



NEW JERSEY LAW REVISION COMMISSION

Draft Tentative Report Relating to New Jersey Notaries Public Act

April 8, 2013

This Draft Tentative Report is distributed to advise interested persons of the Commission's tentative recommendations and the opportunity to submit comments.

Comments should be submitted no later than **June 14, 2013**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this tentative report or direct any related inquiries, to:

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REVISED UNIFORM LAW ON NOTARIAL ACTS

Introduction

In July 2010, the Uniform Law Commission (ULC) approved and recommended for enactment in all states the Revised Uniform Law on Notarial Acts (RULONA). The RULONA, as described in the Prefatory Note, seeks to provide integrity to the notarial practice. The ULC addresses the changes caused by the development and growth of electronic records in business and personal transactions. The ULC acknowledges that other technological advances coupled with shifts in economic and societal norms challenge the integrity of the notarial practice.

The resulting changes in commercial and personal business methods have eroded static forms of notarial practice and necessitated a uniform standard. The RULONA, like its 1982 predecessor, provides minimum standards for notarial practice and governs the recognition of interstate and foreign notarizations. Unlike its predecessor, it regulates the notarization of tangible and electronic records. It also provides additional safeguards including personal appearance, and identification requirements for individuals appearing. The RULONA also seeks to harmonize with related federal statutes like the Electronic Signatures in Global and National Commerce Act (ESign) and other uniform laws including the Uniform Electronic Transactions Act (UETA), and the Uniform Real Property Electronic Recording Act (URPERA).

To date, the RULONA has been adopted, in varying forms, in North Dakota and Iowa and is being considered in the legislatures of Nevada and Oregon. The National Notary Association, the Property Records Association, and the American Society of Notaries expressed strong support for the RULONA.

The text of the draft act follows. For purposes of this initial draft, the language of the existing law was combined with language included in bills introduced in this area and language proposed by the New Jersey Law Revision Commission as follows:

- Underlined text was proposed by A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari.
- **Bold and underlined** text was proposed by A2540, pending legislation sponsored by Assemblywoman Annette Quijano and Assemblyman Joseph Cryan.
- *Italicized and underlined* text is proposed by the New Jersey Law Revision Commission.
- Language highlighted in grey is taken from the RULONA.

The Report was prepared to combine the language identified above and to obtain comments from those knowledgeable about both the law and the practical considerations in this area.

Draft Language

N.J.S.A 52:7-10. Short title

This act shall be known and may be cited as the “Notaries Public Act *of 1979*.”

52:7-11. Definitions

In this act:

a. “Acknowledgment” means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

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

c. “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.

d. “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.

e. “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.

f. “Notarial officer” means a notary public or other individual authorized to perform a notarial act.

g. “Notary public” means an individual commissioned to perform a notarial act by the State Treasurer.

h. “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.

i. “Person” means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

j. “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.

k. “Sign” means, with present intent to authenticate or adopt a record:

1. To execute or adopt a tangible symbol; or

2. To attach to or logically associate with the record an electronic symbol, sound, or process.

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

m. “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.

n. “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

o. “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.

COMMENT

The language shown above is from the RULONA.

52:7-41/2. Appointment; term; removal; application; renewals

a. The ~~Secretary of State~~ State Treasurer shall appoint so many notaries public as the ~~Secretary of State~~ State Treasurer shall deem necessary to commission, who shall hold their respective offices for the term of five years, but may be removed from office at the pleasure of the ~~Secretary of State~~ State Treasurer.

b. A person desiring to be appointed and commissioned a notary public shall make application to the ~~Secretary of State~~ State Treasurer on a form prescribed by the Secretary of State and endorsed by a member of the Legislature or the ~~Secretary of State~~ State Treasurer or Assistant State Treasurer. **The State Treasurer shall include a designated space on the application form for an applicant to provide, on an optional basis, his [applicant’s] email address. Renewals thereof shall be made in the same manner as the original application.**

c. The fee to be collected by the Secretary of State for that appointment or renewal shall be ~~\$25.00~~ \$40.

