

EMERGENCY RULE ADOPTED PURUSANT TO Neb. Rev. Stat. § 84-901.04

TITLE 433 – SECRETARY OF STATE

CHAPTER 9 – ONLINE NOTARIES PUBLIC EARLY IMPLEMENTATION

001. SCOPE.

01.01 The Rules in this Chapter implement the Online Notary Public Act, Neb. Rev. Stat. §§ 64-401 through 64-418.

01.02 This is an emergency rule adopted pursuant to Neb. Rev. Stat. § 84-901.04.

Citation: Neb. Rev. Stat. § 46-407.

002. DEFINITIONS.

In addition to terms defined in the Online Notary Public Act, the following definitions apply for purposes of Chapter 9 of these regulations:

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

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

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

002.04 "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.

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

002.06 "Online Notarization System" means a set of applications, programs, hardware, software, or technology designed or provided by an Approved Online Notary Solution Provider to enable a Notary Public to perform online notarizations.

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

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

002.09 "Token Authentication" means requiring use of a physical device in addition to a password or personal identification number ("PIN") in order to access and use an Online 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 the requirements of Neb. Rev. Stat. § 64-410, means "under the online notary public's sole control" as defined in this Chapter.

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

Citation: Neb. Rev. Stat. §§ 64-402, 64-407, and 64-410.

003. APPLICATION.

003.01 To qualify for registration as an online notary public, an Applicant must:

003.01(A) Provide all information required for registration pursuant to Neb. Rev. Stat. § 64-406;

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

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

003.01(D) Take the required course of instruction within 30 days after it is made available by the Secretary and pass the examination as required by Neb. Rev. Stat. § 64-404;

003.01(E) Pay the required registration fee; and,

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

Citation: Neb. Rev. Stat. §§ 64-403, 64-404, 64-405, 64-406, & 64-407.

004. REGISTRATION RENEWAL.

004.01 A Notary Public applying to renew his or her registration as an online notary public must so indicate on his or her notary public renewal application and pay the fee for registration as an online notary public, in addition to the fee for renewal of his or her Notary Public commission.

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

Citation: Neb. Rev. Stat. §§ 64-605 and 64-406.

005. APPROVED COURSE OF STUDY AND EXAMINATION FOR ONLINE NOTARIES PUBLIC.

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

005.03 An Applicant who qualifies for registration as an online notary before July 1, 2020, must take the required training course within thirty (30) days after it is made available by the Secretary. The Secretary will notify any such Applicant after the training course is available.

005.04 An Applicant must score 85% or better to pass the examination.

005.05 If an Applicant fails the examination, the application for registration will be denied. An Applicant who fails the examination must wait thirty (30) days to reapply for registration, 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 online notary public and will not be eligible to take the exam again.

Citation: Neb. Rev. Stat. §§ 64-404 and 64-407.

006. ONLINE NOTARY PUBLIC ELECTONIC SIGNATURE.

006.01 The online notary public's electronic signature must be Independently Verifiable and unique to the online notary public.

006.02 The online notary public's electronic signature must be retained under the online notary public's sole control.

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

006.04 The online notary public's electronic signature must be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or online notarial certificate are observable through visual examination.

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

Citation: Neb. Rev. Stat. §§ 64-402, 64-407, and 64-410.

007. ONLINE NOTARY SEAL.

007.01 The online notary seal must be Independently Verifiable and unique to the online notary public.

007.02 The online notary seal must be retained under the online notary public's sole control.

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

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

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

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

007.07 The online notary seal must have, within its border, the online notary public's name exactly as commissioned, identifying number, and commission expiration date, as well as the words "Online Notary Public" and the word "Nebraska".

Citation: Neb. Rev. Stat. §§ 64-402, 64-407, and 64-410.

008. PHYSICAL LOCATION OF ONLINE NOTARY PUBLIC DURING PERFORMANCE OF ONLINE NOTARIAL ACT.

When an online notary public performs an online notarial act, he or she must be physically located in the State of Nebraska.

Citation: Neb. Rev. Stat. §§ 64-607, 64-411, and 64-418.

