

NEW MEXICO STATUTES ANNOTATED

CHAPTER 14. RECORDS, LEGAL NOTICES AND OATHS ARTICLE 9A. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

14-9A-3. Validity of electronic documents.

A. If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium or be in writing, the requirement is satisfied by an electronic document satisfying the Uniform Real Property Electronic Recording Act.

B. If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

C. A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed or made under oath is satisfied if the electronic signature of the person authorized to perform that act and all other information required to be included is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression or seal need not accompany an electronic signature.

History: Laws 2007, ch. 261, § 3.

ARTICLE 12A. NOTARIES PUBLIC (REPEALED).

14-12A-1 to 14-12A-26. Repealed.

History

Laws 2003, ch. 286, § 26; repealed by 2021, ch. 21, § 36, effective January 1, 2022.

ARTICLE 13. ACKNOWLEDGMENTS AND OATHS

14-13-1. Administration of oath. Whenever any person shall be required to take an oath before he enters upon the discharge of any office, place or business, or on any lawful occasion, any person administering the oath shall do so in the following form, viz: the person swearing shall, with his right hand uplifted, follow the words required in the oath as administered, beginning: I do solemnly swear, and closing: so help me God.

History: Laws 1893, ch. 42, § 1; C.L. 1897, § 2559; Code 1915, § 3933; C.S. 1929, § 94-110; 1941 Comp., § 46-101; 1953 Comp., § 43-1-1.

14-13-2. Administration of affirmation in lieu of oath. Whenever any person is required to take or subscribe an oath and shall have conscientious scruples against taking the same, he shall be permitted, instead of such oath, to make a solemn affirmation, with uplifted right hand, in the following form, viz: you do solemnly, sincerely and truly declare and affirm, and close with: and this I do under the pains and penalties of perjury, which affirmation shall be equally valid as if such person had taken an oath in the usual form; and every person guilty of falsely, willfully or corruptly declaring as aforesaid, shall be liable to punishment for the same as for perjury.

History: Laws 1893, ch. 42, § 2; C.L. 1897, § 2560; Code 1915, § 3934; C.S. 1929, § 94-111; 1941 Comp., § 46-102; 1953 Comp., § 43-1-2.

14-13-3. Oaths; power to administer. The secretary of state, county clerks, court clerks and all notarial officers are hereby authorized and empowered to administer oaths and affirmations within the state.

History: Laws 1882, ch. 28, § 1; C.L. 1884, § 1742; C.L. 1897, § 2558; Code 1915, § 3932; Laws 1929, ch. 78, § 1; C.S. 1929, § 94-109; 1941 Comp., § 46-103; 1953 Comp., § 43-1-3; Laws 1977, ch. 98, § 1; 2023, ch. 110, § 1.

14-13-4 to 14-13-10. Repealed.

14-13-11. Wage and salary assignments.

A. All assignments of wages or salaries due or to become due to any person, in order to be valid, shall be acknowledged by the party making the assignment before a notary public or other officer authorized to take acknowledgments. The assignment shall be recorded in the office of the county clerk of the county in which the money is to be paid and a copy served upon the employer or person who is to make payment.

B. Any assignment of wages or salary is void if it provides for an assignment of more than twenty-five percent of the assignor's disposable earnings for any pay period. As used in this section, "disposable earnings" means that part of the assignor's wage or salary remaining after deducting the amounts which are required by law to be withheld.

History: Laws 1929, ch. 128, § 1; C.S. 1929, § 8-101; 1941 Comp., § 46-111; 1953 Comp., § 43-1-12; Laws 1971, ch. 172, § 1.

14-13-12. Instrument needs no acknowledgment in absence of statutory requirement.

An acknowledgment of an instrument of writing shall not be necessary to its execution unless expressly so provided by statute.

History: Laws 1901, ch. 62, § 17; Code 1915, § 1; C.S. 1929, § 1-101; 1941 Comp., § 46-112; 1953 Comp., § 43-1-13.

14-13-13. Validation of former acknowledgments; 1951 act. All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof had been in the form prescribed by law.

History: 1941 Comp., § 46-114, enacted by Laws 1951, ch. 14, § 1; 1953 Comp., § 43-1-14.

14-13-14. Validation of former acknowledgments; 1957 act. All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.1, enacted by Laws 1957, ch. 110, § 1.

14-13-15. Validation of former acknowledgments; 1965 act. All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.2, enacted by Laws 1965, ch. 186, § 1.

14-13-16. Validation of former acknowledgments; 1967 act. All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.3, enacted by Laws 1967, ch. 80, § 1.

14-13-17. Validation of former acknowledgments; 1971 act. All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.4, enacted by Laws 1971, ch. 165, § 1.

14-13-18. Validation of former acknowledgments; 1975 act. All acknowledgments taken

outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by the laws of this state to take such acknowledgments, under the seal of such officer, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding any defect in the form of a certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: 1953 Comp., § 43-1-14.5, enacted by Laws 1975, ch. 198, § 1.

14-13-19 to 14-13-23. Repealed.

14-13-24. Validation of certain prior acknowledgments. All acknowledgments taken outside the state of New Mexico prior to the passage and approval of this act [this section], before any officer authorized by either the laws of the jurisdiction where taken or the laws of this state to take such acknowledgments, and all acknowledgments taken within this state before the passage and approval of this act, before any officer authorized by law to take acknowledgments, notwithstanding the form of the certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom such acknowledgment [acknowledgment] was taken or the failure to show that the seal of said officer was affixed to the instrument acknowledged and/or notwithstanding the failure of such acknowledgment to comply with the provisions of Section 14-3-10 NMSA 1978, if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though said certificate of acknowledgment and the record thereof has been in the form prescribed by law.

History: Laws 1981, ch. 212, § 3.

14-13-25. Validation of certain prior acknowledgments. All acknowledgments taken outside the state before any officer authorized by either the laws of the jurisdiction where taken or the laws of this state to take such acknowledgments, and all acknowledgments taken within this state before any officer authorized by law to take acknowledgments, that have been filed and are of record in the appropriate office as provided by law for a period of ten years or more without challenge to the form or content of the acknowledgment, are considered valid, notwithstanding the form of the certificate of acknowledgment or the failure to show the date of the expiration of the commission of the officer before whom the acknowledgment was taken or the failure to show that the seal of the officer was affixed to the instrument acknowledged, and notwithstanding the failure of the acknowledgment to comply with the provisions of Section 14-13-10 NMSA 1978 if the marital status of any married woman uniting with her husband in the execution of any instrument may otherwise appear from the body of the instrument so acknowledged, and the record thereof in the office of the county clerk, are hereby confirmed and made valid to the extent as though the certificate of acknowledgment and the record thereof had been in the form prescribed by law.

History: Laws 1991, ch. 92, § 1.

ARTICLE 14. UNIFORM LAW ON NOTARIAL ACTS

14-14-1 to 14-14-11. Repealed.

History

Laws 1993, ch. 281, § 11; repealed by 2021, ch. 21, § 36, effective January 1, 2022.

ARTICLE 14A. REVISED UNIFORM LAW ON NOTARIAL ACTS.

14-14A-1. Short title.

Chapter 14, Article 14A NMSA 1978 may be cited as the “Revised Uniform Law on Notarial Acts”.

History

2021, ch. 21, § 1, effective January 1, 2022; 2023, ch. 110, § 2, effective June 16, 2023.

14-14A-2. Definitions.

In addition to the general definitions provided in Section 12-2A-3 NMSA 1978 of the Uniform Statute and Rule Construction Act [12-2A-1 to 12-2A-20 NMSA 1978], as used in the Revised Uniform Law on Notarial Acts :

A. “acknowledgment” means a declaration by an individual before a notarial officer that:

(1) the individual has signed a record for the purpose stated in the record; and

(2) if the record is signed in a representative capacity, the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record;

B. “automatic notarial officer” means any of the following who has registered an official stamp with the secretary of state:

(1) a judicial officer;

(2) the secretary of state or a full-time staff member of the secretary of state’s office while performing a notarial act within the scope of the secretary of state’s or staff member’s duties;

(3) a county clerk or deputy county clerk while performing a notarial act within the scope of the county clerk’s or deputy county clerk’s duties; and

(4) an individual who is a member of the state bar of New Mexico and licensed to practice law;

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

D. “electronic signature” means an electronic symbol, sound or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record;

E. “foreign state” means a government other than the United States, a state or a federally recognized Indian tribe;

F. “in a representative capacity” means acting as:

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

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

(3) an agent or attorney-in-fact for a principal; or (4) an authorized representative of another in any other capacity;

G. “judicial officer” means:

(1) a judge of a state court of this state;

(2) a special commissioner or hearing officer appointed pursuant to supreme court rule and employed by a state court;

(3) a special master appointed pursuant to supreme court rule or state statute; and

(4) a court clerk or deputy court clerk of a state court of this state;

H. “licensed to practice law” means a person who is a member of the state bar of New Mexico and, based on such membership, is authorized to practice law before the courts of this state;

I. “notarial act” means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state.

The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy and noting a protest of a negotiable instrument, but does not apply to any act that would otherwise be a notarial act if:

