DRAFT LEGISLATION
FOR A
UNIFORM NOTARY ACT

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The opinions expressed in the Commentary to the Draft Legislation For A Uniform Notary Act do not necessarily represent those of the Advisory Committee or any individual, organization, office or agency.
PREFACE
A Uniform Notary Law

Because the United States is today a highly integrated and interdependent society, commercial and cultural distinctions which once existed between the states have, to a large extent, disappeared. Thus, there is a great need to modernize and make uniform the various state notary public statutes because:

1. Acts of notaries public are likely to have interstate implications, and,

2. Original justifications for diverse notary public laws have become anachronisms in today’s society.

A Uniform Notary Law, drafted to meet the commercial and societal needs of the Twentieth Century, would bring all state notary public statutes into conformity.

All fifty States and the District of Columbia have enacted statutes concerning notaries public. Many of these laws were passed during the late Eighteenth and Nineteenth Centuries and, to a large extent (despite subsequent modifications), still reflect the commercial and cultural needs of that era. Additionally, many notary statutes also reflect distinctions among the states. For example, Louisiana, with its predominantly French origins, accords much greater status and powers to notaries public than those states such as Connecticut which followed the English common law. Various state notary statutes differ widely in scope; some states have comprehensive legislation regulating notaries public, others have laws which establish only minimal guidelines concerning notaries public. The latter, for example, often omit significant provisions with respect to procedural duties of notaries public in performing their official acts, as well as rules governing the liabilities of notaries public and their removal from office.

This proposed Uniform Notary Act is designed to meet the commercial and societal needs of the Twentieth Century by bringing all state notary public statutes into conformity, and, through its detailed provisions, to clarify and define the role of the notary public in modern society.

The Uniform Notary Act has been drafted as a comprehensive piece

The language of the statute is uncomplicated and easily comprehended by laymen who, to a great extent, constitute the ranks of notaries public in this country.
To be known as the Uniform Notary Act, relating to the appointment, qualifications, powers, duties, liabilities and removal of notaries public; to make uniform the Law with respect thereto; and to repeal inconsistent legislation.

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This article contains such general provisions as a short title for the Act; certain guidelines for judicial construction, including an instruction reasonably to avoid the implicit alteration or repeal of any segment of the Act; and a standard severability clause. Article I specifies that the Act has prospective effect only, but this includes renewals of existing commissions (though the Act does not in itself evoke any existing commission). The term “notary public” is defined to indicate that only an individual—not a corporation, partnership or other legal entity—can become a notary public.

The District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States may be substituted for the word “state” throughout the Act where applicable.

Article I

Part I

§ 1-101 Short Title
This Act shall be known and may be cited as the Uniform Notary Act.

§ 1-102 Purposes and Rules of Construction
(a) This Act shall be construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this Act are:

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

(2) to make uniform notary laws among the states enacting it;

(3) to promote, serve, and protect the public interest.

(c) In this Act, unless the context otherwise requires,
(1) words in the singular number include the plural, and
words in the plural number include the singular;
(2) words of the masculine gender include the feminine
and the neuter;
(3) words of the neuter gender may refer to any gender
when the sense so indicates.
§ 1-103  Prospective Effect of Act
This Act applies prospectively. Nothing in this Act shall be
construed to revoke any notary public commission existing on the
effective date of this Act. All renewals of notarial commissions
shall be obtained in accordance with this Act.
§ 1-104  Construction Against Implicit Repeal
This Act is intended to provide comprehensive and unified
coverage of the subject matter. Therefore, no part of it shall be
construed to be impliedly repealed or amended by subsequent
legislation if that construction can be avoided.
§ 1-105  Notary Public and Notarization Defined
(a) The terms “notary public” or “notary” are used inter­
changeably to mean any individual appointed and com­
missioned to perform notarial acts.
(b) “Notarization” means the performance of a notarial act.
§ 1-106  Severability
If any provision of this Act or the application thereof to any
person or circumstance is held invalid, the invalidity does not
affect other provisions or applications of the Act which can be
given effect without the invalid provision or application, and to
this end the provisions of this Act are severable.
§ 1-107  Repeal
The following laws and parts of laws are hereby repealed:
(1) ________________________________
(2) ________________________________
§ 1-108  Time of Taking Effect
This Act shall take effect __________________

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Commentary — Article II

The words "appointing state official" appear throughout the Act. This official is a state officer because the notary is commissioned to act anywhere in the state. The appointing official is commonly the Secretary of State.

The appointing official has no discretion to grant or deny an application for appointment—the applicant is automatically commissioned, provided only that the application (including payment of fees, submission of bond, taking of affirmation, etc.) is complete and true. The appointing official may not, under §2-101(b), commission an applicant who has not, by omission or false representation, complied with all the requirements stated in Part II of this Article. Further, a notary who is commissioned despite his failure to comply with the requirements in Part II risks having his commission revoked under §7-101(1), which in turn disqualifies him from making application for appointment until 10 years have lapsed from the date of the revocation, according to §2-201(6). The 10 year rule in the last mentioned provision applies, of course, to a revocation for any reason listed in §7-101.

