



NEW JERSEY LAW REVISION COMMISSION

Revised Tentative Report Relating to New Jersey Notaries Public Act

November 12, 2013

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S.* 1:12A-8.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **January 8, 2014**.

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 Report or direct any related inquiries, to:

Jayne J. Johnson, Esq., Counsel
New Jersey Law Revision Commission
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07102
973-648-4575
(Fax) 973-648-3123
Email: jjj@njlrc.org
Web site: <http://www.njlrc.org>

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). This report discusses RULONA and the New Jersey statutes governing notaries public.

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 RULONA as a comprehensive revision of the original 1982 Uniform Law on Notarial Acts (ULONA).

Background

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. RULONA also seeks to harmonize with related federal statutes like the Electronic Signatures in Global and National Commerce Act (E-Sign), other uniform laws including the Uniform Electronic Transactions Act (UETA), and the Uniform Real Property Electronic Recording Act (URPERA).

Key Provisions of RULONA

Section 1 of RULONA expands the definition of “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 public 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; (2) a judge, clerk, or deputy clerk; (3) an individual licensed to practice law in the state; or (4) any other individual authorized to perform the specific act by state law. 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).

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 public heightened responsibility by allowing them to select one or more tamper-evident technologies when using electronic records. The provision protects notaries public 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.

This report includes language similar to that found in Section 25 of RULONA that prohibits a notary public or notarial officer who is not an attorney licensed to practice law from giving legal advice; acting as an immigration consultant or an expert on immigration matters; or otherwise performing the duties of an attorney licensed to practice law in New Jersey;

RULONA has been enacted in four states, North Dakota in 2011, Iowa in 2012, Oregon in 2013, and most recently in October 2013 in Pennsylvania. RULONA has also received strong support from the National Notary Association, the American Society of Notaries, and state notary associations, including the Pennsylvania Association 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.*¹ The Commission recommends revisions to the 1979 New Jersey Notary Public Act to

¹ New Jersey has adopted the Uniform Electronic Transactions Act (UETA), *N.J.S. 12A:12-1, et seq.*, which is the ULC's "first comprehensive effort" to govern transactions involving electronic signatures or electronic records that are "not subject to any article of the Uniform Commercial Code, except for Articles 2 and 2A." *ULC, Revised Uniform Law on Notarial Acts*, Legislative Act Summary. "UETA applies only to transactions in which each party has agreed by some means to conduct" the transaction electronically." *Id.* The UETA has been adopted by 47 states. New Jersey also incorporates Electronic Signatures in Global and National Commerce Act (ESign), *N.J.S. 46:26A*, federal law which requires records, contracts or transactions conducted or preserved electronically

enhance protections to the public and to safeguard the underlying transactions that are essential to our state commerce.

In the last legislative session, bills were introduced adding provisions similar to the RULONA identification and personal appearance requirements. A463 introduced in the 2010-2011 legislative session proposed that prospective notaries public take a written examination and maintain a journal sequentially chronicling notarial acts performed. A463 also mandated a criminal background check by the Federal Bureau of Investigation and the State Bureau of Investigation for all prospective notaries public and those seeking commission renewals. Currently, legislation relating to notaries public is pending, including Assembly Bill 2512/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. The draft act that follows while based on RULONA includes modifications incorporating some of these legislative proposals, as well as provisions reflecting New Jersey practice.

The text of the draft act follows²:

- Underlined Language is taken from RULONA.
- *Italicized* text was proposed by A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss, District 38 (Bergen) and Senators Nicholas Scutari, District 22 (Middlesex, Somerset and Union) and Robert Gordon, District 38 (Bergen).
- Language **highlighted in grey text** was proposed by the New Jersey Law Revision Commission.

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

are given the same legal force as their paper equivalents and must met similar standards of “legal effect, validity, or enforceability.” 15 U.S.C. §101.a.

² Please note that this Revised Tentative Report includes changes to the references used to identify language from RULONA provisions, text proposed by NJLRC, and text from legislative proposals.

This Report has been reordered with the removal of the current N.J.S. 52:7-16 (formerly proposed N.J.S. 52:7A-13) because Staff has determined that the provision has become obsolete and as one group of commenters advised it conflicts with the Hague Convention (Apostille) which requires the State Treasurer to be the Designated Competent Authority for New Jersey.

N.J.S. 52:7A-1. Short title

This act shall be known and may be cited as the “New Jersey Law on Notarial Public Acts of 1979.”

COMMENT

This proposed act will create title 7A within Chapter 52 of the New Jersey Statutes and governs notaries public and notarial officers.

52:7A-2. 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 laws of New Jersey. The term includes:

1. taking an acknowledgment,
2. administering an oath or affirmation,
3. taking a verification on oath or affirmation,
4. witnessing or attesting a signature,
5. certifying or attesting a copy or deposition, and
6. noting a protest of a negotiable instrument.

f. “Notarial officer” means a notary public or other individual authorized by law 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 the State of New Jersey; “other State” or “another State” means any State, district, territory, commonwealth, or possession of the United States of America, and the Panama Canal Zone; and signifies a jurisdiction other than the State of New Jersey.

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.

Source: RULONA, Section 2; for subsection n. N.J.S. 17B-17-8

COMMENT

The definitions in this section are from Section 2 of RULONA. The ULC Report examines the definitions in the Comment to Section 2 as follows:

‘Acknowledgment.’ An ‘acknowledgment’ is a common form of notarial act in which an individual declares before a notarial officer that the individual has executed or signed the record for the purpose or purposes stated in the record. The declaration is made in the presence of the notarial officer. *See Coast to Coast Demolition and Crushing, Inc. v. Real Equity Pursuit, LLC*, 226 P.3d 605, 608 (Nev. 2010). It is a common practice for the acknowledging individual to sign the record in the presence of the notarial officer. However, actually signing the record in the presence of the notarial officer is not necessary as long as the individual declares, while in the presence of the officer at that time the acknowledgment is made, that the signature already on the record is, in fact, the signature of the individual. If the record is signed by an individual in a representative capacity, the individual also declares to the notarial officer that the individual has proper authority to execute the record on behalf of the principal.

‘Electronic.’ The adjective ‘electronic’ is used to refer to electrical, digital, magnetic, wireless, optical, electromagnetic, and similar technologies. Electronic technologies are capable of generating, transmitting, or storing information in an intangible format that may subsequently be retrieved and viewed in a perceivable format. As with the Uniform Electronic Transactions Act, the term “electronic” is descriptive

and its reach is not intended to be limited to technologies that are technically or purely electronic in nature (see UETA §2, Comment 4). Rather, it is intended to be a collective term and applies to all “similar” technologies that involve the generation, transmittal, or storage of information in an intangible format. Electromagnetic technologies that generate, transmit, and store information in intangible formats are electronic in nature. Thus, for example, the typical computer hard drive is a device that stores information electronically. Optical technologies that generate, transmit, or store information in intangible formats are also included within the meaning of the term. Although some aspects of optical technologies may not be truly electronic in nature, they are considered to be electronic because they create or manipulate information in an intangible format. Thus, for example, fiber optic cable is a means of transmitting information electronically. The listing of specific technologies in this section is not intended to be static or limited to those created or in use at the time of the adoption of this Act. As electronic technologies continue to develop and evolve, even if they involve competencies other than those listed, they are also included in this definition if they perform the function of generating, transmitting, or storing information in an intangible format from which the information may subsequently be retrieved and viewed in a perceivable format. The term “electronic” in this Act has the same meaning as it has in UETA §2(5), ESign §106(2), and URPERA §2(2). *ULC, Revised Law on Notarial Acts, Comment to Section 2.*

‘Electronic signature.’ An electronic signature is any electronic symbol, sound, or process that is attached to, or logically associated with, an electronic record by an individual with the intent to sign the record. An electronic signature on an electronic record is one that accomplishes the same purpose as a traditional “wet” pen or ink signature on a tangible record; it associates an individual with an electronic record for the purpose of signing or executing the record. The technology that may be used for an electronic signature includes all the technologies that are encompassed within the definition of the term “electronic.” Whether an individual in fact attaches an electronic signature to an electronic record with the intent to sign it is a question of fact to be determined in each case. The term is similar to the definition used in UETA §2(8), ESign §106(5), and URPERA §2(4). *ULC, Revised Law on Notarial Acts, Comment to Section 2.*

‘In a representative capacity.’ The term ‘in a representative capacity’ refers to the role in which an individual signs a record or makes a statement with respect to which a notarial act is performed. Specifically, it indicates that the individual who signs a record or makes the statement is doing so as a representative of another person, a principal, and not on the individual’s own behalf. A representative with proper authority binds the principal as if the principal signed the record. The authority to perform an act in a representative capacity may be authority to the individual (e.g. attorney in fact). Whether a person is authorized to act in a representative capacity is a fact to be determined under the agency law of the state. *ULC, Revised Law on Notarial Acts, Comment to Section 2.*

‘Notarial act.’ The term ‘notarial act’ encompasses a notarial act whether authorized in this Act or by other law of this state. This subsection lists those notarial acts specifically authorized by this Act. The listed notarial acts include taking an acknowledgment, administering an oath or affirmation, taking a verification upon an oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy of a record, and noting a protest of a negotiable instrument. This Act applies to a notarial act regardless of whether it is performed with respect to a tangible record, such as paper, or with respect to an electronic record. Other Uniform Laws, including UETA, ESign, and URPERA, specifically authorize the creation, transfer, storage, and recording of electronic records just as other law has traditionally authorized records on tangible media. This Act specifically authorizes notarial acts to be performed with respect to electronic records. *ULC, Revised Law on Notarial Acts, Comment to Section 2.*

‘Notarial officer.’ The term ‘notarial officer’ includes a notary public as well as other individual having the authority to perform notarial acts under other state, tribal, or federal law or the law of a foreign state. Thus, for example, judges, clerks, and deputy clerks are notarial officers.

