

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 470

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

Linda M. Trujillo

AN ACT

RELATING TO NOTARIAL ACTS; REQUIRING PERSONAL APPEARANCE FOR
NOTARIAL ACTS PERFORMED ELECTRONICALLY UPON RECORDABLE
INSTRUMENTS OF WRITING; REMOVING THE IN-PERSON REQUIREMENT FOR
CERTAIN NOTARIAL ACTS PERFORMED ELECTRONICALLY; REQUIRING
SECURE STORAGE OF ELECTRONICALLY AUTHENTICATED DOCUMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 14-9A-3 NMSA 1978 (being Laws 2007,
Chapter 261, Section 3) is amended to read:

"14-9A-3. VALIDITY OF ELECTRONIC DOCUMENTS.--

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

underscoring material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

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

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

12 D. All deeds, mortgages, leases of an initial term
13 plus option terms in excess of five years, or memoranda of the
14 material terms of such leases, assignments or amendments to
15 such leases, leasehold mortgages, United States patents and
16 other writings affecting the title to real estate, that are
17 required to be notarized, acknowledged, verified, witnessed or
18 made under oath may be performed electronically; provided that
19 the individual making the statement or executing the signature
20 shall appear personally before the notarial officer."

21 SECTION 2. Section 14-12A-2 NMSA 1978 (being Laws 2003,
22 Chapter 286, Section 2) is amended to read:

23 "14-12A-2. DEFINITIONS.--As used in the Notary Public
24 Act:

25 A. "acknowledgment" means a notarial act in which a

underscored material = new
[bracketed material] = delete

1 person:

2 (1) at a single time and place

3 [~~(1)~~] appears in person before the notary
4 public and presents a document or presents the document through
5 an online, electronic certified platform pursuant to rules and
6 standards adopted by the secretary of state;

7 (2) is personally known to the notary public
8 or identified by the notary public through satisfactory
9 evidence; and

10 (3) indicates to the notary public that the
11 signature on the document was voluntarily affixed by the person
12 for the purposes stated within the document and, if applicable,
13 that the person had due authority to sign in a particular
14 representative capacity;

15 B. "affirmation" means a notarial act that is
16 legally equivalent to an oath and in which a person:

17 (1) at a single time and place

18 [~~(1)~~] appears in person before the notary
19 public or presents the document through an online, electronic
20 certified platform pursuant to rules and standards adopted by
21 the secretary of state;

22 (2) is personally known to the notary public
23 or identified by the notary public through satisfactory
24 evidence; and

25 (3) makes a vow of truthfulness or fidelity on

underscored material = new
[bracketed material] = delete

1 penalty of perjury, based on personal honor and without
2 invoking a deity or using any form of the word "swear";

3 C. "commission" means both to empower to perform
4 notarial acts and the written evidence of authority to perform
5 those acts;

6 D. "copy certification" means a notarial act in
7 which a notary public:

8 (1) is presented with a document that is
9 neither a vital record, a public record nor publicly
10 recordable;

11 (2) copies or supervises the copying of the
12 document using a photographic or electronic copying process;

13 (3) compares the document to the copy; and

14 (4) determines that the copy is accurate and
15 complete;

16 E. "credible witness" means an honest, reliable and
17 impartial person who personally knows the person appearing
18 before a notary public and takes an oath or affirmation from
19 the notary to vouch for that person's identity;

20 F. "electronic certified platform" means an
21 electronic platform that is permitted by the secretary of state
22 to collect document review and signing information and:

23 (1) transmits in real time from the principal
24 to a secured data storage:

25 (a) identity verifying information for

underscored material = new
[bracketed material] = delete

1 the principal;

2 (b) evidence of document review and
3 signing by the principal; and

4 (c) any acknowledgments or affirmations
5 made by the principal during the document review prior to the
6 signing;

7 (2) securely stores all identity verification
8 materials, document review and signing information and other
9 relevant information from the principal and presents it for
10 review by a notary public, allowing the notary to affix an
11 electronic acknowledgment or stamp to the document; and

12 (3) automatically, after the notarial action
13 is complete, produces a separate, tamper-evident electronic
14 document that identifies the notary public who affixed the
15 electronic notary stamp, identifies the electronic certified
16 platform on which all electronic signing and notarization
17 actions occurred, lists the principal's identity verification
18 information and identifies the signed document;

19 ~~[F-]~~ G. "jurat" means a notarial act in which a
20 person:

21 (1) at a single time and place

22 ~~[(-)]~~ appears in person before the notary
23 public and presents a document or presents the document through
24 an online, electronic certified platform pursuant to rules and
25 standards adopted by the secretary of state;

underscoring material = new
~~[bracketed material] = delete~~

1 (2) is personally known to the notary public
2 or identified by the notary public through satisfactory
3 evidence;

4 (3) signs the document in the presence of the
5 notary public or through an online, electronic certified
6 platform pursuant to rules and standards adopted by the
7 secretary of state; and

8 (4) takes an oath or affirmation from the
9 notary public that the person is voluntarily affixing [~~his~~] the
10 person's signature and vouching for the truthfulness or
11 accuracy of the signed document;

12 [~~G.~~] H. "notarial act" means any act that a notary
13 public or other person is empowered to perform pursuant to the
14 Notary Public Act or the Uniform Law on Notarial Acts;