The powers and duties of a notary public as later enumerated are basic and elementary. However, a notary public must employ good judgment in the performance of all his notarial acts. Because judgment and competence are qualities that are difficult if not impossible to determine through general tests, this Act, through deliberate omission, advocates the elimination of notary public examinations.

Section 2-103 states that the appointing state official can designate other offices in the state that he might need for appointment of notaries public, record keeping purposes or to issue Certificates of Authority.

Section 2-201 states that the applicant need only be registered to vote in a state election in any of the United States, making it
possible for a person who is a registered voter in New York to become a notary public in California, providing that he obtains the signatures of three endorsers who are actually registered to vote in California and provided that the applicant maintains a business or residence office in California.

The applicant takes an affirmation that he has read and understood the notary law. This affirmation is taken, and an executed bond is submitted, in advance of the applicant’s appointment and commission by the appointing official. The intention is to avoid unnecessary red tape for the notary applicant and the appointing official, by having the applicant fulfill all requirements at one time—the time of application—and before the appointing official acts. As noted above, in most instances commission will be issued as a matter of course, so that seldom will the bond be submitted or the affirmation taken needlessly.

The Applicant’s Affirmation Section 2-204 was changed by amendment of January, 1976 to insure that the applicant cannot easily obtain an additional notarial commission under an assumed name.

Section 2-301 provides that the appointing state official may waive the fee for appointment if the notary is to perform acts for and in behalf of a government office only. However, a notary commissioned under this section is subject to the remaining provisions of the Act, e.g., he must file an application and keep a journal, and he may incur liability under Article VI.

Article II
Part I

§ 2-101 Appointment
(a) Upon application under this Act, the [appointing state official] may appoint and commission individual persons as notaries public in this State.
(b) The [appointing state official] may not appoint and commission as a notary public any person who submits an application containing substantial and material misstatement or omission of fact.

§ 2-102 Jurisdiction and Term

Notaries public may perform notarial acts in any part of this State for a term of four years, unless sooner removed.

§ 2-103 Local or District Offices

The [appointing state official] may designate such local or district offices within this State as he deems necessary for the public convenience to provide certificates of authority and keep records and specimen official signatures of notaries public whose business or residence offices are located near the designated local or district offices.

Part II

§ 2-201 Application

Every applicant for appointment and commission as a notary public shall complete an application to be filed with the [appointing state official] stating:

(1) that he is a citizen of the United States, or if he is not a citizen of the United States, that he is a citizen or national of a country that permits American citizens to become notaries public therein;

(2) if he is a citizen of the United States, that he is a qualified elector of a State at the time of his application;

(3) that he is able to read and write English;

(4) the address of his business or residence in this State;

(5) his social security number, if he has one; and

(6) that during the past [10] years his commission as a notary public has not been revoked.

§ 2-202 Qualifying Fee

Every applicant for appointment and commission as a notary
§ 2-203 Applicant's Endorsers
Every applicant for appointment and commission as a notary public shall submit to the [appointing state official] endorsements from three qualified electors of this State, in the following form:
I, __________ [name of endorser], a qualified elector of this State, believe, to the best of my knowledge, the applicant is a person of good moral character and integrity and capable of performing notarial acts.

[Endorser's signature, address and social security number]

§ 2-204 Applicant's Affirmation
*Every applicant for appointment and commission as a notary public shall take the following affirmation in the presence of a person qualified to administer an affirmation in this State:
I, __________ [name of applicant], solemnly affirm, under the penalty of perjury, that the answers to all questions in this application are true, complete and correct; that I have carefully read the notary law of this State; and, if appointed and commissioned as a notary public, I will perform faithfully, to the best of my ability, all notarial acts in accordance with the law.

[Signature of applicant]

Subscribed and affirmed before me this _____ day of _____, 19___. The undersigned notary public further certifies that ____________ [name of applicant], is known to me to be the applicant and elector who executed the within Application for Appointment and Commission as a Notary Public and acknowledged to me that [s]he executed the same for the purposes therein stated.

[Official signature and official seal of notary]

§ 2-205 Bond
Every applicant for appointment and commission as a notary public shall submit to the [appointing state official] an executed

*Revision January 1976
bond commencing at least 30 days after the date the applicant
mails his application to the [appointing state official] with a term
of [4] years, in the sum of [$5,000], with, as surety thereon, a
company qualified to write surety bonds in this State. The bond
shall be conditioned upon the faithful performance of all notarial
acts in accordance with this Act.

§ 2-206 Confidential Application
Information in the application for appointment, except for the
applicant's name and address, is confidential and may not be
disclosed by an official or employee having access to it to any
person other than the applicant, his authorized representative, or
an employee or officer of the Federal Government, the State
Government, or a local agency, acting in his official capacity. Such
information shall be used by the [appointing state official] for the
sole purpose of performing his duties under this Act.

§ 2-207 Specimen Official Signature
Every applicant for appointment and commission as a notary
public shall mail or deliver to the [appointing state official] a
handwritten specimen of his official signature which contains his
surname and at least the initial of his first name. The fee payable
to the [appointing state official] for recording a specimen of the
official signature is [$2].

