

REVISED STATUTES OF NEBRASKA

CHAPTER 23. COUNTY GOVERNMENT AND OFFICERS

Section 23-1311. Instruments; signatures; illegible; refusal to file.

The name or names of each signer of an instrument presented for filing or recording in the office of the county clerk or register of deeds, including the name of any notary or official taking the acknowledgment, shall be typewritten or legibly printed beneath such signature, and the county clerk or register of deeds may refuse to accept and file any instrument failing to meet the requirements of this section; PROVIDED, that if the county clerk or register of deeds determines that all signatures on the instrument are legible, he shall not refuse to file the instrument.

CHAPTER 33. FEES AND SALARIES

§ 33-102. Notary public; fees; Administration Cash Fund; created; investment. [Operative July 1, 2021]

The Secretary of State shall be entitled to the sum of thirty dollars for receiving an application for a commission to act as a notary public pursuant to section 64-102. The Secretary of State shall be entitled to the sum of thirty dollars for receiving a renewal application pursuant to section 64-104.

The fees received by the Secretary of State pursuant to this section shall be remitted to the State Treasurer for credit seventy-five percent to the General Fund and twenty-five percent to the Secretary of State Cash Fund.

33-133. Notaries public; fees; governmental employee; limitation.

Except as otherwise provided in this section, notaries public may charge and collect fees as follows: For each protest, one dollar; for recording the same, two dollars; for each notice of protest, two dollars; for taking affidavits and seal, two dollars; for administering oath or affirmation, two dollars; for each certificate and seal, five dollars; for taking acknowledgment of deed or other instrument, five dollars; and for each mile traveled in serving notice, mileage at the rate provided in section 81-1176. An employee of the state or its political subdivisions may not charge the fees prescribed in this section if his or her governmental employer paid the commission and bonding fees required of notaries public.

Section 33-153. Fees for acknowledgments, oaths, affirmations; report to county board; payment to county treasurer.

All fees received for taking acknowledgments, oaths and affirmations, by any county officer, or any deputy or employee in his office, whether received for taking acknowledgments, oaths and affirmations, in an official capacity as a county officer or while acting in the capacity of a notary public, must be reported to the county board and paid into the county treasury. Any person who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in a sum not in excess of one hundred dollars. Any county officer or deputy so offending shall also be subject to removal from office.

CHAPTER 64. NOTARIES PUBLIC
ARTICLE 1. GENERAL PROVISIONS

64-101 Appointment; qualifications; term.

(1) The Secretary of State may appoint and commission such number of persons to the office of notary public as he or she deems necessary.

(2) There shall be one class of such appointments which shall be valid in the entire state and referred to as general notaries public.

(3) The term effective date, as used with reference to a commission of a notary public, shall mean the date of the commission unless the commission states when it goes into effect, in which event that date shall be the effective date.

(4) A general commission may refer to the office as notary public and shall contain a provision showing that the person therein named is authorized to act as a notary public anywhere within the State of Nebraska or, in lieu thereof, may contain the word general or refer to the office as general notary public.

(5) No person shall be appointed a notary public unless he or she has taken and passed a written examination on the duties and obligations of a notary public as provided in section 64-101.01.

(6) No appointment shall be made if such applicant has been convicted of (a) a felony or (b) a crime involving fraud or dishonesty within the previous five years.

(7) No appointment shall be made until such applicant has attained the age of nineteen years nor unless such applicant certifies to the Secretary of State under oath that he or she has carefully read and understands the laws relating to the duties of notaries public and will, if commissioned, faithfully discharge the duties pertaining to the office and keep records according to law.

(8) No person shall be appointed a notary public unless he or she resides in the State of Nebraska, except that the Secretary of State may appoint and commission a person as a notary public who resides in a state that borders the State of Nebraska if such person is employed in or has a regular place of work or business in this state and the Secretary of State has obtained evidence of an address of the physical location of such employment or place of work or business prior to such appointment and commission.

(9) Each person appointed a notary public shall hold office for a term of four years from the effective date of his or her commission unless sooner removed.

64-101.01 Written examination required.

The written examination required by section 64-101 shall be developed and administered by the Secretary of State and shall consist of questions relating to laws, procedures, and ethics for notaries public. All applicants for commission as a notary public on and after July 16, 2004, shall be required to take and pass the examination prior to being commissioned.

64-102 Commission; how obtained; bond.

Any person may apply for a commission authorizing the applicant to act as a notary public anywhere in the State of Nebraska, and thereupon the Secretary of State may, at his or her discretion, issue a commission authorizing such notary public to act as such anywhere in the State of Nebraska. A general commission shall not authorize the holder thereof to act as a notary public anywhere in the State of Nebraska until a bond in the

sum of fifteen thousand dollars, with an incorporated surety company as surety, has been executed and approved by and filed in the office of the Secretary of State. Upon the filing of such bond with the Secretary of State and the issuance of such commission, such notary public shall be authorized and empowered to perform any and all the duties of a notary public in any and all the counties in the State of Nebraska. Such bond shall be conditioned for the faithful performance of the duties of such office. Such person so appointed to the office of notary public shall make oath or affirmation, to be endorsed on such bond, and subscribed by him or her before some officer authorized by law to administer oaths, and by him or her certified thereon, that he or she will support the Constitution of the United States and the Constitution of Nebraska and will faithfully and impartially discharge and perform the duties of the office of notary public.

64-103 Commission; signature; seal; filing and approval of bond; delivery.

When any person is appointed to the office of notary public, the Secretary of State shall cause his or her signature or a facsimile thereof to be affixed to the commission and he or she shall affix thereto the great seal of the state. Upon the filing and approval of the bond, as provided for in section 64-102, the Secretary of State shall mail or deliver the commission to the applicant. The form and format of the commission shall be prescribed by the Secretary of State.

64-104 Notary public; commission; renewal; procedure.

Commissions for general notaries public may be renewed within thirty days prior to the date of expiration by filing a renewal application along with the payment of the fee prescribed in section 33-102 and a new bond with the Secretary of State. The bond required for a renewal of such commission shall be in the same manner and form as provided in section 64-102. The renewal application shall be in the manner and form as prescribed by the Secretary of State. Any renewal application for such commission made after the date of expiration of the commission shall be made in the same manner as a new application for such commission as a general notary public.

64-105 Notarial acts prohibited; when.

(1) A notary public shall not perform any notarial act as authorized by Chapter 64, articles 1 and 2, if the principal:

- (a) Is not in the presence of the notary public at the time of the notarial act; and
- (b) Is not personally known to the notary public or identified by the notary public

through satisfactory evidence.

(2) For purposes of this section:

(a) Identified by the notary public through satisfactory evidence means identification of an individual based on:

(i) At least one document issued by a government agency that is current and that bears the photographic image of the individual's face and signature and a physical description of the individual, except that a properly stamped passport without a physical description is satisfactory evidence; or

(ii) The oath or affirmation of one credible witness unaffected by the document or transaction to be notarized who is personally known to the notary public and who personally knows the individual, or the oaths or affirmations of two credible witnesses unaffected by the document or transaction to be notarized who each personally knows the

individual and shows to the notary public documentary identification as described in subdivision (a)(i) of this subsection; and

(b) Personal knowledge of identity or personally known means 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.

64-105.01 Notary public; disqualified; when.

A notary public is disqualified from performing a notarial act as authorized by Chapter 64, articles 1 and 2, if the notary:

- (1) Is a spouse, ancestor, descendant, or sibling of the principal, including in-law, step, or half relatives;
- (2) Except in the performance of duties pursuant to sections 64-211 to 64-215, has a financial or beneficial interest in the transaction other than receipt of the ordinary notarial fee or is individually named as a party to the transaction; or
- (3) Does not understand the acknowledgment or notarial certificate used to certify the performance of his or her duties.

64-105.02 Notarization; when.

(1) A notary public may certify the affixation of a signature by mark on a document presented for notarization if:

- (a) The mark is affixed in the presence of the notary public and of two witnesses unaffected by the document;
- (b) Both witnesses sign their own names beside the mark;
- (c) The notary public writes below the mark: “Mark affixed by (name of signer by mark) in presence of (names and addresses of witnesses) and undersigned notary public”; and
- (d) The notary public notarizes the signature by mark through an acknowledgment, jurat, or signature witnessing.

(2) A notary public may sign the name of a person physically unable to sign or make a mark on a document presented for notarization if:

- (a) The person directs the notary public to do so in the presence of two witnesses unaffected by the document;
- (b) The notary public signs the person’s name in the presence of the person and the witnesses;
- (c) Both witnesses sign their own names beside the signature;
- (d) The notary public writes below the signature: “Signature affixed by notary public in the presence of (names and addresses of person and two witnesses)”; and
- (e) The notary public notarizes the signature through an acknowledgment, jurat, or signature witnessing.

64-105.03 Notary public; unauthorized practice of law; prohibited.

(1) A notary public who is not an attorney shall not engage in the unauthorized practice of law as provided in this section.

(2) If notarial certificate wording is not provided or indicated for a document, a notary public who is not an attorney shall not determine the type of notarial act or certificate to be used.

(3) A notary public who is not an attorney shall not assist another person in drafting,

completing, selecting, or understanding a document or transaction requiring a notarial act.

(4) A notary public who is not an attorney shall not claim to have powers, qualifications, rights, or privileges that the office of notary public does not provide, including the power to counsel on immigration matters.

(5) A notary public who is not an attorney and who advertises notarial services in a language other than English shall include in any advertisement, notice, letterhead, or sign a statement prominently displayed in the same language as follows: "I am not an attorney and have no authority to give advice on immigration or other legal matters".

(6) A notary public who is not an attorney may not use the term notario publico or any equivalent non-English term in any business card, advertisement, notice, or sign.

(7) This section does not preclude a notary public 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.

(8) A violation of any of the provisions of this section shall be considered the unauthorized practice of law and subject to the penalties provided in section 7-101.

64-105.04 Change of residence; duties.

A notary public shall notify the Secretary of State of any change of his or her residence no later than forty-five days after such change. Information provided on the change-of-address form shall include the notary public's name as it appears on his or her commission, the date the commission expires, and the notary public's new address. The Secretary of State shall prescribe forms consistent with the requirements of this section.

64-106 Repealed. Laws 1969, c. 523, s. 11.

64-107 Powers and duties; certificate or records; receipt in evidence.

A notary public is authorized and empowered, within the state: (1) To administer oaths and affirmations in all cases; (2) to take depositions, acknowledgments, and proofs of the execution of deeds, mortgages, powers of attorney, and other instruments in writing, to be used or recorded in this or another state; and (3) to exercise and perform such other powers and duties as authorized by the laws of this state. Over his or her signature and official seal, he or she shall certify the performance of such duties so exercised and performed under this section. Such certificate shall be received in all courts of this state as presumptive evidence of the facts therein certified to.

64-107.01 Oaths and affirmations.

Oaths and affirmations may be administered, in all cases whatsoever, by notaries public.

