

NOTICE OF PROPOSED RULEMAKING

The Office of the New Mexico Secretary of State (“Office”) hereby gives notice that the Office will conduct a public hearing on the described rules below.

The public hearing will be held on October 28, from 9:00 am to 11:00 am, at the State Capitol Building located at 490 Old Santa Fe Trail, Santa Fe, NM 87501 in Room 317. Every effort will be made to ensure that this hearing will be live streamed on the Office’s website. The public hearing allows members of the public an opportunity to submit data, testimony, and arguments in person on the proposed rule changes detailed below. All comments will be recorded by a court reporter.

The purpose of this hearing is to obtain public input on new rules relevant to the 2021 passage of the Revised Uniform Law on Notarial Acts [14-14A-1 to 14-14A-32 NMSA 1978] which is effective beginning January 1, 2022. The new rules shall be codified as:

12.9.3 NMAC Notarial Procedures

12.9.4 NMAC Remote Online Notarization Standards

Additionally, the purpose of the hearing is to obtain public input on repealing 12.9.2 NMAC Performing Electronic Notarial Acts.

12.9.3 NMAC Notarial Procedures

Authority: Section 14-14A-26 NMSA 1978

Purpose: The purpose of this rule is to establish standards, guidelines, procedures, fees and to define the duties and responsibilities for notarial officers under the Revised Uniform Law on Notarial Acts.

Summary of Full Text: *Section 12.9.3.7 NMAC* defines key terms including “electronic record,” “in-person electronic notarization,” “notary seal,” “remote online notarization,” “tamper evident,” “tangible copy,” and “tangible record.” *Section 12.9.3.8 NMAC* provides the process for applying for or renewing a notary public commission including the established application fees. *Section 12.9.3.9 NMAC* provides the condition under which a notary public’s commission automatically expires. *Section 12.9.3.10 NMAC* provides the process for suspending or revoking a notary public commission. *Section 12.9.3.11 NMAC* provides the procedures and requirements for providing training and the required examination course. *Section 12.9.3.12 NMAC* sets the maximum fees that may be charged by a notarial officer. *Section 12.9.3.13 NMAC* provides the requirements for notarial procedures. *Section 12.9.3.14 NMAC* provides requirements of a notarial officer to prevent fraud and mistakes. *Section 12.9.3.15 NMAC* provides requirements for the appearance of the official stamp. *Section 12.9.3.16 NMAC* provides requirements for maintaining a notarial journal. *Section 12.9.3.17 NMAC* provides requirements for non-commissioned notarial officers.

12.9.4 NMAC Remote Online Notarization Standards

Authority: In accordance with Subsection H of Sections 14-14A-5 and 14-14A-26 NMSA 1978, the secretary of state has the authority to promulgate rules for notaries public to perform notarial acts for remotely located individuals using communication technology.

Purpose: The purpose of this rule is to establish uniform standards of performance and governance of notarial acts for remotely located individuals by use of communication technology under the Revised Uniform Law on Notarial Acts.

Summary of Full Text: *Section 12.9.4.7 NMAC* defines key terms including “communication technology,” “identity proofing,” “knowledge-based authentication,” “public key infrastructure,” and “remote notarization system provider.” *Section 12.9.4.8 NMAC* provides the process for applying to perform remote online notarizations including the

established application fees. *Section 12.9.4.9 NMAC* provides the procedures and requirements for providing training and the required examination course. *Section 12.9.4.10 NMAC* provides the process for performing remote online notarial acts. *Section 12.9.4.11 NMAC* provides the methodology used by notary public authorized to perform remote online notarizations to ensure the identity of a remotely located individual. *Section 12.9.4.12 NMAC* establishes the requirements for the audiovisual communication technology utilized to perform remote online notarizations. *Section 12.9.4.13 NMAC* provides the requirements for the electronic signature and stamp utilized by notary publics authorized to perform remote online notarizations. *Section 12.9.4.14 NMAC* provides requirements audio visual record retention. *Section 12.9.4.15 NMAC* provides requirements for maintaining a notarial journal by notary publics authorized to perform remote online notarizations. *Section 12.9.4.16 NMAC* provides requirements for an online certificate for a remote notarial act. *Section 12.9.4.17 NMAC* establishes standards for remote notarization system providers. *Section 12.9.4.18 NMAC* provides requirements for non-commissioned notarial officers to be authorized to perform remote online notarizations. *Section 12.9.4.19 NMAC* provides guidance regarding how commissioned notary publics with an appointment date prior to the effective date of the new law to become authorized to perform remote online notarizations.

Repeal of 12.9.2 NMAC Performing Electronic Notarial Acts

Purpose: 12.9.2 NMAC is based on previous law that is no longer applicable and must be repealed.

Details for Obtaining a Copy of Rule and Submitting Oral or Written Comments: Copies of the proposed rule are available on the Office's website at www.sos.state.nm.us or can be obtained from the Business Services Division by calling (505) 827-3600 or emailing kari.fresquez@state.nm.us. The proposed rule is also available on the New Mexico Sunshine Portal. Interested individuals may provide oral or written comments at the public hearing.

Before the public hearing, written comments may be sent to Kari Fresquez, Director of Legislative and Executive Affairs, via email at kari.fresquez@state.nm.us, fax (505) 827-3611, or by regular mail at Attn: Kari Fresquez – proposed rule, The Office of the New Mexico Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, NM 87501. The deadline to receive written comment is 11:00 am on October 28, 2021. All written public comments will be posted on the website throughout the written comment period at: www.sos.state.nm.us.

Any person with a disability who needs a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact (505) 827-3600 or email kari.fresquez@state.nm.us at least five (5) business days prior to the hearing.