Part III

§ 2-301 State and Local Government Employees
(a) The [appointing state official] may appoint and commis-
sion such number of state and local government employees
as notaries public, to act for and in behalf of their
respective state and local government offices, as he deems
proper. An appointee commissioned as a notary public
under this section may act only for and in behalf of the
government office or offices in which he is employed.
(b) An appointee under this section shall meet the requirements for qualification and appointment prescribed in Article II, Part II, except that the head of the state or local government office where the applicant is employed may execute a certificate that the application is made for the purposes of the office and in the public interest and submit it to the [appointing state official] together with the application for appointment as a notary public, in which case the fee for appointment specified in Section 2-202 is waived.

(c) Premium on the bond and costs of all other notary supplies for a commissioned state or local government employee shall be paid from funds available to the office in which he is employed.

(d) All fees received for notarial services by a notary public appointed for and in behalf of a state or local government office shall be remitted by him to the state or local government office in which he is employed.

(e) A notary public who is an employee of a state or local government office in this State must comply with all provisions of this Act.
By completing a notary’s certificate, the notary public makes it possible for the public-at-large to rely upon the authenticity of the person’s signature (not the notary’s signature) on the document, and be informed that the contents of the notarized document are intended to have force and effect.

When considering the effect of Section 3-702, it is necessary to keep in mind that the primary functions of the notary public are to identify the signer and witness his signature on the document. If there is a question of a disqualifying interest, it would be advisable to obtain the services of a disinterested notary public.

Evaluate the following situations:

1. The attorney-client relationship where the attorney, a notary public, is receiving a fee or retainer for drafting the document in addition to his fee, if any, as a notary public.

2. The officer of a corporation, stockholder of a corporation or bank officer who is a notary public, acting on behalf of his employer (the corporation or bank) who may be a party to the transaction directly or indirectly.

3. The real estate salesman-notary public who notarizes a deed in connection with the consummation of a sale of property where he will receive a commission in addition to his notarial fee.

4. The spouse-notary public who notarizes a document for his or her mate when the spouse-notary public could benefit directly, indirectly or not at all.

After having considered carefully the responsibilities of a notary public and the possible disqualifying interest that arises in an attorney-notary public and client relationship, it would seem that the average attorney will turn to his secretary (rather than himself) to be appointed as a notary public.
Article III

Part I

§ 3-101 Powers

(a) Every notary public is empowered to:

(1) take acknowledgments;

(2) administer oaths and affirmations;

(3) certify that a copy of a document is a true copy of another document; and

(4) perform any other act permitted by law.

§ 3-102 Limitations on Powers

(a) A notary public who has a disqualifying interest, as hereinafter defined, in a transaction may not legally perform any notarial act in connection with the transaction.

(b) For the purposes of this Act, a notary public has a disqualifying interest in a transaction in connection with which notarial services are requested if he:

(1) may receive directly, and as a proximate result of the notarization, any advantage, right, title, interest, cash, or property, exceeding in value the sum of any fee properly received in accordance with Section 4-401 of this Act, or

(2) is named, individually, as a party to the transaction.
This article contains a list of duties that the notary public is obliged to perform for the protection of the party who signed and for the public-at-large.

By keeping a journal of his notarial acts, the notary public makes it possible for anyone who questions the authenticity of the signature on the document at a later date to obtain evidence of such authenticity from the notary’s journal that could be used in a legal action. The journal serves (1) to discourage forgers and impostors by requiring a signature in the journal that can be compared with the signatures on the document and on any identification cards presented; (2) to provide the notary with evidence (the person’s signature in the journal) if it is later necessary for the notary to prove in court that the person actually appeared before him; and (3) to ensure that the person was properly identified by requiring the notary to enter evidence of identification in the journal. The pages of the journal must be numbered and irremovable so that entries cannot be made or pages inserted after the person whose signature has been notarized has left the notary’s office.

Evidence of identity required in Section 4-102(5) is necessary to avoid forgery and impersonation. Sufficient evidence of identification should be requested and the information recorded in the notary’s journal. Nothing has been included in this Act defining exactly what constitutes positive identification of an individual; this must ultimately be decided by a court of law. The notary public is obliged to perform his duties in such a way that this question will rarely need to be settled in a court of law. A person could present to the notary public, as evidence of his identity, one or more kinds of identification such as cards or passports. The notary is obligated to exercise the judgment of a prudent person of average intelligence to decide whether he should
accept this evidence as satisfactory and sufficient. If the person is personally known to the notary public as a friend, relative or associate, no identification cards would be necessary. The friend’s appearance, voice, mannerisms and other physical characteristics could provide the notary public with sufficient and satisfactory evidence of identity.

The person’s signature in the notary’s journal is, of course, always mandatory regardless of what methods or means are accepted as satisfactory and sufficient for identification purposes. By requiring in Section 4-103 that the person whose signature is being notarized sign in the notary’s journal, the forger and/or impostor must duplicate his forgery at the time of the notarial act on the document to be notarized and in the notary’s journal. At the time of the performance of the notarial act, the notary public must carefully compare the person’s signature on the identification card or cards with those subscribed in the notary’s presence on the document and in the notary’s journal.

The person whose signature is being notarized must appear before the notary at the time of the notarization to subscribe his name in the notary’s journal to avoid the notary’s fraudulent certificate occasioned when a party presenting a document for notarization attempts to circumvent the executing witness provisions (§ 5-103), e.g., by assuring the notary: “My spouse signed this deed at home, you can take my word for it.”