64-108 Summons; issuance, when authorized; contempt, power to punish.

Every notary public, when notice by a party to any civil suit pending in any court of this state upon any adverse party for the taking of any testimony of witnesses by deposition, or any commission to take testimony of witnesses to be preserved for use in any suit thereafter to be commenced, has been deposited with him, or when a special commission issued out of any court of any state or country without this state, together with notice for the taking of testimony by depositions or commissions, has been deposited with him or her, is empowered to issue summons and command the presence before him or her of witnesses.

All sheriffs and constables in this state are required to serve and return all process issued by notaries public in the taking of testimony of witnesses by commission or deposition.

64-109 Civil liability of notary public; actions.

If any person shall be damaged or injured by the unlawful act, negligence or misconduct of any notary public in his official capacity, the person damaged or injured may maintain a civil action on the official bond of such notary public against such notary public, and his sureties, and a recovery in such action shall not be a bar to any future action for other causes to the full amount of the bond.

64-110 Repealed. Laws 1945, c. 145, s. 15.

64-111 Repealed. Laws 1967, c. 396, s. 11.

64-112 Removal from state; termination; notice to Secretary of State.

Every notary public removing from the State of Nebraska shall notify the Secretary of State of such removal. Such a removal shall terminate the term of his office.

64-113 Removal; grounds; procedure; penalty.

(1) Whenever charges of malfeasance in office are preferred to the Secretary of State against any notary public in this state, or whenever the Secretary of State has reasonable cause to believe any notary public in this state is guilty of acts of malfeasance in office, the Secretary of State may appoint any disinterested person, not related by consanguinity to either the notary public or person preferring the charges, and authorized by law to take testimony of witnesses by deposition, to notify such notary public to appear before him or her on a day and at an hour certain, after at least ten days from the day of service of such notice. At such appearance, the notary public may show cause as to why his or her commission should not be canceled or temporarily revoked. The appointee may issue subpoenas to require the attendance and testimony of witnesses and the production of any pertinent records, papers, or documents, may administer oaths, and may accept any evidence he or she deems pertinent to a proper determination of the charge. The notary public may appear, at such time and place, and cross-examine witnesses and produce witnesses in his or her behalf. Upon the receipt of such examination, duly certified in the manner prescribed for taking depositions to be used in suits in the district courts of this state, the Secretary of State shall examine the same, and if therefrom he or she finds that the notary public is guilty of acts of malfeasance in office, he or she may remove the person charged from the office of notary public or temporarily revoke such person's commission. Within fifteen days after such removal or revocation and notice thereof, such notary public shall deposit, with the Secretary of State, the commission as notary public and notarial seal. The commission shall be canceled or temporarily revoked by the Secretary of State. A person so removed from office shall be forever disqualified from holding the office of notary public. A person whose commission is temporarily revoked shall be returned his or her commission and seal upon completion of the revocation period and passing the examination described in section 64-101.01. The fees for taking such testimony shall be paid by the state at the same rate as fees for taking depositions by notaries public. The failure of the notary public to deposit his or her commission and seal with the Secretary of State as required by this section shall subject him or her to a penalty

of one thousand dollars, to be recovered in the name of the state.

(2) For purposes of this section, malfeasance in office means, while serving as a notary public, (a) failure to follow the requirements and procedures for notarial acts provided for in Chapter 64, articles 1 and 2, (b) violating the confidentiality provisions of section 71-6911, or (c) being convicted of a felony or other crime involving fraud or dishonesty.

64-114 Change of name; continue to act.

Any person, whose name is legally changed after a commission as a notary public is issued to him or her, may continue to act as such notary public and use the original commission, seal, and name until the expiration or termination of such commission. The bond given by such notary public shall continue in effect, regardless of such legal change of name of such notary public, if the notary public uses the name under which the commission is issued.

64-115 Repealed. Laws 1982, LB 592, s. 2.

64-116 Transferred to section 64-104.

64-117 Repealed. Laws 1982, LB 592, s. 2.

64-118 Seal; engraved or ink stamp; adopt; use.

All persons, officers, and governmental and nongovernmental bodies and associations heretofore authorized by law to adopt and use a seal on official documents are hereby authorized to adopt and use either an engraved or ink stamp seal for such purposes, unless the use of ink stamp seals for such purposes is specifically prohibited by law.

64-119. Rules and regulations.

The Secretary of State may adopt and promulgate rules and regulations relating to the administration of, but not inconsistent with, the provisions of sections 64-101 to 64-118.

ARTICLE 2. RECOGNITION OF ACKNOWLEDGMENTS

64-201 Notarial acts, defined; performed; effect.

For the purposes of sections 64-201 to 64-210, unless the context otherwise requires: Notarial acts means acts which the laws and regulations of this state authorize notaries public of this state to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents. Notarial acts may be performed outside this state for use in this state with the same effect as if performed by a notary public of this state by the following persons authorized pursuant to the laws and regulations of other governments in addition to any other person authorized by the laws and regulations of this state:

(1) A notary public authorized to perform notarial acts in the place in which the act is performed;

(2) A judge, clerk, or deputy clerk of any court of record in the place in which the notarial act is performed;

(3) An officer of the foreign service of the United States, a consular agent, or any other person authorized by regulation of the United States Department of State to perform

notarial acts in the place in which the act is performed;

(4) A commissioned officer in active service with the armed forces of the United States and any other person authorized by regulation of the armed forces to perform notarial acts if the notarial act is performed for one of the following or his dependents: A merchant seaman of the United States, a member of the armed forces of the United States, or any other person serving with or accompanying the armed forces of the United States; or

(5) Any other person authorized to perform notarial acts in the place in which the act is performed.

64-202 Notarial act; performance; proof of authority; maintenance of records.

(1) If the notarial act is performed by any of the persons described in sections 64-201 to 64-204, other than a person authorized to perform notarial acts by the laws or regulations of a foreign country, the signature, rank, or title and serial number, if any, of the person are sufficient proof of the authority of a holder of that rank or title to perform the act. Further proof of his or her authority shall not be required.

(2) If the notarial act is performed by a person authorized by the laws or regulations of a foreign country to perform the act, there is sufficient proof of the authority of that person to act if:

(a) Either a foreign service officer of the United States resident in the country in which the act is performed or a diplomatic or consular officer of the foreign country resident in the United States certifies that a person holding that office is authorized to perform the act;

(b) The official seal of the person performing the notarial act is affixed to the document; or

(c) The title and indication of authority to perform notarial acts of the person appears either in a digest of foreign law or in a list customarily used as a source of such information.

(3) An apostille in the form prescribed by the Hague Convention of October 5, 1961, shall conclusively establish that the signature of the notarial officer is genuine and that the officer holds the designated office. The Secretary of State or his or her deputy shall be authorized to sign the apostille.

(4) The Secretary of State may authorize the use of computers to maintain necessary records dealing with notaries public in the State of Nebraska.

64-203 Certificate; contents.

(1) The person taking an acknowledgment shall certify that:

(a) The person acknowledging appeared before him or her and acknowledged he or she executed the instrument; and

(b) The person acknowledging was known to the person taking the acknowledgment or that the person taking the acknowledgment had satisfactory evidence that the person acknowledging was the person described in and who executed the instrument.

(2) For purposes of this section, appearance before the person taking an acknowledgement includes an appearance outside the presence of a notary public if such acknowledgement was completed in accordance with the Online Notary Public Act.

64-204 Certificate of acknowledgment; form; acceptance.

The form of a certificate of acknowledgment used by a person whose authority is

recognized under section 64-201 shall be accepted in this state if:

- (1) The certificate is in a form prescribed by the laws or regulations of this state;
- (2) The certificate is in a form prescribed by the laws or regulations applicable in the place in which the acknowledgment is taken; or
- (3) The certificate contains the words acknowledged before me, or their substantial equivalent.

64-205 Acknowledgment, defined.

- (1) The words acknowledged before me means:
 - (a) That the person acknowledging appeared before the person taking the acknowledgment;
 - (b) That he or she acknowledged he or she executed the instrument;
 - (c) That, in the case of:
 - (i) A natural person, he or she executed the instrument for the purposes therein stated;
 - (ii) A corporation, the officer or agent acknowledged he or she held the position or title set forth in the instrument and certificate, he or she signed the instrument on behalf of the corporation by proper authority and the instrument was the act of the corporation for the purpose therein stated;
 - (iii) A partnership, the partner or agent acknowledged he or she signed the instrument on behalf of the partnership by proper authority and he or she executed the instrument as the act of the partnership for the purposes therein stated;
 - (iv) A limited liability company, the member or agent acknowledged he or she signed the instrument on behalf of the limited liability company by proper authority and he or she executed the instrument as the act of the limited liability company for the purposes therein stated;
 - (v) A person acknowledging as principal by an attorney in fact, he or she executed the instrument by proper authority as the act of the principal for the purposes therein stated;
 - (vi) A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, he or she signed the instrument by proper authority and he or she executed the instrument in the capacity and for the purposes therein stated; and
 - (d) That the person taking the acknowledgment either knew or had satisfactory evidence that the person acknowledging was the person named in the instrument or certificate.
- (2) For purposes of this section, appearance before the person taking an acknowledgement includes an appearance outside the presence of a notary public if such acknowledgement was completed in accordance with the Online Notary Public Act.

64-206 Statutory short forms of acknowledgment; use of other forms.

The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law of this state. The forms shall be known as Statutory Short Forms of Acknowledgment and may be referred to by that name. The authorization of the forms in this section does not preclude the use of other forms.

- (1) For an individual acting in his or her own right:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledged).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(2) For a corporation:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(3) For a partnership:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(4) For a limited liability company:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging member or agent), member (or agent) on behalf of (name of limited liability company), a limited liability company.

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(5) For an individual acting as principal by an attorney in fact:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

(6) By any Public Officer, trustee, or personal representative:

State of

County of

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of Person Taking Acknowledgment)

(Title or Rank)

(Serial Number, if any)

64-207 Prior notarial acts; effect.

A notarial act performed prior to August 25, 1969, is not affected by sections 64-201 to

64-210. Sections 64-201 to 64-210 provide an additional method of proving notarial acts. Nothing in sections 64-201 to 64-210 diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of this state.

64-208 Sections, how interpreted.

Sections 64-201 to 64-210 shall be so interpreted as to make uniform the laws of those states which enact them. Source: Laws 1969, c. 523, § 8, p. 2144. 64-209 Act, how cited. Sections 64-201 to 64-210 may be cited as the Uniform Recognition of Acknowledgments Act.

64-210 Seal; contents; ink stamp.

(1) Each notary public, before performing any duties of his or her office, shall provide himself or herself with an official ink stamp seal on which shall appear the words State of Nebraska, General Notary or State of Nebraska, General Notarial, and his or her name as commissioned, and the date of expiration of his or her commission.

(2) A notary public shall authenticate all of his or her official acts with such seal.

