

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 9 NOTARIES PUBLIC
PART 2 PERFORMING ELECTRONIC NOTARIAL ACTS

12.9.2.1 ISSUING AGENCY: Office of the Secretary of State.
[12.9.2.1 NMAC - N, 5/30/2008]

12.9.2.2 SCOPE: All notaries public who register to perform electronic notarial acts.
[12.9.2.2 NMAC - N, 5/30/2008]

12.9.2.3 STATUTORY AUTHORITY: 14-9A-5 (C) NMSA 1978
[12.9.2.3 NMAC - N, 5/30/2008]

12.9.2.4 DURATION: Permanent.
[12.9.2.4 NMAC - N, 5/30/2008]

12.9.2.5 EFFECTIVE DATE: May 30, 2008 unless a later date is cited at the end of a section.
[12.9.2.5 NMAC - N, 5/30/2008]

12.9.2.6 OBJECTIVE: The objective of the rule is to establish standards, guidelines, procedures, fees and to define the duties and responsibilities for notaries public electing to perform electronic notarial acts. The office of the secretary of state recognizes that as technology has advanced financial institutions, mortgage lenders, government and businesses are turning to electronic documents in order to speed up communication and productivity.
[12.9.2.6 NMAC - N, 5/30/2008]

12.9.2.7 DEFINITIONS:

A. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

B. “Electronic document” means information that is created, generated, sent, communicated, received or stored by electronic means.

C. “Electronic notarial act” means an official act by a notary public on or involving an electronic document and using means authorized by the secretary of state.

D. “Electronically enabled notary public” means a notary public who has registered with the secretary of state the capability of performing electronic notarial acts.

E. “Electronic notary seal” and “official electronic seal” mean information within a notarized electronic document that includes the notary public’s name, jurisdiction of appointment, commission expiration date and generally corresponds to data in notary public seals used on paper documents.

F. “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document or record.

G. “Electronic notarial certificate” means the portion of a notarized electronic document that is completed by a notary public and contains the notary public’s electronic signature or official electronic seal, official title, commission expiration date, and any required information concerning the date and place of the electronic notarization, and states the facts attested to or certified by the notary public in a particular electronic notarization.

H. “Notary electronic signature” means those forms of electronic signature, which have been approved by the secretary of state as an acceptable means for an electronic notary to affix the notary’s official signature to an electronic record that is being notarized.

I. “Physical appearance” and “appears before the notary” mean that the principal and the notary public are physically close enough to see, hear, communicate with and give documents to each other without reliance on electronic devices such as telephone, computers, video cameras or facsimile machines.

J. “Unique to the notary public” and “under the sole control” mean with respect to an electronic notarization that the signing device used to affix the electronic signature of the notary public and to render the official electronic seal information tamper-evident must be accessible by and attributable solely to the notary public to the exclusion of all other persons and entities operating to effectuate the authorized electronic notarization.

K. “Acknowledgment” means a notarial act in which a person at a single time and place appears in person before the notary public and presents a document; is personally known to the notary public or identified by the notary through satisfactory evidence; and indicates to the notary public that the signature on the document was voluntarily affixed by the person for the purpose stated within the document and, if applicable, that the person had due authority to sign in a particular representative capacity.

L. “Affirmation” means a notarial act, that is legally equivalent to an oath and in which a person at a single time and place appears in person before the notary public; is personally known to the notary public or identified by the notary public through satisfactory evidence; and makes a vow of truthfulness or fidelity on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word “swear”.

M. “Jurat” means a notarial act in which a person at a single time and place appears in person before the notary public and presents a document; is personally known to the notary public or identified by the notary public through satisfactory evidence; signs the document in the presence of the notary public that the person is voluntarily affixing his signature and vouching for the truthfulness or accuracy of the signed document.

[12.9.2.7 NMAC - N, 5/30/2008]

12.9.2.8 PHYSICAL APPEARANCE REQUIREMENT:

A. A notary public shall not perform an electronic notarial act if the document signer does not appear in person before the notary public at the time of notarization. Under no circumstance shall a notary public base identification merely upon familiarity with a signer’s electronic signature or an electronic verification process that authenticates the signer’s electronic signature when the signer is not in the physical presence of the notary public.

B. The methods for identifying document signers for an electronic notarization shall be the same as the methods required for a paper-based notarization.

[12.9.2.8 NMAC - N, 5/30/2008]

12.9.2.9 REGISTRATION REQUIREMENTS:

A. Before performing any electronic notarial act(s), a notary public shall register the capability to notarize electronically with the secretary of state on a form prescribed by the secretary of state.

