement that the signature on the document was freely made by the principal into one that also declares the intent to validate the document itself. Some drafters criticized this addition, fearing it could unwittingly impose unintended obligations upon the principal. The concern follows from the fact that a principal can read a document, not truly understand its effect, but nonetheless sign it. It was suggested that an acknowledgment ought not require the principal to speak to the purpose or intent of

the document. In response, it was argued that apprehensions over this point can be put to rest by the intended reasonable interpretation of the provision. The definition does not make the acknowledgment in itself an admission that the principal understood the legal significance of the document. Indeed, it does not speak to the contents at all. The provision only means that signing serves to adopt the document as the principal’s act. The legal ramifications of the document are subject to independent review. (*See also* Subparagraph 5-1(b)(3), adopting the rule that a notary must not notarize a document if the principal does not appear to understand the significance of the transaction.)

In acknowledging a document, the principal does not make any statement regarding the truthfulness or accuracy of the contents of the document. (*Compare* Section 2-7 and Comment defining “jurat.”) Moreover, there is no implication that the principal has even read the document. The acknowledgment speaks to the fact that the document was signed voluntarily for the purpose of validating the document. Note, the voluntariness associated with the signing (*see* Subparagraph 5-1(b)(4) and Comment) is separate and apart from the voluntariness needed for the acknowledgment itself.

Additionally, the principal asserts that he or she was authorized to sign the document if it was signed in a representative capacity. (*See* Section 9-1 for a model acknowledgment certificate form.)

§ 2-2 Affirmation.

“Affirmation” means a notarial act, or part thereof, which is legally equivalent to an oath and in which an individual at a single time and place:

- (1) appears in person before the notary;
- (2) is personally known to the notary or identified by the notary through satisfactory evidence; and
- (3) makes a vow of truthfulness or fidelity on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word “swear.”

Comment

Section 2-2 offers a definition of “affirmation” that contains all of the standard components. An affirmation serves as the functional equivalent of an “oath” (*see* Section 2-11) for principals who prefer not to pledge to a supreme being. As required for most notarial acts, by definition, the principal must personally appear before and satisfactorily prove identity to the notary. In order to solemnify an affirmation, the Act compels the principal to understand that the statement is made under penalty of perjury.

The Act does not prescribe affirmation wording. It assumes that a simple statement including the language “I affirm” and “under penalty of perjury” will suffice. The notary can orally state the affirmation and have the principal positively assent to it, or the principal can speak the entire affirmation aloud. It is preferable for assent to be made by oral response, but any action

(*e.g.*, a hand gesture or nod) could constitute assent if clearly made for the purpose of adopting the affirmation. While it is not necessary that the principal raise his or her right hand to make an affirmation, notaries are encouraged to require any ceremonial gesture that they feel will most compellingly appeal to the conscience of the principal. When associated with a notarial certificate, good practice would suggest that the notary read aloud any provided affirmation wording and have the principal assent. The key point is that a proper affirmation requires a positive and unequivocal response by the principal.

An affirmation can be a notarial act in its own right, standing alone without a document, but most often it is administered as part of a jurat and the person making the affirmation will be required to sign an affidavit or other document.

§ 2-3 Commission.

“Commission” means both to empower to perform notarial acts and the written evidence of authority to perform those acts.

§ 2-4 Copy Certification.

“Copy certification” means a notarial act in which a notary:

- (1) is presented with a document that is neither a vital record, a public record, nor publicly recordable;
- (2) copies or supervises the copying of the document using a photographic or electronic copying process;
- (3) compares the document to the copy; and

- (4) determines that the copy is accurate and complete.

Comment

Section 2-4 defines and provides guidance on the act of making certified copies. Subparagraph (1) prohibits a notary from making certified copies of certain documents. Generally, the Act assumes that only the duly appointed public custodians of official records and documents may certify copies of them. Thus, a notary cannot certify a copy of a marriage license, birth certificate, or a recorded or recordable deed.

Subparagraphs (2)-(4) specify the procedure for a copy certification performed

by a notary. The notary must copy or supervise the reproduction of the original document, whether it be done by photocopying or a computer scan. The copy must then be compared to the original and determined to be an exact duplicate. Finally, the notary describes the preceding actions with respect to the copy on the notarial certificate that is attached to the copy. (Section 9-5 provides a model certificate form.)

§ 2-5 Credible Witness.

“Credible witness” means an honest, reliable, and impartial person who personally knows an individual appearing before a notary and takes an oath or affirmation from the notary to vouch for that individual’s identity.

Comment

Section 2-5 defines the term “credible witness.” Consistent with the public interest goal of deterring fraud and creating reliable documents, the Act takes the step of removing any doubt as to who can qualify to act in this capacity. Particularly noteworthy is the “impartiality” requirement. This means that the person neither has an interest

in nor is affected by the transaction for which he or she is proving the identity of the principal of the notarization. Although not specifically required by the Act, witness impartiality may be measured by the same standard used to disqualify notaries from acting. (*See* Section 5-2 and Comment.)

§ 2-6 Journal of Notarial Acts.

“Journal of notarial acts” and “journal” mean a device for creating and preserving a chronological record of notarizations performed by a notary.

Comment

By its non-specificity, Section 2-6 recognizes that a journal may be created in a variety of forms. Both paper-based and

electronic journals are permitted. (*See* Section 7-1.)

§ 2-7 Jurat.

“Jurat” means a notarial act in which an individual at a single time and place:

- (1) appears in person before the notary and presents a document;
- (2) is personally known to the notary or identified by the notary through satisfactory evidence;

- (3) signs the document in the presence of the notary; and
- (4) takes an oath or affirmation from the notary vouching for the truthfulness or accuracy of the signed document.

Comment

Section 2-7 provides a definition of a jurat that contains commonly accepted components. A central feature of the jurat is recognized in Subparagraph (4): the principal must take an oath (or make an affirmation) vouching for the truthfulness or accuracy of the contents of the document. This distinguishes the act from both an acknowledgment (*see* Section 2-1) and a signature witnessing (*see* Section 2-19). In the former, the principal merely indicates that a signature was voluntarily affixed to a document for the purposes of adopting the document. In the latter, the principal merely signs the document and nothing more is ascribed to the act. No assertions regarding the accuracy of the contents of the document can be implied from either an acknowledgment or a signature witnessing.

Notwithstanding that it is essential to a jurat, notaries often neglect to formally administer the oath or affirmation. When such omissions are challenged, the courts are apt to imply that an oath was tacitly taken. (*See, e.g., In re Petition No.28, State Question No. 441, 434 P.2d 941, 953-955 (OK. 1967).*) The drafters believed that the significance attributed to a jurat as a statement under oath dictates positive action on the part of the notary to administer an oath or affirmation to the principal. Good practice demands that the oath or affirmation language be recited aloud and that the principal affirmatively respond before the notary completes the certificate. (As to administering oaths and affirmations, *see* Sections 2-11 and 2-2, along with their respective Comments.)

§ 2-8 Notarial Act and Notarization.

“Notarial act” and “notarization” mean any act that a notary is empowered to perform under this [Act].

§ 2-9 Notarial Certificate and Certificate.

“Notarial certificate” and “certificate” mean the part of, or attachment to, a notarized document that is completed by the notary, bears the notary’s signature and seal, and states the facts attested by the notary in a particular notarization.

§ 2-10 Notary Public and Notary.

“Notary public” and “notary” mean any person commissioned to perform official acts under this [Act].

§ 2-11 Oath.

“Oath” means a notarial act, or part thereof, which is legally equivalent to an affirmation and in which an individual at a single time and place:

- (1) appears in person before the notary;
- (2) is personally known to the notary or identified by the notary through satisfactory evidence; and
- (3) makes a vow of truthfulness or fidelity on penalty of perjury while invoking a deity or using any form of the word “swear.”

Comment

Section 2-11 lists the elements of an “oath.” An oath is the alternative to an affirmation. It serves the same purpose and has the same effect. The sole distinction between the two is that an oath-taker pledges to a deity. All of the procedural rules relating to affirmations apply equally

to oaths. (*See* Section 2-2 Comment.) When making an oath, the principal need not swear on nor touch a Bible or other holy text. However, notaries have discretion to utilize gestures or ceremonies that they believe will most compellingly appeal to the conscience of the oath-taker.

§ 2-12 Official Misconduct.

“Official misconduct” means:

- (1) a notary’s performance of any act prohibited, or failure to perform any act mandated, by this [Act] or by any other law in connection with a notarial act by the notary; or
- (2) a notary’s performance of an official act in a manner found by the [commissioning official] to be negligent or against the public interest.

Comment

Section 2-12 defines “official misconduct.” In striving to promote the significance of notarial acts in general, the drafters felt it was important to emphasize proper notarial conduct. The Act broadly defines misconduct to include not only malfeasance (performing prohibited acts) but also nonfeasance (failing to perform required acts). Moreover, this type of misconduct is not limited to duties prescribed by the Act itself, but also extends to obligations imposed by other laws in connection with official acts by the notary. Additionally, misconduct includes misfeasance (negligent performance of acts). Finally, the Act adds a new type of misconduct – violation of public policy. Assisting a known stalker in finding a

victim by allowing access to the notary journal is illustrative; although perhaps lawful on its face (*see generally* Section 7-4, but specifically Subsection 7-4(b)), it might be determined that the notary’s act of showing a home address in a journal entry to a person with a clear harmful intent violated public policy for failing to exercise proper discretion. (*See* Subsection 7-4(a) Comment. For another example of a possible public policy violation, *see* Subsection 6-2(b) Comment.) The public policy rule will also allow appropriate officials to punish conduct that is not specifically forbidden but serves to undermine public confidence in notarizations. Specific accountability for notarial misconduct is set out in Chapter 12.

§ 2-13 Personal Appearance.

“Appears in person before the notary” means that the principal and the notary are physically close enough to see, hear, communicate with, and give identification documents to each other.

Comment

Section 2-13 defines personal appearance so as to mandate that the principal be in the physical presence of the notary at the time of notarization. This is necessary in order for the notary to perform

the essential task of determining that the principal is exactly who he or she purports to be. Ascertaining identity is an integral part of most notarial acts. (*See* Sections 2-1, 2-2, 2-7, 2-11, and 2-19.) To properly

execute this obligation, the notary must make the appropriate investigation. (*See* Section 2-17 for rules to determine satisfactory proof of identification.) A telephone call or an e-mail transmission to the notary does not qualify as personal appearance.

In requiring each signer to appear in person before the notary, the drafters recognized that the Act bars electronic signatures from being notarized when the signer is at a location remote from the notary. However, at least one jurisdiction

recognizes teleconferencing notarizations with the signer at Location A and the notary at Location B. (*See* UTAH ADMIN. CODE R154-10-502.) The drafters believe that until teleconferencing equipment is refined to ensure accurate determination of identity, mandating face-to-face personal appearance before a notary in the same room furthers the goal of providing more reliable documents. The drafters are committed to re-evaluating this position as technological advances make reliable remote identification more feasible.

§ 2-14 Personal Knowledge of Identity.

“Personal knowledge of identity” and “personally knows” mean familiarity with an individual resulting from interactions with that individual over a period of time sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

Comment

Section 2-14 provides guidance on the critical concept of personal knowledge. Although most notarizations will be based upon identification through evidentiary means (*see* Section 2-17), sometimes identity will be determined based on the

notary’s familiarity with another individual. Personal knowledge is a necessary element of the chain of proof when credible witnesses are used. (*See* Subparagraph 2-17(2).) The Act provides a rule of reason for determining personal knowledge.

§ 2-15 Principal.

“Principal” means:

- (1) a person whose signature is notarized; or
- (2) a person, other than a credible witness, taking an oath or affirmation from the notary.

Comment

Section 2-15 introduces a new term used throughout the Act – principal. The drafters determined that it made sense to identify the person needing use of a notary as a principal. It makes for easier reading of the statute and ends ambiguities with respect

to witnesses or other parties who may have dealings with a notary, but are not seeking the performance of a notarial act for themselves (*e.g.*, persons asking a notary to serve a bedridden elderly parent).

§ 2-16 Regular Place of Work or Business.

“Regular place of work or business” means a stationary office or workspace where one spends all or some of one’s working or business hours.

Comment

Section 2-16 establishes an important situs for purposes of the Act. A non-

resident may qualify for a notary commission if he or she has a regular place

of work or business in the jurisdiction. (*See* Subparagraph 3-1(b)(2).) The Act uses the word “regular” to ensure that a notary applicant has more than a passing relationship to the jurisdiction. The drafters intended “regular” to be reasonably construed. Clearly, having an office that is

visited on a weekly basis qualifies, but visiting the office once every year will not. One significant limiting factor is that the workplace must be stationary, *i.e.*, one cannot claim a car used for business in the state as a place of business.

§ 2-17 Satisfactory Evidence of Identity.

“Satisfactory evidence of identity” means identification of an individual based on:

- (1) at least one current document issued by a federal, state, or tribal government agency bearing the photographic image of the individual’s face and signature and a physical description of the individual, though a properly stamped passport without a physical description is acceptable; or
- (2) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the notary and who personally knows the individual, or of 2 credible witnesses unaffected by the document or transaction who each personally knows the individual and shows to the notary documentary identification as described in Subparagraph (1) of this section.

Comment

Section 2-17 reinforces the tenet that positive proof of identity is integral to every proper notarization of a signature. Thus, a separate definition for “satisfactory evidence of identity” was deemed essential. Many statutes refer to satisfactory evidence, but not all go on to define it precisely.

The section allows a principal to prove identity in one of two ways. The first involves self-proof through the use of reliable identification documents. The second employs credible witnesses.

Subparagraph 2-17(1) describes the attributes of documents found in most self-proving provisions. (*See, e.g.*, ARIZ. STAT. ANN., § 41-311(11)(a); CAL. CIV. CODE §1185(c)(4); and TENN. CODE ANN. §66-22-106(c)(2) and (3). *But see* GA. CODE ANN. §45-17-8 (e); and IOWA CODE ANN. §9E.9(6)(c) which allow the notary some discretion in determining what constitutes acceptable proof.) To eliminate any doubt, the Act specifically states that identification issued by a tribal government is acceptable. The Act also makes any valid current passport acceptable identification. This will

ensure that visitors from foreign lands have the requisite proof of identity to access notarial services while they are in the United States. Of course, passports are excellent proofs of identity for United States citizens, as well. The Act requires the principal to produce only one identifying document. (For jurisdictions requiring only one item of proof, *see* FLA. STAT. ANN. §117.05 (b) (2); HAW. REV. STAT. ANN. §502-48; and MICH. COMP. LAWS ANN. §565.262 (b)(ii). For jurisdictions requiring more than one document, *see* CONN. GEN. STAT. ANN. §3-94a (9)(A); and OR. REV. STAT. §194.515 (8)(b).) Nothing prohibits a notary from asking for additional proof of identity if the item(s) presented by the principal raise questions as to their authenticity or are otherwise suspect. Indeed, notaries are obligated to satisfy themselves that the evidence presented positively proves the principal’s identity.

Subparagraph (2) provides a second avenue for proving identity. It is designed for those principals who for one reason or another do not have identification

documents. Primary beneficiaries of this rule are the elderly, especially those in nursing homes, who may no longer have valid driver's licenses or other current forms of government identification. Following the lead of California (*see* CAL. CIV. CODE § 1185 (c)(1) and (2)) and Florida (*see* FLA. STAT. ANN. §117.05(5)(b)(1)), the Act allows credible witnesses of two types to prove the identity of the principal. (For a definition of "credible witness," *see* Section 2-5 and Comment.) The witnesses must personally know the principal. (*See* Section 2-14 for a definition of "personally knows.") To prevent fraud and add to the integrity of the notarization, only persons unaffected by the document or related transaction can serve as witnesses for these purposes. This is consistent with the requirement that "credible witnesses" be impartial. (*See* Section 2-5.)

Only one witness is needed if that person is personally known to the notary. Otherwise two witnesses are needed. The Act takes the view that personal knowledge of the identity of a credible witness is superior to third-party witnesses proving their own identities. Thus, in the case of the former, only one witness is required. In the case of the latter, the witnesses must prove their own identities under the rules of Subparagraph (1). Note, a credible witness cannot have identity proved by another credible witness. The credible witness must either be known to the notary or self-prove identity through acceptable identification.

Because proper identification lies at the heart of reliable notarizations, the drafters contemplated that the rules of this section should be narrowly construed and strictly enforced.

§ 2-18 Seal.

"Seal" means a device for affixing on a paper document an image containing a notary's name, jurisdiction, commission expiration date, and other information related to the notary's commission.

Comment

Section 2-18 broadly defines "seal" for purposes of the Act. With paper documents, images affixed by such devices as adhesive labels and computer laser printers are not ruled out as official seals, as long as these devices are "kept secure and

accessible only to the notary" (*see* Subsection 8-2(d)). The specific requirements of an official seal are detailed in Chapter 8. The Act does not recognize hand-drawn seals. Likewise, "paraphs" are not official seals.

§ 2-19 Signature Witnessing.

"Signature witnessing" means a notarial act in which an individual at a single time and place:

- (1) appears in person before the notary and presents a document;
- (2) is personally known to the notary or identified by the notary through satisfactory evidence; and
- (3) signs the document in the presence of the notary.

Comment

Section 2-19 introduces "signature witnessing," a notarial act recognized in a few jurisdictions. (*See, e.g.,* 5 ILCS 312 § 6-102(c); IOWA CODE § 9E.9(3); and WASH. REV. CODE 42.44.010(2)(d); and other states that have adopted the Uniform Law on

Notarial Acts.) The drafters accept the reality that simple signature witnessing happens all the time, especially on documents without pre-printed certificates. All too often the notary will add the certificate, "Signed before me this day,"

and hope that will suffice as an official certificate. Regrettably, such a certificate currently might not result in a valid notarization in many jurisdictions. Technically it is neither an acknowledgment (*see* Section 2-1) nor a jurat (*see* Section 2-7). To validate these common acts, the Act recognizes the simple signature witnessing. The drafters contemplate that the simple witnessing will be used in lieu of a jurat

when an oath or affirmation is not needed, and as a substitute for an acknowledgment when a positive declaration that the principal accepts the terms of the document is not required. A signature witnessing has the same integrity as other notarial acts, and by definition must meet the same personal appearance and identification requirements in order to be valid.

[§ 2-20 Verification of Fact.

“Verification of fact” means a notarial act in which a notary reviews public or vital records to ascertain or confirm any of the following facts regarding a person:

- (1) date of birth or death;
- (2) name of parent, offspring, or sibling;
- (3) date of marriage or divorce; or
- (4) name of marital partner.]

Comment

Section 2-20 defines a notarial power that some may regard as being beyond the notary’s traditional ministerial role. Locating, reading, and interpreting legal records is generally regarded as the bailiwick of the attorney. Yet, the extraction of certain basic information from public or vital records – *e.g.*, date of birth or death, date of marriage or divorce – is not a function requiring extensive legal training. Such information, as certified by a notary, is often requested by foreign agencies in the context of adoption of a foreign child. Thus, in part to lessen the bureaucratic hardships imposed on childless couples attempting to adopt foreign children, this section gives lawmakers the option of allowing notaries to perform a verification of fact function. The statutory list of verifiable facts may be tailored to a particular jurisdiction.

The verification of fact certificate in Section 9-6 gives notaries the option of visiting a pertinent office that houses public or vital records to ascertain the needed facts, or of accepting a record from the hands of a named individual. Clearly, the former option is preferred, but notaries are given discretion in the latter case to assess the trustworthiness of any presented record. (The notary would be well-advised to positively identify the presenter, and to inspect the proffered document for evidence of tampering or counterfeiting, much like a notary inspects identification cards presented by signers.)

Here and elsewhere in the Act, references to the “verification of fact” power are bracketed to indicate that this new form of notarization may be an option that legislators in some jurisdictions may decide not to adopt. (*See, e.g.*, Subparagraphs 5-1(a)(6) and 6-2(a)(6).)

Article II Notary Public

Chapter 3 – Commissioning of Notary Public

Comment

General: The Act codifies a comprehensive set of commissioning rules. Each adopting jurisdiction is thereby assured that only well-trained and knowledgeable notaries are serving the public. To meet this goal, the Act requires both the education and testing of applicants. (*See* Subparagraph 3-1(b)(5).) In an effort to protect the public from unscrupulous notaries, the Act also provides specific guidance to the commissioning authority regarding the types of behavior that justify denying an applicant a notary commission. (*See* Subsection 3-1(c).) As financial protection for the public against the notary's misconduct, the Act mandates that every notary be bonded. (*See* Section 3-3.)

§ 3-1 Qualifications.

- (a) Except as provided in Subsection (c), the [commissioning official] shall issue a notary commission to any qualified person who submits an application in accordance with this Article.
- (b) A person qualified for a notary commission shall:
 - (1) be at least 18 years of age;
 - (2) reside or have a regular place of work or business in this [State], as defined in Section 2-16;
 - (3) reside legally in the United States;
 - (4) read and write English;
 - (5) pass a course of instruction requiring a written examination under Section 4-3; and
 - (6) submit fingerprints to allow a criminal background check.
- (c) The [commissioning official] may deny an application based on:
 - (1) submission of an official application containing material misstatement or omission of fact;
 - (2) the applicant's conviction or plea of admission or nolo contendere for a felony or any crime involving dishonesty or moral turpitude, but in no case may a commission be issued to the applicant within 5 years after such conviction or plea;
 - (3) a finding or admission of liability against the applicant in a civil lawsuit based on the applicant's deceit;
 - (4) revocation, suspension, restriction, or denial of a notarial commission or professional license by this or any other state or nation, but in no case may a commission be issued to the applicant within 5 years after such disciplinary action; or
 - (5) an official finding that the applicant had engaged in official misconduct as defined in Section 2-12, whether or not

disciplinary action resulted.

- (d) Denial of an application may be appealed by filing in proper form with the [administrative body hearing appeal] within [time limit] after denial, except that an applicant may not appeal when the [commissioning official] within 5 years prior to the application has:
- (1) denied or revoked for disciplinary reasons any previous application, commission, or license of the applicant; or
 - (2) made a finding under Section 12-3(d) that grounds for revocation of the applicant's commission existed.

Comment

Section 3-1 addresses the personal qualifications needed for commissioning as a notary. Subsection (a) provides that, unless a statutory basis for denial exists, every otherwise qualifying applicant must be granted a commission. There is no limit imposed on the number of notaries that may hold a commission in the jurisdiction at any one time. Nor is the number to be linked to the jurisdiction's perceived need for notaries. (*See contra* HAW. REV. STAT. ANN. § 456-1(a).) The public is better served when there is an ample number of notaries available. The Act seeks to foster convenient access for all to notarial services, but it also promotes quality by imposing meaningful commissioning standards.

Subsection (b) spells out the personal requirements for commissioning. As is common throughout the country, Subparagraph (b)(1) sets the minimum qualifying age at 18 years. (*See, e.g.*, ARK. CODE ANN. § 21-14-101(b) (C); DEL. CODE ANN. tit. 29 § 4301(b); and N.M. STAT. ANN. § 14-12-2(B).)

In addressing the residency requirement, Subparagraph (b)(2) adopts an increasingly common policy. The Act subscribes to the view that having a regular place of business (as defined in Section 2-16) within the jurisdiction creates a sufficient nexus for a non-resident to warrant notary commissioning. This position takes into account the "equal protection" argument available to persons doing business in a state, but who are denied notary status because they are not residents. (*See Cook v Miller*, 914 F. Supp. 177

(W.D.Mich.1996), where the Court rejected the "equal protection" argument, but reconsidered its position for an out-of-state attorney licensed in Michigan seeking a notary commission to compete effectively with other lawyers. The legislative response supporting this position can be found at MICH. COMP. LAWS ANN. § 55.107(2).) Although this problem can be handled through cross-border recognition of notary commissions (*see, e.g.*, MONT. CODE ANN. § 1-5-605), the drafters believed the better response is to allow non-residents to become commissioned provided they establish a sufficient nexus in the commissioning state. This will always give persons seeking legal redress against the notary a basis for jurisdiction and a place to serve court summonses or other official papers on the notary. Additionally, it will guarantee that there is an in-state location where the notary journal will be kept and be available for inspection. (For rules regarding access to notary journals, *see* Subsections 7-4(a) through (d).)

Subparagraph (b)(3) incorporates the current state of the law into the statute. Although until recently some state statutes still nominally required the applicant to be a citizen of the United States (*see, e.g.*, KAN. STAT. ANN. § 53-101; MICH. COMP. LAWS ANN. § 55.107(2); and NY EXEC LAW § 130), in *Bernal v. Fainter* (467 U.S. 216 (1984)) the Supreme Court ruled that imposing a citizenship requirement for a notary was unconstitutional. Consequently, any legal resident can qualify for a notary commission, and the Act so holds.