Good business practice dictates that the notary public and the persons whose signatures were notarized initial all corrections and each page of the agreement in a corner as well as affix their signatures in the proper place on the document and notary’s certificate.

Section 4-104 requires that a notary furnish facsimiles of his journal or other records upon receipt of a written court order, and only upon such order.

Section 4-202 introduces one of the most important innova-
tions in notary law offered in this Act: it provides for the mandatory use of a rubber stamp seal capable of photographic reproduction. This change both updates notary law to take account of modern copying technology, and mandates uniform nationwide use of a manifestation of notarization (rubber stamp seal) that all persons may henceforth recognize.

The introduction of the rubber stamp seal overrules the long-standing use of the seal embosser, which § 4-203 now makes optional. In earlier times, a "seal" was used in lieu of the personal signature, for many people did not know how to write their names. Today the seal embosser has an entirely different purpose and should be used in addition to the rubber stamp seal. The seal embosser makes indentations into paper that cannot be photographically reproduced, thus helping to positively identify the document that was intended to be notarized from an altered machine copy that does not have the indentations made by the notary's seal embosser. If a document contains more than one page, the seal embosser should be used in a corner of each page. If there is not enough space on the document for the notary's certificate, the notary's loose certificate should be stapled to the document and the seal embosser should be used to squeeze the document and the notary's certificate together.

It should also be noted that reproduction of the Great Seal of the State is not prescribed on the rubber stamp seal or seal embosser.

Although illegibility of required information will not in itself invalidate a notarization (§ 4-204), an omission could affect its validity.

Article IV
Part I

§ 4-101 Journal
Every notary public shall provide and keep a permanently-bound journal of his notarial acts containing numbered pages.

§ 4-102 Entries in Journal
Every notary public shall make a chronological list of all notarial acts in his journal. The information to be entered in the journal at the time of notarization shall include:

(1) the date and time of the notarial act;
(2) the type of notarial act performed;
(3) a description of the document, agreement, or proceeding;
(4) the printed name and address of each person whose signature is notarized;
(5) evidence of identity (including serial number of card and title of issuing authority, if available) exhibited to the notary public by the person whose signature is notarized; and
(6) other entries necessary by virtue of additional powers granted in Section 3-101.

§ 4-103 Signature in Journal
At the time of notarization, each person for whom a notarial act is to be performed shall sign his name in the notary’s journal.

§ 4-104 Facsimiles of Records; Duty to Furnish
(a) “Facsimile” means an exact copy preserving all the written or printed marks of the original.
(b) Every notary public, upon written court order, shall furnish facsimiles of entries made in his journal of notarial acts or any other papers or copies relating to his notarial acts, upon receipt of a fee of $1 per 8½” x 11” page or part of a page.

Part II

§ 4-201 Official Signature
At the time of notarization a notary public shall sign his official
signature on every notary certificate.

§ 4-202 Rubber Stamp Seal
Under or near his official signature on every notary certificate, a notary public shall rubber stamp clearly and legibly, so that it is capable of photographic reproduction:

1. the words “Official Seal”;
2. his name exactly as he writes his official signature;
3. the words “Notary Public”, “State of [name of state]”, and “My commission expires [commission expiration date]”; 
4. the address of his business or residence in this State; and
5. a serrated or milled edge border in a rectangular form not more than [one inch in width by two and one-half inches in length] surrounding the information.

§ 4-203 Seal Embosser
(a) Every notary public may provide, keep, and use a seal embosser engraved to show the words “Notary Seal”, his name, “Notary Public”, and “State of [name of state]”.
(b) The indentations made by the seal embosser shall not be applied on the notarial certificate or document to be notarized in a manner that will render illegible or incapable of photographic reproduction any of the printed marks or writing.

§ 4-204 Illegibility
The illegibility of any of the information required by Sections 4-201 through 4-203 does not affect the validity of a transaction.

Part III

§ 4-301 Change of Address
Every notary public shall mail or deliver notice to the [appointing state official] within 30 days after he changes the address of his business or residence in this State. The fee payable to the
1. [appointing state official] for recording notice of change of address is [$2].

§ 4-302 Change of Notary’s Name

Every notary public shall mail or deliver notice to the [appointing state official] within 30 days after he changes his name, including with the notification a specimen of his handwritten official signature which contains his surname and at least the initial of his first name. The fee payable to the [appointing state official] for recording notice of change of notary’s name is [$2].

§ 4-303 Lost Journal or Official Seal

Every notary public shall mail or deliver notice to the [appointing state official] within 30 days after he loses or misplaces his journal of notarial acts or Official Seal. The fee payable to the [appointing state official] for recording notice of a lost journal or seal is [$2].

Part IV

§ 4-401 Notice and Maximum Fees

Every notary public who is not licensed to practice law in this State shall post a notice in his business office, printed in 10 point or larger size type, in the English [and ______] language[s] containing the following statements:

(1) ______________ [print notary’s name], a notary public whose commission expires on ______________ [insert expiration date], is not licensed to practice law in this State and may not give legal advice.

(2) The maximum fee in this State for notarization of each signature and the proper recordation thereof in the journal of notarial acts is [$2] for each signature notarized.