COMMENT

The references in the draft to the State Treasurer result from Reorganization Plan 004-1998, where jurisdiction for the appointment and qualifications of notaries public was transferred to the State Treasurer from the Secretary of State. **Bold and underlined** text was proposed by A2540, pending legislation sponsored by Assemblywoman Annette Quijano and Assemblyman Joseph Cryan.

52:7-12 ~~13~~. Minimum age; Qualifications

An applicant for a commission as a notary public must:

a. ~~he is~~ Be at least 18 years of age or older.

b. Complete a criminal history record background check, including fingerprint comparison, conducted through the Federal Bureau of Investigation and the State Bureau of Investigation in the Division of State Police, the applicant has no record of conviction for a crime enumerated in sections 1 or 2 of P.L.1981, c.487 (C.52:7-20 or C.52:7-21), except that if the person has such a record of conviction the State Treasurer may make a determination for appointment of the person in accordance with the provisions of P.L.1968, c.282 (C.2A:168A-1 et seq.). The person seeking approval shall bear the cost for the criminal history record background check, including all costs of administering and processing the check; and approval shall bear the cost for the criminal history record background check, including all costs of administering and processing the check; and

c. For appointments made on or after six months following the effective date of ~~P.L.—, c.—(C.—)~~

(1) Satisfactorily complete a six-hour course of study approved by the State Treasurer pursuant to subsection a. of section 10 of P.L. , c. (C.) (pending before the Legislature as this bill), concerning the functions and duties of a notary public; and

(2) Satisfactorily complete a written examination prescribed by the State Treasurer to determine the fitness and duties of the office of notary public, which examination shall be administered in English. All questions shall be based on the laws of this State as set forth in the public manual of the laws of New Jersey relating to notaries public issued by the State Treasurer. cf: P.L.1979, c.460, s.3)

COMMENT

The proposed changes are adopted from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari.

In addition to the language shown above, the RULONA proposes requiring an additional requirement - an assurance – as follows:

d. Before issuance of a commission as a notary public, the applicant for a shall submit to the State Treasurer an assurance in the form of a surety bond or its functional equivalent in the amount of seven thousand five hundred dollars and is subject to approval by the Secretary of Treasurer. 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 State Treasurer. 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 State Treasurer before canceling the assurance. The surety or issuing entity shall notify the State Treasurer 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 State Treasurer.

52:7-13~~14~~. Appointment of nonresidents; requirements

No person shall be denied appointment as a notary public on account of residence outside of this State, provided such person resides in a State adjoining this State and maintains, or is

regularly employed in, an office in this State. Before any such nonresident shall be appointed and commissioned as a notary public, ~~he~~ *the applicant* shall file with the ~~Secretary of State~~ State Treasurer an affidavit setting forth ~~his~~ ~~he~~ *the applicant's* residence and the address of ~~his~~ ~~he~~ *the applicant's* office or place of employment in this State. Any such nonresident notary public shall file with the ~~Secretary of State~~ State Treasurer a certificate showing any change of residence or of his office or place of employment address in this State.

COMMENT

The language above is substantially the same as the source with changes to make it gender neutral.

52:7-14 15. Oath; filing; certificate of commission and qualification

a. Within ~~3~~three months of the receipt of ~~the~~ ~~his~~ commission, each notary public shall take and subscribe an oath before the clerk of the county in which ~~he~~ *the notary public* resides, faithfully and honestly to discharge the duties of ~~his~~ ~~the~~ office, and that notary public will make and keep a true record of all such matters as are required by law, which oath shall be filed with said clerk. The oath of office of a nonresident notary public shall be taken and subscribed before the clerk of the county in which ~~he~~ *the non resident notary public* maintains his office or is employed in this State.

b. Upon the administration of said oath, the said clerk shall cause the notary public to indorse a certificate of commission and qualification and shall transmit said certificate to the ~~Secretary of State~~ State Treasurer within 10 days of the administration of said oath.

c. The ~~Secretary of State~~ State Treasurer shall cancel and revoke the appointment of any notary public who fails to take and subscribe said oath within 3 months of the receipt of his commission and any appointment so canceled and revoked shall be null, void and of no effect.

COMMENT

The proposed changes are adopted from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari and include NJLRC changes to make the language gender neutral.