Subparagraph (b)(5) imposes both an education and testing requirement on all notary applicants, including commission renewals. (See Section 3-5). A handful of states mandate notary testing (*see* CAL. GOV. CODE § 8201(c); OR. REV. STAT. § 194.022(7); and UTAH CODE ANN. § 46-1-3-5)), but few require a course of instruction (*but see* N.C.GEN. STAT. § 10A-4(b)(3), which imposes a mandatory education requirement for notary commission applicants). Most states merely dictate that notary commission applicants attest to having read the local notary laws or have a familiarity with them. (*See, e.g.*, NEB. REV. STAT. § 64-101(6); 57 PA. CONS. STAT. ANN. § 151; and R.I. GEN. LAWS § 42-30-5(b).) The Act takes the bold step of requiring notaries not only to understand relevant notary laws and practices, but also to satisfactorily demonstrate a command of that knowledge. The drafters believe this requirement serves the public interest by ensuring that all notaries are qualified to perform their duties. Additionally, the requirement helps to professionalize the office – a subsidiary goal of the Act. Finally, passing a written test helps prove that the applicant can satisfy Subparagraph (b)(4), the ability to read and write English.

The drafters recognize that there is a financial cost associated with an education and testing requirement. The Act is silent as to when and by whom the cost is to be borne. This omission was intentional. The drafters believed it best to allow each state to determine the most appropriate method of funding the cost. Some states may have administrative budgets sufficiently ample to meet the added expense. Some will pass the cost along to notary commission applicants either by rolling it into a higher general application fee or by imposing a separate course or testing charge. Other states may allow private enterprise to play a role, letting notaries pay a non-governmental educational organization or institution for the requisite instruction and testing.

Arguably, passing the education and testing costs on to applicants heightens the entry barrier for the notary profession, which can translate into fewer independent notaries whose expenses are not underwritten by an employer. This, in turn, could mean there will be a smaller number of notaries available to serve the public,

especially in economically disadvantaged areas. The drafters considered this possibility, but believed the benefits to the public outweighed any of the risks. Higher commissioning fees and strict testing requirements should limit applications only to highly motivated individuals who will take their duties seriously. Elevating standards in an effort to provide better trained and more devoted notaries can only redound to the public good. Should education and test costs restrict otherwise qualified and interested individuals from entering the field and serving areas in need, a commissioning authority is not precluded from instituting a “test fee waiver” program if it is deemed necessary or appropriate.

Subparagraph (b)(6) introduces a fingerprinting requirement as an added protection against dishonest persons becoming notaries. Fingerprints will allow commissioning officials to do computer-assisted background checks to determine whether the applicant has a criminal record. They also provide the opportunity to discover if aliases have been used, and, if so, whether criminal acts were committed under them. Automated Fingerprint Identification Systems (AFIS) linked to law enforcement data banks simplify the process of checking an applicant’s prints. Additionally, requiring applicants to provide fingerprints should ensure truthful responses to questions relating to prior criminal activity on the application. (*See* Subparagraph 4-2(7).) The fingerprint requirement should deter many unqualified applicants from trying to obtain a commission through deceitful means. Currently, California requires fingerprints of notary applicants. (*See* CAL. GOV. CODE § 8201.1.)

Subsection (c) details specific grounds for denying a commission. Denials are within the discretion of the commissioning official. Although there was unanimous support for authorizing such discretion, some drafters felt the Act did not go far enough, and should have made certain past behavior automatic grounds for rejecting an application. In any event, because notaries hold positions of public trust, any matters within the purview of the subsection raised in the application are to be carefully scrutinized. In exercising discretion, the

commissioning official should tip the balance in favor of the public's interest and not the applicant's desire to become a notary. The better approach is that, absent a clear showing of no risk to the public, the application should be denied. Although the Act contemplates that reviews will be made on a case-by-case basis, the appropriate body ought to consider maintaining accurate records to ensure that the rules are applied evenhandedly over time.

Subparagraph (c)(1) provides a reasonable, minimum standard for denial. A person who is dishonest on an application cannot be trusted to faithfully execute notarial duties. The commissioning official will assess "materiality" of the misstatement or omission. The section allows the applicant to explain the error, and if it is excusable, to be granted a commission.

Subparagraph (c)(2) limits the commissioning official's discretion when the applicant has been held accountable for a felony or any crime involving dishonesty or moral turpitude. Examples could include crimes involving fraud, forgery, theft, securities law violations, and perjury. (The list is merely illustrative and not meant to be inclusive. It is contemplated that the commissioning authority will determine the appropriate crimes for these purposes.) The subsection mandates a five-year commissioning moratorium after a conviction or *nolo contendere* plea. After that period has elapsed, it is expected that the commissioning official will scrutinize the circumstances to determine whether such an applicant is then fit or suited to be a notary.

The provision was purposefully written in broad terms. This allows the commissioning official the opportunity to determine those crimes which should provide a basis for applying the five-year rule. Also, it permits greater discretion after the five-year period has passed to determine which types of acts so question the applicant's integrity that commissioning would constitute too great a risk to the public. For the latter reason, some drafters believed that applicants with a history of fraud, forgery, or similar crimes of deceit ought never to be commissioned. Others felt that rather than provide a potentially incomplete list of acts warranting denial of a notary commission, it was best to let the

commissioning authority exercise judgment on which acts warranted commission denial, taking into account what best suits the needs of the jurisdiction's citizenry.

Subparagraph (c)(3) reinforces the concept that honesty and reliability are cornerstones of the notarial office. Consequently, an applicant who has engaged in deceitful activity, even if not of a criminal nature, ought to be closely scrutinized. Absent a satisfactory belief that such actions will not be repeated, the application should be denied.

Subparagraph (c)(4) places sanctioned notarial and other professional license improprieties on the same footing as crimes involving dishonesty or moral turpitude. (*See* Subparagraph (c)(2).) Some drafters argued that revocation of a notary commission ought to serve as a bar from future commissioning. The Act adopts the view that prior bad actors can be rehabilitated, but recognizes that certain acts require longer periods to prove rehabilitation. Hence, the five-year moratorium for professional misdeeds. After the moratorium expires, the commissioning official retains the discretion to deny the application if satisfactory evidence of rehabilitation has not been produced. Also, the commissioning official always has the discretion to examine the facts leading to the prior disciplinary action, and determine which acts are less likely to be repeated.

Subparagraph (c)(5) provides the commissioning official with general discretionary authority to reject applications of any notary found to have engaged in official misconduct as defined in Section 2-12 of the Act even if no disciplinary action had resulted. In essence, it serves as a back-up to the other rules.

Subsection (d) permits the applicant to appeal a commission denial. The provision also requires the jurisdiction to establish an appeal board and an appropriate filing deadline. Presumably, the appellate body would establish its own procedures. The Act prohibits an appeal for any applicant who has had a notary commission denied or revoked by the commissioning authority within five years of the application; this time period is congruent with Subparagraph (c)(4)'s five-year ban on commission issuance after a disciplinary action. The Act

contemplates that denials or revocations of non-notarial professional licenses are to be treated similarly, *e.g.*, a real estate broker's license. Also, the applicant cannot bring an appeal if a ground for revocation of a notary commission existed in a previous case, even though no action was taken on it. (*See* Subsection 12-3(d).)

§ 3-2 Jurisdiction and Term.

A person commissioned as a notary may perform notarial acts in any part of this [State] for a term of [4] years, unless the commission is earlier revoked under Section 12-3 or resigned under Section 11-3.

Comment

Section 3-2 addresses the scope of the commission. The Act adopts the modern view that a notary is authorized to act throughout the entire jurisdiction. (*See, e.g.*, ARIZ. REV. STAT. ANN. § 41-312(A); IDAHO CODE § 51-107(2); and IND. CODE ANN. § 33-16-2-1(b).) Although the Act allows each jurisdiction to set the length of the notary commission term, a four-year term of office is recommended. Currently, some states set two or three-year periods (*see* DEL. CODE ANN. tit. 29 § 4306; and IOWA CODE ANN. § 9E.4). The drafters felt this was too short, especially in light of the Act's rigorous education and testing components (*see* Subparagraph 3-1 (b)(5)). On the other hand, a five or six-year term, or longer, was

considered too lengthy in that it does not provide sufficient contact between the notary and the commissioning official. (*But see* S.C. CODE ANN. § 26-1-10; and ARK. CODE ANN. § 21-14-101 (10-year term-limits).) Some states offer lifetime appointments (*see generally* LA. REV. STAT. ANN. § 9:2611; and WIS. STAT. ANN. §1370, providing lifetime appointment for attorneys in good standing). The drafters did not believe that the public's interest would be served by commission terms of such length that the commissioning official could not regularly reassess the qualifications of the notary nor apprise the notary of pertinent statutory changes or other developments affecting notarial duties.

§ 3-3 Bond.

- (a) A notary commission shall not [become effective / be issued] until an oath of office and [25,000] dollar bond have been filed with the [designated office]. The bond shall 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 2-12.
- (b) The surety for a notary bond shall report all claims against the bond to the [commissioning official].
- (c) If a notary bond has been exhausted by claims paid out by the surety, the [commissioning official] shall suspend the notary's commission until:
 - (1) a new bond is obtained by the notary; and
 - (2) the notary's fitness to serve the remainder of the commission term is determined by the [commissioning official].

Comment

Section 3-3 addresses bond requirements. Most jurisdictions now require notaries to obtain a surety bond covering their official acts (*see, e.g.*, CAL.

GOV. CODE § 8212; and 57 PA. CONS. STAT. ANN. § 154), but these are often for quite modest amounts (*see, e.g.*, HAW. REV. STAT. ANN. § 456-5 (\$1,000)); N.M. STAT. ANN. § 14-12-3(B) (\$500); and WYO. STAT. ANN. § 32-1-104(a) (\$500)). The Act favors a higher bond of \$25,000, as opposed to the common \$10,000 or \$5,000 amount (*see, e.g.*, ALA. CODE § 36-20-3; KAN. STAT. ANN. § 53-102; and MISS. CODE ANN. § 25-33-1). It is important to note that the bond's function is to protect the public. The injured party can seek financial recovery against the bond, but is not limited to it. Excess damages can also be recovered against the notary. Even if the bond covers the damages, the notary is responsible to the surety company for any payments made on the bond.

The Act does not address notary errors and omissions insurance. This is a different issue. The drafters did not believe imposing an insurance requirement on

notaries was warranted, as has occasionally been proposed. Other professions do not have it. It is hoped that the more stringent commissioning requirements, especially the education and testing components, will reduce if not eliminate notarial errors and concomitant claims.

Subsection (b) imposes a reporting requirement on the surety. This will help the commissioning official monitor notarial misconduct. It will also provide a record for future application reviews.

Subsection (c) puts teeth into the bond requirement. To protect the public, the notary commission is automatically suspended if the bond expires or is exhausted. Notably, once expired, the notary must not only obtain a new bond, but also undergo a fitness review. By its silence, the Act implicitly empowers the commissioning official to promulgate standards and procedures for this review.

§ 3-4 Commissioning Documents.

Upon issuing a notary commission, the [commissioning official] shall provide to the notary:

- (1) a commission document stating the commission serial number and starting and ending dates; and
- (2) a Certificate of Authorization to Purchase a Notary Seal stating the commission serial number.

Comment

Section 3-4 provides the means by which the notary can satisfy other sections of the Act. The purchase certificate is

needed to acquire a seal under Subsection 8-4(b).

§ 3-5 Recommissioning.

A current or former notary applying for a new notary commission shall submit a new completed application and comply anew with all of the provisions of Chapters 3 and 4.

Comment

Section 3-5 establishes an important rule that has far-reaching implications for protection of the public. The Act requires every notary commission applicant, specifically including those who are seeking "renewal" of a current commission, to comply anew with all of the provision of Chapters 3 and 4. Most importantly, this includes the education and testing requirements.

Although it is at odds with what some have termed a "rubber-stamp" renewal process in many jurisdictions (*see, e.g.*, MD. CODE ANN., STATE GOV'T § 18-103(a), (d); NEB. REV. STAT. ANN. § 64-104; N.D. CENT. CODE §§ 44-06-01, 44-06-02; and OKLA. STAT. ANN. tit. 49 § 1), the drafters believe that the Act presents the better approach. By requiring that all components of the

commissioning process be met anew, the Act ensures that every notary keeps abreast of changes and developments in notarial laws and procedures. It also compels individuals to re-examine their interest in remaining a notary, and filters out those

who are not willing to go to the trouble of demonstrating proficiency. This serves the public's interest by ensuring that only those committed to the notary office are allowed to continue in it.

Chapter 4 – Application for Notary Public Commission

Comment

General: This chapter converts the commissioning requirements set out in Chapter 3 into an application form. The format provided is complete in itself, but there is allowance for modifications and additions. The Act is silent on a number of points that were considered to be best left to the discretion of the commissioning official.

§ 4-1 Application Materials.

Every application for a notary commission shall be made on paper or electronic forms determined by the [commissioning official] and include:

- (1) a statement of the applicant's personal qualifications, as described in Section 4-2;
- (2) a certificate evidencing successful completion of a course of instruction, as described in Section 4-3;
- (3) a notarized declaration of the applicant, as described in Section 4-4;
- (4) a full set of fingerprints of the applicant;
- (5) such other information as the [commissioning official] may deem appropriate; and
- (6) an application fee, as specified in Section 4-5.

Comment

Section 4-1 establishes the components of an official application form. A notary commission can be granted only to applicants filing this official form. The section requires the commissioning official to provide the format for this application. It is implicit that the form will both be printed and made available by the commissioning official. Subparagraphs (1) - (5) set forth the elements of the application form as provided in the balance of the chapter. To the extent any jurisdiction does not adopt a specific application requirement set out in the chapter, then the corresponding subparagraph of Section 4-1 should be deleted. For example, for those states that do not opt to impose an education requirement as prescribed in Section 4-3, Subparagraph (2) will be deleted and the balance of the subparagraphs re-numbered.

§ 4-2 Statement of Personal Qualifications.

The application for a notary commission shall state or include, at least:

- (1) the applicant's date of birth;
- (2) the applicant's residence address and telephone number;
- (3) the applicant's business address and telephone number, the business mailing address, if different, and the name of the applicant's employer, if any;
- (4) a declaration that the applicant is a citizen of the United States or proof of the applicant's legal residency in the country;
- (5) a declaration that the applicant can read and write English;
- (6) all issuances, denials, revocations, suspensions, restrictions, and resignations of a notarial commission, professional license, or public office involving the applicant in this or any other state or

- nation;
- (7) all criminal convictions of the applicant, including any pleas of admission or nolo contendere, in this or any other state or nation; [and]
 - (8) all claims pending or disposed against a notary bond held by the applicant, and all civil findings or admissions of fault or liability regarding the applicant's activities as a notary, in this or any other state or nation [; and]
 - (9) if the notary elects to keep an electronic journal, the password or access instructions required by Section 14-4(3)].

Comment

Section 4-2 incorporates into the application form the qualification requirements set out in Section 3-1. Subparagraph (3) is particularly important for non-resident notaries, whose non-residency status is not a bar to commissioning if Subparagraph 3-1(b)(2) is satisfied. The business address requirement not only provides necessary information for the commissioning official, but also for parties seeking to serve legal papers (*e.g.*, a summons or subpoena) on the non-resident notary or to access the non-resident notary's journal (*see* Section 7-4). Subparagraph (4) anticipates that the non-citizen applicant will attach a photocopy of the official

paperwork that authorizes the applicant's legal residence in the country. Subparagraphs (6), (7), and (8) flesh out the requirements of their counterparts in Subparagraphs 3-1(c)(2) through (5) by making clear that potential disqualifying acts are not limited only to those performed in the commissioning jurisdiction.

Subparagraph (9) requires those who elect to use an electronic journal in lieu of a bound paper record to include journal-access information in their respective commission applications. By doing so, the applicant immediately complies with the journal-access requirements imposed by Section 7-5.

§ 4-3 Course and Examination.

- (a) Every applicant for a notary commission shall take, within the 3 months preceding application, a course of instruction of at least 3 hours approved by the [commissioning official], and pass a written examination of this course.
- (b) The content of the course and the basis for the written examination shall be notarial laws, procedures, and ethics.

Comment

Section 4-3 describes the education and testing requirement mandated by Subparagraph 3-1(b)(5). The applicant must both complete the course and pass the exam within three months before submission of the application. Notably, the Act does not waive the requirement for even highly experienced or credentialed applicants. This is contrary to practice in some jurisdictions. (*See, e.g.*, N.Y. EXEC. LAW § 130; R.I. GEN

LAWS § 42-30-5(b) and (c); and N.C. GEN. STAT. § 10A-4(b)(3).)

Both the course and test must be approved by the commissioning official. Nothing in the Act mandates that the commissioning official compose or teach the course, or develop or administer the test. These matters may be handled by an approved educational body. The degree of control over these matters is left to the

discretion of the commissioning official. Some states may opt to have the course and test developed, administered, and graded by an approved independent provider. Others may want to administer both the course and test, or just develop and grade the test.

The educational program must be at least three hours in duration. The Act does not preclude requiring longer courses, and some jurisdictions may opt for that. Subsection (b) states that the course content shall include notarial laws, procedures, and ethics. Although the Act provides the rules for notary laws, it does not provide specific ethical standards for notaries. Nonetheless, the Act views notaries public as professionals, albeit with narrow powers, and as such implicitly suggests that they have ethical obligations to principals and the public.

THE NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY, promulgated by the National Notary Association, provides a comprehensive set of basic ethical standards. Commissioning authorities are encouraged to have education providers integrate the CODE into their courses.

As for the test itself, the Act requires only that it be written. (Currently at least

one jurisdiction administers an oral notarial exam. *See* D.C. CODE ANN. § 1-1206. Other jurisdictions in which courts are the commissioning authority have been known to base qualification on an oral interview with a judge. *See, e.g.*, ALA. CODE § 36-20-1; GA. CODE ANN. § 47-17-2; and VT. STAT. ANN. tit. 24 §§ 14(a) and (c).) Written exams with only multiple-choice or “true-false” answers satisfy the provision. “On-line” or other technologically generated exams are permitted. (Florida offers both on-line education and testing.)

To facilitate implementing the examination requirement, the Act does not specify when the test is to be administered. The drafters intended that the test would be taken immediately after the course is completed when the material would be freshest in the mind of the student. Some jurisdictions, however, may want to allow the applicants time to reflect on the material. The Act does not mandate a formal classroom setting. Thus, aside from on-line teaching and testing, home study and mail-in tests are possible options, provided that the material and tests are from an approved education provider.

§ 4-4 Notarized Declaration.

Every applicant for a notary 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 understand the official duties and responsibilities of a Notary Public in this [State], as explained in the course of instruction I have taken; 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 9-2)

Comment

Section 4-4 requires all applicants to swear or affirm on three points. The first is that the application is fully and accurately completed. This means not only that all statements are true, but also that there are not any pertinent omissions. The applicant then states that he or she understands the

obligations of the notary office as imparted in the mandatory three-hour course. Finally, the applicant takes what amounts to an “oath of office.” Such a declaration is standard fare and required in all jurisdictions. (*See, e.g.*, COLO. REV. STAT. ANN. § 12-55-105; GA. CODE ANN. § 45-17-3; IDAHO CODE §

51-105(d); 5 ILL. COMP. STAT. ANN. 312/2-104; and VA. CODE ANN. § 47.1-9.) The oath impresses upon applicants that notaries public perform an important function in society, a role that must be faithfully fulfilled.

§ 4-5 Application Fee.

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

Comment

Section 4-5 establishes the application fee. This will vary from jurisdiction to jurisdiction depending upon how the general operational costs of the office of the commissioning official are funded, how the specific expenses of processing applications are covered, and whether or not the cost of testing is to be borne by this fee or through a separate charge.

Jurisdictions that rely on third-party education providers for both the course and test may prefer to segregate the training/testing fee from the fee for application processing. Market forces should keep the educational costs reasonable and permit applicants to use factors other

than cost (*e.g.*, convenience) in satisfying their requirements.

Although the Act is silent on point, nothing prevents the commissioning official from waiving the fee in hardship situations. An overarching goal of the Act is to ensure that the public is properly served. The drafters recognize that providing notarial service in some economically depressed areas may be problematic. Thus, to encourage otherwise qualified members of those communities to meet notarial needs, fee waivers may be appropriate. (*See* Subparagraph 3-1(b)(5) Comment for similar issues with respect to testing fees.)

§ 4-6 Confidentiality.

Information required by Section 4-2(7) shall be used by the [commissioning official] and designated [State] employees only for the purpose of performing official duties under this [Act] and shall not be disclosed to any person other than a government agent acting in an official capacity and duly authorized to obtain such information, a person authorized by court order, or to the applicant or such individual's duly authorized agent.

Comment

Section 4-6 mandates that the commissioning official keep all information regarding an applicant's criminal history confidential. Such information, however, can be used for all legitimate, official purposes by the office of the commissioning official. It must also be shared with other governmental officials operating within their authority, and is subject to lawful subpoena. The Act eliminates the need for the commissioning official to seek specific authority to release the information to the applicant's authorized agent. This should eliminate unnecessary paperwork and delay when legitimate requests for information are made.

The drafters considered whether all or more of the information in the application should be kept confidential. For example, some could not understand why the notary's home address and telephone number should be available to the public when a business address and number are listed. But a legislature would not be precluded from exempting law enforcement personnel or other persons in sensitive positions from the requirement to disclose a residence address and telephone number. Additionally, why should all matters related to licenses, public office, and prior tort actions be available? Is such information relevant to prospective

principals or the general public? The drafters decided it was. Notaries, as public servants, should be able to withstand the scrutiny of those who will avail themselves of their services. Principals will rely on notaries to honestly and properly execute certificates and perform other notarial acts. These services will relate to important transactions for the principals and innocent third parties relying on notarized

documents. Consequently, principals concerned about such matters ought to be able to screen a notary's qualifications to determine whether or not the notary satisfies the principal's expectations, and to find the notary for legal action and redress in the event of misconduct. Realistically, the drafters expect that few requests would ever be made for such information.

Chapter 5 – Powers and Limitations of Notary Public

Comment

General: This chapter establishes the parameters for official notarial acts. It not only identifies authorized acts and related functions (*see* Subsections 5-1(a),(c), and (d)), but also specifically proscribes certain activities (*see* Subsection 5-1(b) and Sections 5-2 through 5-9). In some respects this chapter is the centerpiece of the Act. It introduces new procedural concepts, imposes rigorous execution standards, and provides sage guidance for notarial practice.

§ 5-1 Powers and Prohibitions.

- (a) A notary is empowered to perform the following notarial acts:
 - (1) acknowledgments;
 - (2) oaths and affirmations;
 - (3) jurats;
 - (4) signature witnessings;
 - (5) copy certifications;
 - [(6) verifications of fact;]
 - [(7)] electronic notarizations as defined in Article III; and
 - [(8)] any other acts so authorized by the law of this [State].
- (b) A notary shall not perform a notarial act if the principal:
 - (1) is not in the notary's presence at the time of notarization;
 - (2) is not personally known to the notary or identified by the notary through satisfactory evidence;
 - (3) shows a demeanor which causes the notary to have a compelling doubt about whether the principal knows the consequences of the transaction requiring a notarial act; or
 - (4) in the notary's judgment, is not acting of his or her own free will.
- (c) A notary may certify the affixation of a signature by mark on a document presented for notarization if:
 - (1) the mark is affixed in the presence of the notary and of 2 witnesses unaffected by the document;
 - (2) both witnesses sign their own names beside the mark;
 - (3) the notary writes below the mark: "Mark affixed by (name of signer by mark) in presence of (names and addresses of witnesses) and undersigned notary under Section 5-1(c) of [Act]"; and
 - (4) the notary notarizes the signature by mark through an acknowledgment, jurat, or signature witnessing.
- (d) A notary may sign the name of a person physically unable to sign or make a mark on a document presented for notarization if:
 - (1) the person directs the notary to do so in the presence of 2 witnesses unaffected by the document;
 - (2) the notary signs the person's name in the presence of the person and the witnesses;

- (3) both witnesses sign their own names beside the signature;
- (4) the notary writes below the signature: “Signature affixed by notary in the presence of (names and addresses of person and 2 witnesses) under Section 5-1(d) of [Act]”; and
- (5) the notary notarizes the signature through an acknowledgment, jurat, or signature witnessing.

Comment

Subsection 5-1(a) identifies the permissible notarial acts. Subparagraphs (1), (2), and (3) list standard notarial acts recognized in all jurisdictions. (For the applicable description and general execution requirements of “acknowledgment,” *see* Section 2-1 and Comment; of “oath” and “affirmation” *see* Sections 2-11 and 2-2 and Comments, respectively; and of “jurat,” *see* Section 2-7 and Comment.) Subparagraphs (4) and (5) authorize two acts – “signature witnessing” and “copy certification” – not expressly recognized by statute in all jurisdictions. (*See* Section 2-19 and Comment for a definition and execution requirements of a “signature witnessing”; and Section 2-4 and Comment for a definition and execution requirements of a “copy certification.”)

Subparagraph (a)(6) is bracketed to emphasize that the “verification of fact” is an act that some jurisdictions may prefer to withhold as a notarial power. (*See* Section 2-20 and Comment.)