Also, an individual designated as a notarizing officer by the United States Department of State for performing notarial acts overseas is also a notarial officer for that purpose. Other persons, whether by state law, federal law, tribal law, or the law of a foreign state, may also be notarial officers. Many of the provisions of this Act apply broadly to all notarial officers regardless of the source of their authority.

However, some provisions . . . apply only to notaries public. *ULC, Revised Law on Notarial Acts, Comment to Section 2.*

‘Notary public.’ A ‘notary public’ is an individual who is issued a commission as a notary public by the [sic] [State Treasurer]. A notary public does not include those individuals, such as judges and clerks of court, who are authorized to perform notarial acts under other law or as a part of the official duties of an office or position they hold. *ULC, Revised Law on Notarial Acts, Comment to Section 2.*

‘Official stamp.’ The term ‘official stamp’ refers to an image containing specified information that a notarial officer attaches to or associates with a certificate of notarial act, which is itself on, attached to, or associated with a record. The contents and characteristics of the ‘official stamp’ are set forth in this Act, *N.J.S. 52:7A-15*. On a tangible record, the image is a physical one appropriately located on, or attached to, the certificate of notarial act. It may be applied to the surface of the certificate, as with a rubber stamp and ink, or it may be applied by compression or embossment, as with a stamp. On an electronic record, the image is in an electronic format and attached to, or logically associated with, the electronic certificate of notarial act. Being an electronic image, the image must be viewed through a device such as a computer monitor or printed out in order to be humanly perceivable. An ‘official stamp’ is to be distinguished from the device by which the image is affixed on, attached to; or associated with a certificate of notarial act; that device is identified as a “stamping device” and is defined in subsection m. *ULC, Revised Law on Notarial Acts, Comment to Section 2.*

‘Record.’ A ‘record’ consists of information stored on a medium, whether the medium be a tangible one or an electronic one. The traditional tangible medium has been paper on which information is inscribed by writing, typing, printing, or other similar means. The information is humanly perceivable by reading it directly from the paper on which it is inscribed. An electronic medium is one on which information is stored electronically. The information is humanly perceivable only by means of a device that interprets the electronic information in the record and makes it readable. For example, electronic information may be stored on a hard disk and it may be retrieved and read in a humanly perceivable form on a computer monitor or a paper printout. Traditionally, especially if the tangible medium is paper, a record has been referred to as a “document.” In this Act, the word “record” replaces the word “document” and includes information regardless of whether the medium is tangible or electronic. The definition of the word “record” in this Act is the same as the definition of that word in UETA §2(13) and ESign §106(9). It also is the same as the definition of the word “document” as used in URPERA §2(1). *ULC, Revised Law on Notarial Acts, Comment to Section 2.*

‘Sign’ and ‘Signature.’ Subsections k. and l. of this Act define the related words ‘sign’ and ‘signature.’ An individual may ‘sign’ his or her name to a record either on a tangible medium or an electronic medium as long as the individual has the present intent to authenticate or adopt the record so signed. The verb ‘sign’ includes other forms of the verb, such as ‘signing.’ Except as provided for an individual unable to sign, an individual must personally perform the act of signing a record. A symbol located on, or associated with, a tangible or electronic record that is the result of the signing process is an individual’s ‘signature.’ The usual symbol an individual uses as the individual’s signature is the individual’s given name. If, instead of using the individual’s given name, however, an individual uses an alternative symbol as the individual’s signature, such as an “X,” the individual may affix that symbol to the record as the individual’s signature. Nothing in the definitions of the words ‘sign’ or ‘signature’ or of the word ‘record’ (prior subsection) imposes a security process or standard in the definition of those words. When a means of security is imposed, it is done by a requirement in a separate section. *ULC, Revised Law on Notarial Acts, Comment to Section 2.*

‘Stamping device.’ A ‘stamping device’ is the means by which an official stamp is affixed to, embossed on, or associated with, the certificate of notarial act in a record. With a traditional paper medium, for example, the stamping device may be a rubber device that uses ink to impose a stamp on the paper. It may also be a device that compresses or embosses the paper and applies an impression stamp. In an electronic format, the stamping device is an electronic process or technology that associates unique information identifying the notarial officer with the certificate of notarial act that is affixed to, or associated with, an electronic record. The means of identifying the notarial officer may, for example, be a security card, password, encryption device, or other system that allows access to an electronic process that associates the

officer's unique information with the certificate of notarial act on an electronic record. The electronic process may be located on, for example, a desktop or laptop computer; a flash drive or other peripheral device used in connection with a computer: a portable electronic device such as a Blackberry or iPhone; or a secure website on the Internet. The means of identifying the notarial officer and the electronic process are collectively the stamping device. The result, although attached to, or associated with, an electronic certificate of notarial act, will be perceivable only by means of a device such as a computer monitor that is capable of presenting it in a perceivable format. *ULC, Revised Law on Notarial Acts*, Comment to Section 2.

'Verification upon oath or affirmation.' A "verification upon oath or affirmation" is a common form of notarial act. It is a declaration by an individual before a notarial officer in which the individual states on oath or affirmation that the declaration is true. This declaration is sometimes referred to as an "affidavit" or "jurat." See *Coast to Coast Demolition and Crushing, Inc. v. Real Equity Pursuit, LLC*, 226 P.3d 605, 608 (Nev. 2010). *ULC, Revised Law on Notarial Acts*, Comment to Section 2.

52:7-11 52:7A-3. Appointment; term; removal; application; renewals

a. The State Treasurer ~~shall~~ may commission so many notaries public as the Secretary of State State Treasurer deems 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. An applicant for commission ~~A person desiring to be commissioned~~ as a notary public shall make application to the Secretary of State on a form prescribed by the Secretary of State and endorsed by a member of the Legislature or the Secretary of State ~~or Assistant Secretary of State~~ State. Renewals shall be made in the same manner as the original application.

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

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. The remaining language is substantially the same as the source.

A2540 pending in the 2012-13 legislative session, sponsored by Assemblywoman Annette Quijano and Assemblyman Joseph Cryan, proposes the following language:

The State Treasurer shall include a designated space on the application form for an applicant to provide, on an optional basis, ~~his~~ the applicant's email address. Renewals thereof shall be made in the same manner as the original application.

A463/S2008 sponsored in 2010 by Assemblywoman Assemblywoman Dr. Joan Voss and Senators Nicholas Scutari and Robert Gordon propose increasing the fee from \$25.00 to \$40.00.

52:7-12 52:7A-4. Minimum age; Qualifications

a. A person commissioned as notary public in this State shall be at least 18 years of age or older; shall not be disqualified to receive a commission under , N.J.S. 52:7A-6; and shall be at the time of appointment a legal resident of this State, except as otherwise provided in this Act, N.J.S. 52:7A-5.

b. An applicant for commission as a notary public:

1. shall provide satisfactory proof that the applicant has completed a six-hour course of study approved by the State Treasurer pursuant to this Act, *N.J.S. 52:7A-7a.*; and

2. shall satisfactorily complete a written examination prescribed by the State Treasurer, *N.J.S. 52:7A-8*, based on the course of study described in *N.J.S. 52:7A-7a.*

c. An applicant for notary public who holds a notary public commission in this State and who has satisfactorily completed the six-hour course of study required pursuant to subsection b.1 at least one time, shall provide satisfactory proof when applying to renew a notary public commission that the applicant has satisfactorily completed a three-hour continuing education course, pursuant to *N.J.S. 52:7A-7b*, prior to applying for commission renewal.

COMMENT

The shaded underlined language in this provision is adapted from RULONA, Section 21a., b.1, b.2, and b.6. The Draft Report excludes subsection b.3 – 5. Subsections c. and d. of Section 21 apply to the optional assurance which is not included in this Draft Report.

Subsection e. is covered by language in *N.J.S. 52:7-10*, Oath; filing; certificate of commission and qualification and subsection f. has been added to *N.J.S. 52:-10* section as subsection d. Section 21b.1, b.2 and b.6 are also addressed in this Report in *N.J.S. 52:7A-3*.

