

This is an amendment to 12.9.3 NMAC, Sections 7, 8, 10, 14, 15 and 16, effective 6/16/2023.

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 record as defined pursuant to Subsection 7 of Section 14-16-2 NMSA 1978 and includes but is not limited to a PDF or Microsoft Word file.

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 record and the notarial officer meeting physically face-to-face.

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

~~[F.]~~ **E.** “**Remote online notarization (RON)**” means that an electronic record is presented for notarization and the individual signing the record and the notary public meet face-to-face online and communicate using communication technology.

~~[G.]~~ **F.** “**Tamper evident**” means any change to the record provides evidence of the change.

~~[H.]~~ **G.** “**Tangible copy**” means a physical paper copy of an electronic record or tangible record.

~~[I.]~~ **H.** “**Tangible record**” means a physical paper record with an original written signature.

[12.9.3.7 NMAC - N, 1/1/2022; A. & Rn., 6/16/2023]

12.9.3.8 APPLYING FOR OR RENEWING A NOTARY PUBLIC COMMISSION:

A. A person applying for or renewing a notary public commission shall apply electronically or by paper application using the prescribed application form issued by the secretary of state. An applicant shall use the applicant’s name as it appears on the applicant’s state issued identification. 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 a 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:

(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 notarial procedures, as determined by the secretary of state, since the applicant’s last application date; and

(2) a true and complete copy of a surety bond pursuant to Subsection D of Section 14-14A-20 NMSA 1978. The surety bond shall contain the applicant’s notarized signature listed as the principal or sole applicant;

(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 be commissioned as a notary public;

(2) that the name on the bond, on the application, and the signatures on those documents are the same; and

(3) the applicant has not previously had a notary public commission denied or revoked.

C. Within 45 days of receiving the notary public commission and prior to the notary public performing his or her first notarial act, the notary public shall provide a copy of the applicant’s official stamp to the secretary of state. A notary public will be deemed non-compliant with the act upon failure to provide this information. Failure to [~~provide this information~~] comply with this rule shall result in a referral to the state ethics commission.

D. A notarial officer may apply and must receive approval before conducting remote online notarizations pursuant to 12.9.4.8 NMAC.

E. The notary public is required to maintain the notary public's 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 a 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; A. 6/16/2023]

12.9.3.10 EDUCATION AND EXAMINATION PROCEDURES:

A. The secretary of state shall provide regular training and administration of an examination pursuant to Subsection B of Section 14-14A-21 NMSA 1978. Training may be provided by the secretary of state or through any third-party training vendor approved by the secretary of state.

B. The fee for providing the training and examination is not included in the application fee collected pursuant to 12.9.3.8 NMAC.

C. ~~[A.]~~ A notary public applicant and an automatic notarial officer shall provide proof of passing the required examination with a score of eighty percent or higher.

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

[12.9.3.10 NMAC - N, 1/1/2022; A. 6/16/2023]

12.9.3.14 OFFICIAL STAMP:

A. The official stamp of a commissioned notary public shall conform to the requirements pursuant to Section 14-14A-16 NMSA 1978 and shall also include the words "Notary Public" and "State of New Mexico."

B. The official stamp of a notarial officer that is not a commissioned notary public 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."

C. The official stamp shall conform to the following requirements:

(1) be 10-point type;

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

~~(3) the official stamp shall not contain the New Mexico state seal.~~

(3) include the notarial officer's official notary seal, as defined in Subsection L of 14-14A-2 NMSA 1978.

D. If the notarial officer 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.

[12.9.3.14 NMAC - N, 1/1/2022; A. 6/16/2023]

12.9.3.15 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 current or former notary public shall store the journal in a secure location under the notary public's sole control unless a current or former notary public transmits the journal to the secretary of state or state records officer.

~~[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 subject of the record and the date the notarial act was performed.~~

~~—~~ **C.** If a current or former notary public transmits the journal to the state records officer, the notary public shall notify the secretary of state by submitting the prescribed form within 30 days.

~~[E.]~~ **D.** A former employer may retain a copy of a notary public's journal, but it shall be clearly marked as a copy.

~~[F.]~~ **E.** Electronic journal.

(1) If the journal is maintained in an electronic format, it shall meet all the requirements of a tangible journal and shall 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 or the state records officer, it shall be transferred in PDF format.

~~[G:]~~ E. 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.

[12.9.3.15 NMAC - N, 1/1/2022; A. & Rn., 6/16/2023]

12.9.3.16 RULONA ~~[TRANSITION]:~~

A. A notarial officer who is not a notary public is not required to follow the application process prescribed by this rule except that the automatic notarial officer shall provide proof of having successfully completed an approved training course and passing the required examination prior to the notarial officer's initial notarial act. 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.]~~ ~~The commission expiration date is December 31, 2021, for a notarial officer authorized to practice law in this state who was commissioned under the previous Uniform Law on Notarial Acts.~~

~~C.~~ ~~Within six months of the effective date of this rule, a notary public with a commission date prior to the effective date of this rule shall upload a copy of the notary public's official stamp that conforms to Subsection A of Section 14-14A-16 NMSA 1978 and 12.9.3.14 NMAC.~~

~~D.]~~ B. A new automatic notarial officer who is not a notary public 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.

C. Within one year of the effective date of this section of this rule, an existing automatic notarial officer shall upload a copy of the notarial officer's official stamp to the secretary of state and shall provide proof of having successfully completed an approved training course and passing the required examination.

[12.9.3.16 NMAC - N, 1/1/2022; A. 6/16/2023]