

DRAFT AMENDMENT TO
REVISED UNIFORM LAW ON NOTARIAL ACTS

Purposes and Issues

The Draft: This proposed amendment to the Revised Uniform Law on Notarial Acts (“RULONA”) authorizes notaries public to perform notarial acts in the state in which they are commissioned for individuals who are physically located outside the United States. This amendment, if adopted, will be an optional provision of RULONA that a state may enact, if it so chooses, when it enacts RULONA. Alternatively, if the state has already enacted RULONA, it may enact this provision as an amendment to its version of RULONA. The entire amendment has been bracketed in order to display its optional nature.

Purpose: Individuals who are located outside the United States may have notarial acts performed at U.S. embassies or consulates, but access to those facilities is often not convenient or even reasonably proximate to an individual needing the service¹. Alternatively, an individual may seek the service of a notarial officer commissioned by the foreign state, but the process frequently requires a substantive review of the document(s) by the notarial officer and the subsequent acquisition of an apostille to verify the authority of the notarial officer; this is often a prohibitively expensive option. After a thorough review, the working group who prepared this amendment concluded that U.S. citizens residing or traveling abroad frequently encountered these problems, that they were widespread, and that they were persistent.

¹ It should be noted that military personnel may obtain notarizations for U.S. domestic use from military officers, who are conveniently available.

Current law in all but two states (Virginia and Montana) requires that an individual seeking the performance of a notarial act must physically appear before the notary public in order to be identified. However, it is possible today for a remote individual and a notary public to communicate in real time through the use of technology that involves both sight and sound. It is further possible for the identity of that remote individual to be verified to the notary public during the communication session through the services of a third-party provider by a process known as “identity proofing.” It is thus possible today for a notary public to verify the identity of the remote individual without the two of them being physically present in the same room at the same time.

This amendment proposes that communication technology and third-party identity proofing be utilized to allow individuals who are physically located outside the United States to communicate with, and be identified by, a notary public in a state adopting this amendment.

Issues: The amendment provides limitations on the scope of its application and sets forth a number of requirements to assure the identity of the remote individual and the security of the communication. It also authorizes the Secretary of State or other commissioning officer or agency to adopt rules regarding the performance of a notarial act for a person located outside the United States.

The notarial act may be performed under the authority of the amendment only if the record being notarized (i) is a part of or pertains to a matter that is or will be before a court, governmental entity, or other entity located in the United States, or (ii) involves property located in the United States or a transaction substantially connected with the United States. Thus, the amendment does not authorize a remote individual to use a

U.S. notary public to notarize a record for use before the courts or agencies of the foreign state or the sale of land in the foreign state.

Although under this amendment the notarial act is viewed as being performed in the United States, the amendment specifically provides that if the foreign state prohibits the notarization of the record or statement in the fashion permitted by the amendment the notarial act may not be performed. This removes any concern as to the notary public violating that law of the foreign state.

Prior to performing the notarial act, the notary public must be reasonably able, by use of tamper-evident technology or personal acknowledgement of the individual, to identify the record before the notary public as the same record as the one on which the individual made the statement or placed the individual's signature. Thus, for example, the notary public may compare the record she or he has with the record the remote individual displays on the video screen. Or the notary public may verify the record by means of a secure electronic signature tied to the electronic record, which he or she is notarizing.

As previously noted, the identity of the remote individual may be verified to the notary public by means of "identity proofing." Although identity proofing is a developing service, it involves a third-party service provider who is able to verify the identity of the individual through information contained public or private databases. This may involve, for example, the remote individual answering a number of questions for which there is a very high probability that only the true individual would be able to answer. The Secretary of State or other commissioning officer or agency is authorized to adopt rules for the approval of providers of third-party identity verification and the process of identity proofing.

In order to provide further information or evidence as to the performance of the notarial act under the amendment, the notary public must maintain a video and audio copy of the session. The duration and other specifics of that retention may be stipulated by rule by the Secretary of State or other commissioning officer or agency.

As noted previously, this amendment only authorizes the use of remote notarization for an individual who is physically located outside the United States. The amendment further provides that the notary public may refuse to perform a notarial act if he or she is not satisfied that the individual is, in fact, physically located outside the United States.

The Secretary of State or other commissioning officer or agency is authorized to adopt rules regarding the performance of a notarial act with respect to an individual located outside the United States, including (i) the means of performing the notarial act, (ii) standards for approval of the communication technology, (iii) approval of providers of third-party identity verification and the process of identity proofing, and (iv) standards for retention of video and audio copies.

Before a notary public may perform her or his first notarial act for a person located outside the United States by means of communication technology, the notary must notify the Secretary of State or other commissioning officer or agency. In that notification, the notary must identify the communication technology and third-party identifier who will be used in the identity proofing. If the Secretary of State or other commissioning officer or agency has adopted standards, the communication technology must conform to the standards.