

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, notaries public and other notarial officers pursuant to the Revised Uniform Laws on Notarial Acts (RULONA).
[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 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. “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.

F. “Tamper evident” means any change to the record provides evidence of the change.

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

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 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]

12.9.3.9 SUSPENSION OR REVOCATION OF 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 that a notary public's commission has been suspended or revoked, the secretary of state shall update the electronic database of notaries public maintained pursuant to Section 14-14A-23 NMSA 1978.

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

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 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]

12.9.3.11 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. For an in-person notarization of an electronic record, the notary public shall follow the fee structure established pursuant to Subsection C of Section 14-14A-28 NMSA 1978.

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

12.9.3.12 NOTARIAL PROCEDURES:

A. Notarial procedures for tangible records. The individual and the notarial officer shall meet physically face-to-face, 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 permanent ink in a photo-reproducible color to sign the record;
(2) ensure the notarial certificate meets the requirements of Subsection C of Section 14-14A-14 NMSA 1978, sign the certificate using permanent ink and affix the official stamp to the record; and,
(3) if the notarial officer is a notary public or otherwise required to keep a journal pursuant to Subsection E of Section 14-14A-18 NMSA 1978, chronicle or note the notarization in a paper or electronic journal in accordance with Section 14-14A-18 NMSA 1978.

B. Notarial procedures for in-person electronic records. The individual and the notarial officer shall meet physically face-to-face, 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 notary public, or otherwise required to keep a journal pursuant to Subsection E of Section 14-14A-18 NMSA 1978, the notarial officer shall chronicle or note the notarization in a paper or electronic journal in accordance with Section 14-14A-18 NMSA 1978.

C. For an acknowledgment as defined in Subsection A of Section 14-14A-2 NMSA 1978, the individual or representative shall declare before a notarial officer that the individual is signing the record for the purpose stated in the record.

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

E. When certifying or attesting a copy of a record, the notarial officer:

(1) may make or supervise the copy of a record as a means of assuring the accuracy of the copy; or
(2) review the original record 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.

F. 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 acknowledgment in that the record must be signed in the physical presence of the notarial officer and there is no declaration that the record is signed for the purposes stated in the record and differs from a verification of oath and affirmation in that the individual is not declaring that a statement in the record is true.

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

12.9.3.13 PREVENTING FRAUD OR MISTAKES:

A. A notarial officer shall only notarize a record when the signer is either physically face to face or face to face online with the notarial officer.

B. A notarial officer shall determine the signer's identity from personal knowledge or satisfactory evidence pursuant to Section 14-14A-6 NMSA 1978 before 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 shall review the 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 enter the actual date of a notarial act (not an earlier or later date) on a record.

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

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

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) include the notarial officer’s official notary seal.

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. 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.

D. A former employer may retain a copy of a notary public’s journal, but it shall be clearly marked as a copy.

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.

F. 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:

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. 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]

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.