

TITLE 12 TRADE, COMMERCE AND BANKING
CHAPTER 9 NOTARIES PUBLIC
PART 4 REMOTE ONLINE NOTARIZATION STANDARDS

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

12.9.4.2 SCOPE: Commissioned notaries public and other notarial officers authorized by the secretary of state to perform remote online notarizations in the state of New Mexico as well as remote notarization system providers.
[12.9.4.2 NMAC - N, 1/1/2022]

12.9.4.3 STATUTORY 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 notarial officers to perform notarial acts for remotely located individuals using communication technology.
[12.9.4.3 NMAC - N, 1/1/2022]

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

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

12.9.4.6 OBJECTIVE: The objective of the rule is to establish uniform standards of performance and governance of notarial acts for remotely located individuals by use of communication technology.
[12.9.4.6 NMAC - N, 1/1/2022]

12.9.4.7 DEFINITIONS:

A. “Certified tangible copy of an electronic record” means an original tangible copy, as defined pursuant to Subsection F of 2.9.3.7 NMAC, of an electronic record that has been certified by a notarial officer as an accurate copy of the electronic record.

B. “Communication technology” means the use of technological tools, such as computers, software, telephones, and the internet, to create, store, transmit, or share information electronically.

C. “Credential analysis” means an identity assessment used by a notarial officer to determine if an individual’s government-issued identification card is valid. The assessment requires the use of technology to confirm the security features on an identification card and confirm the identification card is not fraudulent.

D. “Electronic record” means see Subsection A of 12.9.3.7 NMAC.

E. “Identity credential” means a government issued identification card pursuant to the requirements Paragraph (1) of Subsection B of Section 14-14A-6 NMSA 1978.

F. “Identity proofing” means a process or service operating according to this rule through which a third party affirms the identity of an individual through use of public or proprietary data sources.

G. “Knowledge-based authentication” means an identity assessment used by a notarial officer to identify an individual that is based on a set of questions formulated from public or private data sources that does not contain a question for which the individual provided a prior answer to the person doing the assessment.

H. “Remote online notarization (RON)” means see Subsection D of 12.9.3.7 NMAC.

I. “Remote notarization system provider” means a business entity that provides a remote notarization system that has been approved by the secretary of state to meet the communication technology and identity proofing requirements outlined in this rule.

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

12.9.4.8 REMOTE ONLINE NOTARIZATION APPLICATION REQUIREMENTS:

A. A notarial officer must submit a notice of intent to perform remote online notarizations (RON) on a form prescribed by the secretary of state and receive approval from the Secretary of State before the notarial officer may remotely notarize a document. The notarial officer shall provide:

(1) the name of the remote online system provider and electronic technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and stamp to an electronic document;

(2) the name of the remote online system provider and electronic technology or technologies to be used in conducting identity proofing;

(3) a copy of any necessary instructions or techniques supplied by a remote notarization system provider that allow the notarial officer's electronic notarial certificate and stamp to be read and authenticated;

(4) a copy of any necessary instructions or techniques supplied by a remote notarization system provider that allow the notarial officer to conduct identity proofing and credential analysis;

(5) an explanation of the methods and technology by which the notarial officer will maintain and store the required journal, if applicable, and audio video recording;

(6) proof of having successfully completed an approved training course and passing the required examination. If the secretary of state has record that a commissioned notary public applying for renewal has previously passed the required examination, a commissioned 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; and

(7) a non-refundable application fee of \$75.

B. An individual applying for authorization to perform remote online notarizations shall already be a current notarial officer pursuant to Section 14-14A-9 or Section 14-14A-20 NMSA 1978 or an individual may simultaneously apply to become a commissioned notary public with authorization to perform RONs.

C. The secretary of state shall issue an approval authorizing the notarial officer to complete RONs once the secretary of state determines that the applicant has met the qualifications. Within 30 days of receiving approval from the secretary of state, the notarial officer shall upload a copy of the applicant's electronic signature and stamp. The applicant's signature and stamp must be received by the secretary of state prior to the notarial officer performing a RON. Failure to provide this information shall result in a revocation of the notarial officer's approval to complete RONs.

D. The commission expiration date for a notary public authorized to perform RONs shall be the same expiration date established when an individual is commissioned as a notary public pursuant to Section 14-14A-20 NMSA 1978.

E. This section does not prohibit a notarial officer from using a hardware or software update to the technologies identified under this section if the hardware or software update does not result in technologies that are materially different from the technologies that the notarial officer originally identified.

F. If at any time a notarial officer authorized to perform RONs adopts a new or additional technology or new remote notarization system provider, the notarial officer must notify the secretary of state of the new or additional technology and signature or stamp on a form prescribed by the secretary of state.