- (1) the act is performed by a judicial officer within the scope of the judicial officer’s duties; and
- (2) the record is filed in the court of the judicial officer;

J. “notarial officer” means:

- (1) an automatic notarial officer; and
- (2) a notary public;

K. “notary public” means an individual commissioned by the secretary of state to be a notary public and authorized by such commission to perform notarial acts pursuant to the Revised Uniform Law on Notarial Acts ;

L. “official notary seal” means the great seal of the state of New Mexico, unless the secretary of state has adopted a seal specific for use by notarial officers; provided that as applied to automatic notarial officers, “official notary seal” includes as an option:

(1) for judicial officers, the seal of the court, if the supreme court has approved a seal for such court and the seal has been filed with the secretary of state;

(2) for the secretary of state or a full-time staff member of the secretary of state’s office, the seal of the secretary of state, if the secretary of state has approved a seal and the seal has been filed with the secretary of state;

(3) for county clerks or deputy county clerks, the seal of the county, if the board of county commissioners has approved a seal for the county and the seal has been filed with the secretary of state; and

(4) for a person who is licensed to practice law and who is not performing a notarial act pursuant to Paragraphs (1) through (3) of this subsection, a seal approved by the state bar of New Mexico for such purpose and the seal has been filed with the secretary of state;

M. “official stamp” means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record and includes an official notary seal;

N. “person” also includes a statutory trust, public corporation, government or governmental subdivision, agency or instrumentality;

O. “record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

P. “sign” or “subscribe”, when used with present intent to authenticate or adopt a record, means to:

- (1) execute or adopt a tangible symbol; or
- (2) attach to or logically associate with the record an electronic symbol, sound or process;

Q. “signature” means a tangible symbol or an electronic signature that evidences the signing of a record;

R. “stamping device” means:

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

(2) an electronic device or process capable of attaching to or logically associating with an electronic record an official stamp; and

S. “verification on oath or affirmation” means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

History

2021, ch. 21, § 2, effective January 1, 2022; 2023, ch. 110, § 3, effective June 16, 2023.

14-14A-3. Authority to perform notarial act.

A. A notarial officer shall perform all notarial acts pursuant to the Revised Uniform Law on Notarial Acts or by law of this state other than the Revised Uniform Law on Notarial Acts.

B. A notarial officer shall not perform a notarial act with respect to a record to which the officer or the officer’s spouse or domestic partner is a party or in which either of them has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

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

History

2021, ch. 21, § 3, effective January 1, 2022; 2023, ch. 110, § 4, effective June 16, 2023.

14-14A-4. Requirements for certain notarial acts.

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

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

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

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

E. A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in Subsection B of Section 55-3-505 NMSA 1978.

History

2021, ch. 21, § 4, effective January 1, 2022.

14-14A-5. Personal appearance required; exception authorized for remote notarizations.

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

B. A remotely located individual may comply with this section or with any other requirement of the laws of this state that state that a person appear before a notarial officer at the time of a notarial act by using communication technology to appear before a notarial officer.

C. A notarial officer located in this state may perform a notarial act using communication technology for a remotely located individual if:

(1) the notarial officer:

(a) has personal knowledge of the identity of the individual pursuant to Subsection A of

Section 14-14A-6 NMSA 1978;

(b) has taken the required class and has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public pursuant to Subsection B of Section 14-14A-6 NMSA 1978 or this section; or

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

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

(3) the notarial officer, or a person acting on behalf of the notarial officer, creates an audiovisual recording of the performance of the notarial act; and

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

(a) the record: 1) is to be filed with or relates to a matter before a public official or court, governmental entity or other entity subject to the jurisdiction of the United States; or 2) involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States;

(b) the notarial act is deemed to be performed in this state and therefore does not require an apostille in the form otherwise prescribed by the Hague Convention of October 5, 1961; and

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

D. If a notarial act is performed pursuant to this section, the certificate of notarial act required by Section 14-14A-15 NMSA 1978 and the short-form certificate provided in Section 14-14A-15 NMSA 1978 shall indicate that the notarial act was performed using communication technology.

E. A short-form certificate provided pursuant to Section 14-14A-15 NMSA 1978 for a notarial act subject to this section is sufficient if it:

(1) complies with rules adopted under Paragraph (1) of Subsection H of this section; or

(2) is in the form provided in Section 14-14A-15 NMSA 1978 and contains a statement substantially as follows: "This notarial act involved the use of communication technology."

F. A notarial officer, a guardian, a conservator or an agent of a notarial officer or a personal representative of a deceased notarial officer shall retain the audiovisual recording created pursuant to Paragraph (3) of Subsection C of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted pursuant to Paragraph (4) of Subsection H of this section, the recording must be retained for a period of at least ten years after the recording is made.

G. Before a notarial officer performs the notarial officer's initial notarial act with a remotely located individual under this section, the notarial officer shall notify the secretary of state that the notarial officer will be performing notarial acts with respect to remotely located individuals and identify the technologies the notarial officer intends to use. If the secretary of state has established standards pursuant to Subsection H of this section and Section 14-14A-26 NMSA 1978 for approval of communication technology or identity proofing, the communication technology and identity proofing shall conform to the standards.

H. In addition to adopting rules pursuant to Section 14-14A-26 NMSA 1978, the secretary of state may adopt rules under this section regarding performance of a notarial act. The rules may:

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

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

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

(4) establish standards and a period for the retention of an audiovisual recording created pursuant to Paragraph (3) of Subsection C of this section.

I. Before adopting, amending or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the secretary of state shall consider:

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

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

(3) input from governmental officials and entities and other interested persons.

J. By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audiovisual recording created pursuant to Paragraph (3) of Subsection C of this section, the provider of the communication technology, identity proofing or storage appoints the secretary of state as the provider's agent for service of process in a civil action in this state related to the notarial act.

K. As used in this section:

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

(a) allows a notarial officer and a remotely located individual to communicate with each other simultaneously by sight and sound; and

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

(2) "identity proofing" means a process or service by which a third person provides a notarial officer with the means to verify the identity of a remotely located individual by a review of personal information from public or private data sources;

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

(4) "remotely located individual" means an individual who is not in the physical presence of the notarial officer who performs a notarial act under Subsection C of this section.

History

2021, ch. 21, § 5, effective January 1, 2022; 2023, ch. 110, § 5, effective June 16, 2023.

14-14A-6. Identification of individual.

A. A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that individual has the identity claimed.

B. A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

(1) by means of:

(a) a passport, driver's license or government-issued nondriver identification card, which is current or expired not more than one year before performance of the notarial act; or

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

(2) by a verification on oath or affirmation of a credible witness personally appearing before the officer, who is unrelated to and unaffected by the document or transaction, and known to the officer and whom the officer can identify on the basis of a passport, driver's license or government-issued nondriver identification card, which is current or expired not more than one year before performance of the notarial act.

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

History

2021, ch. 21, § 6, effective January 1, 2022.

14-14A-7. Authority to refuse to perform notarial acts.

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

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

or

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

B. A notarial officer may refuse to perform a notarial act unless refusal is prohibited by a state or federal law other than the Revised Uniform Law on Notarial Acts.

C. In accordance with the Human Rights Act, a notary public or notarial officer shall not discriminate in the refusal to perform or the manner in which a notarial act is performed pursuant to the Revised Uniform Law on Notarial Acts.

History

2021, ch. 21, § 7, effective January 1, 2022; 2023, ch. 110, § 6, effective June 16, 2023.

14-14A-8. Signature if individual is unable to sign.

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

History

2021, ch. 21, § 8, effective January 1, 2022.

14-14A-9. Notarial acts in this state.

A. A notarial act may be performed in this state by:

(1) a notary public of this state; or

(2) an automatic notarial officer of this state.

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

C. The signature and title of a notarial officer described in Subsection A of this section conclusively establish the authority of the officer to perform the notarial act. An official stamp is required unless a state law specifies that an official stamp is not required for that notarial act.

History

2021, ch. 21, § 9, effective January 1, 2022; 2023, ch. 110, § 7, effective June 16, 2023.

14-14A-10. Notarial act in another state.

A. A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state if the act performed in that state is performed by a notarial officer or other individual authorized by the law of that state to perform the notarial act.

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

C. The signature and title of a notarial officer described in Subsection A of this section conclusively establish the authority of the officer to perform the notarial act. An official stamp is required unless a state law specifies that an official stamp is not required by that notarial officer or for that notarial act.

History

2021, ch. 21, § 10, effective January 1, 2022; 2023, ch. 110, § 8, effective June 16, 2023.

14-14A-11. Notarial act under the authority of a federally recognized indian nation, tribe or pueblo.

A. A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian nation, tribe or pueblo has the same effect as if performed by a notarial officer of this state if the act performed in the jurisdiction of the nation, tribe or pueblo is performed by a notarial officer or other individual authorized by the written law of the nation, tribe or pueblo to perform the notarial act.

B. The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian nation, tribe or pueblo are prima facie evidence that the signature is genuine and that the individual holds the designated title.