Subparagraph (a)(7) specifically permits a notary to perform electronic notarizations. The drafters included this provision recognizing that under federal law state-commissioned notaries are authorized to use electronic signatures in notarizing (*see* 15 U.S.C.A. §§ 7001 *et seq.*) Article III of the Act provides detailed rules for registering electronic notaries and performing electronic notarizations. Those jurisdictions that do not adopt Article III nonetheless may want to include specific authority for electronic notarizations in their basic notary statutes.

Subparagraph (a)(8) expands a notary’s authority to include acts permitted in the jurisdiction by other laws. This is not an uncommon practice. (*See, e.g.,* ALA. CODE 36-20-30; and R.I. GEN. LAWS § 42-30-7.)

The drafters realize that there are other notarial acts currently recognized in some jurisdictions but not listed in Subsection 5-1(a). These acts include protesting commercial paper (*see, e.g.,* ALASKA STAT. § 44.50.090; HAW. REV. STAT. ANN. §§ 456-10,11, and 12; and N.M. STAT. ANN. § 14-12-10) and solemnizing marriages (*see* FLA. STAT. ANN. § 117.045; and ME. REV. STAT. ANN. tit. 19 §121). In the case of protesting commercial paper, the drafters believed it better to mention this act and its requirements within a jurisdiction’s Uniform Commercial Code, where it would be known to notaries with the requisite specialized knowledge, rather than in the general notary laws. Each jurisdiction is free to add as many notarial powers as it determines best meets the need of the public.

Conversely, a jurisdiction could delete an enumerated power. The drafters believe “acknowledgments,” “oaths and affirmations,” “jurats,” “copy certifications,” and “signature witnessings” are essential notarial acts that must be included in any comprehensive notary statute. Any of the other listed powers could be eliminated without substantially impacting the efficacy of the statute.

Subsection (b) prohibits a notary from performing a notarial act if any of the four listed prerequisites are missing. These proscriptions guarantee the integrity and reliability of the transaction. Subparagraphs (b)(1) and (2) specify requirements – the principal’s physical presence and properly proved identity – that appear in the definition of all notarizations permitted by the Act. (*See, e.g.,* Sections 2-1, 2-7, and 2-19.) Although some jurisdictions do not specifically address these requirements, the drafters considered these two elements

essential to all proper notarizations, and deemed it worthwhile to iterate them.

Subparagraphs (3) and (4) address more controversial issues. The former follows the lead of two jurisdictions (*see* FLA. STAT. ANN. § 117.075(5); and GA. CODE ANN. § 45-17-8(b)(3)) requiring the notary to assess whether or not the principal is aware of the significance of the transaction requiring the notarial act. The provision does not require the notary to inquire into the principal's knowledge or understanding of the document to be notarized. Nor does it mandate that the notary actively inquire into or investigate the transaction. Instead, it demands that the notary form a judgment from the circumstances as to whether or not the principal is generally aware of what is transpiring. Thus, if a principal presented a document entitled "power of attorney" and then asked the notary to notarize "this contract to purchase a burial plot," the notary might have a basis to determine that the principal was not aware of the transaction to which the notarization related. Usually, this provision will be invoked only when the notary believes the principal suffers from mental infirmity. It can also, however, come into play for principals who are operating under the heavy influence of alcohol or drugs. It is expected that the notary will make a layman's commonsense judgment about the principal's level of awareness, mainly through conversing with the individual.

The obligations imposed on the notary in Subparagraph (b)(4) are similar to those raised in (b)(3) relating to "awareness." In

(b)(4), the issue is "voluntariness." The subparagraph reinforces the view that a signing is the voluntary and intended act of the principal. If the principal is being unduly influenced by another or is acting under duress, the notary should not perform the notarization. As is the case with "awareness," notaries should play close attention to principals who appear to have mental infirmities, as they are more susceptible to manipulation and exploitation by a third party. (For a more detailed discussion of "voluntariness," *see* Section 2-1 Comment.)

Subsection (c) provides a simple procedure for certifying the principal's mark as his or her legal signature. The mark must be made in the presence of the notary and two disinterested witnesses. The witnesses must sign their names beside the mark. The notary must memorialize the ceremony in writing, and then execute the requested notarization.

Subsection (d) provides the procedure for a notary to sign the name of a principal who is physically unable to do so. The same safeguards found in Subsection (c) for a mark made by a principal are present for a proxy signature made by the notary. There is one added protection: the notary may only affix the signature if specifically directed to do so by the principal. Moreover, this request must be made in the presence of the two disinterested witnesses.

Once the principal's signature is affixed by the notary, the memorializing procedure is congruent with the one spelled out in Subsection (c). The appropriate notarization may then be performed.

§ 5-2 Disqualifications.

- (a) A notary is disqualified from performing a notarial act if the notary:
- (1) is a party to or named in the document that is to be notarized;
 - (2) will receive as a direct or indirect result any commission, fee, advantage, right, title, interest, cash, property, or other consideration exceeding in value the fees specified in Section 6-2(a);
 - (3) is a spouse, domestic partner, ancestor, descendant, or sibling of the principal, including in-law, step, or half relatives; or
 - (4) is an attorney who has prepared, explained, or recommended to the principal the document that is to be notarized.

- (b) Notwithstanding Subsection (a)(2), a notary may collect a fee for an assignment as a signing agent if payment of that fee is not contingent upon the signing of any document.

Comment

Section 5-2 describes situations in which a notary has a disqualifying interest and, therefore, must not proceed with a related notarization. Subparagraph (a)(1) states the basic rule that a notary cannot notarize a document in which he or she is either a principal or otherwise named. This rule goes beyond the basic prohibition against notarizing one's own signature. It also prohibits the notary from acting if mentioned in the document. Being named in the document impugns the notary's disinterest in the transaction and casts in doubt whether he or she can impartially meet the obligations imposed by law.

Subparagraph (a)(2) addresses the "interest in the transaction" issue more squarely. It specifically prohibits a notary from performing an official act related to a transaction from which the notary could benefit. This rule is common to most jurisdictions. (*See, e.g.*, IDAHO CODE § 51-108(2); KAN. STAT. ANN. § 53-109; and PA. CONS. STAT. ANN. 165(e).) However, being an employee who performs a notarization for an employer does not create an interest governed by this subparagraph, unless the employee receives a benefit directly related to the completion of the act. Issues with respect to employee-notaries are specifically addressed in Sections 6-4 (fees), 7-4(f) (journal), 8-2(a) (seal), and 12-1(c) and (d) (liability). Additionally, in recognizing that employees can notarize documents for their employers, it is contemplated that notarization in similar business relationships is permissible. Some jurisdictions specifically authorize corporate officers and directors to notarize documents for their business organizations. (*See, e.g.*, ARK. CODE ANN. § 24-14-109.) The drafters did not feel this needed to be stated separately, concluding that it was implicitly permitted by language that did not specifically prohibit it. (*But see* Subparagraph (a)(4) which disqualifies attorneys from notarizing documents they prepared for their clients.)

Subparagraph (a)(3) offers an expanded view of disqualifying relationships for a notary. Most jurisdictions that address the matter confine such disqualification to close family members, but the drafters felt that broader coverage best fostered the integrity of the notarial act. Particularly noteworthy is the position that for these purposes a domestic partner be treated identically to a spouse. Also, the Act includes "in-laws," "half," and "step" relatives as family members who ought to have their documents notarized by completely independent and disinterested notaries.

Subparagraph (a)(4) raises a particularly controversial issue. Attorneys are usually permitted to notarize their clients' documents. The drafters believed, however, that attorneys clearly have an interest in documents they draft or offer advice on for clients that should disqualify them from notarizing those documents. A separate non-notarial fee is probably being earned for providing legal services in these cases.

Whereas it could be argued that an attorney's notarization of a client's document would run afoul of Subparagraph (a)(2), the drafters thought it best to state the disqualification specifically. Another consideration was whether the attorney's role as advocate for a client is compatible with the notary's role as disinterested witness, especially if the notarized document becomes evidence in litigation and the attorney is asked to testify as an impartial notary in a case in which he or she is representing the client.

Notably, nothing in this subparagraph would prevent a paralegal, legal secretary, or other notary from notarizing the document at the direction of the attorney. The attorney's direction or request does not relieve the notary from fulfilling all of the obligations imposed by the Act with respect to proper execution of a notarial act.

Subsection (b) addresses notary signing agents, who perform a courier and clerical function in bringing loan documents to a borrower and, before notarizing these documents, ensuring that they are signed in the proper places. The operation of notary signing agents has been challenged in a few states because their fees exceed the maximums allowed by statute for notarial acts. The subsection allows notary signing agents to charge fees for their non-notarial

functions, in addition to notarial fees, as long as payment of the non-notarial fees does not depend on whether a borrower signs a packet of loan documents. In other words, the notary signing agent who travels to deliver loan documents to a borrower must be paid for the assignment by the contractor even when the borrower decides not to sign. This removes the agent's incentive to exert pressure on the borrower.

§ 5-3 Refusal to Notarize.

- (a) A notary shall not refuse to perform a notarial act based on the principal's race, advanced age, gender, sexual orientation, religion, national origin, health or disability, or status as a non-client or non-customer of the notary or the notary's employer.
- (b) A notary shall perform any notarial act described in Section 5-1 (a) of this Chapter for any person requesting such an act who tenders the appropriate fee specified in Section 6-2(a), unless:
 - (1) the notary knows or has good reason to believe that the notarial act or the associated transaction is unlawful;
 - (2) the act is prohibited under Section 5-1(b);
 - (3) the number of notarial acts requested practicably precludes completion of all acts at once, in which case the notary shall arrange for later completion of the remaining acts; or
 - (4) in the case of a request to perform an electronic notarial act, the notary is not registered to notarize electronically in accordance with Chapter 15.
- (c) A notary may but is not required to perform a notarial act outside the notary's regular workplace or business hours.

Comment

Section 5-3 establishes important rules that help regulate a notary's conduct. The section gives guidance on the central issues of whether and when a notary can refuse to perform an official act. Most statutes are silent on these matters, yet this can prove to be a troublesome matter for notaries in the field.

Subsection 5-3(a) reinforces the principle that the notary occupies a public office and therefore must treat all members of the public equally. The provision makes clear that a notary may not discriminate against any principal, and, absent some reason justified by another section, must

perform any requested notarization. The drafters' goal was to be as broad as possible in identifying protected classes. Listing specific groups was not intended to suggest that other persons are not entitled to the same protection, but merely to identify groups that often encounter discrimination. For example, people of advanced age were specifically identified because they are often the victims of discrimination on the presumption that they are not competent to handle their own affairs.

The subsection also prohibits a notary from distinguishing between clients or customers and those who do not avail

themselves of the notary's other professional or business services. The drafters were concerned that some employers might view an employee-notary as being available exclusively for the benefit of the employer. The language in this section is designed to emphasize two important points. First, there are no "notaries private," that is, officials commissioned for the sole purpose of handling a single employer's notarization needs. (*Contra* CA. GOV'T CODE §8202.8.) Second, notaries are commissioned to serve all members of the public, including people who do not avail themselves of the notary's other business services. (*Accord* CONN. GEN. STAT. § 3-94f.)

Subsection 5-3(b) begins by specifically requiring a notary to perform all authorized notarizations that are requested by anyone offering the appropriate fee. The subsection then carves out four important exceptions to the rule. Subparagraph (1) directs the notary to refrain from acting if he or she "knows or has good reason to believe" that the notarization is associated with an unlawful act. The drafters did not contemplate that the notary would conduct an investigation of the underlying transaction. There is no duty for the notary to search beyond the readily apparent facts. Nonetheless, as a responsible public officer, the notary must always refuse to proceed with a notarial act when the illegality of the transaction is self-evident. The goal is to thwart illegal acts from being consummated – an entirely appropriate aim for any public official.

Subparagraph (b)(2) reinforces the position that notarizations should never be performed in certain circumstances in which exploitation of the principal is possible or likely. The specific instances are enumerated in Subsection 5-1(b).

Subparagraph (b)(3) introduces a commonsense rule for notarial practice. The drafters recognize that at times there may be a tension between the notary's serving as a public officer and having other professional obligations. In reality, being a notary public

is not full-time employment. A notary cannot reasonably be expected to be at the instantaneous beck and call of the public. He or she may well have to attend to other duties. Consequently, there needs to be some flexibility in responding to the public's requests. This subparagraph makes clear that the notary is not constantly "on call" to perform notarizations, but may arrange to make reasonable accommodations to satisfy the public's need. When the number of documents presented makes notarizing all of them at one time unfeasible, the Act allows the notary to satisfy the request in a way that does not unreasonably interfere with the notary's other obligations. Subsection (c) further reinforces the view that, notwithstanding status as a public servant, being a notary is not a round-the-clock job. Notaries may limit their availability to both a regular workplace and regular business hours.

Whereas a notary has discretion to provide notarial services at any time or place within the jurisdiction, there is no obligation to do so outside of the notary's normal business hours or business place. Additionally, although Subparagraph 5-3(b)(3) is worded to address multiple notarizations, the provision could be reasonably interpreted to apply to only one notarization if the notary were committed to another activity during regular business hours when the notarization request was made.

In this situation, the notary would be encouraged to find a convenient juncture to attend to the notarization within a reasonable time, or arrange a mutually convenient alternate time to perform the notarial act. A principal should never be turned away without accommodation.

Subparagraph (b)(4) recognizes that notaries who have not taken the pains to educate, equip, and register themselves as electronic notaries (*see* generally Chapter 15) cannot reasonably be asked to perform an electronic notarization.

§ 5-4 Avoidance of Influence.

- (a) A notary shall not influence a person either to enter into or avoid a transaction involving a notarial act by the notary, except that the notary may advise against a transaction if Section 5-3(b)(1)

applies.

- (b) A notary has neither the duty nor the authority to investigate, ascertain, or attest the lawfulness, propriety, accuracy, or truthfulness of a document or transaction involving a notarial act.

Comment

Section 5-4 provides a rule to emphasize the notary's impartial role in performing official duties. Subsection (a) mandates that the notary play a neutral role and not attempt to influence any party from participating in or eschewing a transaction requiring a notarial act. The provision is written in broad terms and applies to a notary's dealings with all persons, including those who are not principals. Thus, for example, a notary is forbidden to coax a third party to act as a credible witness under Section 2-5 to prove a principal's identity. Notwithstanding the general rule, the subsection specifically provides that a notary cannot be neutral and therefore is not

bound by the subsection when the notary has reason to believe the underlying transaction is unlawful. (*See* Subsection 5-3(b)(1).)

Subsection (b) underscores the notary's limited role. The notary's duties are confined to the requirements established by the Act. A notary is neither authorized nor obligated to conduct an investigation into any aspect of a transaction. Indeed, the notarization promises no more than what the language in the certificate states. A notary never vouches for the legality, truthfulness, or accuracy of a document. The notary only verifies the principal's identity and participation in the notarization.

§ 5-5 False Certificate.

- (a) A notary shall not execute a certificate containing information known or believed by the notary to be false.
- (b) A notary shall not affix an official signature or seal on a notarial certificate that is incomplete.
- (c) A notary shall not provide or send a signed or sealed notarial certificate to another person with the understanding that it will be completed or attached to a document outside of the notary's presence.

Comment

Section 5-5 addresses improper handling of the notarial certificate – the essential manifestation of most notarial acts. (Simple oaths and affirmations as oral declarations may not require completion of a certificate.) The section mandates that notaries not execute false certificates.

Subsection (a) prohibits executing a certificate that the notary knows or believes has incorrect information. Notaries are often pressured by employers, clients, and friends to falsify a notarial certificate by inserting an incorrect date, or stating that an absent person was present or a stranger was personally known. Notaries must always keep in mind that the information in a

notarial certificate may carry great weight in equitably settling matters involving the rights and property of private citizens. Much depends on the truthfulness and accuracy of the statements in a notary's certificate.

Subsection (b) prohibits a notary from executing an incomplete certificate. The official signature and seal must not be affixed until all other portions of the certificate have been completed. If a notary signs and seals an incomplete certificate, an opportunity may be provided for an unscrupulous person to insert false information on the form. Some notaries like to pre-seal and pre-sign stacks of their

certificates to save time, but this is both an improper and a dangerous practice.

Subsection (c) reinforces the proposition that a proper notarization must be fully completed at one time and place in the notary's presence. Subsection (c) mandates that the notary not execute a certificate without also attaching it to the document to which it relates. The Act makes clear that an unattached certificate, whether complete or incomplete, may not be forwarded for attachment to the relating document by a third party. The reason for

the rule is quite simple. It would be too easy for an unscrupulous person to attach the signed and sealed certificate to a document for which it was not intended. Whereas it is true that, after a document with an attached certificate leaves the notary's possession, there is no way to prevent the certificate from being detached and then reattached to a different document, Subsection (c) at least assures that the notary will not have abetted the illegal act.

§ 5-6 Improper Documents.

- (a) A notary shall not notarize a signature:
 - (1) on a blank or incomplete document; or
 - (2) on a document without notarial certificate wording.
- (b) A notary shall neither certify nor authenticate a photograph.

Comment

Section 5-6 identifies documents that cannot properly be notarized. Subparagraph (a)(1) bans notarizing a blank or incomplete document. A blank document is one that has no text. An incomplete document is one that has unfilled blanks in its text. Nothing in this section authorizes the notary to read the document itself. A principal's privacy rights are important. The notary should do no more than scan the pages for incomplete sections and to glean information about the document for entry in the journal. (For more information on this point, *see* THE NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY, GUIDING PRINCIPLE IX, STANDARDS IX-A-1 and IX-A-2, and COMMENTARY.) Subparagraph (a)(2) extends the rule to prohibit a notary from notarizing a document that lacks notarial certificate wording.

Subsection (b) specifies that a notary cannot notarize a photograph. Although statutes do not specifically address this issue, it is important because of frequent requests that photographs be notarized, particularly for certain medical license applications. The rationale for the proscription is that unless the notary was present when the photograph was taken and developed, there is no way he or she can certify its authenticity. At best, a notary can notarize another person's signed statement of certain facts relating to the picture. Moreover, nothing precludes this statement and the notary's accompanying certificate from being executed on or across the photograph itself. But that notarization does not authenticate the photograph; it only verifies that a principal proved his or her identity and signed the statement.

§ 5-7 Intent to Deceive.

A notary shall not perform any official action with the intent to deceive or defraud.

Comment

Section 5-7 enunciates a basic rule that pervades the entire Act: a notary shall not engage in deceptive practices in the performance of official duties. This concept is self-evident, but is so essential to

establishing integrity and reliability that the drafters believed it was well worth repeating through separate attention. Aside from being a positive obligation, it is also an ethical imperative. (*See* THE NOTARY PUBLIC CODE

OF PROFESSIONAL RESPONSIBILITY, GUIDING PRINCIPLE IV, STANDARDS IV-E-1 and IV-F-2, and COMMENTARY.) A notary who violates this duty should incur both disciplinary and criminal sanctions. (*See generally* Sections 12-3 through 12-7.)

§ 5-8 Testimonials.

A notary shall not use the official notary title or seal to endorse, promote, denounce, or oppose any product, service, contest, candidate, or other offering.

Comment

Section 5-8 fosters maintenance of a neutral, independent, and respected notary office. To this end, the Act prohibits use of the office or any of its incidents for any commercial or political purpose. A similar rule has been promulgated in a number of jurisdictions. (*See, e.g.*, UTAH CODE ANN. § 46-1-10; and OR. REV. STAT. § 194.158(2).) The drafters adopted the rule because of a concern that uninformed members of the public could misunderstand the significance of a notary seal. It was feared that some might believe it carried with it a governmental imprimatur of approval. Of course, this is not the case. Indeed, a notary who uses his or her seal for such purposes with the intent to deceive someone into believing the seal imparted an official government endorsement would be in violation of Section 5-7, and subject to severe sanctions.

§ 5-9 Unauthorized Practice of Law.

- (a) If notarial certificate wording is not provided or indicated for a document, a non-attorney notary shall not determine the type of notarial act or certificate to be used.
- (b) A non-attorney notary shall not assist another person in drafting, completing, selecting, or understanding a document or transaction requiring a notarial act.
- (c) This section does not preclude a notary who is duly qualified, trained, or experienced in a particular industry or professional field from selecting, drafting, completing, or advising on a document or certificate related to a matter within that industry or field.
- (d) A notary shall not claim to have powers, qualifications, rights, or privileges that the office of notary does not provide, including the power to counsel on immigration matters.
- (e) A non-attorney notary who advertises notarial services in a language other than English shall include in the advertisement, notice, letterhead, or sign the following, prominently displayed in the same language:
 - (1) the statement: “I am not an attorney and have no authority to give advice on immigration or other legal matters”; and
 - (2) the fees for notarial acts specified in Section 6-2(a).
- (f) A notary may not use the term “notario publico” or any equivalent non-English term in any business card, advertisement, notice, or sign.

Comment

Section 5-9 draws a sharp line between notarial practice and legal advice. A significant underlying goal of this section is to protect the public, especially those who believe that notaries may lawfully perform some of the functions of attorneys. To this end, guideposts are provided to help ensure that the notary does not cross the line separating notarization from legal advice. Notaries who are not duly qualified attorneys are strictly forbidden from offering legal opinions to others. Those who do are engaged in the unauthorized practice of law. Aside from constituting official misconduct for notary purposes, it may also be actionable as a criminal offense. (*See, e.g.*, IDAHO CODE §51-112(D); and TEX. GOV'T CODE ANN. §406.016.(d).)

Subsection (a) establishes the rule that determining the type of notarization needed by the principal or selecting the certificate to be executed on the document is prohibited. An exception, of course, is made for notaries who are also attorneys. Some notaries may believe it is appropriate for them to assist principals in executing the notarization, and that recommending the act and certificate is consistent with this role. The drafters strongly disagree. Some documents may need an acknowledgment, others a jurat, and others only a signature witnessing. An improper certificate could render the document ineffective. For example, a document with an acknowledgment or signature witnessing certificate cannot be accepted as an affidavit, which speaks to the truth of the contents of the document. Neither of these types of notarization involves an oath or affirmation, an essential element of an affidavit. Such a mistake could prove costly if a transaction fell through because the truth of the document's contents was essential to its completion. A notary ought not to be involved in these matters; they belong in the attorney's realm. The drafters firmly believed that the notary public serves a ministerial role, one that does not entail giving advice or offering opinions. (*Accord* THE NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY, GUIDING PRINCIPLE VI.)

Nothing in this section prohibits a notary from putting or writing certificate wording on a document if the principal asks for a specific type of notarial act. Thus, if a notary is requested to witness a principal's signature, but there is no certificate on the document, the notary may add a signature witnessing certificate to the signature page. Prescribed certificate wording for different notarizations is provided in Chapter 9.

Subsection (b) further clarifies the purely ministerial role played by a notary. It expands the proscription relating to notarial certificates to documents. A notary commission does not authorize the notary to provide any transaction-related assistance. Thus, the notary must neither complete an unfinished document nor draft a document for another person. Of course, this does not apply to completing the notarial certificate that is part of the document, including striking inapplicable language.

The notary should not recommend a document type to a principal, even if specifically asked. Notaries who have access to pre-printed legal forms must refrain from suggesting a form for another person even if the notary is confident about which form is needed. In addition, the notary must never interpret or explain either the purpose or contents of a document to another person. These acts constitute legal advice, and can only be performed by licensed attorneys.

The subsection underscores the fact that a notary is empowered solely to perform a requested notarization. It is inappropriate for a non-attorney notary even to suggest that a document needs to be notarized. The section is not limited in its application to principals (*i.e.*, individuals for whom a notarization is performed), but applies to all persons, whether or not they ask to have a document notarized. Finally, notaries who are also attorneys are not covered by the subsection because an attorney is authorized to perform all of the otherwise proscribed activities in that capacity.

Subsection (c) recognizes that many notaries have other professional qualifications. The Act provides that being a notary does not derogate from any

authority or discretion the notary may derive from other professional licenses or certifications. A real estate agent, for example, may in that capacity give advice and assistance in executing a contract for the purchase of property. The Act permits this and similar activities of other professionals.

Subsection (d) forbids the notary from misrepresenting notarial authority. Immigration matters are of particular concern because in civil law jurisdictions the attorney-like *notario publico* may be authorized to deal with these issues. To prevent public confusion and thwart unscrupulous notaries from attracting business for unauthorized acts, the Act mandates that notaries not misrepresent the powers associated with the notary office. Nothing in the subsection prohibits an attorney-notary from claiming powers afforded by a license to practice law.

Subsection (e) is designed to supplement the rule against misrepresentation of authority spelled out in Subsection (d). The drafters recognize that there is a significant Spanish-speaking population in this country familiar with the

powers of the *notario publico*. As an added precaution to avoid confusion and misunderstanding, the Act requires any notary who advertises notarial services in a foreign language to stipulate clearly in the ad that the notary is not an lawyer and cannot provide legal advice or counsel. Specific reference is made to immigration matters because it is often the subject of greatest interest to foreign-born residents who do not speak English. To further deter exploitation of unknowledgeable aliens, the Act mandates that a notary who advertises in a foreign language state the statutory fees in the same language.

