

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 9 NOTARIES PUBLIC
PART 4 REMOTE ONLINE NOTARIZATION STANDARDS

12.9.4.1 ISSUING AGENCY: Office of the Secretary of State.
[12.9.4.1 NMAC - N, 1/1/2022]

12.9.4.2 SCOPE: Notaries public and other notarial officers authorized by the secretary of state to perform remote online notarizations in the state of New Mexico as well as remote notarization system providers.
[12.9.4.2 NMAC - N, 1/1/2022]

12.9.4.3 STATUTORY AUTHORITY: In accordance with Subsection H of Section 14-14A-5 and Section 14-14A-26 NMSA 1978, the secretary of state has the authority to promulgate rules for notarial officers to perform notarial acts for remotely located individuals using communication technology.
[12.9.4.3 NMAC - N, 1/1/2022]

12.9.4.4 DURATION: Permanent.
[12.9.4.4 NMAC - N, 1/1/2022]

12.9.4.5 EFFECTIVE DATE: January 1, 2022, unless a later date is cited at the end of a section.
[12.9.4.5 NMAC - N, 1/1/2022]

12.9.4.6 OBJECTIVE: The objective of the rule is to establish uniform standards of performance and governance of notarial acts for remotely located individuals by use of communication technology.
[12.9.4.6 NMAC - N, 1/1/2022]

12.9.4.7 DEFINITIONS:

A. “Certified tangible copy of an electronic record” means an original tangible copy, as defined pursuant to Subsection F of 2.9.3.7 NMAC, of an electronic record that has been certified by a notarial officer as an accurate copy of the electronic record.

B. “Credential analysis” means an identity assessment used by a notarial officer to determine if an individual’s government-issued identification card is genuine. The assessment requires the use of technology to confirm the security features on an identification card and confirm the identification card is not fraudulent.

C. “Electronic record” means see Subsection C of 12.9.3.7 NMAC.

D. “Identity credential” means a government issued identification card pursuant to the requirements of Paragraph (1) of Subsection B of Section 14-14A-6 NMSA 1978.

E. “Knowledge-based authentication” means an identity assessment used by a notarial officer to verify the identity of an individual that is based on questions formulated from public or private data sources for which the individual has not provided prior answers.

F. “Remote online notarization (RON)” means see Subsection F of 12.9.3.7 NMAC.

G. “Remote online notarization system” means a set of applications, programs, hardware, or software designed to enable a notarial officer to perform notarial acts on electronic records involving the use of communication technology that satisfies the requirements outlined in this rule.

H. “Remote online notarization system provider” means a business entity that provides a remote online notarization system that has been approved by the secretary of state.

[12.9.4.7 NMAC - N, 1/1/2022]

12.9.4.8 REMOTE ONLINE NOTARIZATION APPLICATION REQUIREMENTS:

A. A notarial officer must submit an application to perform remote online notarizations (RON) on a form prescribed by the secretary of state and receive approval from the secretary of state before the notarial officer may remotely notarize a record. The notarial officer shall provide:

(1) the name of all remote online notarization systems approved for use by the secretary of state the notarial officer intends to use;

(2) a copy of any necessary instructions or techniques supplied by a remote online notarization system provider that allow the notarial officer's signature and official stamp to be read and authenticated;

(3) an explanation of the methods and technology by which the notarial officer will maintain and store the required journal, if applicable, and audio video recording;

(4) proof of having successfully completed an approved training course and passing the required examination. If the secretary of state has a record that a commissioned notary public applying for renewal has previously passed the required examination, a commissioned notary public applying for renewal is not required to re-take the training and examination unless:

(a) the applicant's commission has expired for more than one year; or

(b) there have been substantial changes to the statutes or rules pertaining to RONS, as determined by the secretary of state, since the effective date of applicant's last application date; and

(5) a non-refundable application fee of \$75.

B. An individual applying for authorization to perform RONS shall already be a current notarial officer pursuant to Section 14-14A-9 or Section 14-14A-20 NMSA 1978 or an individual may simultaneously apply to be commissioned as a notary public with authorization to perform RONS.

C. The secretary of state shall issue an approval authorizing the notarial officer to perform RONS when the secretary of state determines that the applicant has met the qualifications. Within 45 days of receiving authorization to perform RONS from the secretary of state, the notarial officer shall provide a copy of the applicant's official electronic stamp to the secretary of state along with the form prescribed by the secretary of state. The applicant's official electronic stamp must be received by the secretary of state prior to the notarial officer performing a RON. Failure to provide this information shall result in a referral to the State Ethics Commission.

D. The expiration date for a notary public authorized to perform RONS shall be the commission expiration date established when an individual is commissioned as a notary public pursuant to Section 14-14A-20 NMSA 1978.