52:7-15 16. State-wide authority; filing certificates of commission and qualification with county clerks

a. A notary public who has been duly commissioned and qualified is authorized to perform ~~his~~ ~~the~~ duties *of a notary public* throughout the State.

b. Any notary public, after having been duly commissioned and qualified, shall, upon request, receive from the clerk of the county where he has qualified, as many certificates of ~~his~~ *the notary public's* commission and qualification as ~~he~~ *the notary public* shall require for filing with other county clerks of this State, and upon receipt of such certificates the notary public may present the same, together with ~~he~~ *the notary public's* autograph signature, to such county clerks as ~~he~~ *the notary public* may desire, for filing.

COMMENT

The language above is substantially the same as the source with changes to make it gender neutral.

52:7-16 17. County clerk to attach certificate of authority to notaries' certificates of proof, acknowledgements or affidavits

The county clerk of the county in which a notary public resides or the county clerk of any county where the autograph signature and certificate of such notary public shall be filed ~~his autograph signature and certificate~~, as provided in section 6 of this act, shall, upon request, subjoin to any certificate of proof, acknowledgement or affidavit signed by the notary public, a certificate under the clerk's hand and seal stating that the notary public was at the time of taking such proof, acknowledgement or affidavit duly commissioned and sworn and residing in this State, and was as such an officer of this State duly authorized to take and certify said proof, acknowledgement or affidavit as well as to take and certify the proof or acknowledgement of deeds for the conveyance of lands, tenements or hereditaments and other instruments in writing to be recorded in this State; that said proof, acknowledgement or affidavit is duly executed and taken according to the laws of this State; that full faith and credit are and ought to be given to the official acts of the notary public, and that the county clerk is well acquainted with the handwriting of the notary public and believes the signature to the instrument to which the certificate is attached is the notary public's genuine signature.

COMMENT

The language above is substantially the same as the source with changes to make it gender neutral.

52:7-17 18. Fee

The ~~Secretary of State~~ State Treasurer shall, by regulation, fix a fee to be charged to each notary for the costs of printing and distribution to each applicant of a manual prescribing the powers, duties and responsibilities of a notary.

COMMENT

The proposed changes are adopted from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari.

52:7-18 19. Statement by notary public after change in name; filing; evidence of continuance of powers and privileges

After a notary public adopts a name different from that ~~which he used~~ at the time he the notary public was commissioned, and before ~~he the notary public signs his name~~ provides a signature to any document which ~~he the notary public~~ is authorized or required to sign as notary public, ~~he the notary public~~ shall make and sign a statement in writing and under oath, on a form prescribed and furnished by the ~~Secretary of State~~ State Treasurer, setting out the circumstances under which ~~he the notary public~~ has adopted the new name. The statement shall set forth whether the new name has been adopted through marriage or by a change of name proceeding or otherwise, and such other information as the ~~Secretary of State~~ State Treasurer shall require.

The statement shall be filed in the office of the Secretary of State and in the office of the clerk of the county where ~~he the notary public~~ qualified as a notary public and in the office of the clerk of any county in which ~~he the notary public~~ may have filed a certificate of ~~his the notary public's~~ commission and qualification.

Such statement, or a certified copy thereof, shall be evidence of the right of said notary public to continue to exercise the powers and privileges and perform the duties of a notary public in ~~his~~ the notary public's changed and new name.

COMMENT

The language above is substantially the same as the source with changes to make it gender neutral.

52:7-19 20. Affixation of name

Each notary public, in addition to subscribing ~~his~~ the notary public's autograph signature to any jurat upon the administration of any oath or the taking of any acknowledgement or proof, shall affix thereto ~~his~~ the notary public's name in such a manner and by such means, including, but not limited to, printing, typing, or impressing by seal or mechanical stamp, as will enable the ~~Secretary of State~~ State Treasurer easily to read said name.

COMMENT

The proposed changes are adopted from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari and include NJLRC changes to make the language gender neutral.