The remaining shaded section incorporates NJLRC recommendations for clarity and the suggestions of interested stakeholders for a course study for applicants and continuing education course for notaries public seeking commission renewal. Some commenters have suggested reducing the number of hours required for each.

RULONA recommends state legislatures add criminal background checks where consumer protection demands increased scrutiny of prospective notaries public. A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senators Nicholas Scutari and Robert Gordon proposes that prospective notaries should be required to do the following:

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 to assist in determining the identity of the applicant and whether the applicant has a record of conviction for a crime under the laws of this State enumerated in sections 1 or 2 of P.L.1981, c.487 (C.52:7-20 or C.52:7-21), or for an offense involving fraud, dishonesty, or deceit, 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 a record of conviction under the laws of another state, or of the United States for an offense or crime involving fraud, dishonesty, or deceit, or for a crime of the second degree or above, 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.).

~~52:7-13~~ **52:7A-5. Appointment of nonresidents; requirements**

A person shall not be denied commission as a notary public because of residence outside of this State, if the person resides in another State ~~adjoining this State~~ and maintains, or is regularly employed in, an office in this State. Before any such nonresident shall be commissioned as a notary public, ~~he~~ the applicant shall file with the ~~Secretary of State~~ State Treasurer an affidavit setting forth the residence and the address of ~~his~~ the applicant and the office or place of employment of the applicant in this State. Any 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 addressed in this State.

COMMENT

NJLRC recommends gender neutral language as indicated. Several commenters recommended removal of the language “adjoining this State”.

52:7A-6. Grounds To Deny The Application, or Refuse to Renew, Revoke, Suspend, or Limit the Commission of Notary Public.

a. The State Treasurer may deny an application for commission as notary public, or refuse to renew, revoke, suspend, or otherwise limit the commission of a notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability necessary to act as a notary public, including:

1. failure to comply with this Act, N.J.S. 52:7A-1, et seq.

2. a fraudulent, dishonest, or deceitful misstatement or omission in the application for 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;

3. a finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on fraud, dishonesty, or deceit by the applicant or notary public;

4. failure by the notary public to discharge any duty required of a notary public, whether by this Act, N.J.S. 52:7A-1, et seq., rules of the State Treasurer, ~~or~~ and any other state law, or federal law;

5. 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;

6. for a notary public ~~or notarial officer~~ who is not an attorney licensed to practice law, any of the following:

(A) giving legal advice;

(B) acting as an immigration consultant or an expert on immigration matters; or

(C) otherwise performing the duties of an attorney licensed to practice law in New Jersey;

7. violation by the notary public of a rule of the State Treasurer regarding a notary public; or

7. withholding access to or possession of an original record or photocopy provided by a person that seeks performance of a notarial act by the notary public, except where allowed by law;

8. denial of an application for notary public, or refusal to renew, revocation, suspension, or otherwise limiting the commission of the notary public in another state;

b. If the State Treasurer denies an application for notary public, or refuses to renew, revokes, suspends, or otherwise limits the commission of 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. 52:14B-1, et seq.

c. The authority of the State Treasurer to deny an application for notary public, or refuse to renew, suspend, revoke, or otherwise limit the commission of a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

COMMENT

The language in this provision is taken from RULONA Section 23 - Grounds to Deny the Application, or Refuse to Renew, Revoke, Suspend, or Limit the Commission of Notary Public. In subsection a.(6), language is taken from RULONA Section 25 – Prohibited Acts.

In subsection a.6, a group of commenters recommended removing the term “notarial officer” used in RULONA because the New Jersey State Treasurer does not have jurisdiction over all notarial officers. In the same subsection a.6, the group of commenters also recommended adding the following subsection:

The group of commenters also recommended adding subsection a.6.(D) “Notario Publico” to this provision.

The ULC Report explains in the Comment to Section 23 that:

Subsection a. lists the grounds upon which the [sic] [State Treasurer] may deny, refuse to renew, revoke, suspend, or impose a condition a commission. The general grounds listed include a lack of honesty, integrity, competency, or reliability on the part of the applicant or current notary public. The grounds are similar to those provided in many other states (compare Ariz. Rev. Stat. §41-330(A) (2010); N.C. Gen. Stat. §10B-5d. (2010)).

Subsections a.1 to 6 enumerate specific grounds upon which the [sic] [State Treasurer] may deny, refuse to renew, suspend, revoke or limit a commission. Subsection [a.(8)] allows the [sic] [State Treasurer] to refuse to renew, suspend, revoke, or impose a condition a commission because the notary public has violated rules adopted by the State Treasurer regarding notaries public. . . The [sic] [State Treasurer] has discretion when making the determination and should weigh all the facts and circumstances before making a decision.

Subsection b. states that an applicant or notary public whose commission has been denied, revoked, or suspended, or upon whose commission a condition has been imposed, or who has been refused a renewal of a commission is entitled to a timely notice and a hearing. Such a notice and hearing are likely required by the state’s administrative procedure act but are restated here for clarity.

Subsection c. provides that the fact that a State Treasurer has the authority to deny, refuse to renew, suspend, revoke or impose a condition on a commission does not prevent additional relief provided by law. Either the State Treasurer or a person aggrieved by the action of a notary public may seek appropriate relief, whether the relief is civil or criminal.

New Jersey Legislation proposed in 2010, A463/S2008 proposed the following provision:

a conviction for a crime under the laws of this State enumerated in sections 1 or 2 of P.L.1981, c.487 (C.52:7-20 or C.52:7-21), or for an offense involving fraud, dishonesty, or deceit, 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 a record of conviction under the laws of another state, or of the United States for an offense or crime involving fraud, dishonesty, or deceit, or for a crime of the second degree or above, except that if the person has such a record of conviction the State Treasurer may make a determination for commission of the person in accordance with the provisions of P.L.1968, c.282 (C.2A:168A-1 et seq.).

Legislation pending in the current legislative session, A2512 was combined with A3721/S2545 requiring notaries who are not attorneys to publish that fact and prohibiting notaries from falsely representing themselves as attorneys in advertisements. A2512/S2545 proposes adopting the following notice after a notary public has taken the oath of commission:

After the administration of the oath, the clerk shall provide a notice to the notary public that a commissioned notary public who is not licensed as an attorney at law shall not use or advertise the title of lawyer or attorney at law, or equivalent terms, in any language, which may mean or imply that the notary public is licensed as an attorney at law in the State of New Jersey or in any other jurisdiction of the United States. The notice shall also state that a notary public who advertises his services is required to provide with such advertisement, in the language of the advertisement, a notice which contains the following statement: "I am not an attorney licensed to practice law and may not give legal advice about immigration or any other legal matter or accept fees for legal advice."

A2512/S2545 also proposes that failure to subscribe to the oath within 3 months of the receipt of the commission would constitute grounds to deny the application of an applicant, or refuse to renew, revoke, suspend, or limit the commission of a notary public.

52:7A-7. Course of Study; Continuing Education

a. An applicant for commission as a notary public under *N.J.S. 52:7A-3* must, within the six-month period immediately preceding application, complete a six-hour course of study prescribed and approved by the State Treasurer. For approval, the following must apply:

1. The course of study shall:

(A) cover the statutes, regulations, procedures and ethics for notaries public as described in the public manual issued by the State Treasurer, and

(B) include the duties and responsibilities of a commissioned notary public.

2. The course of study shall be given by classroom instruction.

b. An applicant for commission renewal must, within the six-month period immediately preceding application, complete a course of at least three-hours of continuing education prescribed and approved by the State Treasurer. For approval, the following must apply:

1. The continuing education course shall cover topics which ensure maintenance and enhancement of skill, knowledge, and competency necessary to perform notarial acts;

2. The continuing education course shall be given by classroom instruction.

c. 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 provider.

d. The State Treasurer may also provide a notary public education course of study and continuing education course.

e. The State Treasurer shall compile a list of all persons offering an approved course of study pursuant to subsection a. and b. 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.

f. The State Treasurer may also provide a notary public education course of study and continuing education course.

g. The State Treasurer shall compile a list of all persons offering an approved course of study pursuant to subsection a. and b. 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 shaded language in this section is adapted from RULONA Section 22, incorporating NJLRC recommendations based on comments from interested stakeholders suggesting a course of study given by classroom instruction, a six-hour course of study for applicants and a three-hour continuing education course for notaries public seeking commission renewal which was influenced by proposed language from A463.

Several commenters have suggested reducing the number of hours required for the course of study from six hours to three hours for applicants and providing for a one-hour course of study instead of three hours for notaries public renewing their commission. Several commenters, including a national organization, have requested that the Report recommend online instruction to satisfy the course of study requirement. Other commenters have stated that requiring classroom instruction is the best means to ensure that New Jersey notaries public are knowledgeable and aware of the current statutes and regulations governing their practice.

