

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 9 NOTARIES PUBLIC
PART 3 NOTARIAL PROCEDURES

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

12.9.3.2 SCOPE: The rule applies to notarial acts, commissioned notaries public and other notarial officers pursuant to the Revised Uniform Laws on Notarial Acts.
[12.9.3.2 NMAC - N, 1/1/2022]

12.9.3.3 STATUTORY AUTHORITY: This rule is authorized by Section 14-14A-26 NMSA 1978.
[12.9.3.3 NMAC - N, 1/1/2022]

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

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

12.9.3.6 OBJECTIVE: The objective of the rule is to establish standards, guidelines, procedures, fees and responsibilities under the Revised Uniform Laws on Notarial Acts.
[12.9.3.6 NMAC - N, 1/1/2022]

12.9.3.7 DEFINITIONS:

A. “County clerk duties” means the official duties performed by the county clerk or deputy county clerk as determined by the county clerk pursuant to Paragraph (4) of Subsection A of Section 14-14A-9 NMSA 1978.

B. “Deputy county clerk” means a person authorized by the county clerk to be a deputy county clerk and who has taken an oath of office.

C. “Electronic record” means a document in an electronic format, such as a PDF or Microsoft Word file, or a document otherwise created, generated, sent, communicated, received, or stored by electronic means.

D. “In-person electronic notarization” means that an electronic record is presented for notarization on a computer or mobile device with the individual signing the document and the notarial officer meeting face-to-face in person.

E. “Notary seal” means official stamp and the terms may be used interchangeably.

F. “Remote online notarization (RON)” means that the individual signing the document and the notary public meet face-to-face online and communicate using audiovisual technology.

G. “Tamper evident” means it is designed to prevent the substitution, removal or insertion of a record.

H. “Tangible copy” means a physical paper copy of an electronic record or tangible record.

I. “Tangible record” means a physical paper document with an original written signature.

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

12.9.3.8 APPLYING FOR OR RENEWING A NOTARY PUBLIC COMMISSION:

A. A person applying for or renewing a notary public commission must apply using the prescribed application form issued by the secretary of state. An applicant must put the applicant’s name as it appears on the applicant’s state issued identification on the application and renewal form. In addition to meeting the requirements pursuant to Subsection B of Section 14-14A-20 NMSA 1978, the applicant shall provide:

(1) proof of having successfully completed an approved training course and passing the required examination. If the secretary of state has record that a notary public applying for renewal has previously passed the required examination, a notary public applying for renewal is not required to re-take the training and examination unless the applicant’s commission has expired for a length of greater than one year;

(2) proof of obtaining a surety bond pursuant to Subsection D of Section 14-14A-20 NMSA 1978. The surety bond must contain:

(a) the applicant’s notarized signature listed as the principal or sole applicant;

- the surety bond;
- (b) the notarized signature and title of the official of the insurance company issuing
 - (c) a corporate seal of the issuing insurance company; and
 - (d) a power of attorney from the insurance company.
- (3) executed oath of office using the prescribed form issued by the secretary of state pursuant to Subsection C of Section 14-14A-20 NMSA 1978 notarized by a notarial officer; and
- (4) a non-refundable application fee of \$30.
- B.** The secretary of state shall issue a notary public certificate of commission containing the notary public's commission number and term expiration date to the applicant once the secretary of state determines:
- (1) that the applicant has met the qualifications to become a commissioned notary public;
 - (2) that the name on the bond, on the application, and the signatures on those documents are exactly the same; and
 - (3) the applicant has not previously had a notary public commission denied or revoked.
- C.** Within 30 days of receiving approval from the secretary of state, the notary public shall provide a copy of the applicant's signature and official stamp. The applicant's signature and official stamp must be received by the secretary of state prior to the notary public performing his or her first notarial act. Failure to provide this information shall result in a revocation of the notary public commission.
- D.** A notarial officer may apply to conduct remote online notarizations pursuant to 12.9.4.8 NMAC.
- E.** The notary public is required to maintain current name, contact information, and signature and official stamp on file with the secretary of state by submitting the form prescribed by the secretary of state within 30 days of the change of information. An amended certificate of commission will be issued upon notification of the name change and the notary public shall be required to obtain a new official stamp showing the updated information. [12.9.3.8 NMAC - N, 1/1/2022]