Subsection (f) takes the final step in attempting to clearly distinguish the United States notary from the *notario publico*. The Act forbids a notary from using the term “*notario publico*” in any commercial representation to members of the public. Although the subsection speaks specifically to written material, the drafters intended the prohibition to extend to all types of representations, including oral and electronic.

Chapter 6 – Fees of Notary Public

Comment

General: This chapter addresses a variety of issues concerning the setting and charging of notarial fees. The Act adopts the long recognized position that notaries are entitled to receive a fee for performing a notarization. The Act acknowledges that a notary may waive all or part of the fee, but must not use discriminatory bases in making that decision. Primarily to better serve the

special needs of homebound principals, the Act introduces a “travel fee” concept. This permits notaries to recover their costs incident to bringing notarial services to those unable to leave a bed or residence. Finally, the chapter also provides guidance on how the fees of employee-notaries are to be handled.

§ 6-1 Imposition and Waiver of Fees.

- (a) For performing a notarial act, a notary may charge the maximum fee specified in Section 6-2, charge less than the maximum fee, or waive the fee.
- (b) A notary shall not discriminatorily condition the fee for a notarial act on the attributes of the principal as delineated in Section 5-3(a), though a notary may waive or reduce fees for humanitarian or charitable reasons.

Comment

Section 6-1 states the basic rule that notaries themselves are to decide whether fees are charged. The drafters acknowledged that many notaries do not charge for their services, especially those who are employees. (*See* Section 6-4 for special rules applicable to an employee-notary.) There are, however, some limitations on notaries’ discretion in regard to fees. First, Subsection (a) makes clear that in no event may a notary charge more than the maximum allowable fee. (*See* Subsection 6-2 (a) for the fee structure.) Second, Subsection (b) prohibits a notary from charging a fee predicated on an improper discriminatory basis. This anti-discrimination provision is new to notary statutes. The subsection specifically incorporates the Subsection 5-3(a) criteria for determining prejudicial acts, and applies

to fees the same ban on unacceptable discrimination applicable to refusals to perform a notarial act.

Conceptually, as a public servant, the notary is precluded from engaging in any discriminatory practices. The Act reinforces the point. Subsection (b) carves out an exception for the notary who is motivated by humanitarian or charitable intentions. Thus, a notary who waives fees for a charity does not engage in discriminatory practice if he or she charges the maximum fee to others. Moreover, a notary may be selective in identifying those charities for which he or she chooses to waive the fee. The only limitation is that the notary may not use the characteristics specified in Subsection 5-3(a) as the basis for distinguishing the charities.

§ 6-2 Fees for Notarial Acts.

- (a) The maximum fees that may be charged by a notary for notarial acts are:
 - (1) for acknowledgments, [dollars] per signature;
 - (2) for oaths or affirmations without a signature, [dollars] per person;

- (3) for jurats, [dollars] per signature;
 - (4) for signature witnessings, [dollars] per signature;
 - (5) for certified copies, [dollars] per page certified with a minimum total charge of [dollars];
 - [(6) for verifications of fact, [dollars] per certificate;] and
 - [(7)] for electronic notarizations, as specified in Section 17-2.
- (b) A notary may charge a travel fee when traveling to perform a notarial act if:
- (1) the notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and
 - (2) the notary explains to the person requesting the notarial act that the travel fee is both separate from the notarial fee in Subsection (a) and neither specified nor mandated by law.

Comment

Section 6-2 establishes the fee schedule. Subsection (a) identifies all of the different notarial acts, and provides a separate fee for each one. The drafters did not include fee amounts. It was determined that these decisions were best left to the respective jurisdictions. However, the drafters did express a preference for a fee of at least \$10 for any notarial act, because this amount authorized by law in three states (*see* CAL. GOV'T CODE § 8211; FLA. STAT. ANN. § 117.05(2)(a); and S.D. CODIFIED LAWS § 18-1-9) was deemed to fairly compensate notaries for their time, effort, and potential liability. Enumeration of the various notarial acts was not intended to indicate that each should carry a different fee amount. More than one type of notarial act may command the same fee. (For example, the fee for an acknowledgment and a jurat may be the same.) The list provides the opportunity to set different fee amounts for the authorized notarial acts. Some jurisdictions stipulate a single fee for any and all notarial acts (*see, e.g.,* N.Y. EXEC. LAW § 136; and IND. CODE ANN, § 33-16-7-1), while others prescribe a fee for each different type of notarial act (*see, e.g.,* HAW. REV. STAT. § 456-17; and NEV. REV. STAT. ANN. § 14-12-19). By its specific reference, Subparagraph (7) applies only if the jurisdiction adopts Article III of the Act relating to electronic notarizations. If that article is not adopted, the subparagraph may be deleted. Should Article III be adopted without Section 17-2, then the fee schedule in this section shall also apply to electronic

notarizations.

Subsection 6-2(b) addresses charging a travel fee incident to the performance of a notarial act. A few jurisdictions currently permit a notary to charge for these costs (*see, e.g.,* ARIZ. REV. STAT. ANN. § 41-316; N.M. STAT. ANN. § 14-12-19(B); and UTAH CODE ANN. § 46-1-12(2)), but most are silent on this point. There are many homebound disabled or elderly persons, as well as individuals in remote areas, who need notarial services. Given the relatively small fees that can be charged for notarial services, a notary cannot reasonably be expected to personally bear the cost of traveling to accommodate these people. In response, the Act permits the notary to be reimbursed for necessary costs incurred to provide these special services. The Act does not impose rigid guidelines, but there is an expectation that the travel fee will be reasonable. Gouging or otherwise taking advantage of a person needing at-home services violates public policy and constitutes official misconduct. (*See* Section 2-12.)

At a minimum, the travel fee covers costs such as public transportation fares, or, if a private vehicle is used, gas, parking, and tolls. The drafters contemplated that the travel fee could include additional expenses, as well. For example, if the situation necessitates that the notary spend a night away from home, reasonable accommodation and meal costs could be recoverable as part of the travel fee. Indeed, one state currently allows and sets per diem

charges for notaries traveling to perform services within that geographically expansive state. (*See* ARIZ. REV. STAT. ANN. § 41-316(B).) Additionally, although the term “travel fee” is used, the section was written so as not to preclude a jurisdiction from allowing a notary to include a charge for time spent traveling. Each jurisdiction must balance the potential cost of a “time charge” against the benefit of special-needs principals having a notary come to them. Also, although perhaps not to be encouraged, nothing in the section would preclude a principal from paying a notary solely for the convenience of having the notary come to a home or office.

Subparagraphs (b)(1) and (b)(2) put two extremely important limits on the use of travel fees. First, and foremost, the principal and notary must agree upon the travel fee in advance. The drafters

contemplated that this agreement will a) be made at the time the principal asks the notary to travel and before the notary commits to the travel, and b) specify the actual dollar amount or an exact method for computing the amount of the fee. Second, the principal must be informed that the travel fee is a) in addition to any notary fees to be charged for notarial acts, and b) not required by law but only payable by mutual agreement.

In regard to the new notarial act of verification of fact (*see* Subparagraph (a)(6)), it is anticipated that the notary’s fee will be set at a level sufficient to cover the costs of obtaining any needed document copies from an office housing public or vital records. The costs of traveling to the office would be addressed by Subsection 6-2(b).

§ 6-3 Payment Prior to Act.

- (a) A notary may require payment of any fees specified in Section 6-2 prior to performance of a notarial act.
- (b) Any fees paid to a notary prior to performance of a notarial act are non-refundable if:
 - (1) the act was completed; or
 - (2) in the case of travel fees paid in compliance with Section 6-2(b), the act was not completed for reasons stated in Section 5-3(b)(1) or (2) after the notary had traveled to meet the principal.

Comment

Section 6-3 addresses the problem notaries encounter when they expend considerable time and effort in traveling to perform a notarization, but are denied payment for travel when the notarial act could not be completed for due cause (*see* Subparagraphs 5-3 (b) (1) and (2)) or when the principal was dissatisfied with a properly performed act. Subsection (a) gives notaries discretion to require prepayment of fees prior to performance of any notarial act. Some notaries may elect to invoke this provision only for acts necessitating travel, particularly verifications of fact (*see* Subparagraph 5-1 (a)(6)), wherein

it is possible that the person requesting the verification may disagree with the notary’s discovered facts and refuse to pay.

Subsection (b) stipulates that any fees paid to the notary prior to notarization are not returnable if a) the notarial act was completed, or b) the act was not completed for due cause (*see* Subparagraphs 5-3 (b) (1) and (2)) when the notary had traveled to the site of the aborted notarization, in which case only the fee for the notarial act itself need be refunded. The travel fee would be retained by the notary.

§ 6-4 Fees of Employee Notary.

- (a) An employer may prohibit an employee who is a notary from charging for notarial acts performed on the employer's time, but shall not condition imposition of a fee on attributes of the principal as described in Section 5-3(a).
- (b) A private employer shall not require an employee who is a notary to surrender or share fees charged for any notarial acts.
- (c) A governmental employer who has absorbed an employee's costs in becoming or operating as a notary shall require any fees collected for notarial acts performed on the employer's time either to be waived or surrendered to the employer to support public programs.

Comment

Section 6-4 addresses issues relating to the employee-notary who performs notarial services primarily for the employer or for customers of the employer. Employee-notaries perform most, if not all, of their notarial duties at the employer's place of business, and they typically store their seals and journals at that site. (Subsections 7-4(e) and (f) require a notary to safeguard the journal when not in use. Subsection 8-2(d) imposes the same requirement for the official seal.) Oftentimes, an employer will pay for the cost of obtaining the employee-notary's commission.

Subsection (a) recognizes that, since an employee is being paid during business hours, it is not unreasonable to allow the employer to dictate that notarial services in the employer's place of business be provided without a fee. However, the subsection stipulates that notary fees should not be discriminatorily imposed by an employer based on a given principal's status as a non-customer of the employer, or for any other prejudicial reason enumerated in Subsection 5-3 (a). Thus, the best and least unfairly discriminatory policy for an employer with notaries on staff would be to charge all "walk-in" principals for notarizations – be these principals customers or non-customers – or charge none of them. Note, the subsection is geared to the employment relationship and would apply to off-site notarizations performed in the scope of employment, as well. However, an employee-notary prohibited from charging

during business hours could charge fees for notarizations performed off-site during non-business hours, or for other notarizations not in the scope of employment. Nothing in this section should be used to imply that an employer can have an employee commissioned solely for the employer's business needs.

Subsection (b) reinforces the view that notarial fees can only be earned by and paid to the notary. The Act tries to balance the notary's independence as a public officer with the employer's right of control over an employee within the scope of employment. Whereas Subsection (a) tips the scale toward employer control over employees, Subsection (b) places greater weight on notarial independence. An employer cannot collect the notary's fees, if for no other reason than that the employer is not a duly commissioned notary. The rule that only a commissioned notary may charge for notarial services cannot be questioned. (For penalties that may be imposed on an unauthorized person acting as a notary, *see generally* Chapter 13.) The effect of this proscription is to prevent the employer from offsetting the employee's salary cost by notary fees collected from third parties. Notwithstanding the above, nothing would prevent a notary from voluntarily giving the fee to, or sharing it with, an employer.

Subsection (c) provides a limited exception to Subsection (b). It permits certain government employers to take the employee-notary's fees and use them for the benefit of the public, or to offer free notarial services as a

public convenience. This applies in cases where the employing governmental unit absorbs the cost for maintaining the employee-notary's commission. The Act intentionally uses the non-specific term "public programs" to allow discretion to the

governmental unit availing itself of this opportunity. Presumably, using the fees to help defray the costs of commissioning the employee-notary could fall within the definition of "public program."

§ 6-5 Notice of Fees.

Notaries who charge for their notarial services shall conspicuously display in their places of business, or present to each principal outside their places of business, an English-language schedule of fees for notarial acts, as specified in Section 6-2(a). No part of any notarial fee schedule shall be printed in smaller than 10-point type.

Comment

Section 6-5 provides a simple rule that notaries who charge for their services must prominently display a fee schedule. Notaries who travel to perform notarizations must carry a fee schedule with them and show it to any principal who requests to see it. Similar provisions can be found in some existing statutes. (*See, e.g.*, NEV. REV. STAT. ANN. §§ 240.100(3), 240.110; and OR. REV. STAT. § 194.164(2) and (3).) The drafters believed that this rule should help eliminate misunderstandings regarding charges for different services, as well as serve to minimize opportunities for unscrupulous notaries to overcharge unsuspecting

principals. The notice must be printed in English, but the drafters are equally concerned that non-English-speaking people, especially those from countries with *notarios publicos*, are not gouged. Although not required, good practice suggests that notaries who usually deal with people not fluent in English also post or present a fee schedule printed in the language used by those persons. A foreign-language advertisement for notarial services requires inclusion of a fee schedule in the particular foreign-language (*see* Subsection 5-9(e)).

Chapter 7 – Journal of Notarial Acts

Comment

General: Notary journals have proven to be a controversial subject. First, there is the threshold issue of whether or not a notary needs to maintain a journal. Some states require a notary journal (*see* ARIZ. REV. STAT. ANN. § 41-319; CAL. GOV'T CODE § 8206(a)(1); and 57 PA. CONS. STAT. ANN. § 161), but many do not. State law may mention notary journals without imposing a requirement to maintain one. (*See* UTAH CODE ANN. §§ 46-1-13 and 46-1-14.) No jurisdiction specifically outlaws the practice. Second, if a journal is maintained, what entries are appropriate? Finally, who should have access to a journal? Most states do not address this issue, even though their notaries may be required or allowed to maintain a journal.

The drafters have adopted the view that journals are essential to good notarial practice and decidedly in the public interest. Entry requirements serve to help ensure that the notary records critical information about each notarial act. Such data can be extremely useful in answering any future questions that may arise concerning the document or its signer.

The Act nonetheless recognizes that there is a tension between principals' privacy rights and the right of the public to access information. Consequently, the drafters determined that while notary journals should not be considered public records *per se*, their public utility should be recognized and limited access granted in certain situations.

§ 7-1 Format.

- (a) A notary shall keep, maintain, protect, and provide for lawful inspection a chronological official journal of notarial acts that is [either: (1)] a permanently bound book with numbered pages [; or (2)] an electronic journal of notarial acts as defined in Section 14-4].
- (b) [A record of electronic notarial acts and a record of non-electronic notarial acts shall not be kept in separate journals.]
- [(c)] A notary shall keep no more than one active journal at the same time [, except that a back-up record of an electronic journal may be kept to offset potential loss of the original journal].

Comment

Section 7-1 mandates that every notary maintain and protect an official journal of all notarizations performed. The section also provides the specific authority for access rules (*i.e.*, “provide for lawful inspection”) that are spelled out in Section 7-4. The notary is required to record notarial acts in chronological order. The Act permits the notary to choose a journal that is either in a bound paper or an electronic form, but Subsection (c) makes clear that only one active journal may be maintained. Thus, a notary may not have one book at home for recording notarial acts for friends and neighbors and another at the office for

notarial acts completed at work. To preserve the chronological integrity of the notary's record, there can be but one active journal. To facilitate adherence to the rule, good practice suggests that the notarial journal and seal be kept together at all times. This will eliminate the opportunity to use the seal without having immediate access to the journal for recording the act. Subsection (c) recognizes that since electronic records are subject to loss or impairment due to the vagaries of computer operation, a notary may create a back-up record when an electronic journal is maintained.

Although the Act was intended to be a

comprehensive unit of three articles, some jurisdictions may elect not to adopt the provisions regarding electronic notarization in Article III. At the same time, however, notaries in such jurisdictions may be allowed to maintain electronic journals for their paper-based notarial acts. Subparagraph (a)(2) addresses this

possibility. In jurisdictions not adopting Section 14-4 in Article III but nonetheless allowing an electronic journal, statutory language defining an electronic journal should be added to Chapter 7. In those instances, the drafters recommend and encourage that the language from Section 14-4 be integrated into the chapter.

§ 7-2 Entries.

- (a) For every notarial act, the notary shall record in the journal at the time of notarization at least the following:
- (1) the date and time of day of the notarial act;
 - (2) the type of notarial act;
 - (3) the type, title, or a description of the document or proceeding;
 - (4) the signature, printed name, and address of each principal;
 - (5) the evidence of identity of each principal, in the form of either: a statement that the person is “personally known” to the notary; a notation of the type of identification document, its issuing agency, its serial or identification number, and its date of issuance or expiration; or the signature, printed name and address of each credible witness swearing or affirming to the person’s identity, and, for credible witnesses who are not personally known to the notary, a description of identification documents relied on by the notary;
 - [(6) the thumbprint of each principal and witness, or, in the case of an electronic journal, the thumbprint or other recognized biometric identifier of each principal and witness, if the journal has the capability of capturing, storing, and retrieving the identifier;]
 - [(7)] the fee, if any, charged for the notarial act;
 - [(8)] the address where the notarization was performed if not the notary’s business address;
 - [(9)] the sequential number of any adhesive label bearing a notary seal image on the notarized document; and
 - [(10)] in the case of an electronic notarization, the name of any authority issuing or registering the electronic device used to create the electronic signature that was notarized; the source of this authority’s license, if any; and the expiration date of the device.
- (b) A notary shall not record a Social Security or credit card number in the journal.
- (c) A notary shall record in the journal the circumstances for not completing a notarial act.

- (d) As required in Section 7-4(a), a notary shall record in the journal the circumstances of any request to inspect or copy an entry in the journal, including the requester's name, address, signature, [thumbprint or other recognized biometric identifier,] and evidence of identity. The reasons for refusal to allow inspection or copying of a journal entry shall also be recorded.

Comment

Subsection 7-2(a) both specifies the requirements for a proper journal entry and stipulates that every notarial act requires an entry. Most of the separate items enumerated in Subparagraphs (a)(1) through (9) are currently required or allowed by jurisdictions legislating the use of notary journals. (*See generally* ARIZ. REV. STAT. ANN. § 41-319; CAL. GOV'T CODE § 8206(a)(1); and 57 PA. CONS. STAT. ANN. § 161.) There are, however, some innovations.

Subparagraph (a)(5) compels the notary to record how the identity of the principal was established, including a description of any identification documents or credible witnesses that were used. By requiring this entry, the Act reinforces both the essential role of the notary – identity verification – and the proper methods of obtaining such verification. Additionally, the entry serves to memorialize proper performance of the act.

Offered as an option (*i.e.*, bracketed) because it may be regarded as too intrusive or controversial by some lawmakers, Subparagraph (a)(6) requires capture of all principals' and witnesses' thumbprints, or, in the case of electronic records, other accepted biometric identifiers. This requirement was quite controversial among the drafters, a number of whom believed it demands too much of both the principal and notary. Proponents of the rule countered that modern technology has made fingerprinting clean, easy, and inexpensive. They argued that many impostors will be deterred from forgery because they will not want to leave a thumbprint behind in the notary's journal as proof of their attempted crime. Also prosecutors may be aided by the journal evidence in bringing forgers to justice.

For electronic journals, any other recognized biometric identifier (*e.g.*, a retinal scan) may be captured in lieu of a thumbprint if the notary's journal technology so allows. No doubt, future technical advancements will make it easier for notaries who maintain an electronic journal to use biometric identifiers other than fingerprints, which a host of electronic products can now capture and store.

Subparagraph (a)(8) adds a new required entry – the location at which the notarization was performed. The purpose of this provision is to help protect the notary if the notarial act is questioned in the future. If the notary is called as a witness, this journal entry can help refresh the notary's recollection regarding the transaction.

Subparagraph (a) (9) reflects that the Act recognizes official notary seals in forms other than the traditional metal embosser or inked stamp, as long as the seal adheres to the requirements of Chapter 8.

Subparagraph (a)(10) provides additional requirements for electronic journals. It directs the principal to provide information about the origin and authenticity of any notarized electronic signature. If, for example, the electronic signature were made using public key technology, the “authority issuing or registering the electronic device used to create the electronic signature” would be the pertinent certification authority.

Subsection 7-2(a) mandates that the journal entry be made at the time of notarization. The Act does not specify whether the recording should be made before or after the notarial act is otherwise completed. Although completing the journal entry at the end might seem a logical choice, there is merit in completing the entry before the rest of the notarization is

performed. The latter option prevents time-pressed principals from leaving with the notarized document before the journal entry is completed. Additionally, it allows the notary to refuse to act for those who will not provide a thumbprint. Finally, the journal entries detail the essential elements of a proper notarization; by making the journal entry first, the notary reinforces the procedure that should be followed for each notarial act.

Subsection (b) responds to privacy concerns by precluding a notary from entering either a Social Security number or a credit card number in a journal. Sophisticated criminals can exploit this information for illegal purposes. The drafters believe that this proscription is a prudent and necessary step toward protecting principals from identity theft and the concomitant hardships it can cause.

Subsection (c) is designed to provide a notary some protection against future claims regarding non-performance. The provision addresses situations in which the notarization process is initiated but not completed. One example would be when the principal cannot provide proper

identification. The provision requires the notary to indicate why the notarization was not completed. It is only in those instances when the notarial act has commenced that such recording is required. Thus, if a notary were to determine from the outset that a prospective principal was mentally unfit to sign an offered document and refused to proceed, that refusal need not be recorded. The journal entry memorializes the circumstances attendant to an incomplete notarization, thereby providing the notary a memory-refreshing record if there is a need to recall the events.

Subsection (d) requires a notary to record in the journal the circumstances of any request to inspect or copy an entry in the journal, including the requester's name, address, signature, and evidence of identity. The reasons for refusal to allow inspection or copying of a journal entry must also be recorded. The notary is specifically cautioned to confine the entry to specific facts (*e.g.*, inability to provide proof of identity), and not record purely subjective judgments. Again, the thumbprint requirement is bracketed to indicate a choice for lawmakers.

§ 7-3 Signatures [and Thumbprints].

At the time of notarization, the notary's journal must be signed [and a thumbprint or other recognized biometric identifier affixed], as applicable, by each:

- (1) principal;
- (2) credible witness swearing or affirming to the identity of a principal; and
- (3) witness to a signature by mark or to a signing by the notary on behalf of a person physically unable to sign.

Comment

Section 7-3 specifies which parties to a notarization must sign the notary's journal. A signature provides evidence that a principal or witness was present at the time of a notarization in case that fact is ever challenged. Additionally, as an aid in detecting impostors, the principal's journal signature provides the notary with a sample to compare against signatures on identification cards and the notarized

document. Again, the option is offered to require a thumbprint, with the understanding that some jurisdictions will regard such a requirement as overly intrusive. A journal thumbprint, of course, is the ultimate proof that a principal actually appeared before the notary. Also, a journal thumbprint requirement will discourage some would-be forgers from attempting criminal activity.

§ 7-4 Inspection, Copying, and Disposal.

- (a) In the notary's presence, any person may inspect an entry in the official journal of notarial acts during regular business hours, but only if:
 - (1) the person's identity is personally known to the notary or proven through satisfactory evidence;
 - (2) the person affixes a signature [and thumbprint or other recognized biometric identifier,] in the journal in a separate, dated entry;
 - (3) the person specifies the month, year, type of document, and name of the principal for the notarial act or acts sought; and
 - (4) the person is shown only the entry or entries specified.
- (b) If the notary has a reasonable and explainable belief that a person bears a criminal or harmful intent in requesting information from the notary's journal, the notary may deny access to any entry or entries.
- (c) The journal may be examined without restriction by a law enforcement officer in the course of an official investigation, subpoenaed by court order, or surrendered at the direction of the [commissioning official].
- (d) Upon complying with a request under Subsection (a), the notary shall provide a copy of a specified entry or entries in the journal at a cost of not more than [dollars] per copy; other entries on the same page shall be masked. If a certified copy of an entry in a bound book is requested, the additional cost is as specified in Section 6-2.
- (e) A notary shall safeguard the journal and all other notarial records and surrender or destroy them only by rule of law, by court order, or at the direction of the [commissioning official].
- (f) When not in use, the journal shall be kept in a secure area under the exclusive control of the notary, and shall not be used by any other notary nor surrendered to an employer upon termination of employment.
- (g) Within 10 days after the journal is stolen, lost, destroyed, damaged, or otherwise rendered unusable or unreadable as a record of notarial acts, the notary, after informing the appropriate law enforcement agency in the case of theft or vandalism, shall notify the [commissioning official] by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, and also provide a copy or number of any pertinent police report.
- (h) Upon resignation, revocation, or expiration of a notary commission, or death of the notary, the journal and notarial records shall be delivered to the [office designated by the commissioning official] in accordance with Chapter 11.

Comment

Section 7-4 addresses a particularly controversial issue concerning the notary journal – whether or not it is a public record – and prescribes procedures for proper handling of the journal. Although a number of jurisdictions require notaries to maintain journals, not all consider the journal to be an accessible public record. (For examples of those that do, *see* CAL. GOV'T CODE § 8206(c); and 57 PA. CONS. STAT. ANN. § 161(a).) The Act rejects the view that the journal is a true public record. Instead, it takes the position that the journal is quasi-public in nature. The Act controls and limits access to the journal by a) having it remain in the complete control of the notary, and b) restricting its inspection by the general public.