52:7A-8. Written Examination

a. 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 this Act, N.J.S. 52:7A-3, and administered by the State Treasurer shall:

1. be based on the statutes, regulations, procedures and ethics for notaries public as described in the public manual issued by the State Treasurer, and
2. include the duties and responsibilities of a commissioned notary public.

b. The State Treasurer shall charge a nonrefundable fee, to be established by regulation, which shall be:

1. payable at the examination site;
2. 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 shaded language reflects NJLRC recommendations based on RULONA Section 22 and comments from interested stakeholders. The *italicized language* is taken from A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senators Nicholas Scutari and Robert Gordon.

52:7-17. Fee 52:7A-9. Manual

a. The State Treasurer shall:

1. maintain a public manual pursuant to this Act, N.J.S. 52:7A-1, et seq.;
2. update the information contained in the manual and the Department of Treasury's Internet website as appropriate.

b. The ~~Secretary of State~~ State Treasurer shall, by regulation, fix a fee to be charged to each notary for the cost of printing and distributing to each applicant a manual prescribing the powers, duties and responsibilities of a notary, however no fee may be charged if the manual is downloaded or printed from the Department of Treasury's website.

COMMENT

Language in subsection b. is taken from N.J.S. 52:7-17. In light of the course of study and written examination provisions proposed by this act, NJLRC recommends subsection a. to include requirements for maintaining and updating the public manual which provides the basis of the course of study and the written examination, including the statutes, regulations, and procedures governing notaries public, as well as the requirements, functions, duties, and ethics requirements of a notary public.

A group of commenters proposed that because notaries public will be kept abreast of developments in the notarial practice through the proposed educational requirements the manual provision may become obsolete, particularly if it is not regularly updated. The commenters proposed eliminating the manual provision but if the provision remains the commenters suggested the language recommended in subsection b.

52:7-14 52:7A-10. Oath; filing; certificate of commission and qualification

a. Within 3 months of the receipt of ~~his~~ the commission, each notary public shall take and subscribe an oath before the clerk of the county in which ~~he~~ the notary public resides, that the notary public will do the following:

1. ~~that notary public will~~ faithfully and honestly ~~to~~ discharge the duties of ~~his~~ office, and
2. ~~that notary public will~~ make and keep a true record of all matters as are required by law, which oath shall be filed with the clerk.

b. The oath of office of a nonresident notary public shall be taken and subscribed before the clerk of the county in which ~~he~~ the nonresident notary public maintains ~~his~~ an office or where the notary public is employed in this State.

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

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

COMMENT

Underlined language in subsection f. is taken from RULONA, Section 21f. NJLRC recommends the shaded language for clarity and gender-neutral language. The remaining language is substantially the same as the source.

NJLRC recommends the shaded language for clarity and gender-neutral language. The remaining language is substantially the same as the source.

52:7-18 52:7A-11. Statement by notary public after change in name; filing; evidence of continuance of powers and privileges

a. After a notary public adopts a name different from that which ~~he~~ the notary public used at the time ~~he~~ the notary public was commissioned, and before ~~he~~ the notary public ~~his name~~ provides a signature to any ~~document~~ record 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.

b. The statement shall ~~set forth~~ state 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.

c. The statement shall be filed in the office of the ~~Secretary of State~~ State Treasurer 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~~ commission and qualification. Such statement, or a certified copy ~~thereof~~, shall be evidence of the right of ~~said~~ the notary public to continue to exercise the powers and privileges and perform the duties of a notary public in ~~his~~ the changed and ~~or~~ new name ~~of the notary public~~.

COMMENT

The language in this provision is substantially the same as the source with NJLRC changes to add gender-neutral language.

~~52:7-15~~ 52:7A-12. 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 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 ~~his~~ the signature of the notary public, to such county clerks as ~~he~~ the notary public may desire, for filing.

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

COMMENT

NJLRC recommends the shaded language for clarity and to add gender-neutral language. The remaining language above is substantially the same as the source. Several commenters have recommended eliminating subsection b. because “as a matter of practicality,” it has become obsolete.

52:7A-13. 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 is a notary public be signed in the same manner as on file with the State Treasurer ;

3. identify the county and state in which the notarial act is performed;
4. contain the title of office of the notarial officer.

~~b.~~ 5. If the notarial officer is a notary public, then all of the following will apply. The notary public must:

~~1.~~ provide a signature exactly and only as it appears on the file with the State Treasurer;

~~2.~~ execute the notary's electronic signature in a manner which attributes the signature of the notary public identified in the commission.

~~e.~~ The certificate must indicate the date of expiration of the commission of the notarial officer.

~~d.~~ b. A certificate of a notarial act is sufficient if it meets the requirements of subsections a., b., and c. and:

1. is in a short form set forth in this Act, N.J.S. 52:7-21;

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 this Act, N.J.S. 52:7A-1, et seq. and any other applicable laws of this state.

~~e.~~ c. 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 this Act, N.J.S. 52:7A-1, et seq.

~~f.~~ d. 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.

~~g.~~ e. If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record.

~~h.~~ f. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record.

~~i.~~ g. If the State Treasurer has established standards pursuant to this Act for attaching, affixing, or logically associating the certificate, the process must conform to the standards.

COMMENT

The language in this provision is taken from Section 15 of RULONA. The NJLRC proposes the following changes to RULONA clarify the language. In proposed subsection h., a group of commenters proposed eliminating the word "securely" provided in the uniform act because the term "securely attached" has not been defined and remains unclear.

52:7A-14. Official Stamp

a. The official stamp of a notary public must:

1. include the name of the notary public, the title “Notary Public, State of New Jersey” the county and state, and the notary public’s commission the expiration date for the commission of the notary public; and

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

b. If a notarial act regarding a tangible record is performed by a notary public, an official stamp shall be affixed to or embossed on the certificate near the signature of the notary public so as to be clear and readable.

c. If a notarial act regarding a tangible record is performed by a notarial officer other than a notary public and the certificate contains the information specified in N.J.S. 52:7A-14a.2, 3, and 4, an official stamp may be affixed to or embossed on the certificate.

d. If a notarial act regarding an electronic record is performed by a notary public and the certificate contains the information specified in N.J.S. 52:7A-14a.2, 3, and 4, an official stamp may be attached to or logically associated with the certificate.

e. d. If a notarial act regarding an electronic record is performed by a notarial officer other than a notary public and the certificate contains the information specified in N.J.S. 52:7A-14a.2, 3, and 4, an official stamp may be attached to or logically associated with the certificate.

COMMENT

The NJLRC makes the following recommendations in response to a group of commenters that requested revising the RULONA provision conform with existing New Jersey practice.

This section merges subsection b, from RULONA Section 15 which identifies those circumstances in which the certificate of notarial act must contain the official stamp of the notarial officer with Section 17 of RULONA concerning the Official Stamp.

The Comment to Section 15 states that:

[i]f the notarial act is performed with respect to a tangible medium and is performed by a notarial officer other than a notary public, subsection b. states that an official stamp may be attached to or embossed on the certificate of notarial act. However, although permitted, it is not required by this act. . . Whether a notarial officer other than a notary public is required to use an official stamp and what the contents of that stamp may be will depend on other law of this state. That law may not require the use of a stamp or it may require the use of a stamp but may specify other contents. Regardless of whether an official stamp is attached to or embossed on the certificate, the certificate nevertheless must, at a minimum, contain the information specified in subsections Certificates of a Notarial Act.

The Comment to Section 17 explains that:

This section sets forth two requirements for a notary public’s official stamp, whether the stamp is a physical image attached to, or embossed on, a tangible certificate of notarial act or an electronic image attached to, or logically associated with, an electronic certificate of notarial act. The official stamp must state the notary public’s name. Since the Act requires that a notary public sign the notary’s name as it appears on file with the [sic] [State Treasurer], the name of the notary on the official stamp should also conform with the name on file with the [sic] [State Treasurer]. The official stamp must state the jurisdiction in which the notary public is commissioned. An optional provision states that the official stamp must set forth the date on which the notary public’s commission expires. Finally, the official stamp must include any other information that is required by the [sic] [State Treasurer].

The official stamp must be capable of being copied together with the record to or with which it is attached or logically associated. Thus, for example, an official stamp that is affixed with a rubber stamping device and ink must provide a clear image in an ink that is capable of being copied. An official stamp that is affixed by embossing must do so in such a way that the information in the embossment is capable of being

copied. An official stamp that is attached to, or logically associated with, an electronic record must be capable of being copied by the same technology by which the electronic record is copied.

52:7A-15. Stamping Device

a. A notary public is responsible for the security of the stamping device used by the notary public and may not allow another individual to use the device to perform a notarial act, except at the specific instruction of a notary public who cannot physically use the stamping device.

b. The notary public's stamping device is the property of the notary public and not the notary public's employer, even if the employer paid for the notary public's stamping device.

~~b.~~ c. If the stamping device used by the notary public is lost or stolen, the notary public or the personal representative of the notary public or guardian shall notify promptly the State Treasurer on discovering that the device is lost or stolen.