(3) The maximum fee in this State for certification of a facsimile of a document, retaining a facsimile in the notary’s file, and the proper recordation thereof in the journal of notarial acts is [$2] for each 8½” x 11” page
retained in the notary’s file.

(4) The maximum fee in this State is [insert amount] for any other notarial act performed.

(5) A notary public who charges more than the maximum fees specified, or fails to post this notice, is guilty of official misconduct.

Part V

§ 4-501 Death

If a notary public dies during the term of his appointment, his heirs or personal representative, as soon as reasonably possible after the notary’s death, shall send by certified mail or deliver to the [appointing state official] the deceased notary’s journal of notarial acts and all other papers and copies relating to his notarial acts. His heirs or personal representative shall destroy forthwith his official seal.

§ 4-502 Resignation or Removal

If a notary public no longer desires to be a notary public or has ceased to have a business or residence address in this State, he shall send forthwith by certified mail or deliver to the [appointing state official] a letter of resignation, his journal of notarial acts, and all other papers and copies relating to his notarial acts. He shall destroy forthwith his official seal. His commission shall thereupon cease to be in effect.

§ 4-503 Revocation of Commission

Immediately after receiving notice from the [appointing state official] that his commission has been revoked, the person whose commission is revoked shall forthwith send by certified mail or deliver to the [appointing state official] his journal of notarial acts and all other papers and copies relating to his notarial acts. He shall destroy forthwith his official seal.

§ 4-504 Failure to be Reappointed
A notary public who is not reappointed to act as a notary public within thirty days after the expiration of his commission shall send forthwith by certified mail or deliver to the [appointing state official] his journal of notarial acts and all other papers and copies relating to his notarial acts. He shall destroy forthwith his official seal.

§ 4-505 Reappointment

(a) No person may be automatically reappointed as a notary public.

(b) Every notary public who is an applicant for reappointment as a notary public shall recomply with the provisions of Article II.
The forms prescribed must be substantially followed for the notarization to be recognized and effective in the adopting state. The form in § 5-101(6) is not exclusive when executed by a notary not commissioned by this Act, but is exemplary, showing a form that, when used by a person outside of the adopting state, is assured to be understood as a notarization. The adopting state cannot, of course, prescribe notarization procedures to be followed by a notarial officer acting in his official capacity and pursuant to an Act of Congress, nor can it deny effect to such a notarization. A U.S. Consul, U.S. military officer, or foreign notary using the form prescribed in § 5-101(6) should include both his title and the authority or law under which he is acting as a notary.

The form of the acknowledgment is prescribed in this Act to emphasize the importance of the statement that is signed by the notary public. If the document is important enough to be notarized, the notary public should be obliged to sign a proper certificate of acknowledgment that includes the words “known to me to be the person.” This clause states that the notary public had sufficient evidence that the person described in and who executed the document was the person who appeared before him. Further, each § 5-101 form states that the document being notarized has been signed for “purposes therein stated,” implying competency of the person signing the document and helping to clarify the meaning of the word “acknowledgment.” If a person appears to be incompetent, the notary public must use good judgment in determining whether he should perform his notarial act.

The Executing Witness Form in § 5-103 provides for an acknowledgment by a person who is unable to appear before a notary. This form prevents undue hardship caused by illness or inability to obtain a notary.
Section 5-104 prescribes a particular form and procedure for certified copies that is required today because of the invention of machine copiers and also because recorders of public documents now perform such duties. The form for the certification of a facsimile (see § 5-104(c)) of a document makes it clear that the notary must retain a facsimile of the certified facsimile.

Article V
Part I

§ 5-101 Acknowledgment Forms
Certificates of acknowledgment shall be substantially in the following form:

(1) By an Individual.
State of __________, County (and/or City) of ______. On this ______ day of ______ in the year ___, before me, __________ [name of notary], a Notary Public in and for said state, personally appeared __________ [name of individual], known to me to be the person who executed the within ______ [type of document] and acknowledged to me that ______ [he] executed the same for the purposes therein stated.

____________[official signature and official seal of notary.] 

(2) By a Partner.
State of __________, County (and/or City) of ______. On this ______ day of ______ in the year ___, before me, __________ [name of notary], a Notary Public in and for said state, personally appeared __________ [name of partner] of __________ [name of partnership], known to me to be the person who executed the within ______ [type of document]
in behalf of said partnership and acknowledged to me that he executed the same for the purposes therein stated.

[official signature and official seal of notary.]

(3) By a Corporate Officer.

State of __________, County (and/or City) of __________. On this ___ day of __________ in the year ____, before me, __________ [name of notary], a Notary Public in and for said state; personally appeared __________ [name of officer], __________ [title of person (president, vice president, etc.)], __________ [name of corporation], known to me to be the person who executed the within __________ [type of document] in behalf of said corporation and acknowledged to me that he executed the same for the purposes therein stated.

[official signature and official seal of notary.]

(4) By an Attorney in Fact for Principal or Surety.

State of __________, County (and/or City) of __________. On this ___ day of __________, in the year ____, before me __________ [name of notary], a Notary Public in and for said state, personally appeared __________ [name of attorney in fact], Attorney in Fact for __________ [name of principal or surety], known to me to be the person who executed the within __________ [type of document in behalf of said principal (or surety)], and acknowledged to me that he executed the same for the purposes therein stated.

