

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 470

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

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

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

A. "acknowledgment" means a notarial act in which a
person:

(1) at a single time and place

[~~(1)~~] appears in person before the notary

1 public and presents a document or presents the document through
2 an online, electronic certified platform pursuant to rules and
3 standards adopted by the secretary of state;

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

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

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

14 (1) at a single time and place

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

19 (2) is personally known to the notary public
20 or identified by the notary public through satisfactory
21 evidence; and

22 (3) makes a vow of truthfulness or fidelity on
23 penalty of perjury, based on personal honor and without
24 invoking a deity or using any form of the word "swear";

25 C. "commission" means both to empower to perform

1 notarial acts and the written evidence of authority to perform
2 those acts;

3 D. "copy certification" means a notarial act in
4 which a notary public:

5 (1) is presented with a document that is
6 neither a vital record, a public record nor publicly
7 recordable;

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

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

11 (4) determines that the copy is accurate and
12 complete;

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

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

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

22 (a) identity verifying information for
23 the principal;

24 (b) evidence of document review and
25 signing by the principal; and

1 (c) any acknowledgments or affirmations
2 made by the principal during the document review prior to the
3 signing;

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

9 (a) in the county where the notary
10 public is located at the time of the review and acknowledgment
11 or stamping of the document; and

12 (b) that clearly indicates on the
13 document that the review and acknowledgment or stamping was
14 performed on an electronic certified platform; and

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

24 [F.] G. "jurat" means a notarial act in which a
25 person:

underscoring material = new
[bracketed material] = delete

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

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

9 (3) signs the document in the presence of the
10 notary public or through an online, electronic certified
11 platform pursuant to rules and standards adopted by the
12 secretary of state; and

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

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

20 [~~H.~~] I. "notarial certificate" means the part of,
21 or attachment to, a notarized document that is completed by the
22 notary public, bears the notary public's signature and seal and
23 states the facts attested by the notary public in a particular
24 notarization;

25 [~~I.~~] J. "notary public" means any person

1 commissioned by the governor to perform official acts pursuant
2 to the Notary Public Act;

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

6 (1) appears in person before the notary
7 public;

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

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

14 ~~[K.]~~ L. "official misconduct" means:

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

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

22 ~~[L.]~~ M. "personal appearance" means that the
23 principal and the notary public are physically close enough to
24 see, hear, communicate with and give identification documents
25 to each other;

1 ~~[M.]~~ N. "personally known" means familiarity with a
2 person resulting from interactions with that person over a
3 period of time sufficient to dispel any reasonable uncertainty
4 that the person has the identity claimed;

5 ~~[N.]~~ O. "principal" means:

- 6 (1) a person whose signature is notarized; or
7 (2) a person, other than a credible witness,
8 taking an oath or affirmation from the notary public;

9 ~~[O.]~~ P. "satisfactory evidence of identity" means
10 identification of a person based on:

- 11 (1) at least one current document issued by a
12 federal, state or tribal government agency bearing the
13 photographic image of the person's face and signature and a
14 physical description of the person, though a properly stamped
15 passport without a physical description is acceptable; or

- 16 (2) the oath or affirmation of one credible
17 witness unaffected by the document or transaction who is
18 personally known to the notary public and who personally knows
19 the person, or of two credible witnesses unaffected by the
20 document or transaction who each personally knows the person
21 and shows to the notary public documentary identification as
22 described in Paragraph (1) of this subsection; and

23 ~~[P.]~~ Q. "seal" means a device, including a rubber
24 stamp, for affixing on a paper document an image containing the
25 notary public's name, the words "State of New Mexico" and, in

1 the case of a rubber stamp, the commission expiration date."

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

4 "14-14-2. NOTARIAL ACTS.--

5 A. In taking an acknowledgment, the notarial
6 officer shall determine, either from personal knowledge or from
7 satisfactory evidence, that the person [~~appearing before the~~
8 ~~officer and~~] making the acknowledgment is the person whose true
9 signature is on the instrument.