G. The renewal of the commission of a notary public who has previously qualified to perform RONs under this section constitutes renewal of the notary public's qualification without the necessity to submit another notification under this section and the renewal fees shall be the same as that to renew as a commissioned notary public unless the applicant's commission has been expired for greater than one year. If an applicant's commission has been expired for a length of greater than one year, the applicant must complete the application process and pay the required application fee as prescribed by this section.

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

12.9.4.9 EDUCATION AND EXAMINATION PROCEDURES:

A. The secretary of state shall provide a remote notarization course and examination. 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 12.9.4.8 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.

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

12.9.4.10 PERFORMANCE OF REMOTE ONLINE NOTARIAL ACTS:

A. A notarial officer authorized to perform RONS must be physically located within the boundaries of New Mexico at the time the notarial act takes place.

B. A notarial officer authorized to perform RONS may perform authorized notarial acts relating to electronic documents only if the individual personally appears before the notarial officer at the time of the notarization; however, such appearance may be by means of an electronic two-way audio and video communication.

C. A notarial officer authorized to perform RONS shall make a reasonable determination regarding whether an individual is under duress or being coerced to complete a transaction. The notarial officer:

(1) shall observe the individual's behavior for signs of being nervous, fearful, hesitant, distracted, distraught or uncomfortable;

(2) shall observe the surroundings and watch the behavior of others in the room who seem to make the individual uncomfortable;

(3) may request to speak privately with the individual; and

(4) may ask direct questions such as "are you signing this document of your own free will?"

D. A notarial officer is authorized to refuse to perform a notarial act when the notarial officer has reasonable grounds to believe that the individual is acting under coercion or undue influence.

E. A notarial officer authorized to perform RONS must verify the identity of the individual at the start of a notarial session by means of two-way video and audio conference technology. Identity may be verified by the notarial officer pursuant to Section 14-14A-6 NMSA 1978.

F. Under no circumstances shall a notarial officer base identification merely on familiarity with an individual's signature or an electronic verification process that authenticates the individual's electronic signature when the individual does not personally appear before the notarial officer.

G. A notarial officer authorized to perform RONS shall refuse to complete the notarial act where the notarial officer:

(1) has reasonable grounds to believe that the individual is acting under coercion or undue influence;

(2) is unable to verify the identity of the individual using the means and standard identified in these rules:

(3) becomes aware that the security of the two-way audiovisual transmission is not secure;

(4) determines the signature of the individual cannot be attached to the electronic document;

or

(5) cannot attach the notarial officer's electronic stamp to the electronic document using an electronic technology which renders any subsequent change or modification to the document evident.

H. The notarial officer shall complete and affix or attach an electronic notarial certificate, signature, and stamp to the electronic document. The electronic notarial certificate shall meet the requirements of Subsection A of Section 14-14A-14 NMSA 1978.

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

12.9.4.11 IDENTITY PROOFING: If a notarial officer does not have satisfactory evidence of the identity of a remotely located individual pursuant to Subsection A of Section 14-14A-6 NMSA 1978, the notarial officer must reasonably verify the individual's identity through two different types of identity proofing procedures as provided in this section. The procedure shall analyze the individual's identity credential against trusted third-person data sources, bind the individual's identity to the individual following successful knowledge-based authentication, and permit the notarial officer to visually compare the identity credential and the individual. The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements:

A. Credential Analysis. The analysis of an identity credential must use public or private data sources to confirm the validity of the identity credential presented by a remotely located individual and, at a minimum:

(1) use automated software processes to aid the notarial officer in verifying the identity of each remotely located individual;

(2) require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;

(3) use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and

(4) enable the notarial officer to visually compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the notarial officer in real time through communication technology.

B. Knowledge-based authentication. A knowledge-based authentication is successful if it meets the following requirements:

- (1) the remotely located individual must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;
- (2) each question must have a minimum of five possible answer choices;
- (3) at least eighty percent of the questions must be answered correctly;
- (4) all questions must be answered within two minutes;
- (5) if the remotely located individual fails after two attempts, the individual may retake the quiz one time within 24 hours;
- (6) during a retake of the quiz, a minimum of forty percent of the prior questions must be replaced;
- (7) if the remotely located individual fails the second attempt, the individual is not allowed to retry with the same notarial officer within 24 hours of the second failed attempt; and
- (8) the notarial officer must not be able to see or record the questions or answers.