[official signature and official seal of notary.]

(5) By a Public Officer, Deputy, Trustee, Administrator, Guardian or Executor.
State of ____________, County (and/or City) of _______ . On this ___ day of _____________ , in the year _____ , before me ______________ [name of notary], a Notary Public in and for said state, personally appeared ______________ [name of person], ______________ , [person's official title] known to me to be the person who executed the within _____________ [type of document] in behalf of said ______________ [public corporation, agency, political subdivision or estate] and acknowledged to me that he executed the same for the purposes therein stated.

____________ [official signature and official seal of notary.]

(6) By a United States Citizen Who is Outside of the United States.

____________ [description or location of place where acknowledgment is taken]

On this ___ day of _____________ , in the year ____, before me ______________ [name and title of person acting as a notary and refer to law or authority granting power to act as a notary], personally appeared _______ ____, [name of citizen] known to me to be the person who executed the within ______________ [type of document] and acknowledged to me that ____________ [he] executed the same for the purposes therein stated.

____________ [official signature and official seal of person acting as a notary and refer to law or authority granting power to act as a notary].

(7) By An Individual Who Cannot Write his Name.

State of ____________, County (and/or City) of _______ _______. On this ___ day of _____________ , in the year _____ , before me ______________ [name of notary], a Notary Public in and for said state, personally appeared
______[name of individual], known to me to be the person who, being unable to write his name, made his mark in my presence. I signed his name at his request and in his presence on the within___________ [type of document] and he acknowledged to me and the two witnesses who have signed and printed their names and addresses hereto, that he made his mark on the same for the purposes therein stated. __________[official signature and official seal of notary.] __________[signatures of two witnesses and their addresses.]

§ 5-102 Affirmation: Procedure, Form
(a) If the affirmation to be administered by the notary public is in writing and the person who took the affirmation has signed his name thereto, the notary public shall write or print under the text of the affirmation the following: “Subscribed and affirmed before me this _____ day of __________, 19__.”

(b) If the affirmation to be administered by the notary public is not in writing, the notary public shall address the affirmand substantially as follows: “You do solemnly affirm, under the penalty of perjury, that the testimony you shall give in the matter in issue, pending between ___________ and ___________, shall be the truth, the whole truth, and nothing but the truth.”

§ 5-103 Executing Witness Form
(a) “Executing witness” as used in this section means an individual who acts in the place of a notary
(b) An executing witness may not be related by blood or
marriage or have a disqualifying interest as defined in Section 3-102.

(c) The affidavit of executing witness for acknowledgment by an individual who does not appear before a notary shall be substantially in the following form:

I, [name of executing witness], do solemnly affirm under the penalty of perjury, that ______ [name of person who does not appear before a notary], personally known to me, has executed the within ______________________ [type of document] in my presence, and has acknowledged to me that ______ [he] executed the same for the purposes therein stated and requested that I sign my name on the within document as an executing witness.

[signature of executing witness.]

Subscribed and affirmed before me this _____ day of _____ 19___.

[official signature and official seal of notary.]

§ 5-104 Certified Facsimiles of Documents: Procedure, Form

(a) A notary public may certify a facsimile of a document if he receives a signed written request stating that:

(1) a certified copy or facsimile of the document cannot be obtained from the office of any recorder of public documents or custodian of documents in this State; and,

(2) the production of a facsimile, preparation of a copy, or certification of a copy of the document does not violate any state or federal law.

(b) Every notary public shall retain a facsimile of each document he has certified as a facsimile of another document, together with other papers or copies relating to his notarial acts.
(c) The certification of a facsimile shall be substantially in the following form:

State of ___________, County (and/or City) of _______.

I, _______________ [name of notary], a Notary Public in and for said state, do certify that on _______ [date] I carefully compared the attached facsimile of ____________ [type of document] and the facsimile I now hold in my possession. They are complete, full, true and exact facsimiles of the document they purport to reproduce.

_________________ [official signature and official seal of notary.]
Commentary – Article VI

A notary public who exercises a power (Article III) that he has not been authorized to perform is guilty of official misconduct. A notary public who fails to perform the duties prescribed in Article IV is also guilty of official misconduct.

Section 6-102 is necessary to avoid the claims that arise because the employer of a notary has allowed or required his employee-notary to perform notarial acts in violation of the law. There have been instances where the notary was told either to notarize the forgery or be fired.

Fines and imprisonment are optional in certain sections of Article VI, Part II. There are many cases where imprisonment is not necessary because the notary public is bonded and the offense is not serious enough to require incarceration. There are, however, cases of premeditated and intentional fraud or forgery for which the penalty of imprisonment might serve as a deterrent.

Article VI

Part I

§ 6-101 Liability of Notary and Sureties
A notary public and the surety or sureties on his bond are liable to the persons involved for all damages proximately caused by the notary’s official misconduct.

§ 6-102 Liability of Employer of Notary
The employer of a notary public is also liable to the persons involved for all damages proximately caused by the notary’s official misconduct, if:

(a) the notary public was acting within the scope of his employment at the time he engaged in the official misconduct; and

(b) the employer consented to the notary public’s official
misconduct.