COMMENT

Language added to subsection a. is recommended in response to a group of commenters who believed the RULONA provision did not provide for a notary public with a physical disability.

The NJLRC recommends adding subsection b. based on the observation of a group of commenters who wanted to prevent controversy when an employer requires an employee to become a notary public and the notary public subsequently leaves the position with the employer.

The language in this provision is taken from Section 18 of RULONA. The ULC recommends that “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.” *ULC, Revised Uniform Law on Notarial Acts*, Comment to Section 18.

The Comment to Section 18 explains that:

In order to protect and maintain the integrity of notarial acts, it is important that a notary public’s stamping device be kept secure and out of the hands of other individuals who might use it fraudulently or erroneously. Accordingly, subsection a. provides that a notary public is responsible for maintaining the security of notary’s stamping device. Similarly, it provides that a notary public may not allow another individual to use the device.

In order to assure the integrity of the notarial system, the optional (bracketed) sentences of subsection a. provide that the notary public may not continue to possess the official stamp once the notary is no longer serving as a notary public. The first optional sentence provides that upon the resignation of the notary public’s commission, the revocation or expiration of the notary’s commission, or the expiration of the date set forth in the stamping device, the notary must disable the device by destroying, defacing, damaging, erasing or securing it in a manner that renders it unusable. Similarly, the second optional sentence provides that upon the death or incompetency of a notary public, if the notary public’s personal representative is knowingly in possession of the stamping device, the representative must render the stamping device unusable by destroying, defacing, damaging, erasing or securing it. (Compare N.C. Gen. Stat. §10B-36a. (2009).)

Subsection b. recognizes that if the official stamp is lost or stolen, the possibility of fraudulent activity or misuse is also raised. Thus, a notary public is required to notify the State Treasurer as soon as the notary discovers that the stamp is lost or stolen. The State Treasurer may be able to take other steps to provide notification that will further protect the public (compare Ariz. Rev. Stat. §41-323 (2010); N.C. Gen. Stat. §10B-36c. (2009)).

52:7A-16. Authority to Perform Notarial Act

a. A notarial officer may perform a notarial act authorized by this Act, N.J.S. 52:7A-1, et seq., and by any other applicable law.

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 in this provision is taken from Section 4 of RULONA. The ULC Report explains, in the Comment to Section 4 that:

Subsection a. is the enabling provision of this Act and grants a notarial officer the authority to perform notarial acts. It authorizes a notarial officer to perform notarial acts that are authorized by this Act as well as those authorized by other law of this State.

When taken in conjunction with the definition of a notarial act, subsection a. also authorizes a notarial officer to perform notarial acts regardless of the format of the record. Thus, a notarial officer may perform notarial acts on tangible records as well as electronic records. However, before a notary public may begin to perform notarial acts on electronic records, the notary must notify the State Treasurer that the notary will be performing notarial acts with respect to electronic records.

Subsection b. prohibits a notarial officer from performing a notarial act in a circumstance in which performance of that act might create a conflict of interest. It provides that a notarial officer may not perform a notarial act with respect to any record in which the officer or the officer's spouse (or civil partner, as defined by state law) is a party. The prohibition is absolute and clear; there is no need to demonstrate a direct beneficial interest even though the interest may be obvious. For example, a notarial officer may not take an acknowledgment of a deed in which the officer or the officer's spouse is a grantor or grantee. *ULC, Revised Uniform Law on Notarial Acts*, Comment to Section 18.

In addition, subsection b. provides that a notarial officer may not perform a notarial act with respect to any record in which the officer or the officer's spouse (or civil partner) has a direct beneficial interest. This prohibition depends on whether there is a direct beneficial interest derived from the record (*see e.g. Galloway v. Cinello*, 188 W. Va. 266, 423 S.E.2d 875 (1992)). For example, a deed by a third party (perhaps a grandparent) creating a trust in which a child of the notarial officer is a beneficiary might involve a direct beneficial interest to the notarial officer that is derived from the trust document (record), especially if the trust relieves support obligations of the officer. If it does provide a direct beneficial interest derived from the record, the officer would be prohibited from taking the acknowledgment of the deed of trust. While further information would be necessary to determine whether there is a direct beneficial interest derived from the record, a notarial officer should avoid performing a notarial act in any situation when doing so would raise the appearance of an impropriety. *ULC, Revised Uniform Law on Notarial Acts*, Comment to Section 4.

This prohibition does not, however, extend to situations in which the beneficial interest is indirect and not the result of the operation of the record or transaction itself. For example, if the interest received is merely the payment of a notarial fee, the benefit is indirect and derived from the performance of notarial duties and not the result of the operation of the record or transaction itself (*see, e.g. Hass v. Neth*, 265 Neb. 321, 657 N.W.2d 11 (2003)). Similarly, a notary public who is hired by an employer to be available to perform notarial acts on multiple transactions does not derive a beneficial interest as a result of the operation of the records or transactions themselves. For example, a notary public may be an employee and the expenses of obtaining and maintaining the commission may be paid by the notary's employer. The obvious purpose of such an arrangement, at least in part, is that the notary public will perform notarial acts in appropriate

situations as needed and requested by the employer. The fact that the notary public's salary and expenses are paid by the employer does not prevent the notary public from performing notarial acts when requested by the employer. Even though the notary receives a salary and the notary's salary may even depend on the fact that the notary performs notarial acts for the employer generally, the notary does not have a direct beneficial interest in the transactions or one that is derived from the operation of the records or transactions. *ULC, Revised Uniform Law on Notarial Acts*, Comment to Section 4.

Likewise, if a notarial officer is an attorney, the attorney/notarial officer may perform notarial acts for a client as long as the attorney does not receive a direct beneficial interest as a result of operation of the record or transaction with regard to which the notarial act is performed. The fact that the attorney receives a fee for performing legal services, presently or in the future, is not a direct beneficial interest resulting from the operation of the record or transaction. Thus, receiving a fee for drafting a will or for subsequently representing the estate are fees for legal services and not a direct beneficial interest received as a result of the operation of the will (record) itself. *ULC, Revised Uniform Law on Notarial Acts*, Comment to Section 4.

If a notarial officer should perform a notarial act in violation of subsection b., the notarial act is not void *per se*. It may, however, be voidable in an action brought by a party who is adversely affected by the officer's misdeed. *See Galloway v. Cinello*, 188 W. Va. 266, 423 S.E.2d 875 (1992), where the court stated that the document was not void *per se* but was voidable; in making a determination the court should consider whether an improper benefit was obtained by the notary or any party to the instrument, as well as whether any harm flowed from the transaction. *But see Estate of McKusick*, 629 A.2d 41 (Me. 1993) in which the court questioned the validity of a will because the affidavit of a witness was made before a notary public who was the spouse of the witness. *ULC, Revised Uniform Law on Notarial Acts*, Comment to Section 14.

52:7A-17. 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 N.J.S. 12A:7, et seq.

f. For the purposes of this section,

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

2. A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual by means of one or more of the following:

(A) A document issued to an individual by a government or government agency bearing the person's signature and either (1) a photographic image of the person's face, or (2) a physical description of the person, which document is current or expired not more than three years before the performance of the notarial act;

(B) A passport which is current or expired not more than three years before the performance of the notarial act;

(C) The oath or affirmation of one individual without interest in the notarial act to be performed when the notarial officer has personal knowledge of the identity of the individual and the individual has personal knowledge of the identity of the person;

(D) The oath or affirmation of two individuals without interest in the notarial act to be performed when the individuals produce to the notarial officer satisfactory evidence of their identities described in paragraphs f.2.a or b. of this subsection and the individuals have personal knowledge of the identity of the person;

(E) A current identification card issued by any branch of the armed forces of the United States.

COMMENT

The shaded underlined language in this provision is adapted from RULONA. This section was reordered for clarity based on recommendations from a group of commenters.

The language shown above is taken from Section 5 of RULONA. The ULC Report examines the definitions of Acknowledgment, Verification on Oath or Affirmation, Witnessing or Attesting a Signature, and to Make or Note a Protest of a Negotiable Instrument in the Comment to Section 5 as follows:

'Acknowledgment' – Subsection a. provides that when taking an acknowledgment, a notarial officer certifies that: (1) the individual who is appearing before the officer and acknowledging the record has the identity claimed, and (2) the signature on the record is the signature of the individual appearing before the officer. The notarial officer must identify the individual either through personal knowledge of the individual or from satisfactory evidence of the identity of the individual. The acknowledging individual must also declare that the individual in signing the record for the purpose stated in the record.