12.9.3.9 EXPIRATION OF A NOTARY'S COMMISSION: A commission for a notary public automatically expires:

- A.** Upon revocation, expiration, or resignation of the notary public's commission.
- B.** 30 days after the notary public's name changes unless the notary public previously submitted a name change;
- C.** upon conviction of the notary public of a felony or crime pursuant to Paragraph 3 of Subsection A of Section 14-14A-22 NMSA 1978;
- D.** if the notary public no longer has a place of employment or a residential address in the state of New Mexico;
- E.** if a notary public fails to provide a copy of the required signature and official stamp within 30 days of receiving a notary public commission; or
- F.** upon the notary public receiving notice from the state ethics commission of adverse action by a notary public. [12.9.3.9 NMAC - N, 1/1/2022]

12.9.3.10 SUSPENDING OR REVOKING A NOTARY PUBLIC COMMISSION:

- A.** Upon the state ethics commission making a determination to deny, refuse to renew, revoke, suspend or impose a condition on a notary public pursuant to Subsection A of Section 14-14A-22 NMSA 1978, the state ethics commission shall notify the secretary of state in writing of the recommended action and reason for the determination.
- B.** Upon receipt of notification from the state ethics commission, the secretary of state shall update the electronic database of notaries public maintained pursuant to Section 14-14A-23 NMSA 1978. [12.9.3.10 NMAC - N, 1/1/2022]

12.9.3.11 EDUCATION AND EXAMINATION PROCEDURES:

- A.** The secretary of state shall provide for regular training and administration of an examination pursuant to Subsection B of Section 14-14A-21 NMSA 1978. Training may be administered in house or through a 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 12.9.3.8 NMAC and shall be collected separately.
- C.** An applicant must provide proof of passing the required examination with a score of eighty percent or higher.

D. Examination records maintained by a third-party vendor, including the applicant's score, shall be retained for four years.
[12.9.3.11 NMAC - N, 1/1/2022]

12.9.3.12 TECHNOLOGY FEES:

A. A notary public or notarial officer may charge the maximum fees pursuant to Section 14-14A-28 NMSA 1978 with a fee not to exceed \$25.00 for each remote notarial act.

B. An in-person notarization of an electronic record shall follow the fee structure established pursuant to Subsection C of Section 14-14A-28 NMSA 1978.
[12.9.3.12 NMAC - N, 1/1/2022]

12.9.3.13 NOTARIAL PROCEDURES:

A. For notarizing tangible records, the individual and the notarial officer shall meet face-to-face in person and the notarial officer shall determine whether the requirements of Section 14-14A-4 NMSA 1978 have been met and shall verify the identity of the individual appearing before the officer in accordance with Section 14-14A-6 NMSA 1978. The notarial officer shall:

- (1) ensure the individual uses ink to sign the document;
- (2) ensure the notarial certificate meets the requirements of Subsection C of Section 14-14A-14 NMSA 1978, signs the certificate using ink and affixes the official stamp to the document; and,
- (3) if the notarial officer is a commissioned notary public or otherwise required to keep a journal pursuant to Subsection E of Section 14-14A-18 NMSA 1978, record the notarization in a paper or electronic journal in accordance with Section 14-14A-18 NMSA 1978.

B. The notarial officer shall not notarize his or her own signature or the signature of his or her spouse or domestic partner under any circumstance.

C. Notarial procedures for in-person electronic records. The individual and the notarial officer shall meet face-to-face in person and the notarial officer shall determine whether the requirements of Section 14-14A-4 NMSA 1978 have been met and shall verify the identity of the individual appearing before the officer in accordance with Section 14-14A-6 NMSA 1978. Upon making the required determination and identity verification:

- (1) the individual shall sign the electronic record using an electronic signature;
- (2) the notarial officer shall ensure the notarial certificate meets the requirements of Subsection C of Section 14-14A-14 NMSA 1978;
- (3) the notarial officer shall sign the notarial certificate with an electronic signature and affix the electronic seal, provided the electronic signature and seal have been previously provided to the secretary of state; and,
- (4) if the notarial officer is a commissioned notary, or otherwise required to keep a journal pursuant to Subsection E of Section 14-14A-18 NMSA 1978, the notarial officer shall record the notarization in a paper or electronic journal in accordance with Section 14-14A-18.

D. For an acknowledgement as defined in Subsection A of Section 14-14A-2 NMSA 1978, the individual must declare before a notarial officer that the individual is signing the document for the purpose stated in the document. For an acknowledgement, the individual is not required to sign in the presence of a notarial officer as long as the individual acknowledges to the notarial officer that the signature already on the document is that of the signer.