C. Credible Witness. A notarial officer has satisfactory evidence of the identity of a remotely located individual if the notarial officer has personal knowledge of the identity or if the notarial officer has satisfactory evidence of the identity of the individual by oath or affirmation of a credible witness appearing before the notarial officer as provided in Paragraph (2) of Subsection B of Section 14-14A-6 NMSA 1978. A credible witness may be a remotely located individual if the notarial officer, credible witness, and individual whose signature is the subject of the notarial act can communicate by using communication technology. A remotely located credible witness must meet the same requirements for identity proofing in this section or the notarial officer must have personal knowledge of the identity of the remotely located credible witness.

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

12.9.4.12 AUDIOVISUAL COMMUNICATION TECHNOLOGY REQUIREMENTS:

A. Communication technology shall:

- (1) provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the notarial officer and the remotely located individual to see and speak with each other; and
- (2) provide a means for the notarial officer to reasonably confirm that a record before the notarial officer is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.
- (3) provide accessible features for people with disabilities including, but not limited to, the ability for an individual to utilize a screen reader to navigate the technology.

B. Communication technology shall provide reasonable security measures to prevent unauthorized access to the live transmission of the audiovisual feeds, the methods used to perform the identity proofing process in this section and the electronic record that is the subject of the notarial act.

C. A notarial officer authorized to perform RONS shall stop and restart the remote online notarization process from the beginning if:

- (1) the remotely located individual or the remote notarial officer must exit the remote notarization system before completion of the notarial act;
- (2) the audio or visual feed is interrupted or terminated; or
- (3) the resolution or quality of the transmission becomes such that the remote notarial officer believes the process has been compromised and cannot be completed.

D. A notarial officer performing a RON has an ongoing duty to verify that each remote notarization system provider has an active status with the secretary of state before using that provider's remote notarization system to perform a remote notarization. This duty extends to each remote notarization.

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

12.9.4.13 ELECTRONIC SIGNATURE AND STAMP:

A. A notarial officer authorized to perform RONS shall use the same unique signature and seal for all electronic notarial acts. The electronic signature and a copy of the stamp shall be provided to the secretary of state within 30 days of being authorized by the secretary of state to perform RONS and prior to the first RON being performed.

B. A notarial officer shall select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notarial officer to use a technology that the notarial officer has not selected. The tamper-evident technology must be capable of:

(1) Affixing or attaching the notarial officer's unique electronic signature and stamp to the electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident; and

(2) Utilizing a valid digital certificate issued by a third-party provider that uses public key infrastructure (PKI) technology that is X.509 compliant. A notarial officer shall not perform a notarial act with respect to an electronic record if the digital certificate:

- (a) has expired;
- (b) has been revoked or terminated by the issuing or registering authority;
- (c) is invalid; or
- (d) is incapable of authentication.

C. Upon completion of a RON, the notarial officer authorized to perform RONs shall provide the individual any necessary instructions supplied by a remote notarization system provider that allows for the notarial officers electronic signature and stamp to be read and authenticated.

D. The remote notarial officer's electronic signature and stamp must be retained under the notarial officer's sole control and access. A notarial officer's employer must not use or permit the use of a notarial officer's electronic signature or stamp by anyone except the notarial officer.

[12.9.X.13 NMAC - N, 1/1/2022]

12.9.4.14 AUDIOVISUAL RECORD RETENTION AND REPOSITORIES:

A. A notarial officer authorized to perform RONs shall retain an audiovisual recording required under Paragraph (4) of Subsection C of Section 14-14A-5 NMSA 1978, in a computer or other electronic storage device that protects the audiovisual recording against unauthorized access by password or cryptographic process. The recording must be created in a file format that is supported by Windows media player (for example: .avi or .wmv) and not include images of any record in which a remotely located individual made a statement or on which the remotely located individual executed a signature.

B. On the death or adjudication of incompetency of a current or former notarial officer, the notarial officer's personal representative or guardian or any other person knowingly in possession of a recording shall:

- (1) comply with the retention requirements of this section; or
- (2) transmit the recording to one or more repositories pursuant to Subsection B below; or
- (3) transmit the recording in an industry-standard readable data storage device to the

secretary of state.

C. A notarial officer, a guardian, conservator, or agent of a notarial officer, or a personal representative of a deceased notarial officer may, by written contract, engage a third person to act as a repository to provide the storage required by this Subsection. The contract shall:

(1) enable the notarial officer, the guardian, conservator, or agent of the notarial officer, or the personal representative of the deceased notarial officer to comply with the retention requirements of this section even if the contract is terminated; or

(2) provide that the information will be transferred to the notarial officer, the guardian, conservator, or agent of the notarial officer, or the personal representative of the deceased notarial officer if the contract is terminated.