(3) A notary public whose commission was issued by the Secretary of State before the effective date of this act is not required to purchase a new ink stamp seal in order to comply with this section until the notary public's commission expires. Upon renewal, each notary public shall have engraved on his or her official ink stamp seal all of the information required in subsection (1) of this section.

64-211 Acknowledgment of written instrument; attorneys; real estate broker or salesman; oath; authorized; prior acknowledgments validated.

(1) It shall be lawful for any attorney or any employer or associate of any such attorney, or for any stockholder, officer, or employee of any professional corporation authorized to practice law and who is a notary public to take the acknowledgment of any written instrument given in connection with the professional activities of such attorney or corporation and to administer an oath to any person executing any such instrument.

(2) It shall be lawful for any real estate broker or salesman or any employee or associate of any such broker and who is a notary public to take the acknowledgment of any written instrument given to or by any client of such broker and to administer an oath to any person or persons executing any such instrument.

(3) Acknowledgments taken or oaths administered prior to February 9, 1976, by any person described in subsections (1) and (2) of this section are hereby ratified and shall in all respects be lawful, valid, and binding.

64-212 Acknowledgment of written instrument; insurance company; credit union; oath; authorized.

It shall be lawful for a member or shareholder, an appointive officer, elective officer, agent, director, or employee of an insurance company or a credit union who is a notary public to take the acknowledgment of any person to any written instrument executed to or by the insurance company or credit union and to administer an oath to any shareholder, director, elected or appointed officer, employee, or agent of such insurance company or credit union.

64-213 Acknowledgments of written instruments; insurance company; credit union; oath; prior acknowledgments validated.

Acknowledgments heretofore taken of any person to any written instrument given to or

by an insurance company or credit union, or any oath administered to any member, director, elected officer, shareholder, appointive officer, employee, or agent of an insurance company or credit union, by any notary public, who was a member, shareholder, appointive officer, agent, or employee of the insurance company or credit union, and not a director or elected officer thereof, shall be deemed to be lawful, valid, and binding.

64-214 Acknowledgments of written instruments; bank; oath; authorized; prior acknowledgments validated.

(1) It shall be lawful for any stockholder, officer, or director of a bank, who is a notary public, to take the acknowledgment of any person to any written instrument given to or by the bank and to administer an oath to any other stockholder, director, officer, employee or agent of the bank.

(2) Acknowledgments heretofore taken of any person to any written instrument given to or by a bank or any oath administered to any stockholder, director, or officer of a bank by any notary public who was a stockholder, director, or officer of said bank shall be deemed to be lawful, valid and binding.

64-215 Acknowledgments of written instruments; savings and loan association; oath; authorized; prior acknowledgments validated.

It is lawful for any shareholder, director, employee, agent, or any elected or appointed officer of a savings and loan association, who is a notary public, (1) to take the acknowledgment of any person to any written instrument given to or by the savings and loan association and (2) to administer an oath to any other shareholder, director, officer, employee, or agent of the savings and loan association. Acknowledgments heretofore taken of any person to any written instrument given to or by a savings and loan association, or any oath administered to any shareholder, director, employee, agent, or elected or appointed officer of a savings and loan association by any notary public who was a shareholder, director, employee, agent, or any elected or appointed officer of the savings and loan association, shall be deemed to be lawful, valid, and binding.

ARTICLE 3. ELECTRONIC NOTARY PUBLIC ACT

64-301. Act, how cited.

Sections 64-301 to 64-317 shall be known and may be cited as the Electronic Notary Public Act.

64-302. Terms, defined.

For purposes of the Electronic Notary Public Act:

(1) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(2) Electronic document means information that is created, generated, sent, communicated, received, or stored by electronic means;

(3) Electronic notarial act means an official act by an electronic notary public that involves electronic documents;

(4) Electronic notary public means a notary public registered with the Secretary of State that has the capability of performing electronic notarial acts in conformance with the Electronic Notary Public Act;

(5) Electronic notary seal means information within a notarized electronic document that includes the notary public's name, jurisdiction, and commission expiration date and generally corresponds to the data in notary seals used on paper documents;

(6) Electronic notary solution provider means a provider of any electronic notary seals or electronic signatures;

(7) Electronic signature means an electronic 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; and

(8) Notary public's electronic signature means an electronic signature which has been approved by the Secretary of State in rules and regulations adopted and promulgated under section 64-316 as an acceptable means for an electronic notary public to attach or logically associate the notary public's official signature to an electronic document that is being notarized.

64-303. Eligibility to register as electronic notary public; Secretary of State; powers.

(1) To be eligible to register as an electronic notary public, a person shall:

(a) Hold a valid commission as a notary public in the State of Nebraska;

(b) Satisfy the education requirement of section 64-305; and

(c) Pay the fee required under section 64-306.

(2) The Secretary of State shall not accept the registration if the requirements of subsection (1) of this section are not met.

64-304. Registration; renewal.

(1) Before performing an electronic notarial act, a notary public shall register with the Secretary of State in a manner prescribed by the Secretary of State.

(2) The registration shall specify the technology the notary public intends to use to perform an electronic notarial act. Such technology shall be provided by an electronic notary solution provider approved by the Secretary of State.

(3) The term of registration as an electronic notary public shall coincide with the term of the commission of the notary public.

(4) A person registered as an electronic notary public may renew his or her electronic notary public registration at the same time he or she renews his or her notary public commission.

64-305. Course of instruction; examination.

(1) Before registering as an electronic notary public, a notary public shall take a course of instruction approved by the Secretary of State and pass an examination for such course in addition to the requirements provided in section 64-101.01.

(2) The content of the course and the basis for the examination shall include notarial laws, procedures, technology, and the ethics of electronic notarization.

64-306. Fee.

The fee for registering or reregistering as an electronic notary shall be in addition to the fee required in section 33-102. The Secretary of State shall establish the fee by rule and regulation in an amount sufficient to cover the costs of administering the Electronic Notary Public Act, but the fee shall not exceed one hundred dollars. The Secretary of State shall remit fees received under this section to the State Treasurer for credit to the Secretary of State Cash Fund for use in administering the Electronic Notary Public Act.

64-307. Type of electronic notarial acts authorized.

The following types of electronic notarial acts may be performed by an electronic notary public:

- (1) Acknowledgments;
- (2) Jurats;
- (3) Verifications or proofs; and
- (4) Oaths or affirmations.

64-308. Signer of document; requirements.

An electronic notarial act shall not be performed if the signer of the electronic document is not in the physical presence of the electronic notary public at the time of notarization and is not personally known to the electronic notary public or identified by the notary public through satisfactory evidence as provided in section 64-105.

64-309. Performance of electronic notarial act; components.

In performing an electronic notarial act, all of the following components shall be attached to, or logically associated with, the electronic document by the electronic notary public and shall be immediately perceptible and reproducible in the electronic document to which the notary public's electronic signature is attached: (1) The electronic notary seal; (2) the notary public's electronic signature; and (3) the completed wording of one of the following notarial certificates: (a) Acknowledgment, (b) jurat, (c) verification or proof, or (d) oath or affirmation.

64-310. Notary public's electronic signature and electronic notary seal; use; maintenance of records; notification to Secretary of State of theft or vandalism.

(1) A notary public's electronic signature in combination with the electronic notary seal shall be used only for the purpose of performing an electronic notarial act.

(2) An electronic notary public shall safeguard his or her electronic signature, electronic notary seal, and all other notarial records. Notarial records shall be maintained by the electronic notary public, and the electronic notary public shall not surrender or destroy the records except as required by a court order or as allowed under rules and regulations adopted and promulgated by the Secretary of State.

(3) When not in use, the electronic notary public shall keep his or her electronic signature, electronic notary seal, and all other notarial records secure, under his or her exclusive control, and shall not allow them to be used by any other notary public or any other person.

(4) Within ten days after discovering that his or her electronic notary seal or electronic signature has been stolen, lost, damaged, or otherwise rendered incapable of being attached to or logically associated with an electronic document, an electronic notary public shall notify the Secretary of State and appropriate law enforcement agency in the case of theft or vandalism.

64-311. Registration expiration, resignation, cancellation, or revocation; death of notary public; duties.

(1) When the registration of an electronic notary public expires or is resigned, canceled, or revoked or when an electronic notary public dies, he or she or his or her duly authorized representative shall erase, delete, or destroy the coding, disk, certificate, card,

software, file, or program that enables the attachment or logical association of the notary public's electronic signature.

(2) A former electronic notary public whose previous registration was not revoked, canceled, or denied by the Secretary of State need not erase, delete, or destroy the coding, disk, certificate, card, software, file, or program that enables the attachment or logical association of the notary public's electronic signature if he or she is reregistered as an electronic notary public using the same electronic signature within three months after the registration expires.

64-312. Electronic evidence of authenticity of notary public's electronic signature and electronic notary seal; form.

Electronic evidence of the authenticity of the notary public's electronic signature and electronic notary seal of an electronic notary public of this state, if required, shall be attached to, or logically associated with, a document with a notary public's electronic signature transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary of State in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the United States Government.

64-313. Electronic certificate of authority; contents; fee.

(1) An electronic certificate of authority evidencing the authenticity of the notary public's electronic signature and electronic notary seal of an electronic notary public 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 public), the person named as an electronic notary public in the attached or associated document, was indeed registered as an electronic notary public for the State of Nebraska 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)

(2) The Secretary of State may charge a fee of twenty dollars for issuing an electronic certificate of authority. The Secretary of State shall remit the fees to the State Treasurer for credit to the Secretary of State Cash Fund.

64-314. Violations of act.

A person violating the Electronic Notary Public Act is subject to having his or her registration removed under the removal procedures provided in section 64-113.

64-315. Notary public not required to register.

Nothing in the Electronic Notary Public Act requires a notary public to register as an electronic notary public if he or she does not perform electronic notarial acts.

64-316. Rules and regulations.

The Secretary of State may adopt and promulgate rules and regulations to insure the integrity, security, and authenticity of electronic notarizations in accordance with the

Electronic Notary Public Act. Such rules and regulations shall include procedures for the approval of electronic notary solution providers by the Secretary of State. In addition, the Secretary of State may require an electronic notary public to create and to maintain a record, journal, or entry of each electronic notarial act.

64-317. Other laws applicable.

Sections 64-101 to 64-119 and 64-211 to 64-215 and the Uniform Recognition of Acknowledgments Act govern an electronic notary public unless the provisions of such sections and act are in conflict with the Electronic Notary Public Act, in which case the Electronic Notary Public Act controls.

ARTICLE 4 ONLINE NOTARY PUBLIC ACT

64-401. Act, how cited.

Sections 64-401 to 64-420 shall be known as the Online Notary Public Act.

64-402. Terms, defined.