009. ONLINE NOTARY SOLUTION PROVIDER APPLICATION.

009.01 Before issuing any online notary seals or electronic signatures to Nebraska online notaries public, an online notary solution provider must be approved by the Secretary.

009.02 To be approved, the online notary solution provider must complete and submit an application to the Secretary. The application must include the following information:

009.02(A) Hardware and software specifications and requirements for the provider's Online Notarization System,

009.02(B) A description of the type(s) of technology used in the provider's online notarization system, and

009.02(C) If requested by the Secretary, a demonstration of how the technology is used to perform an online notarization.

009.02(D) Any other information that the Secretary requests related to the provider's Online Notarization System.

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

Citation: Neb. Rev. Stat. § 64-407.

010. CRITERIA AND STANDARDS FOR APPROVAL OF ONLINE NOTARY SOLUTION PROVIDERS.

010.01 Each applying and each Approved Online Notary Solution Provider must:

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

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

010.01(C) Provide an Online Notarization System that complies with the technical specifications of the rules and standards that govern online notarization processes and procedures in Nebraska, including the minimum requirements for credential analysis, identity proofing, and communication technologies;

010.01(D) To ensure the provider possesses sufficient familiarity with Nebraska's online notary public laws and requirements, require the individual signing the application on behalf of the online notary solution provider to pass the required examination for online notary public applicants and, within thirty (30) days after it is made available, take the mandatory online notary public education course;

010.01(D) Require notaries public to present the Certificate of Registration to act as an online notary public issued by the Secretary prior to authorizing an online notary seal and electronic signature;

010.01(E) Provide prorated fees to align the usage and cost of the online notary solution with the commission term limit of the Notary Public purchasing the online notary seal and electronic signature;

010.01(F) Suspend the use of any online notary solution for any Notary Public whose commission or registration has been revoked, suspended, or canceled by the Secretary; and

010.01(G) Submit an exemplary of the online notary public's electronic signature and the online notary seal to the Secretary for each online notary public who subscribes to the provider's Online Notarization Solution.

010.02 Communication technology provided by the online notary solution provider must, at a minimum:

010.02(A) Provide for continuous, synchronous audio-visual feeds;

010.02(B) Provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak to each other simultaneously through live, real time transmission;

010.02(C) Provide sufficient captured image resolution for credential analysis to be performed in accordance with the Online Notary Public Act and this Chapter.

010.02(D) Include a means of authentication that reasonably ensures only the proper parties have access to the audio-video communication;

010.02(E) be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing quiz, and the means and methods used to generate the credential analysis output; and

010.02(F) provide reasonable security measures to prevent unauthorized access to:

010.02(F)(i) the live transmission of the audio-video communication;

010.02(F)(ii) a recording of the audio-video communication;

010.02(F)(iii) the verification methods and credentials used to verify the identity of the principal; and

010.02(F)(iv) the electronic documents presented for online notarization.

010.03 Credential analysis provided by an online notary solution provider must, at a minimum:

010.03(A) Use automated software processes to aid the online notary public in verifying the identity of a principal or any credible witness;

010.03(B) Ensure that the credential passes an authenticity test, consistent with sound commercial practices that:

010.03(B)(i) Use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features;

010.03(B)(ii) Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;

010.03(B)(iii) Use information held or published by the issuing source or authoritative sources, as available, to confirm the validity of personal details and credential details; and

010.03(B)(iv) Provide the result of the authenticity test to the online notary public;

010.03(C) Enable the online notary public to visually compare the following for consistency: the information and photo presented on the credential itself and the principal as viewed by the online notary public in real time through audio-visual transmission.

010.04 Identity proofing provided by an online notary solution provider must, at a minimum, meet the following requirements:

010.04(A) Require the principal to complete a quiz consisting of a minimum of five questions related to the principal's personal history or identity, formulated from public and proprietary data sources;

010.04(B) Each question must have a minimum of five possible answer choices;

010.04(C) At least 80% of the questions must be answered correctly;

010.04(D) All questions must be answered within two minutes;

010.04(E) If the principal fails his or her first attempt, he or she may retake the quiz one time within 24 hours;

010.04(F) During the retake, a minimum of 60% of the prior questions must be replaced; and

010.04(G) If the principal fails his or her second attempt, he or she is not permitted to retry with the same online notary public for 24 hours.