C. The signature and title of a notarial officer described in Subsection A of this section conclusively establish the authority of the officer to perform the notarial act. An official stamp is required unless the laws of the nation, tribe or pueblo specify that an official stamp is not required by that notarial officer for that notarial act.

History

2021, ch. 21, § 11, effective January 1, 2022; 2023, ch. 110, § 9, effective June 16, 2023.

14-14A-12. Notarial act under federal authority.

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

- (1) a judge;
- (2) a court clerk or deputy court clerk;
- (3) an individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;
- (4) an individual designated a notarizing officer by the United States department of state for performing notarial acts overseas; or
- (5) any other individual authorized by federal law to perform a specified notarial act.

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

C. The signature and title of an officer described in Subsection A of this section conclusively establish the authority of the officer to perform the notarial act. An official stamp is required unless a law specifies that an official stamp is not required by that federal notarial officer or for that notarial act.

History

2021, ch. 21, § 12, effective January 1, 2022; 2023, ch. 110, § 10, effective June 16, 2023.

14-14A-13. Foreign notarial acts.

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

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

C. The signature and official stamp of an individual holding an office described in Subsection B of this section are prima facie evidence that the signature is genuine and the individual holds the designated title. An official stamp is required unless a law of the foreign state specifies that

an official stamp is not required by that notarial officer or for that notarial act.

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

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

History

2021, ch. 21, § 13, effective January 1, 2022; 2023, ch. 110, § 11, effective June 16, 2023.

14-14A-14. Certificate of notarial act.

A. A notarial act shall be evidenced by a certificate. The certificate shall:

- (1) be executed contemporaneously with the performance of the notarial act;
- (2) be signed and dated by the notarial officer in the same manner as on file with the secretary of state;
- (3) identify the jurisdiction in which the notarial act is performed;
- (4) contain the title of office of the notarial officer;
- (5) if the notarial officer is a notary public, indicate the notary public's commission number and the date of expiration of the notarial officer's commission; and
- (6) if the notarial officer is an automatic notarial officer:
 - (a) identify the judicial district or area served if the notarial officer is a judicial officer;
 - (b) identify the county served if the notarial officer is a county clerk or deputy county clerk; and
 - (c) identify the state bar number if the notarial officer is an attorney but is not performing a notarial act pursuant to Subparagraph (a) or (b) of this paragraph and is not a judge.

B. If a notarial act regarding a tangible record is performed by a notary public, an official stamp shall be affixed to or embossed on the certificate. If a notarial act is performed regarding a tangible record by an automatic notarial officer and the certificate contains the information specified in Paragraphs (2), (3), (4), (5) and (6) of Subsection A of this section, an official stamp shall be affixed to or embossed on the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in Paragraphs (2), (3), (4), (5) and (6) of Subsection A of this section, an official stamp shall be attached to or logically associated with the certificate.

C. A certificate of a notarial act is sufficient if it meets the requirements of Subsections A and B of this section and:

- (1) is in a short-form set forth in Section 14-14A-15 NMSA 1978;
- (2) is in a form otherwise permitted by the laws of this state;
- (3) is in a form permitted by law applicable in the jurisdiction in which the notarial act was performed; or
- (4) sets forth the actions of the notarial officer, and the actions are sufficient to meet the requirements of the notarial act as provided in Sections 14-14A-4 through 14-14A-6 NMSA 1978 or law of this state other than the Revised Uniform Law on Notarial Acts.

D. By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in Sections 14-14A-4 through 14-14A-6 NMSA 1978.

E. A notarial officer shall not affix the officer's signature to, or logically associate it with, a certificate until after the notarial act has been performed.

F. If a notarial act is performed regarding a tangible record, a certificate shall be part of, or

securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate shall be affixed to, or logically associated with, the electronic record. If the secretary of state has established standards pursuant to Section 14-14A-26 NMSA 1978 for attaching, affixing or logically associating the certificate, the process shall conform to the standards.

History

2021, ch. 21, § 14, effective January 1, 2022; 2023, ch. 110, § 12, effective June 16, 2023.

14-14A-15. Short-form certificates.

The following short-form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by Subsections A and B of Section 14-14A-14 NMSA 1978:

A. for an acknowledgment in an individual capacity:

State of _____

[County] of _____

This record was acknowledged before me on _____

by _____.

[New Mexico state bar identification number, judicial district or area, county or notary public commission number and date of commission expiration: _____];

B. for an acknowledgment in a representative capacity:

State of _____

[County] of _____

This record was acknowledged before me on _____

by _____.

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

[New Mexico state bar identification number, judicial district or area, county served or notary public commission number and date of commission expiration: _____];

C. for a verification on oath or affirmation:

State of _____

[County] of _____

Signed and sworn to (or affirmed) before me on _____ by

_____ making statement.

[New Mexico state bar identification number, judicial district or area, county served or notary public commission number and date of commission expiration: _____];

D. for witnessing or attesting a signature:

State of _____

[County] of _____

Signed (or attested) before me on _____

by _____.

[New Mexico state bar identification number, judicial district or area, county served or notary public commission number and date of commission expiration: _____];

and

E. for certifying a copy of a record:

State of _____

[County] of _____

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

Dated _____

[New Mexico state bar identification number, judicial district or area, county served or notary public commission number and date of commission expiration: _____];

History

2021, ch. 21, § 15, effective January 1, 2022; 2023, ch. 110, § 13, effective June 16, 2023.

14-14A-16. Official stamp.

The official stamp of a notarial officer shall:

A. include the notarial officer's name, New Mexico state bar identification number if the notary public is licensed to practice law, judicial district or area served if the notarial officer is a judge, court clerk or deputy court clerk, county if the notarial officer is a county clerk or deputy county clerk or notary public commission number and date of commission expiration, the notarial officer's official notary seal and other information required by the secretary of state;

B. be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated; and

C. be filed with the secretary of state before the notarial officer performs the notarial officer's initial notarial act.

History

2021, ch. 21, § 16, effective January 1, 2022; 2023, ch. 110, § 14, effective June 16, 2023.

14-14A-17. Stamping device.

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

B. If a notarial officer's stamping device is lost or stolen, the notarial officer or the notarial officer's personal representative or guardian shall promptly notify the secretary of state on discovering that the device is lost or stolen.

History

2021, ch. 21, § 17, effective January 1, 2022; 2023, ch. 110, § 15, effective June 16, 2023.

14-14A-18. Journal.

A. A notarial officer in this state shall maintain a journal in which the notarial officer chronicles all notarial acts that the notarial officer performs. The notarial officer shall retain the journal for ten years after the performance of the last notarial act chronicled in the journal.

B. A journal may be created on a tangible medium or in an electronic format. A notarial officer performing notarial acts pursuant to Subsection E of this section shall maintain only one journal at a time to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records; provided that a notarial officer may keep a journal in a tangible medium for tangible records and an electronic journal for electronic records. If the journal is maintained on a tangible medium, it must be a permanent, bound register with

numbered pages. If the journal is maintained in an electronic format, it must be in a permanent, tamper-evident electronic format complying with the rules of the secretary of state.

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

- (1) the date and time of the notarial act;
- (2) a description of the record, if any, and type of notarial act;
- (3) the full name and address of each individual for whom the notarial act is performed;
- (4) if identity of the individual is based on personal knowledge, a statement to that effect;
- (5) if identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of any identification credential; and
- (6) the fee, if any, charged by the notarial officer.

D. If a notarial officer's journal is lost or stolen, the notarial officer shall promptly notify the secretary of state on discovering that the journal is lost or stolen.

E. Pursuant to the requirements provided in Subsections B and C of this section, a notarial officer licensed to practice law shall maintain a journal when performing notarial acts for members of the public unrelated to an established attorney-client relationship.

F. On resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall retain the notary public's journal in accordance with Subsection A of this section and inform the secretary of state of where the journal is located.

G. Instead of retaining a journal as provided in Subsections A and F of this section, a current or former notarial officer may transmit the journal to the secretary of state, the state records administrator or a repository approved by the secretary of state.

H. On the death or adjudication of incompetency of a current or former notarial officer, the notarial officer's personal representative or guardian or any other person knowingly in possession of the journal shall transmit the journal to the secretary of state, the state records officer or a repository approved by the secretary of state.

History

2021, ch. 21, § 18, effective January 1, 2022; 2023, ch. 110, § 16, effective June 16, 2023.

14-14A-19. Notification regarding performance of notarial act on electronic record; selection of technology.

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

B. Before performing the notarial officer's initial notarial act with respect to an electronic record, a notarial officer shall notify the secretary of state that the notarial officer will be performing notarial acts with respect to electronic records and identify the technology the notarial officer intends to use. If the secretary of state has established standards for approval of technology pursuant to Section 14-14A-26 NMSA 1978, the technology must conform to the standards. If the technology conforms to those standards, the secretary of state shall approve the use of the technology.

History

2021, ch. 21, § 19, effective January 1, 2022; 2023, ch. 110, § 17, effective June 16, 2023.

14-14A-20. Commission as notary public qualifications; no immunity or benefit.

A. An individual may apply to the secretary of state for a commission as a notary public. The applicant shall comply with and provide the information required by rules established by the

secretary of state and pay any application fee.