For purposes of the Online Notary Public Act:

- (1) Communication technology means an electronic device or process that allows an online notary public and an individual who is not in the physical presence of the online notary public to communicate with each other simultaneously by sight and sound;
- (2) Credential analysis means a process or service operating according to criteria approved by the Secretary of State through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources;
- (3) Electronic means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;
- (4) Electronic document means information that is created, generated, sent, communicated, received, or stored by electronic means;
- (5) 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 electronic document;
- (6) Identity proofing means a process or service operating according to criteria approved by the Secretary of State through which a third person affirms the identity of an individual through review of personal information from public or proprietary data sources;
- (7) Online notarial act means the performance by an online notary public of a function authorized under section 64-408 that is performed by means of communication technology that meets the standards developed under section 64-407;
- (8) Online notarial certificate means the portion of a notarized electronic document that is completed by an online notary public and that contains the following:
 - (a) The online notary public's electronic signature, online notary seal, title, and commission expiration date;
 - (b) Other required information concerning the date and place of the online notarial act; and
 - (c) The completed wording of one of the following notarial certificates: (i) Acknowledgment, (ii) jurat, (iii) verification of proof, or (iv) oath or affirmation;
- (9) Online notary public means a notary public registered with the Secretary of State

who has the authority to perform online notarial acts under the Online Notary Public Act;

(10) Online notary seal means information within a notarized electronic document that confirms the online notary public's name, jurisdiction, identifying number, and commission expiration date and generally corresponds to the data in notary seals used on paper documents;

(11) Online notary solution provider means a provider of any credential analysis, identity proofing, online notary seals, electronic signatures, or communication technology;

(12) Personal knowledge or personally known means 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;

(13) Principal means an individual:

(a) Whose electronic signature is notarized in an online notarial act; or

(b) Taking an oath or affirmation from the online notary public other than in the capacity of a witness for the online notarial act; and

(14) Remote presentation means transmission to the online notary public through communication technology of an image of a government- issued identification credential that is of sufficient quality to enable the online notary public to:

(a) Identify the individual seeking the online notary public's services; and

(b) Perform credential analysis.

64-403. Eligibility to register as online notary public; qualifications.

(1) To be eligible to register as an online notary public, a person shall:

(a) Hold a valid commission as a notary public in the State of Nebraska;

(b) Satisfy the education requirement of section 64-404; and

(c) Pay the fee required under section 64-405.

(2) The Secretary of State shall not accept the registration if the requirements of subsection (1) of this section are not met.

64-404. Course of instruction; examination.

(1) Before registering as an online notary public, a notary public shall take a course of instruction and pass an examination approved by the Secretary of State. The course of instruction and examination shall be approved by the Secretary of State by July 31, 2020.

(2) The content of the course and the basis for the examination shall include notarial laws, procedures, technology, and the ethics of performing online notarial acts.

64-405. Fee.

The fee for registering or renewing a registration as an online notary public shall be in addition to the fee required in section 33-102. The Secretary of State shall establish the fee by rule and regulation in an amount sufficient to cover the costs of administering the Online Notary Public Act, but the fee shall not exceed one hundred dollars. The Secretary of State shall remit fees received under this section to the State Treasurer for credit to the Secretary of State Cash Fund for use in administering the Online Notary Public Act.

64-406. Registration with Secretary of State; contents; renewal.

(1) Before performing an online notarial act, a notary public shall register with the Secretary of State in a manner prescribed by the Secretary of State.

(2) In addition to any additional information prescribed by the Secretary of State, the registration shall include:

(a) The technology the notary public intends to use to perform an online notarial act. Such technology shall be provided by an online notary solution provider approved by the Secretary of State;

(b) A certification by the notary that he or she will comply with the standards developed under section 64-407; and

(c) An email address for the notary.

(3) The term of registration as an online notary public shall coincide with the term of the commission of the notary public.

(4) An application to renew registration as an online notary public shall specify any change in the technology the online notary public intends to use to perform online notarial acts. Such technology shall be provided by an online notary solution provider approved by the Secretary of State.

(5) A person registered as an online notary public may renew his or her online notary public registration at the same time he or she renews his or her notary public commission.

64-407. Rules and regulations.

(1) The Secretary of State shall adopt and promulgate rules and regulations:

(a) Creating standards for online notarial acts in accordance with the Online Notary Public Act, including standards for credential analysis, identity proofing, and communication technology used for online notarial acts; and

(b) To ensure the integrity, security, and authenticity of online notarial acts in accordance with the Online Notary Public Act. Such rules and regulations shall include procedures for the approval of online notary solution providers by the Secretary of State.

(2) The Secretary of State may adopt and promulgate rules and regulations to facilitate the utilization of online notarial acts.

64-408. Types of online notarial acts.

The following types of online notarial acts may be performed by an online notary public:

(1) Acknowledgments;

(2) Jurats;

(3) Verifications or proofs; and

(4) Oaths or affirmations.

64-409. Electronic record; contents; online notary public; duties; retention period.

(1) An online notary public shall keep a secure electronic record of electronic documents notarized by the online notary public. For each online notarial act, the electronic record shall contain:

(a) The date and time of the online notarial act;

(b) The type of online notarial act;

(c) The type, title, or description of the electronic document or proceeding;

(d) The printed name and address of each principal involved in the transaction or proceeding;

(e) Evidence of identity of each principal involved in the transaction or proceeding in the form of:

(i) A statement that the principal is personally known to the online notary public;

- (ii) A notation of the type of identification document provided to the online notary public;
 - (iii) A record of the identity verification made under section 64-411; or
 - (iv) The following:
 - (A) The printed name and address of each credible witness swearing to or affirming the principal's identity; and
 - (B) For each credible witness not personally known to the online notary public, a description of the type of identification documents provided to the online notary public;
 - (f) A recording of any video and audio conference of the performance of the online notarial act, which shall not contain images of the documents that were notarized; and
 - (g) The fee, if any, charged for the online notarial act.
- (2) The online notary public shall take reasonable steps to:
- (a) Ensure the integrity, security, and authenticity of online notarial acts;
 - (b) Maintain a backup for the secure electronic record required by this section; and
 - (c) Protect the secure electronic record and backup record from unauthorized use.
- (3) The electronic record and backup record required by this section shall be maintained for at least ten years after the date of the transaction or proceeding. The online notary public shall not surrender or destroy the record except as required by a court order or as allowed under rules and regulations adopted and promulgated by the Secretary of State.

64-410. Electronic signature and online notary seal; use; registered device; report of theft or vandalism.

- (1) An online notary public's electronic signature in combination with the online notary seal shall be used only for the purpose of performing online notarial acts.
- (2) An online notary public shall take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority.
- (3) An online notary public shall keep secure and under his or her exclusive control: The online notary public's electronic signature, online notary seal, and the electronic record and backup record required under section 64-409. The online notary public shall not allow another person to use the online notary public's electronic signature, online notary seal, or electronic record or backup record.
- (4) An online notary public shall immediately notify an appropriate law enforcement agency and the Secretary of State of the theft or vandalism of the online notary public's electronic signature, online notary seal, or the electronic record or backup record required under section 64-409. An online notary public shall immediately notify the Secretary of State of the loss or use by another person of the online notary public's electronic signature, online notary seal, or the electronic record or backup record required under section 64-409.

64-411. Physical location of principal; verification of identity; manner; security of communication technology; online notarial certificate; notation required.

- (1) An online notary public may perform an online notarial act authorized under section 64-408 that meets the requirements of the Online Notary Public Act and the rules and regulations adopted and promulgated thereunder regardless of whether the principal is physically located in this state at the time of the online notarial act.
- (2) In performing an online notarial act, an online notary public shall verify the

identity of an individual creating an electronic signature. Identity shall be verified by:

- (a) The online notary public's personal knowledge of the individual creating the electronic signature;
- (b) All of the following:
 - (i) Remote presentation by the individual creating the electronic signature of a government-issued identification credential that is current and that bears the photographic image of the individual's face and signature and a physical description of the individual, except that a properly stamped passport without a physical description is satisfactory evidence;
 - (ii) Credential analysis of such credential; and
 - (iii) Identity proofing of the individual creating the electronic signature; or
- (c) Oath or affirmation of a credible witness who is in the physical presence of either the online notary public or the individual and who has personal knowledge of the individual if:
 - (i) The credible witness is personally known to the online notary public; or
 - (ii) The online notary public has verified the identity of the credible witness under subdivision (2)(b) of this section.
- (3) The online notary public shall take reasonable steps to ensure that the communication technology used in an online notarial act is secure from unauthorized interception.
- (4) An online notary public shall attach the online notary public's electronic signature and online notary seal to the online notarial certificate of an electronic document in a manner that is capable of independent verification and that renders evident any subsequent change or modification to the electronic document.
- (5) The online notarial certificate for an online notarial act must include a notation that the notarial act is an online notarial act.

64-412. Fee.

In addition to any fee authorized under section 33-133, an online notary public or his or her employer may charge a fee in an amount not to exceed twenty-five dollars for each online notarial act.

64-413. Expiration of registration; resignation, cancellation, or revocation; death of online notary public; required actions.

(1) Except as provided in subsection (2) of this section, when the registration of an online notary public expires or is resigned, canceled, or revoked or when an online notary public dies, he or she or his or her duly authorized representative shall erase, delete, or destroy the coding, disk, certificate, card, software, file, password, or program that enables the electronic affixation of the online notary public's official electronic signature and online notary seal. The online notary public or his or her duly authorized representative shall certify compliance with this subsection to the Secretary of State.

(2) A former online notary public whose previous registration was not revoked, canceled, or denied by the Secretary of State need not comply with subsection (1) of this section if he or she is reregistered as an online notary public using the same electronic signature within three months after the former registration expired.

64-414. Prohibited acts; penalty.

A person who, without authorization, knowingly obtains, conceals, damages, or destroys

the coding, disk, certificate, card, software, file, password, program, or hardware enabling an online notary public to affix an official electronic signature or online notary seal shall be guilty of a Class I misdemeanor.

64-415. Electronic certificate of authority; form; fee.

(1) Electronic evidence of the authenticity of the electronic signature and online notary seal of an online notary public of this state, if required, shall be attached to, or logically associated with, a document with an online notary public’s electronic signature transmitted to another state or nation and shall be in the form of an electronic certificate of authority signed by the Secretary of State in conformance with any current and pertinent international treaties, agreements, and conventions subscribed to by the United States Government.

(2) An electronic certificate of authority evidencing the authenticity of the electronic signature and online notary seal of an online notary public of this state shall contain substantially the following words:

Certificate of Authority for an Online Notarial Act

I (name, title, jurisdiction of commissioning official) certify that (name of online notary public), the person named as an online notary public in the attached or associated document, was indeed registered as an online notary public for the State of Nebraska and authorized to act as such at the time of the document’s electronic notarization. To verify this Certificate of Authority for an Online Notarial Act, I have included herewith my electronic signature this day of , 20

(Electronic signature (and seal) of commissioning official)

(3) The Secretary of State may charge a fee of twenty dollars for issuing an electronic certificate of authority. The Secretary of State shall remit the fees to the State Treasurer for credit to the Secretary of State Cash Fund for use in administering the Online Notary Public Act.