§ 6-103    Proximate Cause
It is not essential to a recovery of damages that a notary's official misconduct be the only proximate cause of the damages.

Part II

§ 6-201    Official Misconduct Defined
The term "official misconduct" means the wrongful exercise of a power or the wrongful performance of a duty. The term "wrongful" as used in the definition of official misconduct means unauthorized, unlawful, abusive, negligent, reckless, or injurious.

§ 6-202    Official Misconduct
(a) A notary public who knowingly and willfully commits any official misconduct is guilty of a [class of offense] and punishable upon conviction by a fine not exceeding [$5,000] or by imprisonment for not more than [one year], or both.
(b) A notary public who recklessly or negligently commits any official misconduct is guilty of a [class of offense] and punishable upon conviction by a fine not exceeding [$1,000].

§ 6-203    Willful Impersonation
Any person who acts as, or otherwise willfully impersonates, a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a [class of offense] and punishable upon conviction by a fine not exceeding [$5,000] or by imprisonment for not more than [one year], or both.

§ 6-204    Wrongful Possession
Any person who unlawfully possesses a notary's journal, official seal or any papers or copies relating to notarial acts, is guilty of a [class of offense] and punishable upon conviction by a fine not exceeding [$1,000].
Commentary – Article VII

The revocation provisions are not mandatory. The state appointing official is vested with discretion, within the bounds of reason and fairness, to uphold the integrity of the Act and of the office of notary public by invoking the revocation sanction in appropriate circumstances. Repeated disregard of the Act’s procedural requirements, or conviction of criminal acts calling personal integrity into question, would be serious enough to warrant revocation of a commission. Minor variances with requirements or the belated submission of matter relevant to an application for appointment may not necessitate removal.

The notary must retain his qualification to vote in a state election and maintain a residence or business office within the state, or his commission may be revoked. These requirements are intended to avoid the possibility that a notary, in jail or convicted of a crime that involves loss of voting privilege, could not be removed from office.

Revocation of Commission, Section 7-101 was changed by amendment of January, 1976. Paragraph 5 was added to further clarify the notary’s responsibility to be impartial and unbiased. A notary should not use his title of notary public when signing his name to an endorsement of a product, service or person. The title of notary public should not be used to imply that a product is of good quality because the person who signed the endorsement was a notary public. Paragraph 6 was added because some notaries public advertise themselves as notaries public in a language other than English. In some foreign countries the title of notary public can be used only by those who have had many years of education and training. An entirely different problem arises when the notary’s employer advertises “Free notary service to customers only.” This practice is discriminatory. The notary’s employer has also been known to use a valid notarization in advertising intended
to make the buyer believe the offer is more valuable by virtue of
the display of the notarization or a notary’s seal.

Part II of this Article provides a means of enforcing the ban on
the unauthorized practice of law. Some notaries public who are
not attorneys believe that, by virtue of their notarial appoint-
ments, they are allowed to give legal advice or practice law. The
practice of law and the practice of a notary public, heretofore,
have been so entwined and confused that it seems appropriate to
make this procedure available when the appointing state official
does not act under the revocation provisions in Part I.

Article VII

Part I

§ 7-101  Revocation of Commission

The [appointing state official] may revoke the commission of any
notary public who during the current term of appointment:

(1) submits an application for commission and appointment as
a notary public which contains substantial and material
misstatement or omission of fact;

(2) is convicted of any felony or official misconduct under
this Act;

(3) fails to exercise the powers or perform the duties of a
notary public in accordance with this Act;

(4) is adjudged liable or agrees in a settlement to pay damages
in any suit grounded in fraud, misrepresentation, imperson-
ation, or violation of the state regulatory laws of this
State, if his liability is not solely by virtue of his agency or
employment relationship with another who engaged in the
act for which the suit was brought;

*(5) represents or implies from unauthorized use of his title of
notary public that he has qualifications, powers, duties,
rights, or privileges that by law he does not possess;

*Revision January 1976
*(6) allows or permits his name or his title of notary public to be used deceptively, fraudulently, or in false or misleading advertising;

(7) engages in the unauthorized practice of law;

(8) ceases to be a citizen of the United States or a national of a country which permits American citizens to become notaries public therein;

(9) ceases to be a qualified elector of a state;

(10) ceases to have a business or residence address in this State; or

(11) becomes incapable of reading and writing the English language.

A notary's commission may be revoked under the provisions of this Article only if action is taken subject to the rights of the notary public to notice, hearing, adjudication, and appeal.

Part II

§ 7-201 Action for Injunction, Unauthorized Practice of Law

Upon his own information or upon complaint of any person, the [attorney general], or his designee, may maintain an action for injunctive relief in [insert name of proper court or courts] against any notary public who renders, offers to render, or holds himself out as rendering any service constituting the unauthorized practice of the law. Any organized bar association in this State may intervene in the action, at any stage of the proceeding, for good cause shown. The action may also be maintained by an organized bar association in this State.

§ 7-202 Remedies Additional to Those Now Existing

The remedies provided in Article VII, Part II are in addition to, and not in substitution for, other available remedies.