B. To qualify for the commission as a notary public, an applicant:

(1) shall be at least eighteen years of age;

(2) shall be a resident of or have a place of employment in this state;

(3) shall be able to read and write English;

(4) shall not be disqualified to receive a commission under Section 14-14A-22 NMSA 1978;

(5) shall have passed the examination required pursuant to Subsection A of Section 14-14A-21 NMSA 1978; and

(6) if a judicial officer, the secretary of state or a full-time staff member of the secretary of state's office, county clerk or deputy county clerk who is not licensed to practice law, may also be commissioned as a notary public to perform notarial acts outside the individual's scope of duties as an automatic notarial officer.

C. Before issuance of a commission as a notary public, an applicant for the commission shall execute an oath of office pursuant to the laws of this state and submit it to the secretary of state.

D. Before issuance of a commission as a notary public, the notary public or applicant for a commission shall submit to the secretary of state an assurance in the form of a surety bond or its functional equivalent in the amount of ten thousand dollars (\$10,000). The assurance must be issued by a surety or other entity licensed or authorized to do business in this state. The assurance must cover acts performed during the term of the notary public's commission and must be in the form prescribed by the secretary of state.

If a notary public violates law with respect to notaries public in this state, the surety or issuing entity is liable under the assurance. The surety or issuing entity shall give thirty days notice to the secretary of state before canceling the assurance. The surety or issuing entity shall notify the secretary of state not later than thirty days after making a payment to a claimant under the assurance. A notary public may perform notarial acts in this state only during the period that a valid assurance is on file with the secretary of state.

E. On compliance with this section, the secretary of state shall issue a commission as a notary public to an applicant for a term of four years.

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

G. At least thirty days before expiration of each notarial officer's commission, the secretary of state shall mail a notice of expiration to the notarial officer's mailing address of record. A notarial officer may be reappointed upon making an application in the same manner as required for an original application.

History

2021, ch. 21, § 20, effective January 1, 2022; 2023, ch. 110, § 18, effective June 16, 2023.

14-14A-21. Examination of notary public and notarial officers; continuing legal education requirements for automatic notarial officers.

A. An applicant for a commission as a notary public who does not hold a commission in this state is required to pass an examination administered by the secretary of state or an entity approved by the secretary of state.

The examination will be based on the course of study described in Subsection B of this section.

B. The secretary of state or an entity approved by the secretary of state shall offer regularly a course of study to applicants who do not hold commissions as notaries public in this state. The course must cover the laws, rules, procedures and ethics relevant to notarial acts.

C. A person qualified to be an automatic notarial officer is required to attend a course, not to exceed ninety minutes, delivered by the secretary of state or an entity approved by the secretary

of state. The course may be delivered in person or online. Attendance in the course is required before the person's seal may be registered with the secretary of state, and attendees shall demonstrate an understanding of the course material. The course shall cover laws, rules, procedures and ethics relevant to being an automatic notarial officer.

D. An automatic notarial officer may obtain continuing legal education credit, pursuant to rules established by the board of bar commissioners of the state of New Mexico, for participating in continuing legal education related to performing the notarial acts.

History

2021, ch. 21, § 21, effective January 1, 2022; 2023, ch. 110, § 19, effective June 16, 2023.

14-14A-22. Grounds to deny, refuse to renew, revoke, suspend or condition commission of notarial officer.

A. The state ethics commission may revoke, suspend or impose a condition on a notarial officer for any act or omission that demonstrates that the individual lacks the honesty, integrity, competence or reliability to act as a notarial officer, including:

(1) failure to comply with the Revised Uniform Law on Notarial Acts;

(2) a fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public;

(3) a conviction of the applicant or automatic notarial officer of any felony or a crime involving fraud, dishonesty or deceit during the preceding four years;

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

(5) failure by the notarial officer to discharge any duty required of a notarial officer, whether by the provisions of the Revised Uniform Law on Notarial Acts, rules of the secretary of state or any federal or state law;

(6) violation by the notarial officer of an obligation required of a notarial officer, whether by the provisions of the Revised Uniform Law on Notarial Acts, rules of the secretary of state or any federal or state law;

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

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

(9) failure of the notary public to maintain an assurance as provided in Subsection D of Section 14-14A-20 NMSA 1978; or

(10) if the individual ceases to be a resident of this state or ceases to be employed in this state.

B. The secretary of state may deny or refuse to renew an applicant upon notice from the state ethics commission of adverse action upon an applicant or a notarial officer.

C. The authority of the state ethics commission to deny, refuse to renew, suspend, revoke or impose conditions on a notarial officer does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

History

2021, ch. 21, § 22, effective January 1, 2022; 2023, ch. 110, § 20, effective June 16, 2023.

14-14A-23. Database of notaries public.

The secretary of state shall maintain an electronic database of notarial officers providing the following:

A. information and a means through which a person may verify the authority of a notarial officer to perform notarial acts; and

B. indication of whether a notarial officer has notified the secretary of state that the notarial officer will be performing notarial acts on electronic records.

History

2021, ch. 21, § 23, effective January 1, 2022; 2023, ch. 110, § 21, effective June 16, 2023.

14-14A-24. Prohibited acts.

A. A commission as a notary public or status as an automatic notarial officer does not by itself authorize an individual to:

- (1) assist persons in drafting legal records, give legal advice or otherwise practice law;
- (2) act as an immigration consultant or an expert on immigration matters;
- (3) represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship or related matters; or
- (4) receive compensation for performing any of the activities listed in this subsection.

B. A notarial officer shall not engage in false or deceptive advertising.

C. A notarial officer, other than an attorney licensed to practice law in this state, shall not use the term “notario” or “notario publico”.

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

E. Except as otherwise allowed by law, a notarial officer shall not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notarial officer.

F. A notarial officer shall not:

- (1) perform a notarial act on a blank or incomplete record;
- (2) certify or authenticate a photograph;
- (3) perform a notarial act with intent to deceive or defraud; or
- (4) use the title of notary public, notarial officer or official stamp to endorse, promote, denounce or oppose any product, service, contest, candidate or other offering.

G. A notarial officer shall not:

- (1) make or deliver a certificate of notarial act containing statements that the notarial officer knows to be false; or
- (2) knowingly perform a notarial act for an individual who does not comply with Section 14-14A-6 NMSA 1978.

H. A notarial officer who violates any of the provisions of Subsections A through G of this section is guilty of a misdemeanor for each violation and upon conviction shall be punished by a fine not exceeding one thousand dollars (\$1,000) or by imprisonment for a period not exceeding six months, or both.

I. An individual who performs a purported notarial act with knowledge that the individual’s commission as a notary public has expired or that the individual is otherwise disqualified from

being a notarial officer is guilty of a misdemeanor for each purported notarial act and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

History

2021, ch. 21, § 24, effective January 1, 2022; 2023, ch. 110, § 22, effective June 16, 2023.

14-14A-25. Validity of notarial acts.

Except as otherwise provided in Subsection B of Section 14-14A-3 NMSA 1978, the failure of a notarial officer to perform a duty or meet a requirement specified in the Revised Uniform Law on Notarial Acts does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under the Revised Uniform Law on Notarial Acts does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this state other than the Revised Uniform Law on Notarial Acts or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

History

2021, ch. 21, § 25, effective January 1, 2022; 2023, ch. 110, § 23, effective June 16, 2023.

14-14A-26. Rules.

A. The secretary of state may adopt rules to implement the secretary's responsibilities pursuant to the Revised Uniform Law on Notarial Acts. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may:

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

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

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

(4) prescribe the process of granting or renewing a notary public commission;

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

(6) establish the process for approving and accepting surety bonds and other forms of assurance pursuant to Subsection D of Section 14-14A-20 NMSA 1978;

(7) provide for the administration of the examination pursuant to Subsection A of Section 14-14A-21 NMSA 1978 and the course of study pursuant to Subsection B of Section 14-14A-21 NMSA 1978; and

(8) provide for the administration of continuing legal education for notarial officers authorized to practice law in this state in collaboration with the board of bar commissioners of the state of New Mexico and pursuant to rules adopted by the board of bar commissioners of the state of New Mexico.

B. In adopting, amending or repealing rules about notarial acts with respect to electronic records, the secretary of state shall consider, so far as is consistent with the Revised Uniform Law on Notarial Acts:

(1) the most recent standards regarding electronic records promulgated by national bodies, such as the national association of secretaries of state;

(2) standards, practices and customs of other jurisdictions that substantially enact the Revised Uniform Law on Notarial Acts; and

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

C. The state ethics commission may adopt rules to implement the commission's

responsibilities pursuant to the Revised Uniform Law on Notarial Acts. The rules may:

- (1) prescribe the process of submitting a complaint;
- (2) provide for the administration of the adjudication of complaints;
- (3) prescribe the procedure by which the state ethics commission shall handle complaints;
- (4) prescribe the procedure the state ethics commission shall follow in approving a hearing officer's recommendation; and
- (5) prescribe the procedure of appealing the state ethics commission's determination.

History

2021, ch. 21, § 26, effective January 1, 2022; 2023, ch. 110, § 24, effective June 16, 2023.

14-14A-27. Effect of adoption of and amendments to act.