64-416. Violation of act; removal of registration.

A person violating the Online Notary Public Act is subject to having his or her registration removed under the removal procedures provided in section 64-113.

64-417. Effect of act on notary public that does not perform online notarial acts.

Nothing in the Online Notary Public Act requires a notary public to register as an online notary public if he or she does not perform online notarial acts.

64-418. Provisions governing online notary public; online notarial act; not available for certain requirements.

(1) Sections 64-101 to 64-119 and 64-211 to 64-215 and the Uniform Recognition of Acknowledgments Act govern an online notary public unless the provisions of such sections and act are in conflict with the Online Notary Public Act, in which case the Online Notary Public Act controls.

(2) An online notarial act performed under the Online Notary Public Act satisfies any requirement of law of this state that a principal appear before, appear personally before, or be in the physical presence of a notary public at the time of the online notarial act except for requirements under:

(a) A law governing the creation and execution of wills, codicils, or testamentary trusts; or

(b) The Uniform Commercial Code other than article 2 and article 2A.

(3) The Electronic Notary Public Act does not apply to online notarial acts or online public notaries acting under the Online Notary Public Act.

§ 64-419. Online notarial act; validity.

No otherwise valid online notarial act performed on or after April 2, 2020, and before July 1, 2020, pursuant to the Governor’s Executive Order No. 20-13, dated April 1, 2020, shall be invalidated because such act was performed prior to the operative date of Laws 2019, LB186.

§ 64-420. Deed, mortgage, trust deed, other instrument in writing; online notarial act; validity.

No deed, mortgage, trust deed, or other instrument in writing for the conveyance or encumbrance of real estate, or any interest therein, shall be invalidated because it involved the performance of an online notarial act on or after April 2, 2020, and before July 1, 2020, pursuant to the Governor’s Executive Order No. 20-13, dated April 1, 2020. Such deed, mortgage, trust deed, or other instrument in writing is declared to be legal and valid in all courts of law and equity in this state and elsewhere.

TITLE 86. TELECOMMUNICATIONS AND TECHNOLOGY

86-638 Notarization and acknowledgment.

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

NEBRASKA ADMINISTRATIVE CODE

TITLE 433

SECRETARY OF STATE-LICENSING REGULATIONS

CHAPTER 6. NOTARIES PUBLIC

001. DEFINITIONS.

For purposes of Chapter 6 of these regulations:

001.01 Act means Neb. Rev. Stat. §§64-101 through 64-118.

001.02 Applicant means a person who has submitted any of the documents listed in Section 3.

001.03 Application means both the initial and renewal application for Notary Public.

001.04 Form means and includes an application submitted on paper or an application submitted electronically in a digital format approved by the Secretary.

001.05 Malfeasance in office means when a Notary Public (1) fails to follow the requirements and procedures for Notarial acts provided for in statute under Chapter 64, Articles 1 and 2, and this administrative code, (2) fails to respond to written communications or requests from the Secretary, or (3) being convicted of a felony or other crime involving fraud or dishonesty within the last five (5) years.

001.06 Nebraska employer means an entity with an office or regular place of business within the physical boundaries of Nebraska. The Secretary will use a US Postal Service address to determine the physical location of the business.

001.07 Notarial act means an act which the law and regulations of this State authorize Notaries Public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.

001.08 Notarial certificate or acknowledgement means the section at the end of a document where a Notary Public verifies by notarization that the signor of the document presented satisfactory evidence of identity, appeared in the Notary's presence, and that he or she actually signed the document.

001.09 Notary Public means a person commissioned as a notary public under the Act and Neb. Rev. Stat. § 64-119.

001.10 Regular place of work or business in Nebraska means any place where any person is to work, is working, or customarily works, for gain or reward within the physical boundaries of Nebraska.

001.11 Resident means that the applicant considers Nebraska his or her permanent home, or the place to which he or she intends to return after a period of absence. To meet the residency requirement the applicant must live in Nebraska for more than six (6) months out of the year.

001.12 Secretary means the Secretary of State and his or her designated staff.

Citation: Neb. Rev. Stat. §§64-101 through 64-118.

002. NOTARIAL ACTS.

002.01 Document.

002.01(A) The Notarial certificate or acknowledgement must be completed in its entirety including dates, state and county of notarial act.

002.01(B) Blank or incomplete documents should not be notarized.

002.01(C) Notaries Public may not post-date or pre-date a document.

002.02 Seal.

002.02(A) Notaries Public must affix a clear and legible impression of his or her stamp to a document. The seal and signature may not be affixed over printed material or other signatures on the document.

002.02(B) Notaries Public must obtain a new seal each time the commission is renewed which includes the new commission expiration date.

002.02(C) Notary commissions are issued to an individual regardless of whether or not another business or entity paid the notary application fee, bond, or seal.

002.02(D) The seal should be secured and only accessible by the Notary Public.

002.03 Signature.

002.03(A) The signature on the most recent application or bond, will be used for verification; therefore, the Notary Public should always sign consistently with his or her application or bond signature.

002.04 Notaries Public must be aware of the condition of the signor. Special attention should be given when asked to notarize the signature of a minor child or persons that might not have the capability of understanding the document that they are signing. If the Notary Public reasonably believes the signor does not understand the document, they should refuse to notarize.

002.05 Notaries Public cannot refuse to provide services on the basis of race, color, national origin, religion, sex (including pregnancy), disability, or marital status.

Citation: Neb. Rev. Stat. §§64-101 through 64-118.

003. APPLICATIONS AND OTHER FORMS.

The forms required to obtain and maintain a Notary Public commission will be made available to all applicants on the Secretary of State's website or upon request.

Citation: Neb. Rev. Stat. §64-102 and §64-109.

004. COMMISSION REQUIREMENTS.

004.01 Before being considered by the Secretary, every initial application for a Notary Public commission must include the following information and meet the following requirements:

004.01(A) All questions on the application form(s) must be answered;

004.01(B) A fee of \$30 must be submitted;

004.01(C) A passing examination score;

004.01(D) Submission of a surety bond for \$15,000;

004.01(E) U.S. Citizenship Attestation Form; and

004.01(F) Evidence of Employment in Nebraska Form (if applicable).

004.02 Renewal applications must be received no later than the date the commission expires. If received after the expiration date the renewal will be considered an initial application. A renewal application must include the following:

004.02(A) Notary Public Commission Renewal Form;

004.02(B) A fee of \$30;

004.02(C) A bond form or bond rider that updates the initial bond;

004.02(D) U.S. Citizenship Attestation Form; and

004.02(E) Evidence of Employment in Nebraska Form (if applicable).

004.03 No appointment will be made if the applicant has been convicted of a felony unless a full pardon has been granted.

004.04 No appointment will be made if the applicant has been convicted of a crime involving fraud or dishonesty within the last five (5) years unless a full pardon has been granted.

004.04(A) A “crime involving fraud or dishonesty” means a violation of, or a conspiracy to violate, a civil or criminal law involving fraud, dishonesty, bribery, perjury, larceny, theft, robbery, extortion, forgery, counterfeiting, embezzlement, misappropriation of property, or any other offense adversely affecting such person’s fitness to serve as a Notary Public.

004.04(B) “Conviction within the last five (5) years” means being convicted by a court of law within the last five (5) years from the date the application is received.

004.05 An applicant must be a resident of the State of Nebraska or (1) reside in one of the following states: Colorado, Iowa, Kansas, Missouri, South Dakota, or Wyoming and (2) maintain a regular place of work or business in Nebraska.

004.05(A) Non-resident applicants will be required to submit the form titled “Evidence of Employment in Nebraska” listed under Section 003.01(E).

004.05(B) If an applicant is self-employed a written explanation must be attached to the “Evidence of Employment in Nebraska” form noted above.

Citation: Neb. Rev. Stat. §§64-101 through 64-104.

005. CHANGES TO NOTARY PUBLIC COMMISSION INFORMATION.

005.01 Name Change.

005.01(A) A Notary Public may continue to use his or her current Notary Commission as it was issued until the expiration or termination of such commission. The Notary Public must continue to sign his or her name using the name as listed on the commission certificate.

005.01(B) A Notary Public who has changed his or her name during his or her commission, may update his or her name on his or her Notary Commission by filling out and submitting the “Notary Public Request to Change Record” form along with a new bond form or bond rider that updates the initial bond with his or her new name.

005.01(B)(1) Upon receiving a new commission certificate with his or her new name, the Notary Public must obtain a new seal.

005.01(B)(2) The term of the Notary Public commission will not be changed or extended as a result of the name change.

005.02 Address Change.

005.02(A) A Notary Public must update his or her address when moving by filling out and submitting the “Notary Public Request to Change Record” form within 45 days of moving.

005.02(B) No fee will be assessed for updating address information.

005.03 Employment Change.

005.03(A) If a non-resident Notary Public is terminated from a regular place of work or business in Nebraska, he or she must relinquish his or her Notary Public commission by returning the commission certificate and seal to the Secretary.

005.04 Criminal Conviction Reporting.

005.04(A) A Notary Public who is convicted of a felony or crime involving fraud or dishonesty during his or her commission term must notify the Secretary of this conviction by filling out and submitting the “Notary Public Request to Change Record” within forty-five (45) days after the conviction occurs.

Citation: Neb. Rev. Stat. §64-101, §64-105.04, and §64-114.

006. NOTARY PUBLIC EXAMINATION.

006.01 The Notary Public Examination will consist of questions aimed at determining whether the applicant has the reasonably necessary knowledge, experience, and competency to engage in and perform the duties of a Notary Public. An applicant must score 85% or better to pass the exam.

006.01(A) Knowledge of the Notary Public Act and laws related to or affecting notarial work, including but not limited to:

006.01(A)(1) Provisions of Neb. Rev. Stat. §§ 64-101 through 64-118;

006.01(A)(2) Uniform Recognition of Acknowledgements Act Neb. Rev. Stat §§64-209 through 64-215, and any other relevant statutes; and

006.01(A)(3) These Rules and Regulations.

006.02 The written examination will be an open resources test.

006.03 Each applicant shall have three (3) attempts to take and pass the Notary Public Examination. An applicant who fails the second exam attempt must wait thirty (30) days before taking the third and final exam. An Applicant who fails the examination three (3) times will be considered incompetent to receive a Notary Public commission in the State of Nebraska and will not be eligible to take the exam again.

006.03(A) A passing exam score will be valid for 90 days from the date of examination.

006.03(B) If a passing exam score is not used within 90 days the applicant only has the remainder of prior opportunities to retake the exam.

006.04 The examination may be completed electronically if authorized by the Secretary.

Citation: Neb. Rev. Stat. §64-101.01.

007. ALLEGED MALFEASANCE AGAINST NOTARIES PUBLIC.

007.01 In investigating an alleged malfeasance by a Notary Public, the Secretary must consider the totality of the offense, facts, and circumstances in each individual case.