It is common practice for the individual to sign the record in the presence of the notarial officer. However, actually signing the record in the presence of the officer is not required as long as the individual acknowledges to the officer, when the individual appears before the officer, that the signature already on the record is that of the individual. *ULC, Revised Uniform Law on Notarial Acts, Comment to Section 5.*

'Verification on oath or affirmation' – Subsection b. provides that when taking a verification on oath or affirmation, a notarial officer certifies that: (1) the individual who is appearing before the officer and making the verification has the identity claimed, and (2) that the signature on the record is the signature of the individual appearing before the officer. The verifying individual must also declare that the statements in the record are true. The notarial officer must identify the individual either through personal knowledge of the individual or from satisfactory evidence of the identity of the individual. A verification may be referred to as an affidavit or a jurat in some jurisdictions. *ULC, Revised Uniform Law on Notarial Acts, Comment to Section 5.*

'Witnessing or attesting a signature' – Subsection c. provides that when witnessing or attesting a signature, a notarial officer certifies that: (1) the individual who is appearing before the officer and signing the record has the identity claimed, and (2) that the signature on the record is the signature of the individual

appearing before the officer. The notarial officer must identify the individual either through personal knowledge of the individual or from satisfactory evidence of the identity of the individual. Witnessing or attesting a signature differs from taking an acknowledgment in that the record contains no declaration that it is signed for the purposes stated in the record and differs from a verification on oath or affirmation in that the individual is not verifying a statement in the record as being true. It is merely a witnessing of the signature of an identified individual. *ULC, Revised Uniform Law on Notarial Acts*, Comment to Section 5.

“Certifies or attests a copy” – Subsection d. provides that when certifying or attesting a copy of a record or item, a notarial officer certifies that: (1) the officer has compared the copy with the original record or item, and (2) has determined that the copy is a full, true, and accurate transcription or reproduction of the original record or item. This subsection directs the notarial officer to compare a record or item with a copy of the record or item. Therefore, the record or item must be presented to the notarial officer along with the copy so that the officer is able to make the comparison. *ULC, Revised Uniform Law on Notarial Acts*, Comment to Section 5. Certifying or attesting of a copy is usually done if it is necessary to produce a copy of a record when the original is in an archive or other collection of records and the archived record cannot be removed. In many cases, however, the custodian of the official archive or collection may also be empowered to issue an officially certified copy. When a copy officially certified by the custodian of the archive is available, it is official evidence of the state of the public archive or collection, and it may be better evidence of the original record than a copy certified by a notarial officer. *ULC, Revised Uniform Law on Notarial Acts*, Comment to Section 5.

“Make or note a protest of a negotiable instrument” – Subsection e. provides that a notarial officer may make or note a protest of a negotiable instrument under UCC §3-505b. A protest is an official certificate of dishonor of a negotiable instrument. UCC §3-505b. confers the authority to make or take a protest on “a United States consul or vice consul, or a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs.” In the United States a protest of a negotiable instrument may not be needed as evidence of dishonor (see UCC §3-505a.; see also UCC §3-503). A protest may be necessary, however, on international drafts governed by law of a foreign state (see UCC §3- 505, Official Comment). This subsection is designed to insure that there is no doubt as to the authority of a notary public to make or note a protest of a negotiable instrument when appropriate under the Uniform Commercial Code.

52:7A-18. 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 in this provision is taken from Section 6 of RULONA. The ULC Report explains in the Comment to Section 6 that:

This section expressly requires that when an individual is making a statement or executing a record with regard to which a notarial act will be performed by a notarial officer, the individual must appear before the officer to make the statement or execute the record. Thus, an individual who is acknowledging a record or verifying a statement on oath or affirmation before a notarial officer, or an individual whose signature is being witnessed or attested by a notarial officer, must appear before the officer to perform the specified function. See *Vancura v. Katris*, 907 N.E.2d 814, 391 Ill. App. 3d 350 (2009) which involved a notary public who performed notarial acts without the individual signing the instrument personally appearing before the notary.

To provide assurance to persons relying on the system of notarial acts authorized by this Act, notarial officers must take reasonable steps to assure the integrity of the system. It is by personal appearance before the notarial officer that the individual making a statement or executing a record may be properly identified by the notarial officer. It is also by personal appearance before the notarial officer that the officer may be satisfied that (1) the individual is competent and has the capacity to execute the record, and (2) the individual’s signature is knowingly and voluntarily made.

Personal appearance does not include an “appearance” by video technology, even if the video is “live” or synchronous. Nor does it include an “appearance” by audio technology, such as a telephone. At the time that this act is being drafted, those methods of “appearance” do not provide sufficient opportunity for the notarial officer to identify the individual fully and properly; nor do they allow the officer sufficient opportunity to evaluate whether the individual has the competency or capacity to execute the record or whether the record is knowingly and voluntarily made.

52:7A-19. 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 or if an alternative symbol only if the individual uses the symbol as the individual’s signature. 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

Several commenters have questioned whether this section should be strengthened in light of the increase of web-based notarizations.

The language in this provision is taken from Section 9 of RULONA. The ULC Report explains, in the Comment to Section 9 that:

This section recognizes that some individuals may not be personally able to sign a record because of a physical disability. If an individual is physically unable to sign the record, this section allows an alternate process.

This section allows a disabled individual, who is executing a record, to direct an individual other than the notarial officer to sign the executing individual’s name to the record. It then requires the notarial officer to insert the quoted language in the record or to insert words of similar import. In effect, the executing individual is appointing another individual to act as the executing individual’s agent for the purpose of signing the record.

52:7A-20. Certificate Form.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by N.J.S. 52:7A-14. Certificates of notarial acts are deemed sufficient for the purposes indicated if substantially all of the information required in N.J.S. 52:7A-14 and the section that follows are satisfied:

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 taken from Section 16 of RULONA. NJLRC added the shaded language to allow for notarizations of forms that provide substantially all of the required information but contain minor rearrangements or slight errors.

The Comment to Section 16 explains:

This section provides statutory short form certificates of various notarial acts. These forms are sufficient to document a notarial act in this state. Other forms may also qualify under provisions concerning certificates of notarial acts.

These certificates may be used for notarial acts performed on tangible records as well as those performed with respect to electronic records. They are available for notarial acts performed by notaries public as well as notarial officers who are not notaries public. Under N.J.S. 52:7A-15b., an official stamp is required on the certificate if the notarial act is performed on a tangible record by a notary public. Under N.J.S. 52:7A-15b., if the notarial act is performed on a tangible record by a notarial officer other than a notary public or is performed by any notarial officer on an electronic record, an official stamp is optional, but the information or acts specified provisions of this Act must be supplied. The short forms provided in this section call for the insertion of that information or the performance of those acts.

The calls in each of the forms for state and county information refer to the state and county where the notarial act is performed.

A commenter suggested including the following long form in N.J.S. 52:7A-21:

The following long form for certificates of notarial acts are sufficient must be of substantially the following form an, if completed with contain the information required in N.J.S. 52:7A-14; 12A:3-505b.; 17:9A-291; and 17:14A-51:

a. State of New Jersey

[County] of _____

Signed and sworn to (or affirmed) before me on _____ this day of _____ by _____ proved to me on the basis of satisfactory evidence to be the person (s) who appeared before me.

Seal

Signature of notarial officer

[My commission expires: _____]

Acknowledgment

State of _____)

) ss.

County of _____)

On this, the ____ day of _____, 20____, before me, _____, the undersigned officer, personally appeared _____, (known to me) or (proven by satisfactory evidence) or ((proved to me on the oath or affirmation of _____ who is personally known to me) or (proved by satisfactory evidence and stated to me that he/she/they know the document signer and are unaffected by the document)), to be the person(s) who's name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same for the purposes therein contained.

I n witness whereof, I hereunto set my hand and official stamp.

Notary Public

My Commission Expires on: _____

Jurat

State of _____)

) ss.

County of _____)

On this, the ____ day of _____, 20____, before me, _____, the undersigned officer, personally appeared _____, (known to me) or (proven by satisfactory evidence) or ((proved to me on the oath or affirmation of _____ who is personally known to me) or (proved by satisfactory evidence and stated to me that he/she/they know the document signer and are unaffected by the document)), to be the person(s) who's name(s) is/are subscribed to the within instrument, who signed the preceding or attached document in my presence and who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his/her/their knowledge and belief.

In witness whereof, I hereunto set my hand and official stamp.

Notary Public

My Commission Expires on: _____

Proof of Execution

STATE OF NEW JERSEY

COUNTY OF _____; ss.:

On the ____ day of _____, 20 ____ before me, _____, a Notary Public, personally appeared _____ the subscribing witness to the attached instrument, with whom is personally known to me (or proven by satisfactory evidence), who being duly sworn (affirmed) did say and make proof to my satisfaction that he/she knew _____, the person (s) described in and who executed the attached instrument; and that he/she saw _____ sign and deliver the attached instrument as and for his/her voluntary act and deed, for the uses and purposes expressed therein, and the deponent at the same time subscribed his/her name as

a witness thereto.

X _____
(Affiant)

(Notary Public)

My Commission expires on: _____

Signature Witnessing

State of _____)

) ss.