E. If at any time a notarial officer authorized to perform RONS adopts a new remote online notarization system provider, the notarial officer must notify the secretary of state of the new system and provider on a form prescribed by the secretary of state.

F. The renewal of the commission of a notary public who has previously been authorized to perform RONS under this section constitutes renewal of the notary public's qualification without the necessity to submit another application under this section, and the renewal fees shall be the same as that to renew a notary public commission unless the applicant's commission has been expired for more than one year. If an applicant's commission has been expired for more than one year, the applicant must complete the application for authorization to perform RONS and pay the required application fee as prescribed by this section.

[12.9.4.8 NMAC - N, 1/1/2022]

12.9.4.9 EDUCATION AND EXAMINATION PROCEDURES:

A. The secretary of state shall provide a remote notarization course and examination. Training may be administered in house or through any third-party training vendor approved by the secretary of state.

B. The fee for administering the training and examination is not included in the application fee collected pursuant to 12.9.4.8 NMAC.

C. An applicant must provide proof of passing the required examination with a score of eighty percent or higher.

D. Examination records maintained by any third-party vendor, including the applicant's score, shall be retained for five years.

[12.9.4.9 NMAC - N, 1/1/2022]

12.9.4.10 PERFORMANCE OF REMOTE ONLINE NOTARIAL ACTS:

A. A notarial officer authorized to perform RONS must be physically located in New Mexico at the time the notarial act takes place.

B. A notarial officer authorized to perform RONS may perform authorized notarial acts relating to electronic records only if the individual personally appears before the notarial officer at the time of the notarization by means of communication technology.

C. A notarial officer authorized to perform RONS may make a reasonable determination regarding whether an individual is under duress or being coerced to complete a transaction. The notarial officer may:

(1) observe the individual's behavior for signs of being nervous, fearful, hesitant, distracted, distraught or uncomfortable;

(2) observe the surroundings and watch the behavior of others in the room who seem to make the individual uncomfortable;

(3) request to speak privately with the individual; and

(4) ask direct questions such as "are you signing this record of your own free will?"

D. A notarial officer may refuse to perform a notarial act if the notarial officer has reasonable grounds to believe that the individual is acting under coercion or undue influence.

E. A notarial officer authorized to perform RONS shall verify the identity of the individual at the start of an online notarial session by means of communication technology. Identity shall be verified by the notarial officer pursuant to Section 14-14A-6 NMSA 1978 or 12.9.4.11 NMAC.

F. A notarial officer shall not base identification merely on familiarity with an individual's signature or an electronic verification process that authenticates the individual's electronic signature without the individual personally before the notarial officer by two-way audio and video communication technology.

G. A notarial officer authorized to perform RONS shall refuse to complete the notarial act if the notarial officer:

(1) is unable to verify the identity of the individual in compliance with these rules:

(2) becomes aware that communication technology is not secure;

(3) determines the signature of the individual cannot be attached to the electronic record; or

(4) cannot attach the notarial officer's electronic stamp to the electronic record using

technology that renders any subsequent change or modification to the record evident.

H. The notarial officer shall complete and affix or attach the officer's signature and official stamp to the electronic notarial certificate. The electronic notarial certificate shall meet the requirements of Subsection A of Section 14-14A-14 NMSA 1978.

[12.9.4.10 NMAC - N, 1/1/2022]

12.9.4.11 IDENTITY PROOFING: If a notarial officer does not personally know the identity of a remotely located individual pursuant to Subsection A of Section 14-14A-6 NMSA 1978, the notarial officer must reasonably verify the individual's identity through two different types of identity proofing procedures as provided in this section. The procedure shall analyze the individual's identity credential against trusted third-person data sources, bind the individual's identity to the individual following successful knowledge-based authentication, and permit the notarial officer to visually compare the identity credential and the individual. The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements:

A. Credential Analysis. The analysis of an identity credential must use public or private data sources to confirm the genuineness of the identity credential presented by a remotely located individual and, at a minimum:

(1) use automated software processes to aid the notarial officer in verifying the identity of each remotely located individual;

(2) require the identity credential to pass an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;

(3) use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and

(4) enable the notarial officer to visually compare for consistency, the information and photograph on the identity credential and the remotely located individual appearing before the notarial officer in real time through communication technology.

B. Knowledge-based authentication. A knowledge-based authentication is successful if it meets the following requirements:

(1) the remotely located individual must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;

(2) each question must have a minimum of five possible answer choices;

(3) at least eighty percent of the questions must be answered correctly;

(4) all questions must be answered within two minutes;

(5) if the remotely located individual fails after two attempts, the individual may not retake the quiz within 24 hours;

(6) during a retake of the quiz, a minimum of forty percent of the prior questions must be replaced; and

(7) the notarial officer must not be able to see or record the questions or answers.