007.02 Factors Considered.

007.02(A) While evaluating an alleged malfeasance to determine if it should be set for hearing or recommend to a stipulation process, the Secretary may consider a variety of factors, including, but not limited to, the following:

007.02(A)(1) Nature and severity of the act, offense, or crime under consideration;

007.02(A)(2) Number and/or variety of current violations;

007.02(A)(3) Evidence pertaining to the requisite honesty, credibility, truthfulness, and integrity of the Notary Public;

007.02(A)(4) Actual or potential harm to the general public, group, individual, or customer;

007.02(A)(5) History of complaints received by the Secretary; and

007.02(A)(6) Prior disciplinary record or warning from the Secretary.

007.03 Discipline.

007.03(A) Stipulations are a voluntary agreement between the Secretary and Notary Public. A stipulation will be sought in lieu of setting a hearing to simplify the discipline process and provide cost savings to the Secretary.

007.03(A)(1) Stipulations will include the following: (i) statement of facts, (ii) acknowledgment of malfeasance, and (iii) a penalty.

007.03(A)(2) Stipulations must be in writing and signed by the Secretary and Notary Public.

007.03(B) Total Revocation means the Notary Public commission is revoked and cannot ever be reinstated.

007.03(B)(1) The following, nonexclusive list of acts of malfeasance will likely result in the total revocation of a Notary Public commission:

007.03(B)(1)(a) The signor was not in the physical presence of the Notary Public at the time of the Notarial act;

007.03(B)(1)(b) The signor was not personally known to the Notary Public or identified by the Notary Public through satisfactory evidence during the Notarial act;

007.03(B)(1)(c) A Notary Public engaged in the unauthorized practice of law. This would include using the term “notario publico” or any

non-English equivalent term in a manner which misrepresents the authority of the Notary Public;

007.03(B)(1)(d) A Notary Public permitting another person to use the Notary Public's official seal or official seal embosser;

007.03(B)(1)(e) A Notary Public being convicted of a felony or crime involving fraud or dishonesty while commissioned; and

007.03(B)(1)(f) A Notary Public fails to respond to written communications or requests from the Secretary within thirty (30) days from the date the written communication or request was sent.

007.03(B)(2) If revoked the Notary Public commission and seal must be returned to the Secretary's office.

007.03(C) Temporary Revocation means a revocation of the Notary Public commission for as little as one month or as long as 4 years.

007.03(C)(1) The following, nonexclusive list of acts of malfeasance will likely result in the temporary revocation of a Notary Public commission:

007.03(C)(1)(a) Notarizing a document in which the Notary Public has a personal interest;

007.03(C)(1)(b) A Notary Public making a materially false statement on the application; and

007.03(C)(1)(c) Failure of the Notary Public to maintain the required bond.

007.03(C)(2) During the revocation the Notary commission and seal must be returned to the Secretary's office.

007.03(D) An Admonishment will be issued to a Notary Public and notated in his or her paper and electronic file when the Secretary feels that the alleged malfeasance rises to the level of warning but not revocation.

007.03(D)(1) The following, nonexclusive list of acts of malfeasance will likely result in an official warning to the Notary Public:

007.03(D)(1)(a) A Notary Public overlooks changing the County or State of the Notarial document; and

1b 007.03(D)(1)(b) A Notary Public Notarizes a document with blanks.

007.03(D)(2) An official admonishment will not hinder the Notary Public from performing his or her duties.

Citation: Neb. Rev. Stat. §§ 64-105, 64-105.01, and 64-113.

008. FEES.

008.01 The application fee is \$30.00.

008.02 Notaries Public may charge the following fees for his or her services:

008.02(A) For each protest: \$1.00; For recording the same, \$2.00;

008.02(B) For each notice of protest: \$2.00;

008.02(C) For taking affidavits and seal: \$2.00;

008.02(D) For administering oath or affirmation: \$2.00;

008.02(E) For each certificate and seal: \$5.00; and

008.02(F) For each mile traveled in serving notice based on the rate established by the Department of Administrative Services

Citation: Neb. Rev. Stat. §§ 33-102 and 33-133.

CHAPTER 7 – ELECTRONIC NOTARIES PUBLIC

001. SCOPE.

001.01 The Rules in this Chapter implement the Electronic Notary Public Act, Neb. Rev. Stat. §§ 64-301 through 64-317.

002. DEFINITIONS.

In addition to terms defined in the Electronic Notary Public Act, the following definitions apply for purposes of Chapter 7 of these regulations:

002.01 “Applicant” means a person applying for registration as a Nebraska electronic notary public.

002.02 “Approved Electronic Notary Solution Provider” means a person or entity approved to provide an Electronic Notarization System by the Secretary pursuant to the Electronic Notary Public Act.

002.03 “Biometric Authentication” means proving the identity of a user by

verification of the user's identity through technologies that measure and analyze one or more human physiological or behavioral characteristics of the user in order to access and use an Electronic Notarization System. Biometric Authentication technologies include fingerprint scanning devices, retinal scanning devices, and handwriting analysis devices.

002.04 "Electronic Notarization System" means a set of applications, programs, hardware, software, or technology designed to enable an electronic notary public to perform electronic notarizations.

002.05 "Independently Verifiable" means capable of government or third-party authentication of a notarial act, a notary's identity, and a Notary Public's relevant authority.

002.06 "Notary Public" means a person commissioned as a notary public under Neb. Rev. Stat. §§ 64-101 to 64-119.

002.07 "Password Authentication" means the user enters a secret word, phrase, or symbol set in order to access and use an Electronic Notarization System.

002.08 "Secretary" means the Nebraska Secretary of State and his or her designated staff.

002.09 "Token Authentication" means the use of a physical device in addition to a password or personal identification number ("PIN") in order to access and use an Electronic Notarization System. Physical devices used in Token Authentication technologies include magnetic cards or "smart cards" and Universal Serial Bus (USB) memory sticks or "USB keys".

002.10 "Under his or her exclusive control", for the purposes of the Secretary's interpretation of Neb. Rev. Stat. § 64-310, means "under the electronic notary public's sole control" as defined in this Chapter.

002.11 "Under the electronic notary public's sole control" means accessible by and attributable solely to the electronic notary public to the exclusion of all other persons and entities, either through being in the direct physical custody of the electronic notary public or through being secured with one or more Biometric Authentication, Password Authentication, Token Authentication, or other authentication technologies in an Electronic Notarization System provided by an Approved Electronic Notary Public Solution Provider approved pursuant to the Electronic Notary Public Act and this Chapter.

003. APPLICATION.

003.01 To qualify for registration as an electronic notary public, an Applicant will need to:

003.01(A) Provide all information needed for registration pursuant to Neb. Rev. Stat. § 64-304;

003.01(B) Hold a valid Nebraska Notary Public commission;

003.01(C) Certify that he or she continues to meet the qualifications of a Notary Public;

003.01(D) Take the course of instruction and pass the examination as stated in Neb. Rev. Stat. § 64-305;

003.01(E) Pay the registration fee; and,

003.01(F) Provide any other information requested by the Secretary to prove the qualifications of the Applicant.

004. REGISTRATION RENEWAL.

004.01 A Notary Public applying to renew his or her registration as an electronic notary public will so indicate on his or her notary public renewal application and pay the fee for registration as an electronic notary public, in addition to the fee for renewal of his or her Notary Public commission.

004.02 If an electronic notary public fails to renew their registration at the same time the Notary Public commission is renewed, he or she will submit a new application for registration and meet all of the requirements of Section 003 of this Chapter to be registered as an electronic notary public.

005. APPROVED COURSE OF STUDY FOR ELECTRONIC NOTARIES PUBLIC.

005.01 The Secretary will administer the training course and testing for Applicants for electronic notary public registration.

005.02 Upon the Secretary's determination of a need for additional instructors, the Secretary may designate a third-party training course for Applicants or appoint certified Notary Public instructors to administer the training course and testing for Applicants for electronic notary public registration.

005.03 A passing score on the examination is 85% or better.

005.04 Each Applicant shall have three (3) attempts to take and pass the electronic notaries public examination. An Applicant who fails the examination three (3) times will be considered incompetent to be registered as an electronic notary public and will not be eligible to take the exam again.

006. ELECTRONIC NOTARY PUBLIC'S ELECTRONIC SIGNATURE.

006.01 The electronic signature of an electronic notary public is to be Independently Verifiable and unique to the electronic notary public.

006.02 The electronic notary public's electronic signature is to be retained under the electronic notary public's sole control.

006.03 When the electronic notary public performs an electronic notarization, the electronic signature used by the electronic notary public is to be accessible by and attributable solely to the electronic notary public to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization.

006.04 The electronic notary public's electronic signature is to be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination.

006.05 An image of the electronic notary public's handwritten signature is to appear on any visual or printed representation of an electronic notary public certificate regardless of the technology being used to affix the electronic notary public's electronic signature.

007. ELECTRONIC NOTARY SEAL.

007.01 The electronic notary seal is to be Independently Verifiable and unique to the electronic notary public.

007.02 The electronic notary seal is to be retained under the electronic notary public's sole control.

007.03 When the electronic notary public performs an electronic notarization, the electronic seal used by the electronic notary public is to be accessible by and attributable solely to the electronic notary public to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization.

007.04 The electronic notary seal is to be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination.

007.05 An image of the electronic notary public's electronic notary seal is to appear on any visual or printed representation of the electronic notary certificate regardless of the technology being used to affix the electronic notary public's electronic notary seal.

007.06 The perimeter of the electronic notary seal is to contain a border such that the

physical appearance of the seal replicates the appearance of an inked seal on paper.

007.07 The electronic notary seal is to have, within its border, the electronic notary public's name exactly as commissioned, the words "Electronic Notary Public", the words "Nebraska" and the commission expiration date.

008. PHYSICAL PRESENCE REQUIREMENT FOR ELECTRONIC NOTARIZATION.

When an electronic notary public performs an electronic notarization, the principal and the electronic notary public must be in each other's physical presence during the entire electronic notarization so that the principal and the electronic notary public can see, hear, communicate with, and give identification documents as stated in Neb. Rev. Stat. § 64-105 to each other without the use of electronic devices such as telephones, computers, video cameras, or facsimile machines.

009. ELECTRONIC NOTARY SOLUTION PROVIDER APPLICATION.

009.01 Any person or entity applying to the Secretary for designation as an Approved Electronic Notary Solution Provider is to complete and submit an application to the Secretary for review and approval before authorizing any electronic notary seals or electronic signatures to Nebraska electronic notaries. The application is to include the following information:

009.01(A) Hardware and software specifications and requirements for the provider's Electronic Notarization System;

009.01(B) A description of the type(s) of technology used in the provider's Electronic Notarization System; and

009.01(C) A demonstration of how the technology is used to perform an electronic notarization.

009.02 An electronic notary solution provider may appeal the Secretary's denial of the provider's application for designation as an Approved Electronic Notary Solution Provider as provided under the Nebraska Administrative Procedures Act, Neb. Rev. Stat. §§ 84-901 through 84-920.