B. In registering the capability to perform electronic notarial acts, the notary public shall provide the following information to the secretary of state, notary processing unit:

- (1) the applicant’s name as currently commissioned and complete mailing address;
- (2) the expiration date of the notary public’s commission and signature of the commissioned notary;
- (3) proof of successful completion of a course of instruction on electronic notarization offered through an educational provider approved by the United States department of education (ACCET) accrediting council for continuing education and training;
- (4) the applicant’s e-mail address;
- (5) the description of the electronic technology or technologies to be used in attaching an electronic notarial certificate to an electronic document;
- (6) the description of the electronic technology or technologies to be used in attaching the notary’s electronic signature to the electronic document;
- (7) an exemplar of the notary’s electronic signature and the notary’s official electronic seal, which shall contain the notary’s name and any necessary instructions or techniques that allow the notary’s electronic signature or official electronic seal to be read;
- (8) the name, address and phone number of the vendor issuing the electronic notary seal; this vendor shall be registered in the state of New Mexico to transact business;
- (9) the starting and expiration date of the device’s term of registration and any revocations, annulment, or other premature termination of any registered device of the registrant that was due to misuse or compromise of the device, with the date, cause, and nature of each termination explained in detail.

[12.9.2.9 NMAC - N, 5/30/2008]

12.9.2.10 TYPES OF ELECTRONIC NOTARIAL ACTS:

- A. acknowledgments
- B. jurats
- C. oaths or affirmations

[12.9.2.10 NMAC - N, 5/30/2008]

12.9.2.11 FORM AND MANNER OF PERFORMING THE ELECTRONIC NOTARIAL ACT:

A. When performing an electronic notarial act, a notary public shall apply an electronic signature, which shall be attached to or logically associated with the electronic document such that removal or alteration of such electronic signature is detectable and will render evidence of alteration of the document containing the notary certificate which may invalidate the electronic notarial act.

B. When performing an electronic notarial act, a notary public shall complete an electronic notarial certificate, which shall be attached to or logically associated with the electronic document such that removal or alteration of the electronic notarial certificate is detectable and will render evidence of alteration of the document containing the notary certificate which may invalidate the electronic notarial act.

C. The notary public's electronic signature is deemed to be reliable if the following requirements are met:

- (1) it is unique to the notary public;
- (2) it is capable of independent verification;
- (3) it is retained under the notary public's sole control;
- (4) it is attached to or logically associated with the electronic document, and
- (5) it is linked to the data in such a manner that any subsequent alterations to the underlying document's electronic notarial certificate are detectable and may invalidate the electronic notarial act.

D. When performing an electronic notarial act, a notary public shall apply an electronic seal, when required by law, which shall be attached to or logically associated with the electronic document such that removal or alteration of such official electronic seal is detectable and will render evidence of alteration of the document containing the notary certificate which may invalidate the electronic notarial act.

E. The notary public's electronic seal is deemed to be reliable if the following requirements are met:

- (1) it is unique to the notary public,
- (2) it is capable of independent verification,
- (3) it is retained under the notary public's sole control,
- (4) it is attached to or logically associated with the electronic document and
- (5) it is linked to the data in such a manner that any subsequent alterations to the underlying document or electronic notarial certificate are detectable and may invalidate the electronic notarial act.

F. An electronic image of a seal need not accompany an electronic signature.

G. The notary public's electronic signature and with the electronic notary seal shall be used only for the purpose of performing electronic notarial acts.

[12.9.2.11 NMAC - N, 5/30/2008]

12.9.2.12 FEES:

- A. For acknowledgments, \$10.00
- B. For jurats, \$10.00
- C. For oaths or affirmations, \$10.00
- D. An employer shall not establish fees for electronic notarial services that are in excess of those specified within this rule.

E. When performing an electronic notarial act, a notary public may charge the maximum fee specified in this section, charge less than the maximum fee or waive the fee.

[12.9.2.12 NMAC - N, 5/30/2008]

12.9.2.13 CHANGE OF E-MAIL ADDRESS: Within five days after the change of an electronically enabled notary public's e-mail address, the notary shall electronically transmit to the secretary of state a notice of the change, signed with the notary official electronic signature.

[12.9.2.13 NMAC - N, 5/30/2008]

12.9.2.14 LIABILITY, SANCTIONS AND REMEDIES RELATING TO IMPROPER ELECTRONIC NOTARIZATIONS: The liability, sanctions, and remedies for the improper performance of electronic notarial acts are the same as described in the New Mexico notary handbook.

[12.9.2.14 NMAC - N, 5/30/2008]

12.9.2.15 VIOLATION BY PERSON NOT REGISTERED TO PERFORM ELECTRONIC

NOTARIZATIONS: Performing an electronic notarization without registering with the secretary of state is subject to sanctions as described in the New Mexico notary public handbook.

[12.9.2.15 NMAC - N, 5/30/2008]

HISTORY OF 12.9.2 NMAC: [RESERVED]