010.05 If the principal or online notary public exit the online notary solution or the audio or visual feed is interrupted or terminated, the principal must restart the online notarial process from the beginning.

Citation: Neb. Rev. Stat. §§ 64-402, 64-407, 64-409, and 64-411.

011. ONLINE NOTARY SOLUTION PROVIDER CHANGES.

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

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

Citation: Neb. Rev. Stat. § 64-407.

012. SEPARATE ATTESTATIONS.

012.01 For an online notarial act, each principal's signature requiring notarization and attestation in the form of an acknowledgment must be individually affixed to the electronic document by the principal and must be acknowledged separately by the principal, except in the following situations:

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

Citation: Neb. Rev. Stat. § 64-407.

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

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

013.02 Access to an online notary public's signature and online notary seal must be protected by the use of a password authentication, token authentication, biometric authentication, or other form of authentication approved by the Secretary according to the Online Notary Public Act.

Citation: Neb. Rev. Stat. §§ 64-407 and 64-410.

014. REPORT OF THEFT OR VANDALISM.

014.01 An online notary public who is required to report, pursuant to Neb. Rev. Stat. § 64-410, the theft or vandalism of his or her electronic signature, online notary seal, or electronic record, including the backup record, must do so in writing to the Secretary within ten (10) days after the discovery of the theft or vandalism.

014.02 Failure to report the theft or vandalism as required in Neb. Rev. Stat. § 64-410 may subject the online notary public to having his or her registration as an online notary public removed.

Citation: Neb. Rev. Stat. §§ 64-410.

015. RECORD OF ONLINE NOTARIAL ACTS.

015.01 Pursuant to Neb. Rev. Stat. § 64-409, an online notary public is required to maintain a secure electronic record of all online notarial acts by the online notary public.

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

015.03 The online notary public must make this record, or any portion thereof, available to the Secretary upon request by the Secretary.

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

Citation: Neb. Rev. Stat. §§ 64-409.

016. REMOVAL OF REGISTRATION.

016.01 An online notary public violating the Online 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 procedures provided in Neb. Rev. Stat. § 64-113 and 433 NAC 6 007.

Citation: Neb. Rev. Stat. §§ 64-407 and 64-416.

017. CHANGE OF ONLINE NOTARY INFORMATION OR REGISTRATION STATUS

017.01 In addition to complying with the notification requirements to changes to the Notary Public's information required by 433 NAC 6 005, an online notary public must also notify the Secretary in writing within forty-five (45) days after any changing Online Notary Systems or Approved Online Notary Solution Providers.

17.01(A) The new Approved Online Notary Solution Provider must submit an exemplary of the new online notary public's electronic signature and the online notary seal to the Secretary for the online notary public.

017.02 Failure to timely update this information may subject the online notary public to having his or her registration removed.

Citation: Neb. Rev. Stat. §§ 64-407 & 64-416.

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

018.01 An online 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 online notary public's electronic signature and online notary seal, in compliance with Neb. Rev. Stat. § 64-413, must do so in writing to the Secretary within three months after the registration of the online notary public expires, is resigned, canceled, or revoked or upon the death of the online notary public.

Citation: Neb. Rev. Stat. § 64-413.

019. FEES.

The fee for registering or renewing a registration as an online notary public is \$50.00.

Citation: Neb. Rev. Stat. § 64-405.

020. APPLICATIONS AND OTHER FORMS

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

020.01(A) Initial Online Notary Public Registration form;

020.01(B) Online Notary Public Renewal Application and Re-Registration form; and
020.01(C) Online Notary Public Solution Provider application.

020.02 The forms listed in this section will be made available to all Applicants upon request.

Citation: Neb. Rev. Stat. § 64-407.

021. EFFECTIVE DATE.

This Chapter will be superseded by the proposed rule and regulation Nebraska Administrative Code Title 433 Chapter 8 Online Notaries Public when it becomes effective after approval by the Attorney General and Governor and filing with the Secretary of State, pursuant to the Administrative Procedures Act, Neb. Rev. Stat. §§ 84-901 to 920.