010. CRITERIA FOR APPROVAL OF ELECTRONIC NOTARY SOLUTION PROVIDERS.

010.01 Each Applicant and each Approved Electronic Notary Solution Provider is to:

010.01(A) Provide a free and readily available viewer/reader so as to enable all parties relying on the electronically notarized record or document to view the

electronic notary public's electronic signature and the electronic notary seal without incurring any cost.

010.01(B) Comply with the laws, policies, and rules that govern Nebraska Notaries Public;

010.01(C) Provide an Electronic Notarization System that complies with the technical specifications of the rules and standards that govern electronic notarization processes and procedures in Nebraska;

010.01(D) Ensure the provider's principals or employees take the mandatory electronic notary public education course and pass the examination as is necessary to ensure the provider possesses sufficient familiarity with Nebraska's electronic notary public laws and regulations;

010.01(E) Ensure Notaries Public present the Certificate of Registration to act as an Electronic Notary Public issued pursuant to Neb. Rev. Stat. § 64-312 prior to authorizing an electronic notary seal and electronic signature;

010.01(F) Verify the authorization of a Nebraska Notary Public to perform electronic notary acts by confirming through the Secretary or the Secretary's website should an online listing be made available;

010.01(G) Provide prorated fees to align the usage and cost of the Electronic Notarization System with the commission term limit of the electronic notary public purchasing the electronic notary seal and electronic signature;

010.01(H) Suspend the use of any Electronic Notarization System for any Notary Public whose commission has been revoked, suspended, or canceled by the Secretary ; and

010.01(I) Submit an exemplary of the electronic notary public's electronic signature and the electronic notary seal to the Secretary for each electronic notary public who subscribes to the provider's Electronic Notarization System.

011. ELECTRONIC NOTARY SOLUTION PROVIDER CHANGES.

011.01 An electronic notary solution provider is to notify the Secretary within forty-five (45) days of changes, modifications, or updates to information previously submitted to the Secretary.

011.02 An Approved Electronic Notary Solution Provider is to provide notice to the Secretary pursuant to the Electronic Notary Public Act and this Chapter within forty-five (45) days before making available to Nebraska electronic notaries public any updates or subsequent versions of the provider's Electronic Notarization System. The Secretary may remove the designation of the Approved Electronic Notary

solution provider if the changes to Electronic Notarization System do not meet the requirements of the Electronic Notary Public Act and this Chapter.

012. SEPARATE ATTESTATIONS.

012.01 Each electronic signature presented for notarization and attestation in the form of an acknowledgment is to be individually affixed to the electronic document by the principal signer and should be acknowledged separately by the principal signer, except in the following situation:

012.01(A) The notarized document is executed on behalf of:

012.01(A)(i) Any foreign or domestic:

012.01(A)(i)(1) Corporation, non-profit corporation, professional corporation;

012.01(A)(i)(2) Limited liability company;

012.01(A)(i)(3) Unincorporated association or partnership;

012.01(A)(i)(4) Business trust, estate, partnership, trust; or

012.01(A)(ii) The United States, any state, or any foreign government

013. ACCESS AND USE OF ELECTRONIC NOTARY SEAL AND ELECTRONIC SIGNATURE.

013.01 Neither the employer nor any of the employer's employees or agents may use or permit the use of an electronic notary seal or signature by anyone other than the authorized electronic notary public to whom it is registered.

013.02 Access to electronic notary signatures and electronic notary seals is to be protected by the use of a Biometric Authentication, Password Authentication, Token Authentication, or other form of authentication approved by the Secretary according to the Electronic Notary Public Act and this Chapter.

014. REPORT OF THEFT OR VANDALISM.

014.01 An electronic notary public who is to report, pursuant to Neb. Rev. Stat. § 64-310, the theft or vandalism of his or her electronic signature, electronic notary seal, or electronic record, including the backup record, is to do so in writing to the Secretary within ten (10) days after discovering the theft or vandalism.

014.02 Failure to report the theft or vandalism as required in Neb. Rev. Stat. § 64-310 may subject the electronic notary public to having his or her registration as an electronic notary public removed.

015. RECORD OF ELECTRONIC NOTARIAL ACTS.

015.01 Pursuant to Neb. Rev. Stat. § 64-310, an electronic notary public is to keep a journal of all electronic notarizations he or she performs and will present this journal, or any portion thereof, to the Secretary upon written request.

015.02 The electronic notary public is to maintain this record, and the backup record, for at least ten (10) years after the date of the notarial act.

015.03 An electronic notary public who fails to maintain the record or backup record for the retention period, or fails to timely provide the record upon request by the Secretary, will be subject to having his or her registration removed.

016. REMOVAL OF REGISTRATION.

016.01 An electronic notary public violating the Electronic Notary Public Act or this Chapter is subject to having his or her registration removed.

016.02 Any removal of a registration will be under the removal procedures provided in Neb. Rev. Stat. § 64-113 and 433 NAC 6 007.

017. CHANGE OF ELECTRONIC NOTARY PUBLIC INFORMATION OR REGISTRATION STATUS.

017.01 In addition to complying with Title 433 NAC 6 005, Changes to Notary Public Commission Information, an electronic notary public is to notify the Secretary in writing within forty-five (45) days after changing his or her Approved Electronic Notary Solution Provider.

017.01(A) The new Approved Electronic Notary Solution Provider is to submit an exemplary of the new electronic notary public's electronic signature and the electronic notary seal to the Secretary for the electronic notary public.

017.02 Failure to timely notify the Secretary may subject the electronic notary public to having his or her registration removed.

018. EXPIRATION OF REGISTRATION; RESIGNATION, CANCELLATION, OR REVOCATION; DEATH OF ELECTRONIC NOTARY PUBLIC; REQUIRED ACTIONS.

An electronic notary public, or his or her duly authorized representative, who is required to certify that he or she has erased, deleted, or destroyed the coding, disk, certificate, card, software, file, password, or program that enables the electronic affixation of the electronic notary public's electronic signature and electronic notary seal, in compliance with Neb. Rev. Stat. § 64-311, is to do so in writing to the Secretary within three months after the registration of the electronic notary public

expires, is resigned, canceled, or revoked or upon the death of the electronic notary public.

019. FEES.

The fee for registering or re-registering as an electronic notary public is \$100.00.

020. APPLICATIONS AND OTHER FORMS

The forms required to register and maintain a registration as an electronic notary public will be made available to all Applicants on the Secretary's website or upon request.

CHAPTER 8 – ONLINE NOTARIES PUBLIC

001. SCOPE.

001.01 The Rules in this Chapter implement the Online Notary Public Act, Neb. Rev. Stat. §§ 64-401 through 64-418.

002. DEFINITIONS.

In addition to terms defined in the Online Notary Public Act, the following definitions apply for purposes of Chapter 8 of these regulations:

002.01 "Applicant" means a person applying for registration as a Nebraska online notary public.

002.02 "Approved Online Notary Solution Provider" means a person or entity approved to provide an Online Notarization System by the Secretary pursuant to the Online Notary Public Act.

002.03 "Biometric Authentication" means proving the identity of a user by verification of the user's identity through technologies that measure and analyze one or more human physiological or behavioral characteristics of the user in order to access and use an Online Notarization System. Biometric Authentication technologies include fingerprint scanning devices, retinal scanning devices, and handwriting analysis devices.

002.04 "Independently Verifiable" means capable of government or third-party authentication of a notarial act, a notary's identity, and a Notary Public's relevant authority.

002.05 "Notary Public" means a person commissioned as a notary public under Neb. Rev. Stat. §§ 64-101 to 64-119.

002.06 “Online Notarization System” means a set of applications, programs, hardware, software, or technology designed or provided by an Approved Online Notary Solution Provider to enable a Notary Public to perform online notarizations.

002.07 “Password Authentication” means the user enters a secret word, phrase, or symbol set in order to access and use an Online Notarization System.

002.08 “Secretary” means the Nebraska Secretary of State and his or her designated staff.

002.09 “Token Authentication” means the use of a physical device in addition to a password or personal identification number (“PIN”) in order to access and use an Online Notarization System. Physical devices used in Token Authentication technologies include magnetic cards or “smart cards” and Universal Serial Bus (USB) memory sticks or “USB keys”.

002.10 “Under his or her exclusive control”, for the purposes of the Secretary’s interpretation of Neb. Rev. Stat. § 64-410, means “under the online notary public’s sole control” as defined in this Chapter.

002.11 “Under the online notary public’s sole control” means accessible by and attributable solely to the online notary public to the exclusion of all other persons and entities, either through being in the direct physical custody of the online notary public or through being secured with one or more Biometric Authentication, Password Authentication, Token Authentication, or other authentication technologies in an Online Notarization System provided by an Approved Online Notary Solution Provider approved pursuant to the Online Notary Public Act and this Chapter.

003. APPLICATION.

003.01 To qualify for registration as an online notary public, an Applicant will need to:

003.01(A) Provide all information needed for registration pursuant to Neb. Rev. Stat. § 64-406;

003.01(B) Hold a valid Nebraska Notary Public commission;

003.01(C) Certify that he or she continues to meet the qualifications of a Notary Public;

003.01(D) Take the course of instruction and pass the examination as stated in Neb. Rev. Stat. § 64-404;

003.01(E) Pay the registration fee; and,

003.01(F) Provide any other information requested by the Secretary to prove the qualifications of the applicant.

004. REGISTRATION RENEWAL.

004.01 A Notary Public applying to renew his or her registration as an online notary public will so indicate on his or her notary public renewal application and pay the fee for registration as an online notary public, in addition to the fee for renewal of his or her Notary Public commission.

004.02 If an online notary public fails to renew his or her registration at the same time the Notary Public commission is renewed, he or she will submit a new application for registration and meet all of the requirements of Section 003 of this Chapter to be registered as an online notary public.

005. APPROVED COURSE OF STUDY AND EXAMINATION FOR ONLINE NOTARIES PUBLIC.

005.01 The Secretary will administer the training course and testing for Applicants for online notary public registration.

005.02 Upon the Secretary's determination of a need for additional instructors, the Secretary may designate a third-party training course for applicants or appoint certified Notary Public instructors to administer the training course and testing for Applicants for online notary public registration.

005.03 A passing score on the examination is 85% or better.

005.04 Each Applicant shall have three (3) attempts to take the online notaries public examination. An Applicant who fails the examination three (3) times will be considered incompetent to be registered as an online notary public and will not be eligible to take the exam again.

006. ONLINE NOTARY PUBLIC ELECTONIC SIGNATURE.

006.01 The online notary public's electronic signature is to be Independently Verifiable and unique to the online notary public.

006.02 The online notary public's electronic signature is to be retained under the online notary public's sole control.

006.03 When the online notary public performs an online notarization, the electronic signature used by the online notary is to be accessible by and attributable solely to the online notary public to the exclusion of all other persons and entities for the entire time necessary to perform the online notarial act.

006.04 The online notary public's electronic signature is to be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or online notarial certificate are observable through visual examination.

006.05 An image of the online notary's handwritten signature is to appear on any visual or printed representation of an online notarial certificate regardless of the technology being used to affix the online notary public's electronic signature.

007. ONLINE NOTARY SEAL.

007.01 The online notary seal is to be Independently Verifiable and unique to the online notary public.

007.02 The online notary seal is to be retained under the online notary public's sole control.

007.03 When the online notary performs an online notarial act, the online notary seal used by the online notary public is to be accessible by and attributable solely to the online notary public to the exclusion of all other persons and entities for the entire time necessary to perform the online notarial act.

007.04 The online notary seal is to be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or online notary certificate are observable through visual examination.

007.05 An image of the online notary seal is to appear on any visual or printed representation of the online notarial certificate regardless of the technology being used to affix the online notary public's online notary seal.

007.06 The perimeter of the online notary seal is to contain a border such that the physical appearance of the seal replicates the appearance of an inked seal on paper.

007.07 The online notary seal is to have, within its border, the online notary public's name exactly as commissioned, identifying number, and commission expiration date, as well as the words "Online Notary Public" and the word "Nebraska".

008. PHYSICAL LOCATION OF ONLINE NOTARY PUBLIC DURING PERFORMANCE OF ONLINE NOTARIAL ACT.

When an online notary public performs an online notarial act, he or she must be physically located in the State of Nebraska.

009. ONLINE NOTARY SOLUTION PROVIDER APPLICATION.

009.01 Before issuing any online notary seals or electronic signatures to Nebraska online notaries public, an online notary solution provider will need to be approved by the Secretary.

009.02 To be approved, the online notary solution provider will complete and submit an application to the Secretary. The application is to include the following information:

009.02(A) Hardware and software specifications and requirements for the provider's Online Notarization System,

009.02(B) A description of the type(s) of technology used in the provider's online notarization system, and

009.02(C) A demonstration of how the technology is used to perform an online notarization.

009.02(D) Any other information that the Secretary requests related to the provider's Online Notarization System.

009.03 An online notary solution provider may appeal the Secretary's denial of the provider's application for designation as an Approved Online Notary Solution Provider as provided under the Nebraska Administrative Procedures Act, Neb. Rev. Stat. §§ 84-901 through 84-920.

010. CRITERIA AND STANDARDS FOR APPROVAL OF ONLINE NOTARY SOLUTION PROVIDERS.

010.01 Each applying and each Approved Online Notary Solution Provider is to:

010.01(A) Provide a free and readily available viewer/reader so as to enable all parties relying on the online notarized record or document to view the electronic signature and the online notary seal without incurring any cost.

010.01(B) Comply with the laws, policies, and rules that govern Nebraska Notaries Public and online notaries public;

010.01(C) Provide an Online Notarization System that complies with the technical specifications of the rules and standards that govern online notarization processes and procedures in Nebraska, including the minimum requirements for credential analysis, identity proofing, and communication technologies;

010.01(D) To ensure the provider possesses sufficient familiarity with Nebraska's online notary public laws and requirements, the individual signing the application on behalf of the online notary solution provider is to take the mandatory online notary public education course and pass the examination;

010.01(E) Ensure notaries public present their Certificate of Registration to act as an online notary public issued by the Secretary prior to authorizing an online notary seal and electronic signature;

010.01(F) Verify the authorization of a Nebraska Notary Public to perform online notarial acts by confirming through the Secretary or the Secretary's website should an online listing be made available;

010.01(G) Provide prorated fees to align the usage and cost of the online notary solution with the commission term limit of the Notary Public purchasing the online notary seal and electronic signature;

010.01(H) Suspend the use of any online notary solution for any Notary Public whose commission or registration has been revoked, suspended, or canceled by the Secretary; and

010.01(I) Submit an exemplary of the online notary public's electronic signature and the online notary seal to the Secretary for each online notary public who subscribes to the provider's Online Notarization Solution.

010.02 Communication technology provided by the online notary solution provider is to, at a minimum:

010.02(A) Provide for continuous, synchronous audio-visual feeds;

010.02(B) Provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak to each other simultaneously through live, real time transmission;

010.02(C) Provide sufficient captured image resolution for credential analysis to be performed in accordance with the Online Notary Public Act and this Chapter.

010.02(D) Include a means of authentication that reasonably ensures only the proper parties have access to the audio-video communication;

010.02(E) be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing quiz, and the means and methods used to generate the credential analysis output; and

010.02(F) provide reasonable security measures to prevent unauthorized access to:

010.02(F)(i) the live transmission of the audio-video communication;

010.02(F)(ii) a recording of the audio-video communication;

010.02(F)(iii) the verification methods and credentials used to verify the identity of the principal; and

010.02(F)(iv) the electronic documents presented for online notarization.

010.03 Credential analysis provided by an online notary solution provider is to, at a minimum:

010.03(A) Use automated software processes to aid the online notary public in verifying the identity of a principal or any credible witness;

010.03(B) Ensure that the credential passes an authenticity test, consistent with sound commercial practices that:

010.03(B)(i) Use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features;

010.03(B)(ii) Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;

010.03(B)(iii) Use information held or published by the issuing source or authoritative sources, as available, to confirm the validity of personal details and credential details; and

010.03(B)(iv) Provide the result of the authenticity test to the online notary public;

010.03(C) Enable the online notary public to visually compare the following for consistency: the information and photo presented on the credential itself and the principal as viewed by the online notary public in real time through audio-visual transmission.

010.04 Identity proofing provided by an online notary solution provider is to, at a minimum, meet the following:

010.04(A) The principal is to complete a quiz consisting of a minimum of five questions related to the principal's personal history or identity, formulated from public and proprietary data sources;

010.04(B) Each question is to have a minimum of five possible answer choices;

010.04(C) At least 80% of the questions are to be answered correctly;

010.04(D) All questions are to be answered within two minutes;

010.04(E) If the principal fails his or her first attempt, he or she may retake the

quiz one time within 24 hours;

010.04(F) During the retake, a minimum of 60% of the prior questions are to be replaced; and

010.04(G) If the principal fails his or her second attempt, he or she is not permitted to retry with the same online notary public for 24 hours.

010.05 If the principal or online notary public exit the online notary solution or the audio or visual feed is interrupted or terminated, the principal will need to restart the online notarial process from the beginning.

011. ONLINE NOTARY SOLUTION PROVIDER CHANGES.

011.01 An online notary solution provider is to notify the Secretary within forty-five (45) days of changes, modifications, or updates to information previously submitted to the Secretary.

011.02 An approved online notary solution Provider it so provide notice to the Secretary pursuant to the Online Notary Public Act and this Chapter within forty-five (45) days before making available to Nebraska online notaries public any updates or subsequent versions of the provider's online notarization system. The Secretary may remove the designation of the Approved Online Notary Solution Provider if the changes to the online notary system do not meet the requirements of the Online Notary Public Act and this Chapter.

012. SEPARATE ATTESTATIONS.

012.01 For an online notarial act, each principal's signature presented for notarization and attestation in the form of an acknowledgment is to be individually affixed to the electronic document by the principal and should be acknowledged separately by the principal, except in the following situations:

012.01(A) The notarized document is executed on behalf of:

012.01(A)(i) Any foreign or domestic:

012.01(A)(i)(1) Corporation, non-profit corporation, professional corporation

012.01(A)(i)(2) Limited liability company;

012.01(A)(i)(3) Unincorporated association or partnership

012.01(A)(i)(4) Business trust, estate, partnership, trust; or

012.01(A)(ii) The United States, any state, or any foreign government

013. ACCESS AND USE OF ONLINE NOTARY SEAL AND ELECTRONIC SIGNATURE.

013.01 Neither the employer of an online notary public nor any of the employer's employees or agents may use or permit the use of an online notary seal or electronic signature by anyone other than the authorized online notary public to whom it is registered.

013.02 Access to an online notary public's signature and online notary seal is to be protected by the use of a password authentication, token authentication, biometric authentication, or other form of authentication approved by the Secretary according to the Online Notary Public Act.

014. REPORT OF THEFT OR VANDALISM.

014.01 An online notary public who is reporting, pursuant to Neb. Rev. Stat. § 64-410, the theft or vandalism of his or her electronic signature, online notary seal, or electronic record, including the backup record, is to do so in writing to the Secretary within ten (10) days after the discovery of the theft or vandalism.

014.02 Failure to report the theft or vandalism as required in Neb. Rev. Stat. § 64-410 may subject the online notary public to having his or her registration as an online notary public removed.

015. RECORD OF ONLINE NOTARIAL ACTS.

015.01 Pursuant to Neb. Rev. Stat. § 64-409, an online notary public is to maintain a secure electronic record of all online notarial acts by the online notary public.

015.02 The online notary public is to maintain this record, and a backup record, for at least ten (10) years after the date of the online notarial act.

015.03 The online notary public will make this record, or any portion thereof, available to the Secretary upon request by the Secretary.

015.04 An online notary public who fails to maintain the record or backup record for the retention period, or fails to timely provide the record upon request by the Secretary, will be subject to having his or her registration removed.

016. REMOVAL OF REGISTRATION.

016.01 An online notary public violating the Online Notary Public Act or this Chapter is subject to having his or her registration removed.

016.02 Any removal of a registration will be under the procedures provided in Neb. Rev. Stat. § 64-113 and 433 NAC 6 007.

017. CHANGE OF ONLINE NOTARY INFORMATION OR REGISTRATION STATUS

017.01 In addition to complying with Title 433 NAC 6 005, Changes to Notary Public Commission Information, an online notary public is to notify the Secretary in writing within forty-five (45) days after any changing Online Notary Systems or Approved Online Notary Solution Providers.

17.01(A) The new Approved Online Notary Solution Provider is to submit an exemplary of the new online notary public's electronic signature and the online notary seal to the Secretary for the online notary public.

017.02 Failure to timely update this information may subject the online notary public to having his or her registration removed.

018. EXPIRATION OF REGISTRATION; RESIGNATION, CANCELLATION, OR REVOCATION; DEATH OF ONLINE NOTARY PUBLIC; REQUIRED ACTIONS.

018.01 An online notary public, or his or her duly authorized representative, who is required to certify that he or she has erased, deleted, or destroyed the coding, disk, certificate, card, software, file, password, or program that enables the electronic affixation of the online notary public's electronic signature and online notary seal, in compliance with Neb. Rev. Stat. § 64-413, is to do so in writing to the Secretary within three months after the registration of the online notary public expires, is resigned, canceled, or revoked or upon the death of the online notary public.

019. FEES.

The fee for registering or renewing a registration as an online notary public is \$50.00.

020. APPLICATIONS AND OTHER FORMS

The forms required to register and maintain a registration as an online notary public will be made available to all Applicants on the Secretary's website or upon request.