A. A commission as a notary public in effect on the effective date of the Revised Uniform Law on Notarial Acts continues until its date of expiration.

B. A notarial officer, in performing notarial acts after the effective date of the Revised Uniform Law on Notarial Acts or any amendments to the Revised Uniform Law on Notarial Acts shall comply with the most recent version of the Revised Uniform Law on Notarial Acts in effect.

C. When changes to the official stamp are adopted in the Revised Uniform Law on Notarial Acts or by rules issued by the secretary of state, a notarial officer who has registered a stamp with the secretary of state may continue to use the registered stamp until:

- (1) the expiration of the officer's commission, in the case of a notary public; or
- (2) one year following the effective date of the change, in the case of an automatic notarial officer.

D. The secretary of state shall notify notarial officers when a change to the official stamp is adopted.

History

2021, ch. 21, § 27, effective January 1, 2022; 2023, ch. 110, § 25, effective June 16, 2023.

14-14A-28. Fees.

A. A notarial officer may charge the maximum fee specified in this section, charge less than the maximum fee or waive the fee.

B. An employer shall not establish fees for notarial services that are in excess of those specified in this section nor on the attributes of the principal as delineated.

C. The maximum fees that may be charged by a notarial officer for notarial acts are:

- (1) for acknowledgments, five dollars (\$5.00) per acknowledgment;
- (2) for oaths or affirmations without a signature, five dollars (\$5.00) per person;
- (3) for jurats, five dollars (\$5.00) per jurat; and
- (4) for copy certifications, fifty cents (\$.50) per page with a minimum total charge of five dollars (\$5.00).

D. A notarial officer may charge a travel fee when traveling to perform a notarial act if:

(1) the notarial officer and the person requesting the notarial act agree upon the travel fee in advance of the travel; and

(2) the notarial officer explains to the person requesting the notarial act that the travel fee is separate from the notarial fees and not mandated by law.

E. In addition to the fees prescribed in Subsections C and D of this section, a notarial officer may charge a technology fee not to exceed twenty-five dollars (\$25.00) or other amount established by rule by the secretary of state per notarial act performed with respect to an electronic record.

History

2021, ch. 21, § 28, effective January 1, 2022; 2023, ch. 110, § 26, effective June 16, 2023.

14-14A-29. Inspection of public records act compliance. [Repealed]

History

2021, ch. 21, § 29, effective January 1, 2022; repealed by 2022, ch. 27, § 1, effective March 1, 2022.

14-14A-30. Saving clause.

The Revised Uniform Law on Notarial Acts does not affect the validity or effect of a notarial act performed before the effective date of the Revised Uniform Law on Notarial Acts or any amendments to the Revised Uniform Law on Notarial Acts.

History

2021, ch. 21, § 30, effective January 1, 2022; 2023, ch. 110, § 27, effective June 16, 2023.

14-14A-31. Uniformity of application and construction.

In applying and construing the Revised Uniform Law on Notarial Acts , consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History

2021, ch. 21, § 31, effective January 1, 2022.

14-14A-32. Relation to federal electronic signatures in global and national commerce act.

The Revised Uniform Law on Notarial Acts modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

History

2021, ch. 21, § 32, effective January 1, 2022.

ARTICLE 16. UNIFORM ELECTRONIC TRANSACTIONS

14-16-11. 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.

History: Laws 2001, ch. 131, § 11.

NEW MEXICO ADMINISTRATIVE CODE

TITLE 12. TRADE, COMMERCE AND BANKING

CHAPTER 9. NOTARIES PUBLIC

PART 3. NOTARIAL PROCEDURES

12.9.3.1 ISSUING AGENCY: Office of the Secretary of State

[12.9.3.1 NMAC - N, 1/1/2022]

12.9.3.2 SCOPE: The rule applies to notarial acts, notaries public and other notarial officers pursuant to the Revised Uniform Laws on Notarial Acts (RULONA).

[12.9.3.2 NMAC - N, 1/1/2022]

12.9.3.3 STATUTORY AUTHORITY: This rule is authorized by Section 14-14A-26 NMSA 1978.

[12.9.3.3 NMAC - N, 1/1/2022]

12.9.3.4 DURATION: Permanent

[12.9.3.4 NMAC - N, 1/1/2022]

12.9.3.5 EFFECTIVE DATE: January 1, 2022, unless a later date is cited at the end of a section.

[12.9.3.5 NMAC - N, 1/1/2022]

12.9.3.6 OBJECTIVE: The objective of the rule is to establish standards, guidelines, procedures, fees, and responsibilities under the Revised Uniform Laws on Notarial Acts.

[12.9.3.6 NMAC - N, 1/1/2022]

12.9.3.7 DEFINITIONS:

- A. **“County clerk duties”** means the official duties performed by the county clerk or deputy county clerk as determined by the county clerk.
- B. **“Deputy county clerk”** means a person authorized by the county clerk to be a deputy county clerk and who has taken an oath of office.
- C. **“Electronic record”** means a record as defined pursuant to Subsection 7 of Section 14-16-2 NMSA 1978 and includes but is not limited to a PDF or Microsoft Word file.
- D. **“In-person electronic notarization”** means that an electronic record is presented for notarization on a computer or mobile device with the individual signing the record and the notarial officer meeting physically face-to-face.
- E. **“Remote online notarization (RON)”** means that an electronic record is presented for notarization and the individual signing the record and the notary public meet face-to-face online and communicate using communication technology.
- F. **“Tamper evident”** means any change to the record provides evidence of the change.
- G. **“Tangible copy”** means a physical paper copy of an electronic record or tangible record.
- H. **“Tangible record”** means a physical paper record with an original written signature.

[12.9.3.7 NMAC - N, 1/1/2022; A. & Rn. 6/16/20-23]

12.9.3.8 APPLYING FOR OR RENEWING A NOTARY PUBLIC COMMISSION:

- A. A person applying for or renewing a notary public commission shall apply electronically or by paper application using the prescribed application form issued by the secretary of state. An applicant shall use the applicant’s name as it appears on the applicant’s state issued identification. In addition to meeting the requirements pursuant to Subsection B of Section 14-14A-20 NMSA 1978, the applicant shall provide:
 - (1) proof of having successfully completed an approved training course and passing the required examination. If the secretary of state has a record that a notary public applying for renewal has previously passed the required examination, a notary public applying for renewal is not required to re-take the training and examination unless:
 - (a) the applicant’s commission has expired for more than one year; or
 - (b) there have been substantial changes to the statutes or rules pertaining to notarial procedures, as determined by the secretary of state, since the applicant’s last application date; and
 - (2) a true and complete copy of a surety bond pursuant to Subsection D of Section 14-14A-20 NMSA 1978. The surety bond shall contain the applicant’s notarized signature listed as the principal or sole applicant;
 - (3) executed oath of office using the prescribed form issued by the secretary of state pursuant to Subsection C of Section 14-14A-20 NMSA 1978 notarized by a notarial officer; and
 - (4) a non-refundable application fee of \$30.
- B. The secretary of state shall issue a notary public certificate of commission containing the

notary public's commission number and term expiration date to the applicant once the secretary of state determines:

- (1) that the applicant has met the qualifications to be commissioned as a notary public;
 - (2) that the name on the bond, on the application, and the signatures on those documents are the same; and
 - (3) the applicant has not previously had a notary public commission denied or revoked.
- C. Within 45 days of receiving the notary public commission and prior to the notary public performing his or her first notarial act, the notary public shall provide a copy of the applicant's official stamp to the secretary of state. A notary public will be deemed non-compliant with the act upon failure to provide this information. Failure to comply with this rule shall result in a referral to the State Ethics Commission.
- D. A notarial officer may apply and must receive approval before conducting remote online notarizations pursuant to 12.9.4.8 NMAC.
- E. The notary public is required to maintain the notary public's current name, contact information, and signature and official stamp on file with the secretary of state by submitting the form prescribed by the secretary of state within 30 days of the change of information. An amended certificate of commission will be issued upon notification of a name change and the notary public shall be required to obtain a new official stamp showing the updated information.
- [12.9.3.8 NMAC - N, 1/1/2022; A. 6/16/2023]

12.9.3.9 SUSPENSION OR REVOCATION OF A NOTARY PUBLIC COMMISSION:

- A. Upon the state ethics commission making a determination to deny, refuse to renew, revoke, suspend or impose a condition on a notary public pursuant to Subsection A of Section 14-14A-22 NMSA 1978, the state ethics commission shall notify the secretary of state in writing of the recommended action and reason for the determination.
- B. Upon receipt of notification from the state ethics commission that a notary public's commission has been suspended or revoked, the secretary of state shall update the electronic database of notaries public maintained pursuant to Section 14-14A-23 NMSA 1978.
- [12.9.3.9 NMAC - N, 1/1/2022]