15 [~~H.~~] I. "notarial certificate" means the part of,
16 or attachment to, a notarized document that is completed by the
17 notary public, bears the notary public's signature and seal and
18 states the facts attested by the notary public in a particular
19 notarization;

20 [~~I.~~] J. "notary public" means any person
21 commissioned by the governor to perform official acts pursuant
22 to the Notary Public Act;

23 [~~J.~~] K. "oath" means a notarial act that is legally
24 equivalent to an affirmation and in which a person at a single
25 time and place:

1 (1) appears in person before the notary
2 public;

3 (2) is personally known to the notary public
4 or identified by the notary public through satisfactory
5 evidence; and

6 (3) makes a vow of truthfulness or fidelity on
7 penalty of perjury while invoking a deity or using any form of
8 the word "swear";

9 [~~K-~~] L. "official misconduct" means:

10 (1) a notary public's performance of an act
11 prohibited, or failure to perform an act mandated, by the
12 Notary Public Act or by any other law in connection with a
13 notarial act by the notary public; or

14 (2) a notary public's performance of an
15 official act in a manner found by the governor to be negligent
16 or against the public interest;

17 [~~L-~~] M. "personal appearance" means that the
18 principal and the notary public are physically close enough to
19 see, hear, communicate with and give identification documents
20 to each other;

21 [~~M-~~] N. "personally known" means familiarity with a
22 person resulting from interactions with that person over a
23 period of time sufficient to dispel any reasonable uncertainty
24 that the person has the identity claimed;

25 [~~N-~~] O. "principal" means:

underscored material = new
[bracketed material] = delete

1 (1) a person whose signature is notarized; or

2 (2) a person, other than a credible witness,
3 taking an oath or affirmation from the notary public;

4 ~~[P.]~~ P. "satisfactory evidence of identity" means
5 identification of a person based on:

6 (1) at least one current document issued by a
7 federal, state or tribal government agency bearing the
8 photographic image of the person's face and signature and a
9 physical description of the person, though a properly stamped
10 passport without a physical description is acceptable; or

11 (2) the oath or affirmation of one credible
12 witness unaffected by the document or transaction who is
13 personally known to the notary public and who personally knows
14 the person, or of two credible witnesses unaffected by the
15 document or transaction who each personally knows the person
16 and shows to the notary public documentary identification as
17 described in Paragraph (1) of this subsection; and

18 ~~[P.]~~ Q. "seal" means a device, including a rubber
19 stamp, for affixing on a paper document an image containing the
20 notary public's name, the words "State of New Mexico" and, in
21 the case of a rubber stamp, the commission expiration date."

22 **SECTION 3.** Section 14-14-2 NMSA 1978 (being Laws 1993,
23 Chapter 281, Section 2) is amended to read:

24 "14-14-2. NOTARIAL ACTS.--

25 A. In taking an acknowledgment, the notarial

underscoring material = new
~~[bracketed material] = delete~~

1 officer shall determine, either from personal knowledge or from
2 satisfactory evidence, that the person [~~appearing before the~~
3 ~~officer and~~] making the acknowledgment is the person whose true
4 signature is on the instrument.

5 B. In taking a verification upon oath or
6 affirmation, the notarial officer shall determine, either from
7 personal knowledge or from satisfactory evidence, that the
8 person [~~appearing before the officer and~~] making the
9 verification is the person whose true signature is on the
10 statement verified.

11 C. In witnessing or attesting a signature, the
12 notarial officer shall determine, either from personal
13 knowledge or from satisfactory evidence, that the signature is
14 that of the person [~~appearing before the officer and~~] named
15 therein.

16 D. In certifying or attesting a copy of a document
17 or other item, the notarial officer shall determine that the
18 proffered copy is a full, true and accurate transcription or
19 reproduction of the one that was copied.

20 E. In making or noting a protest of a negotiable
21 instrument, the notarial officer shall determine the matters
22 set forth in Section 55-3-505 NMSA 1978.

23 F. A notarial officer has satisfactory evidence
24 that a person is the person whose true signature is on a
25 document if that person is:

underscored material = new
[bracketed material] = delete

- 1 (1) personally known to the notarial officer;
2 (2) identified upon the oath or affirmation of
3 a credible witness personally known to the notarial officer;
4 [~~or~~]
5 (3) identified on the basis of identification
6 documents; or
7 (4) identified through an online, electronic
8 certified platform to rules and standards adopted by the
9 secretary of state."

10 SECTION 4. Section 14-15-1 NMSA 1978 (being Laws 1996,
11 Chapter 11, Section 1) is amended to read:

12 "14-15-1. SHORT TITLE.--~~[This act]~~ Chapter 14, Article 15
13 NMSA 1978 may be cited as the "Electronic Authentication of
14 Documents Act"."

15 SECTION 5. Section 14-15-5 NMSA 1978 (being Laws 1996,
16 Chapter 11, Section 5, as amended) is amended to read:

17 "14-15-5. RULES.--

18 A. The secretary of state, in consultation with the
19 department of information technology, [~~commission~~] shall adopt
20 rules and standards to accomplish the purposes of the
21 Electronic Authentication of Documents Act.

22 B. The rules shall address circumstances under
23 which standards other than adopted standards may be used."

24 SECTION 6. Section 14-15-6 NMSA 1978 (being Laws 1996,
25 Chapter 11, Section 6, as amended) is amended to read:

