

TITLE 433 – SECRETARY OF STATE

CHAPTER 7 – ELECTRONIC NOTARIES PUBLIC

001. SCOPE.

001.01 The Rules in this Chapter implement the Electronic Notary Public Act, Neb. Rev. Stat. §§ 64-301 through 64-317.

002. DEFINITIONS.

In addition to terms defined in the Electronic Notary Public Act, the following definitions apply for purposes of Chapter 7 of these regulations:

002.01 "Applicant" means a person applying for registration as a Nebraska electronic notary public.

002.02 "Approved Electronic Notary Solution Provider" means a person or entity approved to provide an Electronic Notarization System by the Secretary pursuant to the Electronic Notary Public Act.

002.03 "Biometric Authentication" means proving the identity of a user by verification of the user's identity through technologies that measure and analyze one or more human physiological or behavioral characteristics of the user in order to access and use an Electronic Notarization System. Biometric Authentication technologies include fingerprint scanning devices, retinal scanning devices, and handwriting analysis devices.

002.04 "Electronic Notarization System" means a set of applications, programs, hardware, software, or technology designed to enable an electronic notary public to perform electronic notarizations.

002.05 "Independently Verifiable" means capable of government or third-party authentication of a notarial act, a notary's identity, and a Notary Public's relevant authority.

002.06 "Notary Public" means a person commissioned as a notary public under Neb. Rev. Stat. §§ 64-101 to 64-119.

002.07 "Password Authentication" means the user enters a secret word, phrase, or symbol set in order to access and use an Electronic Notarization System.

002.08 "Secretary" means the Nebraska Secretary of State and his or her designated staff.

002.09 "Token Authentication" means the use of a physical device in addition to a password or personal identification number ("PIN") in order to access and use an Electronic Notarization System. Physical devices used in Token Authentication technologies include magnetic cards or "smart cards" and Universal Serial Bus (USB) memory sticks or "USB keys".

002.10 "Under his or her exclusive control", for the purposes of the Secretary's interpretation of Neb. Rev. Stat. § 64-310, means "under the electronic notary public's sole control" as defined in this Chapter.

002.11 "Under the electronic notary public's sole control" means accessible by and attributable solely to the electronic notary public to the exclusion of all other persons and entities, either through being in the direct physical custody of the electronic notary public or through being secured with one or more Biometric Authentication, Password Authentication, Token Authentication, or other authentication technologies in an Electronic Notarization System provided by an Approved Electronic Notary Public Solution Provider approved pursuant to the Electronic Notary Public Act and this Chapter.

003. APPLICATION.

003.01 To qualify for registration as an electronic notary public, an Applicant will need to:

003.01(A) Provide all information needed for registration pursuant to Neb. Rev. Stat. § 64-304;

003.01(B) Hold a valid Nebraska Notary Public commission;

003.01(C) Certify that he or she continues to meet the qualifications of a Notary Public;

003.01(D) Take the course of instruction and pass the examination as stated in Neb. Rev. Stat. § 64-305;

003.01(E) Pay the registration fee; and,

003.01(F) Provide any other information requested by the Secretary to prove the qualifications of the Applicant.

004. REGISTRATION RENEWAL.

004.01 A Notary Public applying to renew his or her registration as an electronic notary public will so indicate on his or her notary public renewal application and pay the fee for

registration as an electronic notary public, in addition to the fee for renewal of his or her Notary Public commission.

004.02 If an electronic notary public fails to renew their registration at the same time the Notary Public commission is renewed, he or she will submit a new application for registration and meet all of the requirements of Section 003 of this Chapter to be registered as an electronic notary public.

005. APPROVED COURSE OF STUDY FOR ELECTRONIC NOTARIES PUBLIC.

005.01 The Secretary will administer the training course and testing for Applicants for electronic notary public registration.

005.02 Upon the Secretary's determination of a need for additional instructors, the Secretary may designate a third-party training course for Applicants or appoint certified Notary Public instructors to administer the training course and testing for Applicants for electronic notary public registration.

005.03 A passing score on the examination is 85% or better.

005.04 If an Applicant fails the examination, the application for registration will be denied. An Applicant who fails the examination may reapply for registration after waiting thirty (30) days, including submitting a new application for registration, paying the registration fee, taking the course of instruction, and passing the exam. An Applicant who fails the examination three (3) times will be considered incompetent to be registered as an electronic notary public and will not be eligible to take the exam again.

006. ELECTRONIC NOTARY PUBLIC'S ELECTRONIC SIGNATURE.

006.01 The electronic signature of an electronic notary public is to be Independently Verifiable and unique to the electronic notary public.

006.02 The electronic notary public's electronic signature is to be retained under the electronic notary public's sole control.

006.03 When the electronic notary public performs an electronic notarization, the electronic signature used by the electronic notary public is to be accessible by and attributable solely to the electronic notary public to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization.

006.04 The electronic notary public's electronic signature is to be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations

to the underlying document or electronic notary certificate are observable through visual examination.

006.05 An image of the electronic notary public's handwritten signature is to appear on any visual or printed representation of an electronic notary public certificate regardless of the technology being used to affix the electronic notary public's electronic signature.

007. ELECTRONIC NOTARY SEAL.

007.01 The electronic notary seal is to be Independently Verifiable and unique to the electronic notary public.

007.02 The electronic notary seal is to be retained under the electronic notary public's sole control.

007.03 When the electronic notary public performs an electronic notarization, the electronic seal used by the electronic notary public is to be accessible by and attributable solely to the electronic notary public to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization.

007.04 The electronic notary seal is to be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination.

007.05 An image of the electronic notary public's electronic notary seal is to appear on any visual or printed representation of the electronic notary certificate regardless of the technology being used to affix the electronic notary public's electronic notary seal.

007.06 The perimeter of the electronic notary seal is to contain a border such that the physical appearance of the seal replicates the appearance of an inked seal on paper.

007.07 The electronic notary seal is to have, within its border, the electronic notary public's name exactly as commissioned, the words "Electronic Notary Public", the words "Nebraska" and the commission expiration date.

008. PHYSICAL PRESENCE REQUIREMENT FOR ELECTRONIC NOTARIZATION.

When an electronic notary public performs an electronic notarization, the principal and the electronic notary public must be in each other's physical presence during the entire electronic notarization so that the principal and the electronic notary public can see, hear, communicate with, and give identification documents as stated in Neb. Rev. Stat. § 64-105 to each other without the use of electronic devices such as telephones, computers, video cameras, or facsimile machines.

009. ELECTRONIC NOTARY SOLUTION PROVIDER APPLICATION.

009.01 Any person or entity applying to the Secretary for designation as an Approved Electronic Notary Solution Provider is to complete and submit an application to the Secretary for review and approval before authorizing any electronic notary seals or electronic signatures to Nebraska electronic notaries. The application is to include the following information:

009.01(A) Hardware and software specifications and requirements for the provider's Electronic Notarization System;

009.01(B) A description of the type(s) of technology used in the provider's Electronic Notarization System; and

009.01(C) A demonstration of how the technology is used to perform an electronic notarization.

009.02 An electronic notary solution provider may appeal the Secretary's denial of the provider's application for designation as an Approved Electronic Notary Solution Provider as provided under the Nebraska Administrative Procedures Act, Neb. Rev. Stat. §§ 84-901 through 84-920.

010. CRITERIA FOR APPROVAL OF ELECTRONIC NOTARY SOLUTION PROVIDERS.

010.01 Each Applicant and each Approved Electronic Notary Solution Provider is to:

010.01(A) Provide a free and readily available viewer/reader so as to enable all parties relying on the electronically notarized record or document to view the electronic notary public's electronic signature and the electronic notary seal without incurring any cost.

010.01(B) Comply with the laws, policies, and rules that govern Nebraska Notaries Public;

010.01(C) Provide an Electronic Notarization System that complies with the technical specifications of the rules and standards that govern electronic notarization processes and procedures in Nebraska;

010.01(D) Ensure the provider's principals or employees take the mandatory electronic notary public education course and pass the examination as is necessary to ensure the provider possesses sufficient familiarity with Nebraska's electronic notary public laws and regulations;

010.01(E) Ensure Notaries Public present the Certificate of Registration to act as an Electronic Notary Public issued pursuant to Neb. Rev. Stat. § 64-312 prior to authorizing an electronic notary seal and electronic signature;

010.01(F) Verify the authorization of a Nebraska Notary Public to perform electronic notary acts by confirming through the Secretary or the Secretary's website should an online listing be made available;

010.01(G) Provide prorated fees to align the usage and cost of the Electronic Notarization System with the commission term limit of the electronic notary public purchasing the electronic notary seal and electronic signature;

010.01(H) Suspend the use of any Electronic Notarization System for any Notary Public whose commission has been revoked, suspended, or canceled by the Secretary ; and

010.01(I) Submit an exemplary of the electronic notary public's electronic signature and the electronic notary seal to the Secretary for each electronic notary public who subscribes to the provider's Electronic Notarization System.

011. ELECTRONIC NOTARY SOLUTION PROVIDER CHANGES.

011.01 An electronic notary solution provider is to notify the Secretary within forty-five (45) days of changes, modifications, or updates to information previously submitted to the Secretary.

011.02 An Approved Electronic Notary Solution Provider is to provide notice to the Secretary pursuant to the Electronic Notary Public Act and this Chapter within forty-five (45) days before making available to Nebraska electronic notaries public any updates or subsequent versions of the provider's Electronic Notarization System. The Secretary may remove the designation of the Approved Electronic Notary solution provider if the changes to Electronic Notarization System do not meet the requirements of the Electronic Notary Public Act and this Chapter.

012. SEPARATE ATTESTATIONS.

012.01 Each electronic signature presented for notarization and attestation in the form of an acknowledgment is to be individually affixed to the electronic document by the principal signer and should be acknowledged separately by the principal signer, except in the following situation:

012.01(A) The notarized document is executed on behalf of:

012.01(A)(i) Any foreign or domestic:

012.01(A)(i)(1) Corporation, non-profit corporation, professional corporation;

012.01(A)(i)(2) Limited liability company;

012.01(A)(i)(3) Unincorporated association or partnership;

012.01(A)(i)(4) Business trust, estate, partnership, trust; or

012.01(A)(ii) The United States, any state, or any foreign government

013. ACCESS AND USE OF ELECTRONIC NOTARY SEAL AND ELECTRONIC SIGNATURE.

013.01 Neither the employer nor any of the employer's employees or agents may use or permit the use of an electronic notary seal or signature by anyone other than the authorized electronic notary public to whom it is registered.

013.02 Access to electronic notary signatures and electronic notary seals is to be protected by the use of a Biometric Authentication, Password Authentication, Token Authentication, or other form of authentication approved by the Secretary according to the Electronic Notary Public Act and this Chapter.

014. REPORT OF THEFT OR VANDALISM.

014.01 An electronic notary public who is to report, pursuant to Neb. Rev. Stat. § 64-310, the theft or vandalism of his or her electronic signature, electronic notary seal, or electronic record, including the backup record, is to do so in writing to the Secretary within ten (10) days after discovering the theft or vandalism.

014.02 Failure to report the theft or vandalism as required in Neb. Rev. Stat. § 64-310 may subject the electronic notary public to having his or her registration as an electronic notary public removed.

015. RECORD OF ELECTRONIC NOTARIAL ACTS.

015.01 Pursuant to Neb. Rev. Stat. § 64-310, an electronic notary public is to keep a journal of all electronic notarizations he or she performs and will present this journal, or any portion thereof, to the Secretary upon written request.

015.02 The electronic notary public is to maintain this record, and the backup record, for at least ten (10) years after the date of the notarial act.

015.03 An electronic notary public who fails to maintain the record or backup record for the retention period, or fails to timely provide the record upon request by the Secretary, will be subject to having his or her registration removed.

016. REMOVAL OF REGISTRATION.

016.01 An electronic notary public violating the Electronic Notary Public Act or this Chapter is subject to having his or her registration removed.

016.02 Any removal of a registration will be under the removal procedures provided in Neb. Rev. Stat. § 64-113 and 433 NAC 6 007.

017. CHANGE OF ELECTRONIC NOTARY PUBLIC INFORMATION OR REGISTRATION STATUS.

017.01 In addition to complying with Title 433 NAC 6 005, Changes to Notary Public Commission Information, an electronic notary public is to notify the Secretary in writing within forty-five (45) days after changing his or her Approved Electronic Notary Solution Provider.

017.01(A) The new Approved Electronic Notary Solution Provider is to submit an exemplary of the new electronic notary public's electronic signature and the electronic notary seal to the Secretary for the electronic notary public.

017.02 Failure to timely notify the Secretary may subject the electronic notary public to having his or her registration removed.

018. EXPIRATION OF REGISTRATION; RESIGNATION, CANCELLATION, OR REVOCATION; DEATH OF ELECTRONIC NOTARY PUBLIC; REQUIRED ACTIONS.

An electronic notary public, or his or her duly authorized representative, who is required to certify that he or she has erased, deleted, or destroyed the coding, disk, certificate, card, software, file, password, or program that enables the electronic affixation of the electronic notary public's electronic signature and electronic notary seal, in compliance with Neb. Rev. Stat. § 64-311, is to do so in writing to the Secretary within three months after the registration of the electronic notary public expires, is resigned, canceled, or revoked or upon the death of the electronic notary public.

019. FEES.

The fee for registering or re-registering as an electronic notary public is \$100.00.

020. APPLICATIONS AND OTHER FORMS

020.01 The following forms will be available for registration as an electronic notary public:

020.01(A) Initial Electronic Notary Public Registration form;

020.01(B) Electronic Notary Public Renewal Application and Re-Registration form; and

020.01(C) Electronic Notary Public Solution Provider application.

020.02 The forms listed in this section will be made available to all Applicants on the Secretary's website or upon request.