Subsection (a) establishes the principle that access to the journal is a privilege not a right. Thus, a person seeking to inspect the journal must be willing to give up some privacy in order to gain access. Specifically, the person must prove identity and both sign and impress a thumbprint in the journal, though, again, some jurisdictions may forego the thumbprint requirement. Additionally, the inspection must be made in the presence of the notary. In an effort to preserve the privacy rights of principals and eliminate “fishing expeditions,” Subparagraph (a)(3) requires that the request to inspect be quite specific. Subparagraph (a)(4) further promotes principals’ privacy protection by limiting the inspection to only the specified entries.

In seeking to balance the public’s rights against unwarranted invasions of privacy, the Act adopts the position that all specific inspection requests must be granted, unless the notary believes either a criminal or harmful purpose will be served by allowing the inspection. The notary must have a “reasonable and explainable belief” that the person requesting the inspection bears a wrongful motive. The drafters recognized that this standard is neither easily defined nor applied. Additionally, there was concern over how the notary would make such a determination. The drafters’ intent was to allow a notary to deny or limit access in those situations where the notary has prior knowledge or is able to formulate a compelling opinion regarding the request.

As to the former, the notary may have been informed by a principal that he or she is being stalked or is the target of identity theft. Regarding the latter, when asked by the notary why the journal information is needed, the person might not be able to give a plausible response. In these situations the notary is alerted to potential misuse of the information and should proceed with caution. To protect the personal safety and the private interests of persons named in the journal, Subsection (b) gives the notary discretion to deny access to the journal to any person the notary reasonably believes has a criminal or harmful intent. Notaries should be protected from becoming accessories to criminal or other wrongful acts. The subsection affords them this opportunity.

Subsection (c) makes it clear that, notwithstanding the protections provided by Subsection (b), notary journals are always subject to lawful inspection by appropriate authorities.

Subsection (d) authorizes the notary to provide a copy of a journal entry for any permitted inspection. The Act requires the notary to exercise due care when making copies to ensure that other journal entries, or parts thereof, are neither revealed nor included as part of the copied material. The notary is entitled to a statutory fee as established in the subsection for providing this service. Except for an electronic journal (*see* Subsection 7-1(c)), a notary is not authorized to make a copy of the journal or any separate entry therein for personal use or as a “back-up” record in the event the original journal is lost, destroyed, or stolen. Although having a copy of the journal might seem to be a sensible precaution, it invites other risks. A copy of a journal may not be adequately protected from unauthorized inspection. It is also possible that the notary by inadvertence or convenience might make an official entry in the copy, a violation of the dictate that the notary maintain only one journal.

Subsection (e) instructs the notary to protect not only the journal, but also any correlative notarial documents. This might include the notary’s commission or copies of communications from the commissioning official. The notary’s journal and records

may only be surrendered pursuant to statute, court order, or a directive of the commissioning official. Note, although law enforcement officials are permitted to access journals, they are not entitled to take physical custody of the journal absent a court order.

Subsection (f) requires the notary to safeguard the journal at all times. The drafters recognize that journals often contain sensitive, confidential information that merits protection. The requirement that the journal be kept in a secure area lends itself to reasonable interpretation. The objective is to shield the information in the journal from unauthorized use. Clearly, keeping the journal locked in a desk under the notary's exclusive control meets the test. But other lesser security measures might also be acceptable. Notaries who keep their journals at home must implement similar security measures.

This subsection reinforces the rule that the journal is the notary's property. No other notary has a greater right than any member of the general public to inspect the journal, nor can another notary use it. Consequently, a notary who performs a notarial act but does not have the journal available may not record that act in the journal of another notary. Also, in some instances a person becomes a notary at the behest of an employer who presumes that the notary's services will be exclusively for the employer's benefit. The Act, however, does not recognize a "notary private" and considers every notary to owe obligations to

the general public, notwithstanding the fact an employer may have paid for the notary's commissioning costs. Consistent with this view, the Act declares that the notary's journal belongs to the notary and not the employer. The employer has inspection and copying rights similar to other members of the public. Nothing prohibits the employer from exercising these rights to create a separate photocopied log of business - related notarizations. (*See, e.g.*, CAL. GOV'T CODE § 8206(d).) Consistent with this position, the journal goes with the notary when the employment relationship terminates.

Subsection (g) requires the notary to inform the commissioning official if, for any reason, the notary cannot continue to use the journal to record notarizations. Imposing this reporting requirement reinforces the view that the journal has official significance and must be handled with due care.

Subsection (h) provides guidance on what to do with the journal and notarial records after the office is vacated or the commission terminated. This provision is consistent with the view that the journal contains sensitive, confidential information that must ultimately be turned over to an appropriate official for safekeeping. The journal should not be kept by another notary, or by the former notary's successors in interest. To do so would compromise the privacy rights of principals and others whose actions are recorded in the journal.

[§ 7-5 Electronic Journal.

If the notary elects to keep an electronic journal pursuant to Section 7-1

(a)(2), the notary shall:

- (1) provide to the [commissioning official] the password or access instructions described in Section 14-4(3) that allow the journal to be viewed, printed out, and copied, but not altered; and
- (2) notify the [commissioning official] when the password or access instructions are changed.]

Comment

Section 7-5 contains provisions ensuring official access to the electronic journal of notarial acts in the event the notary is no longer alive or available to

provide such access. Entries in the electronic journal may be made only by the custodian notary after a biometric scan of a particular physical feature or activity of the

notary produces data matching biometric data stored in the notary's computer. (*See* Subparagraph 14-4(1).) However, any person provided with a pertinent password or other access instructions may view, print out, and electrically copy the journal (*see* Subparagraph 14-4(3)), but may not alter it. Section 7-5 requires the notary to provide this password or instructions to the commissioning official. (*See* Subparagraph 4-2(9).) As the official record of notarial acts, an electronic journal must be forwarded to an office designated by the

commissioning official after the notary's death. (*See* Subparagraph 11-5(3).) In the event of death, this section anticipates that the notary's personal representative or other successor in interest will present proper proof of authority to the commissioning official to obtain access to the electronic journal for the sole purpose of forwarding it as required by law. In the event of the notary's disappearance or permanent incapacity, any other individual legally designated to attend to or settle the notary's affairs may also perform this function.

Chapter 8 – Signature and Seal of Notary Public

Comment

General: Notarizations involving a paper document typically require the notary to affix both an official signature and an official seal on the document itself. These two affixations together constitute the statement to the world that all of the statutory requirements for a proper notarization were satisfied. Because the signature and seal are the prime manifestations of the notarial act, guiding regulations for their proper use and protection are warranted. This is particularly true for the seal, which, if improperly appropriated, could lead to unchecked fraud. In many respects the seal is similar to the notary journal – both are incidents of the office and items for which the notary is the official custodian. (For notary journal rules paralleling those for the official seal, *see* Subsections 7-4(e) through (h).) This chapter addresses basic “signature and seal” issues with an eye toward minimizing opportunities for fraud.

§ 8-1 Official Signature.

In notarizing a paper document, a notary shall:

- (1) sign by hand on the notarial certificate exactly and only the name indicated on the notary’s commission;
- (2) not sign using a facsimile stamp or an electronic or other printing method; and
- (3) affix the official signature only at the time the notarial act is performed.

Comment

Section 8-1 states the simple rule that a notary must hand-sign the notarial certificate portion of any paper document that is being notarized. Subparagraph (2) reinforces this requirement by stipulating that a signature stamp or any other means of reproducing the signature is not acceptable. Thus, a notary cannot run a principal’s document through a word processor and have a computer-generated signature validate the document’s notarial certificate. The official signature that authenticates the notarial act must be handwritten by the notary in ink.

The section also specifies that the notary’s signature must exactly match the spelling of the notary’s name as it appears on the commission. Signatures that are shortened versions of the commission name are not valid.

Lastly, Subparagraph (3) dictates that the notary’s official signature only be affixed at the time of the notarization. The drafters believed that the policy of pre-signing multiple copies of standard notary certificates to save time is a dangerous one, offering many opportunities for fraudulent abuse of the signed blank forms.

§ 8-2 Official Seal.

- (a) A notary shall keep an official seal that is the exclusive property of the notary. The seal shall not be possessed or used by any other person, nor surrendered to an employer upon termination of employment.
- (b) An image of the official seal shall be affixed by the notary on every paper document notarized.
- (c) An image of the seal shall be affixed only at the time the notarial

- act is performed.
- (d) When not in use, the seal shall be kept secure and accessible only to the notary.
 - (e) Any seal image affixed by an adhesive label shall bear a preprinted sequential number which shall be recorded in the journal of notarial acts for its respective notarization.
 - (f) Within 10 days after the seal of a notary is stolen, lost, damaged, or otherwise rendered incapable of affixing a legible image, the notary, after informing the appropriate law enforcement agency in the case of theft or vandalism, shall notify the [commissioning official] by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, and also provide a copy or number of any pertinent police report. Upon receipt of such notice the [commissioning official] shall issue to the notary a new Certificate of Authorization to Purchase a Notary Seal, which shall be presented to a seal vendor in accordance with Section 8-4.
 - (g) As soon as reasonably practicable after resignation, revocation, or expiration of a notary commission, or death of the notary, the seal shall be destroyed or defaced so that it may not be misused.

Comment

Subsection 8-2(a) requires the notary to have an official seal. The seal belongs to the notary. It cannot be used by anyone else, even if the other person is a notary. It is exclusively for the use of the notary to whom it was issued. Similarly, the seal of a notary whose commissioning fees and other notary-related costs were paid for by an employer remains the property of the notary, not the employer. Consequently, if and when the employment relationship ends, the seal stays with the notary. This mirrors the rule with respect to notary journals. (*Cf.* Subsection 7-4(f) and Comment.)

Subsection (b) mandates that a seal impression be affixed by the notary for every notarization of a paper document. In contrast to the limitations on affixation of the notary's signature, however, the subsection does not preclude a seal image from being affixed by an electronic device or by an adhesive label, as long as the notary controls access to the sealing mechanism (*see* Subsection (d)) and, in the case of an adhesive label, the labels bear preprinted sequential numbers, which must be noted in the journal for each notarial act (*see* Subsection (e)). Most often, however,

the seal image will be affixed with an inked stamp.

Subsection (c) mandates that the seal be affixed only at the time of notarization. This is the counterpart to Subparagraph 8-1(3), requiring notary signatures to be similarly affixed. Together, these two provisions work to reduce fraud, mistakes, and omissions because the notary will complete the entire notarization at one time, and that will be in the principal's presence. (*See* Subparagraph 5-1(b)(1).) Otherwise, the notary might more readily forget to complete any open-ended act, leading to possible hardships for the principal. There would also be questions about where such an act should be entered in the sequential journal.

Subsection (d) advances the view that the seal is an incident of the notary office and must be properly safeguarded. This subsection provides the analogue to Subsections 7-4(e) and (f), the rules for proper care of the notary journal. As with the journal, a rule of reason is to be applied to determine what security measures satisfy the spirit of the requirement. Again, good practice suggests that the seal and journal be

kept together. Thus, steps to protect one may serve the same purpose for the other.

Subsection (e) reflects the position that an official notary seal may be in a form other than the traditional embosser or inked stamp. (For a corresponding provision, *see* Subparagraph 7-2(9).)

Subsection (f) imposes a basic notification rule in the event the seal becomes missing or in any way unusable for its intended purpose. It also imposes a duty on the notary to report any theft or vandalism of the seal to the appropriate law enforcement agency. This requirement underscores the importance of the seal, which, in the hands of dishonest people, can create difficulties in the stream of commerce. It also gives local law

enforcement agencies a chance to prevent damage from future misuse of a stolen seal.

The subsection requires the commissioning official, upon receipt of proper notice, to authorize the notary to obtain a new seal as provided in Section 8-4.

Subsection (g) mandates that the seal be rendered unusable upon the notary's death or the resignation, revocation, or expiration of the commission. A new seal must then be issued for any subsequent new commission. This is consistent with the rule stated in Section 3-5 that there be no automatic notary commission renewals. Since every seal must contain the expiration date of the commission (*see* Subparagraph 8-3(a)(3)), every new commission requires a new seal.

§ 8-3 Seal Image.

- (a) Near the notary's official signature on the notarial certificate of a paper document, the notary shall affix a sharp, legible, permanent, and photographically reproducible image of the official seal that shall include the following elements:
 - (1) the notary's name exactly as indicated on the commission;
 - (2) the serial number of the notary's commission;
 - (3) the words "Notary Public" and "[State] of [name of jurisdiction]" and "My commission expires (commission expiration date)";
 - (4) the notary's business address; and
 - (5) a border in a [rectangular/circular] shape no larger than [dimensions], surrounding the required words.
- (b) Illegible information within a seal impression may be typed or printed legibly by the notary adjacent to but not within the impression.
- (c) An embossed seal impression that is not photographically reproducible may be used in addition to but not in lieu of the seal described in Subsection (a).

Comment

Subsection 8-3(a) serves two purposes. First, its general language prescribes where the seal is to be affixed and how it shall appear. Second, the subparagraphs provide detailed specifications for an official seal. As to the former, the seal must be affixed near but not over the notary's signature. Since documents differ, the drafters realized it

would be impossible to identify one physical location that would serve all purposes. The document or certificate may indicate exactly where the seal should be placed, but both can be silent on this point, leaving the matter up to the notary. (*See, e.g.,* certificate forms in Sections 9-1, 9-2, 9-3, 9-5, and 9-6.). The Apostille is an example of a form that specifically

designates where its signature and seal are to be affixed. (*See* Section 10-3.) Regardless of where affixed, the seal must be clearly readable and capable of being photographically copied. Accordingly, an inking rather than an embossing seal increasingly is the standard in modern jurisdictions, facilitating reproduction on microfilm by county recorders.

Subparagraphs (a)(1) through (5) detail the components of the seal itself. The name on the seal must be exactly the same as appears on the commission. (*See* Subparagraph (a)(1).) Subparagraph (a)(2) requires that the notary's commission serial number be included. (*See* Section 3-4). Although some jurisdictions require such numbers (*see* CAL. GOV'T CODE §§ 8207, 8207.1; and FLA. STAT. ANN. § 117.05(3)(a)), others do not (*see* 5 ILL. COMP. STAT. ANN. 312/3-101; and IND. CODE ANN. § 33-16-2-4). The Social Security number should never be used as a substitute for a serial number because of its potential for co-option and misuse. The "business address" feature introduced by Subparagraph (a)(4) is already required in some jurisdictions. (*See, e.g.*, UTAH CODE ANN. § 46-1-3(2)(d)(i); and W. VA. CODE ANN. § 29C-2-201(d).) The drafters felt it important to afford the public the option of questioning the notary and accessing the

notary's journal. By having the notary's address on the document, interested parties are given reasonable direction on where to find the notary and journal. Subparagraph (a)(5) gives each jurisdiction the opportunity to fashion the shape and design of the seal, and should result in uniform, easily recognizable seals.

Subsection 8-3(b) provides guidance for the notary when the seal does not create the crisp image required by Subsection (a). Notaries are authorized to remedy unreadable portions of the seal by typing or printing the needed wording legibly, adjacent to the seal image. To avoid charges that the seal image was tampered with, notaries must not write over any portion of the seal nor make any marks within the area circumscribed by the seal border.

Subsection 8-3(c) addresses the use of non-photographically reproducible embossing seals. Although they may not be used as the official seal and have no official status, they may be affixed to a document for both practical and decorative purposes. Adroitly affixed embossed seals can discourage fraudulent attachment of document pages and notary certificates, and facilitate acceptance of documents in foreign jurisdictions where embossments may be expected.

§ 8-4 Obtaining and Providing a Seal.

- (a) In order to sell or manufacture notary seals, a vendor or manufacturer shall apply for a permit from the [commissioning official], who shall charge a fee of [dollars] for issuance of this permit and maintain a controlled-access telephone number or Internet site to allow vendors and manufacturers to confirm the business mailing address of any notary in the [State].
- (b) A vendor or manufacturer shall not provide a notary seal to a purchaser claiming to be a notary, unless the purchaser presents a photocopy of his or her notary commission and a Certificate of Authorization to Purchase a Notary Seal from the [commissioning official], and unless:
 - (1) in the case of a purchaser appearing in person, the vendor or manufacturer identifies this individual as the person named in the commission and the Certificate of Authorization, through either personal knowledge or satisfactory evidence of identity; or
 - (2) in the case of a purchaser ordering a seal by mail or delivery

- service, the vendor or manufacturer confirms the business mailing address through the controlled-access telephone number or Internet site.
- (c) A vendor or manufacturer shall mail or ship a notary seal only to a mailing address confirmed through the controlled-access telephone number or Internet site.
 - (d) For each Certificate of Authorization to Purchase a Notary Seal, a vendor or manufacturer shall make or sell one and only one seal, plus, if requested by the person presenting the Certificate, one and only one embossing seal.
 - (e) After manufacturing or providing a notary seal or seals, the vendor shall affix an image of all seals on the Certificate of Authorization to Purchase a Notary Seal and send the completed Certificate to the [commissioning official], retaining a copy of the Certificate and the commission for [period of time].
 - (f) A notary obtaining a seal or seals as a result of a name or business address change shall present a copy of the Confirmation of Notary's Name or Address Change from the [commissioning official] in accordance with Sections 11-1 and 11-2.
 - (g) A vendor or manufacturer who fails to comply with this section is guilty of a [class of offense], punishable upon conviction by a fine not exceeding [dollars]. Such conviction shall not preclude the civil liability of the vendor to parties injured by the vendor's failure to comply with this section.

Comment

Section 8-4 establishes the procedure for production and issuance of notary seals. Most jurisdictions have little or no regulation of seals. (*See* ME. REV. STAT. ANN. tit. 4 § 951; S.C. CODE ANN. § 26-1-60; TENN. CODE ANN. § 8-16-301; and W. VA. CODE ANN. §§ 29C-4-102, 29C-4-103.) This can make it easier for the unscrupulous to fraudulently obtain a seal. The drafters believed imposing some measure of control over the issuance of seals was warranted. This is a position that some states have already taken. (*See* CAL. GOV'T CODE §§ 8207 to 8207.4; and OR. REV. STAT. § 194.031.)

Subsection (a) requires all seal vendors and manufacturers to be state-approved. The commissioning official must issue a permit to all seal vendors and manufacturers. To facilitate security with mail orders, the commissioning official must make available to vendors and manufacturers a controlled-access telephone

number or Web site. This allows verification of the address to which the seal will be mailed or delivered.

Subsection (b) prohibits a vendor or manufacturer from providing any type of notary seal unless a copy of the notary's commission and original official purchase authorization certificate (*see* Section 3-4) is supplied by the notary. Additionally, before issuing the seal the vendor or manufacturer must verify that the person is the individual entitled to the seal. The notary must prove identity through satisfactory evidence, or, if the seal is mailed, the commissioning official's controlled-access roster of addresses must be used to guarantee that delivery is made only to an authorized person.

Subsection (c) reinforces the protection of Subsection (b) by expressly requiring that seals be mailed only to the address listed on the roster maintained by the commissioning official, as mandated by Subsection (a).

Subsection (d) provides that only one official seal can be issued pursuant to a Certificate of Authorization to Purchase a Notary Seal. Notaries may not order duplicates to hold in the event the original seal is lost or destroyed. However, one embossing seal may be issued in addition to the official seal allowed for each certificate of authorization. (Regarding use of an embosser seal, *see* Subsection 8-3 (c) and Comment.)

Subsection (e) provides a procedure for giving a sample of the notary's official seal to the commissioning official, allowing this official to survey issued seals for compliance with the law. The sample may also be useful as evidence in any investigations of the notary's conduct.

Subsection (f) gives a procedure for obtaining a new seal in the event of a name or address change by the notary. The commissioning official must also put in place procedures for replacing a lost, stolen, or damaged seal. (*See* Subsection 8-2 (f).)

Subsection (g) imposes criminal and possible civil sanctions upon a manufacturer or vendor who violates any terms of the section. The drafters believed this was necessary to ensure that the rules were properly followed. Imposing penalties is consistent with the view that reasonable efforts should be made to prevent fraud. Since an official seal can easily be used by anyone to generate false notarizations, taking appropriate steps to prevent that from happening is both prudent and justified.

Chapter 9 – Certificates for Notarial Acts

Comment

General: This chapter provides model certificate forms for notarial acts authorized in Subsection 5-1(a). It also provides formats to be used when a principal needs either to sign with a mark or to direct the notary to sign on his or her behalf. The forms are only illustrative and provided for convenience. The sections indicate, however, that the notary must use a form substantially similar to the ones provided. The model forms reflect that notarial certificate wording need not be an original part of the document to which it applies. Rather, the certificate wording may appear on a separate sheet of paper that is

subsequently attached to the document, and this would still constitute a valid notarization.

When completing any notarial form, all inapplicable language should be stricken. This will be particularly necessary for the acknowledgment, jurat, and signature witnessing forms wherein the notary must state how the principal's identity was proven. Additionally, each form has other information that will have to be stricken. Simply drawing a line through the words will suffice. Failure to strike inapplicable language does not affect the validity of the certificate.

§ 9-1 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 _____, 20____, before me, the undersigned notary, personally appeared _____

(name of document signer),

(personally known to me)

(proved to me through identification documents allowed by law, which were _____,)

(proved to me on the oath or affirmation of _____, who is personally known to me and stated to me that (he)(she)

personally knows the document signer and is unaffected by the document,)

(proved to me on the oath or affirmation of _____ and _____, whose identities have been proven to me through documents allowed by law and who have stated to me that they personally know the document signer and are unaffected by the document,)

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) 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) _____.)

(official signature and seal of notary)

Comment

Section 9-1 provides an all-purpose acknowledgment form adaptable to principals with different signing capacities. To comply with Section 2-17, the model form has language compelling credible witnesses to state specifically that they do not have any interest in the transaction related to the document being notarized.

The form also includes language relating to the principal's "voluntariness" in response to the rule set out in Subparagraph 2-1(3). Both of these provisions are innovations not found in most notary acknowledgment certificates. (*See UNIF. ACKNOWLEDGMENT ACT, 12 U.L.A. 1.*)

§ 9-2 Jurat.

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

State of _____

County of _____

On this _____ day of _____, 20____, before me, the undersigned notary, personally appeared _____

(name of document signer),

(personally known to me)

(proved to me through identification documents allowed by law, which were _____,)

(proved to me on the oath or affirmation of _____, who is personally known to me and stated to me that (he)(she)

personally knows the document signer and is unaffected by the document,)

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

_____, whose identities have been proven to me through documents allowed by law and who have stated to me that they personally know the document signer and are unaffected by the document,)

to be the person who signed the preceding or attached document in my presence and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of (his)(her) knowledge and belief.

(official signature and seal of notary)

Comment

Section 9-2 provides a model form for a standard jurat. As with the acknowledgment (*see* Section 9-1), how the signer was identified must be specified –

whether through personal knowledge, identification documents, or one or two credible witnesses. In many states, identification of the signer is not an express

statutory requirement for a jurat, as it is with an acknowledgment. Attention should be paid to the form's language regarding the oath or affirmation, which the notary must not neglect to administer to the principal. (See Subparagraph 2-7(4) and Comment.)

§ 9-3 Signature Witnessing.

A notary shall use a certificate in substantially the following form in notarizing a signature or mark to confirm that it was affixed in the notary's presence without administration of an oath or affirmation.

State of _____
 County of _____
 On this _____ day of _____, 20____, before me, the undersigned notary, personally appeared _____ (name of document signer), (personally known to me) (proved to me through identification documents allowed by law, which were _____,) (proved to me on the oath or affirmation of _____, who is personally known to me and stated to me that (he)(she) personally knows the document signer and is unaffected by the document,) (proved to me on the oath or affirmation of _____ and _____, whose identities have been proven to me through documents allowed by law and who have stated to me that they personally know the document signer and are unaffected by the document,) to be the person who signed the preceding or attached document in my presence.

 (official signature and seal of notary)

Comment

Section 9-3 provides a certificate for a signature witnessing. As defined in Section 2-19, this notarial act only requires the principal to appear, prove identity, and sign. Although silent on point, the certificate does not eliminate the need for the conscientious notary to take the standard precautions for ensuring the principal's awareness and willingness to sign. (See Subparagraphs 5-1(b)(3) and (4).)

§ 9-4 Signer by Mark and Person Unable to Sign.

On paper documents, certificates in Sections 9-1, 9-2, and 9-3 of this Chapter may be used for signers by mark or persons physically unable to sign or make a mark if:

- (1) for a signer by mark, the notary and 2 witnesses unaffected by the document observe the affixation of the mark, both witnesses sign their own names beside the mark, and the notary writes below the mark: "Mark affixed by (name of signer by mark) in presence of (names and addresses of 2 witnesses) and undersigned notary

- under Section 5-1(c) of [Act]”; or
- (2) for a person physically unable to sign or make a mark, the person directs the notary to sign on his or her behalf in the presence of the person and 2 witnesses unaffected by the document, both witnesses sign their own names beside the signature, and the notary writes below the signature: “Signature affixed by notary in presence of (names and addresses of person and 2 witnesses) under Section 5-1(d) of [Act]”.