E. For a verification on oath or affirmation as defined in Subsection O of Section 14-14A-2 NMSA 1978, the individual must declare before a notarial officer that the statement in the document is true.

F. When certifying or attesting a copy of a document, the notarial officer shall review the original of the document along with the copy so that the notarial officer can make a comparison as required by Subsection D of Section 14-14A-4 NMSA 1978.

G. For witnessing or attesting a signature, the notarial officer shall certify that the individual has the identity claimed and that the signature is that of the individual signing. Witnessing or attesting a signature differs from an acknowledgement in that there is no declaration that the document is signed for the purposes stated in the document and differs from a verification of oath and affirmation in that the individual is not declaring that a statement in the document is true.

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

12.9.3.14 PREVENTING FRAUD OR MISTAKES:

A. A notarial officer shall only notarize a document when the signer is present.

B. A notarial officer shall determine from personal knowledge or satisfactory evidence the signer's identity pursuant to Section 14-14A-6 NMSA 1978 prior to performing a notarial act. When obtaining satisfactory evidence of the identity of the signer pursuant to Paragraph (1) of Subsection B of Section 14-14A-6 NMSA 1978, the notarial officer must review the data elements such as name, birth date, photo or other available data elements on an identification document of the signer to make a determination regarding to the identity of the signer.

C. A notarial officer shall only put the actual date (not an earlier or later date) on a document.

D. A notarial officer shall not share or publish his or her official stamp.

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

12.9.3.15 OFFICIAL STAMP:

A. The official stamp of a notarial officer shall conform to the requirements pursuant to Section 14-14A-16 NMSA 1978 and shall also include the words "Notarial Officer" and "State of New Mexico."

B. The official stamp shall conform to the following physical requirements:

(1) be 10-point type;

(2) the face of the official stamp shall be permanently affixed;

(3) if the stamp is affixed to a tangible record, it shall be applied in permanent ink and shall be capable of being photocopied; and

(4) the official stamp shall not contain the New Mexico state seal.

C. If the notary public is authorized to perform remote online notarizations, the official stamp shall also conform to the requirements set forth in Section 12.9.4.13 NMAC.

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

12.9.3.16 JOURNAL:

A. A notary public shall maintain a journal to sequentially chronicle all notarial acts pursuant to Section 14-14A-18 NMSA 1978.

B. A notary public shall store the journal in a secure location and keep the journal under the notary public's sole control unless a current or former notary public transmits the journal to the secretary of state, the state records officer, or leaves the journal with the notary public's firm or employer.

C. A notarial officer shall provide a copy of a requested journal entry or audiovisual recording related to a specified notarial act to a member of the public upon request pursuant to Section 14-14A-29 NMSA 1978. The request shall name the document subject and the date the notarial act was performed.

D. If a current or former notary public transmits the journal to the state records center or leaves the notary journal with the notary public's firm or employer, the notary public must notify the secretary of state by submitting the prescribed form within 30 days.

E. A firm or employer in possession of a notary public's journal has the same responsibility as a notary public to retain the journal for ten years after the last notarial act chronicled in the journal and to otherwise comply with all the requirements of this section.

F. Electronic journal.

(1) If the journal is maintained in an electronic format, it shall meet all the requirements of a tangible journal and must be:

(a) securely stored;

(b) recoverable in the event of a software malfunction or computer crash; and

(c) tamper evident.

(2) Entries from the electronic journal must be available to the public or the state ethics commission in a PDF format.

(3) If an electronic journal is turned over to the secretary of state, the state records officer, or to the notary public's firm or employer, it shall be transferred in PDF format.

G. If a notary public's journal is lost or stolen, the notary public shall promptly notify the secretary of state utilizing a form prescribed by the secretary of state.

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

12.9.3.17 NON-COMMISSIONED NOTARIAL OFFICERS:

A. A notarial officer who is not a commissioned notary public is not required to follow the application process prescribed by this rule. If a notarial officer desires to be authorized to conduct remote online notarizations, the notarial officer shall follow the application procedures pursuant to 12.9.4.8 NMAC.

B. A notarial officer shall upload a copy of the notarial officer’s official stamp to the secretary of state prior to the notarial officer’s initial notarial act.
[12.9.3.17 NMAC - N, 1/1/2022]

History of 12.9.3 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.

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