12.9.3.10 EDUCATION AND EXAMINATION PROCEDURES:

- A. The secretary of state shall provide regular training and administration of an examination pursuant to Subsection B of Section 14-14A-21 NMSA 1978. Training may be provided by the secretary of state or through any third-party training vendor approved by the secretary of state.
- B. The fee for providing the training and examination is not included in the application fee collected pursuant to 12.9.3.8 NMAC.
- C. A notary public applicant and an automatic notarial officer shall provide proof of passing the required examination with a score of eighty percent or higher.
- D. Examination records maintained by third-party vendors, including the applicant's score, shall be retained for five years.
- [12.9.3.10 NMAC - N, 1/1/2022; A. 6/16/2023]

12.9.3.11 TECHNOLOGY FEES:

- A. A notary public or notarial officer may charge the maximum fees pursuant to Section 14-14A-28 NMSA 1978 with a fee not to exceed \$25.00 for each remote notarial act.
- B. For an in-person notarization of an electronic record, the notary public shall follow the fee structure established pursuant to Subsection C of Section 14-14A-28 NMSA 1978.
- [12.9.3.11 NMAC - N, 1/1/2022]

12.9.3.12 NOTARIAL PROCEDURES:

- A.** Notarial procedures for tangible records. The individual and the notarial officer shall meet physically face-to-face, and the notarial officer shall determine whether the requirements of Section 14-14A-4 NMSA 1978 have been met and shall verify the identity of the individual appearing before the officer in accordance with Section 14-14A-6 NMSA 1978. The notarial officer shall:
- (1) ensure the individual uses permanent ink in a photo-reproducible color to sign the record;
 - (2) ensure the notarial certificate meets the requirements of Subsection C of Section 14-14A-14 NMSA 1978, sign the certificate using permanent ink and affix the official stamp to the record; and,
 - (3) if the notarial officer is a notary public or otherwise required to keep a journal pursuant to Subsection E of Section 14-14A-18 NMSA 1978, chronicle or note the notarization in a paper or electronic journal in accordance with Section 14-14A-18 NMSA 1978.
- B.** Notarial procedures for in-person electronic records. The individual and the notarial officer shall meet physically face-to-face, and the notarial officer shall determine whether the requirements of Section 14-14A-4 NMSA 1978 have been met and shall verify the identity of the individual appearing before the officer in accordance with Section 14-14A-6 NMSA 1978. Upon making the required determination and identity verification:
- (1) the individual shall sign the electronic record using an electronic signature;
 - (2) the notarial officer shall ensure the notarial certificate meets the requirements of Subsection C of Section 14-14A-14 NMSA 1978;
 - (3) the notarial officer shall sign the notarial certificate with an electronic signature and affix the electronic seal, provided the electronic signature and seal have been previously provided to the secretary of state; and
 - (4) if the notarial officer is a notary public, or otherwise required to keep a journal pursuant to Subsection E of Section 14-14A-18 NMSA 1978, the notarial officer shall chronicle or note the notarization in a paper or electronic journal in accordance with Section 14-14A-18 NMSA 1978.
- C.** For an acknowledgment as defined in Subsection A of Section 14-14A-2 NMSA 1978, the individual or representative shall declare before a notarial officer that the individual is signing the record for the purpose stated in the record.
- D.** For a verification on oath or affirmation as defined in Subsection O of Section 14-14A-2 NMSA 1978, the individual shall declare before a notarial officer that the statement in the record is true.
- E.** When certifying or attesting a copy of a record, the notarial officer:
- (1) may make or supervise the copy of a record as a means of assuring the accuracy of the copy; or
 - (2) review the original record along with the copy so that the notarial officer can make a comparison as required by Subsection D of Section 14-14A-4 NMSA 1978.
- F.** For witnessing or attesting a signature, the notarial officer shall certify that the individual has the identity claimed and that the signature is that of the individual signing. Witnessing or attesting a signature differs from an acknowledgment in that the record must be signed in the physical presence of the notarial officer and there is no declaration that the record is signed for the purposes stated in the record and differs from a verification of oath and affirmation in that the individual is not declaring that a statement in the record is true.

[12.9.3.12 NMAC - N, 1/1/2022]

12.9.3.13 PREVENTING FRAUD OR MISTAKES:

- A.** A notarial officer shall only notarize a record when the signer is either physically face to face

or face to face online with the notarial officer.

- B.** A notarial officer shall determine the signer's identity from personal knowledge or satisfactory evidence pursuant to Section 14-14A-6 NMSA 1978 before performing a notarial act. When obtaining satisfactory evidence of the identity of the signer pursuant to Paragraph (1) of Subsection B of Section 14-14A-6 NMSA 1978, the notarial officer shall review the name, birth date, photo, or other available data elements on an identification document of the signer to make a determination regarding to the identity of the signer.
- C.** A notarial officer shall only enter the actual date of a notarial act (not an earlier or later date) on a record.
- D.** A notarial officer shall not share or publish his or her official stamp.
[12.9.3.13 NMAC - N, 1/1/2022]

12.9.3.14 OFFICIAL STAMP:

- A.** The official stamp of a commissioned notary public shall conform to the requirements pursuant to Section 14-14A-16 NMSA 1978 and shall also include the words "Notary Public" and "State of New Mexico."
- B.** The official stamp of a notarial officer that is not a commissioned notary public shall conform to the requirements pursuant to Section 14-14A-16 NMSA 1978 and shall also include the words "Notarial Officer" and "State of New Mexico."
- C.** The official stamp shall conform to the following requirements:
 - (1)** be 10-point type;
 - (2)** if the stamp is affixed to a tangible record, it shall be applied in permanent ink and shall be capable of being photocopied; and
 - (3)** include the notarial officer's official notary seal, as defined in Subsection L of 14-14A-2 NMSA 1978.
- D.** If the notarial officer is authorized to perform remote online notarizations, the official stamp shall also conform to the requirements set forth in Section 12.9.4.13 NMAC.
[12.9.3.14 NMAC - N, 1/1/2022; A 6/16/2023]

12.9.3.15 JOURNAL:

- A.** A notary public shall maintain a journal to sequentially chronicle all notarial acts pursuant to Section 14-14A-18 NMSA 1978.
- B.** A current or former notary public shall store the journal in a secure location under the notary public's sole control unless a current or former notary public transmits the journal to the secretary of state or state records officer.
- C.** If a current or former notary public transmits the journal to the state records officer, the notary public shall notify the secretary of state by submitting the prescribed form within 30 days.
- D.** A former employer may retain a copy of a notary public's journal, but it shall be clearly marked as a copy.
- E.** Electronic journal.
 - (1)** If the journal is maintained in an electronic format, it shall meet all the requirements of a tangible journal and shall be:
 - (a)** securely stored;
 - (b)** recoverable in the event of a software malfunction or computer crash; and
 - (c)** tamper evident.
 - (2)** Entries from the electronic journal must be available to the public or the state ethics commission in a PDF format.
 - (3)** If an electronic journal is turned over to the secretary of state or the state records officer, it shall be transferred in PDF format.

F. If a notary public's journal is lost or stolen, the notary public shall promptly notify the secretary of state utilizing a form prescribed by the secretary of state.

[12.9.3.15 NMAC - N, 1/1/2022A. & Rn., 6/16/2023]

12.9.3.16 RULONA:

A. A notarial officer who is not a notary public is not required to follow the application process prescribed by this rule except that the automatic notarial officer shall provide proof of having successfully completed an approved training course and passing the required examination prior to the notarial officer's initial notarial act. If a notarial officer desires to be authorized to conduct remote online notarizations, the notarial officer shall follow the application procedures pursuant to 12.9.4.8 NMAC.

B. A new automatic notarial officer who is not a notary public shall upload a copy of the notarial officer's official stamp to the secretary of state prior to the notarial officer's initial notarial act.

C. Within one year of the effective date of this section of this rule, an existing automatic notarial officer shall upload a copy of the notarial officer's official stamp to the secretary of state and shall provide proof of having successfully completed an approved training course and passing the required examination.

[12.9.3.16 NMAC - N, 1/1/2022; A. 6/16/2023]

History of 12.9.3 NMAC:

12.9.2 NMAC, Performing Electronic Notarial Acts, filed 5/30/2008, was repealed and replaced with new rules 12.9.3 NMAC – Notarial Procedures, and 12.9.4 NMAC – Remote Online Notarizations, effective 1/1/2022.

PART 4. REMOTE ONLINE NOTARIZATION STANDARDS

12.9.4.1 ISSUING AGENCY: Office of the Secretary of State

[12.9.4.1 [12.9.4.1 NMAC N, 1/1/2022]

12.9.4.2 SCOPE: Notaries public and other notarial officers authorized by the secretary of state to perform remote online notarizations in the state of New Mexico as well as remote notarization system providers.

[12.9.4.2 NMAC - N, 1/1/2022]

12.9.4.3 STATUTORY AUTHORITY: In accordance with Subsection H of Section 14-14A-5 and Section 14-14A-26 NMSA 1978, the secretary of state has the authority to promulgate rules for notarial officers to perform notarial acts for remotely located individuals using communication technology.