Comment

Section 9-4 provides formats and procedures allowing use of the previous three certificates (*see* Sections 9-1, 9-2, and 9-3) when the principal’s signature is made by mark or by the notary as a substitute signer (*see* Subsections 5-1 (c) and (d)). In either case, it is possible that a credible witness used to identify the principal may additionally serve as one of the two required witnesses for a signing by mark or for a proxy signing of the principal’s signature by the notary.

§ 9-5 Certified Copy.

A notary shall use a certificate in substantially the following form in notarizing a certified copy:

State of _____
 County of _____
 On this _____ day of _____, 20____, I certify that the
 (preceding) (following)(attached) document is a true, exact, complete,
 and unaltered copy 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 copied document is neither
 a vital record, a public record nor a publicly recordable document,
 certified copies of which may be available from an official source other
 than a notary.

 (official signature and seal of notary)

Comment

Section 9-5 provides the form for a copy certification. Note, the copy may be of either a document presented by a third party or of a notarial record already in the notary’s possession. A copy of an entry from the journal of notarial acts is an instance of the latter. The certificate makes clear that the notary is prohibited from certifying copies of certain records (*see* Subparagraph 2-4(1) and Comment) and that in making the copy the notary believes he or she is complying with that proscription.

[§ 9-6 Verification of Fact.

A notary shall use a certificate in substantially the following form in verifying a fact:

State of _____

County of _____

On this _____ day of _____, 20 ____, I certify that I have reviewed the following record(s),

- (a) _____,
- (b) _____,
- (c) _____,
- (d) _____,

at the following offices, respectively,

- (a) _____,
- (b) _____,
- (c) _____,
- (d) _____,

or upon the records' presentation to me by _____, and hereby verify the following facts as stated in these records:

- (a) _____,
- (b) _____,
- (c) _____,
- (d) _____.

(official signature and seal of notary)]

Comment

Section 9-6 is bracketed because the certificate provided therein reflects a power of the notary which some may view as incompatible with the office's ministerial function – verification of certain facts based on a review of vital or public records. (*See* Section 2-20 and Comment.) Typically the records in question will be birth certificates and marriage licenses, providing information often needed for adoption of a foreign child.

While, in the interest of fraud deterrence, it is preferable that such records

be reviewed by the notary in the offices of their duly designated public custodians (*e.g.*, bureau of vital statistics, office of county clerk, etc.), the form also allows review of records presented by a private individual. It is left to the discretion of the notary whether such records are trustworthy. Indicating whether the vital records were inspected in the office of the official custodian or upon presentation by a private citizen permits third parties acting upon the verification of fact to determine its reliability to their own satisfaction.

CHAPTER 10 – EVIDENCE OF AUTHENTICITY OF NOTARIAL ACT

Comment

General: This chapter presents forms for authenticating notarial acts that may be requested by other United States or foreign jurisdictions. A principal goal of the Act is to establish uniform rules throughout the states of this nation. If achieved, state-to-state authentications might not be needed.

Even if that overarching goal is realized, there would still be the need to authenticate notarial acts for foreign nations. This chapter addresses that need, as well as offering the standard form for the internationally recognized Apostille.

§ 10-1 Forms of Evidence.

On a notarized document sent to another state or nation, evidence of the authenticity of the official seal and signature of a notary of this [State], if required, shall be in the form of:

- (1) a certificate of authority from the [commissioning official] and/or [designated local official], authenticated as necessary by additional certificates from United States and/or foreign government agencies; or
- (2) in the case of a notarized document to be used in a nation that has signed and ratified the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of October 5, 1961, an Apostille from the [federally designated official] in the form prescribed by the Convention, with no additional authenticating certificates required.

Comment

Section 10-1 sets the rule that there are only two types of acceptable evidence of authentication. One is a Certificate of

Authority provided in Section 10-2. The other is the Apostille found in Section 10-3.

§ 10-2 Certificate of Authority.

- (a) A certificate of authority evidencing the authenticity of the official seal and signature of a notary of this [State] shall 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, was a Notary Public for the [State] of _____ [name of jurisdiction] and 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 _____, 20 ____.

(Signature and seal of commissioning official)

- (b) Any electronic document requiring authentication that is attached or logically associated with the electronic signature and seal of an electronic notary shall be authenticated using an electronic certificate of authority prescribed in Section 20-2.

Comment

Section 10-2 presents a Certificate of Authority evidencing the authenticity of a notary’s signature and seal. Although this exact form need not be used, it provides all of the necessary information that must be included in such a certificate. Note, the certificate must be executed by the commissioning official or a designated local official, such as a county clerk, who has evidence of the notary’s authority on file. In the case of official acts performed by electronic notaries, an adaptation of the form in Subsection (a) is provided in Section 20-2.

§ 10-3 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, shall be in the form of a square with sides at least 9 centimeters long and contain exactly the following wording:

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:

Comment

Section 10-3 sets out the Apostille form as prescribed by the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents and referenced in federal rules. (*See* FED. R. CIV. P. 44 *historical notes*.) The rules regarding the format of the Apostille, which may be used to authenticate the acts of a variety of state or territorial officials, must be exactly observed. An Apostille evidencing a notary’s authority is to be completed by the office of the federally designated state or territorial official, normally the official who commissioned the notary. On line 3, the capacity “Notary Public” would be indicated, and on line 4 the name of the notary would be placed. The venue of the authentication, typically the state capital, would be written on line 5, and the date of the authentication on line 6.

§ 10-4 Fees.

The [commissioning/federally designated official] may charge:

- (1) for issuing a certificate of authority, [dollars]; and
- (2) for issuing an Apostille, [dollars].

Comment

Section 10-4 authorizes the authenticating official to charge a fee to cover the administrative costs of issuing a Certificate of Authority or an Apostille. The jurisdiction may wish to further articulate the fee schedule to address “while-you-wait” or “overnight-return” authentications.

Chapter 11 – Changes of Status of Notary Public

Comment

General: This chapter addresses the administrative steps to be taken when a notary changes his or her name, address, or commission status. Easy-to-follow rules are established to ensure that proper notice is received by the commissioning official. Importantly, the Act does not merely impose a notification requirement, but goes on to mandate that the notifying party (the notary or the notary's representative) actually verify receipt of the notice. Any notice required by this chapter may be sent electronically.

§ 11-1 Change of Address.

- (a) Within 10 days after the change of a notary's residence, business, or mailing address, the notary shall send to the [commissioning official] by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice of the change, giving both old and new addresses.
- (b) If the business address is changed, the notary shall not notarize until:
 - (1) the notice described in Subsection (a) has been delivered or transmitted;
 - (2) a Confirmation of Notary's Name or Address Change has been received from the [commissioning official];
 - (3) a new seal bearing the new business address has been obtained; and
 - (4) the surety for the notary's bond has been informed in writing.

Comment

Section 11-1 imposes a notification requirement for any address change by the notary. The notification must be made within 10 days after the change. Some address changes may impact commission status and necessitate resignation of the office. (*See* Subsection 11-3(b).) All notices must include both the old and new address. Since the notary's business address appears in the official seal, any change in business address requires that a new seal be obtained. Further notarizations are prohibited until this is done. (*See* Subsection (b).)

§11-2 Change of Name.

- (a) Within 10 days after the change of a notary's name by court order or marriage, the notary shall send to the [commissioning official] by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice of the change, giving both former and new names, with a copy of any official authorization for such change.
- (b) A notary with a new name shall continue to use the former

name in performing notarial acts until the following steps have been completed, at which point the notary shall use the new name:

- (1) the notice described in Subsection (a) has been delivered or transmitted;
- (2) a Confirmation of Notary's Name or Address 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.

Comment

Section 11-2 provides guidance when a notary changes his or her name. The Act only contemplates official name changes, *i.e.*, pursuant to court order or through marriage. Using a different name familiarly will not affect one's official name for notary public purposes. The notification procedure for a name change generally mirrors the same procedure for an address change (*see* Section 11-1), including requirements to notify the commissioning authority within 10 days and to obtain a new seal reflecting the change. However, a

notary may continue notarizing using a former name until a seal bearing the new name is obtained (*see* Subsection (b)). In contrast, a notary having moved to a new business address may not notarize until a seal bearing that new address has been obtained. The drafters felt that knowing where to find a notary who has moved is more critical than keeping track of the current name of a notary at a known location in the event that either performs a questionable notarization.

§ 11-3 Resignation.

- (a) A notary who resigns his or her commission shall send to the [commissioning official] by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, a signed notice indicating the effective date of resignation.
- (b) Notaries who cease to reside in or to maintain a regular place of work or business in this [State], or who become permanently unable to perform their notarial duties, shall resign their commissions.

Comment

Section 11-3 requires that proper notification be given to the commissioning official when a notary resigns a commission. Additionally, Subsection (b) establishes the rule that a notary who, because of a change of address, no longer has a qualifying nexus in the jurisdiction, must resign the notary commission. The rule applies equally to

notaries who lose their resident status or who fail to maintain a regular place of business in the jurisdiction. The subsection also mandates a resignation for any notary who can no longer perform the duties of office. The Act thereby forces notaries to self-evaluate their status, another step toward professionalizing the office.

§ 11-4Disposition of Seal and Journal.

- (a) Except as provided in Subsection (b), when a notary commission expires or is resigned or revoked, the notary shall:
- (1) as soon as reasonably practicable, destroy or deface all notary seals so that they may not be misused; and
 - (2) within 30 days after the effective date of resignation, revocation, or expiration, send to the [office designated by the commissioning official] by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, the notarial journal and records, [allowing that an electronic journal may be delivered on disk, printed on paper, or transmitted electronically,] in accordance with requirements of the same office.
- (b) A former notary who intends to apply for a new commission and whose previous commission or application was not revoked or denied by this State, need not deliver the journal and records within 30 days after commission expiration, but must do so within 3 months after expiration unless recommissioned within that period.

Comment

Section 11-4 deals with proper disposition of the incidents of office when a notary commission terminates for any reason. To prevent its unauthorized use, the notary should destroy or deface the official seal. How this is best accomplished is left to the discretion of the notary.

Subparagraph (a)(2) requires the former notary, within 30 days after termination of the commission, to deliver the notary journal and any notarial records

to the office of the commissioning official. Subsection (b) carves out an exception to the 30-day-delivery rule. It allows a notary who intends to renew an expired commission up to three months to complete the process. If within that time the commission has not been renewed, the journal and accompanying records must then be forwarded to the commissioning official.

§ 11-5Death of Notary.

If a notary dies during the term of commission or before fulfilling the obligations stipulated in Section 11-4, the notary's personal representative shall:

- (1) notify the [commissioning official] of the death in writing;
- (2) as soon as reasonably practicable, destroy or deface all notary seals so that they may not be misused; and
- (3) within 30 days after death, send to the [office designated by the commissioning official] by any means providing a tangible receipt or acknowledgment, including certified mail and electronic transmission, the notary's journal of notarial acts and any other notarial records, [allowing that an electronic journal

may be delivered on disk, printed on paper, or transmitted electronically,] in accordance with requirements of the same office.

Comment

Section 11-5 addresses disposal of a deceased notary's official seal and journal, and notification of the commissioning authority regarding the death. Destruction or defacement of the seal and proper delivery of the journal, performed by the notary pursuant to Section 11-4 after termination of a commission, are instead to be performed by the decedent's personal representative. Although in many cases this may be a surviving spouse, any proper successor in interest is authorized to perform this task. In regard to disposition of an electronic journal upon the death of the

notary, the notary's personal representative may first have to contact the commissioning official in order to learn journal access instructions (*see* Section 7-5 and Subparagraph 4-2(9)) for the purpose of meeting the obligations imposed by this section.

In the event of the disappearance or permanent incapacity of the notary, any individual legally designated to attend to or settle the notary's affairs may perform the acts required in this section. (*See* Section 7-5 Comment.)

Chapter 12 – Liability, Sanctions, and Remedies for Improper Acts

Comment

General: This chapter provides rules for handling situations in which notaries have acted improperly incident to the performance of their official duties. The drafters believed notaries should be fully accountable for their official actions, and to this end imposed personal liability on them for any of their actions that result in damages to others. Additionally, since the Act mandates bonding (*see* Section 3-3), the drafters included rules to maximize an

injured party's access to the bond. The Act also applies traditional liability rules to broaden the available resources from which damages caused by employee-notaries can be recovered. The balance of the chapter enumerates criminal and disciplinary sanctions that may be imposed on notaries who breach their obligations or violate rules of law in the performance of their official duties.

§ 12-1 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 negligence, intentional violation of law, or official misconduct in relation to 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 negligence, intentional violation of law, or official misconduct in relation to a notarization during the bond term, but this liability may not exceed the dollar amount of the bond or of any remaining bond funds that have not been disbursed to other claimants. Regardless of the number of claimants against the bond or the number of notarial acts cited in the claims, a surety's aggregate liability shall not exceed the dollar amount 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 negligence, intentional violation of law, or official misconduct in performing a notarization during the course of employment, if the employer directed, expected, encouraged, approved, or tolerated the notary's negligence, violation of law, or official misconduct either in the particular transaction or, impliedly, by the employer's previous action in at least one similar transaction involving any notary employed by the employer.
- (d) An employer of a notary is liable to the notary for all damages recovered from the notary as a result of any violation of law by the notary 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 involving any notary employed by the employer. 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

- engage in a violation of law or official misconduct.
- (e) Notwithstanding any other provision in this Act, for the purposes of this section “negligence” shall not include any good-faith determination made by the notary pursuant to the obligations imposed by Section 5-1(b)(3) or (4).

Comment

Subsection 12-1(a) establishes the basic rule that a notary is liable for damages directly resulting from the improper performance of a notarial act. The notary can be held responsible for either a negligent or an intentional act. Intentional acts that can create liability include acts that are either unlawful or constitute official misconduct. (*See* Section 2-12.) Consistent with the modern trend (*see, e.g.,* CAL GOV’T CODE § 8214.1; IND. CODE ANN. § 33-16-4-2; and NEB. REV. STAT. § 64-109; *and also, Jefferson Financial Co. v. United California Bank*, 549 P.2d 142 (Cal. 1976); and *Transamerica Insurance Co. v. Valley National Bank*, 462 P.2d 814 (Az. App. 1969)), the Act specifically rejects the antiquated view that a notary is a public official entitled to sovereign immunity (*see May v. Jones*, 14 S.E. 52 (Ga. 1891)).

Subsection (b) obligates the surety for the notary’s bond for damage recoveries permitted by Subsection (a). Recovery, however, is limited to the unused balance of the bond. In no event may a surety be responsible for more than the dollar value of the bond. Multiple claims are to be prioritized pursuant to local law.

Subsection (c) limits the *respondeat superior* doctrine for employee-notaries to a few, select situations. Although the doctrine may be applied in employee-notary situations without limitation (*see, e.g.,* FLA. STAT. ANN. §117.05(6)), the Act employs a more stringent application that requires an additional act by the employer before according any liability for an employee-notary’s notarization. The drafters decided that the tension between the notary as an independent public servant and as an employee warranted the approach adopted. To reinforce the independence of the office, the drafters wanted to iterate the fact that a notary is first and foremost a public servant, whose duty to the public overrides obligations to an employer. An employer

cannot control a notary’s performance of official duties. Consequently, it would be unfair always to hold the employer accountable for the employee-notary’s behavior. Thus, the Act only imposes liability on the employer where the employer’s own actions caused, facilitated, or permitted the improper behavior. (*Accord* 5 ILCS 312/7-102; CONN. GEN. STAT. ANN. § 3-94 l(b); MO. REV. STAT. §486.360; and VA. CODE ANN. §47.1-27, all of which require employer ratification before liability is imposed.)

In order for an employer to be liable for a recovery permitted by Subsection (a), the employee must not only perform the notarization within the scope of employment, but the employer must also actively or impliedly “consent” to the notary’s specific improper notarial act. Active “consent” includes directing, approving, or tolerating the notary’s behavior. For these purposes, “tolerating” is the functional equivalent of tacit approval. It connotes an awareness of the behavior without taking any steps to correct or prevent it from recurring. Additionally, encouraging or expecting an employee-notary to perform improper notarial acts will constitute active “consent.” The facts of each particular case will have to be reviewed to ascertain when the employer encouraged the notary to perform an improper notarization. The same is true for those cases in which the injured party will try to demonstrate how the employer “expected” the behavior.

As to implied “consent,” the Act simply provides that any past action or inaction by the employer concerning a particular improper notarization will carry forward to a later improper notarization. The theory is that the an employee may reasonably rely on the employer’s past action (or inaction, as the case may be) as a guide to a present act. If objection were not

raised earlier, there is no reason to believe it would be raised now. Thus, under the implied “consent” rule, an employer may be liable for a notarization despite being totally unaware it was performed by the employee-notary. The employer’s failure to properly address a prior improper notarization can provide the basis for liability resulting from a future improper notarization.

The implied “consent” rule can be applied to an improper notarization by any of an employer’s notaries. It is not limited to only the future improper notarizations of the notary who performed a prior improper notarization. The theory justifying the broad application of the rule is that employees are charged with knowledge of company policies and normally are aware of the acts of similar coworkers. It would be inappropriate to allow an employer to escape responsibility because a different employee-notary relying on past company practice performed the improper act. The Act effectively imposes an affirmative obligation on employers to promulgate and implement adequate internal controls to ensure that employee-notaries perform notarizations properly.

Subsection (d) serves to protect the notary financially from damages resulting from an improper notarization coerced by the employer. Generally, Subsection (a) makes the notary liable for damages resulting from all improper notarizations. The Act takes the position that if, under Subsection (c), the employer is found responsible for a specific improper notarial act, then the notary should be indemnified by the employer for any costs imposed upon the notary for following the employer’s dictates. In adopting this position, the drafters recognize that a notary can be put in an untenable position: either perform the improper act or suffer probable employment penalty, including loss of job. Ideally, one would like to think the notary would demonstrate independence and refuse to perform the improper notarization. But reality suggests that usually this will not be the case, especially when the notary is young and inexperienced. Thus, although the notary remains primarily liable for his or her improper acts, the financial costs for those which are coerced by an employer should ultimately be borne by the employer who causes them. Nothing in this section

exculpates the notary from responsibility for the improper act, and appropriate sanctions may be imposed by the commissioning official for it. (*See* Sections 12-3 and 12-4.)

This subsection further develops the theme regarding an employer’s obligation for a coerced improper notarization. It imposes financial obligations on an employer who penalizes a notary for failing to obey a request to perform an illegal notarization. The employer will be held responsible for recompensing the notary for any monetary loss incurred by any employment action taken by the employer that effectively constitutes retaliation for the refusal to follow the illegal request. The drafters believed that this rule was necessary to give teeth to the general proscription against coercing employees into performing illegal notarizations. Without it, an employer could too easily sidestep the ban.

Subsection (e) serves to insulate notaries who properly refuse to execute notarizations. The protection is specifically confined to those situations wherein the notary believes the principal lacks either the capacity to understand the underlying consequences of, or the independent volition to proceed with, the notarization. These are the mandates from Subparagraphs 5-1(b)(3) and (4), respectively. The drafters strongly believe that notaries should refrain from acting in these situations, but feared they might be hesitant to do so. Whether a layperson could make the informed judgment required by the Act was a concern. The “good faith determination” defense was added to encourage notaries to adhere to the rule.

Notaries are not expected to make informed evaluations based upon either lengthy discussions with principals or reviews of medical documents. The Act simply calls for a commonsense assessment drawn from the circumstances attendant the notarization request.

Under these conditions, a notary who refuses to perform the notarization based on a good-faith determination that the principal fails to satisfy either the “capacity” or “volition” test is exculpated from any liability that might result from such refusal, even if the notary reached an erroneous conclusion. The protection extends only to those notaries who act in good faith. This subsection cannot be used

to shield notaries who use Subparagraph 5-1(b)(3) or (4) as a pretense for refusing to perform notarial acts for other reasons. Notaries who try to do so, especially to avoid the non-discrimination rules of Subsection 5-3(a), are guilty of notarial misconduct and should be sanctioned appropriately.

Notaries may, but are not required, to record refusals to notarize in their journals. Subsection 7-2(c) mandates that incomplete notarial acts (those started, but not completed) are to be recorded. The provision, however, is

silent regarding refusals to act. Recording the refusal may be prudent and prove useful in the event it is subsequently challenged. The drafters, however, caution the notary to use care when making this entry. A simple recitation of the circumstances that led to the determination are sufficient. Graphic statements about the notary's perception of the putative principal's mental state should be avoided, as these could provide the basis for a libel action against the notary.

§ 12-2 Proximate Cause.

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

Comment

Section 12-2 provides a special definition of "proximate cause" for purposes of the Act. It expands the traditional notion of "proximate cause" as applied in tort cases. Generally, "proximate cause" is the "primary," "dominant," or "moving" cause for an event. (BLACK'S LAW DICTIONARY 1225-1226 (6th Ed., West 1990).) The Act creates liability so long as the notary's wrongful official act contributes to the

damages; it need not be the sole cause of the injury. (*Accord* 5 ILCS 312/7-103; and MO. REV. STAT. §486.365.) For this purpose, "wrongful" refers to conduct identified in Subsection 12-1(a). Additionally, the provision imputes the same "contributing cause" rule to both the notary's surety and the employer who may be liable for the improper notarization pursuant to Subsection 12-1(c).

§ 12-3 Revocation.

- (a) The [commissioning official] may revoke a notary commission for any ground on which an application for a commission may be denied under Section 3-1(c).
- (b) The [commissioning official] shall revoke the commission of any notary who fails:
 - (1) to maintain a residence or a regular place of work or business in this [State]; and
 - (2) to maintain status as a legal resident of the United States.
- (c) Prior to revocation of a notary commission, the [commissioning official] shall inform the notary of the basis for the revocation and that the revocation takes effect on a particular date unless a proper appeal is filed with the [administrative body hearing appeal] before that date.
- (d) Resignation or expiration of a notary commission does not terminate or preclude an investigation into the notary's conduct by the [commissioning official], who may pursue the investigation to a conclusion, whereupon it shall be made a matter of public record whether or not the finding would have

been grounds for revocation.

Comment

Section 12-3 both authorizes the commissioning official to revoke a notary commission, and prescribes procedural rules to effectuate the decision. Subsection (a) provides that a notary commission may be revoked for any of the reasons that may be used to deny a notary application. These are set out in Subsection 3-1(c). The drafters believed that an act sufficiently serious in nature to deny an application ought to provide the basis for a revocation if committed or discovered after the commission was granted. Thus, an act that could have provided the basis for an application denial, if properly disclosed upon the application, cannot become the basis for a subsequent commission revocation. If the act were not disclosed on the application, it may be a ground for revocation whenever discovered. To hold otherwise would encourage applicants to hide relevant information from the commissioning authority.

Subsection 12-3(b) implements the requirements of Subparagraph 3-1(b)(2) regarding having a sufficient nexus in the state to warrant receiving a notary commission. Section 2-16 defines “regular place of work or business” for this purpose. If the nexus is severed after the commission

is granted, the commission must be revoked. (*Accord* MONT. CODE ANN. §1-5-402; NEB. REV. STAT. §64-113; and 57 PA. CONS. STAT. ANN. §153.) The Act, by its silence, allows the commissioning jurisdiction to determine both local and United States residency.

Subsection (c) requires the commissioning official to give the notary proper notice of the revocation. The notice must inform the notary of a) the basis for revocation, b) the date when the revocation is to take place, and c) the notary’s specific appeal rights. The Act holds that the notary may continue to perform notarizations until the effective revocation date on the notice. The commission, however, may be suspended during the pendency of any appeal.

Subsection (d) reinforces the view that a notary should be held accountable for any improper official act. Thus, resigning a commission or merely letting it expire will not end or preclude any investigatory process and possible subsequent disciplinary action. Moreover, the subsection provides that when the appropriate authority proceeds against a former notary, the action becomes a matter of public record.

§ 12-4 Other Remedial Actions for Misconduct.

- (a) The [commissioning official] may deliver a written Official Warning to Cease Misconduct to any notary whose actions are judged to be official misconduct under Section 2-12.
- (b) The [commissioning official] may seek a court injunction to prevent a person from violating any provision of this [Act].

Comment

Section 12-4 permits the commissioning official to reprimand a notary for matters not warranting greater discipline. The Act establishes an Official Warning sanction. This disciplinary action allows the official to notify the notary that he or she is engaging in official misconduct and must cease such activity. Should the warning not prove effective, or the activities be sufficiently egregious, the commissioning

official may seek injunctive relief from the courts. The subsection gives the commissioning official broad discretion to seek injunctive relief to prevent any provision of the Act from being violated. The drafters intended this authority to extend to non-notaries as well. Thus, the commissioning official could seek to enjoin any person from violating the provisions of the Act. (For examples of non-notary

infractions, *see* Chapter 13.)

