

To: Commission
From: Jayne J. Johnson
Re: Revised Uniform Law on Notarial Acts (RULONA)
Date: March 11, 2013

MEMORANDUM

In July 2010, the Uniform Law Commission (ULC) approved and recommended for enactment in all states the Revised Uniform Law on Notarial Acts (RULONA). This memorandum discusses the RULONA and the New Jersey statutes governing notaries public. If the Commission undertakes a project in this area, it would serve as an amendment to, and an update of, the Commission's Notarial Act project from 1989.

Background

The RULONA, as described in the Prefatory Note, seeks to provide integrity to the notarial practice. The ULC acknowledges that many changes in technology and society challenge the integrity of the practice and the uniformity of the notarial process among the states. The ULC addresses the changes caused by the development and growth of electronic records in business and personal transactions. Static methods have given way to variations in the law and practice of notarial acts from state to state. The rapid changes in interstate commercial and lending practices have broadened the differences between the states. In recognition of these trends, the ULC promulgated the RULONA as a comprehensive revision of the original 1982 Uniform Law on Notarial Acts (ULONA). 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 addresses, and applies to, the notarization of tangible and electronic records. It also provides additional safeguards including journaling, personal appearance, and identification requirements. The RULONA also seeks to harmonize with related federal statutes like the Electronic Signatures in Global and National Commerce Act (ESign), other uniform laws including the Uniform Electronic Transactions Act (UETA), and the Uniform Real Property Electronic Recording Act (URPERA).

The 1989 Report issued by the Commission in this area is not consistent with what appears to be a national trend of imposing additional responsibilities and requirements on notaries. Consideration of the RULONA affords the Commission an opportunity to determine whether New Jersey law, last revised in 1979, conforms to the trend of increasing responsibility and, if not, whether it should.

Key Provisions of the RULONA

Section 1 of the RULONA expands the definition of the "notarial act" to include electronic records. Similarly, the act provides a definition for electronic signature and describes electronic images when defining the official stamp and stamping device.

Section 5 requires notaries to determine from personal knowledge or satisfactory evidence that the identity of the individual appearing before the notary public has the identity claimed and produced the signature on record. Section 6 is a significant provision because it requires personal appearance of an individual who signs a record before the notary. This requirement applies whether the act is completed on a tangible or electronic record and is intended to preserve the integrity of the notarial act.

Section 7 delineates the forms of identification individuals may produce as satisfactory evidence of their identity and to verify their signature. Section 8 gives notaries latitude to refuse performance if they are not satisfied that the individual appearing is competent to execute the record or if they cannot determine that the signature was knowingly and voluntarily made.

Section 9 provides that if an individual is physically unable to sign a record, the individual may direct another person to sign the individual's name on the record. The act describes the procedure for affixing the signature. Section 10 allows a notarial act to be performed by: (1) a notary public; or (2) a judge, clerk, or deputy clerk, or (3) an individual licensed to practice law in the state, or (4) any other individual authorized to perform the specific act by state law.

The RULONA governs notarial acts performed: (1) in other states (Section 11), (2) by federally recognized Indian tribes (Section 12); (3) under federal authority (Section 13); and (4) in foreign jurisdictions (Section 14).

The RULONA, provides, in Section 17, the form and content of the official stamp and in Section 18 the means to secure the stamping device, in another effort to preserve the integrity of the notarial act.

Section 19 discusses an optional journal requirement where notaries public chronicle each act and retain the journal for ten years after performance. The journal may be in a tangible or electronic form but the act does not permit maintaining both simultaneously. The ULC acknowledges that the journaling provision is controversial and emphasized that it is an optional provision. Section 20 gives notaries heightened responsibility by allowing them to select one or more tamper-evident technologies when using electronic records. The provision protects notaries from being obligated to use an electronic record demanded by the individual appearing.

Section 21 delineates the qualifications to apply for commission, including age, residency, and examination requirements. Section 22 requires that the examination be based on the outlined course of study. Section 23 discusses the grounds to deny, refuse to renew, revoke, suspend or condition a notary's commission.

Notably, Section 25 prohibits use of term "notario publico" and the advertising and practices of individuals operating under that title.

RULONA has been enacted in two states, North Dakota in 2011 and Iowa in 2012. In 2013, it was introduced by the legislatures in Nevada and Oregon. The RULONA has also received strong support from the National Notary Association and the American Society of Notaries.

New Jersey Statutes Governing Notaries Public

In New Jersey, the law governing notaries has not been revised since 1979. *N.J.S. 52:7, et. seq.* Like RULONA, New Jersey has age and residency requirements, applicants must be at least 18 years old, *N.J.S. 52:7-12*, and a state resident or regularly maintain an office or employment in the State. *N.J.S. 52:7- 13*. Notaries receive their commission from the State Treasurer¹ for a term of five years. Renewal of the commission is completed in the same manner as the original application,² including the \$25.00 application fee.

In the last legislative session, bills were introduced adding provisions similar to the RULONA identification and personal appearance requirements. The bills also proposed that notaries maintain a sequential journal chronicling acts performed and that prospective notaries take an examination. Unlike RULONA, however, the bills required prospective notaries to complete a six hour course from a list of approved vendors provided by the State Treasurer and mandated a criminal background check by the Federal Bureau of Investigation and the State Bureau of Investigation. Currently, legislation relating to notaries is pending, including Assembly Bill A2512/Senate Bill 2545 that requires notaries who are not attorneys to publish that fact and prohibits notaries from falsely representing themselves as attorneys in advertisements.

Staff seeks Commission authorization to conduct additional research in order to make a recommendation to the Commission regarding whether RULONA is appropriate for enactment in New Jersey.

¹ *N.J.S. 52:7-10* states that a notary is commissioned by the Secretary of State. As a result of Reorganization Plan 004-1998, jurisdiction concerning notaries public appointment and qualifications was transferred from the Secretary of State to the State Treasurer.

² Assembly Bill 2540, pending in the current legislative session, requires the State Treasurer to designate a space on the notary application where an applicant may provide his/her email address.