C. Credible Witness. A notarial officer has satisfactory evidence of the identity of a remotely located individual if the notarial officer has personal knowledge and satisfactory evidence of the identity of the individual by oath or affirmation of a credible witness appearing before the notarial officer as provided in Paragraph (2) of Subsection B of Section 14-14A-6 NMSA 1978. A credible witness may be remotely located if the notarial officer, credible witness, and remotely located individual can communicate simultaneously by using communication technology.

[12.9.4.11 NMAC - N, 1/1/2022]

12.9.4.12 COMMUNICATION TECHNOLOGY REQUIREMENTS:

A. Communication technology shall provide:

(1) for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the notarial officer and the remotely located individual to see and speak with each other;

(2) a means for the notarial officer to reasonably confirm that a record before the notarial officer is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature; and

(3) accessibility accommodations to facilitate communication with a remotely located individual who has a vision, hearing, or speech impairment.

B. Communication technology shall provide reasonable security measures to prevent unauthorized access to the live transmission of the audiovisual feeds, the methods used to perform the identity proofing process, and the electronic record that is the subject of the notarial act.

C. A notarial officer authorized to perform RONS shall stop and restart the remote online notarization process from the beginning if the:

(1) remotely located individual or the remote notarial officer must exit the remote online notarization system before completion of the notarial act;

(2) audio or visual feed is interrupted or terminated; or

(3) resolution or quality of the transmission becomes such that the remote notarial officer believes the process has been compromised and cannot be completed.

D. A notarial officer performing a RON shall verify that each remote online notarization system provider has an active status with the secretary of state before using that provider's remote online notarization system to perform a remote notarization. This duty extends to each remote online notarization.

[12.9.4.12 NMAC - N, 1/1/2022]

12.9.4.13 ELECTRONIC SIGNATURE AND STAMP:

A. A notarial officer authorized to perform RONS shall use the same electronic signature and electronic official stamp for all electronic notarial acts. A copy of the official stamp shall be provided to the secretary of state within 45 days of being authorized by the secretary of state to perform RONS and prior to the first RON being performed.

B. A notarial officer shall select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notarial officer to use a technology that the notarial officer has not selected. The tamper-evident technology must be capable of:

(1) affixing or attaching the notarial officer's electronic signature to the electronic record in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident; and

(2) utilizing a valid digital certificate issued by a third-party provider that uses public key infrastructure (PKI) technology that is X.509 compliant or higher. A notarial officer shall not perform a notarial act with respect to an electronic record if the digital certificate:

(a) has expired;

(b) has been revoked or terminated by the issuing or registering authority;

(c) is invalid; or

(d) is incapable of authentication.

C. The remote notarial officer's electronic signature and official stamp must be retained under the notarial officer's sole control and access. A notarial officer's employer must not permit the use of a notarial officer's electronic signature or official stamp by anyone except the notarial officer.

[12.9.4.13 NMAC - N, 1/1/2022]

12.9.4.14 AUDIOVISUAL RECORD RETENTION AND REPOSITORIES:

A. A notarial officer authorized to perform RONS shall retain an audiovisual recording required under Paragraph (4) of Subsection C of Section 14-14A-5 NMSA 1978, on a computer, storage device, or online storage that protects the audiovisual recording against unauthorized access by password or cryptographic process. The recording must be created in an open file format and not include images of any record in which a remotely located individual made a statement or on which the remotely located individual executed a signature.

B. On the death or adjudication of incompetency of a current or former notarial officer, the notarial officer's personal representative or guardian or any other person knowingly in possession of an audiovisual recording shall:

- (1) comply with the retention requirements of this section;
- (2) transmit the recording to one or more repositories pursuant to Subsection C below; or
- (3) transmit the recording on a data storage device to the secretary of state on an open file format that can be accessed and read by the secretary of state.

C. A notarial officer, a guardian, conservator, or agent of a notarial officer, or a personal representative of a deceased notarial officer may, by written contract, engage a third person to act as a secure repository to provide the storage required by this Subsection. The contract shall:

- (1) enable the notarial officer, the guardian, conservator, or agent of the notarial officer, or the personal representative of the deceased notarial officer to comply with the retention requirements of this section even if the contract is terminated;
- (2) enable the notarial officer to keep all audiovisual recordings under the sole control of the notarial officer and provide copies to any requesting person; or
- (3) provide that the information will be securely transferred to the notarial officer, the guardian, conservator, or agent of the notarial officer, or the personal representative of the deceased notarial officer if the contract is terminated.

[12.9.4.14 NMAC - N, 1/1/2022]

12.9.4.15 NOTARIAL JOURNAL TO RECORD REMOTE ONLINE NOTARIZATIONS:

A. A notarial officer authorized to perform RONS shall adhere to the rule on journals pursuant to 12.9.3.16 NMAC.

B. In addition to the journal information required by Subsection C of Section 14-14A-18 NMSA 1978, the notarial officer must record the name of the remote online notarization system provider used for each remote online notarization.