[12.9.4.3 NMAC - N, 1/1/2022]

12.9.4.4 DURATION: Permanent.

[12.9.4.4 NMAC - N, 1/1/2022]

12.9.4.5 EFFECTIVE DATE: January 1, 2022, unless a later date is cited at the end of a section.

[12.9.4.5 NMAC - N, 1/1/2022]

12.9.4.6 OBJECTIVE: The objective of the rule is to establish uniform standards of performance and governance of notarial acts for remotely located individuals by use of

communication technology.
[12.9.4.6 NMAC - N, 1/1/2022]

12.9.4.7 DEFINITIONS:

- A. “Certified tangible copy of an electronic record”** means an original tangible copy, as defined pursuant to Subsection F of 2.9.3.7 NMAC, of an electronic record that has been certified by a notarial officer as an accurate copy of the electronic record.
- B. “Credential analysis”** means an identity assessment used by a notarial officer to determine if an individual’s government-issued identification card is genuine. The assessment requires the use of technology to confirm the security features on an identification card and confirm the identification card is not fraudulent.
- C. “Electronic record”** means see Subsection C of 12.9.3.7 NMAC.
- D. “Identity credential”** means a government issued identification card pursuant to the requirements of Paragraph (1) of Subsection B of Section 14-14A-6 NMSA 1978.
- E. “Knowledge-based authentication”** means an identity assessment used by a notarial officer to verify the identity of an individual that is based on questions formulated from public or private data sources for which the individual has not provided prior answers.
- F. “Remote online notarization (RON)”** means see Subsection F of 12.9.3.7 NMAC.
- G. “Remote online notarization system”** means a set of applications, programs, hardware, or software designed to enable a notarial officer to perform notarial acts on electronic records involving the use of communication technology that satisfies the requirements outlined in this rule.
- H. “Remote online notarization system provider”** means a business entity that provides a remote online notarization system that has been approved by the secretary of state.

[12.9.4.7 NMAC - N, 1/1/2022]

12.9.4.8 REMOTE ONLINE NOTARIZATION APPLICATION REQUIREMENTS:

- A.** A notarial officer must submit an application to perform remote online notarizations (RON) on a form prescribed by the secretary of state and receive approval from the secretary of state before the notarial officer may remotely notarize a record. The notarial officer shall provide:
 - (1)** the name of all remote online notarization systems approved for use by the secretary of state the notarial officer intends to use;
 - (2)** a copy of any necessary instructions or techniques supplied by a remote online notarization system provider that allow the notarial officer’s signature and official stamp to be read and authenticated;
 - (3)** an explanation of the methods and technology by which the notarial officer will maintain and store the required journal, if applicable, and audio video recording;
 - (4)** proof of having successfully completed an approved training course and passing the required examination. If the secretary of state has a record that a commissioned notary public applying for renewal has previously passed the required examination, a commissioned notary public applying for renewal is not required to re-take the training and examination unless:
 - (a)** the applicant’s commission has expired for more than one year; or
 - (b)** there have been substantial changes to the statutes or rules pertaining to RONs, as determined by the secretary of state, since the effective date of applicant’s last application date; and
 - (5)** a non-refundable application fee of \$75.
- B.** An individual applying for authorization to perform RONs shall already be a current notarial officer pursuant to Section 14-14A-9 or Section 14-14A-20 NMSA 1978 or an individual

may simultaneously apply to be commissioned as a notary public with authorization to perform RONS.

- C. The secretary of state shall issue an approval authorizing the notarial officer to perform RONS when the secretary of state determines that the applicant has met the qualifications. Within 45 days of receiving authorization to perform RONS from the secretary of state, the notarial officer shall provide a copy of the applicant's official electronic stamp to the secretary of state along with the form prescribed by the secretary of state. The applicant's official electronic stamp must be received by the secretary of state prior to the notarial officer performing a RON. Failure to provide this information shall result in a referral to the State Ethics Commission.
- D. The expiration date for a notary public authorized to perform RONS shall be the commission expiration date established when an individual is commissioned as a notary public pursuant to Section 14-14A-20 NMSA 1978.
- E. If at any time a notarial officer authorized to perform RONS adopts a new remote online notarization system provider, the notarial officer must notify the secretary of state of the new system and provider on a form prescribed by the secretary of state.
- F. The renewal of the commission of a notary public who has previously been authorized to perform RONS under this section constitutes renewal of the notary public's qualification without the necessity to submit another application under this section, and the renewal fees shall be the same as that to renew a notary public commission unless the applicant's commission has been expired for more than one year. If an applicant's commission has been expired for more than one year, the applicant must complete the application for authorization to perform RONS and pay the required application fee as prescribed by this section.

[12.9.4.8 NMAC - N, 1/1/2022]

12.9.4.9 EDUCATION AND EXAMINATION PROCEDURES:

- A. The secretary of state shall provide a remote notarization course and examination. Training may be administered in house or through any third-party training vendor approved by the secretary of state.
- B. The fee for administering the training and examination is not included in the application fee collected pursuant to 12.9.4.8 NMAC.
- C. An applicant must provide proof of passing the required examination with a score of eighty percent or higher.
- D. Examination records maintained by any third-party vendor, including the applicant's score, shall be retained for five years.

[12.9.4.9 NMAC - N, 1/1/2022]

12.9.4.10 PERFORMANCE OF REMOTE ON LINE NOTARIAL ACTS:

- A. A notarial officer authorized to perform RONS must be physically located in New Mexico at the time the notarial act takes place.
- B. A notarial officer authorized to perform RONS may perform authorized notarial acts relating to electronic records only if the individual personally appears before the notarial officer at the time of the notarization by means of communication technology.
- C. A notarial officer authorized to perform RONS may make a reasonable determination regarding whether an individual is under duress or being coerced to complete a transaction. The notarial officer may:
 - (1) observe the individual's behavior for signs of being nervous, fearful, hesitant, distracted, distraught or uncomfortable;
 - (2) observe the surroundings and watch the behavior of others in the room who seem to make

- the individual uncomfortable;
- (3) request to speak privately with the individual; and
- (4) ask direct questions such as “are you signing this record of your own free will?”
- D. A notarial officer may refuse to perform a notarial act if the notarial officer has reasonable grounds to believe that the individual is acting under coercion or undue influence.
- E. A notarial officer authorized to perform RONS shall verify the identity of the individual at the start of an online notarial session by means of communication technology. Identity shall be verified by the notarial officer pursuant to Section 14-14A-6 NMSA 1978 or 12.9.4.11 NMAC.
- F. A notarial officer shall not base identification merely on familiarity with an individual’s signature or an electronic verification process that authenticates the individual’s electronic signature without the individual personally before the notarial officer by two-way audio and video communication technology.
- G. A notarial officer authorized to perform RONS shall refuse to complete the notarial act if the notarial officer:
 - (1) is unable to verify the identity of the individual in compliance with these rules:
 - (2) becomes aware that communication technology is not secure;
 - (3) determines the signature of the individual cannot be attached to the electronic record; or
 - (4) cannot attach the notarial officer’s electronic stamp to the electronic record using technology that renders any subsequent change or modification to the record evident.
- H. The notarial officer shall complete and affix or attach the officer’s signature and official stamp to the electronic notarial certificate. The electronic notarial certificate shall meet the requirements of Subsection A of Section 14-14A-14 NMSA 1978.

[12.9.4.10 NMAC - N, 1/1/2022]

12.9.4.11 IDENTITY PROOFING: If a notarial officer does not personally know the identity of a remotely located individual pursuant to Subsection A of Section 14-14A-6 NMSA 1978, the notarial officer must reasonably verify the individual’s identity through two different types of identity proofing procedures as provided in this section. The procedure shall analyze the individual's identity credential against trusted third-person data sources, bind the individual's identity to the individual following successful knowledge-based authentication, and permit the notarial officer to visually compare the identity credential and the individual. The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements:

- A. Credential Analysis. The analysis of an identity credential must use public or private data sources to confirm the genuineness of the identity credential presented by a remotely located individual and, at a minimum:
 - (1) use automated software processes to aid the notarial officer in verifying the identity of each remotely located individual;
 - (2) require the identity credential to pass an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;
 - (3) use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and
 - (4) enable the notarial officer to visually compare for consistency, the information and photograph on the identity credential and the remotely located individual appearing

before the notarial officer in real time through communication technology.

- B. Knowledge-based authentication.** A knowledge-based authentication is successful if it meets the following requirements:
- (1) the remotely located individual must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;
 - (2) each question must have a minimum of five possible answer choices;
 - (3) at least eighty percent of the questions must be answered correctly;
 - (4) all questions must be answered within two minutes;
 - (5) if the remotely located individual fails after two attempts, the individual may not retake the quiz within 24 hours;
 - (6) during a retake of the quiz, a minimum of forty percent of the prior questions must be replaced; and
 - (7) the notarial officer must not be able to see or record the questions or answers.
- C. Credible Witness.** A notarial officer has satisfactory evidence of the identity of a remotely located individual if the notarial officer has personal knowledge and satisfactory evidence of the identity of the individual by oath or affirmation of a credible witness appearing before the notarial officer as provided in Paragraph (2) of Subsection B of Section 14-14A-6 NMSA 1978. A credible witness may be remotely located if the notarial officer, credible witness, and remotely located individual can communicate simultaneously by using communication technology.