County of _____)

On this, the ____ day of _____, 20____, before me, _____, the undersigned officer, personally appeared _____, (known to me) or (proven by satisfactory evidence) or ((proved to me on the oath or affirmation of _____ who is personally known to me) or (proved by satisfactory evidence) and stated to me that he/she/they know the document signer and are unaffected by the document)), to be the person(s) who's name(s) is/are subscribed to the within instrument, who signed the preceding or attached document in my presence.

In witness whereof, I hereunto set my hand and official stamp.

Notary Public

My Commission Expires on: _____

Acknowledgment in a Representative Capacity

State of _____)

}ss

County of _____)

This instrument was acknowledged before me _____,

the undersigned officer, on the ____ day of _____, 20 ____,

by _____ who stated to me that they were the

Name(s) of Person(s) appearing before the officer below)

_____ of _____

(Type of authority, i.e., trustee, power of attorney, etc)
instrument was executed)

(Name of party on behalf of whom

In witness whereof, I hereunto set my hand and official stamp.

Notary Public

My Commission Expires on: _____

See also N.J.S. 17:9A-29. Safe Deposit Box Inventory Certification; N.J.S. 17:14A-51. Proceedings for unpaid rental

52:7A-21. Notarial Act In This State

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

b. A notarial act may be performed in this state by an individual authorized by the applicable law to perform the notarial act.

c. The signature and title of a notarial officer authorized by the applicable law to perform the notarial act conclusively establishes the authority of the officer to perform the notarial act.

COMMENT

The language in this provision is taken from Section 10 of RULONA

52:7A-22. Notarial Acts That Are Not Performed Under the Authority of this State

a. A notarial act performed:

(1) in another state; or

(2) under federal law, including an individual in military service, pursuant to 10 U.S.C. §1044a or performing duties under the authority of military service who is authorized to perform notarial acts under federal law; or

(3) under the authority and in the jurisdiction of a federally recognized Indian tribe;

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 another state or jurisdiction is performed by an individual authorized by the applicable law to perform the notarial act.

b. In this section, “foreign state” means a government other than the United States, a state, or a federally recognized Indian tribe. If a notarial act is performed under the 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, if.

1. 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.

2. 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.

3. 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 in this provision is taken from RULONA Section 11 concerning Notarial Acts in Another State, Section 12 concerning Notarial Acts Under the Authority of Federally Recognized Indian Tribe, Section 13 concerning Notarial Acts Performed Under Federal Authority, and Section 14 concerning Notarial Acts Performed In a Foreign Jurisdiction.

The Comment to Section 13 states that:

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 not 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.

Concerning subsection b, the Comment to Section 14 explains:

[F]or purposes of this section, a “foreign state” means a foreign country and not the United States, a state in the United States federal system, or a federally recognized Indian tribe.

Subsection b. provides for the recognition of notarial acts performed by notarial officers acting under the authority and in the jurisdiction of a foreign state or its constituent units. It also recognizes the notarial acts performed by notarial officers acting under the authority of a multinational or international governmental organization. An example of a multinational or international governmental organization is the United Nations.

Subsection b.1 states that if the title of a notarial office and the authority of a person in that office to perform notarial acts appear in a digest of foreign laws or in a list customarily used as a source for that information, the authority of a notarial officer holding that office to perform the indicated notarial acts is conclusively established. This is the third step in the proof of the authority of a notarial officer to perform a notarial act as listed in the Comment to Section 10.

Subsection b.2 recognizes an “apostille” as one means of conclusively establishing those facts. The United States is a party to an international treaty regarding the authentication of notarial acts performed on public documents. The treaty is known as the Hague Convention (“Convention de La Haye du 5 octobre 1961”). Under this treaty, an “apostille” may be prepared by a competent authority in a foreign state in accordance with the treaty and stamped on or attached to the record. A competent authority is one designated by the foreign state from which the public document emanates. The “apostille” may be in the language of the foreign state in which it is issued, but the words “APOSTILLE (Convention de La Haye, du 5 octobre 1961)” are always in French. The “apostille” should conform as closely as possible to the Model annexed to the Convention.

Subsection b.3 carries out the provisions of Hague Convention and gives effect to an “apostille” complying with the treaty. It states that the “apostille” conclusively establishes that: (1) the signature of the notarial officer on the certificate is genuine, and (2) the officer holds an office with the indicated title. When combined with the conclusive presumption established under subsection (c) as to the authority of a notarial officer with a designated title to perform a notarial act, all three steps in the proof of the authority of a notarial officer to perform a notarial act, as listed in the Comment to Section 10, are met.

52:7A-23. 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 N.J.S. 52:7A-10, et seq., 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 in this provision is taken from Section 20 of RULONA. The Comment to Section 20 explains that:

Subsection a. provides that a notary public may elect to perform notarial acts with respect to electronic records and, for the purpose of performing those notarial acts, may select one or more technologies. This allows a notary to use more than one technology in order to accommodate clients using different technologies to perform their electronic transactions. However, a notary public may determine whether to use a technology requested by a client and may refuse to do so.

Any technology that the notary selects must be a tamper evident technology. A tamper evident technology is one that is designed to allow a person inspecting an electronic record to determine whether there has been any tampering with the integrity of a certificate of notarial act logically associated with a record or with the attachment or association of the notarial act with that electronic record.

Subsection b. requires that, before performing the notary public's initial notarial act with respect to an electronic record, a notary public must notify the [sic] [State Treasurer] that the notary will be performing notarial acts with respect to electronic records. When a notary provides a notification to the [sic] [State Treasurer], the notary must also identify the technology or technologies that the notary intends to use to perform the notarial acts.

If, at the time that a notary public provides the notification to the State Treasurer, the State Treasurer has established standards for the approval of technology to be used to perform notarial acts with respect to electronic records, any technology selected by the notary must conform to those standards. If the technology conforms to those standards, the [sic] [State Treasurer] must approve it for use by the notary. In the absence of standards adopted by the [sic] [State Treasurer], the notary public may proceed with performing notarial acts with respect to electronic records as long as the notary public employs tamper evident technologies as required by this section.

52:7A-24. 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

b. 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 in this provision is taken from Section 24 of RULONA. The Comment to Section 24 explains that:

This section requires the [sic] [State Treasurer] to maintain an electronic database of notaries public. The objectives sought by this provision are twofold. First, it is a disclosure of information and a means by which a member of the public may verify whether an individual who claims to be a notary public in fact has a commission as a notary public. Second, by also requiring that the database indicate whether a notary public has informed the [sic] [State Treasurer] that the notary will be performing notarial acts with respect to electronic records, it provides information to members of the public who are seeking to find a notary public capable of performing notarial acts with respect to electronic records.

52:7A-25. Authority To Refuse To Perform Notarial Act

Unless refusal to perform a notarial act is prohibited by any applicable law, a notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

a. the individual executing the record is competent or has the capacity to execute the record; or

b. the individual's signature is knowingly and voluntarily made.

COMMENT

The language in this provision is taken from Section 8 of RULONA. The ULC Report explains, in the Comment to Section 8 that:

Subsection a. allows the notarial officer to refuse to perform a requested notarial act in either of two circumstances. First, if the notarial officer is not satisfied as to the competency or capacity of the individual executing the record, the officer may refuse to perform the notarial act. Thus, for example, if the notarial officer is not satisfied that the individual has the mental status needed to execute the record, the officer may refuse to perform the notarial act. Second, if the notarial officer has concern about whether the individual's signature was knowingly and voluntarily made, the officer may refuse to perform the notarial act. Thus, for example, if the notarial officer is concerned that the individual's signature is coerced, the officer may refuse to perform the notarial act.

Satisfaction as to the competency or capacity of the individual making the record or with the fact that the signature is knowingly and voluntarily made are matters within the proper judgment of the notarial officer. No expertise on the part of the notarial officer as to those matters is required to refuse to perform the notarial act.

This subsection does not impose a duty upon the notarial officer to make a determination as to the competency or capacity of the individual nor as to whether the signature of the individual is knowingly and voluntarily made. It does not require the officer to perform a formal evaluation of the individual on those matters. It merely permits the notarial officer to refuse to perform the notarial act if the officer should not be satisfied as to those matters.

Subsection b. gives the notarial officer the general authority to refuse to perform a notarial act for any other reason as long as the reason for the refusal is itself not a violation of other law of this state or the United States. Thus, for example, a notary public may be an employee whose employer has paid the expenses of obtaining and maintaining the notary public commission. Their understanding may be that the notary public will be available to perform notarial acts as needed by the employer but will not be available to perform them for general members of the public. A notary public under that arrangement may refuse to perform notarial acts for members of the public. In another context, a notary public may refuse to perform a notarial act with respect to an electronic record if the client demands that the notary use a technology for performing the notarial act that the notary has not selected.

The subsection does prohibit, however, the officer from refusing to perform the notarial if the refusal is a violation of other law. For example, the notarial officer may not refuse to perform the notarial act due to discrimination that is prohibited by state or federal law. Indeed, such a refusal to perform the notarial act may also be punishable under the state or federal law.