52:7-20 21. Conviction of offense involving dishonesty or crime of second degree; prohibition of appointment

No person shall be appointed or, ~~reappointed~~ if so appointed, shall forfeit that appointment as a notary public if ~~he~~ the notary public has been convicted under the laws of this State of an offense involving dishonesty, ~~including but not limited to a violation of section 1 of P.L.1997, c. 1 (C.2C:21-31) or section 1 of P.L.1994, c. 47 (C.2C:21-22)~~, or of a crime of the second degree or above, but nothing in this section shall be deemed to supersede P.L.1968, c. 282 (C.2A:168A-1 et seq.). A notary public shall report any disqualifying any conviction to the State Treasurer within 48 hours of the conviction. (cf: P.L. 1981, c. 487, s.1)

COMMENT

The proposed changes are adopted from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari and include NJLRC changes to make the language gender neutral.

52:7-21 22. Conviction under laws of another state or United States; prohibition of appointment

No person shall be appointed or, ~~reappointed~~ if so appointed, shall forfeit that appointment as a notary public if ~~he~~ the notary public has been convicted under the laws of another state, or of the United States, of an offense or crime involving dishonesty, ~~including but not limited to a violation of section 1 of P.L.1997, c. 1 (C.2C:21-31) or section 1 of P.L.1994, c. 47 (C.2C:21-22)~~, or of a crime of the second degree or above, but nothing in this section shall be deemed to supersede P.L.1968, c. 282 (C.2A:168A-1 et seq.). A notary public shall report any disqualifying any conviction to the State Treasurer within 48 hours of the conviction. (cf: P.L. 1981, c. 487, s.2).

COMMENT

The proposed changes are adopted from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari and include NJLRC changes to make the language gender neutral.

The RULONA proposes the following language, which Staff will consider in light of comments received:

Grounds To Deny, Refuse to Renew, Revoke, Suspend, or Condition Commission of Notary Public.

a. The State Treasurer may deny, refuse to renew, revoke, suspend, or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:

1. failure to comply with this [act];
2. a fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission as a notary public submitted to the State Treasurer;
3. a conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty, or deceit;
4. a finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty, or deceit;
5. failure by the notary public to discharge any duty required of a notary public, whether by this [act], rules of State Treasurer, or any federal or state law;
6. 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;
7. violation by the notary public of a rule of the State Treasurer regarding a notary public; [or]
8. denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state[; or]
9. failure of the notary public to maintain an assurance as provided [] [; or]
10. If the State Treasurer denies, refuses to renew, revokes, suspends, or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with the New Jersey Administrative Procedure Act, *N.J.S.A. 52:14B-1*, et seq.

c. The authority of the State Treasurer to deny, refuse to renew, suspend, revoke, or impose conditions on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

New Section – Prohibited Acts

a. A commission as a notary public does not 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 notary public may not engage in false or deceptive advertising.

c. A notary public, other than an attorney licensed to practice law in this state, may not use the term “notario” or “notario publico”.

d. A notary public, other than an attorney licensed to practice law in this state, may not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law. If a notary public who is not an attorney licensed to practice law in this state 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 notary public shall include the following statement, or an alternate statement authorized or required by the State Treasurer, 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, it must 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 notary public may not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.

COMMENT

The language shown above is from the RULONA.

Legislation pending in the current legislative session as A2512/S2545 includes the following:

A notary public who is not licensed to practice law in this State and who advertises notarial services in a language other than English shall include in any such advertisement, in the same language, and in English, the following notice: “I am not licensed to practice law in the State of New Jersey and I am not permitted to give legal advice on immigration or other legal matters, or accept fees for legal advice.” This same notice shall be posted in a conspicuous place in the notary public’s place of business.

The language contained in subsection d. may adequately address the issue, but Staff will determine whether further revision to the language is necessary.

New Section – Course of Study

a. Commencing (date), the State Treasurer shall review the course of study proposed by any vendor to be offered pursuant to subsection c. of section 3 of P.L.1979, c.460 (C.52:7-12). If the course of study includes all material that a person is expected to know to satisfactorily complete the written examination required pursuant to subsection c. of section 3 of P.L.1979, c.460 (C.52:7-12), the State Treasurer shall approve the course of study.

b. The State Treasurer shall, by regulation, prescribe an application form and adopt a certificate of approval for the notary public education course of study proposed by a vendor.

c. The State Treasurer may also provide a notary public education course of study.

d. The State Treasurer shall compile a list of all persons offering an approved course of study pursuant to subsection a. of this section and shall provide the list with every public manual of the laws of New Jersey relating to notaries public issued by the State Treasurer.