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

12.9.4.15 NOTARIAL JOURNAL TO RECORD REMOTE ONLINE NOTARIZATIONS:

A. A notarial officer authorized to perform RONs shall adhere to the rule on journals pursuant to 12.9.3.16 NMAC.

B. In addition to the journal information required by Subsection C of Section 14-14A-18 NMSA 1978, the notarial officer must record the name of the remote notarization system provider used for each remote online notarization.

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

12.9.4.16 CERTIFICATE OF REMOTE NOTARIAL ACT:

A. Any document notarized remotely online must clearly state, in the remote online notarial certificate, that the person making the acknowledgement, oath or affirmation and signing the document appeared

remotely online using audiovisual communication technology. This requirement is met if the statement is substantially as follows: “This notarial act involved the use of communication technology.”

B. A certified tangible copy of an electronic record shall be considered an original document. A certified tangible copy of an electronic record must include a notarial certificate of authenticity. This requirement is met if the statement is substantially as follows: “The attached document entitled _____ (document title, if applicable), dated _____ (document date, if applicable), and containing ___ pages is an accurate copy of an electronic record printed by me or under my supervision. At the time of printing, no security features present on the electronic record indicated any changes or errors in an electronic signature or other information in the electronic record after the completion of the electronic record's creation, execution or notarization.”

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

12.9.4.17 STANDARDS FOR REMOTE NOTARIZATION SYSTEM PROVIDERS:

A. Application. A provider must submit an application on a form prescribed by the secretary of state before the provider can provide services to a notarial officer in New Mexico. Upon being approved as a provider, the secretary of state shall list the provider as active on the website of the secretary of state.

B. Criteria for approval. In order to be approved and maintain an active status, a remote notarization system provider shall:

(1) provide the ability for an individual receiving notarization services to generate a printable version of all documents executed in the system;

(2) ensure that access to a notarial officer’s electronic signature and stamp is limited solely to the notarial officer and protected by the use of some form of user authentication;

(3) communication technology provided by the remote notarization system provider shall:

(a) provide for continuous, synchronous audiovisual feeds;

(b) provide sufficient video resolution and audio clarity to enable the remote notarial officer and the remotely located individual to see and speak to one another simultaneously through live, real time transmission;

(c) provide security measures to prevent unauthorized access; and

(d) provide accessible features for people with disabilities including, but not limited to, the ability for an individual to utilize a screen reader to navigate the technology.

(4) provide for the credential analysis and knowledge-based authentication assessment requirements provided for in Subsection 11 of this rule;

(5) provide a public key certificate or identity verification method by a trusted third party; and

(6) provide a storage system that complies with 12.9.4.14 NMAC.

C. Notifications.

(1) If a remote notarization system provider becomes aware of a possible security breach involving its data, the provider must give notice to both the secretary of state and the New Mexico notaries public using its services no later than 30 days after the date of determination that a security breach occurred.

(2) No later than 30 days before making any changes to the remote notarization system that would impact any previously provided answer in its application about its system that would affect the provider’s eligibility for approval, a provider must request approval from the secretary of state and the New Mexico notaries public using its services.

(3) For non-system related changes to the provider’s information on file with the secretary of state, the provider must notify and update information provided to the secretary of state on a form prescribed by the secretary of state no later than 30 days after the changes take effect.

D. Complaints. A person may file a complaint with the secretary of state against an active provider. The complaint must allege a specific violation of New Mexico’s Revised Uniform Law on Notarial Acts or these rules.

E. Grounds for termination of active status. The secretary of state may terminate approval of a provider for any of the following reasons:

(1) violation of any provision of the Revised Uniform Law on Notarial Act or these rules;

(2) making representations that the Secretary of State endorses, recommends, or mandates use of any of the provider’s products, goods, or services;

(3) if the provider sustains a data breach; and

(4) failure to timely respond to the Secretary of State’s request for information or otherwise cooperate with an investigation, including providing requested information.

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

12.9.4.18 NON-COMMISSIONED NOTARIAL OFFICERS:

A. If a non-commissioned notarial officer desires to be authorized to conduct RONs, the notarial officer shall follow the application procedures pursuant to 12.9.4.8 NMAC.

B. Upon approval by the secretary of state for a non-commissioned notarial officer to perform RONs, the notarial officer shall comply with this rule and all lawful provisions applicable to a commissioned notary public performing RONs.

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

12.9.4.19 NOTARY PUBLIC COMMISSION IN EFFECT: A commissioned notary public with an appointment or renewal date prior to the effective date of the Revised Uniform Law on Notarial Acts that desires to be authorized to perform RONs, shall follow the application process prescribed by Subsection B of 12.9.4.8 NMAC to simultaneously apply to become a commissioned notary public under Revised Uniform Law on Notarial Acts and become authorized to perform RONs.

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

History of 12.9.4 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.