52:7A-26. Journal

a. *A notary public shall maintain in a ~~sequential~~ journal a record of all notarial acts performed. The notary public shall retain the journal 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.~~ 1. A journal may be created on a tangible medium or in an electronic format.

~~3.~~ 2. A notary public 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.~~ 3. If the journal is maintained on a tangible medium, it must be a permanent, bound register with numbered pages.

4. If the journal is maintained in an electronic format, it must be in a permanent, tamper-evident electronic format complying with the rules of the State Treasurer.

b. *For ~~each~~ every notarial act ~~involving one transaction~~, the notary public 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;~~

~~3. the name, address, signature, and, in the case of immigration documents, the right thumbprint of each person of whom the notarial act is performed whose signature is notarized;~~

~~4. 5. if identity of the individual is based on personal knowledge, a statement to that effect;~~

~~5. if the identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including, if applicable, the type, date of issuance and date of expiration of an identification document, or the name and signature of any identifying witness and, if applicable, the type, serial number, date of issuance and date of 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.

g. 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 who is 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 journal.

COMMENT

The proposed changes were based on comments from several entities and were made for clarity.

The underlined text is taken from Section 19 of RULONA. The *italicized* language was proposed by A463/S2008 sponsored in 2010 by Assemblywoman Dr. Joan Voss and Senators Nicholas Scutari and Robert Gordon. Language in subsection a.(4) was recommended by a commenter to distinguish the mandatory journaling requirements for commissioned notary publics from the permissive requirements for all other notarial officers to conform with current practice and to prevent undue burden on an individual who maintains a business and or practice in this State and also qualifies as a notarial officer.

A group of commenters proposed reordering this provision for clarity. Several commenters proposed removing the "thumbprint requirement" in subsection b.3 because it is not been effective in other contexts and the term "serial numbers" from subsection b.4 because of concerns related to privacy law and open public records.

A group of commenters proposed the language in subsection g. to clarify the language allowing notarial officers to may maintain a record of notarial acts in the form of files regularly maintained in their practice or, in lieu of maintaining a journal.

52:7A-27. Validity of Notarial Acts

Except as otherwise provided in N.J.S. 52:7A-6 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 in this provision is taken from Section 26 of RULONA.

52:7A-28. Rules

a. The State Treasurer may adopt rules to implement this Act, N.J.S. 52:7A-10, et seq. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may:

1. prescribe the manner of performing notarial acts regarding tangible and electronic records;
2. include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;
3. include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;
4. prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public;
5. include provisions to prevent fraud or mistake in the performance of notarial acts;
6. provide for the administration of the examination under N.J.S. 52:7A-8 and the course of study under N.J.S. 52:7A-7.

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 State Treasurers;
2. standards, practices, and customs of other jurisdictions that substantially enact the Revised Uniform Law on Notarial Acts N.J.S. 52:7A-10, et seq.; and
3. the views of governmental officials and entities and other interested persons.

COMMENT

This language in this provision is from Section 27 of RULONA. The Comments to Section 27 explains that:

This section makes it clear that the failure of a notarial officer to perform the duties or to meet the requirements of this act does not invalidate the notarial act performed by the notarial officer. For example, a notarial act performed by a notary public whose assurance or surety bond may have expired or been cancelled is not invalidated. However, this provision only applies to a person who is a notarial officer. The section does not legitimate a notarial act attempted to be performed by a person who does not have the authority to perform the act. For example, an individual who does not have a valid commission as a notary public cannot perform notarial acts and any attempted notarial act would be invalid.

Despite the fact that a notarial act may be valid, the underlying record or transaction may be invalid and may be set aside in appropriate legal proceedings. For example, the underlying record may be the product of fraud, whether performed by the notarial officer or by a third person. In accordance with other law of this state, an action may be brought to invalidate or set aside the record and obtain restitution and other relief.

52:7A-29. Relation to Electronic Signatures in Global and National Commerce Act

This act modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

COMMENT

The language in this provision is taken from RULONA Section 31 which responds to the specific language of the Electronic Signatures in Global and National Commerce Act and is designed to avoid preemption of state law under that federal legislation.

52:7A-30. Repeals.

The following are repealed by this Act:

N.J.S. 52:7-13

N.J.S. 52:7-20

N.J.S. 52:7-21

52:7A-31. Effective Date

This [act] takes effect...

Table of Dispositions

PROPOSED N.J.S.	TITLE	CURRENT N.J.S.	TITLE	COMMENT
52:7A-1	Short Title.	52:7-10.	Short Title.	
52:7A-2	New Section	New Section	Definitions	RULONA, Section 2
52:7A-3	Appointment; term; removal; application	52:7-11	Appointment; term, application; renewals	Removals addressed in <i>N.J.S. 52:7A-6</i>
52:7A-4	Minimum Age.	52:7-12	Qualifications.	RULONA, Section 21
52:7A-5	Appointment of nonresidents; requirements.	52:7-13	Appointment of nonresidents; requirements.	
52:7A-6	New Section	New Section	Grounds to Deny The Application, or Refuse to Renew, Revoke, Suspend, or Limit the Commission of a Notary Public	RULONA, Section 23, RULONA. Section 25 (including only subsections a.(1), (2))
52:7A-7	New Section	New Section	Course of Study; Continuing Education	RULONA Section 22 (subsections
52:7A-8	New Section	New Section	Written Examination	RULONA, Section 22
52:7A-9	Fee	52:7-17	Manual; Fee	
52:7A-10	Oath; filing; certificate of commission and qualification.	52:7-14	Oath; filing; certificate of commission and qualification.	
52:7A-11	Statement by notary public after change in name; filing; evidence of continuance of powers and privileges.	52:7A-18	Statement by notary public after change in name; filing; evidence of continuance of powers and privileges.	
52:7A-12	State-wide authority; filing of certificates of commission and qualification with county clerks; Affixation of Name.	52:7-15 52:7-19	State-wide authority; filing certificates of commission and qualification with county clerks. Affixation of name.	Subsection (c) is taken from 52:7-19
		52:7-16	County clerk to attach certificate of authority to notaries' certificates of proof; acknowledgments or affidavits.	Recommended for Repeal.

Table of Dispositions

PROPOSED N.J.S.	TITLE	CURRENT N.J.S.	TITLE	COMMENT
52:7A-13	New Section	New Section	Certificate of Notarial Act.	RULONA, Section 15 (same title); omitting subsection b, which is included in <i>N.J.S. 52:7A-15</i> .
52:7A-14	New Section	New Section	Official Stamp.	RULONA, Section 17 and includes subsection b. of RULONA, Section 15.
52:7A-15	New Section	New Section	Stamping Device.	RULONA, Section 18 (same title).
52:7A-16	New Section	New Section	Authority to Perform Notarial Acts.	RULONA, Section 4 (same title).
52:7A-17	New Section	New Section	Requirements for Certain Notarial Acts.	RULONA, Section 5 (same title); Language in subsection b. is adapted from Section 7 of RULONA.
52:7A-18	New Section	New Section	Personal Appearance.	RULONA, Section 6 (same title)
52:7A-19	New Section	New Section	Signature If Individual Unable to Sign.	RULONA, Section 9 (same title).
52:7A-20	New Section	New Section	Certificate Form.	RULONA, Section 16 (Short Form Certificates).
52:7A-21	New Section	New Section	Notarial Act In This State.	RULONA, Section 10 (same title).
52:7A-22	New Section	New Section	Notarial Acts That Are Not Performed Under The Authority of This State	Complies portions of RULONA, Section 11 (Notarial Act in Another State); Section 12, Notarial Act Under the Authority of a Federally Recognized Indian Tribe; Section 13, Notarial Acts Under Federal Authority; and Section 14, Foreign Notarial Act.

Table of Dispositions

PROPOSED N.J.S.	TITLE	CURRENT N.J.S.	TITLE	COMMENT
52:7A-23	New Section	New Section	Notification Regarding Performance of Notarial Act on Electronic Record; Selection of Technology.	RULONA, Section 20 (same title).
52:7A-24	New Section	New Section	Database of Notaries Public.	RULONA, Section 24 (same title).
52:7A-25	New Section	New Section	Authority To Refuse To Perform Notarial Acts.	RULONA, Section 8 (same title)
52:7A-26	New Section	New Section	Journal.	RULONA, Section 19 (same title)
52:7A-27	New Section	New Section	Validity of Notarial Acts.	RULONA, Section 26 (same title).
52:7A-28	New Section	New Section	Rules.	RULONA, Section 27 (same title).
52:7A-29	New Section	New Section	Relation to Electronic Signatures In Global and National Commerce Act	RULONA, Section 31 – Relation to Electronic Signatures In Global and National Commerce Act.
52:7A-30	New Section	New Section	Repeals.	RULONA, Section 32 (same title)
52:7A-31	New Section	New Section	Effective Date	RULONA, Section 33 (same title); Omitted RULONA Section 3 – Applicability; Section 28 – Notary Public Commission In Effect; Section 29 – Savings Clause; Section 30 – Uniformity and Application and Construction; Section