[12.9.4.11 NMAC - N, 1/1/2022]

12.9.4.12 COMMUNICATION TECHNOLOGY REQUIREMENTS:

- A. Communication technology shall provide:**
- (1) for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the notarial officer and the remotely located individual to see and speak with each other;
 - (2) a means for the notarial officer to reasonably confirm that a record before the notarial officer is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature; and
 - (3) accessibility accommodations to facilitate communication with a remotely located individual who has a vision, hearing, or speech impairment.
- B. Communication technology shall provide reasonable security measures to prevent unauthorized access to the live transmission of the audiovisual feeds, the methods used to perform the identity proofing process, and the electronic record that is the subject of the notarial act.**
- C. A notarial officer authorized to perform RONs shall stop and restart the remote online notarization process from the beginning if the:**
- (1) remotely located individual or the remote notarial officer must exit the remote online notarization system before completion of the notarial act;
 - (2) audio or visual feed is interrupted or terminated; or
 - (3) resolution or quality of the transmission becomes such that the remote notarial officer believes the process has been compromised and cannot be completed.
- D. A notarial officer performing a RON shall verify that each remote online notarization system provider has an active status with the secretary of state before using that provider's remote online notarization system to perform a remote notarization. This duty extends to each remote online notarization.**

[12.9.4.12 NMAC - N, 1/1/2022]

12.9.4.13 ELECTRONIC SIGNATURE AND STAMP:

- A. A notarial officer authorized to perform RONs shall use the same electronic signature and**

electronic official stamp for all electronic notarial acts. A copy of the official stamp shall be provided to the secretary of state within 45 days of being authorized by the secretary of state to perform RONs and prior to the first RON being performed.

- B.** A notarial officer shall select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notarial officer to use a technology that the notarial officer has not selected. The tamper-evident technology must be capable of:
 - (1)** affixing or attaching the notarial officer's electronic signature to the electronic record in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident; and
 - (2)** utilizing a valid digital certificate issued by a third-party provider that uses public key infrastructure (PKI) technology that is X.509 compliant or higher. A notarial officer shall not perform a notarial act with respect to an electronic record if the digital certificate:
 - (a)** has expired;
 - (b)** has been revoked or terminated by the issuing or registering authority;
 - (c)** is invalid; or
 - (d)** is incapable of authentication.
- C.** The remote notarial officer's electronic signature and official stamp must be retained under the notarial officer's sole control and access. A notarial officer's employer must not permit the use of a notarial officer's electronic signature or official stamp by anyone except the notarial officer.

[12.9.4.13 NMAC - N, 1/1/2022]

12.9.4.14 AUDIOVISUAL RECORD RETENTION AND REPOSITORIES:

- A.** A notarial officer authorized to perform RONs shall retain an audiovisual recording required under Paragraph (4) of Subsection C of Section 14-14A-5 NMSA 1978, on a computer, storage device, or online storage that protects the audiovisual recording against unauthorized access by password or cryptographic process. The recording must be created in an open file format and not include images of any record in which a remotely located individual made a statement or on which the remotely located individual executed a signature.
- B.** On the death or adjudication of incompetency of a current or former notarial officer, the notarial officer's personal representative or guardian or any other person knowingly in possession of an audiovisual recording shall:
 - (1)** comply with the retention requirements of this section;
 - (2)** transmit the recording to one or more repositories pursuant to Subsection C below; or
 - (3)** transmit the recording on a data storage device to the secretary of state on an open file format that can be accessed and read by the secretary of state.
- C.** A notarial officer, a guardian, conservator, or agent of a notarial officer, or a personal representative of a deceased notarial officer may, by written contract, engage a third person to act as a secure repository to provide the storage required by this Subsection. The contract shall:
 - (1)** enable the notarial officer, the guardian, conservator, or agent of the notarial officer, or the personal representative of the deceased notarial officer to comply with the retention requirements of this section even if the contract is terminated;
 - (2)** enable the notarial officer to keep all audiovisual recordings under the sole control of the notarial officer and provide copies to any requesting person; or
 - (3)** provide that the information will be securely transferred to the notarial officer, the guardian, conservator, or agent of the notarial officer, or the personal representative of the deceased notarial officer if the contract is terminated.

[12.9.4.14 NMAC - N, 1/1/2022]

12.9.4.15 NOTARIAL JOURNAL TO RECORD REMOTE ONLINE NOTARIZATIONS:

- A.** A notarial officer authorized to perform RONs shall adhere to the rule on journals pursuant to 12.9.3.16 NMAC.
- B.** In addition to the journal information required by Subsection C of Section 14-14A-18 NMSA 1978, the notarial officer must record the name of the remote online notarization system provider used for each remote online notarization.

[12.9.4.15 NMAC - N, 1/1/2022]

12.9.4.16 CERTIFICATE OF REMOTE NOTARIAL ACT:

- A.** An electronic certificate of a notarial act for a remote online notarization must clearly state that the remotely located individual signing the record appeared using communication technology. This requirement is met if the statement is substantially as follows: “This notarial act involved the use of communication technology.”
- B.** A certified tangible copy of an electronic record shall be considered an original record. A certified tangible copy of an electronic record must include a notarial certificate substantially in the short form provided in Subsection E of Section 14-14A-15 NMSA 1978.

[12.9.4.16 NMAC - N, 1/1/2022]

12.9.4.17 STANDARDS FOR REMOTE ONLINE NOTARIZATION SYSTEM PROVIDERS:

- A. Application.** A provider must submit an application on a form prescribed by the secretary of state before the provider can provide its remote online notarization system to a notarial officer in New Mexico. Upon being approved as a provider, the secretary of state shall list the provider as active on the website of the secretary of state.
- B. Criteria for approval.** To be approved and maintain an active status, a remote online notarization system provider shall:
 - (1)** provide the ability for an individual receiving notarization services to print tangible copies of all records notarized for that individual executed on the system;
 - (2)** ensure that access to a notarial officer’s electronic signature and official stamp is limited solely to the notarial officer and protected by the use of a password or other secure means of authentication;
 - (3)** communication technology provided by the remote notarization system provider shall comply with the requirements of Section 12.9.4.12 NMAC;
 - (4)** provide for the credential analysis and knowledge-based authentication assessment requirements provided for in Section 12.9.4.11 NMAC;
 - (5)** provide, or allow a notarial officer to provide, a public key certificate to satisfy the requirement of Paragraph 2 of Subsection B of Section 12.9.4.13 NMAC; and
 - (6)** provide a storage system that complies with 12.9.4.14 NMAC.
- C.** The secretary of state may request that remote online notarization system providers submit an application on an annual basis for a remote online notarization system provider to maintain active status.
- D. Notifications.**
 - (1)** If a remote online notarization system provider becomes aware of a security breach involving its data, the provider must comply with the requirements of the Data Breach Notification Act 57-12C-1 to 57-12C-12 NMSA 1978 and submit notice to the secretary of state.
 - (2)** No later than 30 days before making any substantial changes or feature enhancements to the remote online notarization system that was previously approved by the secretary of state, a provider must request approval from the secretary of state and notify the New Mexico notarial officers using its system.

- (3) No later than 30 days after any changes to the provider's information on file with the secretary of state, the provider must notify and update the information on a form prescribed by the secretary of state.
- E. Complaints. A person may file a complaint with the secretary of state against a remote online notarization system provider. The complaint must allege a specific violation of New Mexico's Revised Uniform Law on Notarial Acts or these rules.
- F. Grounds for termination of active status. The secretary of state may terminate approval of a provider for any of the following reasons:
 - (1) a violation of the Revised Uniform Law on Notarial Act or these rules that impacts the ability of the remote online notarization provider from providing a compliant remote online notarization system;
 - (2) making representations that the secretary of state endorses, recommends, or mandates use of any of the provider's products, goods, or services;
 - (3) if the provider sustains a security breach pursuant to Subsection D of Section 57-12C-2 NMSA 1978; and (4) failure to respond within ten business days to the secretary of state's request for information or otherwise cooperate with an investigation, including providing requested information.

[12.9.4.17 NMAC - N, 1/1/2022]

12.9.4.18 NON-COMMISSIONED NOTARIAL OFFICERS:

- A. If a notarial officer who is not commissioned as a notary public desires to be authorized to conduct RONS, the notarial officer shall follow the authorization application procedures pursuant to 12.9.4.8 NMAC.
- B. Upon approval by the secretary of state to perform RONS, the notarial officer shall comply with this rule and all statutes applicable to a notary public performing RONS.

[12.9.4.18 NMAC - N, 1/1/2022]

12.9.4.19 NOTARY PUBLIC COMMISSION IN EFFECT: A notary public with an appointment or renewal date prior to the effective date of the Revised Uniform Law on Notarial Acts who desires to be authorized to perform RONS shall follow the application process prescribed by Subsection B of 12.9.4.8 NMAC to apply to become authorized to perform RONS.

[12.9.4.19 NMAC - N, 1/1/2022]

History of 12.9.4 NMAC:

12.9.2 NMAC, Performing Electronic Notarial Acts, filed 5/30/2008, was repealed and replaced with new rules 12.9.3 NMAC – Notarial Procedures, and 12.9.4 NMAC – Remote Online Notarizations, effective 1/1/2022.