10 B. In taking a verification upon oath or
11 affirmation, the notarial officer shall determine, either from
12 personal knowledge or from satisfactory evidence, that the
13 person [~~appearing before the officer and~~] making the
14 verification is the person whose true signature is on the
15 statement verified.

16 C. In witnessing or attesting a signature, the
17 notarial officer shall determine, either from personal
18 knowledge or from satisfactory evidence, that the signature is
19 that of the person [~~appearing before the officer and~~] named
20 therein.

21 D. In certifying or attesting a copy of a document
22 or other item, the notarial officer shall determine that the
23 proffered copy is a full, true and accurate transcription or
24 reproduction of the one that was copied.

25 E. In making or noting a protest of a negotiable

1 instrument, the notarial officer shall determine the matters
2 set forth in Section 55-3-505 NMSA 1978.

3 F. A notarial officer has satisfactory evidence
4 that a person is the person whose true signature is on a
5 document if that person is:

6 (1) personally known to the notarial officer;

7 (2) identified upon the oath or affirmation of
8 a credible witness personally known to the notarial officer;

9 [~~or~~]

10 (3) identified on the basis of identification
11 documents; or

12 (4) identified through an online, electronic
13 certified platform to rules and standards adopted by the
14 secretary of state."

15 SECTION 3. Section 14-15-1 NMSA 1978 (being Laws 1996,
16 Chapter 11, Section 1) is amended to read:

17 "14-15-1. SHORT TITLE.--~~[This act]~~ Chapter 14, Article 15
18 NMSA 1978 may be cited as the "Electronic Authentication of
19 Documents Act"."

20 SECTION 4. Section 14-15-5 NMSA 1978 (being Laws 1996,
21 Chapter 11, Section 5, as amended) is amended to read:

22 "14-15-5. RULES.--

23 A. The secretary of state, in consultation with the
24 department of information technology, [commission] shall adopt
25 rules and standards to accomplish the purposes of the

1 Electronic Authentication of Documents Act.

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

4 SECTION 5. Section 14-15-6 NMSA 1978 (being Laws 1996,
5 Chapter 11, Section 6, as amended) is amended to read:

6 "14-15-6. CONTRACTING SERVICES.--The [~~office~~] secretary
7 of state, in consultation with the department of information
8 technology, may contract with a private, public or quasi-public
9 organization for the provision of services under the Electronic
10 Authentication of Documents Act. A contract for services shall
11 comply with rules adopted pursuant to the Electronic
12 Authentication of Documents Act and the provisions of the
13 Public Records Act and the Procurement Code."

14 SECTION 6. A new section of the Electronic Authentication
15 of Documents Act is enacted to read:

16 "[NEW MATERIAL] NOTARIZATION AND ACKNOWLEDGMENT--SECURE
17 STORAGE OF ELECTRONICALLY AUTHENTICATED DOCUMENTS.--Any
18 electronically authenticated documents and all identity
19 verification materials, document review and signing information
20 and other relevant information shall be stored in a permanent,
21 tamper-evident electronic format complying with rules and
22 standards set by the secretary of state, in consultation with
23 the department of information technology, together with all
24 information and documents used to provide satisfactory evidence
25 of the identity of the person that signed the document."

1 SECTION 7. [NEW MATERIAL] ELECTRONIC ACKNOWLEDGMENT OF
2 DOCUMENTS RELATING TO REAL PROPERTY TRANSACTIONS.--All deeds,
3 mortgages, leases of an initial term plus option terms in
4 excess of five years, or memoranda of the material terms of
5 such leases, assignments or amendments to such leases,
6 leasehold mortgages, United States patents and other writings
7 affecting the title to real estate, that are required to be
8 notarized, acknowledged, verified, witnessed or made under oath
9 shall not be performed on an online electronic certified
10 platform. Any deed, mortgage, lease of an initial term
11 plus option term in excess of five years, or memorandum of the
12 material terms of such lease, assignment or amendment to such
13 lease, leasehold mortgage, United States patent and
14 other writings affecting the title to real estate, that are
15 affixed with an electronic acknowledgment or stamp on an
16 electronic certified platform shall be invalid.

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