COMMENT

The language shown above is taken from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari.

New Section – Written Examination

The written examination prescribed by the State Treasurer to determine the fitness of an applicant to exercise the functions of a notary public as provided in subsection c. of section 3 of P.L.1979, c.460 (C.52:7-12), shall be a proctored examination administered by the State Treasurer. The State Treasurer shall charge a nonrefundable fee, to be established by regulation, which shall be payable at the examination site. This fee shall be established, prescribed or changed by the State Treasurer to defray any proper expenses incurred by the Department of the Treasury and any staff employed to administer this examination, except that fees shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.

COMMENT

The language shown above is taken from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari.

New Section – Authority to Perform Notarial Act

a. A notarial officer may perform a notarial act authorized by this [act] or by law of this state other than this [act].

b. A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer’s spouse [or civil 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.

COMMENT

The language shown above is from the RULONA.

New Section – 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 [Section 3-505(b) of the Uniform Commercial Code].

COMMENT

The language shown above is from the RULONA.

New Section – Personal Appearance Required

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.

COMMENT

The language shown above is from the RULONA.

New Section – Identification of Individual

a. A notary public shall not perform a notarial act unless the person who is seeking the notarial act is personally known to the notary public or provides satisfactory evidence of his identity.

b. For the purposes of this section, satisfactory evidence of a person's identity shall consist of one or more of the following:

(1) A valid document issued by a government agency bearing the person's signature, a photographic image of the person's face, including a photographic image contained on a valid driver license issued by another state, and a physical description of the person;

(2) A valid passport;

(3) The oath or affirmation of one individual without interest in the notarial act to be performed who is personally known to the notary public and who personally knows the person;

(4) The oath or affirmation of two individuals without interest in the notarial act to be performed who personally know the person and produce to the notary public evidence of his identity described in paragraphs (1) or (2) of this subsection;

(5) A valid identification card issued by any branch of the armed forces of the United States; or

(6) A valid identification card issued by the United States Bureau of Citizenship and Immigration Services.

COMMENT

The language shown above is taken from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari.

New Section – Authority To Refuse To Perform Notarial Act

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 law other than this [act].

COMMENT

The language shown above is from the RULONA.

New Section – Signature If Individual 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.

COMMENT

The language shown above is from the RULONA.

New Section – Notarial Act In This State

a. 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.

b. The signature and title of a notarial officer described in subsection [(a)(1) or (2)] [(a)(1), (2), or (3)] conclusively establish the authority of the officer to perform the notarial act.

COMMENT

The language shown above is from the RULONA.

New Section – 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:

1. A notary public of that state;
2. A judge, clerk, or deputy clerk of a court of that state; or
3. Any 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)(1) or (2) conclusively establish the authority of the officer to perform the notarial act.

COMMENT

The language shown above is from the RULONA.

New Section – Notarial Act Under Authority of Federally Recognized Indian Tribe

a. A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this state, if the act performed in the jurisdiction of the tribe is performed by:

1. A notary public of the tribe;

2. A judge, clerk, or deputy clerk of a court of the tribe; or

3. Any other individual authorized by the law of the tribe 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 tribe 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)(1) or (2) conclusively establish the authority of the officer to perform the notarial act.

COMMENT

The language shown above is from the RULONA.

New Section – 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, clerk, or deputy clerk of a court;

2. An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;

3. An individual designated a notarizing officer by the United States Department of State for performing notarial acts overseas; or

4. Any other individual authorized by federal law to perform the 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)(1), (2), or (3) conclusively establish the authority of the officer to perform the notarial act.

COMMENT

The language shown above is from the RULONA and Staff hopes to elicit comment regarding its provisions. The RULONA comment explains:

Subsection (a)(2) recognizes the authority of certain individuals to perform notarial acts while in the military service or under the authority of a military service. These provisions are currently codified in 10 U.S.C §1044a (2010). At the time of the drafting of this Act, subsection (b) of the federal codification provides the following individuals with the authority to perform notarial acts for the purposes stated in subsection (a) of the enactment:

(b) Persons with the powers described in subsection (a) are the following:

(1) All judge advocates, including reserve judge advocates when not in a duty status.

(2) All civilian attorneys serving as legal assistance attorneys.

(3) All adjutants, assistant adjutants, and personnel adjutants, including reserve members when not in a duty status.

(4) All other members of the armed forces, including reserve members when not in a duty status, who are designated by regulations of the armed forces or by statute to have those powers.

(5) For the performance of notarial acts at locations outside the United States, all employees of a military department or the Coast Guard who are designated by regulations of the Secretary concerned or by statute to have those powers for exercise outside the United States.

New Section – Foreign Notarial Act.

a. In this section, “foreign state” means a government other than the United States, a state, or a federally recognized Indian tribe.

b. 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.

c. 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.

d. The signature and official stamp of an individual holding an office described in subsection (c) are prima facie evidence that the signature is genuine and the individual holds the designated title.

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

f. 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.

COMMENT

The language shown above is from the RULONA.

New Section – Certificate of Notarial Act.

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

1. Be executed contemporaneously with the performance of the notarial act;

2. Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the [commissioning officer or agency];

3. Identify the jurisdiction in which the notarial act is performed;

4. Contain the title of office of the notarial officer; and

5. If the notarial officer is a notary public, indicate the date of expiration, if any, of the officer's commission.

b. If a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to or embossed on the certificate. If a notarial act is performed regarding a tangible record by a notarial officer other than a notary public and the certificate contains the information specified in subsection (a)(2), (3), and (4), an official stamp may 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 subsection (a)(2), (3), and (4), an official stamp may 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) and:

1. is in a short form set forth in Section 16;

2. is in a form otherwise permitted by the law of this state;

3. is in a form permitted by the 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 5, 6, and 7 or law of this state other than this [act].

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 4, 5, and 6.

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

f. If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the

[commissioning officer or agency] has established standards pursuant to Section 27 for attaching, affixing, or logically associating the certificate, the process must conform to the standards.

COMMENT

The language shown above is from the RULONA.

New Section – Short Form Certificates.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by Section 15(a) and (b):

a. For an acknowledgment in an individual capacity:

State of _____

[County] of _____

This record was acknowledged before me on _____ by _____

Date Name(s) of individual(s)

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____]

b. For an acknowledgment in a representative capacity:

State of _____

[County] of _____

This record was acknowledged before me on _____ by _____

Date Name(s) of individual(s)

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

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____]

c. For a verification on oath or affirmation:

State of _____

[County] of _____

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

Date Name(s) of individual(s)

making statement

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____]

d. For witnessing or attesting a signature:

State of _____

[County] of _____

Signed [or attested] before me on _____ by _____

Date Name(s) of individual(s)

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____]

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 _____

Signature of notarial officer

Stamp

[_____]

Title of office

[My commission expires: _____]

COMMENT

The language shown above is from the RULONA.

New Section – Official Stamp

The official stamp of a notary public must:

a. include the notary public’s name, jurisdiction, [commission expiration date,] and other information required by the State Treasurer; and

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

COMMENT

The language shown above is from the RULONA.

New Section – Stamping Device

a. A notary public is responsible for the security of the notary public’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, the 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 notary public, the notary public’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 notary public’s stamping device is lost or stolen, the notary public or the notary public’s personal representative or guardian shall notify promptly the commissioning officer or agency on discovering that the device is lost or stolen.

COMMENT

The language shown above is from the RULONA.

New Section - Journal

a. A notary public shall maintain in a sequential journal a record of all notarial acts performed for 10 years after the performance of the last notarial act chronicled in the journal.

(1) The journal shall be kept under the exclusive control of the notary.

(2) A journal may be created on a tangible medium or in an electronic format.

(3) A notary public may shall maintain only one journal at a time to chronicle all notarial acts, whether those notarial acts are performed regarding tangible or electronic records.

(4) A notary public who is an attorney at law admitted to practice in this State, or who is employed by an attorney at law or employed by or acting as an agent for a title insurance company licensed to do business in this State pursuant to P.L.2001, c.210 (C.17:22A-26 et seq.), may maintain a record of notarial acts in the form of files regularly maintained for the attorney's law practice or the title insurance company's business activities, as the case may be, in lieu of maintaining a sequential journal.

b. For every notarial act involving one transaction, the notary shall record in the journal or file, as appropriate:

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

(2) the type of notarial act, including but not limited to the taking of an acknowledgment, the taking of a proof of a deed, the administering of an oath, or the taking of an affidavit;

(3) the type, title, or description and date of every document notarized;

(4) the name, address, signature, and, in the case of immigration documents, the right thumbprint of each person whose signature is notarized;

(5) a statement explaining how the signer's identity was verified, including, if applicable, the type, serial number and date of issuance or expiration of an identification document, or the name and signature of any identifying witness and, if applicable, the type, serial number and date of issuance or expiration of a document identifying the witness; and

(6) the fee charged for the notarial act.

c. If a notary public's journal is lost or stolen, the notary public promptly shall notify the State Treasurer on discovering that the journal is lost or stolen.

d. 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) and inform the State Treasurer where the journal is located.

e. Instead of retaining a journal as provided in subsections (a) and (d), a current or former notary public may transmit the journal to the State Treasurer, New Jersey State Archives and Records, or a repository approved by the State Treasurer. }

f. On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal shall transmit it to State Treasurer, New Jersey State Archives and Records, or a repository approved by the State Treasurer.

COMMENT

The proposed changes include language from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari and text proposed in the RULONA.

**New Section – Notification Regarding Performance of Notarial Act on Electronic Record;
Selection of Technology.**

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

b. Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the State Treasurer that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the State Treasurer has established standards for approval of technology pursuant to Section 27, the technology must conform to the standards. If the technology conforms to the standards, the State Treasurer shall approve the use of the technology.

COMMENT

The language shown above is from the RULONA.

New Section – Database of Notaries Public.

The State Treasurer shall maintain an electronic database of notaries public:

a. through which a person may verify the authority of a notary public to perform notarial acts; and

2. which indicates whether a notary public has notified the State Treasurer that the notary public will be performing notarial acts on electronic records.

COMMENT

The language shown above is from the RULONA.

New Section – Validity of Notarial Acts.

Except as otherwise provided in subsection _____ the failure of a notarial officer to perform a duty or meet a requirement specified in this [act] does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this [act] 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 this [act] 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.

COMMENT

The language shown above is from the RULONA.

New Section – Rules.

a. The State Treasurer may adopt rules to implement this [act]. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, in accord with 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, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public; [and]

5. include provisions to prevent fraud or mistake in the performance of notarial acts; [and]

6. provide for the administration of the examination under Section ___ and the course of study under ___.

b. In adopting, amending, or repealing rules about notarial acts with respect to electronic records, the State Treasurer shall consider, so far as is consistent with this [act]:

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 this [act]; and

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

COMMENT

The language shown above is from the RULONA.

New Section – Notary Public Commission In Effect.

A commission as a notary public in effect on [the effective date of this [act]] continues until its date of expiration. A notary public who applies to renew a commission as a notary public on or after [the effective date of this [act]] is subject to and shall comply with this [act]. A notary public, in performing notarial acts after [the effective date of this [act]], shall comply with this [act].

COMMENT

The language shown above is from the RULONA.

New Section – Savings Clause

The provisions of sections 12 and 13 of P.L. , c. (C.) (pending before the Legislature as this bill) shall not apply to any notary public when performing a notarial act at the request of any person holding elective public office in this State, or any person appointed to a board, commission or agency or other public body created by or in this State or any county or municipality of the State, when that person is acting in his capacity as an elected or appointed official.

COMMENT

The language shown above is taken from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari.

New Section – Effective date

This act shall take effect on the 180th day after enactment, but the State Treasurer may take such anticipatory administrative action in advance as shall be necessary for the implementation of the act.

COMMENT

The language shown above is taken from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senator Nicholas Scutari.

New Section - Uniformity of Application and Construction

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

COMMENT

The language shown above is from the RULONA.