*Revision January 1976
Commentary – Article VIII

The certificate of authority, used to verify the authority of a notary to perform a given act, is provided in this Article primarily to meet the demands for such verification that come from foreign countries. Even if the notarization is to be used in the state where the notary is commissioned, there might be reason to question the authority of the notary to act if the notarization is not complete.

Article VIII

Part I

§ 8-101 Certificate of Authority

Upon the receipt of a written request, the notarized document and a fee of [ $2] payable to the [appointing state official or official of the local office designated by the appointing state official], the office of the [appointing state official or designated local or district office] shall provide a certificate of authority in substantially the following form:

I__________ [appointing state official, or local or district office designated by appointing state official, name and title] of the State of [name of State] which office is an office of record having a seal, certify that _________________ [notary’s name], by whom the foregoing or annexed document was notarized, was, at the time of the notarization of the same, a Notary Public authorized by the laws of this State to act in this State and to notarize the within _________________ [type of document], and I further certify that the Notary’s signature on the document is genuine to the best of my knowledge, information, and belief and that such notarization was executed in accordance with the laws of this State.

In testimony whereof, I have affixed my signature and the seal of this office this _____ day of __________ 19___.

____________ [certifying officer’s signature, title, jurisdiction, address and the seal affixed near the signature.]
DRAFT LEGISLATION FOR A Uniform Notary Act

THE POSITION OF THE NATIONAL NOTARY ASSOCIATION
The National Notary Association first published the Draft Legislation For A Uniform Notary Act in September, 1973. In less than five years, Missouri and California adopted this model law virtually in toto. Other states have since introduced revisionary legislation based, in large part, on the Uniform Notary Act.

As one of the authors of the Act, the NNA has been asked to actively promote its passage. Consequently, this position paper has been prepared to explain both the NNA's long-standing role as a non-advocate and its purpose in donating the Draft Legislation For A Uniform Notary Act to the public domain.

PURPOSE OF THE NATIONAL NOTARY ASSOCIATION

The National Notary Association was founded in 1957 to "impart knowledge, understanding, and unity among Notaries Public in their service to society." Education of the nation's more than 2.5 million Notaries on legal, technical, and ethical facets of their calling has remained the primary goal of the Association. As a teacher, the NNA has long noted that a lack of both definitiveness and uniformity among state notarial codes has been a major obstacle in the education of Notaries.

Society, though, is the real victim of the nation's diverse, often conflicting, and usually less than comprehensive Notary statutes, many enacted over 200 years ago. These laws, reflecting the isolationist, rural culture of a bygone era, are conspicuously out of tune with the realities of modern commerce.

The NNA became convinced it is in the best interests of society that a comprehensive and modern code be uniformly adopted by all states.

GENESIS OF THE UNIFORM NOTARY ACT

While the NNA possessed the expertise in notarial customs and practices to lay the foundation for a model law, it required the expertise of attorneys, lawmakers, and governing officials to ensure that this law was workable and legally sound.

Thus, the NNA contacted Yale Legislative Services of Yale Law School to assist in preparing a draft. An organization providing drafting services for public interest legislation, Yale Legislative Services accepted this challenge.

The NNA also formed an Advisory Committee of concerned legislators, secretaries of state, recorders, attorneys, judges, and Notaries from around the nation to evaluate the drafts. Committee members
worked without compensation for what one member termed "this critical public-interest legislation."

The Draft Legislation For A Uniform Notary Act, then, was created through the combined efforts of Yale Legislative Services, a distinguished 12-person Advisory Committee, and the National Notary Association. Drafted in everyday language, the Act embodies significant departures from present Notary laws, including: stringent notarial recordkeeping requirements; mandatory bonding of all Notaries; specification of wording for a wide variety of notarial certificates. For the first time, modern Notaries are given clear and comprehensive guidelines for performing their duties.

THE NNA'S EDUCATIONAL ROLE

The NNA believes that its adherence to a non-advocative, strictly educational role best serves both Association members and society at large. The NNA’s commitment to education is total: it will not divert energies or financial resources to lobbying efforts for the Uniform Notary Act or any other legislation.

The Uniform Notary Act must stand on its own merits and recommend itself to legislators concerned with the public interest. The Association is prepared to provide these legislators with a wealth of background information and technical assistance on the Uniform Notary Act in particular and on the Notary office in general. Further, legislators can expect “grass roots” support from the tens of thousands of NNA members and other Notaries whom the Association has impressed with the importance of statutory reform.

The NNA has donated the Draft Legislation For A Uniform Notary Act to the public domain and will not withhold rights to publication or use by any responsible group. Not only legislators, but public-spirited attorneys, bar associations, consumer-protection groups, and all persons concerned with effective Notary laws should have a strong interest in the Uniform Notary Act.

ENACTING THE UNIFORM NOTARY ACT

The Draft Legislation For A Uniform Notary Act is a model, to be adopted as a whole or in part. It was authored by the nation’s leading authorities on the office of Notary Public to provide legislators with a workable alternative to the United States’ largely outmoded notarial statutes. A growing volume of interstate and international transactions lends increasing urgency to the need for uniform Notary laws reflecting the realities of 20th century society. Lawmakers can look to the Draft Legislation For A Uniform Notary Act as the most authoritative and definitive guide to Notary law reform available.