[12.9.4.15 NMAC - N, 1/1/2022]

12.9.4.16 CERTIFICATE OF REMOTE NOTARIAL ACT:

A. An electronic certificate of a notarial act for a remote online notarization must clearly state that the remotely located individual signing the record appeared using communication technology. This requirement is met if the statement is substantially as follows: "This notarial act involved the use of communication technology."

B. A certified tangible copy of an electronic record shall be considered an original record. A certified tangible copy of an electronic record must include a notarial certificate substantially in the short form provided in Subsection E of Section 14-14A-15 NMSA 1978.

[12.9.4.16 NMAC - N, 1/1/2022]

12.9.4.17 STANDARDS FOR REMOTE ONLINE NOTARIZATION SYSTEM PROVIDERS:

A. Application. A provider must submit an application on a form prescribed by the secretary of state before the provider can provide its remote online notarization system to a notarial officer in New Mexico. Upon being approved as a provider, the secretary of state shall list the provider as active on the website of the secretary of state.

B. Criteria for approval. To be approved and maintain an active status, a remote online notarization system provider shall:

- (1) provide the ability for an individual receiving notarization services to print tangible copies of all records notarized for that individual executed on the system;
- (2) ensure that access to a notarial officer's electronic signature and official stamp is limited solely to the notarial officer and protected by the use of a password or other secure means of authentication;

(3) communication technology provided by the remote notarization system provider shall comply with the requirements of Section 12.9.4.12 NMAC;

(4) provide for the credential analysis and knowledge-based authentication assessment requirements provided for in Section 12.9.4.11 NMAC;

(5) provide, or allow a notarial officer to provide, a public key certificate to satisfy the requirement of Paragraph 2 of Subsection B of Section 12.9.4.13 NMAC; and

(6) provide a storage system that complies with 12.9.4.14 NMAC.

C. The secretary of state may request that remote online notarization system providers submit an application on an annual basis for a remote online notarization system provider to maintain active status.

D. Notifications.

(1) If a remote online notarization system provider becomes aware of a security breach involving its data, the provider must comply with the requirements of the Data Breach Notification Act, Sections 57-12C-1 to 57-12C-12 NMSA 1978, and submit notice to the secretary of state.

(2) No later than 30 days before making any substantial changes or feature enhancements to the remote online notarization system that was previously approved by the secretary of state, a provider must request approval from the secretary of state and notify the New Mexico notarial officers using its system.

(3) No later than 30 days after any changes to the provider's information on file with the secretary of state, the provider must notify and update the information on a form prescribed by the secretary of state.

E. Complaints. A person may file a complaint with the secretary of state against a remote online notarization system provider. The complaint must allege a specific violation of New Mexico's Revised Uniform Law on Notarial Acts or these rules.

F. Grounds for termination of active status. The secretary of state may terminate approval of a provider for any of the following reasons:

(1) a violation of the Revised Uniform Law on Notarial Act or these rules that impacts the ability of the remote online notarization provider from providing a compliant remote online notarization system;

(2) making representations that the secretary of state endorses, recommends, or mandates use of any of the provider's products, goods, or services;

(3) if the provider sustains a security breach pursuant to Subsection D of Section 57-12C-2 NMSA 1978; and

(4) failure to respond within ten business days to the secretary of state's request for information or otherwise cooperate with an investigation, including providing requested information.

[12.9.4.17 NMAC - N, 1/1/2022]

12.9.4.18 NON-COMMISSIONED NOTARIAL OFFICERS:

A. If a notarial officer who is not commissioned as a notary public desires to be authorized to conduct RONS, the notarial officer shall follow the authorization application procedures pursuant to 12.9.4.8 NMAC.

B. Upon approval by the secretary of state to perform RONS, the notarial officer shall comply with this rule and all statutes applicable to a notary public performing RONS.

[12.9.4.18 NMAC - N, 1/1/2022]

12.9.4.19 NOTARY PUBLIC COMMISSION IN EFFECT: A notary public with an appointment or renewal date prior to the effective date of the Revised Uniform Law on Notarial Acts who desires to be authorized to perform RONS shall follow the application process prescribed by Subsection B of 12.9.4.8 NMAC to apply to become authorized to perform RONS.

[12.9.4.19 NMAC - N, 1/1/2022]

History of 12.9.4 NMAC:

12.9.2 NMAC, Performing Electronic Notarial Acts, filed 5/30/2008, was repealed and replaced with new rules 12.9.3 NMAC – Notarial Procedures, and 12.9.4 NMAC – Remote Online Notarizations, effective 1/1/2022.