§ 12-5 Publication of Sanctions and Remedial Actions.

The [commissioning official] shall regularly publish a list of persons whose notary commissions have been revoked by the [commissioning official] or whose actions as a notary were the subject of a court injunction or Official Warning to Cease Misconduct.

Comment

Section 12-5 requires publishing a list of the names of notaries who have had their commissions revoked and of notaries who have received an Official Warning to Cease Misconduct. The drafters thought that such

a regular public posting would have a fraud-deterrent utility in alerting the public about notaries who have been sanctioned. Also, it would impose a stigma that conscientious notaries would strive to avoid.

§ 12-6 Criminal Sanctions.

- (a) In performing a notarial act, a notary is guilty of a [class of offense], punishable upon conviction by a fine not exceeding [dollars] or imprisonment for not more than [term of imprisonment], or both, for knowingly:
- (1) failing to require the presence of a principal at the time of the notarial act;
 - (2) failing to identify a principal through personal knowledge or satisfactory evidence; or
 - (3) executing a false notarial certificate under Section 5-5.
- (b) A notary who knowingly performs or fails to perform any other act prohibited or mandated respectively by this [Act] may be guilty of a [class of offense], punishable upon conviction by a fine not exceeding [dollars] or imprisonment for not more than [term of imprisonment], or both.

Comment

Section 12-6 sets out specific criminal penalties for notaries who violate critical provisions of the Act. Since criminal acts are involved, the Act requires that the notary knowingly violate the law. Mere negligence does not merit criminal sanction, and is addressed in Section 12-1. Nonetheless, repeated, knowing acts of negligence may result in suspension or revocation of the commission. If damage claims exceed the available bond, under Subsection 3-3(c) the commission will be suspended. When this happens, Subparagraph 3-3(c)(2) further requires the notary to prove fitness to serve out the remainder of the commission term. The request to continue may be denied.

Further, the suspension could then serve as the basis for revoking the commission. (*See* Subsection 12-3(a) applying Subsection 3-1(c).)

Subsection (a) targets three specific notarial functions – requiring a principal’s physical presence, properly identifying the principal, and executing a true notarial certificate – for special treatment. These acts are the core features of notarizations that lend integrity and reliability to the notarial act.

The drafters did not recommend specific criminal sanctions, preferring instead to have each jurisdiction determine whether violating these duties should

constitute a felony, misdemeanor, or mere infraction. Appropriate fines and terms of incarceration would be determined by the status assigned to these offenses.

Subsection (b) makes any other knowing violation of the Act subject to criminal sanction. Again, the drafters deferred to the local jurisdictions to determine what

penalties would best meet their needs.

Examples of potential criminal violations could include charging a fee in excess of the statutory amount (*see, e.g.*, D.C. CODE ANN. §1-1214; GA. CODE ANN. §45-17-11; and KY. REV. STAT. ANN. §64.300) and executing a blank certificate (*see, e.g.*, FLA. STAT. ANN. §117.107(10)).

§ 12-7 Additional Remedies and Sanctions Not Precluded.

The remedies and sanctions of this chapter do not preclude other remedies and sanctions provided by law.

Comment

Section 12-7 makes clear that the criminal sanctions described in Section 12-6 are not exclusive. Certain Act violations may also trigger sanctions provided by the jurisdiction's penal code. For example, a non-attorney notary who dispenses legal advice might be in violation of the

jurisdiction's unauthorized practice of law statute. (*See, e.g.*, IDAHO CODE §51-112(d); and TEX. GOV'T CODE ANN. §406.016(d).) Also, the criminal sanction will not serve as a substitute to block any civil remedies that may be available to injured parties.

Chapter 13 – Violations by Non-Notary

Comment

General: This chapter imposes disciplinary sanctions on non-notaries who wrongfully simulate or interfere with official notarial acts.

Section 13-1 addresses acting as a notary without authorization, and makes clear such action is illegal and subject to criminal penalties. This position is common to many jurisdictions. (*See, e.g.*, COL. REV. STAT. §12-55-117; VA. CODE ANN. §47.1-29; and W. VA. CODE ANN. §29C-6-204.)

To protect against fraudulent notarizations and destruction of useful records, Section 13-2 makes knowing wrongful possession or corruption of the official notarial materials (seal, journal, and

records) a criminal act. (For similar treatment, *see* MO. ANN. STAT. §486.380; NEV. REV. STAT. ANN. 240.140; and WASH. REV. CODE ANN. §42.44.090(4).)

To preserve the integrity of the notarial act, Section 13-3 makes influencing or assisting a notary to commit an improper act a violation.

Finally, Section 13-4 states that the penalties of Sections 13-1 through 13-3 are not necessarily exclusive, and allows imposition or pursuit of other sanctions as deemed appropriate. (*Accord* CAL. GOV'T CODE §8207.4(6); and IDAHO CODE §51-119(5).)

§ 13-1 Impersonation.

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

§ 13-2 Wrongful Possession.

Any person who knowingly obtains, conceals, defaces, or destroys the seal, journal, or official records of a notary is guilty of a [class of offense], punishable upon conviction by a fine not exceeding [dollars] or imprisonment for not more than [term of imprisonment], or both.

§ 13-3 Improper Influence.

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

§ 13-4 Additional Sanctions Not Precluded.

The sanctions of this chapter do not preclude other sanctions and remedies provided by law.

Article III Electronic Notary

Comment

This article establishes the electronic notary public office. It also defines the electronic notary's emerging role in the arena of electronic commerce. Electronic documents and signatures – created, exchanged, and authenticated by computers – are accounting for more and more of the nation's business. The widely enacted Uniform Electronic Transactions Act (“UETA”), adopted by the National Conference of Commissioners on Uniform State Laws on July 29, 1999, recognizes the legal effect of electronic signatures, including those used by notaries. Further, the federal Electronic Signatures in Global and National Commerce Act (“E-Sign”) (15 U.S.C.A. §§ 7001 *et seq.*) now authorizes every state-commissioned notary in the nation to use electronic signatures in performing official acts. However, neither UETA nor E-Sign actually defines an electronic notarization, nor provides pertinent procedures, certificates, or qualifications for the officer performing such acts. This article accomplishes these tasks.

Two cornerstone rules underlie the article. The first is that the fundamental principles and processes of traditional notarization must remain the same regardless of the technology used to create a signature. No principle is more critical to notarization than that the signer must appear in person before a duly commissioned notary public to affix or acknowledge the signature and be screened for identity, volition, and basic awareness by the notary. While technology may be perfectible, the basic nature of the human beings who use it, unfortunately, is not. Any process – paper-based or electronic – that is called notarization of a signature must involve the personal physical appearance of a principal before a commissioned notary. Contrary to popular understanding, electronic notarization does not mean “remote” notarization, with the notary before a computer at Location A and the principal before a computer at Location B. In the

Act, the definitions of the common notarizations apply both to paper and electronic documents (*see* Sections 2-1 (acknowledgement), 2-2 (affirmation), 2-7 (jurat), 2-11 (oath), and 2-19 (signature witnessing)), and all embody the fundamental principle that the signer must appear in person before the notary at the time of notarization.

The second cornerstone of the article is technology neutrality. This Act neither embraces nor rejects any particular electronic signature technology. At the same time, it does not prevent or discourage a jurisdiction's prescription or proscription of a particular technology for electronic signatures or notary journals. Rather, the Act posits software performance standards for electronic notarization which any qualifying technology must meet. (*See, e.g.*, the performance standards for an electronic journal of notarial acts in Section 14-4.) The drafters preferred to let the forces of the marketplace winnow out the less capable and relevant technologies.

The drafters considered it unnecessary and even violative of E-Sign to require special commissioning of electronic notaries. Instead, the Act merely requires interested paper-based notaries to formally register their intent to notarize electronically with their commissioning official, while proving their electronic capabilities. (*See* Section 15-2 and Comment.)

Under the Act, the electronic notary is not a creature distinct from the traditional paper-based notary. Rather, every paper-based notary has the statutory authority to act as and become an electronic notary – if the desire is there. However, just as most notaries today elect to eschew their statutory authority to take depositions for lack of facility in shorthand reporting, so too, no doubt, many notaries will pass up the opportunity to notarize electronically for lack of facility in computers. A traditional notary is not obligated to become an electronic notary.

Chapter 14 – Definitions Used in This Article

Comment

General: Both E-Sign and the widely enacted UETA recognize that an electronic signature may be used by a notary public to notarize another electronic signature. Unfortunately, neither provides any guidance as to what constitutes an electronic

notarization. This chapter introduces definitions to be used in establishing rules for notarizing electronic signatures and electronically affixing the notary's official signature.

§ 14-1Electronic.

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Comment

Section 14-1 defines “electronic” consistent with UETA. (*See* UETA § 2(5).) The drafters employed terms that are compatible with UETA because that act has either been adopted by a number of jurisdictions (*see, e.g.*, KAN. STAT. ANN. §§ 16a-2-201, 401; NEB. REV. STAT. § 9-210; UTAH CODE ANN. § 46-4-101; and ME. REV. STAT. ANN. tit. 1501 §§ 9401-9419) or served as the template for other legislation

enacted throughout the country (*see, e.g.*, ARIZ. REV. STAT. ANN. §§ 44-7001 *et seq.*; MD. CODE ANN. (Commercial Law) §§ 21-101 *et seq.*; and OHIO REV. CODE ANN §§ 1306.1-23). The term “electronic” is to be liberally construed to embrace not only computer-generated signatures and records, but also those created by other technologies that may be currently in use or developed in the future.

§ 14-2Electronic Notary Public and Electronic Notary.

“Electronic notary public” and “electronic notary” mean a notary public who has registered with the [commissioning official] the capability of performing electronic notarial acts in conformance with this Article.

Comment

Section 14-2 defines the electronic notary. The Act takes the straightforward approach of recognizing that any commissioned conventional notary should have the opportunity to operate as an electronic notary. Indeed, most authorities interpret the E-Sign statute as giving electronic notarization powers to all current

state-commissioned notaries. (E-Sign § 7002 specifically states it may be preempted by state law when certain requirements are met; absent meeting those requirements, however, E-Sign controls.) To notarize electronically, the notary must comply with the registration requirements set out in Chapter 15.

§ 14-3Electronic Document.

“Electronic document” means information that is created, generated, sent, communicated, received, or stored by electronic means.

Comment

Section 14-3 defines “document” in a way that makes it the functional equivalent

of the term “record” in UETA. (*See* UETA § 2(13).) The drafters preferred “document”

to “record” because it strengthens the electronic notary’s connection to paper-based official acts. The Act also seeks to eliminate any confusion about the term

“record,” which could be misunderstood to denote an official status or be considered an archive.

§ 14-4 Electronic Journal of Notarial Acts.

“Electronic journal of notarial acts” and “electronic journal” mean an electronic device for creating and preserving a chronological record of notarizations performed by a notary that:

- (1) allows a journal entry to be made by the notary only after a biometric scan of a particular physical feature or activity of the notary produces data that match with biometric data of the notary stored in the device;
- (2) does not allow a journal entry to be altered in content or sequence by the notary or any other person after a record of the notarization is entered and stored;
- (3) allows entries to be viewed, printed out, and copied electronically by any person using a password or another non-biometric access method designated by the notary;
- (4) has a back-up system in place to provide a duplicate record in the event of loss of the original record;
- (5) has the capability of capturing and storing the images of a handwritten signature and a thumbprint as they are made, or of capturing and storing in retrievable form, in lieu of a thumbprint, another recognized biometric identifier; and
- (6) has the capability of printing out on paper and of providing electronic copies of any entry, any combination of entries, or all entries, including the images of related handwritten signatures and thumbprints, providing that if another type of biometric identifier is used in lieu of thumbprints, these identifiers will be included in any electronic copy.

Comment

Section 14-4 details the requirements for an electronic journal. (Section 7-1 requires all notaries to maintain journals. Subparagraph 7-1(a)(2) authorizes any notary to maintain an electronic journal, even for paper-based transactions. Section 18-1 authorizes any electronic notary to maintain either an electronic journal or a traditional bound book with numbered pages.)

As is the case with a bound paper journal, the electronic journal must remain in the exclusive custody and control of the notary and be properly safeguarded. (*See* Subsections 7-4(e) and (f).) Entries in the

electronic journal may only be made by the custodial notary after submitting personal biometric data, such as a thumbprint, that matches with biometric data stored in the device. (*See* Subparagraph 14-4(1).) Depending on the technology employed, this stored data will be based on a number of thumbprints, retinal scans, or other biometric readings previously submitted by the notary. The drafters believed a biometric access mechanism to be more secure than a password or card key that might be lost, stolen, or compromised. After a record of a notarization is entered and stored, the entry may not be changed or further manipulated

by anyone, even the notary. (*See* Subparagraph 14-4(2).) However, anyone using a particular password or another designated non-biometric means of access will be allowed to view, print out, or electronically copy, but not change, any or all entries. (*See* Subparagraph 14-4(3).) To ensure that the electronic journal is accessible after the death, disappearance, or incapacity of the notary, provision is made elsewhere in the Act (*see* Section 7-5 and Subparagraph 4-2(9)) for the notary to give the password or other non-biometric access instructions to the state commissioning official and to keep this official informed of any changes in the password or access mechanism.

The electronic journal must employ a technology allowing the images of both a handwritten signature and a thumbprint to be captured and stored electronically, and to be viewed as part of larger entry in the journal. (*See* Subparagraph 14-4(5).) In place of a document signer's thumbprint in the journal, the Act allows any other recognized biometric identifier to be used, such as a retinal scan or a voice print. One drafter preferred as a biometric identifier a combined audio-video message that would not only identify a signer but also show intentionality. However, a majority of the drafters preferred the thumbprint as a biometric identifier of a document signer, for four reasons: fingerprint scanners are increasingly used and relatively inexpensive; a single thumbprint image takes up a relatively small amount of computer disk storage space; the fingerprint

is widely recognized in commerce and law as an identifying tool; and a fingerprint image may be printed out on paper in the event the journal may not be archived electronically in a particular jurisdiction.

The electronic journal must meet the same requirements as a bound paper journal. In particular, it must be available for inspection and entry copying, and it must be surrendered to lawful authorities under certain circumstances. (*See* Subsections 7-4(a), (c), and (d).) In lieu of surrender of the electronic journal, authorities may allow a paper print-out or an electronic copy to suffice. It would be useful for the electronic journal software to include automatically at the top of each printed or electronically copied page the name and commission number of the notary, the date on which the print-out or copy was made, and a statement that it is part of the electronic record of a particular notary.

The Act establishes high standards for the electronic notary journal, but the important purpose of the journal justifies them. This may well result in a scant number of notaries, paper-based or electronic, maintaining electronic journals. That, in and of itself, should not be a matter of great moment. To the extent the demands of maintaining an electronic journal impose costs, only those notaries willing to shoulder that burden will do so. These will be limited to truly interested and qualified notaries. The public will then be better served because only motivated and capable notaries will be preserving a record of their acts electronically.

§ 14-5 Electronic Notarial Act and Electronic Notarization.

“Electronic notarial act” and “electronic notarization” mean an official act by an electronic notary public that involves electronic documents.

§ 14-6 Electronic Notary Seal.

“Electronic notary seal” and “electronic seal” mean information within a notarized electronic document that includes the notary's name, jurisdiction, and commission expiration date, and generally corresponds to data in notary seals used on paper documents.

Comment

Section 14-6 defines “notary seal” for requirements for its paper-based electronic notarizations consistent with the counterpart. (*See* Chapter 8.) Certain visual

components of traditional notary seals (*e.g.*, serrated border, rectangular shape, inclusion of state seal) may not translate into an electronic seal, although some electronic document technologies may allow their inclusion. The Act itself is “technology-neutral” and neither endorses nor rejects any particular electronic technology. The components of an “electronic seal” are detailed in Subparagraph 19-1(2).

Although E-Sign and UETA can be read to have eliminated the need for adding an official seal to an electronic document (*see* E-Sign § 7001(g) and UETA § 11), the

Act preserves the seal requirement to strengthen the connection between electronic and traditional paper-based notarial acts. This does not mean, however, that the electronic signature and the electronic seal could not be combined as a single unit, or that the seal could not be a component of the signature or vice versa. What is important is that basic information about the notary’s commission – contained in traditional inking and embossing notary seals – also be an element of a notarized electronic document.

§ 14-7 Electronic Signature.

“Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the document.

Comment

Section 14-7 essentially borrows the definition of “electronic signature” from UETA, substituting the term “electronic document” for “record.” (*See* UETA § 2(8).) It describes the different possible

forms of an electronic signature, and is intended to be as inclusive as possible. No doubt, technologies not yet developed will create new ways to produce electronic signatures that would satisfy the definition.

Chapter 15 – Registration as Electronic Notary

Comment

General: The Act recognizes that federal law specifically permits state-commissioned notaries to perform electronic notarizations. (*See* E-Sign § 11.) E-Sign does not specify, however, the qualifications necessary to become an electronic notary. To require a notary to obtain an additional commission to operate as an electronic notary would impose an impediment in violation of E-Sign’s already existing permission to notarize electronically. Nonetheless, the Act adopts

the view that it is both in the public’s interest and a reasonable accommodation to require some state oversight of electronic notaries. To this end, the Act mandates that an interested notary first register with the commissioning official in order to operate as an electronic notary. This chapter identifies the registration prerequisites. These include both administrative matters and provisions that, at a minimum, guarantee that the notary is capable of operating electronically.

§ 15-1 Course of Instruction.

- (a) Before performing electronic notarial acts, a notary shall take a course of instruction of at least 3 hours approved by the [commissioning official], and pass an examination of this course.
- (b) The content of the course and the basis for the examination shall be notarial laws, procedures, and ethics as they pertain to electronic notarization.

Comment

Section 15-1 mandates that all notaries seeking to be added to the electronic notary registry (*see* Section 15-2) satisfactorily complete an education and testing requirement. This is in addition to and not a substitute for the general education and testing requirement for basic notary commissioning. (*See* Section 4-3.) The Act adopts the position that, in order to protect the public, any notary who wants to perform electronic notarizations must prove the capability to do so. This section installs the mechanism for providing that protection. As with the basic notary education course, the electronic course is set at three hours. The goal is to ensure that the electronic

notary is at a minimum proficient at performing electronic tasks. It is anticipated that the course and exam may be taken interactively “on-line” or in a more traditional setting. Administrative matters can be handled similarly to those for the basic notary education requirements. (*See* Section 4-3 and Comment.) Nothing in the Act precludes the electronic notary from taking additional courses to maintain or improve skills. Indeed, continuing education that keeps the electronic notary abreast of technological developments is encouraged. (*See* THE NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY, PRINCIPLE X and STANDARD X-A-4.)

§ 15-2 Registration with [Commissioning Official].

- (a) Before performing electronic notarial acts, an electronic notary shall register the capability to notarize electronically with the [commissioning official].
- (b) Before performing electronic notarial acts after recommissioning, an electronic notary shall reregister with the [commissioning official].

Comment

Section 15-2 requires the electronic notary to be officially registered with the commissioning official. This serves a number of purposes. First, it demonstrates the electronic notary's proficiency in electronic communications and use of an electronic signature. Second, it provides the commissioning official with notice of the notary's active participation in electronic notarizations. Third, it provides information (*e.g.*, decrypting instructions) that may assist the commissioning official in any subsequent investigation of the electronic notary's conduct. Fourth, it allows the official to authenticate the acts of the electronic notary.

Subsection (b) provides a rule for

electronic registration similar to that for traditional commissioning. Upon "renewing" the notary commission, the interested notary must also reregister as an electronic notary. However, unlike the commission renewal process (*see* Section 3-5), reregistration as an electronic notary does not require repeating the education and testing requirements. This section also provides that the term of the electronic registration runs concurrently with the term of the notary's commission. When the commission expires without renewal, so does the electronic registration. This subsection requires the reregistration to be coincidental with the renewing of the commission.

§ 15-3 Electronic Registration Form.

- (a) An electronic form shall be used by an electronic notary in registering with the [commissioning official] and it shall include, at least:
 - (1) a description of the course on electronic notarization required by Section 15-1;
 - (2) a description of the technology the registrant will use to create an electronic signature in performing official acts;
 - (3) if the device used to create the registrant's electronic signature was issued or registered through a licensed authority, the name of that authority, the source of the license, the starting and expiration dates of the device's term of registration, and any revocations, annulments, or other premature terminations of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail; and
 - (4) the e-mail address of the registrant.
- (b) The electronic registration form for an electronic notary shall:
 - (1) be signed by the registrant using the electronic signature described in the form;
 - (2) include any decrypting instructions, codes, keys, or software that allow the registration to be read; and
 - (3) be transmitted electronically to the [commissioning official].

Comment

Section 15-3 details the content of the electronic notary registration form. Subsection (a) requires the notary to create

an electronic form that complies with the registration requirements. Subparagraph (1) mandates that the registrant prove the

education and testing requirements have been satisfied. (See Section 15-1.) Subparagraph (a)(2) requires the registrant to describe the technology that will be used in performing electronic notarizations. This information allows the commissioning official to compare technologies and determine which ones best meet the needs of the public. Registrants can then be informed whether defects in a particular program have been discovered. The information may also be helpful in any subsequent official investigations of the electronic notary's conduct.

Subparagraph (a)(3) requires the registrant to report certain information relating to any certification authority, or equivalent functionary, with which the notary's electronic signature may be registered. The objective of this subparagraph is to provide the commissioning official with another means of verifying both the integrity and electronic capabilities of the registrant. The Act gives the commissioning official discretion to use the information obtained in any way it

deems appropriate. Since an electronic notary may adopt only one technology in creating a registered official signature (see Subparagraphs (a) (2) and (3)), an individual electronic notary will not be capable of notarizing every type of electronic document. It is anticipated that electronic notaries will select electronic technologies whose security is proven and use is widespread. It is left to each jurisdiction to judge the feasibility and desirability of allowing notaries to register and use multiple official signatures for the same name in different technologies.

Subsection (b) provides the commissioning official with evidence that the registrant has the requisite electronic capability. It also provides a record that can be used to investigate complaints or other matters relating to any electronic notarization of the notary. For purposes of Subparagraph (b)(2), if a notary uses public key technology to create the signature, the public key must be forwarded to the commissioning official. This will allow the notary's communication to be read.

§ 15-4 Fee for Registration.

The fee payable to the [commissioning official] for registering or re-registering as an electronic notary is [dollars].

Comment

Section 15-4 sets a registration fee that is distinct from the commissioning fee. The Act anticipates that the fee will be

established at an amount to cover administrative and related costs of overseeing electronic notarizations.

§ 15-5 Confidentiality.

Information on the registration form of an electronic notary pertaining to decrypting instructions, codes, keys, or software shall be used by the [commissioning official] and designated [State] employees only for the purpose of performing official duties under this [Act], and shall not be disclosed to any person other than a government agent acting in an official capacity and duly authorized to obtain such information, a person authorized by court order, or to the registrant or the registrant's duly authorized agent.

Comment

Section 15-5 serves as the counterpart to Section 4-6 regarding confidentiality of application information submitted for a

commission. In this context, however, some of the information is even more sensitive because, if compromised, it could allow

access to otherwise secure electronic documents and records. Moreover, these documents and records might belong to innocent members of the public who had an expectation of privacy when they presented the documents and records for notarization.

Consequently, the Act reinforces the need for strict confidentiality on decrypting instructions, codes, and related items. As with other confidential material, duly authorized persons are entitled to access it.

Chapter 16 – Electronic Notarial Acts

Comment

General: This chapter identifies those traditional paper-based notarial acts that can also be performed electronically. It references the proper procedure to be followed for each such notarization. It makes clear that the

fundamental principles of notarial practice set out in Articles I and II apply equally to both traditional paper and computer age electronic notarizations.

§ 16-1 Types of Electronic Notarization.

The following types of notarial act, as permitted by Section 5-1 (a), may be performed electronically:

- (1) acknowledgment;
- (2) jurat; [and]
- (3) signature witnessing[; and]
- (4) verification of fact].

Comment

Section 16-1 identifies the four types of notarization that can be performed electronically. Copy certifications were omitted because of the problems attendant to setting copy production standards for diverse technologies, though future revisions of the Act may offer a solution to this problem and propose electronic certified copies. Oaths and affirmations, being purely oral acts, cannot be administered electronically and accordingly are excluded from the roster of electronic

notarizations. The electronic notary, however, must still administer the oath or affirmation when executing an electronic jurat (*see* Section 2-7) or swearing in a credible witness (*see* Section 2-5) for an electronic acknowledgement, jurat, or signature witnessing. Also, nothing in this or any other section of this article derogates from the electronic notary's authority to perform any of the notarial acts authorized by Section 5-1 in a non-electronic setting.

§ 16-2 Notarization of Electronic Signature.

In notarizing an electronic signature, an electronic notary shall take reasonable steps to ensure that any registered device used to create the electronic signature is current and has not been revoked or terminated by its issuing or registering authority.

Comment

Section 16-2 pertains to any electronic signature technology used by a principal that required registration of the signature-creating software or device. It forces the notary to ensure that the authority who allegedly registered the notary's electronic signature does in fact exist. The Act does not make the notary an insurer of the registering authority's integrity,

but mandates that reasonable steps be taken to verify the reliability of this authority. Generally, this will not impose an undue burden on the electronic notary. Indeed, with public key technology, verification of the certificate authority's existence and the digital certificate's currency is done automatically.

§ 16-3 Prohibitions.

An electronic notarization shall not be performed if the signer of the

electronic document:

- (1) is not in the presence of the electronic notary at the time of notarization;
- (2) is not personally known to the notary or identified by the notary through satisfactory evidence;
- (3) shows a demeanor which causes the notary to have a compelling doubt about whether the signer knows the consequences of the transaction requiring a notarial act; or
- (4) in the notary's judgment, is not acting of his or her own free will.

Comment

Section 16-3 essentially restates the basic prohibitions common to all notarizations, whether paper-based or electronic. The drafters thought it imperative to highlight the fact that electronic notarizations carry the same fundamental responsibilities as their paper-based counterparts. Consequently, basic requirements for all notarizations, as set out in Subsection 5-1(b), *i.e.*, mandating the

principal's presence, proof of identity, awareness, and exercise of free will, must also be observed for electronic notarizations. Electronic notarization does not mean "remote" notarization. Not only must the principal be present, but the notary also must meet the same identity, volition, and awareness standards imposed for paper-based notarizations.

§ 16-4 Disqualifications and Limitations.

In performing an electronic notarial act, an electronic notary shall follow the same rules set down in Article II for non-electronic notarial acts in regard to disqualifications, refusal to notarize, avoidance of influence, false certificates, improper documents, intent to deceive, testimonials, and unauthorized practice of law.

Comment

Section 16-4 subjects electronic notaries to the same restrictions, limitations, and disqualifications that govern traditional non-electronic notaries. It specifically incorporates the rules of Sections 5-2 through 5-9 into this section to apply when

electronic notarizations are performed. Again, the Act reinforces the view that electronic notarizations carry the same obligations and weight as paper-based notarizations.

Chapter 17 – Fees of Electronic Notary

Comment

General: This chapter adapts the fee rules for paper-based notarial acts to electronic notarizations. The drafters anticipated that jurisdictions will permit higher fees for electronic notarizations than for their paper-based counterparts because of the costs necessary to establish oneself and operate as an electronic notary. There will also be ongoing upgrade and maintenance expenses. Electronic notary fees must bear a reasonable relationship to the costs of operating as an electronic notary.

§ 17-1 Imposition and Waiver of Fees.

- (a) For performing an electronic notarial act, an electronic notary may charge the maximum fee specified in Section 17-2, charge less than the maximum fee, or waive the fee.
- (b) An electronic notary shall not discriminatorily condition the amount of fees for an electronic notarial act on the attributes of the principal as delineated in Section 5-3(a), though a notary may waive or reduce fees for humanitarian or charitable reasons.

Comment

Section 17-1 adapts the general rules regarding fees for paper-based notarizations to electronic notarizations. As is the case with conventional notarial acts, an electronic notary shall neither charge a fee higher than that which is permitted by statute, nor improperly discriminate in the charging of fees. (For a discussion of prohibited discriminatory fee practices, *see* Section 6-1 Comment.)

§ 17-2 Maximum Fees.

- (a) For performing electronic notarial acts, the maximum fees that may be charged by an electronic notary are:
 - (1) for acknowledgments, [dollars] per signature;
 - (2) for jurats, [dollars] per signature; [and]
 - (3) for signature witnessings, [dollars] per signature[; and]
 - (4) for verifications of fact, [dollars] per certificate].
- (b) An electronic notary may charge a travel fee when traveling to perform a notarial act if:
 - (1) the notary and the person requesting the notarial act agree upon the travel fee in advance of the travel; and
 - (2) the notary explains to the person requesting the notarial act that the travel fee is both separate from the notarial fee in Subsection (a) and neither specified nor mandated by law.

Comment

Section 17-2 sets the fee schedule for electronic notarizations. It is anticipated that these fees will be higher than those for paper-based notarizations. The costs should be determined by taking into account the expenses associated with maintaining an electronic notarization practice, but they must not be so high as effectively to

preclude the public from availing itself of the new services. Since federal legislation (E-Sign) has paved the way for the use of electronic documents and signatures, efforts should be made to foster that initiative. A reasonable, affordable fee structure will play an important role in navigating electronic notarizations into the stream of commerce.

Subsection (b) restates the travel fee rules and restrictions for paper-based notarial acts, and applies them to electronic notarizations. The provision reinforces the

position that remote notarizations are not permitted. Principals must be present before the notary for every notarization of a signature. There are no exceptions made for electronic notarizations. Thus, if an electronic notary has a laptop computer or other portable means of authenticating a principal's electronic document, the electronic notary is eligible to pre-arrange with the principal an appropriate travel fee. (For rules and discussion of travel fees, *see* Subsection 6-2(b) and Comment.)

§ 17-3 Payment Prior to Act.

- (a) A notary may require payment of any fees specified in Section 17-2 prior to performance of a notarial act.
- (b) Any fees paid to a notary prior to performance of a notarial act are non-refundable if:
 - (1) the act was completed; or
 - (2) in the case of travel fees paid in compliance with Section 17-2 (b), the act was not completed for reasons stated in Section 5-3(b)(1) or (2) after the notary had traveled to meet the principal.

Comment

Section 17-3 adapts for electronic notaries the rules giving paper-based notaries discretion to require payment of fees prior to the performance of a notarial

act. Under these rules, if a notarial act is not completed for due cause (*see* Subparagraphs 5-3 (b) (1) and (2)), a travel fee may still be retained by the notary (*see* Section 6-3).

§ 17-4 Fees of Employee Electronic Notary.

- (a) An employer may prohibit an employee who is an electronic notary from charging for electronic notarial acts performed on the employer's time, but shall not condition imposition of a fee on attributes of the principal as described in Section 5-3 (a).
- (b) A private employer shall not require an employee who is an electronic notary to surrender or share fees charged for any electronic notarial acts.
- (c) A governmental employer who has absorbed an employee's costs in operating as an electronic notary may require any fees collected for electronic notarial acts performed on the employer's time either to be waived or surrendered to the employer to support public programs.

Comment

Section 17-4 adopts for electronic employee-notaries the rules regulating fees

for paper-based employee-notaries. (*See* Section 6-4 and Comment.)

§ 17-5 Notice of Fees.

Electronic notaries who charge for their electronic notarial acts shall conspicuously display in their places of business, or present to each principal outside their places of business, an English-language schedule of fees for electronic notarial acts, as specified in Section 17-2(a). No part of any notarial fee schedule shall be printed in smaller than 10-point type.

Comment

Section 17-5 adopts for electronic notaries who charge a fee the fee disclosure requirements for paper-based notaries. (*See* Section 6-5 and Comment.) In the case of a notary traveling to perform an electronic

notarization, the Act would allow a fee schedule to be “presented” through an on-screen laptop display in lieu of a schedule printed on paper.

Chapter 18 – Record of Electronic Notarial Acts

Comment

General: This chapter identifies the record-keeping responsibilities of the electronic notary. Just as the notary who exclusively notarizes paper documents may record these acts in either a traditional or an electronic journal (*see* Subsection 7-1(a)), so the electronic notary is given the option of using either type of journal. All provisions of Chapter 7 regarding the journal's format (Section 7-1), entries (Sections 7-2 and 7-3), and inspection, copying, and disposal (Section 7-4) apply, including the provision that only one journal may be kept (*see* Subsections 7-1(b) and (c)). The drafters debated whether or not an electronic notary should be required to

maintain an electronic journal. Mandating electronic journals for proper recordation of electronic notarizations seemed sensible. Upon further reflection, however, a consensus developed that an electronic notary ought to have the same option as the notary who only performs paper-based notarizations. This position was further bolstered by the certain fact that most electronic notaries' official acts in the foreseeable future will be paper-based transactions. Forcing a notary to maintain an electronic journal for all notarizations when most of them would be traditional paper-based acts could not be justified.

§ 18-1 Recording Electronic Notarial Acts.

An electronic notary shall keep, maintain, protect, and provide for lawful inspection a chronological official journal of notarial acts that is either a permanently bound book with numbered pages or an electronic journal as defined in Section 14-4, and shall conform with all journal requirements of Sections 7-1, 7-2, 7-3, 7-4, and 7-5.

Chapter 19 – Electronic Signature and Seal

Comment

General: This chapter addresses the composition and use of electronic signatures and seals. Section 19-1 prescribes the components of an electronic notarization, corresponding to the elements of the notarial “certificate” used when paper documents are notarized. Section 19-2 mandates that the notary’s electronic signature and seal be used only for authenticating electronic notarial acts.

§ 19-1 Notarial Components of Electronic Document.

In performing an electronic notarial act, the following components shall be attached to, or logically associated with, the electronic document by the electronic notary:

- (1) the official electronic signature of the notary;
- (2) the notary’s electronic seal, which comprises:
 - (a) the notary’s name exactly as stated on the commission issued in accordance with Chapters 3 and 4;
 - (b) the commission serial number;
 - (c) the words “Electronic Notary Public”;
 - (d) the words “[State] of [name of commissioning jurisdiction]”;
 - (e) the expiration date of the commission;
 - (f) the expiration date of any registered electronic device used to create the notary’s electronic signature;
 - (g) the notary’s e-mail address; and
 - (h) the address of the notary’s principal place of work or business; and
- (3) the completed wording of one of the following notarial certificates from Chapter 9:
 - (a) General Acknowledgment;
 - (b) Jurat; [or]
 - (c) Signature Witnessing[; or]
 - (d) Verification of Fact].

Comment

Section 19-1 establishes the form and content for electronic notarizations that correspond to acts involving paper documents and notarial certificates. Subparagraphs (1) and (2) require that the official electronic signature and electronic seal be “attached to, or logically associated with,” the electronic document, with the language here closely following UETA (*see* UETA § 2(8)). The technology employed by the electronic notary will dictate how this attachment or logical association will be accomplished. Depending on the technology selected, it is possible that the electronic signature and seal may be combined in a single element, or that the seal may be a component of the signature or vice versa. The important matter is that all of the information descriptive of the electronic notary’s commission somehow be made a part of, or a secure attachment to, the notarized electronic document. (*See* Sections 14-6 and 14-7 and Comments.)

The section imports from Chapter 9 the certificate language to be used for all four of the allowed electronic notarial acts. In doing so, the section reinforces the view that electronic notaries adhere to essentially

the same formalities as do their paper-based counterparts.

§19-2 Electronic Signature and Seal Exclusively for Official Acts.

The notary's electronic signature and seal shall be used only for the purpose of performing electronic notarial acts.

Comment

Section 19-2 stipulates that the electronic notary's official signature and seal may not be used for any purpose other than the authentication of electronic notarial acts. This will prevent confusion about whether the notary's electronic signing of a particular communication does or does not constitute an official act. Accordingly, an electronic notary may have two or more different electronic signatures using the same or different technologies, one for

official use in electronic notarizations and one or more for use in private matters. Just as the traditional notary must dispose of the inking or embossing official seal in a manner preventing its misuse (*see* Sections 11-4 and 11-5), so the electronic notary must ensure that the coding, disk, certificate, card, software, or program creating the notary's official electronic signature is erased, deleted, or destroyed (*see* Subsection 21-3(a)).

Chapter 20 – Evidence of Authenticity of Electronic Notarial Act

Comment

General: This chapter anticipates that electronic documents may be forwarded to foreign jurisdictions that may require verification of the authority of the notarial officer. This is the electronic counterpart to the authenticating certificate for paper-based notarizations as set out in Chapter 10.

§ 20-1 Form of Evidence of Authority of Electronic Notarial Act.

On a notarized electronic document transmitted to another state or nation, electronic evidence of the authenticity of the official signature and seal of an electronic notary of this [State], if required, shall be attached to, or logically associated with, the document and shall be in the form of an electronic certificate of authority signed by the [commissioning official] in conformance with any current and pertinent international treaties, agreements, and conventions subscribed by the government of the United States.

Comment

Section 20-1 authorizes the commissioning official to electronically sign and transmit the authentication certificate. The Act directs the commissioning official to comply with any pertinent arrangement between the United States and other nations that affect the authentication of exchanged electronically notarized documents.

§ 20-2 Certificate of Authority for Electronic Notarial Act.

An electronic certificate of authority evidencing the authenticity of the official signature and seal of an electronic notary of this State shall contain substantially the following words:

Certificate of Authority for an Electronic Notarial Act

I, _____ (name, title, jurisdiction of commissioning official), certify that _____ (name of electronic notary), the person named as Electronic Notary Public in the attached or associated electronic document, was indeed registered as an Electronic Notary Public for the [State] of _____ [name of jurisdiction] and authorized to act as such at the time of the document's electronic notarization.

To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic signature this ____ day of _____, 20__.

(Electronic signature (and seal) of commissioning official)

Comment

Section 20-2 provides the form and content of the certificate of authority for an electronic notarial act. The drafters purposely made the form simple and straight to the point. The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents provides a form, the Apostille, for authentication of

notarized documents exchanged between subscribing nations. The treaty prescribes in precise terms the dimensions, format, and content of this certificate. (For specifications of the Apostille as adopted by the Act, *see* Section 10-3.) But that

provision applies only to traditional paper documents. Thus, the drafters deemed it necessary to have a separate authentication certificate for electronic documents. For obvious reasons there is no mention of physical dimensions.

§ 20-3 Fees.

For issuing an electronic certificate of authority, the [commissioning official] may charge [dollars].

Comment

Section 20-3 authorizes the commissioning official to collect a fee to cover administrative costs of issuing the certificate of authority. This fee conceivably might be less than the fees specified in

Section 10-4 for authentication of paper documents, reflecting time economies afforded by electronic handling of documents.

Chapter 21 – Changes of Status of Electronic Notary

Comment

General: This chapter provides guidance for electronic notaries in reporting to the commissioning official pertinent changes in status. These provisions correspond to similar rules imposed on paper-based notaries. (*See* Chapter 11.)

However, nothing in this chapter relieves the notary from any obligations imposed by Chapter 11. The nature of the electronic notary's duties requires that some additional status changes be reported, and these are addressed in the chapter.

§ 21-1 Change of E-Mail Address.

Within 5 days after the change of an electronic notary's e-mail address, the notary shall electronically transmit to the [commissioning official] a notice of the change, signed with the notary's official electronic signature.

Comment

Section 21-1 imposes an obligation specific to the electronic notary to report any change of e-mail address. The reporting must be made electronically. This form of reporting underscores the fact that the medium of communication between electronic notaries and the commissioning

official is electronic. Whereas paper-based notaries are given 10 days to report changes of physical address (*see* Section 11-1), the drafters believed an e-mail address change can be reported more expeditiously without hardship to the notary.

§ 21-2 Expiration of Electronic Device.

If the registration of the device used to create electronic signatures either expires or is changed during the electronic notary's term of office, the notary shall cease performing electronic notarizations until:

- (1) a new device is duly issued or registered to the notary; and
- (2) an electronically signed notice is sent to the [commissioning official] which shall include the starting and expiration dates of any new registration term and any other new information at variance with information in the original electronic registration form, as described in Section 15-3.

Comment

Section 21-2 reflects the fact that an electronic notary's registration is geared to a specific electronic signature. Any change in the status of that signature must be reported to the commissioning official. (An analogous rule applies to a name change by a paper-based notary – *see* Section 11-2.) The Act provides that an electronic notary must perform electronic notarizations only with an electronic signature that has been registered with the commissioning official. In the event an electronic notary decides to change the registered electronic signature,

the new signature cannot be used for electronic notarizations until it, too, has been submitted to the commissioning official. If an electronic notary has an electronic signature that has been registered with a certification authority or equivalent agent, and that electronic signature changes, expires, or becomes ineffective for any reason, the notary is prohibited from using that signature for electronic notarizations. The section requires the notary to transmit an electronic communication to the commissioning official with the new "e-

signature.” Until such time as this reporting is made, the electronic notary may not perform electronic notarizations with either the former or the new signature.

§ 21-3 Disposition of Software.

- (a) Except as provided in Subsection (b), when an electronic notary’s commission expires or is resigned or revoked, or when an electronic notary dies, the notary or the notary’s duly authorized representative shall erase, delete, or destroy the coding, disk, certificate, card, software, or program that enables electronic affixation of the notary’s official electronic signature.
- (b) A former electronic notary whose previous commission or application was not revoked or denied by this [State], need not erase, delete, or destroy the coding, disk, certificate, card, software, or program enabling electronic affixation of the official electronic signature if he or she is recommissioned and reregistered as an electronic notary using the same electronic signature within 3 months after commission expiration.

Comment

Section 21-3 mandates that the software or other electronic devices used to create the notary’s electronic signature be properly disposed of to prevent their misuse by unauthorized parties. This rule corresponds closely to the rule for the proper disposal of the tools of office for the paper-based notary, *i.e.*, seal and journal. (See Sections 11-4 and 11-5.)

Subsection (b) allows an electronic notary who obtains a new commission in accordance with Chapters 3 and 4 to

continue using the same electronic signature used with the previous commission. However, this electronic signature may not be used until the new commission is actually issued; if recommissioning and reregistration as an electronic notary does not occur within three months after the previous commission expires, then the erasure, deletion, or destruction of the coding, disk, certificate, card, signature, or program must be performed in accordance with Subsection (a).

Chapter 22 – Liability, Sanctions, and Remedies for Improper Acts

Comment

General: Section 22-1 reinforces the position that electronic notaries are first and foremost duly commissioned notaries with traditional powers and responsibilities. As such, they hold positions of trust and confidence. Therefore, in the performance of electronic notarizations the public has the right to expect the same high levels of integrity, honesty, impartiality, and trustworthiness that is demanded of notaries performing traditional paper-based notarizations. In recognition of that fact, the Act applies all of the liabilities, sanctions, and remedies set out in Chapter 12 for paper-based notarizations to electronic notarizations.

§ 22-1 Liability, Sanctions, and Remedies Relating to Improper Electronic Notarizations.

The liability, sanctions, and remedies for the improper performance of electronic notarial acts are the same as described and provided in Chapter 12 for the improper performance of non-electronic notarial acts.

Chapter 23 – Violations by Person Not an Electronic Notary

Comment

General: This chapter addresses criminal sanctions that may be imposed upon persons who improperly access, possess, or use the tools of office of an electronic notary. This chapter addresses actions by third parties designed to bring about improper electronic notarizations. It also provides guidance with respect to

§ 23-1 Impersonation and Improper Influence.

The criminal sanctions for impersonating an electronic notary and for soliciting, coercing, or influencing an electronic notary to commit official misconduct in performing electronic notarial acts are the same sanctions described in Chapter 13 in regard to impersonation and improper influence in performing non-electronic notarial acts.

Comment

Section 23-1 establishes rules that parallel those set out in Sections 13-1 and 13-3 with respect to performing notarial acts without authority and influencing the performance of improper notarial acts. The section recognizes that an unscrupulous person could a) use an electronic signature that has not been properly registered with the commissioning official to perform unauthorized electronic notarizations, or b) misappropriate and use someone else's properly registered electronic signature. The section also imposes sanctions upon any person attempting to influence a notary to perform an improper electronic notarization.

§ 23-2 Wrongful Possession of Software or Hardware.

Any person who knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling an electronic notary to affix an official electronic signature is guilty of a [class of offense], punishable upon conviction by a fine not exceeding [dollars] or imprisonment for not more than [term of imprisonment], or both.

Comment

Section 23-2 is analogous to Section 13-2 relating to the wrongful possession or destruction of the seal or journal of a paper-based notary. The section imposes the same criminal liability for any person who engages in similar acts with respect to the tools belonging to the notary that are needed to create an electronic signature. This section does not specifically mention electronic journals because there is no distinction between a paper and an electronic journal for the purposes of Section 13-2. Thus, the electronic journal is protected under that section.

APPENDIX 1

THE NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY*

Guiding Principles

I

The Notary shall, as a government officer and public servant, serve all of the public in an honest, fair and unbiased manner.

II

The Notary shall act as an impartial witness and not profit or gain from any document or transaction requiring a notarial act, apart from the fee allowed by statute.

III

The Notary shall require the presence of each signer and oath-taker in order to carefully screen each for identity and willingness, and to observe that each appears aware of the significance of the transaction requiring a notarial act.

IV

The Notary shall not execute a false or incomplete certificate, nor be involved with any document or transaction that is false, deceptive or fraudulent.

V

The Notary shall give precedence to the rules of law over the dictates or expectations of any person or entity.

VI

The Notary shall act as a ministerial officer and not provide unauthorized advice or services.

VII

The Notary shall affix a seal on every notarized document and not allow this universally recognized symbol of office to be used by another or in an endorsement or promotion.

VIII

The Notary shall record every notarial act in a bound journal or other secure recording device and safeguard it as an important public record.

IX

The Notary shall respect the privacy of each signer and not divulge or use personal or proprietary information disclosed during execution of a notarial act for other than an official purpose.

X

The Notary shall seek instruction on notarization, and keep current on the laws, practices and requirements of the notarial office.

** In addition to its 10 "Guiding Principles," the Code includes 85 "Standards of Professional and Ethical Practice." Each Standard presents an "Illustration" for which a proper course of action is explained through either an "Ethical Imperative" or a "Professional Choice." Published in 1998 by the National Notary Association, the Code was drafted by an NNA-recruited national panel of attorneys, state and county officials, surety executives, and notaries public.*

APPENDIX 2

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
JULY 30 - AUGUST 6, 1982

WITH PREFATORY NOTE AND COMMENTS

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

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the **Uniform Law on Notarial Acts** was as follows:

ROBERT A. STEIN, University of Minnesota, School of Law, Minneapolis, MN
55455, *Chairman*

WILLIAM S. ARNOLD, P.O. Drawer A, Crossett, AR 71635

WADE BRORBY, 306 South Gillette Avenue, Gillette, WY 82716

WILLIAM GORDON, Suite 610, 100 North Stone Avenue, Tucson, AZ 85701

LINDA JUDD, P.O. Box 999, Post Falls, ID 83854

JAMES A. SHOWERS, 62 West Elm, Hillsboro, TX 76645

FRED L. MORRISON, University of Minnesota, School of Law, Minneapolis, MN
55455, *Reporter*

JOHN C. DEACON, P.O. Box 1245, Jonesboro, AR 72401, *President: 1979-1981*
(*Member Ex Officio*)

M. KING HILL, JR., Sixth Floor, 100 Light Street, Baltimore, MD 21202, *President:*
1981-1983 (Member Ex Officio)

CARLYLE C. RING, JR., 308 Monticello Boulevard, Alexandria, VA 22305,
Chairman, Executive Committee

WILLIAM J. PIERCE, University of Michigan, School of Law, Ann Arbor, MI
48109, *Executive Director*

EDWARD F. LOWRY, JR., Suite 1650, 3300 North Central Avenue, Phoenix, AZ
85012, *Chairman, Division B: 1979-1981 (Member Ex Officio)*

ROBERT H CORNELL, 25th Floor, 50 California Street, San Francisco, CA 94111,
Chairman, Division B: 1981-1982 (Member Ex Officio)

Review Committee

FRANK W. DAYKIN, Legislative Building, Capitol Complex, Carson City, NV
89710, *Chairman*

CHARLES W. JOINER, P.O. Box 7880, Ann Arbor, MI 48107

ORLAN L. PRESTEGARD, Room 411 West, State Capitol Building, Madison,
WI 53702

Advisors to Special Committee on Uniform Law on Notarial Acts

HENRY M. KITTLESON, *American College of Real Estate Lawyers*

FRANK R. ROSINY, *American Bar Association*

MILTON G. VALERA, *National Notary Association*

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
645 North Michigan Avenue, Suite 510
Chicago, IL 60611

UNIFORM LAW ON NOTARIAL ACTS

Commissioners' 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 notarially certified copy.

Subsection (e) refers to a provision of the Uniform Commercial Code which confers authority to note a protest 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 (sic) 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 of authority of the notarial officer 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 prima 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 recognition 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 _____

This instrument was acknowledged before me on (date) 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.)

(Seal, if any)

(Signature of notarial officer)

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).

(Seal, if any)

(Signature of notarial officer)

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)).

(Seal, if any)

(Signature of notarial officer)

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
possession of _____.
Dated _____

(Seal, if any)

(Signature of notarial officer)

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 (officer, Company A, etc.) and rank who is acting as a notarial officer will (Captain, U.S. Army) as identification. normally enter both title (e.g., commanding

§ 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

NATIONAL NOTARY ASSOCIATION

9350 De Soto Ave., P.O. Box 2402

Chatsworth, CA 91313-2402

1-818-739-4000

www.nationalnotary.org

E-mail: nna@nationalnotary.org